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[FR Doc. 2021-05787 Filed 3-18-21; 8:45 am]

BILLING CODE 7590-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91331; File No. SBSDR-2021-01]

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

March 16, 2021.

#### I. Introduction

On February 11, 2021, ICE Trade Vault, LLC ("ICE Trade Vault") filed with the Securities and Exchange Commission ("Commission") an application on Form SDR to register as a security-based swap data repository ("SDR") pursuant to Section 13(n)(1) of the Securities Exchange Act of 1934 ("Exchange Act") and 17 CFR 240.13n-1 ("Rule 13n-1") thereunder,<sup>1</sup> and as a securities information processor ("SIP") under Section 11A(b) of the Exchange Act.<sup>2</sup> ICE Trade Vault amended its application on March 10 and March 11, 2021. ICE Trade Vault intends 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 application,<sup>3</sup> and the Commission will consider any comments it receives in making its determination whether to approve ICE Trade Vault's application for registration as an SDR and as a SIP.

<sup>1</sup> 15 U.S.C. 78m(n)(1); 17 CFR 240.13n-1. A copy of ICE Trade Vault's application on Form SDR and all non-confidential exhibits and amendments thereto are available for public viewing on the Commission's website. In 2016, ICE Trade Vault submitted a prior application for registration as an SDR. See Release No. 77699 (Apr. 22, 2016), 81 FR 25475 (Apr. 28, 2016); Release No. 34-81223 (July 27, 2017), 82 FR 35844 (Aug. 1, 2017). ICE Trade Vault withdrew this prior application in 2018. See Letter from Kara Dutta, General Counsel, ICE Trade Vault, Mar. 23, 2018, <https://www.sec.gov/divisions/marketreg/sdr/ice-trade-vault-sdr-application-withdrawal-letter-032318.pdf>.

<sup>2</sup> 15 U.S.C. 78k-1(b).

<sup>3</sup> The descriptions set forth in this notice regarding the structure and operations of ICE Trade Vault have been derived, excerpted, or summarized from ICE Trade Vault's application on Form SDR.

#### II. Background

##### A. SDR Registration, Duties, and Core Principles

Section 13(n) of the Exchange Act makes it unlawful for any person, unless registered with the Commission, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of an SDR.<sup>4</sup> To be registered and maintain registration, an SDR must comply with certain requirements and core principles described in Section 13(n), as well as any requirements that the Commission may impose by rule or regulation.<sup>5</sup> In 2015, the Commission adopted 17 CFR 240.13n-1 to 13n-12 under the Exchange Act to establish Form SDR, the procedures for registration as an SDR, and the duties and core principles applicable to an SDR ("SDR Rules").<sup>6</sup> The Commission provided a temporary exemption from compliance with the SDR Rules and also extended exemptions from the provisions of the Dodd-Frank Act set forth in a Commission order providing temporary exemptions and other temporary relief from compliance with certain provisions of the Exchange Act concerning security-based swaps, and these temporary exemptions expired in 2017.<sup>7</sup>

The Commission also has adopted 17 CFR 242.900 to 909 under the Exchange Act (collectively, "Regulation SBSR"), which governs regulatory reporting and public dissemination of security-based swap transactions.<sup>8</sup> Among other things, Regulation SBSR requires each registered SDR to register with the Commission as a SIP,<sup>9</sup> and the Form SDR constitutes an application for registration as a SIP, as well as an SDR.<sup>10</sup>

In 2019, the Commission stated that implementation of the SBS Reporting Rules can and should be done in a manner that carries out the fundamental policy goals of the SBS Reporting Rules while minimizing burdens as much as

practicable.<sup>11</sup> Noting ongoing concerns among market participants about incurring unnecessary burdens and the Commission's efforts to promote harmonization between the SBS Reporting Rules and swap reporting rules, the Commission took the position that, for four years following Regulation SBSR's Compliance Date 1 in each asset class,<sup>12</sup> certain actions with respect to the SBS Reporting Rules would not provide a basis for a Commission enforcement action.<sup>13</sup> The no-action statement's relevance to ICE Trade Vault's application for registration as an SDR and SIP is discussed further below.

##### B. Standard for Registration

As noted above, to be registered with the Commission as an SDR and maintain such registration, an SDR is required to comply with the requirements and core principles described in Section 13(n) of the Exchange Act, as well as with any requirement that the Commission may impose by rule or regulation.<sup>14</sup> In addition, Rule 13n-1(c)(3) under the Exchange Act 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.<sup>15</sup> The Commission shall deny the registration of an SDR if it does not make any such finding.<sup>16</sup> Similarly, to be registered with the Commission as a SIP, the Commission must find that such applicant is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as a SIP,

<sup>11</sup> Release No. 34-87780 (Dec. 18, 2019), 85 FR 6270, 6347 (Feb. 4, 2020) ("ANE Adopting Release").

