BLACKROCK

April 4, 2011

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

Re: Registration and Regulation of Security-Based Swap Execution Facilities (File Number S7-06-11)

Dear Ms. Murphy:

BlackRock, Inc.[1] is pleased to provide these comments on the Securities and Exchange Commission's (the "Commission" or the "SEC") proposed rules (the "Proposed Rules") concerning the registration and regulation of security-based swap execution facilities ("SB SEFs").[2] The Proposed Rules create a framework for the registration and operation of SB SEFs, a new type of regulated trade execution facility, which will provide the ability to list, trade and execute standardized cleared and other security-based swap ("SB swap") transactions. The Proposed Rules implement the regulatory obligations that each SB SEF must meet in order to comply with Section 3D of the Securities Exchange Act of 1934, as amended ("Exchange Act"), both initially upon registration and on an ongoing basis. The Commission requests comment on all aspects of its proposal.

BlackRock fully supports the objectives of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") to establish a comprehensive regulatory framework to reduce risk, increase transparency for both price and liquidity, and promote market integrity. We recognize that promoting SB swap trade executions on SB SEFs is one of the goals of the Dodd-Frank Act. As an asset manager representing many different types of clients, investment vehicles, and separate accounts (collectively "Funds and Accounts"), we offer these comments to facilitate the development of a successful SB SEF marketplace to the benefit of all market participants, including investors in our Funds and Accounts.[3]

As we present our comments to the Commission, we believe it is important to set the context of SB SEFs within the current bilateral over-the-counter ("OTC") market. SB SEFs will be new participants in the derivatives marketplace and could potentially undermine, if not designed and implemented correctly, the success of cleared derivatives as they

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[1] BlackRock is one of the world's leading asset management firms. We manage over $3.54 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. Our 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.

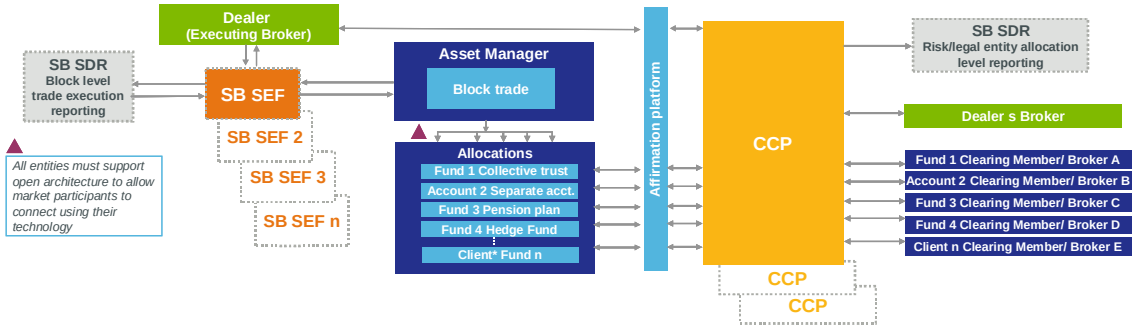
[2] *See* 76 Fed. Reg. 10948 (Feb. 28, 2011).

[3] We also support the Dodd-Frank Act's objectives of reducing risk, increasing transparency, and promoting market integrity in the swaps market and have submitted comments to the Commodity Futures Trading Commission ("CFTC") on its proposed rules for swap execution facilities ("SEFs"). *See* BlackRock Comment Letter dated March 8, 2011 entitled, "CTFC Notice of Proposed Rulemaking on Core Principles and Other Requirements for Swap Execution Facilities (RIN 3038-AD18)" (the "BlackRock SEF Letter").

migrate from the bilateral OTC market. Investment managers like BlackRock confidently use the OTC derivatives market to execute SB swaps for our clients. This confidence comes from our consistent ability to receive liquidity, as measured in both size and competitive pricing, for products we wish to trade from a range of liquidity providers.

