MANAGED FUNDS ASSOCIATION
The Voice of the Global Alternative Investment Industry
WASHINGTON, DC | NEW YORK

August 13, 2012

Via Electronic Submission: rule-comments@sec.gov

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

Re: File No. S7-05-12: Statement of General Policy on the Sequencing of Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Ms. Murphy:

Managed Funds Association[1] appreciates the opportunity to provide comments on the Securities and Exchange Commission's (the "**Commission**") statement of general policy (the "**Sequencing Roadmap Statement**")[2] on the anticipated sequencing of the compliance dates of final rules to be adopted by the Commission pursuant to certain provisions of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**")[3], and the Securities and Exchange Act of 1934, as amended by those provisions (the "**Exchange Act**").

Executive Summary

MFA supports the Commission's establishment of a sequencing roadmap to facilitate implementation of Title VII rulemakings applicable to security-based swaps ("**SB swaps**"). We appreciate that the sequencing implementation plan is the subject of an express policy statement, an approach we endorsed in our earlier comments on implementation.[4] A properly sequenced

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[1] The Managed Funds Association (MFA) represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry's contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, North and South America, and all other regions where MFA members are market participants.

[2] Commission "Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act", 77 Fed. Reg. 35625 (June 14, 2012), available at: http://www.gpo.gov/fdsys/pkg/FR-2012-06-14/pdf/2012-14576.pdf.

[3] Pub. L. 111-203, 124 Stat. 1376 (2010).

[4] *See* MFA's letter to Chairman Schapiro, dated March 24, 2011 (the "**MFA Implementation Letter**"). In the MFA Implementation Letter, we recommended a timeline and sequencing for adoption and implementation of final rules related to Title VII of the Dodd-Frank Act, rather than a "big bang" approach to implementation. With

implementation plan will provide SB swap market participants with the appropriate time to evaluate relevant final rules and make any necessary adjustments to their business models or portfolio composition. Additionally, such an implementation plan will provide SB swap market participants with the time required to resolve outstanding operational issues and documentation prior to compliance with the mandatory clearing requirement for SB swaps.

However, MFA believes that the Sequencing Roadmap Statement suggests certain substantive dependencies between the reporting rules and clearing rules[5] that we believe do not exist. Specifically, we respectfully request that the Commission clarify that the Sequencing Roadmap Statement provides for parallel implementation of its SB swap reporting and clearing rules in the second-priority category. In our view, these rules can proceed simultaneously and together will lay the regulatory groundwork for the implementation of further requirements related to execution on SB swap execution facilities ("**SB SEFs**") and real-time public reporting, including establishing appropriate block trade thresholds.

Before implementing mandatory clearing, we agree that the Commission should determine whether to propose amendments to its rules regarding customer protection, specifically with regard to SB swap clearing activity in a broker-dealer. We respectfully urge the Commission to address these requirements sooner in the sequencing plan than what we interpret is contemplated in the Sequencing Roadmap Statement, and to do so in close coordination with the Commodity Futures Trading Commission ("**CFTC**"). We further believe that, before implementing mandatory clearing, it is absolutely essential for the Commission to allow margin for SB swaps that are required to be cleared, or cleared voluntarily, to be calculated on a portfolio margining basis with swaps. We respectfully urge the Commission to approve the pending clearing agency petitions for such portfolio margining as soon as possible to encourage buy-side access to clearing and to facilitate voluntary clearing of single-name credit default swaps ("**CDS**"), which will in turn facilitate the transition to mandatory clearing of these SB swap products. MFA and its members have strongly urged the Commission promptly to approve the clearing agencies' petitions for exemptive relief. These rule changes would allow clearing members to maintain customer funds in single omnibus accounts subject to Section 4d(f) of the Commodity Exchange Act for positions in single-name CDS and broad-based index CDS. Accordingly, customers will be allowed to benefit from the same portfolio margining relief that is currently enjoyed by dealers for their proprietary accounts, without further delay. MFA strongly believes that granting pending portfolio margining petitions now would not prohibit

