

April 4, 2011

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Registration and Regulation of SB Swap Execution Facilities; RIN 3235-AK93. 76 FR 10948
(February 28, 2011)

Dear Ms. Murphy:

Bloomberg L.P. appreciates the opportunity to provide the Securities and Exchange Commission (“Commission”) with our comments with respect to the proposed rules in the above-referenced release (“Release”). The Commission seeks comment on proposed Regulation SB SEF that is designed to create a registration, rule and enforcement framework for a security-based swap (“SB swap”) execution facility (“SB SEF”) under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”). Bloomberg intends to register as a SB SEF in order to continue to facilitate trading in the SB swap markets under the new regulatory regime.

Bloomberg Background

Bloomberg is a leading, privately-held independent platform for electronic trading and processing of over-the-counter (“OTC”) derivatives. Bloomberg’s core business is the delivery of analytics and data on approximately 5 million financial instruments, as well as information and news on almost every publicly traded company through the Bloomberg Professional service. The Bloomberg Professional service provides comprehensive coverage on all major asset classes and currencies, including all varieties of mortgage-related securities. More than 300,000 professionals in the business and financial community around the world are connected via Bloomberg’s proprietary network.

Virtually all major central banks and virtually all investment institutions, commercial banks, government agencies and money managers with a regional or global presence are users of the Bloomberg Professional service, giving Bloomberg extraordinary global reach to all relevant financial institutions that might be involved in swap trading.

Bloomberg employs over 12,900 employees around the world, including more than 2,300 news and multimedia professionals at 146 bureaus in 72 countries, making up one of the world’s largest news organizations.

I. Proposed Rule 811 (d) – SB SEF Execution Methods and Venues

Our OTC derivatives electronic trading platform was built on the idea of adding transparency to the market by creating electronic functions that streamline trading in swaps and provide efficient access to swap pricing. Bloomberg has hosted various “request for quotes” (“RFQ”) systems for OTC derivatives for the past five years. Furthermore, our Bloomberg Bond Trader System, a competitive multi-dealer RFQ platform for U.S. and foreign government securities, has been active for more than 13 years. We are confident that these models are the correct paradigms for a SB SEF.

Bloomberg fully supports the Commission’s efforts to create a SB swap marketplace that achieves the goals of Dodd-Frank. We believe that the Dodd-Frank mandatory clearing and reporting requirements will significantly mitigate systemic risk, promote standardization and enhance transparency. Of an equal but different importance is the creation of the newly regulated SB SEF marketplace. While all three of the foregoing areas are critical under the new Dodd-Frank regulatory regime, we believe that SB swap clearing and reporting activities benefit from legal certainty and specificity provided by detailed prescriptive rules. The proposed SEF trading protocols, however, would benefit from more flexible rules.

We applaud the Commission for generally using a principle-based approach in interpreting the definition of a SB SEF. Specifically, we think the Commission has struck the right balance by supporting an RFQ system but not mandating transmission of an RFQ to a minimum or a maximum number of liquidity providers (*e.g.*, security-based swap dealers). We think, however, that the SB SEFs and participants should be provided flexibility with regards to related trading procedures and protocols as discussed below.¹

A. Request for Quotes – Composite Quote

While the Commission does not dictate a certain type of trading or trading rules for SB SEFs it does set forth certain protocols for a SB SEF that intends to use an RFQ model. The Commission states that an RFQ platform should include functionality that allows a participant requesting a quote to submit an RFQ to all participants. A participant exercising investment discretion, however, could send an RFQ to “less than all” participants on behalf of its “customer” or on its own behalf. Also, as proposed the requestor would be able to determine to whom to send the RFQ. Finally, as proposed, the SB SEF must include RFQ responses in the SB SEF’s composite indicative quote. If the SB SEF displays firm, executable trading interest, it must display such interest to all participants.²

We support the RFQ model for trading SB swaps and the increased transparency associated with disseminating trading interest through a composite indicative quote. The Commission refers to a composite quote as showing an “average quote for each SB swap available on the SB SEF.”³ We believe, however, that the term “composite indicative quote” should not be limited to one model or methodology. Bloomberg has developed and maintained composite pricing on fixed-income instruments since 1998.

¹ The Commission defines the term “participant” as a person that is permitted to directly engage in or effect transactions on the SB SEF. See proposed Rule 800.

² Release p. 10972.

³ Id. at fn. 152.