Although we support many aspects of the Proposed Rules, we are concerned that, in some instances, the Commission emphasizes price transparency over liquidity transparency, also known as depth of market. The bilateral OTC SB swap market is an institutional market. Certain of the draft SB SEF rules attempt to promote retail market conventions with the objective of price transparency, something the OTC market currently offers asset managers like BlackRock, at the cost of impairing liquidity. This will drive up the costs of SB swaps and make these products less attractive to investors. Liquidity comes from confidence of execution, thus we encourage the Commission to allow flexibility in trade execution when introducing SB SEFs, understanding it will take time to gain confidence and will only do so with a phased approach, allowing new market conventions to form, consistent with the spirit of the Dodd-Frank Act.

BlackRock supports the introduction of SB SEFs and urges the Commission to promulgate flexible SB SEF rules that will allow for confidence and liquidity to build in these new trading platforms. Market participants will resist trading on SB SEFs unless they have confidence in SB SEFs and SB SEF regulation and governance. We support a regulatory framework consistent with the Dodd-Frank Act that will allow the SB SEF marketplace to evolve as the SB swap market transitions from the OTC market to a cleared environment. Accordingly, we urge the Commission to reconsider those aspects of the Proposed Rules that would impose impediments on the ability of market participants to execute trades on SB SEFs. We are particularly concerned that certain provisions of the Proposed Rules would impair liquidity and transfer this liquidity risk premium to investors in our Funds and Accounts in the form of wider bid/ask spreads and higher transaction costs. These increased costs and risks may cause investors to seek other risk transfer strategies or to transact swaps in jurisdictions with more favorable regulations and market structures, contrary to the goals established in the Dodd-Frank Act.



We also recommend that the Commission consider the role and interconnectivity of SB SEFs, as illustrated above, within the overall trade process flow in the new market structure regime. If the cost of trading or transacting on SB SEFs is too high due to the need to link to multiple SB SEFs, each with a shallow pool of liquidity in different product offerings, or the path that leads transaction data information from the SB SEF to the

clearing agencies becomes too expensive or operationally burdensome, investment strategies may be forced into other markets or products.

In the interest of investors in our Funds and Accounts, we specifically request that the SEC: (1) allow transparency of price and liquidity in the swap markets to develop gradually though market forces as confidence builds in this new regime, rather than trying to encourage transparency through mandating execution methods; (2) allow SB SEFs to establish flexible trade execution options; (3) clarify the post-execution responsibilities of SB SEFs; (4) ensure that all market participants have a meaningful voice on SB SEF operating committees; and (5) harmonize SB SEF and SEF regulation.

We will comment on the Proposed Rules in the context of the following categories: (i) pre-trade price transparency, (ii) trade execution, (iii) post-execution responsibilities, (iv) SB SEF governance, (v) market development and, (vi) sequencing and implementation.

I. Pre-Trade Price Transparency

The Dodd-Frank Act seeks, among other things, to promote the execution of SB swaps on SB SEFs and to promote pre-trade price transparency in the SB swaps market. In BlackRock's view, one way the Commission can advance these objectives is by adopting regulations that permit SB SEFs to offer market participants flexible trade execution options that allow for transparency of price and availability of liquidity to co-exist. Such regulations would minimize market disruption, as execution of SB swaps moves onto SB SEF trading platforms.

i. RFQ to a Mandatory Minimum Number of Counterparties

We support the Commission's proposal to permit a market participant exercising investment discretion to seek a request for quote ("RFQ") from one or more potential counterparties. This rule would allow market participants, including investment managers, to request a quote from the optimal number of counterparties from the pool of "all" available market participants in order to receive competitive pricing for their clients. Asset managers must, at times, transfer substantial risk positions on behalf of Funds and Accounts. In some cases, the best way to execute without disrupting the market is to deal with a limited number of counterparties which, depending on liquidity in the market, may actually be a single counterparty. The SEC proposes to interpret the SB SEF definition to allow this functionality. We believe this flexibility is necessary, as indicated in our CFTC letter, to the successful development of SB SEFs. We prefer the SEC's proposal to the more prescriptive one offered by the CFTC, which would require that all RFQs be shared with at least 5 market participants. In fact, in the BlackRock SEF Letter, we recommended that the CFTC not mandate that RFQs be disseminated to a minimum number of counterparties.[4]

[4] *See* BlackRock SEF Letter at 3-4.