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respect to the implementation of central clearing, we stated: "At the time that a class of products is ready for clearing, all market participants (including buy-side participants) should be permitted (but not required) to clear those products, while confirming that they intend to be operationally ready to comply with the mandate when it comes into force. Then, there should be a phase-in period before clearing of that product becomes mandatory to give sufficient time for market participants to resolve outstanding documentation or structural issues and for the infrastructure to prove that it is ready for clearing at scale." The MFA Implementation Letter also declared that "[o]ur members uniformly agree that rule adoption and implementation should move forward as soon as possible and in a logical, thoughtful manner."

[5] According to the Sequencing Roadmap Statement, the Commission's clearing rules include: (1) the process for mandatory clearing determinations, (2) the standards with which clearing agencies must comply, and (3) the end-user exception to mandatory clearing. Sequencing Roadmap Statement at 35634-35.

customers from later choosing a different portfolio margining offering under a Section 3E account structure, if made available.[6] As an additional prerequisite to mandatory clearing, we believe the Commission should also propose and adopt a rule requiring straight-through-processing ("**STP**") of cleared SB swap transactions. We respectfully urge the Commission to adopt a parallel requirement to the CFTC's final rules requiring STP for cleared swaps.

We appreciate the opportunity to provide comments that we believe will assist the Commission in adopting final rules to implement the Title VII reforms that apply to SB swaps under the Commission's jurisdiction in a way that will be practical and efficient.

I. Rules that are Not Interdependent Should be Finalized Expeditiously in Parallel

As a policy matter, we appreciate the Commission's efforts in setting forth a sequencing framework for compliance dates for final Title VII rules applicable to SB swaps by grouping the rules into five categories and describing their interconnectedness, both within and among the five categories.[7] We agree with the Commission's first-priority categorization of the final product and entity definitions rules, both of which are now final and pending effectiveness. We also applaud the Commission for acknowledging that these Definitional Rules would need to be adopted and effective prior to requiring compliance with other Title VII rules under the Dodd-Frank Act.[8]

We also generally agree with the Commission's statement that the Cross-Border Rules should be proposed as a single release before certain final rules with cross-border implications are effective.[9] However, we are concerned that the primacy of the Commission's proposed Cross-Border Rules may delay concurrent progress in the Commission's other rulemakings on SB swap reporting, clearing and trading until such time that the Commission's proposed Cross-Border Rules have been issued for public comment. Given that the CFTC has issued its proposed cross-border guidance and the European Securities and Markets Authority (ESMA) is

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[6] *See* MFA's letter to the Commission, dated June 13, 2012, submitted in support of ICE Clear Credit LLC's Request for Exemptive Relief Pursuant to Section 713(a) of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act re: Maintaining Customer Funds in Single Customer Omnibus Accounts for Positions in Single-Name Credit Default Swaps and Broad-based Credit Indices and Portfolio Margining [File No. 4-641], available at: http://www.sec.gov/comments/4-641/4641-4.pdf.

[7] The five categories of such rules are listed in the Sequencing Roadmap Statement as follows: "(1) The rules further defining the terms 'security-based swap,' 'security-based swap agreement,' ''mixed swap,' 'security-based swap dealer,' 'major security-based swap participant,' and 'eligible contract participant,'(the 'Definitional Rules') and the rules concerning the treatment of cross-border SB swap transactions and non-U.S. persons acting in capacities regulated under Subtitle B of Title VII (the 'Cross-Border Rules'); (2) rules pertaining to the registration and regulation of SDRs, the reporting of SB swap transaction data to SDRs, and the public dissemination of SB swap transaction data; (3) rules pertaining to the mandatory clearing process of SB swap transactions, clearing agency standards, and the end-user exception from mandatory clearing; (4) rules pertaining to the registration and regulation of SBSDs and MSBSPs; and (5) rules pertaining to the mandatory trading of SB swap transactions, including the rules pertaining to the registration and regulation of SB SEFs". Sequencing Roadmap Statement at 35629.

