



April 4, 2011

**Via Electronic Submission:** <http://www.sec.gov/rules/proposed.shtml>

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

**Re: Proposed Rule and Proposed Interpretation on Registration and Regulation of Security-Based Swap Execution Facilities (RIN 3235-AK93)**

Dear Ms. Murphy:

Managed Funds Association (“MFA”)<sup>1</sup> appreciates the opportunity to provide comments to the Securities and Exchange Commission (the “**Commission**”) on its proposed rule and proposed interpretation relating to “Registration and Regulation of Security-Based Swap Execution Facilities” (the “**Proposed Rules**”)<sup>2</sup> under Title VII<sup>3</sup> of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “**Dodd-Frank Act**”).<sup>4</sup> MFA supports the Commission’s decision to provide baseline principles interpreting the definition of security-based swap execution facility (“**SB SEF**”), rather than establishing a prescribed configuration. In addition, we share the Commission’s view that providing flexibility for those trading venues that seek to register with the Commission as SB SEFs is essential to permit the continued development of organized markets for the trading of security-based swaps (“**SB Swaps**”).<sup>5</sup>

As a result, we are providing comments to the Commission on the Proposed Rules to assist the Commission in adopting final rules that promote SB SEFs as desirable venues for the execution and trading of SB Swaps, while ensuring that SB SEFs and exchanges are appropriate

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<sup>1</sup> MFA is the voice of the global alternative investment industry. Its members are professionals in hedge funds, funds of funds and managed futures funds, as well as industry service providers. Established in 1991, MFA is the primary source of information for policy makers and the media and the leading advocate for sound business practices and industry growth. MFA members include the vast majority of the largest hedge fund groups in the world who manage a substantial portion of the approximately \$1.9 trillion invested in absolute return strategies. MFA is headquartered in Washington, D.C., with an office in New York.

<sup>2</sup> Commission Proposed Rule; Proposed Interpretation on “Registration and Regulation of Security-Based Swap Execution Facilities”, Release No. 34-63825, File No. S7-06-11, RIN 3235-AK93, 76 Fed. Reg. 10948, at 10954 (Feb. 28, 2011) (the “**Proposing Release**”).

<sup>3</sup> Entitled “The Wall Street Transparency and Accountability Act”.

<sup>4</sup> Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>5</sup> Proposing Release at 10953.

for the trading of particular classes of SB Swaps (“**SBS Class**”). In particular, in this comment letter, MFA:

- supports Commission-approved objective, transparent criteria to determine when an SB SEF can make an SB Swap “available to trade”;
- supports a request for quote (“**RFQ**”) model that permits a quote-requester to send an RFQ to a single liquidity provider or recipient;
- encourages the Commission to permit the execution of block trades in “one participant to one participant” transactions that could then be “printed” on an SB SEF; and
- articulates concern for the discretion afforded to an SB SEF to preclude access to its platform to any eligible contract participant (“**ECP**”)<sup>6</sup> that is not registered with the Commission as a security-based swap dealer (“**SB Swap Dealer**”), major security-based swap participant (“**Major SB Swap Participant**”) or broker.

#### **I. Determination of an SB Swap’s Availability to Trade**

Section 763(a) of the Dodd-Frank Act provides that if an SB Swap is subject to the clearing requirement, the transaction must be executed on an exchange, on a registered SB SEF or an SB SEF exempt from registration, unless no SB SEF or exchange makes such SB Swap available for trading or the SB Swap transaction is subject to a clearing exception.<sup>7</sup> MFA strongly supports the Commission’s position that “available to trade” must mean something more than the decision to trade or list an SB Swap on an SB SEF or an exchange.<sup>8</sup> We also support the Commission’s requirement that an SB SEF must use objective criteria established by the Commission to make an SB Swap “available to trade” and periodically review SB Swaps to determine the appropriateness of the continued trading of the SB Swap on the SB SEF.<sup>9</sup> This initial and ongoing review is critically important since, once an SB Swap is available to trade on an exchange or an SB SEF, it can no longer trade in the over-the-counter (“**OTC**”) market.<sup>10</sup>

In the Proposing Release, the Commission sets forth two possible tests for determining whether an SB Swap is “available to trade”.<sup>11</sup> Under the first test, the Commission would

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<sup>6</sup> The ECP definition is contained in Section 3(a)(65) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”).