<sup>12</sup> See *id.* Under Regulation SBSR, the first compliance date ("Compliance Date 1") for affected persons with respect to an SBS asset class is the first Monday that is the later of: (i) six months after the date on which the first SDR that can accept transaction reports in that asset class registers with the Commission; or (ii) one month after the compliance date for registration of SBS dealers and major SBS participants ("SBS entities"). *Id.* at 6346. The compliance date for registration of SBS entities is October 6, 2021. See *id.* at 6270, 6345.

<sup>13</sup> See *id.* The specific rule provisions of the SBS Reporting Rules affected by the no-action statement are discussed in Part II.B.

<sup>14</sup> See 15 U.S.C. 78m(n)(3).

<sup>15</sup> 17 CFR 240.13n-1(c)(3).

<sup>16</sup> *Id.*

<sup>4</sup> 15 U.S.C. 78m(n).

<sup>5</sup> *Id.*

<sup>6</sup> See Release No. 34-74246 (Feb. 11, 2015), 80 FR 14438, 14438 (Mar. 19, 2015) ("SDR Adopting Release"). In 2016, the Commission subsequently amended 17 CFR 240.13n-4 to address third-party regulatory access to SBS data obtained by an SDR. See Release No. 34-78716 (Aug. 29, 2016), 81 FR 60585 (Sep. 2, 2016).

<sup>7</sup> See Release No. 34-80359 (Mar. 31, 2017), 82 FR 16867 (Apr. 6, 2017).

<sup>8</sup> Release No. 34-74244 (Feb. 11, 2015), 80 FR 14563 (Mar. 19, 2015); Release No. 34-78321 (July 14, 2016), 81 FR 53546 (Aug. 12, 2016). Regulation SBSR and the SDR Rules are referred to collectively as the "SBS Reporting Rules."

<sup>9</sup> See 17 CFR 242.909.

<sup>10</sup> See Form SDR, Instruction 2.

comply with the provisions of the Exchange Act and the rules and regulations thereunder, carry out its functions in a manner consistent with the purposes of the Exchange Act, and, insofar as it is acting as an exclusive processor, operate fairly and efficiently.<sup>17</sup>

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 a list of the asset classes 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, general information regarding its business organization, and contact information.<sup>18</sup> Obtaining this information and other information reflected on Form SDR and the exhibits thereto—including the 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—will enable the Commission to determine whether to grant or deny an application for registration.<sup>19</sup> Furthermore, the information requested in Form SDR will enable the Commission to assess whether the applicant is so organized and has the capacity to comply and carry out its functions in a manner consistent with the federal securities laws and the rules and regulations thereunder, including the SBS Reporting Rules.<sup>20</sup>

Consistent with the Commission's no-action statement in the ANE Adopting Release,<sup>21</sup> an entity wishing to register with the Commission as an SDR must still submit an application on Form SDR but can address the rule provisions included in the no-action statement by discussing how the SDR complies with comparable Commodity Futures Trading Commission ("CFTC") requirements.<sup>22</sup> Accordingly, in such instances the Commission will not assess an SDR application for consistency or compliance with the rule provisions included in the Commission's no-action statement. Specifically, the Commission

identified the following provisions as not providing a basis for an enforcement action against a registered SDR for the duration of the relief provided in the Commission statement: Under Regulation SBSR, aspects of 17 CFR 242.901(a), 901(c)(2) through (7), 901(d), 901(e), 902, 903(b), 906(a) and (b), and 907(a)(1), (a)(3), and (a)(4) through (6); under the SDR Rules, aspects of Section 13(n)(5)(B) of the Exchange Act and 17 CFR 240.13n-4(b)(3) thereunder, and aspects of 17 CFR 240.13n-5(b)(1)(iii); and under Section 11A(b) of the Exchange Act, any provision pertaining to SIPs.<sup>23</sup> Thus, an SDR applicant will not need to include materials in its application explaining how it would comply with the provisions noted above, and could instead rely on its discussion about how it complies with comparable CFTC requirements.<sup>24</sup> The applicant may instead represent in its application that it: (i) Is registered with the CFTC as a swap data repository; (ii) is in compliance with applicable requirements under the swap reporting rules; (iii) satisfies the standard for Commission registration of an SDR under Rule 13n-1(c); and (iv) intends to rely on the no-action statement included in the ANE Adopting Release for the period set forth in the ANE Adopting Release with respect to any SBS asset class or classes for which it intends to accept transaction reports.<sup>25</sup>

### III. Summary of ICE Trade Vault's Application on Form SDR

As noted above, ICE Trade Vault intends to operate as a registered SDR for the credit derivatives asset class.<sup>26</sup> ICE Trade Vault states that its core duties are: (i) Acceptance and confirmation of data; (ii) recordkeeping; (iii) public reporting; (iv) maintaining data privacy and integrity; and (v) permitting access to regulators.<sup>27</sup> It notes that its fundamental purpose is to provide transparency to the SBS market and publicly disseminate trade information.<sup>28</sup> In its application, ICE Trade Vault represents that it is provisionally registered with the CFTC as a swap data repository, is in compliance with applicable

requirements under the CFTC reporting rules applicable to a registered swap data repository, and intends to rely on the Commission's position outlined in the ANE Adopting Release for applicable reporting rules and SBSDR duties for the period set forth therein.<sup>29</sup> Below is an overview of the representations made in the application materials.