[8] *Id.*

[9] *Id.* at 35631.

expected to issue its proposal soon, we respectfully urge the Commission to issue its proposed Cross-Border Rules as soon as possible. If the Commission's earliest timing for issuing the proposed Cross-Border Rules is this fall, we are concerned that the Commission's progress in finalizing its SB swap reporting rules and clearing rules would be substantially delayed after factoring in a 60-day public comment period in response to the Proposed Cross-Border Rules. To avoid such delay, we respectfully urge the Commission to follow the CFTC's rulemaking approach, and make concurrent progress in proposing its Cross-Border Rules and finalizing other Title VII rules, provided that the Commission stages their effectives dates and compliance dates in a logical order after the Cross-Border Rules are finalized. Otherwise, we are very concerned that the Commission may lose momentum in its substantive Title VII rulemakings on SB swap data reporting, clearing and trading.

II. Mandatory Clearing Rules Should be Elevated to the Second Category to Work Concurrently with SB Swap Reporting Rules

Following the adoption and effectiveness of the Definitional Rules and the Commission's proposal of the Cross-Border Rules, the Commission states that the "next step in the implementation process should be requiring SDRs to register with the Commission and comply with applicable duties and core principles".[10] We are concerned that this statement can be interpreted in such a way that the entire set of final rules pertaining to the registration and regulation of swap data repositories ("**SDRs**"), the reporting of SB swap transaction data to SDRs, and the public dissemination of SB swap transaction data, including the Commission's proposed block trade thresholds, must be implemented in a separate, second category of rules before finalization and compliance with the SB swap clearing rules. We seek the Commission's clarification that implementation of the reporting rules and clearing rules can proceed in parallel. As we recommended to Chairman Schapiro in our MFA Implementation Letter, the clearing rules and the reporting rules to SDRs and regulators should be grouped together in the second-priority implementation tier, after the first-priority tier of final entity and product definitions. This sequencing recommendation is based on our view that the expanded use of central clearing for the most liquid and standardized classes of products, and the ability of SDRs to receive data on both cleared and bilateral products should work concurrently as the next implementation priorities in order to leverage systems and obtain data that will lay the regulatory groundwork for more informed implementation of final rules on SB SEFs and real-time public reporting, including establishing appropriate block trade thresholds.[11]

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[10] *Id.*

[11] MFA Implementation Letter at Annex A. We also recommended grouping swap dealer/SB swap dealer ("**SD**") and major swap participant/major SB swap participant ("**MSP**") requirements into the second-priority tier of Title VII rulemakings, because such requirements will likely need a phase-in period for regulated entities to develop operational infrastructure, policies, and procedures for compliance with SD/MSP registration, internal and external business conduct standards, capital and margin requirements and SD/MSP recordkeeping requirements. However, we do not take issue with the Commission's general sequencing of the SD/MSP requirements after the mandatory clearing rules in the SEC Roadmap Statement.

III. The Commission Should Rapidly Advance its Proposed Customer Protection Regime and its Approval of Petitions for Portfolio Margining with Swaps

We generally agree with the Commission's formulation of the mandatory clearing prerequisites, but urge the Commission to address its SB swap margining requirements and to determine its proposed amendments to its rules regarding customer protection, specifically with regard to SB swap clearing activity in a broker-dealer, sooner in the sequencing plan, and in close coordination with the CFTC. According to the Sequencing Roadmap Statement, the Commission believes that SB swaps should not be required to be cleared "until after the later [sic] of : (1) The compliance date of certain of the final rules resulting from the Clearing Agency Standards Proposing Release; (2) the compliance date of final rules resulting from the End-User Clearing Exception Proposing Release; and (3) the Commission determining whether to propose amendments to the existing net capital and customer protection requirements applicable to broker-dealers with regard to SB swaps clearing through such broker-dealers and whether to address portfolio margining with swaps."[12]