Requiring that a market participant broadcast its desire to execute to multiple counterparties could adversely affect prices and liquidity and move the market against that investor,[5] as liquidity providers may have neither certainty of trade nor sufficient time to hedge their positions because other market participants will have knowledge of the trade. Liquidity providers will have to factor into their prices the market impact of transactions entered into by other market participants based on the knowledge that a "winning" liquidity provider may have to hedge its exposure. As a result, liquidity providers will transfer this liquidity risk premium in the form of a wider bid/ask spread to clients. This transference of liquidity risk premium is a direct cost to investors in our Funds and Accounts because it will be reflected in the performance of particular strategies and in the returns BlackRock can deliver to its investors.

Another unintended consequence of requiring market participants to broadcast their desire to execute to multiple counterparties would be that asset managers may be forced to break trades into smaller slices so as to decrease the risk of market moving activity to the detriment of its clients and the market as a whole. This slicing of trades also transfers liquidity risk and uncertainty of trade execution from the liquidity provider to the investor.

Apart from impacting the pricing, slicing of trades will lead to an increase in transaction costs and operational risk. Over time, as liquidity increases for certain types of swap transactions and confidence builds within the swap market, there will be a natural progression for RFQs to migrate to more counterparty requests and then ultimately to central order books for execution.

We appreciate the Commission's sensitivity to these concerns and recommend that the Commission's final rules should not require distribution of RFQs to more than one potential counterparty. This would be consistent with the Dodd-Frank Act, which requires that SB SEFs offer market participants *the ability* to accept bids and offers made by other market participants.

ii. Access Requirements

BlackRock recognizes that the SEC must balance the statutory requirements of impartial access (Core Principle 2) and financial integrity of transactions (Core Principle 6). We believe, however, that Proposed Rules 809(a) and (b) are too restrictive and will prevent many of our clients from becoming SB SEF participants.

Under Proposed Rules 809(a) and (b), SB SEFs must allow all security-based swap dealers ("SBSDs"), major security-based swap participants ("MSSPs") and brokers who otherwise meet the SB SEF's access criteria to become participants on its market. Although Proposed Rule 809(b) would permit eligible contract participants ("ECPs") who are not registered with the SEC to become SB SEF participants, there is no guarantee that any SB SEF would allow such ECPs to become participants. Accordingly, we believe Proposed Rules 809(a) and (b) would harm our clients and other market participants, by restricting unnecessarily the ability of ECPs,

[5] *See* Proposed Rules at 10954.

including certain pension funds and commercial end users, to execute directly on SB SEFs. We urge the SEC to require that SB SEFs allow all ECPs to become SB SEF participants, provided they meet the SB SEF's participation criteria, irrespective of whether the ECP is registered with the SEC. We further urge the SEC to require SB SEFs to set participation criteria that are fair, objective, and not unreasonably discriminatory against ECPs who are not also SBSDs, MSSPs or brokers.

II. Trade Execution

BlackRock believes that, consistent with encouraging the development of a successful and sustainable SB SEF marketplace, SB SEFs should be designed to offer flexible trade execution options. For the purpose of orderly trade execution, without causing market disruption, the SEC should balance the goal of transparency using both the elements of price and liquidity.

The Commission should also continue to promote an all-to-all marketplace and discourage any structural impediments to the framework or the infrastructure supporting the framework that would impede this. For example, a SB SEF should not be allowed to specify in its rules that one side of a transaction must be a particular market participant.

i. Execution Methods

Today, SB swap markets have a balance of pre-trade price transparency and liquidity which enables participants to hedge their risks in an orderly fashion through bilateral negotiation with liquidity providers. When adopting final rules, the SEC should strive not to disrupt market participants' ability to manage their risks confidently and efficiently.

We support the SEC's proposal to allow SB SEFs to offer market participants flexible methods of execution that are designed to take into account available liquidity and pre-trade price transparency so that transactions may be absorbed into the overall market with no market disruption. This flexibility of execution methods should encourage some SB swap products to gravitate naturally from block to RFQ and then towards central limit order books as confidence builds within the SB SEF and availability of liquidity begins to concentrate and appear on the central limit order book. SB SEFs should have the flexibility to allow market participants to execute SB swap transactions through central limit order books, RFQ platforms, brokerage trading, and any other methods that satisfy the multiple-to-multiple requirement of the Dodd-Frank Act. The parameters that differentiate the central order book, the RFQ, and non-SEF trade execution (block trade), should take into account liquidity of a particular SB swap and may differ from one SB swap to another.

