1401 H Street, NW, Washington, DC 20005-2148, USA
202/326-5800 www.ici.org

January 18, 2011

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information (SEC File No. S7-34-10)

Dear Ms. Murphy:

The Investment Company Institute[1] welcomes the opportunity to comment on the Securities and Exchange Commission's ("Commission") proposal regarding reporting and dissemination of security-based swap[2] information pursuant to Sections 763 and 766 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[3] Proposed Regulation SBSR would require, upon execution, reporting of transaction, volume, and pricing terms of a swap to a registered swap data repository ("SDR"). The SDR then would be required to make certain of the swap data publicly available in real time.

As participants in the swaps markets, funds have a strong interest in ensuring the integrity and quality of these markets. Market transparency like that underlying Regulation SBSR is a key element to

[1] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $12.05 trillion and serve over 90 million shareholders.

[2] Throughout this letter, we will use the term "swap" to refer to swaps when related to the Commodity Futures Trading Commission ("CFTC") and security-based swaps when related to the Commission.

[3] *See* SEC Release No. 34-63346, 75 FR 75208 (December 2, 2010) ("Release"), available at http://www.sec.gov/rules/proposed/2010/34-63346fr.pdf.

achieving those goals. Accordingly, we support the concept of requiring reporting and public dissemination of certain swap transaction data. We are concerned, however, that Regulation SBSR does not adequately protect information regarding block trades. We recommend that the Commission, for those trades, delay reporting of all trade information, establish granular and current thresholds to identify block trades, change the reporting time frame to 24 hours, and eliminate the proposed exclusion for equity total return swaps. As discussed below, we also recommend a number of modifications to the proposed reporting obligations to reflect swaps market practices and the status of technological developments in the swaps market.

I. Block Trades

Block trades enable funds, on behalf of their shareholders, to transact in large amounts with minimal disruption to the market. Regulation SBSR would provide that market participants would learn the price of a swap block trade in real time, but not the notional size. Depending on when the swap transaction took place, the size of the block trade could be disseminated as early as eight hours after execution or immediately upon re-opening of an SDR. While we firmly agree with the Commission's assessment regarding the need to delay real-time reporting regarding the size of a block trade, we have numerous concerns with the remainder of the proposed framework for reporting block trades.

A. Delayed Reporting of All Block Trade Information

We recommend that all block trade information should be delayed, not just the notional amount. In the Release, the Commission notes its preliminary belief that the size of a swap transaction that is sufficiently large to signal to other market participants that there is the potential for subsequent trading activity should be suppressed to provide time for those subsequent transactions to be absorbed by the market. We agree with this proposition and believe that fund shareholders, as well as the market, may be negatively affected by premature disclosure of transaction data about a swap block trade. First, the market must have sufficient time to digest a block order to avoid significantly affecting the swap's price. Second, providing real-time information about block orders can facilitate the ability for market participants to piece together information about a fund's holdings or trading strategy and can lead to frontrunning of a fund's trades, adversely impacting the price of a swap and the underlying security to the detriment of fund shareholders.

B. Thresholds for Qualifying as a Block Trade

The Commission seeks comment in the Release on general criteria that should be used by SDR's to determine whether a transaction is a "block trade," instead of proposing thresholds to define

the term "block trade."[4] The Commission also states that it would not be appropriate to establish different block trades thresholds for similar instruments with different maturities. Rather than imposing uniform thresholds, we believe the Commission should assess the current liquidity for a particular swap type, term, and underlying security.[5] This would enable the Commission to evaluate the market for a particular swap and determine what might be an illiquid size for purposes of defining a block trade in that swap.[6] To remain meaningful, the thresholds would need to be reviewed more than once a year.

C. Length of Reporting Delay

Regulation SBSR would delay public dissemination of the notional size of block trades for a minimum of 8 hours or, in certain cases, until re-opening of a SDR. We are concerned that these time frames are inadequate and could result in higher costs for block trades which, ultimately, would be felt by fund shareholders. We believe that the appropriate time for dissemination of block trade data is best determined by evaluating the type of swap and the factors considered in establishing a "block trade." The Commission, however, does not yet have the information to make these determinations. We therefore recommend that, at this time, the Commission delay dissemination of block trade information for 24 hours after execution and eliminate the provision requiring dissemination upon re-opening of a SDR.

In a block transaction, a dealer must have adequate time to lay-off the trade ahead of dissemination of key information about the trade. This time will vary depending on the type of swap and the current market for that swap. If the dealer does not have time to lay-off the trade ahead of dissemination of the information, it could charge a higher price to the fund executing the block to compensate for its loss of flexibility to hedge the trade in the market.[7] This higher price could negatively impact market efficiencies related to the liquidity that would have been associated with the block trade because the fund is likely to consider breaking up its block into small orders instead of paying the higher price. A 24-hour reporting time frame should be adequate to account for the dealer's

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[4] The Commission states that it will propose specific block trade thresholds at the time it adopts Regulation SBSR, and that SDRs will perform mechanical, non-subjective calculations to implement the thresholds.