In our view, we respectfully suggest that the phrase "whether to" in the third clearing prerequisite above should be removed and that the Commission should proceed with its determinations on customer protection requirements and addressing portfolio margining with swaps. In other words, we believe the Commission's proposals to amend customer protection requirements with regard to swap clearing activity in a broker-dealer should be issued for public comment. Similarly, we believe the Commission should be considering portfolio margining petitions from clearing agencies on a case-by-case basis, on their merits, and issuing orders approving pending petitions as soon as possible to encourage buy-side access to clearing and to facilitate voluntary clearing of single-name credit CDS. We suggest that the Commission should encourage voluntary clearing of single-name CDS as a priority, which will in turn facilitate the transition to mandatory clearing.

We applaud the Commission for proceeding to issue its Final Clearing Procedures Release.[13] Now that the Commission has done so, we respectfully suggest that the Commission should not postpone its implementation of mandatory clearing submission process rules and defer its review of SB swap clearing submissions by clearing agencies. We believe the Commission would enhance the efficiency of its first mandatory clearing determinations by seeking clearing submissions from registered SB swap clearing agencies based on the SB CDS products that such clearing agencies are currently clearing, rather than starting exclusively with pre-enactment SB swaps.[14] We note that the CFTC requested derivatives clearing organizations

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[12] Sequencing Roadmap Statement at 35635.

[13] Commission Final Rule on "Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b-4 and Form 19b-4 Applicable to All Self-Regulatory Organizations", 77 Fed. Reg. 41602 (July 13, 2012) (the "**Final Clearing Procedures Release**").

[14] *See* Final Clearing Procedures Release at 41626 (noting that the Commission will commence the implementation of its mandatory clearing determinations by addressing pre-enactment SB swaps). The Final Clearing Procedures Release notes that central clearing of security-based swaps began in March 2009 for index CDS products, in December 2009 for single-name corporate CDS products, and in November 2011 for single-name

("**DCOs**") to submit both pre-enactment swaps and swaps for which DCOs have initiated clearing since enactment of the Dodd-Frank Act when it asked the DCOs for their submissions.[15] We believe such an approach would be far more efficient than an initial stand-alone review of pre-enactment SB swaps. Further, we respectfully suggest that the Commission proceed with requesting submissions and conducting its review to provide SB swap market participants with certainty around the scope of SB swaps that will be covered in the Commission's initial clearing requirement determination.

IV. The Commission Should Adopt a Rule Requiring the Straight-Through-Processing of Cleared SB Swap Transactions as an Additional Prerequisite to Mandatory Clearing

MFA has long urged U.S. and international regulators to adopt a requirement for straight-through-processing or STP that mandates that transactions in cleared SB swaps are accepted or rejected for clearing immediately following execution.[16] STP is critical to realizing the Dodd-Frank Act objectives of reducing systemic risk, improving transparency, and supporting competition in the SB swaps markets. We believe the Commission should propose and adopt a STP rule at the earliest possible opportunity and prior to requiring mandatory clearing of SB swaps. The CFTC's final rules on *Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management* will require STP for cleared swaps,[17] and we urge the Commission to adopt a parallel requirement to ensure that the SB swaps market develops consistently and is afforded the same benefits.

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sovereign CDS products. According to such Release: "The level of clearing activity appears to have steadily increased as more products have become eligible to be cleared." *Id.* at 41636. While the Commission also noted in such Release that there is currently no central clearing of non-CDS SB swaps, such as those based on equity securities, there is a longer history of clearing listed equity options experience upon which to draw to inform the transition to clearing of OTC equity derivatives. In August 2011, the Options Clearing Corporation (OCC) reported a record monthly volume of 550 million options contracts. See OCC Timeline (http://www.theocc.com/about/corporate-information/occ-timeline.jsp).

