

June 10, 2022

Vanessa A. Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re: Rules Relating to Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities (File No. S7-14-22)**

Dear Ms. Countryman:

The Wholesale Markets Brokers' Association, Americas ("WMBAA")<sup>1</sup> appreciates the opportunity to provide comments to the Securities and Exchange Commission (the "Commission") in response to the Commission's proposed rules governing security-based ("SB") swap execution and security-based swap execution facilities ("SBSEF") (the "Proposed Rule" or "Regulation SE").<sup>2</sup>

As the operators of global trading venues for financial instruments, including swap execution facilities subject to Commodity Futures Trading Commission ("CFTC") registration and regulation, the WMBAA is pleased to share its views based on its experience operating in other markets and complying with other regulatory regimes, in an attempt to support the Commission's smooth implementation of new rules designed to govern the SB swap marketplace. As interdealer brokers, WMBAA members have long acted as intermediaries in connection with the execution of swaps and SB swaps in the over-the-counter market and are responsible for the execution of most of the interdealer intermediated swaps transactions in the world.

The WMBAA has a long history of supporting legislative and regulatory efforts to encourage and improve liquidity formation, price discovery, and trade execution on regulated trading platforms, particularly as established under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). It is in that context that the WMBAA

---

<sup>1</sup> The WMBAA is an independent industry body representing the largest inter-dealer brokers. The members of the group – BGC Partners, GFI Group, Tradition, and TP ICAP – operate globally, including in the North American wholesale markets, in a broad range of financial products, and have received registration as swap execution facilities. The WMBAA membership collectively employs approximately 4,000 people in the United States; not only in New York City, but in Stamford and Norwalk, Connecticut; Chicago, Illinois; Jersey City and Piscataway, New Jersey; Raleigh, North Carolina; Miami and Juno Beach, Florida; Burlington, Massachusetts; and Dallas, Houston and Sugar Land, Texas.

<sup>2</sup> *Rules Relating to Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities*, 87 Fed. Reg. 28872 (May 1, 2022).

generally supports this rulemaking, which harmonizes the Commission's rules with those of the CFTC and will reduce most of the duplicative regulatory burdens that could appear when conducting business through a dually-registered trading venue.

Before addressing specific issues, the WMBAA observes that market participants (SBSEF participants, new SBSEF participants, clearing agencies, SB swap data repositories, as well as critical market infrastructure providers) will need adequate time before the SBSEF and trade execution rules "go live." Based on our collective experience with implementing new rules and changes to market structure operations, the WMBAA encourages the Commission to provide at least one year from adoption of Regulation SE before its effective date to ensure a smooth transition.

The WMBAA provides several constructive comments in response to the Proposed Rule and would welcome the opportunity for further engagement on these issues.

### **Ownership and Governance Restrictions**

Rule 834 of the Proposed Rule would not permit an SBSEF's members, either alone or together with any officer, principal, or employee of the member, to:

- (1) Own, directly or indirectly, 20 percent or more of any class of voting securities or of other voting interest in the SBSEF or SB swap exchange; or
- (2) Directly or indirectly vote, cause the voting of, or give any consent or proxy with respect to the voting of, any interest that exceeds 20 percent of the voting power of any class of securities or of other ownership interest in the SBSEF or SB swap exchange.<sup>3</sup>

The WMBAA strongly opposes proposed Rule 834 and urges the Commission to not adopt this provision. As written, proposed Rule 834 would have the effect of prohibiting certain SBSEF participants from having common ownership and control as the SBSEF. In other words, an SBSEF likely would not be able to onboard an affiliated introducing broker ("IB"), even if the IB would be subject to the same rules and practices as an unaffiliated participant. As a result, some CFTC-registered SEFs, including the WMBAA member firms, have affiliated IB participants that execute their respective swaps business on their affiliated SEFs. The affiliated transactions make up a majority of the SEF's business. These firms may choose not to register as an SBSEF and take on the costs and burdens of being an SBSEF if they cannot accommodate their affiliate's trade execution needs. This would thwart the goal of developing a competitive landscape of regulated SB swap marketplaces.

