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August 29, 2011

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

Dear Ms. Murphy:

Interactive Data is pleased to provide comments to the Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants (File Number S7-25-11) proposed by the Securities and Exchange Commission (Commission) on June 29, 2011.

Background on Interactive Data Corporation:

Interactive Data Corporation is a trusted leader in financial information. Thousands of financial institutions, including many of the world's leading buy-side money management firms, subscribe to our fixed income evaluations, reference data, real-time market data, trading infrastructure services, fixed income analytics, desktop solutions and hosted, web-based solutions. Interactive Data's offerings are used to assist clients with mission-critical functions, including portfolio valuation, regulatory compliance and risk management.

For over 40 years, Interactive Data's Pricing and Reference Data business has been collecting, editing, maintaining, and delivering financial data, and has established itself as a leading provider of evaluated pricing for 2.8 million fixed income securities, international equities and other hard-to-value instruments including OTC derivatives such as security-based swaps. These offerings are complemented by a comprehensive range of reference data for more than 7 million securities that encompasses listed markets pricing, identification information, corporate actions, and terms and conditions for fixed income securities.

In recent years, we have invested considerable resources to provide our clients with greater insight and transparency into the inputs used to derive our evaluated prices. We believe that the expertise and experience we have accumulated over the years as we established our company as a leading provider of evaluated pricing services affords us a unique perspective on certain aspects of this proposal, particularly those pertaining to the calculation and disclosure of the daily mark. Consequently, we have focused the majority of our comments on this subject.

Business Conduct Requirements: The Daily Mark

As a provider of valuation services covering a range of asset classes including derivatives, we support the Commission's position that the "daily mark ... would provide helpful transparency to counterparties during the lifecycle of a security-based swap."¹ Accordingly, there are two key areas in the proposal regarding the daily mark that we wish to highlight as they both underscore the inherent challenges involved with calculating the daily mark. In addition, we encourage the Commission to review the Appendix of this letter for responses to the specific questions related to the daily mark that were raised in the proposal.

- **Daily Mark Valuation Dispute Resolution:** Since the daily mark represents an important measure for all parties involved in the security-based swap (SBS) market, we believe that the Commission's proposal would be substantially strengthened by requiring SBS Entities and their counterparties to have a clearly defined process for resolving any potential valuation disputes about daily marks for both cleared and uncleared security-based swaps. Related to this, we also believe that the use of a mutually agreed upon independent source for security-based swap pricing data would help facilitate efficient, timely resolution of most daily mark valuation disputes. Our perspective on these matters reflects decades of experience in supporting our clients' valuation inquiries – or what we refer to as the "challenge process." This process is mutually beneficial – clients gain a better understanding about the inputs used in the valuation process while we may gain additional insight about the factors that market participants consider for valuation. The Commodities Futures Trading Commission's (CFTC's) proposed rule on Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants (RIN 3038–AC96) includes guidelines for valuation dispute resolution that may help inform and serve as a model for consideration by the Commission.
- **Transparency into the Daily Mark Calculation:** As a result of the combination of the daily mark's significance to counterparties during the lifecycle of a security-based swap and the fact that there is no uniform way to determine the daily mark, we recommend that the Commission require greater levels of disclosure as to how the daily mark was calculated. By indicating whether the daily mark was calculated based on inputs related to actual trade activity, using "mathematical models, quotes and prices of other comparable securities, security-based swaps, or derivatives, or any combination thereof,"² and whether those inputs were sourced directly or through third-party valuation service providers, the counterparty will be in a better position to assess the overall quality of the daily mark that was provided by the SBS Entity. From a practical perspective, this information could be delivered along with the daily mark to a website or electronic platform that is used to disclose the daily mark.

¹ Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants (File Number S7-25-11), Page 57

² Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants (File Number S7-25-11), Page 60

Business Conduct Requirements: Material Incentives or Conflicts of Interest

Proposed Rule 15Fh-3(b)(2) would require that an SBS Entity disclose all material incentives or conflicts of interest it may have in connection with a security-based swap. Interactive Data strongly believes that security-based swap valuations should be free of actual or perceived conflicts of interest. We believe that such disclosures are justified and necessary, especially in light of the fact that the largest participants in the derivatives market often have direct or indirect affiliations and business relationships that could influence their conduct. This belief is further reinforced by the investigations conducted by the U.S. Department of Justice and the European Union for antitrust violations in the credit derivatives market by major banks and certain clearing agencies and market data providers in which those banks share ownership. It is also in this spirit that we believe that the proposed rules should be amended to include specific disclosures by SBS Entities of any affiliations or material business relationships they may have with any provider of security-based swap valuation services. Counterparties should know, for example, whether an SBS Entity is affiliated with or has an interest in the security-based swap valuation service provider that they use to determine daily marks.