<sup>7</sup> Section 763(a) adds Section 3C(h) of the Exchange Act. *See also* Section 761(a), adding Section 3(a)(77) of the Exchange Act, which defines the term “security-based swap execution facility”.

<sup>8</sup> Proposing Release at 10969.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 10968.

<sup>11</sup> *Id.* at 10969.

compare the aggregate percentage of trading taking place in the SB Swap on exchanges and SB SEFs with the percentage of trading of that SB Swap in the OTC market. Under the second test, the Commission would look to the overall volume in the SB Swap, wherever executed, where a baseline trading threshold for each SB Swap must be met. That baseline threshold could be a minimum number of transactions in the SB Swap executed within a given period or a minimum notional value traded in the SB Swap.<sup>12</sup> Since many SB Swaps do not currently trade on any exchange or SB SEF, we believe that initially the second test would more appropriately determine whether an SB Swap is available to trade on an SB SEF or an exchange.<sup>13</sup> We also strongly support the use of a minimum liquidity threshold that takes into account the specific asset class of a particular SB Swap because if there is limited liquidity for a particular SB Swap or SBS Class, requiring the trading of that SB Swap or SBS Class on an SB SEF or exchange can further diminish its liquidity.

We, therefore, recommend that the Commission make the liquidity of the SB Swap or SBS Class the determining factor of where the SB Swap or SBS Class trades, by mandating that, at all times, an SB Swap's availability for trading must be subject to a minimum liquidity threshold tailored to each particular SBS Class of that SB Swap. In addition, if an SB Swap or SBS Class ceases to trade effectively on an SB SEF or exchange, the Commission should suspend the mandatory SB SEF or exchange execution requirement for that SB Swap or SBS Class and allow it to trade bilaterally as well as on an SB SEF, until its liquidity is suitably re-established.

Moreover, under proposed §242.811(c), an SB SEF must establish a swap review committee comprised of each class of participants, including customers of the SB SEF, which will determine whether the SB SEF should permit trading of an SB Swap.<sup>14</sup> We agree that the swap review committee's determination about whether the SB SEF should trade an SB Swap should not be the same as a determination that the SB SEF has made such SB Swap "available to trade".<sup>15</sup> We agree that separation of these determinations will prevent the swap review committee's decision from being the sole determinant of when an SB Swap can no longer trade in the OTC market.<sup>16</sup> In this regard, we believe that the Commission should require the swap

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<sup>12</sup> *Id.*

<sup>13</sup> We recognize that the first test may be an effective alternative once SB SEFs commence active trading.

<sup>14</sup> Proposed §242.811(c). The swap review committee must periodically review each SB Swap to determine whether to continue to trade that SB Swap on the SB SEF. To determine whether the SB Swap should trade on the SB SEF, the swap review committee must consider at least: (1) whether the liquidity of the market for the SB Swap is at an appropriate level for the platform on which the SB Swap trades; and (2) whether the SB Swap would be more suited for trading on a different type of platform, including platforms that would provide increased price transparency for participants entering orders, requests for quotes or other trading interests, and whether the SB Swap is readily susceptible to manipulation. The first review of SB Swaps by the swap review committee will not be earlier than 120 days after the initiation of trading for a given SB Swap. Decisions made by the swaps review committee would be promptly reported to the Chief Compliance Officer or the regulatory oversight committee

<sup>15</sup> Proposing Release at 10969 n. 149.

<sup>16</sup> *Id.*

review committee to consider whether the SB Swap or SBS Class should trade in the OTC market as well as on an SB SEF.

## II. Execution Models

Section 761(a) of the Dodd-Frank Act defines an SB SEF as a “trading system or platform in which multiple participants have the ability to execute or trade security-based swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that (A) facilitates the execution of security-based swaps between persons; and (B) is not a national securities exchange.”<sup>17</sup> In the Proposing Release, the Commission states that it interprets the definition to mean “a system or platform that allows more than one participant to interact with the trading interest of more than one other participant on that system or platform.”<sup>18</sup> Therefore, in accordance with this interpretation, an SB SEF would be required to provide basic functionality to give any participant on the SB SEF the ability to make and display executable bids or offers accessible to all other participants on the SB SEF, if the market participant chooses to do so.<sup>19</sup> MFA strongly supports the Commission’s approach designed to allow flexibility to those trading venues that seek to register with the Commission as SB SEFs and to permit the continued development and evolution of organized markets for the trading of SB Swaps. We share the Commission’s belief that this flexible approach will allow the Commission to monitor the market for SB Swaps and propose adjustments, as necessary, to any interpretation that it may adopt as this market sector continues to evolve.<sup>20</sup>

