

February 22, 2011

Ms. Elizabeth Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Trade Acknowledgment and Verification of Security-Based Swap Transactions (RIN 3235-AK91)

Dear Ms. Murphy:

MarkitSERV¹ is pleased to submit the following comments to the Securities and Exchange Commission (the “**SEC**” or the “**Commission**”) on the proposed SEC rulemaking entitled Trade Acknowledgment and Verification of Security-Based Swap Transactions (the “**Proposed Rule**”)² to implement certain requirements included in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “**DFA**”).³

1. Introduction.

MarkitSERV provides trade processing, confirmation, matching, and reconciliation services for swaps and security-based swaps (“**SBS**”) across regions and asset classes. With over 2,000 firms currently using the MarkitSERV platform, including over 21,000 buy-side fund entities, its legal, operational, and technological infrastructure plays an important role in supporting the swaps markets in the United States and globally. As a service and infrastructure provider to the international swaps markets, MarkitSERV supports the Commission’s objectives of increasing transparency and efficiency in these markets and of reducing both systemic and counterparty risk.

In our comments below, with respect to the Proposed Rule, MarkitSERV wishes to: (a) highlight certain significant market consequences and implementation impacts; (b) identify potential challenges with the Proposed Rule; and (c) propose solutions and recommendations on ways to more effectively implement the Proposed Rule.

2. Executive Summary.

As further explained below, MarkitSERV believes that: (i) the record trail created by the verification process (*i.e.*, confirmation) should constitute best evidence that the counterparties (*i.e.*, SBS swap dealers (“**SB SDs**”) or SBS major swap participants (“**SB MSPs**”)) agree to the terms and binding nature of a trade; (ii) trades subject to the clearing requirement should be legally verified prior to submission to a central clearing counterparty (“**CCP**”) for clearing; (iii) the

¹ MarkitSERV, jointly owned by The Depository Trust & Clearing Corporation (DTCC) and Markit, provides a single gateway for OTC derivatives trade processing. By integrating electronic allocation, trade confirmation and portfolio reconciliation, MarkitSERV provides an end-to-end solution for post-trade transaction management of OTC derivatives in multiple asset classes. MarkitSERV also connects dealers and buy-side institutions to trade execution venues, central clearing counterparties and trade repositories. In 2010, more than 19 million OTC derivatives transaction sides were processed using MarkitSERV. Please see www.markitserv.com for additional information.

² Trade Acknowledgment and Verification of Security-Based Swap Transactions, 76 Fed. Reg. 3859 (proposed Jan. 21, 2011).

³ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

registration requirements applicable to entities that must register as clearing agencies with the Commission for providing “confirmation” services should be fair and should apply to all entities that provide similar acknowledgment, verification and confirmation services, be it through affirmation or through matching; (iv) in this regard, “confirmation” clearing agencies should only be required to fulfil a limited number of requirements compared to credit-substituting CCPs or should be given an exemption from certain requirements that are not relevant to them; (v) a swap execution facility (“**SEF**”), a designated contract market (“**DCM**”), or a derivatives clearing organization (“**DCO**”) that provides confirmations should meet all requirements applicable to confirmation clearing agencies; (vi) the Proposed Rule should apply separate time periods (15/30/24) to each of trade acknowledgment and trade verification; (vii) the time periods should commence from the point when all information required to trade acknowledge and trade verify is available; (viii) the definition of “processed electronically” should also include as a required component electronic communication; (ix) electronic processing and communication should be required where possible; (x) electronic confirmation should be encouraged but not required for all swaps and SBS; (xi) the SEC and Commodity Futures Trading Commission (“**CFTC**”) should harmonize their rules to the maximum extent possible so as to minimize the already substantial compliance burdens on regulated parties; (xii) counterparties should be permitted to delegate their recordkeeping responsibilities to qualified third parties; and (xiii) the Proposed Rule should be implemented in phases.

3. Current Market Practice.

Our comments below address market practice in the credit and equity derivative markets that would be subject to the Proposed Rule, although similar comments would apply to the interest rate derivative markets. Before we comment on the specific provisions of the Proposed Rule, we will describe how swap transactions are currently confirmed in these markets.