However, we are concerned by the Commission's proposed interpretation of the multiple-to-multiple language in the Dodd-Frank Act. Specifically, the Proposed Rules would require that each SB SEF “provide at least a basic functionality to

allow any market participant on the SB SEF the ability to make and display executable bids or offers accessible to all other participants on the SB SEF."[6] This proposal, which requires all-to-all functionality, exceeds the Dodd-Frank Act's multiple-to-multiple mandate. Although BlackRock encourages the SEC to promote an all-to-all marketplace, we believe that requiring all-to-all functionality is unwarranted and unwise, both for cleared SB swaps and uncleared SB swaps.

Mandatory all-to-all functionality should not be required for cleared SB swaps because there is no evidence that market participants will utilize this capability. In fact, we believe that few, if any, market participants would take advantage of all-to-all capabilities, at least initially, because market participants may receive poor prices if they broadcast widely their desire to execute. SB SEFs should be allowed to provide choice of selection from all market participants. We believe mandatory all-to-all will increase the cost of SEF technology, which would be passed on to users of the SB SEF in the form of higher trading fees. This would discourage the execution of SB swaps on SB SEFs and could delay or prevent the build up of liquidity on these markets.

For uncleared SB swaps, the all-to-all functionality may prove unworkable entirely. The impartial access requirements of the Dodd-Frank Act and many aspects of the Proposed Rules contemplate broad participation of market participants on SB SEFs. As the SEC recognizes, counterparty credit arrangements are a critical component of execution in the uncleared SB swap market; each party to an uncleared SB swap must be willing to accept its counterparty's credit risk.[7] Broad participation, however, means that not all SB SEF participants will have credit arrangements in place with all other SB SEF participants, and some SB SEF participants may be unwilling to accept the credit risk of other SB SEF participants. For example, Proposed Rules 809(a) and (b) would require that a SB SEF grant access to all qualifying MSSPs. However, since MSSPs are buy-side market participants, it is likely that some qualifying MSSPs would not have trading documentation in place with other qualifying MSSPs – buy-side market participants typically negotiate trading documentation with sell-side market participants, but not with other buy-side participants. This would make it infeasible for a SB SEF to offer all-to-all functionality for uncleared SB swaps.

Further, given the need to evaluate and price counterparty credit risk before entering an uncleared SB swap, we respectfully suggest that the Commission clarify that only cleared SB swaps will be offered on a central limit order book, where bids and offers interact anonymously.

ii. Composite Indicative Quotes

We respectfully suggest that the Commission revisit its proposal to require that responses to a RFQ be included in the composite indicative quote for a SB swap on the SB SEF.[8] This requirement could adversely impact liquidity, especially for

[6] *See* Proposed Rules at 10954.
[7] *See* Proposed Rules at 10961 and Proposed Rule 815(b) (Proposing that SB SEFs may allow participants to take into account counterparty credit risk).
[8] *See Proposed* Rule 811(e).

block trades and large non-block trades. When a market participant requests a quote from another market participant, such as a liquidity provider, the liquidity provider will know that its quote will be incorporated into, and affect the price of, the composite indicative quote visible to all market participants. Other market participants will see a change in the composite indicative quote for a SB swap and will know that a trade may soon be executed in the SB swap.[9] The liquidity provider will need to price the availability of this information to the broader market ahead of trade execution into the quote it provides. As a result, SB swap users, like Funds and Accounts, will receive pricing with wider bid/ask spreads. We do not believe that the Dodd-Frank Act requires this result and suggest that the SEC remove the composite indicative quote requirement from its final rules.

At the very least, the Commission should specify in the text of Proposed Rule 811(e) that the bids and offers received in response to a RFQ will not be incorporated into the composite indicative quote until after a security-based swap data repository ("SB SDR") would be permitted to make information regarding a SB swap transaction public under Proposed Rule 902 of Proposed Regulation SBSR. Clarification would ensure that the composite indicative quote requirement does not conflict with Proposed Rule 817(c), which would not allow a SB SEF to make *any* information regarding a SB swap transaction publicly available prior to the time a SB SDR is permitted to do so and may, to some extent, mute the composite indicative quote's potential impact on liquidity.

iii. Block Trades

An asset manager transacts for many different investors linked to an investment strategy. In order to minimize the transaction costs for its investors, the manager may execute these trades as a block. Block trading is a very important and efficient mechanism of trade execution used by asset managers. The block size set for block trading should take into account market disruption and liquidity of the tradable instruments by factoring in open interest and average size of trade and should be set at a level that makes trade execution at a block level an option for institutional investors and not only liquidity providers.

