



asset management group

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 Asset Management Group of the Securities Industry and Financial Markets Association (“**SIFMA AMG**”)¹ appreciates the opportunity to provide the following response to the U.S. Securities and Exchange Commission (the “**Commission**”) with respect to the Commission’s request for comment on the proposed rules related to security-based (“**SB**”) swap execution and registration and regulation of SB swap execution facilities (“**SBSEFs**”) (the “**Proposed Rule**” or “**Regulation SE**”).²

I. Introduction.

SIFMA AMG is generally supportive of the aspects of the Proposed Rule that would harmonize the SBSEF rules with the U.S. Commodity Futures Trading Commission (“**CFTC**”) swap execution facility (“**SEF**”) rules (set forth in Parts 37 and 40 of the CFTC’s regulations) and trading opportunities for asset managers on behalf of their clients. We believe there are many aspects of the CFTC’s swap market regulatory framework that functions well and provides a workable structure for the SB swap rule set including providing asset managers with improved liquidity, expanded competition, and pre- and post-trade price transparency.

¹ SIFMA’s Asset Management Group (SIFMA AMG) brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG’s members represent U.S. and global asset management firms whose combined assets under management exceed \$45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds. For more information, visit <http://www.sifma.org/amg>.

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

At the same time, we continue to encourage both the Commission and the CFTC to consider certain enhancements to the swap and SB swap regulatory regimes. As detailed in this letter, as well as in prior comments to the CFTC,³ SIFMA AMG is concerned about certain aspects of the Proposed Rule that our membership believes would frustrate the statutory goals and progress that have been made towards fair competition, liquidity, and price transparency.

II. Executive Summary.

The new regulatory framework for the registration and regulation of SBSEFs proposed by the Commission is a key step towards completing the remaining pieces of swap regulations within the Dodd-Frank Wall Street Reform and Consumer Protection Act (“**Dodd-Frank**”). In establishing a new framework for SBSEFs, the Proposed Rule seeks to parallel the CFTC rules that govern SEFs and swaps trade execution.

In general, SIFMA AMG has welcomed the move to SEFs given that much of our members’ swaps trading is done through SEFs (both voluntary and mandated). Nevertheless, SIFMA AMG has concerns that certain components of the Proposed Rules, if adopted, allow for the possibility of certain unintended actions and unexpected consequences for SB swaps at the point of transition from voluntary exchange trading (where liquidity may build over time) to mandatory exchange trading (where robust liquidity must exist from the time of the mandate). While we embrace the role of registered, regulated execution facilities, we also want to draw attention to those areas where there is a risk of negatively impacting the relatively small and illiquid SB swaps markets in the transition to mandatory exchange trading.

Specifically, while SIFMA AMG supports the growing transition to trade execution via electronic platforms, we think that most SB swaps are not yet appropriate for a mandate to trade exclusively on a SBSEF. Various characteristics of SB swaps differ from CFTC swaps, and we would caution the Commission to carefully assess the appropriateness of requiring certain SB swaps to be subject to each of the mandatory clearing requirement as well as the “made available to trade” (“**MAT**”) requirement. While we generally support the transition to exchange trading, we want the opportunity to weigh in as products are considered for mandatory SBSEF trade execution. Consistent with our recommendations to the CFTC for its enhanced responsibility in assessing products for a SEF mandate, we want to ensure that the Commission’s SBSEF ruleset requires that liquidity and other standards have been met before applying an SBSEF mandate, and that the Commission fully considers comments from market participants and other interested parties before applying such a mandate.

³ SIFMA AMG, Comment Letter on Proposed Rule on Swap Execution Facilities and Trade Execution Requirement and Post-Trade Name Give-up on Swap Execution Facilities (Mar. 15, 2019), <https://www.sifma.org/wp-content/uploads/2019/07/2019-03-15-SIFMA-AMG-Letter-re-SEF-Proposal.pdf>.

In brief, our comments generally express the following views:

- **Impartial Access to SBSEFS:** It is critical that the Commission maintains impartial access requirements and non-discriminatory eligibility criteria for SBSEF membership.
- **Registration of SBSEFs:** We support aligning SBSEF registration with the CFTC's SEF registration requirements and recommend that the Commission's approach to exemptive authority does not disrupt the existing market structure and the relationships between venues and participants.
- **Self-Certification of Rules:** We recommend that the Commission should review all material rule and contractual changes proposed by SBSEFs, clearing agencies, SB swap data repositories, and exchanges. We also recommend that the Commission adopt a requirement for public comment for such changes.
- **Made Available to Trade Determination:** SIFMA AMG recommends that the Commission address known and identified shortcomings with the CFTC's MAT protocol without making the MAT standards synonymous with the clearing requirement standards.
- **Methods of Execution for Required and Permitted Transactions:** The Commission should expand permitted modes of SB swap execution for swaps mandated for trading on SBSEFs in order to provide for a less prescriptive, more principles-based approach that balances transparency, competition, and liquidity through a flexible set of rules. Any means of execution that provides sufficient pre-trade price transparency and preserves competitive execution should be available.
- **Straight Through Processing:** SIFMA AMG supports harmonization with the CFTC on this point and encourages both the Commission and the CFTC to codify the CFTC's guidance in Appendix B to Part 37 and the CFTC's staff guidance from 2013.
- **Block Trades:** While we support the proposed approach to block trading, further study needs to be given to assess the merit of the proposed block size for credit SB swaps as well as any other SB swaps.
- **Post Trade Name Give-up:** The Commission should prohibit post-trade name give-up for anonymously-traded cleared SB swaps as post-trade name give-up for anonymously-executed cleared SB swaps leads to uncontrolled information leakage.
- **Cross-Border Rules:** We are concerned about the complexities and over-broad reach associated with the "ANE" regime and any potential negative impact the Proposed Rule would have on the current construct for SEFs registered with the CFTC and subsequent amendments that could change how our members interact with SEFs.