The WMBAA, and many others, previously opposed these hard caps when they were proposed in 2010. The proposals were never approved by the Commission or the CFTC. With a decade of experience operating SEFs and venues for other financial products, including Commission-regulated alternative trading systems, the WMBAA still believes the Proposed Rule's approach is too heavy-handed of a way to solve a problem that has been more than adequately addressed

---

<sup>3</sup> *Id.* at 28926.

through less burdensome measures. The CFTC never adopted its proposed ownership/governance prohibition for SEFs, and its existing conflicts of interest rules have proven satisfactory.

The Commission should allow SBSEFs to maintain flexibility in establishing its governance structures. Rather than mandating ownership limits, we believe the Commission should instead permit SBSEFs to exercise reasonable discretion as to its mechanisms for mitigating conflicts of interest and rely, instead, on the conflict of interest and antitrust provisions already embedded in the SBSEF regulatory regime.

If adopted, this would be a fundamental departure from the CFTC's rules, minimizing many of the other benefits of a harmonized regime, and thwart efforts to smoothly implement the SB swap regulations. We believe some CFTC registered SEFs, which are prospective SBSEFs, might have to review their ownership and governance structure and, possible, amend their organization, only delaying implementation of these important rules that will benefit the SB swap market.

### **SBSEF Registration**

Proposed Rule 803 provides the requirements for registration as an SBSEF with the Commission and is modeled after CFTC Rule 37.3. Proposed Rule 803 also considers reserving exemptive authority for the Commission to relax or eliminate certain registration requirements for entities that are registered SEFs with the CFTC.<sup>4</sup>

The WMBA strongly supports the Commission's use of exemptive authority to facilitate an expedited registration process. Given that many entities will likely be dually registered with the Commission and the CFTC, we believe that the registration process for SBSEFs should be streamlined in such a way that the Commission could rely on an entity's existing CFTC SEF registration, which demonstrates that the entity is in good regulatory standing. This approach is even further supported by the fact that most of the Commission's Title VII Dodd-Frank rules are in place, and implementing the trade execution/SBSEF rules quickly would help to complete the implementation of these regulations.

A prolonged registration process, particularly for venues already registered with the CFTC, only further delays the introduction of regulated price discovery, liquidity formation, and trade execution for SB swaps. SBSEF registration also further expedites SB swap data reporting to the extent SBSEFs will report trades to a SB swap data repository under the Commission's Regulation SBSR, as this service cannot be provided until SBSEFs are registered and operational.

If the Commission were to not retain the exemptive authority within Proposed Rule 803, the WMBA supports a process that gives deference to existing CFTC SEFs and provides a more

---

<sup>4</sup> *Id.* at 28882.

streamlined process for such registrants. As the Commission observed in the Proposed Rule, most of the SB swap liquidity will likely be centralized around a few facilities, with most (if not all) of them already operating as CFTC-regulated SEFs.

### **Listing SB Swaps – Self-Certification**

Under the Proposed Rule, the Commission provides the procedures for listing products on SBSEFs and submitting rules via certification.<sup>5</sup> Entities that are dually registered would be able to make similar filings to the Commission and CFTC, with the exception that the Proposed Rule allows for a 10-day certification process, compared to a 1-day process under CFTC Part 40 regulations.

The WMBA believes that a 10-day self-certification process is too long and, therefore, does not support this suggestion under the Proposed Rule and encourages the Commission to reduce the review period to either harmonize with the CFTC's 1-day approach or, alternatively a 2-day review period. This will allow market operators to voluntarily offer Permitted Transactions (as defined in the Proposed Rule) to meet participants' demands to transact on regulated platforms in a reasonable period of time.

Further, the WMBA asks the Commission take into consideration the significant differences in the products being listed by SEFs and the universe of SB swaps that might be listed on SBSEFs. In comparison to the CFTC SEF listings, the SB swap landscape is much smaller. Thus, once operational, it is less likely that SBSEFs will add products regularly. We urge the Commission to consider the relatively low volume of new SB swaps likely to be self-certified once the regime is in place and accommodate participants' needs to hedge risk in a timely manner through a shorter review period for self-certified products.

