



THOMSON REUTERS

April 4, 2011

VIA ELECTRONIC FILING

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

RE: Registration and Regulation of Securities-Based Swap Execution  
Facilities; Proposed Rule; **File Number S7-06-11**

Thomson Reuters welcomes the invitation to submit comments to the Securities & Exchange Commission ("SEC") on the proposed rule establishing registration requirements and core principles for securities-based swap execution facilities ("SB-SEFs"), published February 28, 2011. Thomson Reuters supports the SEC's ongoing efforts to implement Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), generally, and to support Congress' goals in relation to SB-SEFs, including promoting the trading of swaps on SEFs and promoting pre-trade price transparency in the swaps market. Crucial to fulfilling these goals is the preservation of flexibility in trading models to address the wide variety of markets, ensuring that market participants are able to find sufficient liquidity in these markets to accomplish their investment objectives, and not deterring the trading of swaps on regulated platforms. Thomson Reuters strongly believes that the SEC should allow SB-SEFs to operate efficiently while meeting the goals of Dodd-Frank.

## BACKGROUND

The proposed rule will affect Thomson Reuters primarily because of its operation (through subsidiaries) of the Thomson Reuters Dealing and Thomson Reuters Matching applications, and its ownership interest in Tradeweb.<sup>1</sup> Thomson Reuters Dealing is a leading global, multi-asset electronic trading platform, and related data services, providing price transparency in a wide range of assets. Dealing was launched in 1982 and is now being used actively by over 18,000 professionals in over 125 countries for trading a diverse range of over 60 sub-asset classes including derivatives. Thomson Reuters Matching is an anonymous electronic trading application for the foreign exchange spot and swap markets with a central order book model. Both applications provide technology and connectivity for market participants and provide both pre- and post-trade transparency on

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<sup>1</sup> Tradeweb is filing separate comments in response to this proposed rule, and Thomson Reuters supports the comments made and alternatives proposed in that filing.



an efficient and orderly trading platform together with post-trade efficiency. Tradeweb is a leading global provider of electronic trading platforms and related data services for the OTC fixed income and derivatives markets. Thomson Reuters anticipates that all of these trading platforms will register as SB-SEFs, and therefore will be subject to the SB-SEF requirements and related Core Principles set out in Dodd-Frank and through the proposed rule.

In addition, Thomson Reuters Markets Division is a leading provider of real time market connectivity for financial institutions in the United States and around the world. Its Markets Division provides market information, technology and connectivity between market participants to help enable transparent, efficient and orderly securities markets. The Company has pioneered many developments in both exchange and OTC markets, and so has deep expertise in electronic transactions processes across many of the asset ranges. These products and services may be useful to SB-SEFs and market participants looking to comply with the requirements of certain core principles by use of third-party solutions.

## COMMENTS

Thomson Reuters believes that its broad experience, both domestically and internationally, across a number of asset classes, gives it an ability to provide the SEC with informed and relevant suggestions regarding the proposed rule. In general, Thomson Reuters supports the SEC's recognition that Congress intended the SB-SEF to be an entity that is distinct from the exchanges/ designated contract market, with each entity subject to different registration requirements and core principles. In particular, we agree with the preamble to the proposed rule which states:

[T]he Commission has sought to facilitate competition and innovations in the SB swap market that could be used to promote more efficient trading in organized, transparent and regulated trading venues. The Commission does not believe it should simply overlay the same regulatory structure that is currently in place for equities, given important differences in the nature and maturity of the SB swap and equities markets.<sup>2</sup>

The SEC thus appears not disposed to impose on SB-SEFs obligations that essentially turn them into exchanges because this, in addition to not giving effect to Congress' intent in Dodd-Frank, would narrow the diversity of available trading models.

We set out some preliminary comments before responding on the proposed rules amplifying the fourteen Core Principles.

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<sup>2</sup> 76 Fed. Reg. at 10,952.