#### A. Organization and Governance

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.<sup>30</sup> As a general matter, the number of directors and composition of the Board of Directors ("ITV Board") shall be determined by ICE, as the sole member of ICE Trade Vault.<sup>31</sup> Currently, the ITV Board consists of at least three directors, all of whom are appointed by ICE.<sup>32</sup> The ITV Board is composed of individuals selected from the following groups: members of senior management or the Board of Directors of ICE, independents and employees of ICE Trade Vault's users with derivatives industry experience.<sup>33</sup> ICE considers several factors in determining the composition of the ITV Board, 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 and a swap data repository regulated by the CFTC.<sup>34</sup> Additionally, in accordance with Exchange Act Rule 13n-4(c)(2), ICE Trade Vault provides users with the

<sup>29</sup> See Form SDR, Application Letter from Trabue Bland, President, ICE Trade Vault, dated Mar. 10, 2021, at 1, 2.

<sup>30</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 9. ICE is a holding company whose subsidiaries operate 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.

<sup>31</sup> See Board of Directors Governance Principles, Ex. D.3.

<sup>32</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 9; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 2.1; Board of Directors Governance Principles, Ex. D.3.

<sup>33</sup> See Board of Directors Governance Principles, Ex. D.3.

<sup>34</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 9; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 2.1; Board of Directors Governance Principles, Ex. D.3.

<sup>17</sup> See 15 U.S.C. 78k-1(b)(3).

<sup>18</sup> See SDR Adopting Release, *supra* note 6, at 14459.

<sup>19</sup> See *id.* at 14458.

<sup>20</sup> See *id.* at 14458-59.

<sup>21</sup> See *supra* notes 11-13 and accompanying text.

<sup>22</sup> See *supra* note 13.

<sup>23</sup> The ANE Adopting Release provides additional discussion of the particular aspects of the affected rules that would not provide a basis for an enforcement action. See ANE Adopting Release, *supra* note 11, at 6347-48.

<sup>24</sup> *Id.* at 6348.

<sup>25</sup> *Id.* For example, an applicant need not describe in Exhibit S its functions as a SIP.

<sup>26</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.1.

<sup>27</sup> See *id.*

<sup>28</sup> See *id.*

opportunity to participate in the process for nominating the ICE Trade Vault independent director and with the right to petition for alternative candidates.<sup>35</sup> At least one director will at all times be “independent” in accordance with applicable provisions of the New York Stock Exchange Listed Company Manual.<sup>36</sup> Two officers of ICE Trade Vault’s parent, ICE, currently serve as the non-independent directors.<sup>37</sup> ICE shall periodically review the composition of the ITV Board to assure that the level of representation of directors is appropriate for the interests of these constituencies in ICE Trade Vault.<sup>38</sup>

The ITV Board oversees all risks relating to ICE Trade Vault.<sup>39</sup> The powers and authority of the ITV Board include the ability to: (i) Designate and authorize specific appointed officers to act on behalf of the ITV Board; (ii) fix, determine and levy all fees, when necessary; (iii) prepare and amend the Rulebook; (iv) act in emergencies; and (v) delegate any such power to the appropriate party.<sup>40</sup> The ITV Board oversees ICE Trade Vault’s SDR functions as well as other regulated services that ICE Trade Vault provides, such as the swap data repository registered with the CFTC.<sup>41</sup>

ICE Trade Vault’s Chief Compliance Officer (“CCO”) is appointed by the ITV Board and reports directly to the President of ICE Trade Vault.<sup>42</sup> The ITV Board approves the compensation of the CCO and meets with the CCO at least annually.<sup>43</sup> The CCO also works directly with the ITV Board in certain instances, for example, when resolving conflicts of interest.<sup>44</sup> The CCO has supervisory authority over all staff acting at the direction of the CCO and his or her responsibilities include, but are not limited to: (i) preparing and signing a compliance report with a financial report that conforms to the requirements of Exchange Act Rule 13n–11(f), which shall be provided to the SEC annually in accordance with Exchange Act Rule

13n–11(d); (ii) reviewing the compliance of ICE Trade Vault with respect to the requirements and core principles described in Section 13(n) of the Exchange Act and the applicable SEC regulations; and (iii) establishing and administering written policies and procedures reasonably designed to prevent violations of the Exchange Act, the core principles applicable to SDRs and applicable law.<sup>45</sup>

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.<sup>46</sup> In addition, ICE Trade Vault prohibits any member of the ITV Board or of any board committee which has authority to take action for and in the name of ICE Trade Vault from knowingly participating in such body’s deliberations or voting in any matter involving a named party in interest (a person or entity that is identified by name as a subject of any matter being considered by the ITV Board or a board committee) where such member (i) is a named party in interest, (ii) is an employer, employee, or guarantor of a named party in interest or an affiliate thereof, (iii) has a family relationship (the person’s spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law) with a named party in interest or (iv) has any other significant, ongoing business relationship with a named party in interest or an affiliate thereof.<sup>47</sup> The CCO shall determine whether any member of the deliberating body is subject to a prohibition under its conflicts of interest policies.<sup>48</sup>