Developing a meaningful composite is a complex process involving intricate proprietary algorithms. Each SB SEF has a compelling reason to develop a composite indicative quote that represents the most accurate reflection of the markets that meets participant needs and expectations. A trading platform that offers a composite that is consistently “away” from the actual market will quickly be marginalized by participants. Accordingly, the Commission should allow for a broad-range of models and methodologies to be used for developing a meaningful composite indicative quote in which to reflect RFQ responses (as well as other trading interests).

B. Block Trades

The Commission proposes that block trades must be executed on a SB SEF platform and be subject to the various requirements relative to pre-trade transparency. Specifically, the Commission suggests that a SB SEF could meet pre-trade price transparency requirements for block trading by using a multi-dealer RFQ platform “as long as the block trade interacts with existing interest on the SB SEF (*i.e.*, the limit order book portion of the SB SEF that handles orders that are not blocks)...”⁴ In the example provided by the Commission, if a SB SEF offered both an RFQ execution mechanism and a central limit order book and that book had a resting order at a price equal to or greater than a response that comes back from an RFQ request then the block order would have to execute against the resting order first before it could be executed against the RFQ liquidity provider.⁵

We understand the Commission’s interest in promoting a more transparent and competitive trading market for block trades. However, we do not believe that the Commission should mandate that a block trade interact with any existing interest on a SB SEF. Liquidity providers responding to a block trade RFQ factor in the size of the trade when quoting a price. For example, a key variable in the “negotiation process” is the size of a proposed transaction. Imposing a trading protocol that could materially alter the size of a block trade would interject uncertainty for the liquidity provider responding to an RFQ. Rather, liquidity seekers (*e.g.*, institutional investors and investment managers) should be given the option of interacting with such quotes if it is consistent with their trading strategy and the goal of obtaining best execution.

II. Core Principles

A. Third-Party Regulatory Services

As a preliminary matter we would like to affirm with the Commission the ability of a SB SEF to use a third-party regulatory service provider to assist in complying with Dodd-Frank Title VII Core Principles and related rules. The Commission has recognized the appropriateness of regulatory

⁴ Release p. 10974.

⁵ The Commodity Futures Trading Commission (“CFTC”) does not propose to subject block trades to mandatory swap execution facility (“SEF”) trading protocols nor does it require block trades to interact with any existing interest on a SEF. *See Core Principles and Other Requirements for Swap Execution Facilities*, 76 FR 1214 (January 7, 2011). We emphasize the importance of a coordinated approach between the Commission and the CFTC in regulating the two markets so as to have consistency in the markets unless there are material differences necessitating a different approach. We do not believe there is a material difference between the markets on this issue.

outsourcing arrangements in other contexts.⁶ Under such an arrangement the SB SEF would retain responsibility for complying with the Core Principles and related rules but would use a third-party to perform certain functions.⁷ We believe that the SB SEF self-regulatory functions that may be appropriate for outsourcing may include, but would not be limited to, the following:

- Trade practice surveillance;
- Market surveillance;
- Real-time market monitoring;
- Investigations of possible rule violations; and
- Disciplinary actions.

Title VII of Dodd-Frank creates an entirely new regulatory regime for the previously unregulated OTC SB swap market. The ability of SB SEFs to broadly avail themselves of a third-party regulatory service provider would allow SB SEFs to meet aggressive effective dates as well as allow SB SEFs to more efficiently focus on integrating the entire gamut of new rules and policies imposed on them. The value of being able to enlist an established third-party service provider should not be underestimated in terms of the Commission's being able to facilitate the expeditious and reliable introduction of SB SEFs into the newly constituted SB swaps marketplace.

B. Proposed Rules 812 and 815 – Swaps Not Readily Susceptible to Manipulation and Financial Integrity of Transactions

Proposed Rule 812 would require that a SB SEF permit only trading in SB swaps not readily susceptible to manipulation. More specifically, proposed Rule 812(b) would require a SB SEF's swap review committee to determine that a SB swap is not susceptible to manipulation after "taking into account all of the terms and conditions of the security-based swap and the markets for the security-based swap and any underlying security or securities ..."⁸ Separately, proposed Rule 815 would require a SB SEF to establish and enforce rules and procedures for ensuring the financial integrity of SB swaps entered on or through the facilities of such SB SEF.