In Proposed Regulation SBSR, the SEC outlined broad parameters for block trading but did not specify the criteria that will be used to determine minimum block size. However, until the Commission establishes the criteria and formula for determining minimum block size, Proposed Rule 800 would permit a SB SEF to set its own criteria for a block trade as long as the criteria are consistent with the Dodd-Frank Act's Core Principles for SB SEFs and the SEC's regulations.

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[9] This concern would be particularly acute for SB swaps that trade infrequently because the composite indicative quote available at the SB SEF may differ significantly from the present fair market value of the relevant SB swap. We note that the Division of Risk, Strategy and Financial Innovation ("Division") submitted a comment letter in response to the Commission's proposal entitled "Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information," 75 Fed. Reg. 75208 (Dec. 2, 2010) ("Proposed Regulation SBSR"). Although this comment letter focuses on setting minimum size requirements for block trades, the data used by the Division indicates that a majority of corporate and sovereign single-name credit default swaps trade no more than five times per day and a sizeable minority trade less frequently than once per day.

We believe this proposal would create uncertainty by empowering SB SEFs to determine which trades will qualify as blocks. If two SB SEFs list the same SB swap for trading, Proposed Rule 800 appears to allow the respective SB SEFs to establish different block criteria for the swap. We believe this could encourage SB SEFs to compete to offer lower block thresholds in an effort to increase market share by allowing participants to avoid, temporarily, the Dodd-Frank Act's real-time reporting requirements. We respectfully submit that the SB swap market would be better served if SB SEFs were encouraged to compete on other factors, such as breadth of product offerings, depth of liquidity or technological capabilities. Furthermore, the dataset used to determine block size should be consistent for all block size calculations and should include the data representing the overall market. A SB SEF would have insight into the executions taking place only on its platform, which is a slice of the overall market.

We encourage the SEC to establish block trading criteria that balance the two elements of transparency: liquidity and price.[10] If the block size is set too large, making block trading an unavailable option to asset managers, these transactions would need to be executed in smaller pieces so as not to disrupt the market while the overall trade is being executed so as not to harm the interest of our clients. The slicing of trade execution increases the liquidity risk to the investor. It will also increase transaction costs and operational risks.[11] Over time, as market transitions and the confidence in the new market structure builds, the minimum block size could be adjusted to continue to achieve the goals of the Dodd-Frank Act.

We are concerned by the Commission's statement that block trades would still be subject to the proposed requirements regarding pre-trade transparency and interaction with other trading interests. In particular, we note that the SEC's proposal would require a block trade to interact with any pre-existing resting bids and offers. The Commission explains that if a SB SEF has a 5,000 notional resting order on its limit order book in SB swap A and a 100,000 notional RFQ in swap A was disseminated to liquidity providers, if the resting limit order has a price equal to or greater than the price at which a response comes back in the RFQ mechanism, the SB SEF system would be required to execute 5,000 of the RFQ order against the resting limit order and 95,000 against the response.[12] This could result in the block trade being fragmented into two or more trades, which will increase execution risk and operating costs for market participants. Asset managers may use RFQs to comply with restrictions in their investment management agreements in trading with certain counterparties. Executing a resting bid or offer against an RFQ may result in the execution with a restricted counterparty. In addition, this requirement would reduce certainty of execution for market participants and would impair the ability of asset managers to control trading for their Funds and

[10] We have made similar requests to the CFTC. One of our principal concerns is that if the CFTC or SEC fails to properly balance liquidity and price transparency, it may be infeasible for market participants to enter into block trades for some products. *See* BlackRock SEF Letter; *see also* BlackRock Comment Letter dated February 7, 2011 entitled "Real-Time Reporting of Swap Transaction Data; RIN 3038-AD08; 75 FR 76140."; BlackRock Comment Letter dated February 22, 2011 entitled "Core Principles and Other Requirements for Designated Contract Markets; Proposed Rule; 75 Fed. Reg. 80,572; RIN 3038–AD09."

