

January 24, 2011

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

Re: (1) Security-Based Swap Data Repository Registration, Duties, and Core Principles; and (2) Regulation SBSR-Reporting and Dissemination of Security-Based Swap Information

Dear Ms. Murphy:

Markit¹ is pleased to submit the following comments to the Securities and Exchange Commission (“**SEC**” or the “**Commission**”) on the following proposed rulemakings to implement certain requirements included in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “**DFA**”):² (1) SEC Proposed Rule on Security-Based Swap Data Repository Registration, Duties, and Core Principles³ (the “**SBS SDR Regulation**”); and (2) SEC Proposed Rule on Regulation SBSR - Reporting and Dissemination of Security-Based Swap Information⁴ (the “**Regulation SBSR**”) (collectively, “**Proposed Rules**”).

1. Introduction.

Markit provides independent data, valuations and related services for swaps and security-based swaps (“**SBS**”) across many regions and asset classes in order to reduce risk and improve operational efficiency in these markets. As a service and infrastructure provider to the global swaps markets, Markit supports the Commission’s objectives of increasing transparency and efficiency in the OTC derivatives markets and of reducing both systemic and counterparty risk.

Markit wishes to: (a) highlight some significant market consequences and impact of implementing the Proposed Rules as currently drafted; (b) identify potential deficiencies in the Proposed Rules; and (c) propose solutions and recommendations on how to more effectively implement Congressional intent in respect of the Proposed Rules.

2. Executive Summary.

Markit believes that: (i) SBS SDRs can play an important role in SBS valuations (both collecting the valuation data from the counterparties and providing independent position valuations), but they should not be mandated to

¹ Markit is a financial information services company with over 2,000 employees in North America, Europe and Asia Pacific. The company provides independent data and valuations for financial products across all asset classes in order to reduce risk and improve operational efficiency. Please see www.markit.com for additional information.

² Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

³ Security-Based Swap Data Repository Registration, Duties, and Core Principles [RIN 3235-AK79], 75 Fed. Reg. 77306 (proposed Dec. 10, 2010).

⁴ Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information [RIN 3235-AK80], 75 Fed. Reg. 75208 (proposed Dec. 2, 2010).

perform such valuations; (ii) as expressed in the rules relating to SDRs, all data should remain owned by market participants and real-time data required to be reported should be made available on reasonable commercial terms; (iii) operating hours requirements for real-time disseminators should be practical and consistent with established industry practices; (iv) normalization of swaps pricing will require a standardized approach and should not be imposed on participants at this time; (v) the Commission should harmonize with the CFTC the reporting regime that applies to SBS to avoid the publication of inconsistent data; and (vi) proprietary SBS SDR codes should be made widely available on an at-cost basis.

3. Description of the Existing SBS SDR Model.

The concept of a SBS SDR – as a registered entity – was first articulated in the DFA in 2010,⁵ but several entities already perform some or all of the SBS SDR functions and have done so in the U.S. and other markets for a number of years. Based on the most recent commitments from the G14 dealers to the New York Federal Reserve,⁶ the OTC derivatives industry supported the establishment of trade repositories in the asset classes of credit derivatives, equity derivatives, and interest rate derivatives. Importantly, the NYFED Commitment Letter was promulgated and signed by the G14 group before the DFA passed either the House or the Senate. Indeed, the letter referenced herein and the five prior joint industry commitment letters thereto all laid out goals and were successful in establishing and meeting targets related to the implementation of a robust and resilient framework for OTC derivatives risk management and market structure.

The DTCC created the Trade Information Warehouse (“*TIW*”), a trade repository for credit derivatives, several years ago and, in a phased-in industry-supported approach, launched the Equity Derivatives Reporting Repository (“*EDRR*”) with MarkitSERV in August 2010. MarkitSERV (a joint venture between Markit and DTCC) provides a gateway for the credit and equity trade repositories to access the entire set of trade details as confirmed by the counterparties to the transaction. Confirmation of economic and legal terms, submitted and ultimately verified by parties to the transaction on a timely basis, is important to ensure legal certainty, particularly in the event of financial crisis and economic duress, and for accuracy in creating and continuing effective regulatory monitoring.

