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ROUNDTABLE

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*Invested in America*

January 31, 2012

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

Re: *Cleared Security-Based Swap Transactions Involving Eligible Contract  
Participants (File Number S7-22-11)*

Dear Ms. Murphy:

The Financial Services Roundtable, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association<sup>1</sup> appreciate the opportunity to comment on the Securities and Exchange Commission's (the "**Commission**") proposed exemptions (the "**Proposal**") for security-based swaps issued by registered or exempt clearing agencies from certain provisions of the Securities Act of 1933, as amended (the "**Securities Act**"), the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and the Trust Indenture Act of 1939, as amended (the "**Trust Indenture Act**").<sup>2</sup>

We support the Commission's efforts to facilitate the efficient functioning of the market for security-based swaps. We believe that the Proposal would further the goal of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**") to promote central clearing of security-based swaps. We also support the Proposal on the basis that it would establish comparable regulatory treatment for security-based swaps and standardized options, security futures products, which are often used for similar financial purposes.

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<sup>1</sup> Further information about the Associations is available in the Appendix.

<sup>2</sup> Exemptions for Security-Based Swaps Issued by Certain Clearing Agencies, Release Nos. 33-9222; 34-64639; 39-2474 (SEC File No. S7-22-11) (June 15, 2011), *available at* <http://www.sec.gov/rules/proposed/2011/33-9222fr.pdf>.

In addition, we request that the Commission provide exemptions from Section 12(g) of the Exchange Act and the Trust Indenture Act for uncleared security-based swaps.

### **Securities Act Rule 239**

We support the Commission's adoption of proposed Securities Act Rule 239, which would exempt cleared security-based swaps between eligible contract participants from all provisions of the Securities Act, except the antifraud provisions of section 17(a), subject to certain conditions. To otherwise require a clearing agency, as "issuer" of the security-based swap, to file a registration statement covering the offer and sale of the security-based swaps it clears would be costly and time-consuming and could therefore discourage central clearing of certain security-based swaps. Furthermore, registration would not provide any meaningful additional information to an investor. We believe that providing information about a clearing agency, through registration, beyond that which existing law requires<sup>3</sup> is not necessary for the protection of security-based swap counterparties. Finally, we support proposed Securities Act Rule 239 because it would equalize the treatment of security-based swaps with standardized options and security futures products, for which the Commission has previously provided similar exemptions.<sup>4</sup>

We agree with the Commission's proposal to extend the exemption for cleared security-based swaps to those that are permitted, but not required, to be cleared. Limiting the exemption to security-based swaps that are subject to the mandatory clearing requirement would discourage central clearing and therefore be at odds with a key goal of Title VII of the Dodd-Frank Act.

### **Exchange Act Rules 12a-10 and 12h-1(h)**

We support the Commission's proposed Exchange Act Rules 12a-10 and 12h-1(h), which would exempt cleared security-based swaps from sections 12(a) and 12(g) of the Exchange Act, respectively, for the same reasons that we support an exemption for security-based swaps from the registration requirement in section 5 of the Securities Act. To require registration would be burdensome, would discourage central clearing, and would not provide any meaningful or useful additional information to an investor. In addition, other Exchange Act requirements that are triggered by registration, such as ongoing periodic reporting and the proxy rules, would not make sense to apply to security-based swaps.

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<sup>3</sup> See 15 U.S.C. 78j(b).

<sup>4</sup> See Securities Act Rule 238 [17 CFR 230.238] and Section 3(a)(14) [15 U.S.C. 77c(a)(14)].

Finally, because similar exemptions exist for standardized options and security futures products, we support the comparable treatment that proposed Exchange Act Rule 12h-1 would provide for security-based swaps.<sup>5</sup>

### **Trust Indenture Act Rule 4d-11**

We support the Commission's proposed Rule 4d-11 under Section 304(d) of the Trust Indenture Act. We do not believe that the protections contained in the Trust Indenture Act are necessary in the context of cleared security-based swaps involving eligible contract participants. The Trust Indenture Act is designed to protect and enforce the rights of debtholders that take part in public offerings. Because a security-based swap is a contract between two persons, security-based swap counterparties would not meaningfully benefit from the substantive and procedural protections of the Trust Indenture Act. Eligible contract participants are capable of enforcing obligations under security-based swaps without the protections of the Trust Indenture Act. Therefore, imposing the requirements of the Trust Indenture Act on cleared security-based swaps would not further the goals of the Trust Indenture Act and would introduce unnecessary costs and burdens to clearing arrangements.

### **Exemptions for Uncleared Security-Based Swaps**

We respectfully request that the Commission provide an exemption for uncleared security-based swaps between eligible contract participants from Section 12(g) of the Exchange Act.<sup>6</sup> We believe that there may develop classes of security-based swaps that satisfy the registration threshold under Section 12(g). Requiring an eligible contract participant to register such a class would be burdensome and would not provide any meaningful or useful information about the security-based swaps. Investors in security-based swaps are primarily concerned with the referenced security or loan, issuer or narrow-based security index, and not the counterparty that is "issuing" the swap. Furthermore, the ongoing periodic reporting requirements and proxy rules, among other requirements, that are triggered by registration under the Exchange Act would not make sense to apply in the context of security-based swaps. It is also possible that a non-dealer eligible contract participant to a security-based swap could be required to register a class of securities, and thus file periodic reports, if it has entered into 500 transactions referencing the same underlier. Not only would this be an illogical outcome, but it also would dissuade market participants from

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<sup>5</sup> See Exchange Act Rules 12h-1(d) and 12h-1(e).

<sup>6</sup> We plan to separately submit a request to the Division of Corporate Finance for no action relief from the Securities Act for uncleared security-based swaps between eligible contract participants.

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entering into security-based swaps. Therefore, we request relief from section 12(g) for all uncleared security-based swaps between eligible contract participants.

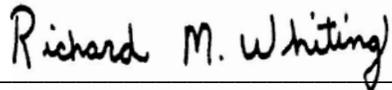
We also request exemptive relief from the application of the Trust Indenture Act to uncleared security-based swaps for the same reasons discussed in the previous section.

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We appreciate the Commission's careful consideration of the issues associated with security-based swaps becoming "securities" under the federal securities laws and strongly support the proposed exemptions from the Securities Act, Exchange Act, and Trust Indenture Act.

If you have any questions with respect to the request contained in this letter, or require any further information, please feel free to contact any of the undersigned.

Very truly yours,



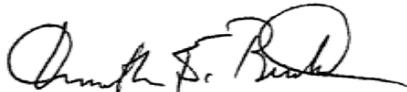
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Richard M. Whiting  
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Kenneth E. Bentsen, Jr.  
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January 31, 2012

cc: Hon. Mary L Schapiro, Chairman  
Hon. Elisse B. Walter, Commissioner  
Hon. Luis A. Aguilar, Commissioner  
Hon. Troy A. Paredes, Commissioner  
Hon. Daniel M. Gallagher, Commissioner  
Ms. Meredith Cross, Director, Division of Corporation Finance  
Ms. Amy Starr, Chief, Office of Capital Markets Trends

## Appendix

The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine and account directly for \$92.7 trillion in managed assets, \$1.1 trillion in revenue, and 2.3 million jobs.

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