



November 11, 2011

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

Dear Ms. Murphy:

Blackrock, Inc. (“**Blackrock**”), The Bank of New York Mellon Corporation (“**BNY Mellon**”) and State Street Corporation (“**State Street**”) ¹ appreciate the opportunity to provide comments to the Securities and Exchange Commission (“**SEC**”) regarding registration of security-based swap execution facilities (“**SB SEFs**”) under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“**Dodd-Frank**”).

Section 763 of Dodd-Frank requires that a person who “operate[s] a facility for the trading or processing of security-based swaps” be registered with the SEC as a SB SEF or national securities exchange. In October, November and December of 2010, Blackrock, BNYMellon and State Street each wrote to the SEC, the Commodity Futures Trading Commission (“**CFTC**”) or both stating their belief that “processing of security-based swaps” should be read to mean trade execution matching and comparison functions that occur before a trade is submitted for clearing and should not include other post-execution activities, including middle-office or back-office processing functions.²

¹ Information about Blackrock, BNY Mellon and State Street can be found in Appendix A to this letter.

² See Blackrock Presentation to CFTC, Re: Swap Execution Facility (SEF) Discussion; Oct. 19, 2010, http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission_101910_182_0.pdf; Letter from Raymond Dorado, BNY Mellon, to David A. Stawick and Elizabeth M. Murphy, Re: Registration Requirement for “Processing of Swaps,” Dec. 7, 2010, http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission13_120710.pdf; Letter from David Phelan, State Street, to David A. Stawick and Elizabeth M. Murphy, Re: Swap Execution Facility (SEF) Registration Requirements, Nov. 24, 2010, http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission13_112410-ss.pdf. See also Letter from Mark D. Young, Skadden Arps, to David A. Stawick and Elizabeth M. Murphy, Re: Interpretation of Statutory Registration Requirements for Swap Execution Facilities and Security-Based Swap Execution Facilities, Sep. 22, 2010 (arguing (...continued)

We believe that this reading is the only way to reconcile the “processing of security-based swap” language with the statutory definitions of SB SEFs.³ Not all middle-office or back-office processing activities will be performed by trade execution platforms, and it is likely that some SEFs will offer very little of such processing capability. The regulatory requirements proposed for SB SEFs are clearly designed for platforms involved in the execution of swap transactions. It would prove extraordinarily difficult and costly for a platform purely engaged in processing activities to comply with the proposed SB SEF requirements. Subjecting these activities to the regulatory regime for SB SEFs and exchanges will lead to unnecessary dual regulation that will be costly to swap market participants and will not further any of the goals of Dodd-Frank.

The SEC included a reference to the requirement to register for “processing of security-based swaps” in its proposed rule regarding SB SEFs.⁴ Footnote 62 states:

Section 3D(a)(1) of the Exchange Act states that “no person may operate a facility for the trading or processing of security-based swaps, unless the facility is registered as a security-based swap execution facility or as a national securities exchange under this section.” Section 3(a)(77) of the Exchange Act defines “security-based swap execution facility” to mean a trading system or platform in which multiple participants have the ability to execute or trade SB swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that (A) **facilitates the execution of SB swaps between persons**; and (B) is not a national securities exchange. The Commission interprets these two provisions, taken together, to require registration as a SB SEF or a national securities exchange for any entity that meets the definition of SB SEF in Section 3(a)(77) of the Exchange Act.⁵

(continued...)

that SEF or SB SEF registration should be required for those who operate a system or platform for trading or executing swaps, including the essential processing inherent in the trading and execution functions, rather than for other processing of swaps).

³ This phrase may in fact be a fragment of an earlier definition that was inadvertently retained in the subsequent definition.

⁴ Registration and Regulation of Security-Based Swap Execution Facilities, 76 Fed. Reg. 10,948 (Feb. 28, 2011).

⁵ *Id.* at 10,959 n.62 (emphasis added).

Blackrock, BNY Mellon and State Street believe this footnote unintentionally substitutes one ambiguity for another by referring to the term “facilitates the execution of SB swaps between persons.” While we believe facilitation refers to the core execution function of the SB SEF, and not to other activities unrelated to the matching of buy and sell interests on the SB SEF, we recognize it could be argued to include post-trade processing. Based on the fact that the footnote concludes that the SEC “interprets these two provisions, taken together, to require registration as a SB SEF or a national securities exchange for any entity that meets the definition of SB SEF” and that, as stated above, post-trade processing activities do not fit within the definition of SB SEF, we believe that this footnote was meant to exclude post-execution activities, including middle-office or back-office processing functions activities, from registration requirements. As a result, Blackrock, BNY Mellon and State Street believe that footnote 62 should be clarified by replacing or supplementing it with the following language:

With regard to entities that offer processing services for SB swap transactions, but not trade execution, the Commission notes that Section 3D(a)(1) of the Exchange Act states that “[n]o person may operate a facility for the trading or processing of security-based swaps, unless the facility is registered as a security-based swap execution facility or as a national securities exchange under this section.” Section 3D of the Exchange Act states that a registered SB SEF may “(A) make available for trading any SB swap, and (B) facilitate trade processing of any SB swap.” The Commission believes that entities operating platforms that are involved with the processing of swap transactions executed off the platform, but that do not themselves offer the ability for participants to execute or trade an SB swap with each other, do not meet the definition of an SB SEF and should not be required to register as SB SEFs. Such platforms would not provide the ability to “execute or trade” an SB swap as is required by the definition.

We believe that this language would clarify that post-trade processing activities engaged in by Blackrock, BNY Mellon and State Street would not require registration as SB SEFs.

Sincerely,

Joanne T. Medero
Managing Director
BlackRock

Raymond J. Dorado
Executive Vice President and
Deputy General Counsel
BNY Mellon

Stefan M. Gavell
Executive Vice President
Global Head of Regulatory,
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State Street Corporation

Appendix A: About Blackrock, BNY Mellon and State Street

BlackRock is one of the world's leading asset management firms. BlackRock manages over \$3.35 trillion on behalf of institutional and individual clients worldwide through a variety of equity, fixed income, cash management, alternative investment, real estate and advisory products. BlackRock's client base includes corporate, public, multi-employer pension plans, insurance companies, third-party mutual funds, endowments, foundations, charities, corporations, official institutions, banks, and individuals around the world.

Established in 2007 from the merger of Mellon Financial Corporation and The Bank of New York Company, Inc., BNY Mellon is a global financial services company focused on helping clients manage and service their financial assets, operating in 36 countries and serving more than 100 markets. BNY Mellon is a leading provider of financial services for institutions, corporations and high-net-worth individuals, providing asset management and wealth management, asset servicing, issuer services, clearing services and treasury services through a worldwide client-focused team. It has \$25.9 trillion in assets under custody and administration and \$1.2 trillion in assets under management, services \$11.9 trillion in outstanding debt and processes global payments averaging \$1.6 trillion per day. BNY Mellon's history spans 225 years from its founding in 1784.

With over \$20 trillion of assets under custody and administration and \$1.9 trillion of assets under management at September 30, 2010, State Street is a leading specialist in meeting the needs of institutional investors worldwide. Our customers include mutual funds, collective investment funds and other investment pools, corporate and public retirement plans, insurance companies, foundations, endowments and investment managers. Including the United States, we operate in 25 countries and more than 100 geographic markets worldwide. We conduct our business primarily through our principal banking subsidiary, State Street Bank and Trust Company, which traces its beginnings to the founding of the Union Bank in 1792. State Street Bank's current charter was authorized by a special act of the Massachusetts Legislature in 1891, and its present name was adopted in 1960.