Bloomberg SEF LLC 731 Lexington Ave Tel +1 212 318 2000
New York, NY 10022 bloomberg.com

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Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance (File No. S7-2026-21; RIN 3038-AF71)

Dear Mr. Kirkpatrick and Ms. Countryman:

Bloomberg SEF LLC[1] ("BSEF") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("CFTC") and Securities and Exchange Commission's ("SEC," and together, the "Commissions") Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance (the "RFC").[2]

BSEF has over 12 years of experience operating a swap execution facility ("SEF") registered with the CFTC under the Commodity Exchange Act (the "CEA") and CFTC regulations thereunder. BSEF has also operated an SEC-registered security-based swap ("SBS") execution facility ("SBSEF") since January 2025. In these capacities, BSEF has to comply with both CFTC regulations applicable to SEFs and SEC regulations applicable to SBSEFs.

Swaps and security-based swaps are economically and operationally similar products, and the SEF and SBSEF models are functionally similar in how each facilitates trading. That similarity is

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[1] Bloomberg SEF LLC is a wholly owned subsidiary of Bloomberg L.P. operating a swap execution facility that is registered with, and regulated by, the CFTC. BSEF provides its participants with access to liquidity across credit, interest rate, and foreign exchange swaps. In January 2025, BSEF became registered with the SEC as the operator of an SBSEF. In the security-based swaps market, BSEF provides its market participants with access to trade single-name credit default swaps.
[2] Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance, Securities Act Release No. 33-11424; Exchange Act Release No. 34-105735; File No. S7-2026-21 (SEC); CFTC RIN 3038-AF71; 91 FR 37873 (June 24, 2026).

what makes harmonization, and, where appropriate, alternative compliance, both sensible and achievable.

The goal of harmonization should be to preserve the SEC's supervisory and market-integrity objectives while reducing unnecessary divergence from the CFTC framework. BSEF has identified priority areas where further SEC and CFTC harmonization would reduce duplicative compliance obligations, lower ongoing operational and compliance costs, and support more consistent treatment across the two agencies.

Alternative Compliance

The Commissions should seek to preserve robust price discovery, trade transparency, and strong market and investor protections while right-sizing requirements to reflect the functions performed and the risks presented. A well-designed alternative compliance framework could advance these objectives by permitting compliance with one Commission's requirements to satisfy substantially similar requirements of the other Commission. Streamlining these parallel processes could reduce unnecessary friction without removing or weakening applicable regulatory protections.

Such an approach is especially appropriate for swaps and SBS, which are functionally similar and economically related products frequently traded by the same market participants on a venue operated by the same or related entities, that are, nevertheless, governed by parallel statutory frameworks. For entities operating both a SEF and an SBSEF, the Commissions should establish a framework under which compliance with the CFTC's regulatory framework satisfies the corresponding SEC requirements, and should determine, through coordination, the appropriate allocation of registration, reporting, examination, supervision, and enforcement responsibilities to avoid duplication.

Coordinated examination and oversight offer some of the largest efficiency gains for the least implementation effort, and the Commissions can pursue them without new rulemaking. For an entity that operates both a SEF and an SBSEF, separate CFTC and SEC examinations, each with separate priorities, information requests, and procedures, impose duplicative costs and burdens without a corresponding regulatory benefit. The Commissions should coordinate examinations of dually-operated facilities by agreeing on examination priorities, streamlining and de-duplicating information requests, adopting consistent procedures, and, where appropriate, conducting joint examinations rather than separate ones. The federal securities laws already supply a workable model: Section 17(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 17d-2 allow self-regulatory organizations to allocate examination and oversight responsibility for common members through a coordinated plan, sparing firms duplicative examinations.[3] The Commissions should likewise strengthen ongoing coordination, including regular engagement and standing information-sharing arrangements. This can build on the agencies' 2026 Memorandum of Understanding, which itself identifies duplicative examinations and uncoordinated oversight as sources of friction to be addressed.[4] To make this coordination durable, the Commissions should designate a standing cross-agency liaison to coordinate examinations, information requests, and interpretive questions affecting dually-registered or dually-operated entities.