### A. Limit Order Book Model

The Proposing Release states that the Commission believes that a limit order book system for the trading of SB Swaps could satisfy the definition of SB SEF and that such a system may be especially suitable for the trading of more liquid SB Swaps.<sup>21</sup> However, the Proposing Release is ambiguous with regard to how a limit order book would differ from a traditional order book and from a central limit order book. We encourage the Commission to clarify in the adopting release the characteristics it envisions for the limit order book model, especially since the Proposing Release recognizes that this model is not yet in operation for the trading of SB Swaps in the United States.<sup>22</sup>

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<sup>17</sup> Section 761(a) of the Dodd-Frank Act, amending Section 3(a)(77) of the Exchange Act. *See also* Proposing Release at 10949-50 (explaining the basic regulatory framework for SB SEFs), at 10953-55 (explaining the scope of the SB SEF definition), at 10958-59 (setting forth exemptions from the SB SEF definition), and at 10959-61 (setting forth conditional exemptions for SB SEFs from regulation as brokers).

<sup>18</sup> Proposing Release at 10953.

<sup>19</sup> *Id.* at 10955.

<sup>20</sup> *Id.* at 10953.

<sup>21</sup> *Id.* at 10955.

<sup>22</sup> *Id.* at 10952.

The Proposing Release also suggests that if an SB Swap is trading through an RFQ mechanism (as we further describe in Section B below) but trading in the SB Swap becomes sufficiently liquid, the SB SEF should consider moving the SB Swap to a platform with greater transparency and competition, such as a limit order book.<sup>23</sup> MFA applauds the flexibility afforded by this approach, which tailors the choice of trading venue to the liquidity of each product. However, we believe that the final rules should continue to recognize that there are many diverse SB Swap execution methodologies and that the order book model conceivably encompasses a variety of multiple-to-multiple execution styles. Thus, we recommend that the Commission permit SB SEFs to operate both a limit order book model and an RFQ model side-by-side. We believe that, for SB SEFs that operate both a limit order book and an RFQ mechanism, the Commission must not impose requirements on pre-trade transparency and interaction between the RFQ and the limit order book that would discourage an SB SEF from implementing both mechanisms. Such requirements could deter use of an RFQ facility and undermine its utility. Rather, we recommend a more limited interaction between an RFQ and limit order book, to the effect that, when identified RFQ recipients respond to the RFQ, the SB SEF should communicate any bids or offers resting on the trading system or platform pertaining to that instrument to the quote-requester along with the responsive quotes. The quote-requester may then consider these resting orders as part of its evaluation of the best trade bid or offer,<sup>24</sup> and should be able to continue exercising discretion in making this complex evaluation based on all the factors associated with the trade.

## **B. RFQ Model and Composite Indicative Quote**

Under the Proposed Rules, a system or platform that allows a quote-requester to send an RFQ to all participants, but also permits the quote-requester to send an RFQ to as few as one participant (*i.e.*, allows, but does not require, multiple participants to execute or trade SB Swaps by accepting bids or offers made by multiple participants) would satisfy the statutory definition of SB SEF.<sup>25</sup> However, in the Proposing Release, the Commission requests comments on whether it should limit a quote-requester's option to send an RFQ to fewer than all participants to block trades.<sup>26</sup> MFA does not recommend limiting the proposed interpretation solely to block

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<sup>23</sup> *Id.* at 10969.

<sup>24</sup> This recommendation essentially mirrors the interaction between RFQs and the order book suggested by the Commodity Futures Trading Commission (“CFTC”) in its Notice of Proposed Rulemaking on “Core Principles and Other Requirements for Swap Execution Facilities”, RIN 3038-AD18, 76 Fed. Reg. 1214 (Jan. 7, 2011) (“CFTC Proposed SEF Rules”). Specifically, CFTC proposed rule 37.9(a)(ii) contemplates that upon identified market participants receiving an RFQ, the swap execution facility (“SEF”) must take into account any bids or offers resting on the trading system or platform pertaining to the same instrument and communicate them to the quote-requester along with the responsive quote. *See also* MFA’s comment letter to the CFTC in response to the CFTC’s Proposed SEF Rules, dated March 8, 2011, at 6, available at <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=31242&SearchText=managed>.