The existence of a swap data repository is not new and, although it continues to rapidly evolve, there are established operational models applicable to these entities. We believe the mandate in the DFA to establish the

⁵ See DFA § 763, 124 Stat. at 1781 (adding Exchange Act Section 10B(n)).

⁶ See the letter with certain commitments from the 14 buy-side and sell-side derivatives institutions addressed to the President of the Federal Bank of New York on March 1, 2010 (the “*NYFED Commitment Letter*”), signed by AllianceBernstein; Bank of America-Merrill Lynch; Barclays Capital; BlackRock, Inc.; BlueMountain Capital Management LLC; BNP Paribas; Citadel Investment Group, L.L.C.; Citi; Credit Suisse; Deutsche Bank AG; D.E. Shaw & Co., L.P.; DW Investment Management LP; Goldman Sachs & Co.; Goldman Sachs Asset Management, L.P.; HSBC Group; International Swaps and Derivatives Association, Inc.; J.P.Morgan; Managed Funds Association; Morgan Stanley; Pacific Investment Management Company, LLC; The Royal Bank of Scotland Group; Asset Management Group of the Securities Industry and Financial Markets Association; Société Générale; UBS AG; Wachovia Bank, N.A.; and Wellington Management Company, LLP (the “*G14*”). Commitments spelled out in the NYFED 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

SBS SDRs⁷ and the SEC's rules thereunder will impact the existing SBS SDR model and how unregistered entities that offer related products and services (the "*Third-Party Service Providers*"), such as Markit, can serve the role in implementing the provisions of the DFA.

4. Proposed Regulation on SBS SDR.

On December 20, 2010, the SEC published the proposed rule on Security-Based Swap Data Repository Registration, Duties, and Core Principles – the SBS SDR Regulation.⁸ This rule is intended to clarify how the SBS SDRs "are required to collect and maintain accurate [SBS] transaction data so that relevant authorities can access and analyze the data from secure, central locations to better monitor for systemic risk and potential market abuse."⁹ Markit respectfully submits the following comments for the SEC to consider before publishing its final rule.

a. SBS SDRs Can Play a Role in SBS Valuations (Both Collecting the Valuation Data from Counterparties and Providing Independent Position Valuations)

SBS SDRs should play a role in collecting valuation data from participants as part of the reportable data flow of material economic terms.

Separately from collecting valuation data, the SBS SDR Regulation requires SBS SDRs to "establish, maintain, and enforce written policies and procedures reasonably designed to calculate positions for all persons with open SBSs ..."¹⁰ and seeks comment on the best methods to calculate the market value of positions while ensuring the accuracy of such valuations. In order to do so, we believe that the Commission should work to create a system where SBS SDRs play an important and even primary role not only in ensuring the accuracy of counterparties' swap valuations, but also in performing independent valuations for the counterparties.

However, based on Markit's experience in providing market participants with independent valuations of OTC derivatives positions, we do not believe that most SBS SDRs currently have the capability to perform independent valuations, or that they are currently best situated to develop this capacity. We also recognize that performing such independent valuations may not be practical given the highly customized and bespoke nature of many swaps.

Therefore, Markit believes that, while desirable, the long-term goal of having all SBS SDRs perform independent valuations is not appropriate at this time. In the short-term, the Commission should only require SBS SDRs to collect, and potentially report, valuations as provided by the counterparties to a swap and/or any relevant third party entities.

⁷ See DFA, §§ 763(i) and 766(a), 124 Stat. at 1779, 1797 (adding Exchange Act Sections 10B(m)(1)(G) and 13A(a)(1)(A), respectively). The DFA amends the Commodity Exchange Act ("*CEA*") to provide for a similar regulatory framework with respect to reporting to SDRs of swap data that is regulated by the CFTC.

⁸ 75 Fed. Reg. 77306.

⁹ *Id.* at 77307.

¹⁰ *Id.* at 77329.