Alternative compliance should, however, be available only where the underlying regulatory framework is robust, operationally tested, and capable of achieving substantially similar regulatory objectives and outcomes. It should not permit entities or products to select a regulatory regime based solely on which framework is less burdensome. The Commissions should maintain appropriate oversight, information-sharing, and coordination mechanisms to prevent regulatory gaps and arbitrage.

CFTC and SEC Rule Harmonization

Remove XBRL Filing Requirements Under Regulation SE

If the Commissions retain separate regulatory regimes for SEFs and SBSEFs, the requirements applicable to those facilities should be aligned wherever possible, and any differences should be supported by a material regulatory need. In particular, an SBSEF should not be required to develop and maintain a more burdensome filing process that is not required of a CFTC-registered SEF and provides limited additional benefit to the SEC.

Under Regulation SE, the SEC requires SBSEFs to submit certain reports, filings, and disclosures in structured, machine-readable XBRL format. While the SEC has increasingly used structured data requirements in other regulatory contexts, applying XBRL requirements to SBSEF filings is unnecessary, burdensome, and poorly tailored to the nature of SBSEF regulation, given the small number of SBSEF registrants or potential registrants. We believe the SEC should remove the XBRL filing requirements from Regulation SE and permit SBSEFs to submit required forms, reports, amendments, and other regulatory filings in a more practical format. XBRL is not needed for the SEC to exercise effective oversight of SBSEFs, and its use

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[3] See Section 17(d) of the Exchange Act, 15 U.S.C. 78q(d); 17 C.F.R. 240.17d-1, 240.17d-2 (permitting self-regulatory organizations to allocate examination and oversight responsibility for common members through a coordinated plan, avoiding duplicative examinations).

[4] See Memorandum of Understanding between the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission (Mar. 11, 2026); SEC Press Release No. 2026-26, SEC and CFTC Announce Historic Memorandum of Understanding Between Agencies (Mar. 11, 2026) (identifying duplicative examinations, parallel reporting regimes, and uncoordinated enforcement as sources of regulatory friction the Joint Harmonization Initiative will address).

would impose avoidable implementation costs on a limited number of specialized trading facilities without a corresponding regulatory benefit.

These obligations would be especially burdensome for limited-purpose SBSEF-Bs. For those entities, the XBRL requirement adds another point of divergence between the SEC's SBSEF regime and the CFTC's SEF framework.

The SEC's approach should be harmonized with the CFTC framework. CFTC-registered SEFs are not subject to a comparable XBRL filing regime for regulatory submissions. Requiring different filing processes for otherwise parallel trading-facility regimes increases compliance costs and complicates dual registration.

The SEC can achieve its supervisory objectives without mandating XBRL. The SEC can require complete, accurate, and timely filings in standard electronic formats and can request additional data or structured information where specifically needed. A more targeted approach would preserve the SEC's ability to review SBSEF operations, monitor compliance, and obtain relevant information, while avoiding a broad technology mandate that is not justified by the nature of the registrants.

The SEC has already provided relief from certain structured data requirements. In February 2026, the Division of Trading and Markets granted no-action relief permitting an SBSEF to submit its annual compliance report in PDF format via email, a Commission portal, or EFFS rather than as an Interactive Data File under Rule 831(j)(2) — relief sought and granted expressly to harmonize the Commission's submission protocols with the CFTC's, which permits SEFs to file annual compliance reports in PDF through a dedicated portal or by email.[5]

The SEC should therefore amend Regulation SE to remove the XBRL filing requirements for SBSEFs.[6] Doing so would reduce unnecessary compliance burdens, better align the SEC's SBSEF framework with the CFTC's SEF regime, and support a more practical, functional approach to regulating security-based swap execution facilities.

