



8011-01p
SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-77699; File No. SBSDR-2016-01]

April 22, 2016

Security-Based Swap Data Repositories; ICE Trade Vault, LLC; Notice of Filing of Application for Registration as a Security-Based Swap Data Repository

I. Introduction

On March 29, 2016, and as amended on April 18, 2016, ICE Trade Vault, LLC (“ICE Trade Vault”) filed with the Securities and Exchange Commission (“Commission”) a Form SDR seeking registration as a security-based swap data repository (“SDR”) under Section 13(n) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and the Commission’s rules promulgated thereunder.² ICE Trade Vault proposes to operate as a registered SDR for security-based swap (“SBS”) transactions in the credit derivatives asset class. The Commission is publishing this notice to solicit comments from interested persons regarding ICE Trade Vault’s Form SDR,³ and

¹ 15 U.S.C. 78m(n)(3).

² 17 CFR 240.13n-1 through 240.13n-12.

³ ICE Trade Vault filed its Form SDR, including the exhibits thereto, electronically with the Commission. The descriptions set forth in this notice regarding the structure and operations of ICE Trade Vault have been derived, excerpted, and/or summarized from information in ICE Trade Vault’s Form SDR application, and principally from ICE Trade Vault’s Guidebook (Exhibit GG.2), which outlines the applicant’s policies and procedures designed to address its statutory and regulatory obligations as an SDR registered with the Commission. ICE Trade Vault’s Form SDR application and non-confidential exhibits thereto are available in EDGAR at <http://www.sec.gov/cgi-bin/browse-edgar?CIK=0001658496&owner=exclude&action=getcompany&Find=Search>. In addition, the public may access copies of these materials on the Commission’s website at: <http://www.sec.gov/rules/other/2016/ice-trade-vault-form-sdr.htm>.

the Commission will consider any comments it receives in making its determination whether to grant ICE Trade Vault registration as an SDR.⁴

II. Background

A. SDR Registration, Duties and Core Principles, and Regulation SBSR

Section 763(i) of the Dodd-Frank Act added Section 13(n) to the Exchange Act, which requires an SDR to register with the Commission and provides that, to be registered and maintain registration as an SDR, an SDR must comply with certain requirements and “core principles” described in Section 13(n) and any requirement that the Commission may impose by rule or regulation.⁵

The Commission adopted Exchange Act Rules 13n-1 through 13n-12 (“SDR rules”), which require an SDR to register with the Commission and comply with certain “duties and core principles.”⁶ Among other requirements, the SDR rules require an SDR to collect and maintain accurate SBS data and make such data available to the Commission and other authorities so that relevant authorities will be better able to monitor the buildup and concentration of risk exposure in the SBS market.⁷

⁴ ICE Trade Vault’s Form SDR application also constitutes an application for registration as a securities information processor (“SIP”). See Exchange Act Release No. 74246 (Feb. 11, 2015), 80 FR 14438, 14458 (Mar. 19, 2015) (“SDR Adopting Release”).

⁵ 15 U.S.C. 78m(n).

⁶ See SDR Adopting Release, 80 FR at 14438.

⁷ See SDR Adopting Release, 80 FR at 14450.

Concurrent with the Commission's adoption of the SDR rules, the Commission adopted Regulation SBSR,⁸ which, among other things, provides for the reporting of SBS information to registered SDRs, and the public dissemination of SBS transaction, volume, and pricing information by registered SDRs. In addition, Regulation SBSR requires each registered SDR to register with the Commission as a securities information processor.⁹

B. Standard for Granting SDR Registration

To be registered with the Commission as an SDR and maintain such registration, an SDR is required (absent an exemption) to comply with the requirements and core principles described in Exchange Act Section 13(n), as well as with any requirements that the Commission adopts by rule or regulation.¹⁰ Exchange Act Rule 13n-1(c)(3) provides that the Commission shall grant the registration of an SDR if it finds that the SDR is so organized, and has the capacity, to be able to (i) assure the prompt, accurate, and reliable performance of its functions as an SDR; (ii) comply with any applicable provisions of the securities laws and the rules and regulations thereunder; and (iii) carry out its functions in a manner consistent with the purposes of Section 13(n) of the Exchange Act and the rules and regulations thereunder.¹¹ The Commission must deny registration of an SDR if it does not make such a finding.¹²

⁸ See Exchange Act Release No. 74244 (Feb. 11, 2015), 80 FR 14563 (Mar. 19, 2015) ("Regulation SBSR Adopting Release").

⁹ See Regulation SBSR Adopting Release, 80 FR at 14567.

¹⁰ See Exchange Act Section 13(n)(3), 15 U.S.C. 78m(n)(3).

¹¹ See 17 CFR 240.13n-1(c)(3).

¹² See id.

In determining whether an applicant meets the criteria set forth in Rule 13n-1(c), the Commission will consider the information reflected by the applicant on its Form SDR, as well as any additional information obtained from the applicant. For example, Form SDR requires an applicant to provide, among other things, contact information, a list of the asset class(es) for which the applicant is collecting and maintaining data or for which it proposes to collect and maintain data, a description of the functions that it performs or proposes to perform, and general information regarding its business organization.¹³ This, and other information reflected on the Form SDR, will assist the Commission in understanding the basis for registration as well as the SDR applicant's overall business structure, financial condition, track record in providing access to its services and data, technological reliability, and policies and procedures to comply with its statutory and regulatory obligations.¹⁴ Furthermore, the information requested in Form SDR will enable the Commission to assess whether the SDR applicant would be able to comply with the federal securities laws and the rules and regulations thereunder, and ultimately whether to grant or deny an application for registration.¹⁵

III. ICE Trade Vault Application for Registration

ICE Trade Vault currently operates as a trade repository under the regulatory framework of other authorities. Specifically, ICE Trade Vault is a swap data repository regulated and provisionally registered by the Commodity Futures Trading Commission ("CFTC").¹⁶ In that

¹³ See SDR Adopting Release, 80 FR at 14458.