#### B. Access and Information Security

ICE Trade Vault represents that it provides access to its SDR service on a fair, open and not unreasonably discriminatory basis.<sup>49</sup> According to ICE Trade Vault, access to and usage of its service is available to all market participants that validly engage in SBS

transactions and to all market venues from which data can be submitted to ICE Trade Vault, and do not require the use of any other ancillary service offered by ICE Trade Vault.<sup>50</sup> ICE Trade Vault represents that for security reasons, access to the ICE Trade Vault system is strictly limited to users (entities with valid permissions and security access).<sup>51</sup> Users will only have access to (i) data they reported, (ii) data that pertains to a SBS to which they are a counterparty; (iii) data that pertains to a SBS for which the user is an execution agent, platform, registered broker-dealer or a third-party reporter; and (iv) data that ICE Trade Vault is required to make publicly available.<sup>52</sup>

According to ICE Trade Vault, access to its system is provided to parties that have a duly executed User Agreement in effect with ICE Trade Vault.<sup>53</sup> When enrolling with ICE Trade Vault, users must designate an administrator with respect to the user’s use of ICE Trade Vault to ensure ICE Trade Vault access is granted by a trusted individual at the user’s firm who is closest to and has the most knowledge of those in the firm who require access; the administrator will create, permission and maintain all user names and passwords for the user.<sup>54</sup> According to ICE Trade Vault, passwords must meet technical and procedural processes for information security and must include at least three of the following elements: uppercase letters, lowercase letters, numbers, and special characters.<sup>55</sup>

ICE Trade Vault may decline the request of an applicant to become a user

<sup>50</sup> 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.”).

<sup>51</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 1; see also ICE Trade Vault User Agreement, Ex. U.2.

<sup>52</sup> See *id.*; see also Security-Based Swap Data Repository User Onboarding Process Guide, Ex. N.6.

<sup>53</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 1; Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 3.1.1; see also ICE Trade Vault User Agreement, Ex. U.2.

<sup>54</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 1; Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 3.1.1.

<sup>55</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 1.

<sup>35</sup> See *id.*

<sup>36</sup> See *id.*

<sup>37</sup> See *id.*

<sup>38</sup> See Board of Directors Governance Principles, Ex. D.3.

<sup>39</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 9; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 2.1; Board of Directors Governance Principles, Ex. D.3.

<sup>40</sup> See *id.*

<sup>41</sup> See *id.*

<sup>42</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 9; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 2.1.1.

<sup>43</sup> See *id.*

<sup>44</sup> See *id.*

<sup>45</sup> See *id.*

<sup>46</sup> See ICE Global Code of Business Conduct, Ex. D.4.

<sup>47</sup> See Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.1, sec. 2.10.2.

<sup>48</sup> See Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 2.10.4.

<sup>49</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 1; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 3.1.

of its system if such denial is required in order to comply with applicable law (e.g., to comply with sanctions administered and enforced by the Office of Foreign Assets Control of the U.S. Department of the Treasury).<sup>56</sup> If an applicant is denied by ICE Trade Vault for any other reason, the applicant will be entitled to notice and an opportunity to contest such determination in accordance with the Rulebook.<sup>57</sup> If the denial of an application is reversed, the applicant will be granted access to ICE Trade Vault promptly following completion of onboarding requirements.<sup>58</sup> In addition, ICE Trade Vault may revoke a user's access to ICE Trade Vault following a determination that (i) the user has violated any provision of the User Agreement (including by failing to pay any fees when due), the Rulebook, applicable law or any ICE Trade Vault policies and procedures related to its SDR service or (ii) such action is necessary or appropriate in light of ICE Trade Vault's regulatory responsibilities or for the protection of the integrity of its system (each, an "Access Determination").<sup>59</sup> Access Determinations shall be made by the CCO based on the information gathered during the inquiry, if any, and reviewed by the President and General Counsel of ICE Trade Vault within 5 business days of such determination prior to implementing any revocation of access.<sup>60</sup> Notwithstanding the foregoing, the CCO's Access Determination may be implemented immediately without prior review by the President or General Counsel ("Immediate Revocation") where the CCO determines such revocation is necessary for the protection of the integrity of the ICE Trade Vault system or to fulfill ICE Trade Vault's regulatory responsibilities.<sup>61</sup> If (i) an Immediate Revocation occurs or (ii) the President and General Counsel conclude that an Access Determination is appropriate and in compliance with applicable law, the CCO shall, within 1 business day, provide notice by email to the user to which the Access Determination applies, including in such notice the specific reasons for the determination.<sup>62</sup> If the President and General Counsel

conclude that limitation or revocation of access pursuant to an Access Determination made by the CCO would constitute unreasonable discrimination, the President and General Counsel shall take such actions as are necessary to maintain or restore access to ICE Trade Vault, its services or SDR information, as applicable.<sup>63</sup>