Consistent Recognition and Treatment of Exempt Foreign Trading Venues

The markets for swaps and SBS are global. Liquidity in non-US dollar denominated instruments can be concentrated on trading venues located outside the United States, and U.S. market participants frequently need to access those venues to obtain best execution and hedge risk.

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[5] See Letter from Eric Juzenas, Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission, to Derek Kleinbauer, President, Bloomberg SEF LLC, re: Order Book and Annual Compliance Report Data Structuring for Security-Based Swap Execution Facilities (Feb. 27, 2026), available at https://www.sec.gov/files/tm/no-action/bsef-no-action-relief-022726.pdf.

[6] If the operator of SBSEF is a public company, all requirements applicable to its status as a public company shall continue to apply.

Congress recognized this reality in the Dodd-Frank Act, which not only created parallel U.S. registration regimes for swap execution facilities and security-based swap execution facilities, but enabled each of the CFTC and the SEC to recognize and exempt a foreign trading venue from registration where the venue is already subject to equivalent oversight in its home jurisdiction.[7]

The CFTC has implemented this authority through a functioning, well-developed process. Section 5h(g) of the CEA authorizes the CFTC to exempt a swap execution facility from registration where it finds the facility to be subject to comparable, comprehensive home-country supervision,[8] and the CFTC administers that authority through published exemptive orders that are based on the CFTC's determination that the regulatory framework applicable to a foreign venue achieves the same regulatory outcome as the CFTC's regulatory framework and, therefore, is equivalent. The CFTC evaluates the foreign regulatory framework that governs foreign venues rather than examining (and re-examining) each venue individually, so that additional qualifying venues in an already-recognized jurisdiction can obtain relief without duplicating the same comparability analysis.

This process works, and it has produced concrete results. The CFTC has issued equivalence determinations covering four jurisdictions—the European Union, the United Kingdom, Japan, and Singapore—and, on the basis of those determinations, has extended exempt-SEF relief to dozens of foreign trading venues.[9] Each determination reflects substantial agency analysis of the relevant foreign regulatory framework and a considered finding that the home-country regime achieves regulatory objectives comparable to those of the CFTC.

By recognizing comparable foreign regimes rather than requiring each foreign venue to satisfy a second, wholly domestic set of requirements, the CFTC's approach expands the liquidity available to U.S. persons. Most importantly, recognition has also been reciprocal: foreign authorities have in turn recognized CFTC-registered SEFs, giving U.S. venues access to non-U.S. participants and preserving the competitiveness of U.S. market infrastructure abroad.

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[7] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, §§ 733, 763(c), 124 Stat. 1376, 1712, 1769 (2010) (adding, respectively, Section 5h of the CEA, 7 U.S.C. 7b-3, and Section 3D of the Exchange Act, 15 U.S.C. 78c-4).

[8] Section 5h(g) of the CEA, 7 U.S.C. 7b-3(g) ("The Commission may exempt, conditionally or unconditionally, a swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a prudential regulator, or the appropriate governmental authorities in the home country of the facility.").

[9] See CFTC, Exemption of Foreign Swap Trading Facilities from SEF Registration, available at https://www.cftc.gov/International/ForeignMarketsandProducts/ExemptSEFs (collecting the orders of exemption issued under Section 5h(g) of the CEA for the European Union (subsequently amended to cover multilateral trading facilities and organized trading facilities authorized within the United Kingdom following Brexit), Japan, and Singapore, together with the appendices listing the covered trading facilities).