5. Real-Time Reporting.

a. Availability of Real-time Data at Reasonable Commercial Terms

Markit supports the requirement that the reported real-time SBS data be made available in machine-readable format, be capable of being downloaded, saved and/or analyzed, and agrees that it should be made available on a non-delayed basis to the public, media, and data vendors.¹¹

We believe two points should be clarified. First, as in the rules relating to SDRs, we believe the Commission should be clear that data ownership does not transfer to a SEF or any other regulated entity. While data required for public reporting should be available for such use, any use of other data or commercialization of data should only be done with the specific consent of the data owners. Second, the proposed rules do not reference the cost of the publicly disseminated real-time data, and we recommend that the Commission require such data to be made available on “fair and reasonable, and not unduly discriminatory commercial terms.” By doing so, the Commission can ensure that public transparency of activity in the swaps markets is available to all market participants and observers on reasonable terms, while still promoting investment and development of valuable products and services.

b. Operating Hours Requirements for Real-Time Disseminators Should be More Practical and Consistent with Established Industry Practices

The Commission requires SBS SDRs to receive and disseminate SBS transaction information on a continuous basis and only permits normal closing hours when neither the U.S. nor international markets are “active.”¹² Even when a disseminator is closed for normal or *ad hoc* special closing hours, however, the rule would require the disseminator to continue to receive the relevant transaction data and hold such data in a queue.¹³

Markit believes that this requirement exceeds the capabilities of currently-existing reporting infrastructures, and that it would therefore increase the risk of infrastructure failure because SBS SDRs (and /or their designated qualified affiliates or Third-Party Provider disseminators) will not have adequate time to maintain and update their systems.

Based on our experience in the area of public trade reporting, we believe that it is standard practice to include a maintenance window in any technology system. Such maintenance windows are required to perform security patches, bug fixes, software upgrades and make the necessary network changes to accommodate both internal and external changes to access requirements. When systems are required to be available on a 24-hour basis, this maintenance window takes place on scheduled weekends. Regulation SBSR must permit similar maintenance windows. Otherwise, reporting systems will be prone to failure and bugs, and critical failures could result.

We would therefore encourage the Commission to clarify this rule in terms of actual operating hours, *e.g.*, by defining them as “24 hours from Monday to Friday for the relevant business centers”, and also to consider

¹¹ See Regulation SBSR, 75 Fed. Reg. at 75284; SBS SDR Regulation, 75 Fed. Reg. at 77318.

¹² See Regulation SBSR, 75 Fed. Reg. at 75235.

¹³ See *id.*

allowing additional closing hours either “when markets are less active” or “when only less active markets are open.”¹⁴

c. Normalization of Swaps Pricing will Require a Standardized Approach

The real-time reporting rules proposed by the Commission and the CFTC propose to require counterparties to “normalize” the pricing of swaps by requiring the reporting counterparty to quantify and separately display the value of certain elements of the swap that caused the traded price to deviate from its “regular” price.¹⁵ Specifically, the Commission requested comment on whether liquidity premiums that were included in the pricing of SBS block trades should and could be separately displayed,¹⁶ while the CFTC requires pricing normalization related to embedded options, additional cash flows, or counterparty value adjustment (CVA) to be displayed as separate data fields.¹⁷

Markit agrees in principle that the pricing and separate display of such factors could make publicly reported swaps prices more meaningful. However, we also believe that such standards cannot be established within the proposed time frames, both in terms of the time given to implement the regime and the time provided for the reporting of each swap post execution. Furthermore, the proposed mechanism for the normalization of swaps pricing may not actually enhance transparency because every market participant will use different standards and assumptions for the pricing of these variables, resulting in a lack of comparability.

The Commission therefore should, instead of creating such obligation for the reporting counterparties, simply allow the emergence of services in the marketplace that will identify, quantify, and report the value of any relevant factors to their users on the basis of the publicly reported SBS information.

6. Other Issues.

a. Ensuring the Consistency of Reporting Rules

Markit appreciates that the Commission is required to design rules that reflect the specifics of the SBS asset classes and products. However, we caution the Commission against creating significantly different reporting requirements than those established by the CFTC because this would likely confuse the market and risk frustrating the Commission’s objective in increasing transparency in the swaps markets. Currently, however, the Commission’s reporting rule differs from the CFTC’s rule in important respects.