ICE Trade Vault states that it recognizes its responsibility to ensure data confidentiality and dedicates significant resources to information security to prevent the misappropriation or misuse of confidential information and any other SDR information not subject to public dissemination (i.e., the information identified in Exchange Act Rule 902(c) and that it does not, as a condition of accepting SBS data from users, require the waiver of any privacy rights by such users.<sup>64</sup> ICE Trade Vault states that it maintains a security policy that sets forth technical and procedural processes for information security and contains an extensive list of policies and means of implementation and that it uses a multi-tiered firewall deployment to provide network segmentation and access control to its services.<sup>65</sup> ICE Trade Vault states that its application servers are housed in a demilitarized network zone behind external firewalls and that a second set of internal firewalls further isolate ICE Trade Vault database systems, while an intrusion system provides added security to detect any threats and network sensors analyze all internet and private line traffic for malicious patterns.<sup>66</sup>

ICE Trade Vault states that tactical controls are regularly examined and tested by multiple tiers of internal and external test groups, auditors and independently contracted third-party security testing firms.<sup>67</sup> According to ICE Trade Vault, in addition, the security policy imposes an accountable and standard set of best practices to protect the confidentiality of users' SDR information, including confidential information and other SDR information not subject to public dissemination.<sup>68</sup> ICE Trade Vault states that it completes an audit for adherence to the data security policies on at least an annual basis; the audit tests the following

applicable controls, among others, to ICE Trade Vault systems: (i) Logical access controls; (ii) logical access to databases; (iii) physical and environmental controls; (iv) backup procedures; and (v) change management.<sup>69</sup> ICE Trade Vault states that it has a robust information security program and maintains effective and current policies and procedures to ensure employee compliance; ICE Trade Vault's information security program includes: asset management; physical and environmental security; authorization, authentication and access control management; internet, email and data policy management, record retention management; and accountability, compliance and auditability.<sup>70</sup> ICE Trade Vault states that it performs network scans and penetration tests regularly to ensure the information security systems are performing as designed.<sup>71</sup>

ICE Trade Vault 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.<sup>72</sup> In accordance with the Business Continuity Plan, all production system hardware and software is replicated in near real-time at a geographical- and vendor-diverse disaster recovery site to avoid any loss of data.<sup>73</sup> ICE Trade Vault shall notify the SEC as soon as it 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.<sup>74</sup>

### C. Acceptance and Use of SBS Data

ICE Trade Vault states that it will accept data in respect of all SBS trades

<sup>69</sup> See *id.*

<sup>70</sup> See *id.*

<sup>71</sup> See *id.*

<sup>72</sup> See *id.*

<sup>73</sup> See *id.*

<sup>74</sup> See *id.*; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 2.8.3 ("ICE Trade Vault will notify the SEC as soon as practicable of any action taken, or proposed to be taken (time permitting), pursuant to this Rule 2.8.3. The decision-making process with respect to, and the reasons for, any such action will be recorded in writing. ICE Trade Vault will also notify Users via email as soon as practicable of any action taken (time permitting), or proposed to be taken, pursuant to this Rule 2.8.3.").

<sup>56</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 1; Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 3.1.2.

<sup>57</sup> See *id.*

<sup>58</sup> See *id.*

<sup>59</sup> See Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 3.3.

<sup>60</sup> See *id.*

<sup>61</sup> See *id.*

<sup>62</sup> See *id.*

<sup>63</sup> See *id.*; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 3.4 (review and dispute of revocation of access), 3.5 (final access determinations), 3.6 (implementation of a revocation of access).

<sup>64</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 4.

<sup>65</sup> See *id.*

<sup>66</sup> See *id.*

<sup>67</sup> See *id.*

<sup>68</sup> See *id.*

in the credit derivatives asset class and promptly records such data upon receipt.<sup>75</sup> ICE Trade Vault requires all users to report complete and accurate trade information and to review and resolve all error messages generated by the ICE Trade Vault system with respect to the data they have submitted.<sup>76</sup> According to ICE Trade Vault, access to SDR information by ICE Trade Vault employees and others performing functions on behalf of ICE Trade Vault is strictly limited to those with the direct responsibility for supporting the ICE Trade Vault system, users and regulators.<sup>77</sup> ICE Trade Vault employees and others performing functions on behalf of ICE Trade Vault are prohibited from using SDR information other than in the performance of their job responsibilities.<sup>78</sup> In accordance with applicable SEC regulations, ICE Trade Vault may disclose, for commercial purposes, certain SDR information; any such disclosures shall be made solely on an aggregated basis in a manner that ensures that the disclosed SDR information cannot reasonably be attributed to individual transactions or users.<sup>79</sup>