¹⁴ See id.

¹⁵ See SDR Adopting Release, 80 FR at 14458-59.

¹⁶ See Order of Provisional Registration, In the Matter of the Request of ICE Trade Vault, LLC for Provisional Registration as a Swap Data Repository Pursuant to Section 21 of the Commodity Exchange Act and Part 49 of the Commodity Futures Trading Commission's

capacity, ICE Trade Vault has been accepting derivatives data for the commodity and credit asset classes in the United States since October 2012. Additionally, in 2014, ICE Trade Vault was approved by the Ontario Securities Commission,¹⁷ the Autorité des marchés financiers,¹⁸ and the Manitoba Securities Commission¹⁹ as a Canadian Trade Repository to serve the commodity, credit, and foreign exchange asset classes.

A. Corporate Structure and Governance Arrangements

ICE Trade Vault is a Delaware limited liability company, and is a wholly owned subsidiary of Intercontinental Exchange Holdings, Inc., which, in turn, is a wholly owned subsidiary of Intercontinental Exchange, Inc. (“ICE”), a publicly traded company.²⁰ ICE Trade Vault is managed by a Board of Directors responsible for overseeing its operations.²¹ The Board of Directors has the ability to: (i) designate and authorize specific appointed officers to act on

Regulations (June 27, 2012), available at <http://www.cftc.gov/stellent/groups/public/@otherif/documents/ifdocs/icetradevaultregistration.pdf>.

¹⁷ See Ontario Securities Commission, Order (Section 21.2.2 of the Securities Act), in the Matter of the Securities Act, R.S.O. 1990, Chapter S.5, as amended, and in the Matter of ICE Trade Vault, LLC (Sept. 19, 2014), available at http://www.osc.gov.on.ca/documents/en/Securities/ord_20140923_215-ice-trade-vault-llc.pdf.

¹⁸ See Autorité des marchés financiers, Decision 2014-PDG-0111, Bulletin 2014-09-25, Vol. 11, n°38 (Sept. 23, 2014), available at http://www.lautorite.qc.ca/files/pdf/bourses-oar-chambres/referentiels-centraux/2014_pdg_0111_ice_tv.pdf.

¹⁹ See Manitoba Securities Commission, Order No. 7014 (Oct. 23, 2014), available at <http://docs.mbsecurities.ca/msc/oe/en/item/105126/index.do>.

²⁰ See Exhibit V.2 (Disclosure Document). ICE is a global operator of exchanges, clearing houses, and data services for financial and commodity markets. ICE operates global marketplaces for trading and clearing a broad array of securities and derivatives contracts across major asset classes, including energy and agricultural commodities, interest rates, equities, equity derivatives, credit derivatives, bonds, and currencies.

²¹ See id.

behalf of the Board of Directors; (ii) fix, determine and levy all fees, when necessary; (iii) prepare and amend ICE Trade Vault’s Guidebook²²; (iv) act in emergencies; and (v) delegate any such power to the appropriate party.²³ The Board of Directors would oversee ICE Trade Vault’s SDR functions as it currently oversees the other regulated services that ICE Trade Vault provides.²⁴

According to ICE Trade Vault, the Board of Directors is required to have at least three Directors, all appointed by ICE.²⁵ ICE Trade Vault represents that ICE considers several factors in determining the composition of the Board of Directors, including whether directors, both individually and collectively, possess the required integrity, experience, judgment, commitment, skills and expertise to exercise their obligations of oversight and guidance over an SDR.²⁶

Additionally, ICE Trade Vault represents that its participants are afforded the opportunity to participate in the process for nominating the ICE Trade Vault Independent Director and with the right to petition for alternative candidates.²⁷ According to ICE Trade Vault, at least one Director will at all times be “independent” in accordance with applicable provision(s) of the New

²² See Exhibit GG.2 (Guidebook).

²³ See id.

²⁴ See id.

²⁵ See id.

²⁶ See id.

²⁷ See id.

York Stock Exchange Listed Company Manual.²⁸ ICE Trade Vault represents that two officers of ICE Trade Vault’s parent, ICE, currently serve as the Non-Independent Directors.²⁹

ICE Trade Vault’s Chief Compliance Officer (“CCO”) is appointed by the Board of Directors and reports directly to the President of ICE Trade Vault.³⁰ The Board of Directors approves the compensation of the CCO and meets with the CCO at least annually.³¹ According to ICE Trade Vault, the CCO also works directly with the Board of Directors in certain instances, for example, when resolving conflicts of interest.³² ICE Trade Vault represents that the CCO’s responsibilities include, but are not limited to: (i) preparing and signing a compliance report with a financial report to be provided to the Commission annually; (ii) reviewing the compliance of ICE Trade Vault with respect to regulatory requirements and core principles; and (iii) establishing and administering written policies and procedures reasonably designed to prevent violations of the Exchange Act.³³

ICE Trade Vault directors, officers and employees must comply with the ICE Global Code of Business Conduct, which describes policies for, among other things, handling conflicts of interest, prohibiting insider trading, complying with the law and document management and retention requirements.³⁴ In addition, ICE Trade Vault prohibits any member of its Board or of

²⁸ See id.

²⁹ See id.

³⁰ See Exhibit V.2

³¹ See id.

³² See id.

³³ See id.