[5] The futures market is highly liquid allowing for the application of uniform block trade thresholds that are set on a long-term basis. In comparison, the swaps market is thinly traded and liquidity in a particular swap can change more frequently.

[6] Similar to the CFTC proposal for real-time reporting of swap transaction data, the Commission could consider involving the SDRs in performing the recommended liquidity calculations and disseminating the block thresholds for each particular swap category. *See* Commodity Futures Trading Commission Release, *Real-Time Reporting of Swap Transaction Data*, 75 FR 76139 (December 10, 2010), available at http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2010-29994a.pdf.

[7] If the market learns of the block trade prematurely, market participants may be able to execute trades in anticipation of the dealer's subsequent trading activity and thereby raise the price of such activity.

need to lay-off the trade regardless of the type of swap. Once the Commission gains a better understanding of the appropriate thresholds for a "block trade" and the time it takes the market to absorb a block trade in the various categories of swaps, we think our 24-hour recommendation could be refined.

D. Exclusions from Block Trades

Regulation SBSR would not treat as a block trade an equity total return swap or a swap that is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the security-based swap is based. We do not believe such swaps should be excluded from categorization as a block trade. As with other swaps executed in large quantities, it is still necessary to offset the market risks, as discussed above, associated with disclosing these swap transactions in real time.

Specifically, dealers trade equity total return swaps based on anticipated subsequent trading or hedging with the buying or shorting of the underlying securities. While the underlying security purchases or sales are not subject to delayed reporting, the derivative equity total return swap must be subject to delayed reporting, particularly if in an illiquid size, so as to not signal to the market that the dealer will be trading a mirror equity total return swap and/or buying or shorting securities. Thus, the need to delay price and size information is no less important for equity total return swaps or other similarly designed swaps, and we recommend that the Commission include these swaps within the scope of the term "block trades."

II. Reporting Obligations

We have several recommendations discussed below that would ensure that Regulation SBSR accounts for current operational capabilities and market practices of swaps market participants.

A. Reporting Time

Regulation SBSR would require reporting of swap transaction data to a SDR in real time. "Real time" would mean "as soon as technologically practicable, but in no event later than 15 minutes after the time of execution of the [swap]." We are concerned that the 15 minute limit is not technologically practicable under existing communications and data infrastructure. We believe custom and market practice will eventually define the time period that is a reasonable interpretation of technologically practicable, driven by more swaps becoming exchange traded and centrally cleared, and as market participants automate in response to Commission and CFTC rulemaking under the Dodd-Frank Act.[8] We recommend that the Commission eliminate the 15-minute requirement in order to provide

[8] We note that neither the Dodd-Frank Act nor the CFTC have proposed a time limitation for the term "technologically practicable," which provides market participants with some flexibility to adapt to the new rule without violating the law for an unintended delay.

flexibility for unintended or uncontrollable delays as the swaps marketplace adapts to the Dodd-Frank Act rulemaking.

Currently, there are limited reporting facilities for cleared swaps. The Depository Trust Clearing Corporation has a trade warehouse for credit default swaps and interest rate swaps only, for which reporting is same day, not 15 minutes. Other facilities or platforms will have to be created for other categories of swaps. In addition, outside of the dealers, there is little automation with respect to counterparty swap transaction data. Indeed, we disagree with the suggestion in the Release that large institutional traders have the systems and processes to, with little or no manual intervention, aggregate and send the data. Most swaps counterparties, including institutional investors, agree to the terms of timing contractually, and the time period is typically by the close of the next business day.

Regulation SBSR also would provide that no person other than an SDR may make a transaction report available before the earlier of: (1) 15 minutes after execution of the swap; or (2) the time that a SDR publicly disseminates a report of that swap. Having recommended that the Commission eliminate the 15 minute reporting deadline in Regulation SBSR, we similarly recommend that it eliminate the 15 minute prong from this proposed provision for dissemination of swap transaction data by other market participants. Otherwise, the potential would exist for a market participant to unfairly disseminate swap data in its possession before a SDR publicly disseminated the same data. This modification would align with the CFTC proposal and would ensure that swap transaction data is not made available to the public prior to release by an SDR.

