

April 9, 2021

Submitted via <https://www.sec.gov/rules/other.shtml>

Secretary Vanessa A. Countryman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Comments regarding DTCC Data Repository (U.S.) LLC Notice of Filing for Registration as a Security-Based Swap Data Repository (Release No. 34-91071; File No. SBSDR-2020-01), and ICE Trade Vault, LLC Notice of Filing for Registration as a Security-Based Swap Data Repository (Release No. 34-91331; File No. SBSDR-2021-01).

Dear Secretary Countryman,

The International Swaps and Derivatives Association, Inc. (“ISDA”)¹ appreciates the opportunity to provide comments to the U.S. Securities and Exchange Commission (“SEC” or “Commission”) on behalf of its members which may have obligations under *Regulation SBSR - Reporting and Dissemination of Security- Based Swap Information; Final Rule* (“SBSR”) with respect to the applications of DDR Data Repository (U.S.) LLC (“DTCC”) and ICE Trade Vault, LLC (“ICE TV”) for registration as a security-based swap data repositories (“SBSDRs”).

ISDA and its members support the applications of both DTCC and ICE TV as registered SBSDRs and have provided comments regarding certain aspects of the applications on the following pages.

¹Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 925 member institutions from 75 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association’s website: www.isda.org.

A. Consistency of SBSDR functionality

ISDA believes that the requirements of registered SBSDRs should be harmonized to the greatest extent possible in order to promote reporting infrastructure efficiencies and to mitigate costs for parties that onboard to more than one SBSDR to comply with their SBSR obligations. ISDA supports SBSDR functionality for message types that can be used multi-jurisdictionally for reporting, including global data elements such as the Unique Transaction Identifier (“UTI”), Unique Product Identifier (“UPI”), Critical Data Elements (“CDE”) and the Legal Entity Identifier (“LEI”).

Moreover, we support DTCC and ICE TV’s planned builds to support flexibility so that a reporting entity would be able to report Rule 901(d) and Rule 901(c) sets of data at the same time or one before the other, as long as each set of data is reported within the required 24 hours of execution.

B. Intention to rely on SEC’s time-limited no-action relief

We support DTCC and ICE TV’s intentions to rely on the no-action relief outlined in the SEC’s “Cross-Border Application of Certain Security-Based Swap Requirements Final rules/guidance”² for the applicable reporting rules and SBSDR duties for the relevant period.

C. Legal Entity Identifier (LEI) / Counterparty ID

Section 6.2 of the ICE TV Rulebook Annex states that in instances a counterparty does not have an LEI at time of reporting, or is not eligible to obtain an LEI, the party reporting the trade must sign a document (Exhibit U.4)³, at least two business days prior to reporting, provide the reason the counterparty is reporting without an LEI, and agree to notify ICE TV if and when the counterparty has obtained an LEI at a later point.

We believe there are some challenges with ICE TV’s requirements for reporting counterparties since:

- The reporting counterparty may not have transparency into the reason(s) the counterparty’s LEI is not available two days prior to reporting;
- Reporting counterparties have not built a way to notify themselves when a counterparty has obtained an LEI. Although the numbers of non-LEI counterparties may not be high and the Global LEI Foundation (GLEIF) Application Programming Interface (API) could be leveraged, the reporting counterparty would still need to build this additional functionality for the ICE TV requirement;
- The dependency on ICE TV’s subsequent creation of an internal ID for the counterparty may also impair the ability of the reporting counterparty to comply with its reporting deadline.

² Cross-Border Application of Certain Security-Based Swap Requirements, 85 Fed. Reg. 6270 (Feb. 4, 2020).

³ <https://www.sec.gov/rules/other/2021/ice-trade-vault/exhibit-u.4-ice-trade-vault-sec-no-lei-set-up-request-revised-march-2021.pdf>.

Instead, ISDA in principle supports the approach set out in Section 4.3 of the DTCC Rulebook for the LEI, which requires the reporting counterparty to provide an LEI for itself and its counterparty for each transaction record submitted, and new DTCC users to provide an LEI during the onboarding process. We believe this approach will enable a reporting counterparty to fulfill its regulatory obligations without additional dependencies or burdens for reporting counterparties.

However, we believe that Section 4.3 of the DTCC Rulebook and Section 6.2 of the ICE TV Rulebook Annex should also discuss SBSDR functionality for “Counterparty 2”⁴ identifiers that will be permitted under the new Commodity Futures Trading Commission (“CFTC”) swap data reporting rules (e.g. Natural Persons Identifiers (NPIs), Privacy Law Identifiers (PLIs), and identifiers for counterparties who are eligible for LEIs but who, despite best efforts, do not obtain an LEI per §45.6).

D. Unique Transaction Identifier (UTI) / Transaction ID

ISDA supports the approach set out for unique trade identifiers in Section 4 of the DTCC Rulebook, however for clarity we suggest adding appropriate references to the Unique Swap Identifier (“USI”) since it is still mandated under CFTC.

Although an ICE TV-generated Unique Identification Code (UIC) code is last in the ICE TV waterfall of UIC code types in restated Rule 6⁵ of the Rulebook Annex, we propose that the specified ICE TV-generated Transaction ID code be revised to a maximum of 52 instead of 54 characters⁶. This would align the ICE TV Transaction ID with the global UTI standard expected to be implemented by the CFTC in May, 2022. In addition, since the current industry best practice UTI and USI each have maximum lengths of 42 characters, while the global Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) (together “CPMI-IOSCO”) UTI has a maximum of 52, it is possible that not all market infrastructure systems are able to accommodate more than 52 characters. Shortening to 52 will reduce the possibility of incurring additional compliance costs for market participants.