We believe that with respect to SB swaps subject to the mandatory clearing requirement, the requirements under proposed Rules 812 and 815 can be satisfied by the separately proposed, extensive mandatory clearing requirements and due diligence process along with the SB SEF participant eligibility requirements.⁹ First, both SB swap clearing agencies and the Commission would be required to conduct

⁶ For example, Regulation ATS allows self-regulatory organization ("SRO") functions to be done by a third-party entity. See *Regulation of Exchanges and Alternative Trading Systems*, 63 FR 70844, 70863 (December 22, 1998).

⁷ Regardless of the scope or nature of the functions outsourced, a SB SEF would retain exclusive authority over all substantive decisions made by its regulatory service provider.

⁸ Release p. 11061. Under proposed Rule 812 (c), the swap review committee would also be required to "periodically review the trading in the security-based swap" after commencement of trading (presumably to determine if subsequent to approval the SB swap became readily susceptible to manipulation), Release p. 11062.

⁹ *Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b-4 and Form 19b-4 Applicable to All Self-Regulatory Organizations*, 75 FR 82490, 82491 (December 30, 2010). A clearing member would be required to provide substantial amounts of capital and liquid collateral to clearing agencies as part of their membership requirements. *Ownership Limitations and Governance Requirements for Security Based Swap Clearing Agencies, Security-Based Swap Execution Facilities and National Securities Exchanges With Respect to Security-Based Swaps Under Regulation MC*, 75 FR 65882 (October 26, 2010).

extensive due diligence prior to accepting a SB swap for mandatory clearing.¹⁰ Second, SB SEF access would be limited to persons that are registered with the Commission as SB swap dealers, major SB swap participants, or brokers, or persons that are eligible contract participants (“ECPs”).¹¹ The Commission acknowledges that with the exception of ECPs these participants are subject to “minimum financial responsibility requirements (including margin and net capital requirements)” sufficient to serve as a baseline to ensure the financial integrity of their transactions entered on a SB SEF.¹² Moreover, as discussed, each participant will be subject to a vigorous financial review by an SB clearing agency or a member of an SB clearing agency.

We do not believe it is necessary to set separate, duplicative financial requirements or obligations at the SB SEF level that are redundant to the exhaustive financial requirements that will be associated with membership or access to a SB clearing agency. Therefore, where a determination has been made that a SB swap is subject to mandatory clearing and where SB SEF access is limited to the enumerated entities (as required by proposed Rule 809(a)) there should be a presumption that a SB SEF has satisfied the requirements of Rules 812 and 815 if adopted.

III. Conflicts of Interest

The Commission proposes Rule 820 as additional means of mitigating potential conflicts of interest through ownership limits and structural governance requirements. The Commission recently proposed a separate set of comprehensive ownership limitations and governance requirements, Regulation MC, for SB SEFs.¹³ As a complement to Regulation MC, Rule 820 would require SB SEFs to provide participants with “fair representation” by (i) allowing them to have representation in the selection of SB SEF directors (no less than 20 percent of the total number of directors of the SB SEF must be selected by participants), (ii) requiring that at least one director on the SB SEF Board shall be representative of investors who are not SB swap dealers or major SB swap participants, which director must not be a person associated with any participant, and (iii) requiring SB SEFs to provide a process to nominate an alternative candidate or candidates to the SB SEF Board.

As we have previously commented, the primary rationale for ownership and governance requirements stems from a concern about conflicts that may arise with respect to SB SEFs owned by

¹⁰ The Commission would be required to consider five factors in making its assessment based on information provided by the clearing agency that may include relevant product specifications, product legal documentation and contract terms. *Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing*, 75 FR 82490, 82494-95 (December 30, 2010).

¹¹ Proposed Rule 809 (a).

¹² Release p. 10962. Under proposed Rule 809(d) a SB SEF would be responsible for establishing risk management controls and supervisory procedures reasonably designed to manage financial, regulatory and other risks associated with the ECP’s access. An ECP is subject to separate, significant capital requirements. See Section 1a (18) of the Commodity Exchange Act, as amended by Dodd-Frank. Based on the proposed clearing requirements, as discussed, we believe Rule 809(d) can be satisfied by virtue of confirming that the ECP has access to a clearing agency.