ICE Trade Vault states that, in accordance with Exchange Act Rule 13n-5(b)(5), it maintains internal policies and procedures in place to ensure its recording process and operation does not invalidate or modify the terms of trade information, and that it regularly audits these controls to ensure the prevention of unauthorized and unsolicited changes to SDR information maintained in the ICE Trade Vault system through protections related to the processing of SBS.<sup>80</sup>

Additionally, ICE Trade Vault states that it reasonably relies on the accuracy of trade data submitted by users and that all users must complete a conformance test to validate data submission integrity prior to ICE Trade Vault's acceptance of actual SBS data and must immediately inform ICE Trade Vault of any system or technical issues that may affect the accuracy of SBS data

transmissions.<sup>81</sup> ICE Trade Vault states that users are responsible for the timely resolution of trade record errors and disputes.<sup>82</sup> ICE Trade Vault provides users electronic methods to extract SDR information for trade data reconciliation.<sup>83</sup> Disputes involving clearing transactions shall be resolved in accordance with the clearing agency's rules and applicable law.<sup>84</sup> For an alpha SBS executed on a platform and reported by a platform user, disputes must be resolved in accordance with the platform's rules and applicable law.<sup>85</sup> For SBS that are reported by a user that is neither a platform nor a clearing agency, counterparties shall resolve disputes with respect to SDR information in accordance with the counterparties' master trading agreement and applicable law.<sup>86</sup> Users that are non-reporting sides may verify or dispute the accuracy of trade information that has been submitted by a reporting side to ICE Trade Vault, where the non-reporting side is identified as the counterparty, by sending a verification message indicating that it verifies or disputes such trade information.<sup>87</sup> If the reporting side for a SBS transaction discovers an error in the information reported with respect to a SBS, or receives notification from a counterparty of an error, the reporting side shall promptly submit to ICE Trade Vault an amended report that corrects such error.<sup>88</sup> ICE Trade Vault will disseminate a corrected transaction report in instances where the initial report included erroneous primary trade information.<sup>89</sup> Users are required to notify ICE Trade Vault promptly of disputed trade data by utilizing the "Dispute" functionality; when a User

"disputes" a trade, the status of the trade will be recorded as "Disputed," and notice of the dispute will be sent promptly to the other party to the trade; the trade record may then be amended or canceled upon mutual agreement of the parties; the status of the trade will remain "Disputed" until either party to the trade provides evidence satisfactory to ICE Trade Vault that the dispute has been resolved.<sup>90</sup> ICE Trade Vault will provide regulators with reports identifying the SDR information that is deemed disputed.<sup>91</sup>

#### D. Fees

According to ICE Trade Vault, all fees imposed by ICE Trade Vault in connection with the reporting of swap data shall be equitable and established in a uniform and non-discriminatory manner as determined from time-to-time by ICE Trade Vault.<sup>92</sup> In addition, ICE Trade Vault represents that all fees will be commensurate to ICE Trade Vault's costs for providing its SDR service. ICE Trade Vault states it will only assess fees as noted in its fee schedule, and there will be no "hidden fees" associated with ICE Trade Vault Service.<sup>93</sup>

The most current pricing schedule is made available via the ICE Trade Vault website. ICE Trade Vault applies fees according to the type of SDR user accessing ICE Trade Vault: counterparty, clearing agency, execution agent and third party reporter.<sup>94</sup> According to ICE Trade Vault, in the case of the execution agent versus the third party reporter, the application of fees is differentiated based upon the type of service provided in each case.<sup>95</sup> According to ICE Trade Vault, an execution agent is directly involved with trade execution; as such, it is charged directly for the fees associated with the SDR just as a counterparty, whereas the underlying

<sup>81</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 6.

<sup>82</sup> See *id.*; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.6 and 4.7.

<sup>83</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 6; Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.6.

<sup>84</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 6; Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.2.4 and 4.7.

<sup>85</sup> See *id.*

<sup>86</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 6; Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.7.

<sup>87</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 6; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.2.3.

<sup>88</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 6; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.2.2.

<sup>89</sup> See *id.*

<sup>90</sup> See *id.*; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.7.

<sup>91</sup> See Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.7; see also Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 6.

<sup>92</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2, sec.8; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 2.7 ("In accordance with Exchange Act Rule 13n-4(c), any dues, fees or other charges imposed by, and any discounts or rebates offered by, ICE Trade Vault in connection with the ICE SBSDR Service shall be fair and reasonable and not unreasonably discriminatory. ICE Trade Vault dues, fees, other charges, discounts, or rebates shall be applied consistently across all similarly situated Users.")

<sup>93</sup> See ICE Trade Vault Security-Based Swap Data Repository Service and Pricing Schedule, Ex. M.2.

<sup>94</sup> See Dues, Fees and Charges, Ex. M.1.

<sup>95</sup> See *id.*

<sup>75</sup> See Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.1.

<sup>76</sup> See Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.2.1.

<sup>77</sup> See Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 3.8; Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 5.