The SEC has not established a comparable framework.[10] The SEC instead relies on the case-by-case exemptive process in Rule 833 of Regulation SE, under which a foreign venue may apply for relief that the SEC may grant where it finds the exemption "necessary or appropriate in the public interest and consistent with the protection of investors."[11]

In its current form, that process is unclear, more cumbersome than the CFTC's, and duplicates the analysis the CFTC has already performed because the regulations applicable to SEFs and SBSEFs are almost entirely the same. Unlike the CFTC's orders, Rule 833 is not built around a comparability determination: it neither calls for, nor gives clear credit for, a demonstration that the foreign jurisdiction imposes comprehensive, comparable supervision, and it does not articulate the standards, conditions, or evidentiary showing a venue must satisfy to obtain relief. The SEC also declined to adopt abbreviated procedures for CFTC-registered SEFs, and indicated that it did not intend to extend its exemptive authority to the foreign venues already exempt from SEF registration—so a venue the CFTC has already examined and exempted must nonetheless assemble and prosecute a separate application before the SEC.[12]

Bloomberg raised a number of these concerns in its comment letter responding to the SEC's proposed SBSEF rule, urging the SEC to align its treatment of foreign trading venues with the CFTC's established comparability framework.[13] While the SEC addressed certain comments in adopting the final Regulation SE, the central difficulty remains: the final rule did not adopt a CFTC-style comparability process, did not provide streamlined recognition for venues already exempted by the CFTC, and left the standards governing Rule 833 relief substantially undefined.

Because the SEC has not established a comparability framework that foreign authorities can reciprocate, a U.S.-registered SBSEF does not obtain the recognition abroad that CFTC-

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[10] Section 3D(e) of the Exchange Act, 15 U.S.C. 78c-4(e) ("The Commission may exempt … by the Commodity Futures Trading Commission."). The absence of any reference to "the appropriate governmental authorities in the home country of the facility" — language that appears in the CFTC's counterpart at Section 5h(g) of the CEA — is the principal difference the SEC has cited between its exemptive authority and the CFTC's.

[11] 17 C.F.R. 242.833(a); see Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities, Exchange Act Release No. 34-98845 (Nov. 2, 2023) (adopting Regulation SE). Rule 833(a) permits a foreign security-based swap trading venue to request an exemption from the Exchange Act definitions of "exchange," "security-based swap execution facility," and "broker."

[12] See Regulation SE, supra note 10 (declining to adopt abbreviated SBSEF registration procedures for CFTC-registered SEFs, and explaining that the Commission did not intend to extend its exemptive authority to the foreign trading venues then exempt from SEF registration, in light of differences between its statutory exemptive authority and the CFTC's).

[13] See Letter from Bloomberg L.P. and Bloomberg SEF LLC to the SEC re: Rules Relating to Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities, Release No. 34-94615; File No. S7-14-22 (June 10, 2022), available at https://www.sec.gov/comments/s7-14-22/s71422-20130961-300254.pdf.

registered SEFs receive.[14] As a result, BSEF is not recognized in the European Union, or the United Kingdom, Japan, or Singapore to offer its SBSEF for participants located in those jurisdictions, even though a substantial portion of the relevant participant base operates from those jurisdictions. The same missing framework that limits U.S.-person access to foreign liquidity therefore also limits the ability of U.S. SBSEFs to serve non-U.S. participants. This concern is equally relevant to the foreign trading venues that hold CFTC exempt-SEF relief but face a separate, more cumbersome and poorly defined path to provide their SBS services to U.S. persons. It is because of the CFTC framework that BSEF is able to provide a venue "bridge" whereby UK and EU market participants may transact on its SEF without regard to the constraints imposed by Brexit on EU and UK trading venue's ability to support trading between UK and EU market participants on the same platform. Such a "bridge" structure is not currently available to support trading in SBS between EU and UK market participants on BSEF.

The practical consequence of this lack of clarity is that foreign venues have avoided the SEC process altogether. Where the requirements, standards, and likelihood of relief are not well articulated—and where obtaining relief would require duplicating work the CFTC has already done—the rational response has been not to pursue SEC relief at all. Bloomberg affiliates operating foreign trading venues elected not to seek an SEC exemption, even though there is meaningful trading activity that could be transacted on those venues by U.S. persons.[15] The result is reduced U.S.-person access to foreign liquidity and greater market fragmentation—precisely the outcomes the CFTC's framework was designed to avoid.