[11] *See* BlackRock SEF Letter at 5.

[12] *See* Proposed Rules at n. 163.

Accounts. We respectfully suggest that the Commission remove this requirement from its final rules.

The requirement that offers to enter into block trades be reflected in the composite indicative quote will further raise costs and reduce liquidity for block trades. The purpose of delayed reporting of block trades is to provide time for the party that provides liquidity to hedge its risk exposure. Without the benefit of this reporting delay, other market participants would know that a liquidity provider needs to lay off its risk and would cause the price to move against that dealer. Dealers would transfer this liquidity risk to end users for executing block trades in the form of wider bid/ask spreads. If all responses to RFQs, including those responses for block trades must be incorporated into the composite indicative quote, market participants may be able to anticipate when a block trade will occur ahead of the actual block trade execution based on fluctuations in the composite indicative quote. This could make it more expensive for liquidity providers to lay off the risks associated with block trades and could raise the costs of block trading and the effectiveness of block trading to minimize market disruption.

III. Post-Execution Responsibilities

i. Trade and Risk Reporting

We believe that the SB SEF should be responsible for trade and risk reporting at time of execution. As trade execution platforms, SB SEFs will have adequate reporting information, such as the economic terms of a SB swap, at the time of trade execution. Requiring SB SEFs to report transaction information to SB SDRs will enhance data integrity by streamlining data flow and reducing the number of touch points that data must pass through before reaching the SB SDR. Transferring data too many times before reporting it to the SB SDR can compromise the integrity of the transaction information, as the risk of data errors occurring increases with each "hand-off." A SB SEF is also preferred as a reporting party to any one market participant or a market participant hierarchal reporting structure as this will help preserve the intent of an all-to-all market structure as proposed by the Dodd-Frank Act.

We share the Commission's belief that SB SEFs must be execution facilities, and that entities that merely process swaps do not meet the Dodd-Frank Act's definition for SB SEFs. We also recognize, however, that SB SEFs will be providers of transaction data to entities involved in post-trade processing. We ask that the SEC limit transaction-level data required by a SB SEF to information required for trade execution and not to burden the SB SEF with post-trade operational data collection and maintenance. For example, a SB SEF plays a role in trade execution, but is not a party to the clearing of a trade. If certainty of clearing is required at time of trade execution, this should be achieved through documentation between the market participant and its clearing member and should not be part of the SB SEF validation checks.

A SB SEF should be required to report the transaction size of trades executed on the SB SEF. However, it would be too burdensome and costly for a SB SEF to monitor and report aggregate transaction positions executed by a counterparty. This is partially because the SB SEF only has a view into transactions executed on the SB SEF and has no view on transactions executed by a counterparty on other trading venues or other SB SEFs. Similarly, SB SEFs should not be responsible for maintaining records of post-execution events for swaps because SB SEFs may not be aware of such events and requiring such records would be unduly burdensome.

ii. Market Surveillance

The Proposed Rules would require SB SEFs, as part of their self-regulatory function, to collect and evaluate data on individual market participants' market activity on an ongoing basis in order to detect and prevent manipulation and price distortion. We believe that the SEC intends to require each SB SEF to monitor only the activity that occurs on its market and ask the Commission to confirm our understanding. A SB SEF would not be in a position to monitor trading or other activity that occurs elsewhere in the SB swap marketplace and requiring SB SEFs to monitor such off-facility activity may restrict the development of SB SEFs. This is because SB SEFs will not possess information about trades that are executed on other venues or about other positions that a market participant holds.