B. Reporting Party

Regulation SBSR would establish a hierarchy for identifying the reporting party to a swap transaction. It also would provide that a swap be reported if the swap has sufficient jurisdictional ties to the United States. As discussed above, dealers are the only market participants that currently have the infrastructure and standardization to report the requisite data. As noted in the Release, upgrades to their systems would be minimal. Funds, in comparison, would need to expend significant time and resources to build out their systems to accommodate the proposed data collection and reporting requirements. We therefore recommend that, generally, swap dealers and swap execution facilities be obligated to report swap data regardless of whether or not they are a U.S. person and regardless of whether they are registered in the United States, assuming there are jurisdictional ties to the United States warranting reporting of the swap.

We also recommend that the Commission permit the parties to a swap transaction to determine who will assume the reporting obligation. This determination could be memorialized in the contract between the counterparties. Importantly, as long as the reporting party was identified to the

SDR, the Commission would have a responsible party to contact regarding any questions about the reported swap transaction.[9]

C. "Unique Identification Codes"

Regulation SBSR would require reporting of a "participant ID" of each counterparty and, as applicable, the broker ID, desk ID, and trader ID of the reporting party. The ID for each of these parties would be a "unique identification code" or "UIC" as assigned to each product or person by or on behalf of an internationally recognized standard's setting body meeting certain fee and usage restrictions.[10] An SDR would assign all necessary UICs using its own methodology if no standards-setting body met the criteria identified by the Commission. We are very concerned by the possibility that multiple UICs could be assigned by different regulators to the same financial entity, unnecessarily creating compliance burdens, operational difficulties, and opportunities for confusion.[11] We strongly recommend that regulators coordinate their efforts to establish UICs.

For example, both the CFTC and the Department of the Treasury have outstanding proposals that would require the creation and assignment of a UIC or, in the case of the Treasury, a "Legal Entity Identifier" to certain financial entities.[12] It is critical for these and other regulators to work together

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[9] Regulation SBSR would require each participant of a SDR to provide it with information sufficient to identify its ultimate parent and any affiliates of the participant that also are participants of the SDR. It would be very common that our advisers would trade with multiple accounts in one swap transaction – *i.e.,* both mutual funds and separate client accounts – for which they would allocate the swap contract notional amounts at the end of the day. Advisers often do not know all of the affiliates of their clients, and some clients are reluctant to provide this information. We recommend that the Commission clarify that an adviser that has implemented reasonable policies and procedures to obtain the required information about affiliates and documented its efforts to obtain the information from its clients be deemed to have satisfied this provision of Regulation SBSR.

[10] In the fund context, it would be most appropriate to apply a UIC to each fund/portfolio/series – *i.e.*, an identifier should not be applied at the trust level where a trust contains multiple funds.

[11] In light of this concern, if the Commission adopts the proposed UIC provisions, we recommend that it coordinate the use of UICs in Regulation SBSR with the unique identifier provisions in its consolidated audit trail proposal. *See* SEC Release No. 62174 (May 26, 2010), 75 FR 32555 (June 8, 2010) ("Release"), available at http://www.sec.gov/rules/proposed/2010/34-62174.pdf.

[12] The CFTC proposal for swap data recordkeeping and reporting requirements states that, if developed, unique product identifiers may be used in lieu of some of the information required to be reported to an SDR. *See* Commodity Futures Trading Commission, *Swap Data Recordkeeping and Reporting Requirements*, 75 FR 76574 (December 8, 2010), available at https://www.cftc.gov/ucm/groups/public/2otherif/documents/ifdocs/federalregister112210.pdf *Real-Time Reporting of Swap Transaction Data* (December 10, 2010). The Office of Financial Research within the Department of the Treasury has issued a statement of policy regarding its preference to adopt a universal standard for identifying parties to financial contracts. *See* Office of Financial Research; Statement on Legal Entity Identification for Financial Contracts, 75 FR 74146 (November 30, 2010), available at http://edocket.access.gpo.gov/2010/pdf/2010-30018.pdf.

and issue a single, universal standard to identify financial entities. The creation of different identification mechanisms for different regulatory purposes not only unduly burdens affected financial entities but also creates operational difficulties as multiple and larger control systems are needed to track the various identification mechanisms created in response to regulatory mandates. Finally, the existence of multiple UICs for a single financial entity has the potential to create confusion among regulators and other users of the UICs, particularly as the regulators attempt to coordinate their efforts to monitor and manage systemic risk in the U.S. financial system.

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If you have any questions on our comment letter, please feel free to contact me directly at (202) 326-5815, Heather Traeger at (202) 326-5920, or Ari Burstein at (202) 371-5408.

Sincerely,

/s/ Karrie McMillan

Karrie McMillan
General Counsel

cc: The Honorable Mary L. Schapiro
The Honorable Kathleen L. Casey
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes

Robert W. Cook, Director
James Brigagliano, Deputy Director
Division of Trading and Markets