Summary

Interactive Data appreciates the opportunity to respond to the Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants (File Number S7-25-11) proposed Commission. We support the Commission in its mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. As noted above, we believe our experience, expertise and capabilities in delivering evaluated pricing and other valuation services for over 2.8 million fixed income securities and other hard-to-value instruments, including OTC derivatives, provides a unique perspective as it applies specifically to the daily mark requirements of this proposal. To that end, our comments reflect our conviction that SBS Entities and their counterparties should have well-defined and appropriate processes in place to resolve potential valuation disputes. We also strongly believe that the efficiency and transparency of the security-based swap market and investor confidence in general would greatly benefit from high-level transparency into the determination of the daily mark.



We believe that third-party valuation service providers like Interactive Data will continue to play an important role in helping counterparties validate daily marks. We would be happy to meet with the Commission staff to further discuss our comments or to address industry valuation practices and to help your agency better understand our approach to OTC derivative valuations, particularly in the absence of readily available trade data. We look forward to working collaboratively with the Commission on this and other issues that may arise in which our experience, expertise and capabilities would be of value.

Sincerely,

A handwritten signature in black ink that reads "Mark Hepsworth".

Mark Hepsworth
President, Institutional Business
Interactive Data Corporation

Appendix

Comments to the Commission’s Daily Mark Issues:

The perspectives shared above on the daily mark are embedded within many of our responses to the following issues:

Is the end-of-day settlement price an appropriate “daily mark” for cleared security-based swaps for purposes of this rule?

As noted in footnote 102 of the proposed rule, the processes for determining the end-of-day settlement price may vary by clearing agency, including the timing for when “end-of-day” settlement prices are determined. While we support the ability for each clearing agency to determine its end-of-day settlement prices using processes it believes adequately satisfy the needs of its members, we are concerned that inconsistent practices among clearing agencies can lead to confusion about the daily mark for cleared security-based swaps among SBS Entities and their counterparties. Furthermore, it is unclear whether the process(es) used by clearing agencies to determine the end-of-day settlement price will result in daily marks that are consistent with the process(es) used to calculate the daily mark for uncleared security-based swaps. Such challenges may never be adequately resolved due to the lack of active trading or absence of consistent or up-to-date bid and offer quotes for an uncleared security-based swap. Nevertheless, we believe that investor confidence in the efficiency and transparency of the security-based swap market would be further strengthened if the Commission required SBS Entities and their counterparties to have a clearly defined process for resolving any potential valuation disputes about the daily mark for both cleared and uncleared security-based swaps. We believe that the use of a mutually agreed upon independent source for security based swap pricing data would help facilitate efficient, timely resolution of most daily mark valuation disputes.

Should the Commission prescribe a method for determining the end-of-day settlement price for cleared security-based swaps for purposes of this rule? If so, what method and why?

We do not believe that the Commission should prescribe any particular method for determining the end-of-day settlement price for cleared SBS. However, as stated in our previous response, we believe that investor confidence in the efficiency and transparency of the security-based swaps market would be further strengthened if the Commission required a clearly defined process for SBS Entities and their counterparties to resolve any potential valuation disputes about the daily mark for both cleared and uncleared security-based swaps. We believe that the use of a mutually agreed upon independent source for security based swap pricing data would help facilitate efficient, timely resolution of most daily mark valuation disputes.

Is the midpoint between the bid and offer prices for a particular uncleared security-based swap, or the calculated equivalent thereof, as of the close of business unless the parties agree in writing otherwise, an appropriate “daily mark” for uncleared security-based swaps? If not, how should the Commission define “daily mark” in this context, and why?

We generally agree that the midpoint between the bid and offer prices is an appropriate daily mark for a particular uncleared security-based swap. However, we are concerned that this definition may present a conflict of interest for SBS Entities when calculating their daily marks. This potential conflict of interest is exacerbated for security-based swaps that are not actively traded or do not have consistent or up-to-date bid and offer quotes, as well as by the fact that the Commission does not propose that the daily mark represent an executable trade price, fair value for financial reporting purposes or the sole determinant for variation margin calculations. These dynamics provide further support for our comments that SBS Entities and their counterparties should have a clearly defined process in place to resolve potential valuation disputes about daily marks, and that SBS Entities should provide high-level transparency about the inputs that were used to calculate the daily mark.

We also noted the Commission’s proposal that, “... the SBS Entity may calculate an equivalent to a midmarket value using mathematical models, quotes and prices of other comparable securities, security-based swaps, or derivatives, or any combination thereof, provided that these calculations produce a daily mark that is consistent with the attributes described above.”³ In our view, it would be unlikely that quotes and prices for similar security-based swaps or derivatives could be utilized in isolation to credibly calculate a daily mark. However, we note that it is possible to incorporate market activity from the security’s underlying cash securities, as well as activity from applicable sectors, indices or comparable securities into valuation models for security-based swaps and other derivatives, and we have developed proprietary models accordingly.

³ Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants (File Number S7-25-11), Page 60

Are there requirements under proposed Rule 15Fh-3(c) that would cause an SBS Entity to be a fiduciary for ERISA purposes? If so, which requirements, and is there an alternate method for calculating the daily mark that would not cause an SBS Entity to be a fiduciary for ERISA purposes?

