

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
United States
www.sec.gov

Chris Barnard

15 July 2013

- **17 CFR Parts 240, 242 and 249**
- **File No. S7-02-13; S7-34-10; S7-40-11**
- **Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants**

Dear Sir.

Thank you for giving us the opportunity to comment on your proposed rules: Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants.

You are proposing rules and interpretive guidance to address the application of the provisions of the Securities Exchange Act of 1934, as amended (the Exchange Act), that were added by Subtitle B of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), to cross-border security-based swap activities. The proposed rules and interpretive guidance address the application of Subtitle B of Title VII of the Dodd-Frank Act with respect to each of the major registration categories covered by Title VII relating to market intermediaries, participants, and infrastructures for security-based swaps, and certain transaction related requirements under Title VII in connection with reporting and dissemination, clearing, and trade execution for security-based swaps.

I generally support the intent of the proposed rules.¹ However, I would first comment that the proposed rules should ideally be as close as possible to the rules proposed by the

¹ I have already commented on and supported some of the proposals. See my comment letters on SEC proposed rules: Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, 75 FR 75208, December 2010; and Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, 76 FR 65784, October 2011.

Commodity Futures Trading Commission (CFTC) for swaps.² I would suggest that there is little administrative, legal or economic rationale for proposing very different rules, and rule differences lead to duplication of reporting regimes at the lowest level of the reporting entities, which is counterproductive, confusing and wasteful. I would therefore recommend that the SEC and the CFTC should work more closely together to propose one set of robust rules regarding cross-border swap activities. This will reduce cost and complexity, and is in itself a strong signal to the markets that regulators are seen to be working more closely together, rather than within their individual silos. I would further support substance over form with regard to cross-border security-based swap activities. Economic implications are just as important as legal considerations, and therefore I would recommend that where security-based swaps are guaranteed by a US person, or where a non-US person is guaranteed by a US person, then the security-based swaps provisions should apply to the underlying security-based swaps which are guaranteed.

Definition of US person

I would certainly propose that the SEC should align the definition of US person with the CFTC's proposed definition, for consistency and simplicity. The definition should be stronger. For example, the SEC should consider adopting the CFTC's proposed definition of US person relating to: commodity pools; pension plans; and estates or trusts.

Yours faithfully

C.R.B.

Chris Barnard

² See for example CFTC proposed rule, Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act, 77 FR 41214, July 2012, and my comment letter thereon.