³⁴ See Exhibit D.4 (Global Code of Business Conduct).

any Board committee (that the Board may create from time to time as it deems necessary)³⁵ that has authority to take action for ICE Trade Vault from knowingly participating in deliberations or voting in any matter involving a named party in interest where such member: (i) is a named party in interest; (ii) is an employer, employee, or guarantor of a named party in interest; (iii) has a family relationship with a named party in interest; or (iv) has any other significant ongoing relationship with a named party in interest or an affiliate of such party.³⁶ Furthermore, the CCO of ICE Trade Vault shall determine whether any member of a deliberating body is subject to a prohibition under its conflicts of interest policies.³⁷

B. Description of ICE Trade Vault's SDR Service

ICE Trade Vault has applied to become a registered SDR with the Commission to accept data in respect of all SBS trades in the credit derivatives asset class.³⁸

ICE Trade Vault states that it intends to provide an SDR service that facilitates the collection, storage and regulatory reporting of a comprehensive range of trade data in respect of credit derivatives trades.³⁹ ICE Trade Vault also states that it intends to offer certain ancillary services (i.e., services offered by ICE Trade Vault that are not core SDR functions), which include: (i) confirmation of the accuracy of the data submitted to ICE Trade Vault; and (ii) resolution of trade record errors and disputes.⁴⁰

³⁵ See Exhibit D.3 (Governance Principles).

³⁶ See Exhibit GG.2.

³⁷ See id.

³⁸ See ICE Trade Vault Form SDR, Item 6; see also Exhibits V.2 and GG.2.

³⁹ See Exhibit V.2.

⁴⁰ See id.

C. Access

ICE Trade Vault represents that it would provide access to its SDR service on a fair, open and not unreasonably discriminatory basis.⁴¹ According to ICE Trade Vault, access to and usage of its SDR service is available to all market participants that engage in SBS transactions, and do not require the use of any other ancillary service offered by ICE Trade Vault, except for any ancillary service(s) that ICE Trade Vault is required to provide.⁴² ICE Trade Vault represents that for security reasons, access to the ICE Trade Vault system is strictly limited to market participants with valid permissions and security access who have executed a Participant Agreement with ICE Trade Vault and have completed and delivered to ICE Trade Vault the applicable ICE Trade Vault Enrollment Form (such market participants, “Participants”).⁴³ According to ICE Trade Vault, Participants will only have access to their own data and data that ICE Trade Vault is required to make publically available.⁴⁴ ICE Trade Vault notes that passwords must meet technical and procedural processes for information security, must be from

⁴¹ See Exhibits V.2 and GG.2.

⁴² See id.; see also SDR Adopting Release, 80 FR at 14451-52 (Commission noting that confirmation and dispute resolution services or functions “are ancillary. . . . [and are] not ‘core’ SDR services, which would cause a person providing such core services to meet the definition of an SDR, and thus, require the person to register with the Commission as an SDR. However, SDRs are required to perform these two services or functions, and thus, they are required ancillary services[.] . . . An SDR may delegate some of these required ancillary services to third party service providers, who do not need to register as SDRs to provide such services. The SDR will remain legally responsible for the third party service providers’ activities relating to the required ancillary services and their compliance with applicable rules under the Exchange Act.”).

⁴³ See Exhibit V.2 (stating also that these documents are available upon request, and when enrolling with ICE Trade Vault, Participants must designate a master user (“Administrator”), who will, among other things, create and maintain all user IDs for its firm, which will ensure ICE Trade Vault access is granted by a trusted individual at the Participant’s firm who is closest to and has the most knowledge of those in the firm who require access).

⁴⁴ See id.

eight to fourteen characters in length, utilize three different character types, and must be reset at least annually.⁴⁵

ICE Trade Vault represents that determinations to revoke access to its system, its SDR service or data maintained by ICE Trade Vault shall be made by the CCO.⁴⁶ According to ICE Trade Vault, unless circumstances require immediate action, prior to implementing a limitation or revocation of access to its system, its SDR service or SDR information, ICE Trade Vault's President and General Counsel shall review the basis for the limitation or revocation, with the CCO providing notice to the Participant of such limitation or revocation.⁴⁷ ICE Trade Vault represents that if the President and General Counsel determine that revocation of access is the result of unreasonable discrimination, the President and General Counsel will take such actions as are necessary to restore access to such service or data.⁴⁸

D. Use of Data

ICE Trade Vault represents that access to information it maintains as an SDR would be limited to those with the direct responsibility for supporting the ICE Trade Vault system, its SDR

⁴⁵ See id.

⁴⁶ See id.

⁴⁷ See Exhibit GG.2.

⁴⁸ See id. Because persons applying to be SDRs are also applying to be SIPs with the Commission, the procedures for notifying the Commission of any prohibitions or limitations of access to services as provided in Section 11A(b)(5)(A) would apply. See SDR Adopting Release, 80 FR at 14482 ("Rule 909 of Regulation SBSR, which the Commission is concurrently adopting in a separate release, requires each registered SDR to register as a SIP, and, as such, Exchange Act Section 11A(b)(5) governs denials of access to services by an SDR. This section provides that '[i]f any registered securities information processor prohibits or limits any person in respect of access to services offered, directly or indirectly, by such securities information processor, the registered securities information processor shall promptly file notice thereof with the Commission.' Accordingly, an SDR must promptly notify the Commission if it prohibits or limits access to any of its services to any person.").

service, Participants and regulators.⁴⁹ ICE Trade Vault would prohibit its employees and others performing similar functions on behalf of ICE Trade Vault from using information it maintains as an SDR other than in the performance of their job responsibilities.⁵⁰

E. Asset Class Accepted; Submission Requirements; Validation

ICE Trade Vault has represented that it would accept data in respect of all SBS trades in the credit derivatives asset class.⁵¹ ICE Trade Vault has represented that Participants would be required to submit trade information in the data format required by ICE Trade Vault.⁵² The ICE Trade Vault system would accept tab delimited file uploads via web access and Applicable Programming Interface submissions in FpML format.⁵³

Exhibit N.5 to ICE Trade Vault's application enumerates the required fields and acceptable values for the submission of trade information into the ICE Trade Vault system. According to ICE Trade Vault, the ICE Trade Vault system would perform certain validations to ensure that a submitted trade report adheres to the enumerated fields and values contained in Exhibit N.5.⁵⁴ Under ICE Trade Vault's policies and procedures, upon receipt of trade information for an SBS, the ICE Trade Vault system would validate that:

- a. The submission file is in a valid format for receipt and processing;

⁴⁹ See Exhibits V.2 and GG.2.