E. Unique Product Identifiers (UPI) / Product ID

Section 6.3 of ICE TV’s Rulebook Annex specifies that where a SEC or CPMI-IOSCO accepted UPI taxonomy is not available, then the ICE TV will create a product ID based on its own product taxonomy.

ISDA supports product identification based on the CPMI-IOSCO UPI global standard when the standard is available. In the interim, however, we support use of the ISDA Taxonomy as an acceptable product ID. The ISDA Taxonomy is already built and used by the majority of market

⁴ See #14 “Counterparty 2”, CFTC Technical Specification (September 17, 2020),

https://www.cftc.gov/media/4891/DMO_Part43_45TechnicalSpecification091720/download

⁵ Point 16 on page 26.

⁶ Step 7, Section 6.1.

participants for other jurisdictional reporting and, under the new CFTC swap data reporting rules, accepted until such time as the CPMI-IOSCO UPI is implemented by the CFTC. If ICE TV were to require a different product taxonomy prior to the global UPI, new implementation mechanisms will be needed for most reporting sides and market infrastructure providers and market participants will have to bear additional costs in order to build for ICE TV’s potentially unique method.

Therefore, we propose that ICE TV revise Section 6.3 of the Rulebook and Annex to state that as SBSDR, it would accept the ISDA taxonomy for product identification in the interim until such time as the UPI global standard is implemented, in line with approach DTCC has taken in its Rulebook⁷.

In addition, we believe that the §§6.3 discussion related to the issuance of Product IDs by ICE TV should be clarified to state that once the global UPI is implemented, ICE TV would no longer issue Product IDs⁸ since the Derivatives Service Bureau (DSB) will be responsible for assigning UPI codes and maintaining the associated reference data, as the UPI Service Provider-designate for the UPI system.

F. Package Indicator

ICE TV has proposed that reporting parties submit a value of “Y” to indicate that an SBS is part of a package.⁹ Accordingly, “Package Trade Flag” in Exhibit N.5 is a boolean indicator. Since the new CFTC swap data reporting rules will similarly require a boolean value to indicate whether a swap transaction is part of a package, we propose that ICE TV align with the looming CFTC requirement to use “True” instead of “Y” to minimize build “uplifts” when CFTC goes live.

G. Availability of “Not Applicable”

Sections 4.2.5.4 and 4.2.5.5 of the ICE TV Rulebook Annex requests that reporting counterparties input “Not Applicable” where a data field is not applicable for: (1) a pre-enactment and transitional (e.g. historical) security-based swaps submission and (2) an exotic SBS submission.

SEC Rule 242.901(i) requires reporting of historical SBS only to the extent that information about such transactions “is available.” Requiring reporting counterparties to input and report “Not Applicable” for historical SBS appears to runs contrary to SEC Rule 242.901(i). Additionally, the amended Part 45 CFTC swap data terms will no longer permit reporting of “Not applicable” or “N/A.” As such, we propose that relevant sections of the ICE TV Rulebook and Annex eliminate the reporting of “Not Applicable”.

⁷ Section 4.4

⁸ Except for certain products that may not be sufficiently covered by the UPI, such as custom baskets. *See* §5.3, CPMI-IOSCO UPI Technical Guidance (September 2017), <https://www.bis.org/cpmi/publ/d169.pdf>.

⁹ ICE TV Rulebook Annex, Section 4.2.5.6.

H. Public Dissemination of SBS data

ISDA and its members appreciate the Commission’s position on enforcement of certain SBSR rules (“SEC no-action relief”) as specified in its “Cross-Border Application of Certain Security-Based Swap Requirements Final rules/guidance.”¹⁰ We applaud the Commission for its recognition of “the time and costs that may be incurred by swap data repositories and swap market participants to implement aspects of the SBS reporting rules that have no analog in, or are not wholly consistent with, the swap reporting rules.”

Although the specifications in the DTCC¹¹ and ICE TV Rulebooks technically align with the §242.902 requirement that a registered SBSDR shall publicly disseminate immediately upon receipt, SDRs are already built to delay public dissemination under CFTC but would be required to incur the cost of adding functionality to disseminate immediately under SBSR. The SEC’s requirement for SBSDRs in this regard is not consistent with its equivalent in CFTC swap reporting, thereby undermining the SEC’s efforts to harmonize requirements and minimize the industry burden of complying to SBSR. We urge the SEC to permit SBSDRs to delay public dissemination consistent with the CFTC’s approach for Swap Data Repositories, for the reasons above.

We would like to thank the Commission for its consideration of the comments provided in this letter. ISDA reiterates its support for DTCC and ICE TV’s applications, and looks forward to the Commission’s recognition of both as registered SBSDRs.

Sincerely,



Eleanor Hsu
Director, Data and Reporting
International Swaps and Derivatives Association, Inc. (ISDA)

¹⁰ Cross-Border Application of Certain Security-Based Swap Requirements, 85 Fed. Reg. 6270 (Feb. 4, 2020).

¹¹ See DTCC Rulebook Section 5.1.3; ICE TV Rulebook Annex restated Rule 5, point 15.