[15] We note that the CFTC sought such DCO submissions on February 1, 2012, well in advance of its recently proposed rulemaking on the first mandatory clearing determinations for certain interest swaps and index CDS, and respectfully urge the Commission to pursue a similar approach. *See* CFTC Notice of Proposed Rulemaking on "Clearing Requirement Determination Under Section 2(h) of the CEA", 77 Fed. Reg. 47170 (Aug. 7, 2012), at 47172, available at: http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-18382a.pdf.

[16] For MFA's detailed explanation of the benefits of straight-through-processing, please see (i) MFA letter to the CFTC dated April 11, 2011, available at: http://www.managedfunds.org/wp-content/uploads/2011/06/4.11.11-CFTC-Customer-Positions-Rules-Final-MFA-Letter.pdf, (ii) MFA letter to the CFTC dated September 30, 2011, available at: http://www.managedfunds.org/wp-content/uploads/2011/10/CFTC_Customer.Clearing.Documentation.and_.Timing.of_.Acceptance.for_.Clearing_Clearing.Member.Risk_.Management_FinalMFALetter.pdf, and (iii) MFA letter to ESMA dated August 5, 2012, available at: https://www.managedfunds.org/wp-content/uploads/2012/08/MFA-Accompanying-Letter-to-ESMA-re-Straight-Through-Processing-MFA-Final-Letter.pdf.

[17] CFTC Final Rule: 77 Fed. Reg. 21278 (Apr. 9, 2012), available at: http://www.cftc.gov/LawRegulation/DoddFrankAct/Dodd-FrankFinalRules/ssLINK/2012-7477a.

V. The Commission Should Adopt a 90-Day Compliance Period for Mandatory Clearing of Single-Name CDS for all Market Participants

In the Sequencing Roadmap Statement, the Commission requested comment on whether the Commission should phase in mandatory clearing by type of market participant, similar to the CFTC's final clearing implementation rule.[18] While we supported the CFTC's phase-in of mandatory clearing by category of market participant for logistical reasons[19], we believe that a 90-day compliance period should apply to all SB swap market participants with respect to an initial clearing requirement determination that would cover single-name CDS and other SB swaps in the credit asset class that are currently being cleared, provided that such compliance date is later than the compliance date for a given entity under the CFTC Final Clearing Implementation Rule. Our recommendation for a flat 90-day compliance period would be a more practical and efficient approach for the Commission to consider given that market participants will have resolved most of their logistical clearing readiness issues. More specifically, all categories of market participants will already be subject to the CFTC's clearing mandate for broad-based index CDS in the credit asset class, and thus will have resolved operational readiness issues and established clearing relationships and documentation that will facilitate mandatory clearing of single-name CDS.

VI. MFA Strongly Supports Sequencing Mandatory Trade Execution Compliance after Mandatory Clearing

MFA strongly believes that clearing is both a natural first step towards, and a prerequisite for, execution on SB SEFs.[20] We applaud the Commission for acknowledging the statutory sequencing envisioned by the Dodd-Frank Act, and sequencing compliance with the SB swap mandatory trade execution requirement later in the process, after mandatory clearing.[21] As we

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[18] *See* CFTC Final Rule on "Swap Transaction Compliance and Implementation Schedule: Clearing Requirement under Section 2(h) of the CEA", approved by seriatim vote on July 24, 2012 (the "**CFTC Final Clearing Implementation Rule**") (noting on pp. 4-5 of the final rule release that the CFTC's compliance schedule for the Clearing Requirement under new section 2(h)(1)(A) of the Commodity Exchange Act (the "**CEA**") is based on the type of market participants entering into a swap subject to the Clearing Requirement: Category 1 Entities must comply no later than 90 days after the publication of the Clearing Requirement determination in the *Federal Register*; Category 2 Entities must comply within 180 days after such publication date; and all other market participants must comply no later than 270 days after such publication date).