### Flexibility in trading models

Thomson Reuters supports the SEC's approach to ensuring flexibility in trading models, in particular its approach to the request for quote ("RFQ") functionality for SB-SEF trading platforms. The diverse over-the-counter swaps market requires the availability of different trading methods. While swaps may gravitate to particular types of trading models over time, that migration should be permitted to happen naturally through market forces and choices, not through mandated regulation. Request for quote enables counterparties to access liquidity on a more focused basis whether because of the size of the trade, the specific details of the trade, or the credit worthiness of the counterparties. Thomson Reuters supports the approach of the proposed rule, which permits counterparties to determine the number of RFQ recipients, depending upon the specifics of the trade. Thomson Reuters believes that this approach better preserves the distinctive nature of the type of market which the SB-SEF serves and provides the market with greater diversity of trading models.

### Pre-trade transparency

Thomson Reuters suggests the SEC focus pre-trade transparency regulations on indicative pricing. For high-volume liquid instruments trading electronically this can be a continuous best bid and offer (BBO) from multiple price makers. For the more illiquid, less frequently traded instruments this can be an end-of-day indicative price.

### Jurisdictional overlaps

Thomson Reuters appreciates the spirit of co-operation which the SEC and the CFTC have exhibited in implementing the provisions of Dodd-Frank within their respective mandates. It would be helpful, however, to have clear guidance as to how the regulatory regime will cover operators who may choose to operate both swap execution facilities (SEFs) and SB-SEFs in respect of different markets, and to have an agreed set of requirements applicable to both. The SEC correctly recognizes that "it is likely the same entities will be registered as SB-SEFs and SEFs."<sup>3</sup>

Efficiency also dictates that there should be one application process and that entities operating SEF/SB SEFs would then apply the relevant rules to their systems in particular asset classes.

Thomson Reuters also believes that the SEC (and the CFTC) should explicitly recognize that in the global marketplace the requirements for SEFs should be harmonized with regulated trading venues in other jurisdictions (e.g., Europe's Multilateral Trading Facilities) to ensure that there is a level playing field between systems operating on a

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<sup>3</sup> 76 Fed. Reg. at 10,980.



global basis to avoid regulatory arbitrage which could pose a significant risk to the US as well as the global financial system.

Thomson Reuters would urge the SEC to promulgate regulations implementing its exemptive authority under sections 3D(e) and 36 of the Exchange Act, to provide for mutual recognition of derivatives trading platforms that are registered and regulated by the CFTC and/or foreign regulators.

### Core Principles

Under the Dodd-Frank Act there is a clear distinction between SB-SEFs and designated contract markets (“DCMs”) or exchanges. There was also recognition by Congress that alternatives to traditional DCMs and exchanges were necessary, reflecting the optimum way for the OTC derivatives market to operate. We support the direction of the regulation but want to ensure that the SEC adopts rules that are clear and allow for flexibility in how trades are executed. This will give the end users choice, but, as importantly, gives them access to liquidity while trading in an efficient and transparent manner on regulated markets. It is important that, in implementing Dodd-Frank, the SEC maintains this flexibility in applying the Core Principles, and in doing so avoids creating unintended consequences for end-users and the marketplace as a whole.

### **Core Principle 1 – Compliance with Core Principles**

Core Principle 1 states that the SB-SEFs shall have reasonable discretion in establishing the manner in which they comply with the Core Principles unless otherwise determined by the regulators in rules or regulations.

We believe that, taking into account the nature of the Core Principles, SB-SEFs should be able to determine how to best achieve the objectives of Dodd-Frank without overly prescriptive rules or regulations which may limit the flexibility of the regulator and its oversight of the market.

### **Core Principle 2 – Compliance with SB SEF Rules**

The SEC notes that much as the Exchange Act requires national securities exchanges to have rules governing trading, membership, and discipline of its members.<sup>4</sup> Core Principle 2 should provide similar rules. Although the principles which govern exchanges are similar, the SEC Proposed Rules should recognize that SB-SEFs should have reasonable flexibility unless the rules or regulations prescribe otherwise.

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<sup>4</sup> 76 Fed. Reg. at 10967.