The SEC should establish an exemptive framework allowing foreign trading venues that have received CFTC exempt-SEF relief to facilitate SBS trading for U.S. persons without seeking duplicative SEC relief, provided the venue remains subject to comparable, comprehensive home-country supervision and satisfies conditions substantially similar to those in the applicable CFTC order. As an initial matter, the SEC should recognize the CFTC's existing equivalence determinations and extend relief to the venues those determinations already cover; going forward, the SEC should amend its rules to mirror the CFTC's comparability framework so that future determinations follow a single, streamlined path.

This approach would build on the CFTC's existing comparability determinations for foreign swap trading facilities in the EU, UK, Japan, and Singapore. Where the same foreign regulatory framework applies to the venue's swaps and SBS, separate SEC review should not be necessary absent an SEC-specific investor-protection or market-integrity concerns. Most non-U.S. jurisdictions do not maintain separate trading-facility regimes—or separate regulators—for

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[14] Foreign authorities extend recognition or equivalence to CFTC-regulated trading venues on the basis of the CFTC's comparability framework; because the SEC has not adopted a reciprocal home-country comparability regime for SBSEFs, no analogous recognition is available to U.S.-registered SBSEFs abroad.

[15] Bloomberg Multilateral Trading Facility Limited, a UK multilateral trading facility registered with the UK Financial Conduct Authority; Bloomberg Trading Facility B.V., registered with the Netherlands Authority for the Financial Markets; and Bloomberg Tradebook Singapore Pte. Ltd., registered with the Monetary Authority of Singapore.

swaps and security-based swaps, and security-based swaps on the constituents of broad-based security indices (single-name CDS) are traded on the same facility;[16] there is accordingly no sound basis for recognizing a foreign venue differently simply because the product is a single-name CDS rather than an index CDS.

Harmonized treatment would reduce market fragmentation, avoid duplicative venue approvals, and allow U.S. persons to access foreign liquidity on a consistent cross-border basis. The SEC should pair this relief with appropriate conditions, including reciprocal recognition by the relevant foreign authorities for SEC-registered SBSEFs, similar to the relief provided for CFTC-registered SEFs and DCMs.

Harmonizing Grace and Tolerance Periods for Swaps and SBS based on Security Indices Across Registered SEFs and SBSEFs

The SEC and CFTC existing rules provide grace and tolerance periods when a security index underlying an index credit default swap changes regulatory classification.[17] These periods provide venues and market participants with an orderly opportunity to assess the change in classification and, where necessary, transition trading activity.

These rules, however, do not expressly extend the same treatment to foreign trading venues exempt from SEF registration. Nor do they address foreign SBS trading venues that may operate pursuant to a future exemption or recognition framework. As a result, an exempt foreign venue may be required to cease offering an index CDS to U.S. persons immediately after the underlying index changes regulatory classification, even though a registered SEF or SBSEF trading the same product would benefit from a grace or tolerance period.

BSEF appreciates the Commissions' efforts to provide clarity on definitions and respectfully requests the agencies extend the grace and tolerance periods provided under the CFTC's rules to foreign venues authorized to provide U.S. persons with access to swaps or SBS pursuant to an exemption or recognition framework. Foreign venues that have already been determined to be subject to comparable and comprehensive regulation should not be denied an orderly transition period solely because they operate pursuant to an exemption rather than direct registration. Extending the provisions would provide venues and market participants with sufficient time to

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[16] The bifurcated U.S. treatment of swaps and security-based swaps is itself a feature of the Dodd-Frank framework rather than of most foreign regimes. Cf. Section 5h(a)(2) of the CEA, 7 U.S.C. 7b-3(a)(2), and Section 3D(a)(2) of the Exchange Act, 15 U.S.C. 78c-4(a)(2) (dual-registration provisions reflecting parallel but separate U.S. regulation by the CFTC and the SEC).