<sup>25</sup> Proposing Release at 10953, which specifies that an SB SEF would be able to offer functionality to a participant enabling that participant to choose to send a single RFQ to any number of specific liquidity-providing participants on that SB SEF platform, including to just a single liquidity provider. *See also* Proposed §242.811(d)(2).

<sup>26</sup> *Id.* at 10956.

trades. Rather, we believe that the interpretation in the Proposing Release should apply to all transactions. We think it appropriate to give a quote-requester discretion as to the number of recipients to which it chooses to send an RFQ for all transactions because, among other reasons, in these markets, quote-requesters are typically sophisticated, institutional investors able to draw on their expertise to make this determination.

In addition, we are concerned that under proposed §242.811(e), an SB SEF that operates an RFQ platform must create and disseminate a composite indicative quote for SB Swaps traded on or through the SB SEF and make that screen available for viewing by all of that SB SEF's participants. All responses to an RFQ would be included in the composite indicative quote, including both composite indicative bids and composite indicative offers,<sup>27</sup> which the Commission believes will satisfy the transparency requirements of the Dodd-Frank Act and "would provide valuable pricing information to the participants of an SB SEF, while at the same time not disclosing specific trading interest of individual participants when that interest is not firm."<sup>28</sup>

We believe that composite indicative quotes, as presented in the Proposing Release, are counterproductive. The Commission indicates that composite indicative quotes will provide pre-transaction transparency.<sup>29</sup> However, we believe that where the quote-requester utilizes the RFQ, by definition, the trade is less liquid and the willingness of responders to provide good pricing is dependent on the confidentiality of its price. Therefore, in our view, pre-trade publication of illiquid market pricing will encourage "front running", undermine the willingness of responders to provide tight pricing and greatly diminish the appeal of allowing an SB SEF participant to send an RFQ to as few as one participant. Instead, we believe that it is critical in this type of market to permit the quote-requester to control pre-trade transparency.

In addition, the Commission should consider that bids and offers that are too high or low might distort composite indicative quotes, which could encourage abuse and greatly reduce the usefulness of pre-trade transparency attained through their dissemination. Since we would assume that the majority of SB Swaps traded through an RFQ model would not be actively traded, the publication of a composite indicative quote for such SB Swaps will prematurely disclose and potentially undermine the negotiation inherent in the RFQ process. If the negotiation is undermined, it will likely have negative repercussions on the ability of SB SEF participants to execute these transactions efficiently, thus affecting market liquidity. Thus, because of the market impact of pre-trade transparency, we believe post-trade reporting is sufficient. For example, in a regime in which non-block transactions are reported to a swap data repository ("**SDR**") in real time (*i.e.*, as soon as technologically practicable, and in any event no

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<sup>27</sup> Proposed §242.811(e) and Proposing Release at 10953 n. 41. Essentially, the composite indicative quote is the "average" quote for each SB Swap available on an SB SEF.

<sup>28</sup> *Id.* at 10973.

<sup>29</sup> *Id.* at 10972.

later than 15 minutes from the time of execution)<sup>30</sup> and the SDR disseminates information about those transactions immediately upon receipt,<sup>31</sup> we believe post-trade transparency offers a sufficient indication of market interest for a certain SB Swap or SBS Class.

### III. Block Trades

The Proposed Rules require SB SEFs to establish and enforce rules governing the manner in which they will handle block trades<sup>32</sup> and permit an SB SEF to create different trading rules for block trades in response to liquidity providers' concerns that requiring an excessive level of pre-trade transparency will result in front-running and could diminish liquidity.<sup>33</sup> However, in the Proposing Release, the Commission also indicates that it believes that block trades should be subject to the same minimum pre-trade transparency and order interaction requirements as non-block trades, including the dissemination of composite indicative quotes.<sup>34</sup> MFA is concerned that subjecting block trades to the same pre-trade transparency and order interaction requirements as non-block trades will promote "front running" and will significantly impact the liquidity available on those platforms that would provide for block trading and adversely affect the utility of the block trading feature. As a result, we support the Commission permitting the execution of block trades in "one participant to one participant" transactions that could then be "printed" on an SB SEF.