⁵⁰ See id.

⁵¹ See id.

⁵² See Exhibit GG.2.

⁵³ See id.

⁵⁴ See id.

- b. All fields meet the required field format (e.g., number, date, date timestamp, free form text, or standard data value);
- c. All required and conditionally required fields are contained in the submission;
- d. All conditionally required fields meet the validation standards; and
- e. All standard data value fields are provided with an acceptable value.⁵⁵

ICE Trade Vault’s policies and procedures provide that, if the submitted trade information fails any of the above validations, the ICE Trade Vault system would generate an error message and give such information an “invalid” status.⁵⁶

For historical SBS reporting, ICE Trade Vault represents that the ICE Trade Vault system would require Participants to indicate a “Y” value for “Flag for Historical Security-Based Swap public dissemination exemption.”⁵⁷ In addition, the ICE Trade Vault system allows Participants to submit “Y” or “N” values for a field “Flag for Historical Security-Based Swap Life Cycle Event public dissemination” to update information in the ICE Trade Vault system associated with such SBS.⁵⁸

ICE Trade Vault represents that it would support the reporting of highly customized and bespoke SBS (“exotic SBS”).⁵⁹ ICE Trade Vault would require a Participant that wishes to

⁵⁵ See id.

⁵⁶ See id.

⁵⁷ See id.

⁵⁸ See id.

⁵⁹ See id.

submit a trade report for exotic SBS to upload a file to the ICE Trade Vault system that contains that trade information and the corresponding confirmed terms.⁶⁰

F. Verification of Transaction Data

To fulfill its obligations under Exchange Act Rule 13n-5(b)(1), ICE Trade Vault's policies and procedures provide that it would require Participants to report complete and accurate trade information and to review and resolve all error messages generated by the ICE Trade Vault system.⁶¹ If any trade information is found to be incorrect or incomplete, ICE Trade Vault would require Participants to correct and resubmit such information to the ICE Trade Vault system.⁶² For SBS that are not executed on a platform, ICE Trade Vault would require the reporting side to provide the method used to confirm the trade information (e.g., electronic confirmation service or paper confirmation). ICE Trade Vault would further require Participants to warrant and represent that all trade information reported to ICE Trade Vault is complete and accurate.⁶³ If the counterparties to an SBS use a paper confirmation to confirm the trade, ICE Trade Vault would require the reporting side to upload to the ICE Vault Trade system a copy of the confirmation that was agreed upon by the counterparties.⁶⁴

According to ICE Trade Vault, clearing agencies would access ICE Trade Vault as Participants to report SBS that have been accepted for clearing. Platforms (such as an SBS execution facility) will access ICE Trade Vault as Participants to report the relevant data with

⁶⁰ See id.

⁶¹ See id.; see also Exhibit V.2.

⁶² See Exhibit GG.2.

⁶³ See id.

⁶⁴ See id.

respect to SBS that have been executed on their respective platforms or subject to the rules of their markets.⁶⁵

ICE Trade Vault's policies and procedures provide that Participants would be responsible for the timely resolution of trade record errors contained in trade information that has been submitted to ICE Trade Vault.⁶⁶ ICE Trade Vault would provide Participants with electronic methods to extract information maintained by ICE Trade Vault for reconciliation.⁶⁷ If the non-reporting side for an SBS transaction discovers an error contained in the trade information submitted to ICE Trade Vault on its behalf, ICE Trade Vault requires that counterparty to notify promptly the reporting side of such error.⁶⁸ ICE Trade Vault represents that if the reporting side discovers an error contained in the trade information that it previously submitted to ICE Trade Vault or receives notification from a counterparty of an error, the reporting side is required to submit promptly to ICE Trade Vault amended trade information that remedies such error.⁶⁹ ICE Trade Vault would disseminate a corrected transaction report in instances where the initial report included erroneous primary trade information.⁷⁰

G. Disputed Trade Data

Under ICE Trade Vault's policies and procedures, Participants would be required to notify promptly ICE Trade Vault of trade information that is disputed by the counterparties to the

⁶⁵ See id.

⁶⁶ See Exhibits V.2 and GG.2.

⁶⁷ See id.

⁶⁸ See id.

⁶⁹ See id.

⁷⁰ See id.

trade. ICE Trade Vault states that when a Participant “disputes” a trade stored in ICE Trade Vault’s system, the status of the trade would remain “Disputed” until the party that disputed the trade sends a message to ICE Trade Vault indicating that the dispute has been resolved.⁷¹

H. Application and Dissemination of Condition Flags

ICE Trade Vault represents that it would apply submitted flags to trade information that is: (i) an error correction required to be disseminated by Rule 905(b)(2) of Regulation SBSR; or (ii) a life cycle event, or any adjustment due to a life cycle event, required to be disseminated by Rule 902(a) of Regulation SBSR.⁷² In addition, ICE Trade Vault’s policies and procedures require Participants of ICE Trade Vault to apply certain flags with respect to primary trade information (i.e., flags required under Rule 901(c)(1)(v) of Regulation SBSR),⁷³ and ICE Trade Vault would publicly disseminate such flags if the SBS is eligible for public dissemination. ICE Trade Vault represents that certain flags address security-based swap characteristics that may contribute to creating a distorted market view.⁷⁴

I. Calculation and Maintenance of Positions

As provided in ICE Trade Vault’s policies and procedures, ICE Trade Vault states that it would calculate open positions for persons with open SBS for which ICE Trade Vault maintains records.⁷⁵ ICE Trade Vault’s policies and procedures relating to its calculation of positions are provided in Exhibit GG.2.