The SB-SEF must provide any registered SB swap dealer, major SB swap participant, brokers, or eligible contract participants with impartial access to the market. Thomson Reuters believes that, although access to SB-SEFs should be non-discriminatory and based on a fair and transparent process, the SB-SEFs, applying fair and objective criteria that takes into account commercial criteria, should each ultimately be able to choose who its participants should be. SB-SEFs will operate in a highly regulated environment and should be able to ensure that those who have access to execute transactions on their systems are trusted counterparties in order to ensure the smooth operation of the system and to prevent the manipulation of those markets.

Much of Core Principle 2 represents best practices to assure that members of a SB-SEF comply with the rules of the SB-SEF, and Thomson Reuters supports requirements that assure the integrity and neutral position that SB-SEFs must occupy in the market. Thomson Reuters believes additional disciplinary processes would impose too great an administrative burden on the SEC as well as registered SB-SEFs. In general, SB-SEFs will be required to maintain rules, including enforcement mechanisms, as a way to assure market participants a level playing field at that particular SB-SEF. In determining whether a market participant should have access to a SB-SEF, SB-SEFs should be able to take into account any previous breaches by that market participant of the rules or regulations applied by a exchange or other SB-SEF. As SB-SEFs earn reputations in the marketplace, Thomson Reuters believes that those with the best reputation will draw participants towards them. Accordingly, Thomson Reuters believes that detailed procedures related to appeals, settlement, and penalties, are not necessary in the SB-SEF marketplace.

Thomson Reuters suggests that, like the CFTC, the SEC should permit third-parties to provide regulatory compliance solutions regarding the detection of rules violations, surveillance, and audit trail and disciplinary rules. Targeted applications can provide efficient compliance while preserving a firm's security and data integrity.

### **Core Principle 3 – Manipulation**

Thomson Reuters believes that the anti-manipulation requirements are an integral part of any reputable trading platform and we would support SB-SEFs being required to have in place appropriate systems and controls to identify and manage situations where the market or individual swap contracts may be susceptible to manipulation or fraud.

### **Core Principle 4 – Monitoring of trading and trade processing**

Thomson Reuters concurs that a reputable, well-functioning electronic trading platform must have robust systems and controls in place and be able to implement automated trading alerts when circumstances arise. SB-SEFs should be reasonably permitted to determine for themselves what trading criteria to monitor, commensurate with the types of



instruments traded, such that computers and human beings are fairly treated in their ability to execute on a quote.

#### **Core Principle 5 – Ability to obtain information**

Thomson Reuters operates in all of the major markets and trading centers, and is able to transmit information to the various foreign/international regulators when required by law, regulation or contract, to do so.

#### **Core Principle 6 – Financial integrity of transactions**

For swaps subject to clearing requirements, Thomson Reuters agrees that SB-SEFs should assure the secure and prompt routing of the swap transaction to a DCO. For non-cleared swaps, Thomson Reuters believes, aside from ensuring that the counterparties meet the requirements for participating on the SB-SEF, the SB-SEF should be in a neutral position regarding credit and/or collateral arrangements and that this should be primarily a matter between the counterparties.

#### **Core Principle 7 – Emergency authority**

The exercise of emergency authority to react to a party's position, potentially liquidating open positions, does not fall within a trading platform's traditional role in the market and Thomson Reuters urges the SEC to exercise caution in placing SB-SEFs into this quasi-supervisory role.

At the same time, trading platforms do have experience with exercising trading restrictions and suspensions during significant market events. If the SEC issues binding orders for a SB-SEF to take specific actions, including the liquidation of positions and/or the transfer of open positions (for example, in circumstances leading to a firm being placed in a relevant resolution regime), that are within the contractual ability of the SB-SEF, it would be reasonable to expect SB-SEFs to comply.

#### **Core Principle 8 – Timely publication of trading information**

Thomson Reuters believes that any properly functioning SB-SEF will have the functionality to electronically capture transactions for recordkeeping and reporting purposes on a real time basis subject to certain technological constraints.

However, Thomson Reuters believes that this information should be provided to the swap data repository ("SDR") whose overarching responsibility is the collection and storage of all life-cycle data and that any further publication or dissemination of that information



should be the responsibility of the SDR and not the SB-SEF. This would avoid duplication of reporting trades to the market.