Finally, although we are mindful of the underlying intent of the Dodd-Frank Act to migrate as many transactions in SB Swaps as possible onto SB SEFs, we would like to reiterate the importance of defining the notion of block size in a way that allows a sufficient number of transactions to continue to take place bilaterally. The Commission has not set minimum amounts for block trades,<sup>35</sup> but rather references block trade sizes as set forth in Proposed Regulation

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<sup>30</sup> Commission Proposed Rules on "Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information", Release No. 34-63346, File No. S7-34-10, RIN 3235-AK80, 75 Fed. Reg. 75208 (Dec. 2, 2010) ("**Proposed Regulation SBSR**"), proposed §242.901(c)–(d).

<sup>31</sup> Proposed Regulation SBSR §242.902(a).

<sup>32</sup> Proposed §242.811(d)(9).

<sup>33</sup> Proposing Release at 10973-74.

<sup>34</sup> *Id.* The Commission indicates that in a system that permits participants to display firm quotes a block trade would need to interact with the displayed orders like any other trade. The Proposing Release states that allowing block trades to be executed off of the SB SEF and then reported to the SB SEF without interacting with other trading interest on the SB SEF (*i.e.*, effectively using the SB SEF as a "print facility"), could circumvent the mandatory trade execution requirement and undermine the goals of providing for more transparent and competitive trading on an SB SEF.

This approach is different from the one taken by the CFTC. CFTC Proposed SEF Rule 37.9(a) explicitly defines block trades as "permitted transactions" which do not have any pre-trade transparency, that may but do not have to be executed on SEFs and for which voice-based execution continues to be permissible.

<sup>35</sup> By contrast, the CFTC defines block size as the greater of (a) the 95th percentile of transaction size in that category of swap instrument in the past calendar year (distribution test) and (b) the largest of five times the mean, median, and mode of transaction sizes for that category swap instrument over the past calendar year (social size

SBSR<sup>36</sup> relating to trade reporting.<sup>37</sup> We believe that the Commission's determinations relating to block size should take into account the varying characteristics of market liquidity for a particular instrument and the characteristics of the relevant class or product. In light of the importance of the block trade designation and the myriad of SB Swaps, we do not believe that a one-size-fits-all definition for all SB Swaps is sufficient. Rather, we believe that an SB SEF's swap review committee should determine on a periodic basis what constitutes a "block" for each SB Swap or SBS Class that it trades. This approach will permit the markets to adjust as trading develops.

As a related consideration, we reiterate our belief that with respect to the determination of block trade sizes for SB Swaps, the Commission should obtain empirical evidence before establishing block trade levels for each SB Swap or SBS Class (*e.g.*, relating to duration, underlying reference entity, etc.), so as to ensure that any final rules do not disrupt the markets or reduce liquidity.<sup>38</sup> If the Commission elects to set block trade levels prior to obtaining appropriate data, it should set the initial levels for all SBS Classes sufficiently low such that they will not reduce market liquidity.<sup>39</sup> The Commission could then adjust these levels over time as evidence supporting higher or lower thresholds becomes available.<sup>40</sup> In addition, in the context of Regulation SBSR, we endorse a "size-plus" approach to disclosure of transaction notional amounts that is specific to each SB Swap or SBS Class (*i.e.*, an approach conceptually similar to the mandatory reporting of OTC secondary market transactions in eligible fixed income securities through the Trade Reporting and Compliance Engine ("**TRACE**")).<sup>41</sup>

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multiple test). CFTC Notice of Proposed Rulemaking on "Real-Time Public Reporting of Swap Transaction Data", RIN 3038-AD08, 75 Fed. Reg. 76140 (December 7, 2010), proposed rule 43.5(h)(3).

<sup>36</sup> Proposed Regulation SBSR at 75285; proposed §242.902(b).

<sup>37</sup> Proposed §242.907(b) states that swap data repositories ("**SDRs**") will be required to establish and maintain written policies and procedures for calculating and publicizing block trade thresholds for all SB Swaps reported to the SDRs. Each SB SEF would use the same threshold for block trades to ensure consistency and uniformity across SB SEFs. However, until the Commission establishes the criteria and formula for determining a block trade pursuant to proposed Regulation SBSR, the Proposed Rules would permit an SB SEF to set its own criteria and formula for determining what constitutes a block trade as long as such criteria and formula are consistent with the Core Principles and related rules and regulations.