The process of documenting SBS and swaps in today’s market involves three functions: (i) trade enrichment; (ii) trade affirmation or matching of material trade terms negotiated between the counterparties; and (iii) attachment to a legal framework. These three steps are present in the “confirmation” of the vast majority of all SBS and swap transactions, regardless of the execution method (*i.e.*, via bilateral paperwork, telephone, voice-brokered, or executed on an electronic execution platform), whether transactions are centrally cleared or not, and whether they are confirmed electronically or through other means.

a. Trade enrichment

Transactions in SBS and swaps are typically executed through the agreement of the main economic terms of the transaction (such as pricing and notional size), with other economic details only explicitly agreed where they vary from accepted market practice (for example payment frequency, business day conventions, defaults, disruption fallbacks, termination events and termination calculation methodology, and holiday calendars), and additional terms which are specific to the terms of the counterparty relationship (for example master agreement reference or other credit terms).

Trade confirmations that are established for SBS and swap transactions today must contain all of this information (*i.e.*, best evidence of the trade), and the process of adding additional information to the execution details to create a complete documentation of the SBS or swap transaction is known as “trade enrichment”. The level of required trade enrichment depends on the complexity of the transaction type and the form of legal framework under which the trade is

confirmed. Enrichment can happen through a variety of means, including trade capture systems and automated confirmation services such as the ones provided by MarkitSERV.

b. Trade affirmation vs. matching

Counterparties to a SBS or swap transaction typically use one of two methods to agree that the fully enriched set of transaction details accurately records the execution intent:

- i. *Affirmation*: in the affirmation method, one party alleges the details of the SBS or swap transaction to their counterparty, equivalent to sending a “trade acknowledgment” as defined in the Proposed Rule.⁴ The counterparty will then check or verify these details and, if appropriate, affirms that they are correct. For transactions that are facilitated through an intermediary, e.g. an inter-dealer broker or an electronic trading system, the intermediary may propose the transaction details to both parties, who then affirm them with each other.
- ii. *Matching*: as part of the matching method, both counterparties to the SBS or swap transaction allege the transaction details to each other, which are then compared. The comparison can be performed in a centralized fashion, i.e., “central matching” through electronic matching services such as those provided by MarkitSERV. It can also be performed in a localized manner, where one or both counterparties make their own comparison and notify the other party of any discrepancies.⁵

Affirmation and local matching can also be used together, where the party who receives alleged details of the SBS or swap transaction will perform a local match to their satisfaction, and then affirms to their counterpart.

When one of the automated electronic confirmation services such as MarkitSERV is used to affirm or match details of a SBS or swap transaction, the service provides notification to both parties when the process of affirmation or matching is complete, thereby completing the confirmation process. The service will also be used as a means to communicate and rectify any discrepancies prior to completing the confirmation.

Current market practice includes confirmation of trade life-cycle events, varying amongst asset classes, but including for example negotiated full and partial terminations and full and partial novations.

MarkitSERV is one of the services that facilitates confirmation of SBS and swap transactions. It does so in various asset classes through affirmation, matching, as well as through affirmation with local matching. Each of these methods is widely used by a variety of market participant types. Quarterly metrics⁶ show that the major market makers each executed on average around 40,000 credit derivative transactions per month in 2010. 99% of these transactions were electronically confirmed, with a very high percentage of those using a central matching method.

⁴ See Proposed Rule, 76 Fed. Reg. at 3873 (to be codified at 17 C.F.R. § 240.15Fi-1(a)(10) (“The term *trade acknowledgment* means a written or electronic record of a security-based swap transaction sent by one party to the other.”)).

⁵ “Local matching” can be performed by printing both forms of the counterparties’ confirmations on paper and physically comparing them side-by-side and item-by-item, or by using a computer system to compare electronically captured trade data.

⁶ Available at <http://www.markit.com/en/products/research-and-reports/metrics/metrics.page>.