Finally, the WMBA requests Commission confirmation that it does not expect SBSEFs to self-certify every security for which there may exist a related SB swap. For example, while an SBSEF may publish "terms and conditions" relevant for an instrument (like a single-name total return SB swap) under proposed Rule 804, the Commission might receive thousands of underlying national market system equity stocks from each SBSEF, exponentially increasing the number of products the Commission would need to review. Further, given the potential 10-day review period (compared to the CFTC's shorter timeframe), SBSEFs will be forced to proactively self-certify every potential SB swap in an attempt to be able to meet all potential participant demand without a two-week delay, only increasing the volume of self-certifications the Commission may receive. The WMBA believes that listing the instrument, and not each equity that may be linked to the instrument, is an appropriate approach to balance the SBSEF's and Commission's resources with respect to product self-certification.

---

<sup>5</sup> *Id.* at 28882.

### **Made Available to Trade Determination**

Proposed Rule 816 of Regulation SE, which is analogous to CFTC Rule 37.10, provides the “made available to trade” (“MAT”) process for SBSEFs.<sup>6</sup> As previously communicated to the CFTC,<sup>7</sup> the MAT process raises concerns for WMBAA members.

The WMBAA has long believed that market participants should have the ability or forum to comment on proposed MAT determinations and such a determination should not rest solely with a single SBSEF. Such an approach risks introducing commercial and other motives beyond an objective assessment of the factors set forth in the Proposed Rule, none of which are required to be considered.

The WMBAA encourages the Commission to consider these comments on the MAT process, despite deviating from the CFTC’s current approach. Regardless, the Commission should also ensure that all SBSEFs, and market participants, have adequate time to prepare for the operational and market conditions that come along with a MAT determination.

### **Prohibition on Name Give-Up**

The WMBAA believes that SEC should undertake an evolutionary approach to the prohibition on name give-up, which initially should apply only to Required Transactions, and not Permitted Transactions where clearing may not be certain leading up to or at the time of trade execution. The WMBAA believes Required Transactions would be the appropriate products to subject to this rule, and would encourage liquidity formation and further development of less liquid SB swaps where a SBSEF trading mandate is not required. At such time when voluntarily cleared SB swaps become more liquid, and a clearing and trade execution mandate become more appropriate, then the Commission can consider imposing the prohibition on post-trade counterparty disclosure for Permitted Transactions.

### **Daily Market Data Reports**

The WMBAA strongly opposes the proposed Daily Market Data Report proposed in Rule 825. While we support the Commission’s stated policy goals of publishing information for market participants, this departure from the otherwise generally-harmonized rule proposal risks overly complicating the SBSEF regime for limited benefit.

The WMBAA does not believe the utility exists for such a report, particularly with SB swap data reporting and dissemination in place through Regulation SBSR. At best, the Daily Market Data Report serves as a duplicative source of information that fails to improve price discovery or liquidity formation. At worst, the Daily Market Data Report could negatively impact market

---

<sup>6</sup> *Id.* at 28898.

<sup>7</sup> See, e.g., *Letter from Shawn Bernardo, Chairman, WMBAA, to Mr. Christopher Kirkpatrick, Secretary, CFTC, Regarding Swap Execution Facilities and Trade Execution Requirement (RIN 3038-AE25) (March 15, 2019)*.

conditions, particularly for block trades. This potential scenario is even more likely in the relatively illiquid SB swap market where volume and number of participants is relatively small.

The WMBAA encourages the Commission to remove the proposed Daily Market Data Report and review this issue with the benefit of several years' experience with these rules, particularly once Regulation SBSR is fully operational and SB swap data repositories are receiving information about SBSEF-executed SB swaps. At that time, the Commission may be able to more appropriately devise a public reporting scheme that achieves the objectives needed in the future with a better-informed sense of the benefits and burdens of such a program.

\* \* \*

The WMBAA appreciates the opportunity to comment on the Proposed Rule. We look forward to continuing to work with the Commission and its staff on future rulemakings, amendments, or guidance.

Please feel free to contact the undersigned with any questions you may have on our comments.

Sincerely,



William Shields  
Chairman, WMBAA