The SEC should avoid imposing unnecessary regulatory burdens on SB SEFs or forcing market participants to provide SB SEFs with information about all trades that are executed elsewhere. Similarly, the SEC should not compel SB SEFs to share information about trading by mutual market participants or to become members of the Intermarket Surveillance Group. Such rules, which are not required by the Dodd-Frank Act, would be operationally burdensome for SB SEFs and could discourage the execution of SB swaps on SB SEFs. We urge the SEC to avoid this result.

iii. Central Counterparty Clearing House ("CCP") Connectivity

BlackRock requests that the SEC affirm that a SB SEF must provide connectivity to all CCPs that may clear a SB swap which is listed on the SB SEF. This type of requirement is necessary to achieve the Dodd-Frank Act's objectives of allowing counterparties to choose their clearing agency. We note that the CFTC, in its proposed rules on swap execution facilities, would require that "for swaps cleared by a DCO [derivatives clearing organization], a SEF must ensure that it has the capacity to route transactions to the DCO."[13] This language suggests that if a DCO offers a swap for clearing, each SEF that lists that swap for execution must ensure that market participants will have the capability to route transactions in an efficient manner to that DCO. The CFTC staff has, in informal conversations, confirmed this interpretation of the proposed regulation and we encourage the SEC to adopt a parallel requirement.

[13] *See* Core Principles and Other Requirements for Swap Execution Facilities, 76 Fed. Reg. 1214, 1229 (Jan. 7, 2011).

The Dodd-Frank Act contemplates that counterparties to a SB swap will choose where the SB swap will be cleared. If a SB SEF is not required to ensure connection of market participants with each clearing agency that accepts a particular SB swap for clearing, a SEF would be able to deprive swap counterparties of available liquidity by providing connectivity to only one clearing agency, resulting in a form of vertically-integrated SB SEF-clearing agency model for trade execution and clearing. Clarifying that SB SEFs must offer connectivity to each clearing agency that clears a SB swap will enhance competition by preventing one clearing agency from establishing a monopoly for clearing a particular swap. In addition, connectivity to multiple clearing agencies will reduce costs to market participants who would otherwise have to participate on multiple SB SEFs in order to have access to the liquidity available for a cleared transaction. For example, if two SB SEFs offer trading on SB swap B, but one SB SEF ensures connectivity only to the CME Group ("CME") while the other SB SEF ensures connectivity only to the LCH Clearnet Group ("LCH"), then a client would need to connect to both SB SEFs to have access to the liquidity of the CME and LCH contracts, which may be identical from a risk standpoint. This would raise costs for end users and discourage execution on SB SEFs.

iv. Swaps Available to Trade

The Dodd-Frank Act requires that all SB swaps subject to the clearing requirement and "made available to trade" by a national securities exchange ("Exchange") or SB SEF be traded on an Exchange or SB SEF (the "Execution Requirement").[14] A cleared SB swap may be exempt from the Execution Requirement if no SB SEF or Exchange "makes the security-based swap available to trade." We appreciate the Commission's recognition that the term "available to trade" is a critical aspect of the determination that a swap must be traded on a SB SEF or Exchange.[15] We agree with the Commission that SB SEFs should not be given discretion to determine which SB swaps are "made available to trade" in light of their pecuniary interest in the determination. Instead, we believe that the SEC should either make the determination itself or prescribe objective factors that the swap review committee of a SB SEF could apply mechanically to determine whether a SB swap is "made available to trade."[16]

We also appreciate that the Commission has distinguished between listing a SB swap and making that SB swap "available to trade" in the Proposed Rules. In its final rule, the Commission should go further, however, and explicitly curb SB SEF discretion for declaring a product "available to trade." Because the determination that an instrument has been made available to trade essentially removes it from the bilateral OTC SB swap market, a significant segment of customers and market makers without connectivity to that particular platform would effectively be precluded from entering the market in that instrument unless they rely on intermediaries or other SB SEFs or Exchanges that also offer that SB swap. Market participants would be required to seek connectivity with the platform listing a

[14] *See* Section 763 of the Dodd-Frank Act, which inserts Section 3C of the Exchange Act.
[15] *See* Proposed Rules at 10969.
[16] The BlackRock SEF Letter urges the CFTC to adopt mandatory objective criteria for determining when a swap is made available to trade. *See* BlackRock SEF Letter at 8.

particular instrument in order to trade the instrument. As a consequence, market participants with greater resources to devote to connectivity, operations and document negotiation would likely have an advantage in gaining access to trading. The exclusion of market participants who do not have such resources would be inconsistent with the equal access requirements of the Dodd-Frank Act.