¹³ See *Ownership Limitations and Governance Requirements for Security-Based Swap Clearing Agencies, Security-Based Swap Execution Facilities and National Securities Exchanges with Respect to Security-Based Swaps Under Regulation MC*, 75 FR 65882 (Oct. 26, 2010).

market participants.¹⁴ We believe that where a SB SEF is not owned by its members or other market participants and where the SB SEF can demonstrate a sufficient mitigation of potential conflicts of interest the Commission should consider exempting a SB SEF from proposed Rule 820 as well as from certain provisions of Regulation MC. Section 36 of the Securities and Exchange Act of 1934 provides the Commission with the authority to grant an exemption from any Commission rule or rule provision under Regulation MC, which exemption could be subject to conditions and could be revoked at any time. In the context of Regulation MC the Commission noted that it could grant an exemption where a SB SEF “demonstrated that it established alternative means to effectively mitigate conflicts of interest...”¹⁵ We believe that as part of the registration process a SB SEF should be provided the opportunity to submit facts and circumstances which may demonstrate that the governance structure, as proposed in Rule 820 and Regulation MC, is not necessary or appropriate. The Commission would be able to revoke the exemption at any time if subsequent events or circumstances warranted such action; in such case, the Commission could require a SB SEF to institute the requisite governance structure.

IV. International Harmonization

Dodd-Frank provides that no provision relevant to SB swaps “shall apply to any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States, unless such person transacts such business in contravention of [Commission anti-evasion rules].”¹⁶ The reach of Dodd-Frank could be very broad. The Commission has noted, for example, that if a U.S. person executes a SB swap anywhere in the world the information related to that SB swap should be reported in the U.S. because U.S. regulators have an interest in ensuring they have knowledge of the transaction.¹⁷ The Commission has also stated that where a SB swap was executed in the United States it would be subject to U.S. jurisdiction even if the counterparties were not U.S. persons.¹⁸

Section 752 of Dodd-Frank requires the Commission to, as appropriate, “consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation” of swaps. The Commission has acknowledged with regards to its regulation in the area of security-based swaps that it is important to consult with regulatory counterparts abroad “in an effort to promote robust and consistent standards and avoid conflicting requirements, where possible.”¹⁹

The SB swaps marketplace is a global business. A large percentage of transactions on Bloomberg’s SB swap platform today involve non-U.S. banks. As an entity seeking to register as a SB SEF under Dodd-Frank, Bloomberg believes it is critically important for there to be harmonization of

¹⁴ The enumerated entities in Section 765 of Dodd-Frank are bank holding companies with \$50 billion or more in total consolidated assets, a nonbank financial company supervised by the Board of Governors of the Federal Reserve System, an affiliate of such bank holding company or nonbank financial company, a SB swap dealer or a major SB swap participant.

¹⁵ 75 FR 65882, 65913.

¹⁶ Section 772 of Dodd-Frank.

¹⁷ *Proposed Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information*, 75 FR 75208, 75240 (December 2, 2010).

¹⁸ *Id.*

¹⁹ *Testimony on Implementation of Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act by the U.S. Securities and Exchange Commission*, Mary L. Schapiro (February 15, 2011).

efforts among U.S. and foreign regulatory authorities. In particular, there is a need to have consistent standards applicable to both SB SEFs and participants across different jurisdictions. Without coordination a SB SEF may be put in the untenable position of enforcing rules against certain participants that are inconsistent, or worse, conflicting with foreign rules. Moreover, without harmonized and consistent standards a SB SEF could be required to have one set of rules for U.S. and another set of rules for non-U.S. participants with a further set of transaction-level rules (*i.e.*, based on the counterparties or underlying instruments). All of this would lead to confusing, disparate rules and requirements that could lead to unintended consequences associated with an uneven playing field, such as regulatory arbitrage, that would be at odds with the regulatory goals of Dodd-Frank and the financial interests of the United States.

We ask that the Commission consult with its foreign regulator counterparts prior to finalizing its proposed SB SEF rules in an effort to avoid regulations that may ultimately be inconsistent or incompatible with regulations in foreign jurisdictions regarding the same SB trading activity.

V. Effective Date for Final Rules

Bloomberg is confident that it can make the technological, structural and compliance enhancements required to meet timelines set by the Commission. However, we understand market participants, both liquidity providers and liquidity seekers, as well as key market facilities are concerned with the multiple layers of proposed rules, the scope of the changes required from them in terms of trading behavior and technological changes that the proposals imply. We therefore urge the Commission to consult and review the proposed implementation timelines with general market participants.

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We appreciate the opportunity to provide our comments on the proposed rules, and would be pleased to discuss any questions that the Commission may have with respect to this letter.

Very truly yours,



Ben Macdonald
Global Head Fixed Income
Bloomberg L.P.