As proposed by the Department of Labor, the term “fiduciary” under ERISA would be expanded to include certain persons who provide investment valuation information to employee benefits plans and who qualify as investment advisers within the meaning of section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)). Such investment advisers have not been designated as ERISA “fiduciaries” since the passage of ERISA more than 35 years ago. Interactive Data has previously voiced its substantial concerns regarding the Employee Benefit Security Administration’s proposed rule. We encourage the Commission to review our comment letter, available at <http://www.dol.gov/ebsa/pdf/1210-AB32-085.pdf>, for our perspective that the expansion of the definition of “fiduciary” should not include organizations providing valuation advisory services.

In calculating the midmarket value, should the Commission require an SBS Entity to use third-party market quotations (i.e., should the Commission allow an SBS Entity to use its own market quotations)? Why or why not? Should there be constraints or conditions on such use? Why or why not?

The Commission notes that the daily mark is not necessarily “intended to represent the value that either an SBS Entity or its counterparty would use for its own, internal valuation, or fair value for financial reporting purposes for the particular security-based swap. Nor would the daily mark necessarily represent a price at which the SBS Entity would be willing to execute a trade.”⁴ Although we acknowledge that the use of third-party market quotations has been an accepted practice for valuing infrequently traded securities, we do not believe that it represents best practice nor is it necessarily consistent with the key objectives of the Dodd-Frank Act, including improved accountability and transparency in the financial system. As previously stated, we believe that the use of independent third-party valuation services that incorporate a range of inputs, including but not limited to third-party market quotations, represents industry best practice. Related to the goal of providing a daily mark that would serve as helpful transparency to counterparties during the lifecycle of a security-based swap, we believe that the SBS Entities and their counterparties should generally understand what inputs and/or method(s) were used to determine the daily mark. From a practical perspective, this information could be delivered via the same website or electronic platform that is used to disclose the daily mark.

⁴ Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants (File Number S7-25-11), Page 60

Should the Commission require an SBS Entity to provide additional disclosures including, as appropriate: (1) that the daily mark may not necessarily be a price at which either the counterparty or the SBS Entity would agree to replace or terminate the security-based swap; (2) that, depending upon the agreement of the parties, calls for margin may be based on considerations other than the daily mark provided to the counterparty; and (3) that the daily mark may not necessarily be the value of the security-based swap that is recorded in the books of the SBS Entity? In addition to disclosing any material changes to data sources, methodology or assumptions used, should an SBS Entity be required to disclose the impacts of these material changes? Are there any other disclosures that the Commission should require the SBS Entity to provide in connection with the daily mark?

We do not believe that the specific disclosures describe above are necessary. We also believe that it is valuable for SBS Entities to disclose material changes to data sources, methodology or assumptions used. However, it may be impractical to disclose the impacts of any material changes with any level of precision or specificity simply because those changes will be applied prospectively to the calculation of future daily marks.

We do not intend the proposed disclosures regarding the data sources and description of the methodologies and assumptions used to prepare the daily marks to require the disclosure of information considered proprietary in nature in order for an SBS Entity to discharge its obligations. Is such disclosure a concern under the current formulation of the rule? If so, what types of proprietary information might be subject to disclosure under the proposed rule? Is there other information that could adequately substitute for purposes of meaningful disclosure? What mechanisms, if any, could be used to protect proprietary information implicated by the daily mark requirement while providing adequate disclosure to counterparties?

We support the Commission's position that the proposed disclosures regarding data sources and a description of the methodologies and assumptions used to prepare the daily mark should not require the disclosure of proprietary information. Given the substantial investment in proprietary intellectual property by both SBS Entities and their valuation service providers necessary to develop appropriate valuation methodologies, models and tools, we believe that a general description of key valuation inputs should be sufficient for such disclosures.

Should access to a website or electronic platform be considered sufficient for disclosure of the daily mark? Why or why not? Should other forms of Internet-based or electronic disclosure be addressed, and if so, how?

Interactive Data supports the use of a website or electronic platform for the disclosure of the daily mark. With that said, we believe that data security is paramount for any such platform and suggest that the final rule be amended to specify that a secure website or electronic platform be utilized to disclose the daily mark. In addition, we believe that such a platform could be designed to provide transparency into the inputs used to determine the daily mark and serve as a portal for initiating inquiries or challenges to the daily mark.

Should we require that the daily mark for both cleared and uncleared security-based swaps should be provided without charge and with no restrictions on internal use by the recipient, although restrictions on dissemination to third parties are permissible? Why or why not?

We encourage the Commission to require that the daily mark for both cleared and uncleared security-based swaps be provided by the SBS Entity to its counterparty without charge. However, we reiterate our belief that the value of any such mandate may be diluted if there is no clearly defined process in place for resolving daily mark valuation disputes between counterparties. In addition, we believe that restrictions on dissemination of the daily mark to all other third parties are appropriate as well as restrictions related to timely access to transparency related information about the inputs that may have contributed to the daily mark.