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April 4, 2011

Via E-Mail: rule-comments@sec.gov

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

Re: File No. S7-06-11 Registration and Regulation of Security-Based Swap Execution Facilities

Dear Ms. Murphy and Commissioners:

Thank you for the opportunity to provide our comments. The California Public Employees' Retirement System ("CalPERS") is the largest public pension fund in the United States with approximately \$230 billion in global assets providing retirement benefits to more than 1.6 million public workers, retirees, their families, and beneficiaries. As a significant long-term investor in the U.S. capital markets, CalPERS is reliant upon effective and comprehensive regulation designed to protect investors.

CalPERS welcomes the opportunity to provide these comments to the Securities and Exchange Commission (the "Commission") with respect to the Commission's proposed rules on the Registration and Regulation of Security-Based Swap Execution Facilities ("the SB SEF Proposing Release").

CalPERS' comments will focus on the importance of assuring impartial access to security-based swap execution facilities ("SB SEFs"). SB SEFs will play a critical role in achieving the goals of the Dodd-Frank Wall Street and Reform and Consumer Protection Act of 2010 ("the Dodd-Frank Act") to enhance transparency and financial integrity in SB swap markets. Following its implementation, it is expected that the Dodd-Frank Act will require the great majority of SB swap transactions to occur only on regulated exchanges and SB SEFs. It reasonably can be assumed that many SB swaps will not be traded on exchange and, therefore, SB SEFs may provide the only means by which many SB swaps may be transacted.

Fair and impartial access to SB SEFs for qualified market participants will be essential if the Dodd-Frank Act's goals are to be met. Unwarranted denial of access to membership in SB SEFs to otherwise qualified SB swap market participants would be detrimental not only to their ability to transact in SB swaps but also to market liquidity and price competition. Section 763 of Title VII of the Dodd-Frank Act, which sets forth the core principles for the SB SEFs, thus requires in Core Principle 2 that SB SEFs must provide market participants with "impartial access to the market."

Core Principle 2, contained in Section 3D of the Securities Exchange Act of 1934, is designed to prevent domination of SB swap markets by a small group of large dealers who might have an incentive to prevent direct market access by other SB swap market participants for competitive advantage. As the Commission's SB SEF Proposing Release notes, trading of SB swaps in many over-the-counter markets today can be dominated by a small number of large SB swap dealers, which raises legitimate concerns over whether there is fair access to and competition in SB swaps markets. CalPERS endorses the Commission's proposed rules to the extent they are designed to eliminate the potential for SB SEFs to be dominated by a small group of dealers.

CalPERS supports the requirement in proposed Rule 811(b) that SB SEFs shall establish fair, objective, and not unreasonably discriminatory standards for granting impartial access to trading on the SB SEF. Rule 811(b) must be construed to prevent an SB SEF's owners or operators from unfairly discriminating against any properly qualified eligible contract participant ("ECP"). Consistent with this, SB SEFs should not be allowed to impose capital and other financial requirements for participation by ECPs that materially depart from the statutory standards of an ECP. We thus support the Commodity Futures Trading Commission's proposed standard with respect to SEFs under its jurisdiction that any ECP should be able to demonstrate financial soundness by demonstrating that it is a clearing member of a designated contract market or by showing that it has clearing arrangements in place with such a clearing member. Permitting requirements that are out of kilter with the statutory ECP standards would invite large dealers to try to deny smaller market participants access to SB SEFs by imposing unreasonably onerous participation requirements that smaller ECPs could not meet.

Consistent with the foregoing, CalPERS supports the position stated in the Commission's SB SEF Proposing Release that SB SEFs that wish to permit access to non-registered ECPs be required to adopt and enforce objective standards for access for non-registered ECPs to their markets.¹ CalPERS, however, opposes the Proposed Rule 809(b) to the extent it would permit an SB SEF to limit access to only *registered* ECPs (*i.e.*, SB swap dealers, major SB Swap Participants, and brokers). Such a limitation would appear to permit an SB SEF to be limited to only large market participants and market professionals. CalPERS respectfully submits that permitting an SB SEF effectively to be limited to registered market professionals is not consistent with the Dodd-Frank Act's goals and could perpetuate SB swap markets dominated by large dealers.

¹ CalPERS agrees with the Commission's assessment that the requirement for impartial access to an SB SEF under Core Principle 2 does not mean that an SB SEF must allow unfettered access to any and all persons. SB SEFs must be permitted to exclude persons whose financial wherewithal is insufficient to assure the financial integrity of SB swaps transacted through an SB SEF or whose disciplinary history demonstrates a threat to market integrity.

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We applaud the SEC's efforts to issue timely rule proposals and would welcome the opportunity to discuss CalPERS comments in greater detail with Commissioners and staff. If you have any questions, please do not hesitate to contact Anne Simpson, Senior Portfolio Manager, Global Equity at (916) 795-9672, or anne_simpson@calpers.ca.gov.

Sincerely,

A handwritten signature in blue ink that reads "Eric Baggesen". The signature is written in a cursive style with a large, prominent "E" and "B".

ERIC BAGGESEN
Senior Investment Officer

cc: Joseph A. Dear, Chief Investment Officer – CalPERS