The volume in interest rate derivatives was around 20,000 transactions per month, 80% of which were electronically confirmed, largely using affirmation or affirmation with local matching. The volume in equity derivatives was around 3,000 transactions per month, of which 40% were electronically confirmed using a mixture of central matching, affirmation and affirmation with local matching.

c. Current market practice for attachment to a legal framework

Currently, almost every SBS or swap confirmation references master level documentation with the predominant framework provided by the International Swaps and Derivatives Association (“*ISDA*”). Parties to a transaction typically sign a Master Agreement prior to entering into a trading relationship, and all subsequent transactions to which the Master Agreement is applicable are governed by the terms of the agreement. For some products, such as equity derivatives, the parties also sign a Master Confirmation Agreement (“*MCA*”) which contains terms which do not vary across individual transactions within a product or regional sector. The use of MCAs allows individual trade confirmations to reference the relevant MCA and so contain fewer terms that would otherwise be repeated in a standardized form trade after trade. ISDA also publishes standard definitions for each asset class which define terms that are frequently used in transaction documentation, in order to reduce the length and complexity of transaction level documentation. Additional ISDA documentation which may be relied upon includes master-level credit support documentation and other master netting agreements.

Automated confirmation services such as those provided by MarkitSERV allow participants to agree in advance to rely on master-level documentation or commonly-accepted industry-wide conventions. This reliance is created by both parties signing operating procedures with the platform providers which evidence that agreement, and which can be relied upon by both parties to a trade being confirmed using the service. The Commission acknowledges in the Proposed Rule that such mechanism greatly simplifies the use of the automated service by allowing easier integration and wider use among market participants.⁷ Importantly, these platforms afford flexibility related to standardization. Working with all customers to the platform, in an open and collaborative process, the confirmation development process includes working groups and notification related to legal construct, specifically data elements and field entries related to those elements. We believe that in this context the right balance between standardization, operational efficiency and legal certainty is paramount.

It is worth noting that a number of middleware services currently operating in the marketplace provide affirmation or matching functionality without any legal attachment. We do not believe that the record trail created by such a service is the best possible evidence of the terms or existence of a transaction because the parties do not consent to the binding nature of the affirmation or matching. In the interest of maximizing the certainty that parties have as to the terms and even existence of a transaction, we support the Proposed Rule’s requirement that the

⁷ See Proposed Rule, 76 Fed. Reg. at 3860 (“... Prudent practice requires that, after coming to an agreement on the terms of a transaction, the parties document the transaction in a complete and definitive written record so there is legal certainty about the terms of their agreement in case those terms are later disputed. Therefore, industry best practices incorporate a process by which the parties verify that the trade acknowledgment accurately reflects the terms of their trade... This process, through which one party acknowledges an SBS transaction and its counterparty verifies it, is the confirmation process, which results in the issuance of a confirmation that reflects the terms of the contract between the parties. This confirmation includes any transaction-specific modifications to master agreements between the parties that might apply to the transaction, such as the International Swaps and Derivatives Association (“*ISDA*”) Master Agreement and Schedule. A confirmation is thus a written or electronic record of an SBS transaction that has been sent by one party and verified by the other where that record has been manually, electronically, or by some other legally equivalent means, signed by the receiving counterparty.”).

parties consent to the binding nature of the verification process (*i.e.*, produce a legally binding confirmation), and believe that this should be the case regardless of what framework the parties agree to use for attachment. We note that this requirement is consistent with the corresponding proposed rule issued by the CFTC (the “**CFTC Rule**”).⁸

MarkitSERV generally believes that in order to minimize legal risk in the SBS and swaps markets the Proposed Rule should require transactions to be fully legally confirmed before being presented to a CCP for clearing. We note that requiring swaps and SBS transactions to be legally confirmed before being submitted to a CCP constitutes the market standard today for the large majority of clearable credit and interest rate derivative transactions.