⁷¹ See id.

⁷² See Exhibit GG.2.

⁷³ See 17 CFR 240.901(c)(i)(v).

⁷⁴ See Exhibit GG.2.

⁷⁵ See id.

J. Assignment of Unique Identification Codes

ICE Trade Vault's policies and procedures include the methodology ICE Trade Vault would utilize in connection with its assignment of unique identification codes ("UICs") in accordance with Rule 903 of Regulation SBSR.⁷⁶ In particular, ICE Trade Vault represents that it would assign UICs as follows:

1. Any SEC endorsed standard will be used, or in its absence;
2. Any CPMI-IOSCO endorsed standard will be used, or in its absence;
3. Any industry endorsed standard will be used, or in its absence;
4. ICE Trade Vault will generate an ID for the applicable UIC.⁷⁷

K. Transaction ID Methodology

ICE Trade Vault represents that it has "endorsed" a transaction ID methodology as follows:

1. If a transaction is executed on a platform, that platform would generate the transaction ID.
2. If a transaction is cleared, the clearing agency would generate the transaction IDs for resulting cleared SBS.
3. If the transaction is executed off-platform and is not cleared, the parties must mutually agree which side of the trade will generate the transaction ID. When the transaction ID generator is the reporting side, that party may request that ICE Trade Vault generate the transaction ID on its behalf.

⁷⁶ See id.

⁷⁷ See id.

4. For historical SBS that have been reported in another jurisdiction, the transaction ID assigned in that jurisdiction will be used for reporting.
5. For historical SBS that have not been reported in another jurisdiction, the methodology described in items 1-3 above will apply.
6. A multi-jurisdictional transaction should never have multiple transaction IDs.⁷⁸

L. Ultimate Parent and Affiliate Information

ICE Trade Vault's policies and procedures provide that Participants, except for those that are platforms or clearing agencies, would be required to provide ICE Trade Vault information (e.g., parent IDs and counterparty IDs) to identify their ultimate parent(s) and affiliates.⁷⁹ In addition, ICE Trade Vault requires that Participants promptly notify ICE Trade Vault of any changes to such information.⁸⁰

M. Branch and Trading Desk ID

Under ICE Trade Vault's policies and procedures, in order to receive a branch ID or trading desk ID from ICE Trade Vault, Participants must submit the branch and desk information to ICE Trade Vault before reporting an SBS.⁸¹ More information concerning branch ID and trading desk ID is contained in Exhibit GG.2.

⁷⁸ See id.

⁷⁹ See id.

⁸⁰ See id.; see also Exhibit U.5 (ICE Trade Vault Ultimate Parent & Affiliate Information Notification).

⁸¹ See Exhibit GG.2.

N. Product ID

ICE Trade Vault states that it would issue product IDs and maintain reference data representation for SBS that will include schema definitions and will be made publicly available on a non-fee basis on ICE Trade Vault’s internet website (www.icetradevault.com).⁸² According to ICE Trade Vault, if the industry creates and adopts a product ID taxonomy and registry, ICE Trade Vault would comply with the published standard at such time.⁸³ ICE Trade Vault has represented that it would create product IDs based on an industry accepted UPI taxonomy or, where not available, its own product taxonomy.⁸⁴

ICE Trade Vault would require its Participants to notify ICE Trade Vault of any new SBS products they intend to report to ICE Trade Vault by submitting the relevant product information to: ICETradeVaultSupport@theice.com.⁸⁵ A complete list of available product information would be made available via a link on ICE Trade Vault’s internet website.⁸⁶

O. Missing UIC Information

ICE Trade Vault’s policies and procedures provide that the reporting side to an SBS may report the non-reporting side’s UIC information (other than counterparty ID) but is not required to do so.⁸⁷ ICE Trade Vault’s policies and procedures provide that, if the non-reporting side is not a Participant, the non-reporting side “should contact ICE Trade Vault” via electronic mail to

⁸² See id.

⁸³ See id.

⁸⁴ See id.

⁸⁵ See id.

⁸⁶ See id.

⁸⁷ See id.; see also Exhibit GG.2 (Guidebook, section 6.2 requirements relating to counterparty IDs, execution agent IDs and broker IDs).

register for access to ICE Trade Vault and its trade information. ICE Trade Vault represents that it would identify in its records any SBS reported to it for which it does not have required UIC information.⁸⁸

According to ICE Trade Vault, once a day, ICE Trade Vault would send a report to each Participant that is a counterparty to an SBS(s) that lacks required UIC information.⁸⁹ ICE Trade Vault represents in its policies and procedures that a Participant that receives a report must provide the missing information with respect to its side of each SBS referenced in the report to ICE Trade Vault within 24 hours.⁹⁰

P. Public Dissemination

ICE Trade Vault represents that it would publicly disseminate information required for public dissemination pursuant to Regulation SBSR, including SBS transaction reports, which contain all of the primary transaction information, and information regarding life cycle events or adjustments due to a life cycle event.⁹¹ In addition, ICE Trade Vault would provide the public, Participants and regulators with the ability to download historical data.⁹²

Q. Safeguarding Data, Operational Reliability, and Emergency Authority

ICE Trade Vault represents that it has implemented systems and procedures to allow for timely resumption of key business processes and operations following unplanned interruptions, unavailability of staff, inaccessibility of facilities, and disruption or disastrous loss to one or

⁸⁸ See id.

⁸⁹ See id.

⁹⁰ See id.

⁹¹ See id.

