

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
United States
www.sec.gov

Chris Barnard

26 June 2015

- **17 CFR Parts 240 and 242**
- **Release No. 34-74834**
- **File No. S7-06-15**
- **Application of Certain Title VII Requirements to Security-Based Swap Transactions Connected with a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed By Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent**

Dear Sir.

Thank you for giving us the opportunity now to comment on your Proposed rule and proposed rule amendments on Application of Certain Title VII Requirements to Security-Based Swap Transactions Connected with a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed By Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent.

You are proposing amendments and a re-proposed rule to address the application of certain provisions of the Securities Exchange Act of 1934 (Exchange Act) that were added by Subtitle B of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to cross-border security-based swap (SBS) activities. You are proposing amendments to Exchange Act rules 3a71-3 and 3a71-5 that would address the application of the de minimis exception to SBS transactions connected with a non-U.S. SBS dealing activity that are arranged, negotiated, or executed by personnel of such person located in a U.S. branch or office, or by personnel of such person's agent, located in a U.S. branch or office. You are also re-proposing Exchange Act rule 3a71-3(c) and proposing certain amendments to Exchange Act rule 3a71-3(a) to address the applicability of external business conduct requirements to the U.S. business and foreign business of registered SBS dealers. You are also proposing amendments to Regulation SBSR to apply the regulatory reporting and public dissemination requirements to transactions that are arranged, negotiated, or executed by personnel of non-U.S. persons, or personnel of such non-U.S. persons' agents, that are

located in the United States and to transactions effected by or through a registered broker-dealer (including a registered SBS execution facility), along with certain related issues, including requiring registered broker-dealers (including registered SBS execution facilities) to report certain transactions that are effected by or through the registered broker-dealer.

I broadly support these proposals. I note that your proposals differ from the Commodity Futures Trading Commission (CFTC) proposals so far in some key areas, including mandatory clearing and trade execution. I would first generally comment that the proposed rules should ideally be as close as possible to the jurisdictional rules proposed by the CFTC for swaps. I would suggest that there is little administrative or economic rationale for proposing very different rules, and rule differences lead to duplication of operational, controlling and reporting regimes at the lowest level of the reporting entities, which is counterproductive, confusing and wasteful. I would therefore recommend that the SEC and the CFTC should work more closely together to propose one set of robust rules regarding jurisdictional oversight for SBSs and swaps. This will reduce cost and complexity, and is in itself a strong signal to the markets that regulators are seen to be working more closely together, rather than within their individual silos.

One specific comment that I have is that I would recommend that you should not provide exemptive relief for the following cases: non-U.S. persons whose counterparties have a right of recourse against a U.S. person under a security-based swap; non-U.S. persons whose obligations under a security-based swap are guaranteed by a U.S. person; and guaranteed non-U.S. persons. For these cases, the activities and transactions “have a direct and significant connection with activities in, or effect on, commerce of the United States”¹.

Yours faithfully

C.R.B.

Chris Barnard

¹ This is the wording under Section 722(d) of the Dodd-Frank Act, which amends Section 2 of the CEA for provisions relating to swaps. I support a similar approach also for SBSs.