d. Current market practice for electronically executed trades

The documentation process for electronically executed SBS or swap transactions is currently the same as for those that are executed through other means. Execution platforms will typically not hold all of the data that would be required to bilaterally confirm trades. This is either because they support trading for standardized transactions, where for example common terms such as payment frequency are assumed at execution, or because they do not hold bilaterally specific terms, such as MCA type and date. In either case these terms will be added during the enrichment process, and the full details are then agreed through an affirmation or matching process. Confirmation platforms such as MarkitSERV will provide automated enrichment capabilities which, combined with electronic affirmation/matching and legal attachment, allow a fully automated service for electronically executed transactions in SBS and swaps. Accordingly, we support the broad confirmation language set forth in the Proposed Rule.⁹

e. Confirmation submission and timeliness analysis

Part of the ongoing industry commitments to the Federal Reserve Bank of New York (FRBNY) include submission timeliness and confirmation targets for electronically eligible confirmations that are processed on an electronic platform, with such targets agreed per asset class in order to take into account respective size, breadth, and levels of standardization. An analysis of transactions electronically confirmed through MarkitSERV shows the following submission and timeliness rates:

Timeliness of Electronic Submission and Electronic Confirmation

	% Submitted		% Confirmed	
	T+0	T+1	T+0	T+1
Credit	96%	99%	88%	95%
Equity	79%	94%	69%	80%
Rates	89%	97%	84%	94%

⁸ See, e.g., Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants, 75 Fed. Reg. 81519, 81521 (proposed Dec. 28, 2010) (“*Confirmation* means the consummation (electronically or otherwise) of legally binding documentation (electronic or otherwise) that memorializes the agreement of the counterparties to all of the terms of a swap transaction.”).

⁹ The CFTC Rule states that it expects that counterparties could satisfy the confirmation requirement by executing on a SEF or DCM, or by clearing on a DCO, see CFTC Rule, 75 Fed. Reg. 81519, 81520, while the Proposed Rule proposes a much broader application and states that the SBS SD and the SBS MSP “will have satisfied the requirements of paragraph (b)(1) of this section [to provide the trade acknowledgment of the trade] if a clearing agency through its facilities produces a confirmation of each [SBS] swap transaction.” See Proposed Rule, 76 Fed. Reg. at 3874 (to be codified at 17 C.F.R. § 240.15Fi-1(b)(2)).

Electronically Eligible Volume as a % of Total Volume¹⁰

Credit	99%
Equity	41%
Rates	92%

MarkitSERV's Comments Related to the Proposed Rules

4. Registration Requirements for Clearing Agencies Providing Matching Services Should Be Fair and Equitable.

The Proposed Rule emphasizes the importance of clearing agencies that provide matching services to the confirmation process. Indeed, the Proposed Rule states that “the Commission wishes to encourage SBS Entities to use these matching services.”¹¹ In order to best promote the development and use of matching services, the Commission should be careful to not provide disincentives for entities wishing to provide these services. For example, the Proposed Rule groups entities providing matching services and those providing central clearing services (CCPs) under the common umbrella of “clearing agencies,” and notes that both of these types of entities must register as such with the Commission.¹² We believe that the Commission needs to further clarify the registration, operational, financial, governance, ownership, compliance and other requirements that would be applicable to those clearing agencies that provide only confirmation services versus those that are applicable to CCPs.¹³

We believe that a clearing agency providing only confirmation services (a “confirmation clearing agency”) should only be required to satisfy a very limited number of provisions compared to a CCP, or should be provided with an appropriate exemption. This is because a *matching facility* compares the terms of the trade that has already been executed without novation or substitution as a central counterparty between the counterparties and without carrying any credit risk vis-à-vis the counterparties.

In contrast, the sole function of the *central clearing counterparty*, in its traditional sense, is to substitute or novate the trade, where the original trade between the counterparties is terminated and instead two trades arise between the counterparties and, most critically, where the CCP carries the credit risk vis-à-vis each counterparty. Neither the Commodity Exchange Act (“CEA”),¹⁴ nor the CFTC,¹⁵ nor the DFA¹⁶ impose the derivatives clearing organization

¹⁰ Markit Metrics Trend Report, Q4 2010, available at <http://www.markit.com/en/products/research-and-reports/metrics/metrics.page>.