⁹² See id.

more of ICE Trade Vault's facilities or services.⁹³ ICE Trade Vault represents that its SDR service data is saved to a redundant, local database and a remote disaster recovery database in near real-time and that its SDR service database is backed up to tape daily with tapes moved offsite weekly.⁹⁴ ICE Trade Vault also states that Participants' individual trade data records remain available to Participants and regulators at no charge for online access through its SDR service from the date of submission until five years after expiration of the trade (last day of delivery or settlement as defined for each product).⁹⁵ According to ICE Trade Vault, after the initial five-year period, Participants' trade data will be stored off-line and remain available to Participants and regulators, upon a three-day advance request to ICE Trade Vault, until ten years from the termination date.⁹⁶ ICE Trade Vault also states that Participants will retain unimpaired access to its online and archived trade data.⁹⁷

ICE Trade Vault represents that it maintains and will continue to maintain a robust emergency and business-continuity and disaster recovery plan ("Business Continuity Plan") that allows for timely resumption of key business processes and operations following unplanned interruptions, unavailability of staff, inaccessibility of facilities, and disruption or disastrous loss to one or more of ICE Trade Vault's facilities or services.⁹⁸ ICE Trade Vault represents that its Business Continuity Plan requires that all production system hardware and software is replicated

⁹³ See id.

⁹⁴ See Exhibits V.2 and GG.2.

⁹⁵ See id.

⁹⁶ See Exhibit V.2.

⁹⁷ See Exhibits V.2 and GG.2.

⁹⁸ See id.

in near real-time at a geographical- and vendor-diverse disaster recovery site to avoid any loss of data.⁹⁹

ICE Trade Vault represents that it is authorized to determine, in its sole discretion, whether an emergency exists with respect to, or otherwise threatens, its system or its SDR service (an “Emergency”) and whether emergency action is warranted to mitigate such circumstances, but that it may also exercise emergency authority if ordered to do so by the Commission or other regulatory agency of competent jurisdiction.¹⁰⁰ Circumstances requiring the invocation of emergency authority pursuant to ICE Trade Vault’s policies and procedures include: (i) any occurrence or circumstance that ICE Trade Vault determines to constitute an Emergency; (ii) any “Physical Emergency” (such as a fire or other casualty, bomb threats, terrorist acts, substantial inclement weather, power failures, communications breakdowns, computer system breakdowns, or transportation breakdowns); (iii) any occurrence or circumstance that threatens or may threaten the proper functionality of ICE Trade Vault’s system or its SDR service; (iv) any occurrence or circumstance that may materially affect the performance of its system or its SDR service; (v) any action taken by any governmental body or any regulator that may have a direct impact on its system or its SDR service; and (vi) any other circumstance that may impact ICE Trade Vault, its system or its SDR service in a materially adverse manner.¹⁰¹

Under ICE Trade Vault’s policies and procedures, if the President of ICE Trade Vault, or any individual designated by the President or the Board of Directors, determines that an

⁹⁹ See id.

¹⁰⁰ See Exhibit GG.2.

¹⁰¹ See id.

Emergency is likely to arise or has arisen, the President or such designee, as the case may be, may, consistent with ICE Trade Vault’s conflict of interest policies, declare an Emergency with respect to its system, its SDR service or the facilities of ICE Trade Vault and take or place into immediate effect a temporary emergency action or protocol.¹⁰² ICE Trade Vault represents that any such action or protocol may remain in effect for up to 30 business days, after which time, and for each 30-business day period thereafter, it must be reissued by the Board of Directors to remain in effect.¹⁰³ Under ICE Trade Vault’s policies and procedures, the CCO would be consulted in the event any emergency action or protocol may raise potential conflicts of interest.¹⁰⁴

ICE Trade Vault represents that any such action or protocol may provide for, or may authorize ICE Trade Vault, the Board of Directors or any committee thereof to undertake, actions deemed necessary or appropriate by the President or its designee to respond to the Emergency, including, but not limited to, the following: modifying or suspending any relevant provision of the Guidebook; changing the operating hours of its SDR service; temporarily limiting or denying access to its system or its SDR service; or requiring re-submission of any data lost or otherwise affected due to such Emergency.¹⁰⁵ Any such action placed into effect in accordance with the preceding paragraph may be reviewed by the Board of Directors at any time and may be revoked, suspended or modified by the Board of Directors.¹⁰⁶ ICE Trade Vault

¹⁰² See id.

¹⁰³ See id.

¹⁰⁴ See id.

¹⁰⁵ See id.

¹⁰⁶ See id.

represents that it will notify the SEC as soon as is reasonably practicable of ICE Trade Vault's invocation of its emergency authority, any material business disruption, or any threat that actually or potentially jeopardizes automated system capacity, integrity, resiliency, availability or security,¹⁰⁷ with the decision-making process with respect to, and the reasons for, any such action recorded in writing¹⁰⁸ and with ICE Trade Vault notifying Participants via email as soon as practicable of any action taken (time permitting), or proposed to be taken.¹⁰⁹

R. Data Confidentiality; Sensitive Information and Security

ICE Trade Vault represents that it “recognizes its responsibility to ensure data confidentiality and [that it] dedicates significant resources” to information security to prevent the misappropriation or misuse of confidential information, and that it does not, as a condition of accepting SBS data from Participants, require the waiver of any privacy rights by such Participants.¹¹⁰ ICE Trade Vault would use a multi-tiered firewall scheme to provide network segmentation and access control to its services.¹¹¹ A second set of firewalls would further isolate ICE Trade Vault’s systems and provide added security to detect any threats.¹¹² In addition, network sensors would analyze all internet and private line traffic for malicious patterns.¹¹³

¹⁰⁷ See Exhibits V.2 and GG.2.