[19] *See* MFA's comments on the CFTC Clearing and Trade Execution Implementation Proposal and the CFTC Documentation and Margin Implementation Proposal, filed with the CFTC on Nov. 4, 2011, available at: http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=49947&SearchText= (the "**MFA CFTC Implementation Comment Letter**").

[20] *See* Annex A to MFA Implementation Letter, stating in relevant part: "Clearing (1) is a pre-condition to, or (2) at the very least would contribute to a more efficient/effective formulation of rules related to SEF trading, real-time reporting, etc. In fact, once participants begin widespread clearing their swaps, comparatively lower barriers to entry for execution platforms and the publication of prices by CCPs may result in achievement of some transparency goals".

[21] The trade execution requirement presupposes that the clearing requirement is already in effect for a given class of swaps. *See* Section 723(a)(8) of the Dodd-Frank Act. *See also* "CFTC Staff Concepts and Questions

noted in the MFA CFTC Implementation Comment Letter, we are very concerned with having the mandatory trade execution requirement potentially coming into effect at the same time as the mandatory clearing requirement. This timing overlap substantially risks complicating and delaying the transition to central clearing. Progress in the transition to central clearing is much further along than the transition to SB SEF execution, and there is a burdensome overlap in terms of requirements on personnel, infrastructure, and capital resources to launch the two simultaneously. Linking them for implementation purposes brings them both down to the lowest common denominator, *i.e.*, the point at which the entire SB swap market is ready for execution on SB SEFs. The added challenges of trading exclusively on SB SEFs may thus further delay the transition to mandatory clearing, unless the transition to clearing is allowed to proceed before the transition to SB SEF execution. Accordingly, MFA respectfully suggests that the Commission should implement the SB swap mandatory trade execution requirement for all relevant market participants at the same time, and at the earliest, only after the phase-in of the clearing requirement has been completed.

From a liquidity perspective, for execution on SB SEFs to work smoothly, the market in a given SB swap contract should be able to shift critical mass from off-SB SEF execution to on-SB SEF execution. Otherwise, once a clearing requirement takes effect and the Commission follows a phase-in approach by market participant, such implementation schedule could limit liquidity that the first category of market participants could access, while the subsequent categories of market participants would have the option to execute bilaterally or on an SB SEF. The ensuing fragmentation of liquidity in this intermediate period would likely distort pricing and competition, and undermine the utility offered by SB SEFs. The need for this uniform market shift to SB SEF execution of a swap or class of swaps speaks to why, at a minimum, the execution requirement should not become effective until after the clearing requirement has commenced, and appropriate volumes of a class of SB swaps have been cleared as evidence that the industry is prepared to take the next step to mandatory SB SEF trading.

MFA also applauds the Commission for viewing the "made available to trade" construct as a distinct and separate legal standard from the "listing" of a swap by an SB SEF.[22] We also agree with the Commission's proposal that it would assume an active role in the "made available to trade" determination process by establishing objective measures for such a determination, rather than allowing an SB SEF or a group of SB SEFs to establish such measures.[23] We

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Regarding Phased Implementation of Effective Dates for Final Dodd-Frank Rules", available at: http://cftc.gov/ucm/groups/public/@newsroom/documents/file/staffconcepts050211.pdf (the "**CFTC Staff Implementation Concepts**"). Concept item 11 reiterates the intended statutory sequence: "The statute provides for some natural sequencing. . . . [T]here can be no trading requirement prior to the Commission's determination that a swap is required to be cleared, a trading platform(s) has listed the swap for trading, and the Commission has determined that the swap is made available for trading".

22 *See* Commission Proposed Rule on "Registration and Regulation of Security-Based Swap Execution Facilities", Release No. 34-63825, File No. S7-06-11, RIN No. 3235-AK93, 76 Fed. Reg. 10948 (Feb. 28, 2011), available at: http://www.gpo.gov/fdsys/pkg/FR-2011-02-28/pdf/2011-2696.pdf.