¹¹ See Proposed Rule, 76 Fed. Reg. at 3862.

¹² See *id.* at 3862 & n.22.

¹³ See *id.* at 3862 n.22 (“In the course of clearing and settling SBS transactions, clearing agencies would need much or all of the information that is required on a trade acknowledgment, and therefore, the clearing agency would have in place systems to receive and process the information on a trade acknowledgment. The Commission notes that clearing agencies must: register with the Commission and submit their rules for review and approval by the Commission; meet minimum standards of care; have the capacity to enforce the rules and discipline their participants; and have chief compliance officers to oversee compliance with their statutory and regulatory obligations. The Commission believes that clearing agencies are thus equipped to manage the operations necessary to provide trade acknowledgments in the course of their work clearing and settling SBS transactions.”).

¹⁴ See Commodity Exchange Act, 7 U.S.C. § 1a(15): “The term “derivatives clearing organization” means a clearinghouse, clearing association, clearing corporation, or similar entity, facility, system, or organization that, with respect to an agreement, contract, or transaction— (i) enables each party to the agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the derivatives clearing organization for the credit of the

registration requirements on matching/affirmation facilities. In this connection, we note that it would be imperative that the Commission reconcile with the CEA, as amended by the DFA, and the CFTC its requirements applicable to confirmation clearing agencies because a large number of market participants will be trading simultaneously commodity-based swaps, SBS, as well as “mixed swaps” that will be matched/affirmed and confirmed on facilities under both the Commission and the CFTC jurisdiction.

Alternatively, we believe that the Commission should provide for either: (i) an exemption from registration for confirmation clearing agencies, or (ii) a conditional exemption from registration for these entities, that would only apply relevant requirements to confirmation clearing agencies (*i.e.*, “clearing agency” registration-light).

Furthermore, we believe it is very important that the Commission establishes a level playing field for different providers of confirmation services. This can be achieved through: (i) clarifying that the Commission will not permit unregistered third parties to perform confirmation functions; (ii) requiring all confirmation providers to meet the same registration and conduct requirements without regard to the method of confirmation provided (*e.g.*, affirmation, matching, acknowledgment, verification or any other method) if they include in their functionality sending a verified trade to a registered entity *e.g.*, SB SDR, CCP or public disseminator. Tools which merely act as a communication conduit between two parties for affirmation but provide no further connectivity (*e.g.*, electronic mail) should not be required to register as a clearing agency; and (iii) making SEFs and CCPs that provide confirmation services subject to at least the same registration requirements as confirmation clearing agencies.

5. SEFs, DCMs, and DCOs That Provide Confirmations Should Meet All Requirements Applicable to Confirmation Clearing Agencies.

Execution of a trade on a SEF or DCM, or clearing on a DCO in and of itself does not provide counterparties with a full, legally binding confirmation of the SBS or swap transaction. To this end, we note that confirmation clearing agencies are required under the Proposed Rule to produce “legally binding matched terms to the transaction.”¹⁷ We agree with the Commission parties should confirm all terms of the transaction,¹⁸ and do not believe that just executing a SBS on a SEF or DCM, or clearing it through a DCO, will do so.

SEFs or DCOs that indeed provide or intend to provide confirmations should not only be required to produce a complete, legally binding record of the transaction that is based on a recognized legal framework, but should also be required to register as a confirmation clearing agency.

parties; (ii) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such agreements, contracts, or transactions executed by participants in the derivatives clearing organization; or (iii) otherwise provides clearing services or arrangements that mutualize or transfer among participants in the derivatives clearing organization the credit risk arising from such agreements, contracts, or transactions executed by the participants.”

¹⁵ See General Regulations and Derivatives Clearing Organizations, 75 Fed. Reg. 77576, 77585 (proposed Dec. 13, 2010) (to be codified at 17 C.F.R. § 1.3(d)) (materially tracking the definition of DCO in the CEA for the definition of both a “clearing organization” and a “derivatives clearing organization.”).