¹⁰⁸ See Exhibit GG.2.

¹⁰⁹ See id.

¹¹⁰ See id.

¹¹¹ See id.

¹¹² See Exhibits V.2 and GG.2.

¹¹³ See id.

ICE Trade Vault's application states that certain controls would be regularly examined and tested by multiple tiers of internal and external test groups, auditors and independently contracted third-party security testing firms.¹¹⁴ In addition, ICE Trade Vault has represented that it would undertake an audit for adherence to its data security policies on at least an annual basis.¹¹⁵

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning ICE Trade Vault's Form SDR, including whether ICE Trade Vault has satisfied the requirements for registration as an SDR. To the extent possible, commenters are requested to provide empirical data and other factual support for their views. In addition, the Commission seeks comment on the following issues:

1. Please provide your views as to whether ICE Trade Vault's application for registration as an SDR demonstrates that ICE Trade Vault is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as an SDR, comply with any applicable provisions of the securities laws and the rules and regulations thereunder, and carry out its functions in a manner consistent with the purposes of Section 13(n) of the Exchange Act and Commission's SDR rules.
2. Exchange Act Rule 13n-5(b)(1)(iii) requires every SDR to establish, maintain, and enforce written policies and procedures reasonably designed to satisfy itself that the transaction data that has been submitted to the SDR is complete and accurate. Please provide your views as to whether ICE Trade Vault's policies and procedures concerning

¹¹⁴ See id.

¹¹⁵ See id.

verification of trade data are sufficiently detailed and reasonably designed to satisfy ICE Trade Vault that the transaction data that has been submitted to ICE Trade Vault is complete and accurate, as required by Rule 13n-5(b)(1)(iii).

3. Please provide your views as to whether ICE Trade Vault's policies and procedures to address confirmation of data accuracy and completeness for bespoke, bilateral SBS transactions (i.e., requiring the reporting side of the transaction to identify the method used to confirm the trade information, either by use of an electronic confirmation service or by paper confirmation agreed upon by the counterparties) are appropriate and reasonably designed to meet its obligations under the Rule 13n-5(b)(1)(iii). In this regard, the Commission is also interested in receiving comments as to whether ICE Trade Vault's definition of "confirmed" as contained in its Guidebook (Exhibit GG.2) is appropriate.
4. Please provide your views as to whether ICE Trade Vault's policies and procedures relating to invalidly entered UICs being subject to an error message and an "invalid" status as noted in Exhibit GG.2 are sufficiently detailed to meet the objectives of Exchange Act Rule 13n-5(b)(1)(iii).
5. Please provide your views as to whether ICE Trade Vault's policies and procedures are sufficiently detailed and reasonably designed to ensure that the transaction data and positions that it maintains are complete and accurate, as required by Exchange Act Rule 13n-5(b)(3).
6. Please provide your views as to whether ICE Trade Vault's policies and procedures are sufficiently detailed and reasonably designed to ensure that it has the ability to protect the

privacy of SBS transaction information that it receives, as required by Exchange Act Rule 13n-9.

7. Please provide your views as to whether ICE Trade Vault's policies and procedures are sufficiently detailed and reasonably designed to ensure that it has the ability to calculate positions, as required by Exchange Act Rule 13n-5(b)(2).
8. Please provide your views as to whether ICE Trade Vault's policies and procedures are sufficiently detailed and reasonably designed to provide a mechanism for Participants and their counterparties to effectively resolve disputes over the accuracy of SBS data that it maintains, as required by Exchange Act Rule 13n-5(b)(6). Are ICE Trade Vault's policies and procedures relating to dispute resolution adequate? Why or why not? Should the policies and procedures specify timeframes in the dispute resolution process to facilitate timely and conclusive resolution of disputes? Why or why not?
9. Please provide your views as to whether ICE Trade Vault's policies and procedures are sufficiently detailed and reasonably designed to ensure that its systems that support or are integrally related to the performance of its activities provides adequate levels of capacity, integrity, resiliency, availability and security, as required by Exchange Act Rule 13n-6.
10. Please provide your views as to whether the disclosures in ICE Trade Vault's Disclosure Document to a Participant prior to accepting any SBS data from that Participant or upon the Participant's request, as required by Exchange Act Rule 13n-10, are adequate. Specifically, the Commission is interested in receiving comments as to whether ICE Trade Vault's Disclosure Document contains adequate and sufficiently detailed information that would reasonably enable the Participant to identify and evaluate accurately the risks and costs associated with using ICE Trade Vault's services. Such

information includes ICE Trade Vault's criteria for providing others with access to its services and data it maintains, its criteria for those seeking to connect to or link with it, its description of its policies and procedures regarding its noncommercial and/or commercial use of the SBS transaction information that it receives from a Participant, any registered entity, or any other person, its description of all the SBS data repository's services, including any ancillary services, and its description of its governance arrangements.

11. Please provide your views as to whether ICE Trade Vault's policies and procedures are sufficiently detailed and reasonably designed for the CCO's handling, management response, remediation, retesting, and closing of noncompliance issues, as required by Exchange Act Rule 13n-11(c)(7).
12. Please provide your views as to whether ICE Trade Vault's policies or procedures could result in an unreasonable restraint of trade or impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.
13. Please provide your views as to whether ICE Trade Vault's proposed dues, fees, or other charges, discounts or rebates and the process for setting dues, fees, or other charges, discounts or rebates are fair and reasonable and not unreasonably discriminatory. Please address whether such proposed dues, fees, other charges, discounts, or rebates are applied consistently across all similarly situated users of ICE Trade Vault's services, including, but not limited to, Participants, market infrastructures (including central counterparties), venues from which data can be submitted to ICE Trade Vault (including exchanges, SBS execution facilities, electronic trading venues, and matching and confirmation platforms), and third party service providers.