The SEC should implement reporting rules that are consistent with the reporting rules being proposed by the European Commission through MiFID II to ensure that a trade is reported under the same rules, irrespective of how and/or where it has been executed. The decision should not depend on which SDR or trade repository the trade reports to.

### **Core Principle 9 – Recordkeeping**

The proposal calls for data to be retained for five years, the first two years in an easily accessible place. Particularly where third-party vendors are used, the length of retention is an issue that is secondary to its collection. To the extent that foreign regulators, e.g., the European Commission, are proposing to require a longer retention, a five-year retention period may be subsumed by the longer periods.

### **Core Principle 10 – Antitrust Concerns**

Thomson Reuters believes that the transparency and impartial access requirements should be sufficient to avoid any antitrust issues or unreasonable restraint of trade.

### **Core Principle 11 – Conflicts of Interest**

Thomson Reuters has previously submitted its comments regarding SB-SEF conflicts of interest and ownership requirements on November 24, 2010.

Thomson Reuters would, however, reiterate that unduly burdensome or inflexible ownership limits or governance requirements are unlikely to secure the legislative objectives of Dodd-Frank and are more likely to deter the establishment of new platforms and the development of existing ones.

We believe that a proper balance should be maintained to ensure that the proposed rules do not inadvertently create another type of conflict within the board which would impact its compliance and efficiency. To impose artificial caps on ownership of SB-SEFs or excessive requirements for independent directors may have a negative impact on both capital and innovation in the markets.

### **Core Principles 12 – Financial resources**

In general, Thomson Reuters supports the underlying principle of the legislation and the SEC's proposal that a SB-SEF has sufficient financial resources to function continuously and in periods of market fluctuation and stress. We also recognize that periodic review of financial resource adequacy is warranted. Dodd-Frank's core principles for SB-SEFs goes



beyond, and given the likely joint registration of SEFs and SB-SEFs likely supplants, the SEF's Core Principle requirements regarding financial resources, by requiring additional adequate financial resources to meet obligations to its members and participants notwithstanding a default by the member or participant creating the largest financial exposure for that organization. Aside from requiring SB SEFs to not overestimate resources or underestimate expenses, the proposed rule essentially restates the provision of Dodd-Frank (adding section 3D(d)(12)(A) of the Exchange Act).

Thomson Reuters encourages the SEC to embrace the CFTC's approach to ensuring adequate financial resources by providing that capital requirements can be satisfied with resources other than those of the SB-SEF. Thomson Reuters supports the view that assets of affiliated entities within a corporate group should be acceptable for this purpose, provided the resources are designated for that purpose and are secure.

### **Core Principle 13 – Systems Safeguards**

Thomson Reuters believes that any sound SB-SEF will have robust system safeguards, and that its automated systems should reflect best practices in the industry. A SB-SEF should provide for high standards of information security and have a business continuity/disaster recovery plan. It should have in place resources to ensure the proper functioning of its systems and adequate capacity and performance as well as providing an appropriate level of redundancy and for uninterrupted systems operation.

### **Core Principle 14 –Chief Compliance Officer**

Thomson Reuters, in its November 24th comments on the SEC's conflict of interest proposal, suggested that the rigorous requirements imposed on a chief corporate compliance officer (CCO) would mitigate many of the concerns behind the proposed independent director requirements. The public reporting required of the CCO would provide significant transparency as to the SB-SEF's activities, including whether the SB-SEF is following the recommendations of the independent directors and/or the CCO.

## **CONCLUSION**

We reiterate our general view that these new rules should be implemented in a flexible manner as required under Core Principle 1 and that adequate account be taken of the considerable resources which will be required both in applicant SB-SEFs and the SEC to put this new regime in place and to ensure that it operates effectively. We believe that, in order to ensure the proper operation of these markets, it may be necessary for the SEC to adopt a phased-in approach and we would urge avoiding over-hasty rulemaking which could result in unintended consequences for the markets and the broader economy.



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We look forward to working with the SEC on this proposed rule and would welcome the opportunity to meet with SEC staff to discuss these issues further.

Sincerely,

Nancy C. Gardner  
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Thomson Reuters