For example, we believe that differences between the definitions of block trades and the related reporting requirements might lead to misleading impressions when market participants report index arbitrage trades. When a trade such as a Markit CDX.NA.IG (North American credit index) transaction coupled with opposite transactions in all of the 125 underlying single name Credit Default Swaps (“*CDS*”) is publicly reported, the

¹⁴ Finally, in practice, several entities in addition to the SBS SDR real time disseminator itself must be available to provide real-time dissemination reporting. Therefore, requiring SBS SDRs to operate continuously will also require all parties involved to operate continuously.

¹⁵ See Regulation SBSR, 75 Fed. Reg. at 75234.

¹⁶ See *id.* at 75234.

¹⁷ See Real-Time Reporting of Swap Transaction Data, 75 Fed. Reg. 76140, 76155 (proposed Dec. 7, 2010) (“The Commission believes that requiring this field will increase transparency and price discovery across the swap markets, as it will allow for the easy comparison of price by market participants and the public.”).

rules should not create a situation where the report gives the impression as if actual credit risk for the single names had traded.

Based on differences in the proposed definition and reporting regime for block trades, situations could arise where the index transaction was reported with a 15 minute delay, some of the single name CDS were reported immediately with volume, and the remaining single name CDS trades were reported immediately without volume. As this is only one of many such potential situations, Markit recommends that the Commissions aim to harmonize their real-time reporting requirements to the greatest extent possible, including block trade definitions and delays.

b. The Use of Codes For SBS Transaction Reporting

The Regulation SBSR states, in relevant part, that the use of codes in place of certain data elements can increase efficiency and security both when reporting to the SDRs and reporting by the SDRs.¹⁸ The rule goes on to state that the SBS SDRs are only allowed to use such codes if the information used to interpret these codes is widely available on a non-fee basis.¹⁹

Importantly, we believe that the rule should not require product identifiers to be free of cost, as promulgation of this rule may have the unintended consequence of proliferation of codes that are not as useful or reliable as the codes that require significant underlying work and that have taken years to create. Based on our experience as a provider of identifiers that are used in the SBS markets and beyond, we believe that the creation and maintenance of any reliable, unique, and current identifier system will require a significant level of investment, experience, and maintenance efforts. As numerous examples have shown, identifier systems that are provided on an automated basis and/or for free generally are not adequate for the intended goals. We further note that the Commission permits counterparty identifiers to be priced at cost,²⁰ and we believe that there should be no difference for product identifiers. That said, we are concerned that the Regulation will likely prevent the provision of reliable product identifiers if providers of product identifiers cannot do so on a reasonable commercial basis. We therefore believe that product identifiers can be made available on a “commercially reasonable, modest cost basis”, and we are open to discussing how Markit RED codes could be made widely available on a very low-cost basis for the purpose of reporting to and by SDRs.

Summary Conclusions

For the reasons explained above, we welcome the adoption of the SBS SDR Regulation and the Regulation SBSR and appreciate the opportunity to provide our comments on these two regulations.

We thank the Commission for considering our comments. In the event you may have any questions, please do not hesitate to contact the undersigned or Marcus Schuler at marcus.schueler@markit.com.

¹⁸ See Regulation SBSR, 75 Fed. Reg. at 75223.

¹⁹ See *id.* at 75286 (to be codified at 17 C.F.R. § 242.903).

²⁰ See *id.* at 75221 (“a [counterparty identifier] would have to be assigned by or on behalf of an internationally recognized standards-setting body (“IRSB”) that imposes fees and usage restrictions that are fair and reasonable and not unreasonably discriminatory.”).

Ms. Elizabeth Murphy

January 24, 2011

Page 7

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Gould', written over a light gray rectangular background.

Kevin Gould

President Markit North America, Inc.

CC: Mary L. Schapiro, Commissioner, Chairman
Kathleen L. Casey, Commissioner
Elisse B. Walter, Commissioner
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