14. Exchange Act Rule 13n-4(c)(2)(ii)—(iii) provides that each SDR must establish governance arrangements that provide for fair representation of market participants, and must provide representatives of market participants, including end-users, with the opportunity to participate in the process for nominating directors and with the right to petition for alternative candidates. Please provide your views as to whether ICE Trade Vault's governance structure provides fair representation and an opportunity for participation by market participants pursuant to Rule 13n-4(c)(2)(ii)—(iii).
15. Rule 903(a) of Regulation SBSR provides, in relevant part, that if no system has been recognized by the Commission, or a recognized system has not assigned a UIC to a particular person, unit of a person, or product, the registered SDR shall assign a UIC to that person, unit of person, or product using its own methodology. Is the methodology that ICE Trade Vault proposes to use to assign UICs as described in its application materials appropriate in light of the requirements under Rule 903(a) of Regulation SBSR? Why or why not?
16. Rule 907(c) of Regulation SBSR requires a registered SDR to make its Regulation SBSR policies and procedures publicly available on its website. The Commission has stated that this public availability requirement will allow all interested parties to understand how the registered SDR is utilizing the flexibility it has in operating the transaction reporting and dissemination system, and will provide an opportunity for Participants to make suggestions to the registered SDR for altering and improving those policies and procedures, in light of the new products or circumstances, consistent with the principles

set out in Regulation SBSR.¹¹⁶ ICE Trade Vault has proposed to satisfy its obligation under Rule 907(c) of Regulation SBSR by making the policies and procedures contained in Exhibit GG.2 and the other application exhibits referenced therein available on its public website. Is the information that is included in or referenced in Exhibit GG.2 appropriate in light of the requirements of Rule 907(c)?

17. For certain data fields, Exhibit N.5 indicates that the acceptable data format is the “standard data value” for the field, but Exhibit N.5 does not provide more specific information regarding acceptable data formats for such fields. ICE Trade Vault has indicated to Commission staff that it plans to make available to its Participants detailed specifications for reporting SBS information, and Participants will be permitted to download detailed descriptions of the acceptable data format for each “standard data value” from the ICE Trade Vault system. However, ICE Trade Vault stated in its discussions with Commission staff that it will make such additional specifications available only to Participants who have executed a Participant Agreement. Is it anticipated to be problematic for persons seeking to report SBS information to an SDR to be required to execute a Participant Agreement as a condition to ICE Trade Vault providing access to the additional data format specifications?
18. Regulation SBSR imposes duties on various market Participants to report SBS transaction information to a registered SDR. Please provide your views as to whether the ICE Trade Vault application and the associated policies and procedures (including technical specifications for submission of data) provide sufficient information to potential

¹¹⁶ See Regulation SBSR Adopting Release, 80 FR at 14648.

Participants about how they would discharge these regulatory duties when reporting to ICE Trade Vault. In particular, please provide your views as to whether ICE Trade Vault's technical specifications for submission of data are sufficiently detailed, especially with regard to historical SBSs and bespoke SBS. Please describe in detail what additional information you believe is necessary to allow you to satisfy any reporting obligation you may incur under Regulation SBSR.

19. Rule 906(a) of Regulation SBSR provides, in relevant part, that a Participant of the registered SDR must provide the missing information with respect to its side of each SBS referenced in the report to the registered SDR within 24 hours. ICE Trade Vault has represented that a non-reporting-side participant must be fully onboarded before it may submit information that it is required to provide to a registered SDR by Rule 906(a) of Regulation SBSR. Please provide your views as to whether this form of access afforded to the non-reporting-side is fair, open, and not unreasonably discriminatory.
20. Please provide your views as to whether ICE Trade Vault's policies and procedures relating to Rule 906(a) are sufficiently detailed, appropriate and reasonably designed to ensure data accuracy and completeness.
21. Please provide your views as to whether ICE Trade Vault has provided sufficient information to explain the SBS transaction information that it would publicly disseminate to discharge its duties under Rule 902 of Regulation SBSR. Please describe any additional information that you feel is necessary. Please offer any suggestions generally for how the publicly disseminated information could be made more useful.
22. Please provide your views as to whether ICE Trade Vault has provided sufficient information to explain how Participants would be required to report life cycle events

under Rule 901(e). Please describe any additional information that you feel is necessary. In particular, please indicate whether you believe ICE Trade Vault's specifications are reasonably designed to identify the specific data element(s) that change and thus that trigger the report of the life cycle event.

23. Please provide your views as to whether ICE Trade Vault has provided sufficient information about how an agent could report SBS transaction information to ICE Trade Vault on behalf of a principal (i.e., a person who has a duty under Regulation SBSR to report). Please describe any additional information that is necessary. In particular, please provide your views as to whether ICE Trade Vault should differentiate between agents who are Participants of ICE Trade Vault because they themselves at times are principals (i.e., they are counterparties to one or more SBSs that are reported to ICE Trade Vault on a mandatory basis) and agents who are never principals (e.g., a vendor).
24. Please provide your views as to whether ICE Trade Vault's policies and procedures for developing condition flags for transactions having special characteristics under Rule 907(a)(4) of Regulation SBSR are consistent with the goal of preventing market participants without knowledge of these characteristics receiving a distorted view of the market. Are there additional condition flags that you believe ICE Trade Vault should utilize? If so, please describe them and why you believe they are appropriate.

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SBSDR-2016-01 on the subject line.

Paper comments:

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549-1090. All submissions should refer to File Number SBSDR-2016-01.

To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/other.shtml>).

Copies of the Form SDR, all subsequent amendments, all written statements with respect to the Form SDR that are filed with the Commission, and all written communications relating to the Form SDR between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SBSDR-2016-01 and should be submitted on or before [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

By the Commission.

Brent J. Fields
Secretary