[17] These provisions allow a swap traded on a registered SEF to continue trading for a transitional period after its underlying index changes from a broad-based to a narrow-based security index. See 17 C.F.R. 1.3. Parallel provisions allow an SBS traded on a registered SBSEF to continue trading for a transitional period after its underlying index changes from a narrow-based to a broad-based security index. See 17 C.F.R. 240.3a68-3.

make necessary operational changes, avoid abrupt disruptions to trading and liquidity, and promote consistent treatment of substantially similar products and trading venues.

Further Definitions of Swaps and Security-Based Swaps

In Appendix A we provided responses to selected questions related to definitions of "swap" and "security-based swap".

As the Commissions consider whether additional definitional clarity is warranted, BSEF urges the Commissions to direct any new guidance at genuinely innovative or nascent products and to preserve the established treatment of instruments that already trade in well-functioning markets. Market participants have built trading, clearing, reporting, and risk-management infrastructure around the current classifications, and uncertainty about whether an instrument is a swap, security-based swap, security option, or future would disrupt those markets and raise costs without a corresponding regulatory benefit. For example, if the Commissions were hypothetically to redefine the term SBS such that certain or all cash equity options were to be captured in a revised definition and reclassified as SBS, whether intentionally or accidentally, the corresponding effects would not be trivial. Migrating all such activity off existing trading platforms and onto SBSEFs would be extraordinarily disruptive to the marketplace in terms of onboarding, transaction reporting, counterparty documentation, and legal entity structure, among other things. The Commissions' focus should be to clarify the boundaries for new products while ensuring that the status quo for existing, mature markets is not disturbed.

Conclusion

BSEF commends the Commissions for undertaking a coordinated review of the swap and security-based swap regulatory frameworks. This RFC provides an important opportunity to address longstanding differences between parallel regulatory regimes and reduce unnecessary operational complexity.

Harmonization and alternative compliance should rest on robust, operationally tested regulatory frameworks that preserve strong investor and market protections, promote transparency, and advance the statutory objectives of both Commissions. Requirements should be streamlined or eliminated only where a primary regulatory framework already provides the information, supervision, safeguards, and enforcement necessary to achieve those objectives.

At the same time, alternative compliance should not allow products or market participants to migrate to the regulatory regime perceived as less burdensome where doing so would reduce transparency and price discovery, weaken investor protections, or create gaps in oversight. The Commissions should maintain appropriate coordination and information-sharing mechanisms to prevent regulatory arbitrage and ensure that harmonized approaches remain aligned over time.

Greater alignment could also reduce barriers to establishing and maintaining an SBSEF and make trading on an SBSEF more attractive to market participants, helping to realize the transparency, price-discovery, competition, and market-integrity benefits associated with regulated venue trading. BSEF supports the Commissions' continued efforts to develop a more coordinated, transparent, and efficient framework that preserves effective oversight while avoiding unnecessary operational burdens.

Sincerely,

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Derek Kleinbauer
President
Bloomberg SEF LLC