<sup>78</sup> See *id.*

<sup>79</sup> See *id.*

<sup>80</sup> See Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 4.5.

funds are not charged a fee.<sup>96</sup> However, the third party reporter is not involved with the trade execution and simply provides a service to counterparties who have an obligation to report; therefore, according to ICE Trade Vault, they are assessed a fee for each of those reporting parties on behalf of whom they are reporting the trades.<sup>97</sup> According to ICE Trade Vault, as a result, the third party reporter is able to pass the cost of its service to each of its counterparties utilizing third party reporting; this allows for the cost of ICE Trade Vault to be fair and equal for reporting parties whether they choose to report directly to ICE Trade Vault or via a third party reporter.<sup>98</sup> Additionally, according to ICE Trade Vault, clearing agency fees vary from other users due to the unique requirements necessary to support this type of customer; ICE Trade Vault must build out a separate custom interface(s) and purchase and maintain additional hardware necessary to support the high volume of trades submitted to the SDR by the clearing agency; as a result, the minimum fee outlined in the ICE Trade Vault pricing schedule reflects the costs incurred by ICE Trade Vault to purchase the necessary hardware and software and the cost to build out the SDR system; in addition, the clearing agency fees also reflect the additional ongoing support and maintenance costs for this type of high volume user.<sup>99</sup> According to ICE Trade Vault, all fees within the schedule, including the monthly per \$1MM notional, are cost based to ensure ICE Trade Vault may operate with a minimum margin while allowing for a reasonable cost to its customers, given the expected volume of trades it expects to receive as an SDR.<sup>100</sup>

ICE Trade Vault will assess a Repository Fee upon its acceptance of any trade message for an SBS transaction.<sup>101</sup> For both cleared and uncleared/bilateral transactions, the Repository Fee rates will be \$1.35 per \$1/MM Notional. For cleared SBS, the Repository Fee will be charged to the clearing agency that cleared the SBS and, for uncleared or bilateral SBS transactions, the fee will be charged to the user which submitted the record as a counterparty or execution agent.

For transactions submitted directly by a clearing agency user, clearing agency users will have a minimum monthly invoice per user of \$10,000, and the

invoice will be the greater of (i) the total of all Repository Fees incurred by user or (ii) \$10,000.<sup>102</sup> If a clearing agency user does not have any submittals in a given month but does have open positions, the \$10,000 will be charged as a minimum maintenance fee in the place of any Repository Fees. If a clearing agency user does not have any submittals in a given month and does not have any open positions then no fees will be charged.

For transactions submitted directly by a counterparty user, the minimum monthly invoice per user will be \$375.<sup>103</sup> In a given month, each user represented as a counterparty shall be invoiced the greater of (i) the total of all Repository Fees incurred by user or (ii) \$375. If the user does not have any submittals in a given month but does have open positions on SBS in the ICE Trade Vault Service, the \$375 will be charged as a minimum maintenance fee in the place of any Repository Fees. If the user does not have any submittals in a given month and does not have any open positions then no fees will be charged.

When an execution agent submits an SBS transaction on behalf of the counterparty and is listed as the execution agent, the execution agent will be charged the Repository Fee (not the underlying funds, accounts or other principals).<sup>104</sup> When an execution agent submits an SBS transaction where the execution agent is acting as the counterparty, it will be charged the Repository Fee. The minimum monthly invoice for an execution agent will be a total of \$375, including all transactions in which the executing agent is acting on behalf of a counterparty or acting as its own counterparty.

For transactions submitted by third party reporters, third party reporters will only be charged a Repository Fee for those transactions they report on behalf of non-users of ICE Trade Vault.<sup>105</sup> Each non-user on whose behalf the third party reporter submits the transaction will have an invoice created as if it were a user, and will be invoiced the greater of (i) the total of all Repository Fees incurred by non-user or (ii) \$200. If the non-user does not have any submittals by the third party reporter in a given month but does have open positions, \$200 will be charged as a minimum maintenance fee in the place of any Repository Fees. If the non-user does not have any submittals by the third party reporter in a given month

and does not have any open positions then no fees will be charged. The details regarding the Repository Fees incurred or the minimum monthly amount for each non-user will be detailed on the third-party reporter's invoice and summed across all non-users to determine the total amount charged to any one third party reporter. ICE Trade Vault will solely provide invoices to the third party reporter for trades reported on behalf of the non-user and will not issue an invoice directly to any non-users.

#### E. Recordkeeping

According to ICE Trade Vault, users access ICE Trade Vault through a web-based front-end that requires user systems to (a) satisfy the minimum computing system and web browser requirements specified in the ICE Trade Vault Technical Guides; (b) support HTTP 1.1 and 128-bit or stronger SSL data encryption; and (c) the most recent version of Chrome.<sup>106</sup> Trade information submitted to ICE Trade Vault is saved in a non-rewriteable, non-erasable format, to a redundant, local database and a remote disaster recovery database in near real-time; the database of trade information submitted to ICE Trade Vault is backed-up to tape daily with tapes moved offsite weekly.<sup>107</sup> Counterparties' individual trade data records remain available to users at no charge for online access through ICE Trade Vault from the date of submission until five years after expiration of the trade (last day of delivery or settlement as defined for each product).<sup>108</sup> After the initial five-year period, counterparties' trade data will be stored off-line and remain available upon a three-day advance request to ICE Trade Vault, until ten years from the termination date.<sup>109</sup> According to ICE Trade Vault, users will retain unimpaired access to their online and archived trade data.<sup>110</sup> However, if a user or its regulator requests or requires archived trade information from ICE Trade Vault to be delivered other than via the web-based front-end or the application programming interface ("API") or in a non-standard format, such user may be required, in

<sup>106</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 2; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 3.7.