IV. SB SEF Governance

BlackRock, as the voice of its clients, believes that the committees responsible for the day-to-day operations of SB SEFs, Exchanges, and clearing agencies should include input from all market participants and that no one class of participant should dominate these committees. The Commission should require that SB SEFs ensure that buy-side market participants have a meaningful voice on these operating committees. We note that Proposed Rule 811(c)(2) would impose a fair representation standard on the swap review committee of the SB SEF. Under this standard, each class of participant, as well as other market participants, must be given the right to participate on the swap review committee and no category of market participant may predominate. We believe such representation is critical to building a robust and sustainable regulatory framework for SB SEFs to serve the best interests of our clients as well as the interests of the U.S. financial system.[17]

We ask the Commission to take a similar approach when adopting other SB SEF governance rules. Specifically, we believe such rules should require SB SEFs to have robust procedures and processes to evaluate and approve eligibility to participate on the SB SEF. The SEC also should provide clarity on the role and liability of the SB SEF for transactions that have trade execution breaks. In the central limit order book where parties trade anonymously, it is essential that a SB SEF have the right rules and processes in place to manage credit risk exposure of market participants allowed to participate on the SB SEF and for trade execution break resolution.

V. Market Development

An important aspect of a sustainable regulatory regime is sizing appropriately the costs of regulation. One way to keep costs relatively low is to harmonize compliance duties across agencies where possible. The Dodd-Frank Act provides this opportunity for SB SEFs and their equivalent for swaps, SEFs. Although the CFTC will register and supervise SEFs and the SEC will do the same for SB SEFs, the statutory language establishing SB SEFs is nearly identical to the language establishing SEFs. Moreover, the Dodd-Frank Act and the Proposed Rule contemplate that some facilities may register as both a SEF and a SB SEF, further indicating that there should be significant overlap between the regulation of SEFs and SB SEFs.

[17] We also support Proposed Rule 820, which would require the rules of a SB SEF to assure a fair representation of its participants in the selection of its directors and the administration of its affairs. We plan to submit a comment letter further emphasizing this view in response to the SEC's proposal entitled "Ownership Limitations and Governance Requirements for Security-Based Swap Clearing Agencies, Security-Based Swap Execution Facilities, and National Securities Exchanges with Respect to Security-Based Swaps under Regulation MC." In addition, we have made similar comments to the CFTC; *see* BlackRock SEF Letter at 9 and n. 10.

However, the SEC's Proposed Rules for SB SEFs differ substantially from the CFTC's proposal on SEFs. We recognize that some differences may be inevitable since the swap and SB swap markets differ in some respects, but greater harmonization is possible and desirable for buy-side market participants. Differences between the CFTC's and SEC's rules that are not required by differences between the financial products each agency regulates will "drive up the cost of implementation, without improving the regulatory structure."[18] We urge the SEC and CFTC to meet and harmonize their rules as much as possible to create a more streamlined approach to SEF and SB SEF regulation before either regulator adopts final rules in this area.

In addition, we urge the SEC and CFTC to engage foreign regulators to take a flexible, harmonized approach towards devising the new market rules for execution platforms. SB swaps in one market are often hedged in or linked to other markets, and it is critical that SB SEFs (or their equivalents) in different jurisdictions operate in a compatible manner. This need for compatibility also favors flexibility in SB SEF regulation. We note that the European Commission has indicated its intention to be flexible in its regulation of derivatives trading platforms and we recommend that the SEC not develop rigid rules.

VI. Sequencing and Implementation

BlackRock recommends that the SEC allow sufficient time for the rule writing, design, and implementation of SB SEFs. SB SEFs are a new and unknown entity for all market participants. We recommend SB SEF implementation follow clearing implementation and precede public real-time reporting and block size rule implementation. Once the transition of clearing standardized products from the OTC bilateral market to a cleared environment has been successfully achieved, introducing SB SEFs will be more orderly and will have a higher probability of acceptance and adoption by market participants.

Thank you for the opportunity to share our views on this important issue. If you would like to discuss further, please contact any of us.

Sincerely,

Joanne Medero
Richard Prager
Supurna VedBrat

[18] *See* Letter from Barney Frank, House Committee on Financial Services, to Mary Schapiro and Gary Gensler (Feb. 18, 2011).