Appendix — Responses to Specific Questions in the RFC

Questions	Answers
Question 1. What types of event contracts or other innovative products or product structures that may touch on the regulatory interests of both Commissions have raised interpretive questions for market participants, and how should those questions be resolved? In the context of these innovations, is additional clarification necessary to provide principled, objective criteria for distinguishing between swaps, mixed swaps, SBS, or other securities or instruments that are excluded from the definition of ''swap''? What characteristics do event contracts share or not share with other products that may be classified as swaps, mixed swaps, SBS, or other securities or products excluded from the ''swap'' definition? Taking into account the rules and interpretations the Commissions adopted in the Product Definitions Adopting Release, should the Commissions issue new or revised rules or interpretations to address these innovations?	We observed that some SEF participants execute swaps on a SEF where the same participant is on both sides of the transaction. The treatment of such transactions is not addressed by the Commissions, and we propose that such transactions, if executed on a SEF or SBSEF, should constitute a "swap" or "SBS" and be treated the same way as inter-affiliate swaps. There are legitimate risk-transfer related reasons to execute such transactions on a SEF/SBSEF. At a high level, members of CME are permitted to execute exchange for related positions transactions where the same member is on both sides of a transaction if each trader operates in a separate business unit (CME Rule 538), and block trades can be executed with the same member on both sides as long as both sides of the transaction are represented by independent decision-makers, each managing separate accounts with separate business purposes and reporting structures (CME Group RA 2606-5). The fact that the same member is on both sides does not disqualify a transaction from being a future and subject to all relevant DCM rules. As with swaps executed on a SEF on a fully disclosed basis, counterparties to EFRP are also disclosed pre-trade. Similar to futures, same-LEI swaps are frequently submitted to a DCO for clearing. The same treatment should be afforded to swap SBS executed between counterparties with the same LEI and a swap executed between different divisions of the same participant should continue to be treated as swaps for all purposes.
Question 2. As discussed above, several exclusions from the definition of ''swap'' are set forth in CEA section 1a(47)(B). Is additional regulatory clarity necessary with respect to application of these exclusions? For example, are there areas where principled, objective criteria could further clarify the definitional lines?	Existing swap markets may be disrupted from re-characterizing as futures instruments currently traded as swaps on SEFs, exempt SEFs and over-the-counter markets. To prevent this potential disruption, a derivative instrument that is listed on a SEF or available only to ECPs should continue to be a swap, rather than a future.
Question 5. Regarding the SBS NBSI Prong, is there a need for additional clarity regarding when a swap is based on ''an index that is [an NBSI] including any interest therein or on the value thereof''? Should the Commissions further	For Index CDS, the markets are treating new series of an existing index (e.g., CDX.NA.HY) as a new index because different series could be traded at the same time. As a result, new series of an existing index must be traded for a period prescribed by CFTC Rule 1.3 and SEC Rule 3a68-3 (the "Waiting Periods") before

address the circumstances when a swap does or does not satisfy the SBS NBSI Prong? For example, what additional clarity, consistent with CEA section 1a(35) and Exchange Act section 3(a)(55), might the Commissions provide with respect to the characterization of contracts referring to potential changes to the composition of an NBSI, as opposed to changes in the price or value of an NBSI? The Commissions have adopted rules addressing tolerance periods and grace periods for products referencing securities indexes traded on designated contract markets, swap execution facilities ("SEFs"), foreign boards of trade, security-based SEFs, or national securities exchanges, where the securities index temporarily moves from broad-based to narrow-based or from narrow-based to broad-based. Should the Commissions revise or clarify those rules or provide additional clarity, transition rules, or safe harbors for products that are based on a securities index that transitions between narrow-based and broad-based, or vice versa?	they can benefit from the grace and tolerance periods. On the other hand, a new version of the same series is treated as a change in the composition of the same index and can rely on the Waiting Periods accrued by the series to benefit from the grace and tolerance periods. Waiting Periods are, generally, either 30 days of trading on a SEF or DCM or trading as a swap on a broad-based security index ("BBSI") (or a narrow-based security index ("NBSI") in the case of an SBS). As a result, because new series usually cannot satisfy any Waiting Period, if the next version of a BBSI index becomes NBSI before the Waiting Period is over, the SEF will not be able to take advantage of the grace and tolerance periods provided in CFTC Rule 1.3 (and SBSEFs will not be able to take advantage of the grace and tolerance periods provided in the SEC Rule 3a68-3). We propose that the Waiting Periods should be waived for a new series of an existing index. If a new series of index is NBSI, but previous series were BBSI, a SEF (or SBSEF) should be able to take advantage of grace and tolerance periods accrued to the previous series with respect to new series even if the previous series are still trading as a separate index.