¹⁶ See DFA, 124 Stat. at 1685-86 (requiring registration of entities performing “the functions of a derivatives clearing organization” and permitting voluntary registration of any person that clears one or more transactions that are not required to be cleared).

¹⁷ Proposed Rule, 76 Fed. Reg. at 3862 n. 20.

¹⁸ See *id.* at 3860 (“prudent practice requires that, after coming to an agreement on the terms of a transaction, the parties document the transaction in a complete and definitive written record so there is legal certainty about the terms of their agreement in case those terms are later disputed.”).

6. The Time Periods Applicable to Trade Acknowledgment and Trade Verification Should Be Consistent and Achievable.

- a. The Time Period Applicable to Trade Acknowledgment Should Commence From the Point When All Information Required To Acknowledge a Transaction Is Available

The Proposed Rule sets forth a series of rules regarding the time period to acknowledge an SBS or swap transaction based on the parties involved and the method of execution.¹⁹ We believe that counterparties should be encouraged and required to confirm SBSs and swap transactions in a reasonable period of time, however, we do not regard the proposed time periods as feasible in many cases.

Complications and operational challenges would arise from the proposed time periods. The current market practice related to allocations, for example, will prohibit trade acknowledgments from being issued by the proposed time periods: it is current market practice today that a transaction is entered into at an “execution” level, for a certain notional size and price, and only allocated by the end-user to multiple underlying funds thereafter. These allocations are often only done by the end of the day to a dealer by the customer, which would make it impossible to achieve confirmation by the required time periods.²⁰ Additionally, for some SBS products, such as equity swaps, the details necessary to price them are only known at the end of the business day.

For many SBS and swap transactions it will be due to the above reasons that trade acknowledgments are not currently issued within 30 minutes of execution. Thus, we recommend that the allowed time period for issuance of trade acknowledgments by SB SDs or SB MSPs should commence only when the SB SD or SB MSP is in possession of all of the information necessary to issue the trade acknowledgment.

The CFTC’s proposed requirement to confirm non-electronically processed transactions by the end of the day of execution²¹ does not seem appropriate as it would require confirmation of a complex trade within minutes if a transaction took place late in the day. We believe that the Commission’s proposal of providing an acknowledgment “within 24 hours” is generally preferable, as long as it was applied to business days only. However, we doubt that such requirement could be achieved today for all transactions that are not electronically processed.

We do not believe that instituting this more practical trade acknowledgment process where the time period to provide acknowledgments would only start when all of the relevant information is available to the SD/MSP would be detrimental to the Commission’s reporting regime. On the contrary, we believe it would better serve it. Data relating to all SBSs will be reported in real-time as soon as technologically practicable regardless of the timing of trade acknowledgment and verification.²² We believe that, there should be the right balance between accuracy of data and timeliness, with more importance being placed on accuracy. The Commission should favor

¹⁹ See *id.* at 3874 (to be codified at § 240.15Fi-1(c)).

²⁰ Middleware providers such as MarkitSERV currently provide electronic allocation delivery (EAD) mechanisms which can reduce the interval between execution and confirmation, however adoption of EAD by end users is variable.

²¹ See CFTC Rule, 75 Fed. Reg. at 81531 (to be codified at 17 C.F.R. § 23.501(a)(1)(iii)).

²² See 15 U.S.C. 78m(m)(1)(A) (defining real-time public reporting as reporting data relating to a SBS transaction as soon as technologically practicable after the time at which the SBS transaction has been executed).

accuracy by granting the parties the requisite time to accurately acknowledge and verify the transaction data.

b. The Proposed Rule Should Base the Time Periods Around Trade Verification (or Dispute) As Well As Trade Acknowledgment, and Time Periods Should Consider Method of Communication

The Proposed Rule only sets the prescribed time periods for communicating trade acknowledgments, while the trade acknowledgment is only the first component in the confirmation process and must be followed by trade verification. Accordingly, we believe that both the trade acknowledgment and the trade verification (or dispute) should be subject to the time limitations.