<sup>38</sup> See MFA's comment letter to the Commission, dated January 18, 2011, in response to Proposed Regulation SBSR, at 4, available at: <http://www.sec.gov/comments/s7-34-10/s73410-27.pdf>.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> See Financial Industry Regulatory Authority, Inc. ("**FINRA**") Rule 6760, which requires member broker-dealers to report transactions in corporate and agency debt securities to TRACE within 15 minutes. See also FINRA Rule 6750(a), which requires FINRA to disseminate publicly a transaction report immediately upon receipt of the information. However, if the par value of the trade exceeds \$5 million (in the case of investment grade bonds) or \$1 million (in the case of non-investment-grade bonds) the quantity disseminated by TRACE will be either "5 million+" or "1 million+". At no time will TRACE subsequently disseminate the full size of the trade. See <http://www.finra.org/Industry/Compliance/MarketTransparency/TRACE/>.

#### IV. Access to an SB SEF

Under proposed §242.809(a), an SB SEF must permit a person to become a participant in the SB SEF only if such person is an ECP or is registered with the Commission as an SB Swap Dealer, Major SB Swap Participant or broker (as defined in Section 3(a)(4) of the Exchange Act). However, under proposed §242.809(b), an SB SEF may choose not to permit any ECP that is not registered with the Commission as an SB Swap Dealer, Major SB Swap Participant or broker to become a participant in the SB SEF.<sup>42</sup>

MFA respectfully disagrees with the Commission allowing an SB SEF to choose whether to permit ECPs not registered as an SB Swap Dealer, Major SB Swap Participant or broker to become SB SEF participants. We believe that giving SB SEFs such discretion could be prejudicial to many market participants that should be eligible to participate in the trading of SB Swaps, such as hedge funds that are not so registered.<sup>43</sup> As a result, we request that the Commission's final rules require SB SEFs to allow all ECPs to become SB SEF participants.<sup>44</sup> Additionally, to ensure the impartial application of the SB SEF's admission requirements, we request that the Commission require the independent directors on an SB SEF's Board of Directors<sup>45</sup> to review all applications from potential SB SEF participants.

In addition, proposed §242.815(a) requires SB SEFs to set specific standards to ensure the financial integrity of the transactions entered on the SB SEF. We believe the Commission should require each SB SEF to recognize in its standards proposed §242.815(b), which would permit an SB SEF's rules to allow a participant trading an SB Swap that will not be cleared through a registered clearing agency to consider counterparty credit risk in selecting potential counterparties. In parallel, we recommend that the Commission memorialize in the final rules that as long as a participant has an arrangement with a member of a registered clearing agency to clear trades subject to mandatory clearing,<sup>46</sup> that participant is deemed to meet the financial integrity standard. We believe this approach is consistent with and supports the principle of fair access set forth in proposed §242.811(b).

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<sup>42</sup> Proposed §242.809(b).

<sup>43</sup> See MFA's comment letter to the Commission and the CFTC, dated February 22, 2011, in response to RIN No. 3235-AK65: the Commission and CFTC's Joint Proposed Rule; Proposed Interpretations on "Further Definitions of 'Swap Dealer,' 'Security-Based Swap Dealer,' 'Major Swap Participant,' 'Major Security-Based Swap Participant' and 'Eligible Contract Participant'", available at: <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27887&SearchText=managed%20funds%20association>.

<sup>44</sup> In any event, we believe that since registered investment advisers registered will be subject to the Commission's oversight, the Commission should permit them to become SB SEF participants.

<sup>45</sup> Commission Proposed Rule on "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", Release No. 34-63107, File No. S7-27-10, RIN 3235-AK74, 75 Fed. Reg. 65882 (Oct. 26, 2010), at 65899-903; proposed §242.702(d)(1), requiring that a Board of an SB SEF be composed of a majority of independent directors.

<sup>46</sup> Proposed §242.809(c).

Finally, with respect to the requirement that a participant agree to consent to an SB SEF's disciplinary procedures,<sup>47</sup> we request that the Commission clarify in its adopting release that, in order to avoid SB SEF overreaching, an SB SEF's disciplinary regime may only implement, and not be in addition to, the oversight responsibilities of the Commission.

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MFA thanks the Commission for the opportunity to provide comments regarding the Proposed Rules. Please do not hesitate to contact Carlotta King 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 Schapiro, Chairman  
The Hon. Kathleen L. Casey, Commissioner  
The Hon. Elisse B. Walter, Commissioner  
The Hon. Luis A. Aguilar, Commissioner  
The Hon. Troy A. Paredes, Commissioner

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<sup>47</sup> Proposed §242.809(c).