<sup>107</sup> See Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 7.1; see also Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 3.

<sup>108</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 3.

<sup>109</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2, sec. 3.

<sup>110</sup> See *id.*

<sup>96</sup> See *id.*

<sup>97</sup> See *id.*

<sup>98</sup> See *id.*

<sup>99</sup> See *id.*

<sup>100</sup> See *id.*

<sup>101</sup> See ICE Trade Vault Security-Based Swap Data Repository Service and Pricing Schedule, Ex. M.2.

<sup>102</sup> See *id.*

<sup>103</sup> See *id.*

<sup>104</sup> See *id.*

<sup>105</sup> See *id.*

accordance with the ICE Trade Vault schedule of fees and charges, to reimburse ICE Trade Vault for its reasonable expenses in producing data in response to such request or requirement as such expenses are incurred.<sup>111</sup> Similarly, ICE Trade Vault may require a user to pay all reasonable expenses associated with producing records relating to its transactions pursuant to a court order or other legal process, as those expenses are incurred by ICE Trade Vault, whether such production is required at the instance of such user or at the instance of another party with authority to compel ICE Trade Vault to produce such records.<sup>112</sup>

#### F. Disclosure

ICE Trade Vault publishes a disclosure document to provide a summary of information regarding its service offerings and the SBS data it maintains.<sup>113</sup> Specifically, the disclosure document sets forth a description of the following: (i) criteria for access to the ICE Trade Vault service and SBS data; (ii) criteria for connection and linking to ICE Trade Vault; (iii) policies and procedures to safeguard SBS data and operational reliability; (iv) policies and procedures to protect the privacy of SBS data; (v) policies and procedures on ICE Trade Vault commercial and non-commercial use of SBS data; (vi) ICE Trade Vault data accuracy and dispute resolution procedures; (vii) ICE Trade Vault services; (viii) ICE Trade Vault pricing; and (ix) ICE Trade Vault governance arrangements.<sup>114</sup>

#### G. Regulatory Reporting and Public Dissemination

As a registered SDR, ICE Trade Vault would carry out an important role in the regulatory reporting and public dissemination of SBS transactions. As noted above, ICE Trade Vault has stated that it intends to rely on the no-action statement included in the ANE Adopting Release for the period set forth in the ANE Adopting Release with respect to the credit derivatives asset class.<sup>115</sup> Therefore, ICE Trade Vault does not need to include materials in its application explaining how it would comply with the provisions of the SBS Reporting Rules noted in the no-action

statement.<sup>116</sup> Instead, ICE Trade Vault may rely on its discussion about how it complies with comparable CFTC requirements pertaining to regulatory reporting and public dissemination of swap transactions.

#### 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 and as a SIP. Commenters are requested, to the extent possible, to provide empirical data and other factual support for their views. 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SBSDR-2021-01 on the subject line.

##### Paper comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SBSDR-2021-01.

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.

<sup>116</sup> However, the ICE Trade Vault application includes provisions explaining how it would require users to identify SBS, as required by Rule 901(c)(1) of Regulation SBSR. See Security-Based SDR Service Disclosure Document, Ex. N.5 (fields 146-148). The ICE Trade Vault application also includes a provision explaining how it would comply with a condition to the no-action statement included in the ANE Adopting Release. See Security-Based SDR Service Disclosure Document, Ex. N.4, sec. 3.5 (providing, in the case of a credit security-based swap, for dissemination of a capped notional size of \$5 million if the true notional size of the transaction is \$5 million or greater).

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SBSDR-2021-01 and should be submitted on or before April 9, 2021.

By the Commission.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-05744 Filed 3-18-21; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91323; File No. SR-PEARL-2021-07]

### Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt a Minimum Execution Quantity Instruction for Orders

March 15, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 1, 2021, MIAX PEARL, LLC ("MIAX PEARL" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposed rule change to amend Exchange Rule 2614, Orders and Order Instructions, to adopt the Minimum Execution Quantity instruction.

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/pearl> at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>111</sup> See *id.*; see also Swap Data Repository Rulebook, Security-Based Swap Data Reporting Annex, Ex. HH.2, sec. 7.1.

<sup>112</sup> See *id.*

<sup>113</sup> See Security-Based SDR Service Disclosure Document, Ex. V.2.

<sup>114</sup> See *id.*

<sup>115</sup> See *supra* note 29 and accompanying text.