For example, if a trade was electronically executed and was processed electronically, the trade acknowledgment should be communicated within 15 minutes and the trade should be verified (or disputed) also within 15 minutes from the time trade acknowledgment was sent – *i.e.*, the total of 30 minutes to complete the confirmation. Likewise, a trade that was not executed electronically but processed electronically, should be trade acknowledged within 30 minutes and verified (or disputed) within 30 subsequent minutes – *i.e.*, the confirmation should arise within one hour. For the non-electronically processed trades, the trade acknowledgment should be sent (*e.g.*, via a fax or a pdf email or any other method) within 24 hours, and trade verification or dispute should be communicated 24 hours after receipt of the trade acknowledgment.

Because the communication is a critical component in this chain of events (*i.e.*, communication of trade terms, execution, communication of trade acknowledgment, communication of verification), communication methodology should be factored in the calculation of the time periods. Accordingly, we propose that the definition of “processed electronically” should include not only the concept of being entered into the computerized trade system, but also the concept of being capable of being promptly communicated to the counterparty as follows:

"(9) The term processed electronically means entered into a [SBS SD] or [SBS MSP]'s computerized processing systems to facilitate clearance and settlement, **as well as to become capable of being communicated electronically to the counterparty either as trade acknowledgment or as trade verification.**"

The SEC's rule differs from the corresponding rule proposed by the CFTC because it would place time periods on the provision of trade acknowledgment as opposed to confirmation.²³ The SEC's Proposed Rule also differs from the CFTC Rule in that it requires transactions that cannot be electronically processed to be acknowledged within 24 hours of execution,²⁴ while the CFTC Rule requires confirmation of such transactions within the same calendar day as execution.²⁵ We encourage the Commissions to harmonize their rules to the extent possible in this regard as well, while recognizing that they need to take into account the specifics of the asset classes and products that they regulate.

We recognize that SB SDs and SB MSPs may face difficulty achieving timely confirmation if such confirmation depends on an action by its counterparty which is not an SB SD or SB MSP.

²³ Compare Proposed Rule, 76 Fed. Reg. at 3863 (setting forth time requirements applicable to trade acknowledgment), with CFTC Rule, 75 Fed. Reg. at 81522 (setting forth time requirements applicable to trade confirmation).

²⁴ See Proposed Rule, 76 Fed. Reg. at 3863.

²⁵ See CFTC Rule, 75 Fed. Reg. at 81522.

Through our experience with end-users, including corporations, fund managers and financial entities, the legal and operational considerations, including in some cases, a sanctioned multi-level confirmations approval process, it will prove to be a challenging proposition to require such demanding timing requirements. Therefore, we believe that the Commission should adopt the CFTC's requirement that SDs and MSPs "establish written policies and procedures reasonably designed to ensure confirmation with . . . [non-SDs or MSPs] by the next business day after the swap transaction is executed."²⁶

7. Electronic Processing Encouraged.

In encouraging electronic handling of SBS transactions, we believe that the Proposed Rule correctly requires SB SDs and SB MSPs to electronically process SBS transactions if they have "the ability to do so,"²⁷ and correctly requires trade acknowledgments through electronic means.²⁸ However, we also believe that the Commission should require SDs/MSPs to communicate swaps and SBS transaction information electronically where they have the ability to do so.

Furthermore, we generally believe that the Commission should encourage the use of electronic matching and confirmation platforms. Such a requirement is already effectively in place, based on the G14 dealer commitments to the FRBNY²⁹ and other regulatory authorities. These commitments apply to confirmable events that can be processed electronically using an electronic confirmation platform, and include commitments for each asset class for market participants to support eligible products on an electronic matching platform within targeted dates. For example, it contains a standing commitment for major dealers to support all electronically eligible trades within 90 days of availability on an electronic confirmation platform where they are trading more than an asset-class agreed number of eligible trades per month based on a three month average.³⁰

However, although great strides have been made with respect to asset-class standardization and electronic confirmation, there will be situations where electronic confirmation might not be feasible or practicable. Due to product innovation or the bespoke nature of some SBS, situations might arise where electronic confirmation technically cannot be provided, while the low number of transactions in a specific instrument type might sometimes not be sufficient to justify the cost of building the capabilities to electronically confirm. We therefore believe that it would not be realistic or achievable for the Commissions to mandate electronic confirmation of *all* SBS or swap transactions.