23 *Id.* at 10969.

strongly support the Commission's conclusion that the "made available to trade" determination should be made separately from the clearing requirement and the "listing" of an SB swap product on an SB SEF.[24] We believe the Commission, as well as the CFTC, have the statutory authority to make judgments about which SB swaps and swaps, respectively, should be subject to the mandatory execution requirement, separate from those SB swaps and swaps that are subject to the mandatory clearing requirement.[25]

VII. MFA Strongly Objects to Implementation Phasing of Margining Requirements by Type of SB Swap Market Participant

We respectfully urge the Commission, in response to its request for comment, not to adopt a phased implementation of the SB swap margining requirements by type of SB swap counterparty. We strongly believe such a phased implementation approach is not appropriate as it would create unfair disparities and inconsistent treatment among market participants. We do not understand there to be any basis for the imposition of higher margin requirements and potentially disparate pricing for uncleared SB swaps on one category of SB swap market participants before another category of SB swap market participants. These requirements should be implemented for all relevant SB swap market participants at the same time. Therefore, we respectfully propose that there be one compliance date for SB swap margining requirements that would become effective only after the later of the compliance date for the clearing requirement that applies to all SB swap market participants and the latest effective date of the final SB swap trade documentation and margin requirements (*i.e.*, 60 days after the last of such rules is published in the *Federal Register*). This additional 60 days prior to triggering such compliance date would ensure that SB swap market participants have adequate lead time to evaluate the final SB swap trade documentation and margin requirements and to assess which adjustments need to be made to their trading documentation, business models and portfolios in an orderly manner before the compliance deadline.

Without a single compliance date for SB swap margining requirements sequenced after the implementation of mandatory clearing, MFA believes that phasing in such margin requirements for uncleared SB swaps by type of SB swap market participant would distort pricing and competition across the marketplace by forcing certain counterparties to pay higher margin amounts before other counterparties with longer phase-in schedules. In this regard, we

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[24] *Id.*, stating in relevant part that the Commission "would in effect interpret the phrase 'made available to trade' in Section 3C(h) of the Exchange Act as meaning something more than the decision to simply trade, or essentially list, a SB swap on a SB SEF or an exchange. [footnote omitted] This approach would have the further effect of permitting SB swaps to be made subject to mandatory clearing independently of whether they are required to be traded exclusively on SB SEFs and exchanges, because there would not be an automatic requirement that SB swaps subject to mandatory clearing trade only on a SB SEF or exchange simply because they are listed on one". *Id.* at 10969 (emphasis added).

[25] *See* Section 733 of the Dodd-Frank Act which adds section 5h(d)(1) to the CEA, stating as follows: "The Securities and Exchange Commission and the Commodity Futures Trading Commission may promulgate rules defining the universe of swaps that can be executed on a swap execution facility. These rules shall take into account the price and nonprice requirements of the counterparties to a swap and the goal of this section as set forth in subsection (e)".

see no justification from a cost-benefit perspective to impose disparate and prejudicial cost burdens on early adopters.

Assuming the Commission adequately addresses our comments and concerns in the final rulemakings to which they pertain, we believe that setting forth a firm implementation timetable by rulemaking will benefit the U.S. SB swap markets substantially, by eliminating uncertainty, permitting investment and ensuing competition, and increasing confidence through progressive transfer of risk to clearing and establishment of a foundation for significantly increased transparency in these markets.

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MFA thanks the Commission for the opportunity to provide comments regarding the Sequencing Roadmap Statement. Please do not hesitate to contact Laura Harper or the undersigned at (202) 730-2600 with any questions the Commission or its staff might have regarding this letter.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell
Executive Vice President & Managing
Director, General Counsel

cc: The Hon. Mary L. Schapiro, Chairman
The Hon. Elisse B. Walter, Commissioner
The Hon. Luis A. Aguilar, Commissioner
The Hon. Troy A. Paredes, Commissioner
The Hon. Daniel M. Gallagher, Commissioner