8. The Commissions Should Harmonize Their Rules.

We strongly encourage the Commissions to harmonize their rules as much as possible. As noted above, operational processes will require substantial modification which will require

²⁶ See CFTC Rule, 75 Fed. Reg. at 81522.

²⁷ See *id.* at 3863.

²⁸ See *id.* at 3874 (to be codified at 17 C.F.R. § 240.15Fi-1(d)).

²⁹ See the letter with certain commitments from the 14 buy-side and sell-side derivatives institutions addressed to the President of the Federal Reserve Bank of New York on March 1, 2010 (the "**FRBNY Commitment Letter**"). Commitments spelled out in the FRBNY Commitment Letter include: (i) greater use of global derivatives repositories; (ii) promotion of clearable contracts and centralized clearing generally; (iii) promotion of processing and legal contract standardization; (iv) promotion of bilateral margining and collateral arrangements; (v) promotion and greater use of straight-through trade processing, electronification, trade date matching, affirmation and processing of trades. http://www.newyorkfed.org/newsevents/news/markets/2010/100301_letter.pdf.

³⁰ http://www.newyorkfed.org/newsevents/news/markets/2010/100301_table.pdf.

separate regimes *per regulatory agency*. It is very important to note that firms are often organized per asset class. Therefore, they will need separate technology and operational processing tracks per asset class and each of these divisions will *also* need separate processing tracks per regulatory agency if the rules are different.

Our request for regulatory reconciliation is not exclusive to the United States, as other global jurisdictions will mandate further sets of processes. We believe that, unless international regulators harmonize their efforts, enormous developmental and implementation challenges will result that could potentially lead to market disruption. This will not only be the case for newly established requirements; the ongoing cost and efforts entailed to support the plethora of regulatory priorities will be a costly endeavor.

9. Record Keeping Delegation.

We believe that often it will be most efficient for counterparties to delegate the task of record keeping for SBS confirmations to dedicated confirmation platforms. Any forthcoming rules should therefore clarify that the task of recordkeeping for confirmations can be delegated to third parties and under what conditions.

10. The Proposed Rule Should be Phased-In.

We believe that the proposed requirements regarding the confirmation process and time periods for such confirmations would be demanding in many cases. In order to avoid market disruption, then, we suggest that the Commission implement the rules in phases. These phases could be based, for example, upon the complexity of products or the average time to confirm similar transactions. Such a phased-in approach would permit market participants to adapt to the Proposed Rule without causing adverse market consequences due to premature implementation.

We also submit, in order to accomplish the goals as outlined in the Proposed rule, “[t]o promote the efficient operation of the SBS market, and to facilitate market participants’ management of their SBS-related risk,” including efforts in “[c]onsulting with other financial regulators, including the Commodities Futures Trading Commission and the Board of Governors of the Federal Reserve System,” that efforts be made to coordinate and consult with other international regulatory bodies relative to this phased-in implementation. Our ability as a service provider to SBS and swaps markets both in the United States and elsewhere to ensure proper functioning will rest with the needs and demands of the regulators and participants alike, where prioritization will be essential.

Summary Conclusions

MarkitSERV appreciates the opportunity to comment on the Proposed Rule, and would be happy to elaborate or further discuss any of the points discussed. In the event you may have any questions, please do not hesitate to contact the undersigned or Gina Ghent at gina.ghent@markitserv.com, (646) 505-2310.

Ms. Elizabeth Murphy
February 22, 2011
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Sincerely,

A handwritten signature in blue ink, appearing to read "J. Gooch". The signature is stylized with a large, sweeping initial "J" and a long, horizontal stroke extending to the right.

Jeff Gooch
Chief Executive Officer
MarkitSERV