- **Ownership and Governance:** We recommend that the Commission, like the CFTC, should focus on board governance, conflicts of interest, and antitrust considerations rather than proscriptive, bright line rules.

III. Impartial Access to SBSEFs.

To further the Commission's mission of maintaining fair, orderly, and efficient markets, SIFMA AMG believes that the Commission should maintain strong, impartial access requirements and continue non-discriminatory eligibility criteria for any market participant to become an SBSEF member. SIFMA AMG therefore asks that the Commission incorporate into its Proposed Rule the CFTC's guidance regarding impartial access to SEFs.⁴ Specifically, we encourage the Commission to address the potential use of restrictive requirements to obtain access to SBSEFs and to make clear that an SBSEF's reasonable discretion in establishing access criteria must be impartial, transparent, and applied in a fair and nondiscriminatory manner.

Permitting barriers to access creates an uneven playing field, where only select participants will ultimately gain access to certain levels of liquidity or competitive pricing. We generally believe that access to SBSEFs should remain open to all participants who satisfy impartial and non-discriminatory standards. Limiting access would block other market participants access to favorable prices and customers will not be able to cost-effectively compete. This lack in competition would result in higher prices for customers and our members' clients.

On a related point, the Commission preliminarily estimates that there are three existing national securities exchanges that, in the future, might seek to list SB swaps and thereby become SBS exchanges⁵. Consistent with the points above regarding impartial access, SIFMA AMG urges the Commission to consider the relevant requirements for both SBSEFs and national securities exchanges to ensure that the same protections afforded market participants under Dodd-Frank are set forth for national securities exchanges such that asset managers and others do not face any form of regulatory arbitrage between the two types of venues that may facilitate SB swap trade executions.

IV. Registration of SBSEFs.

Rule 803 of proposed Regulation SE is modelled after CFTC Rule 37.3. Under the Proposed Rule, the Commission adopts exemptions from the definition of "exchange" for SBSEFs

⁴ See e.g., CFTC, Division of Clearing and Risk, Division of Market Oversight and Division of Swap Dealer and Intermediary Oversight Guidance on Application of Certain Commission Regulations to Swap Execution Facilities, CFTC Staff Guidance (Nov. 14, 2013), available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/dmostaffguidance111413.pdf>.

⁵ *Id.* at 28963.

that provide execution only for SB swaps and from certain requirements which might otherwise be applicable to SBSEFs.

SIFMA AMG supports the Commission's determination to model its proposed registration requirements under proposed Rule 803 of the Proposed Rule after the CFTC's rules.⁶ As market participants are familiar with the CFTC's requirements, SIFMA AMG appreciates the Commission's attempts to minimize registration burdens and expedite the establishment of SBSEF regime by aligning its proposed registration requirements for SBSEFs with those of the CFTC.

In addition, as many entities will likely be registering with the Commission and the CFTC, creating a streamlined registration process will ease the burden of new requirements imposed on potential dual-registrants. Allowing currently registered CFTC SEFs to become registered SEC SBSEFs would be more efficient and would more quickly kickstart the Commission's SB swaps regime. SIFMA AMG thus generally supports the contemplated use of exemptive authority for swap execution facilities that are currently registered. However, SIFMA AMG asks that the Commission's approach to exemptive authority does not disrupt the existing market structure and the relationships between venues and participants.

V. Self-Certification of Rules.

The Commission indicates its belief that the CFTC's self-certification procedures are understood by SEFs, and that consistency with these procedures would yield "regulatory benefits" and reduce the burdens on SBSEFs.⁷ Through Part 40, the CFTC aimed to provide a review process for new rules, rule amendments and changes to contractual terms. For non-material changes, the CFTC provided methods for self-certification by the SEF.

SIFMA AMG has observed that the CFTC's self-certification process – intended for less important rule changes – has been relied upon by CFTC registrants for most submissions, leaving little that is reviewed or capable of challenge by market participants or the CFTC unless the submission is inconsistent with the statute or a CFTC regulation. SIFMA AMG believes that the Commission should modernize the tools available to it and its staff for reviewing material rule and contractual changes that may be objectionable.

SIFMA AMG supports an alternative approach where the Commission can review all material rule and contractual changes by SBSEFs, clearing agencies, SB swap data repositories, and exchanges. SIFMA AMG also recommends that the Commission adopt a requirement for public comment for such changes.

Rulebook or contractual changes can alter protections within Commission-regulated markets. The Commission should be able to object to any such change it deems to be inconsistent

⁶ *Id.* at 28879.

⁷ *Id.* at 28883.

with Commission policy, including considerations of compliance costs and the impact on consumer protections, all of which would be best informed by requiring public comment prior to certification. Under the CFTC regime, for changes that are submitted for certification there is no formal process to allow market participants to object to a submission. Decisions to adopt or modify rules by self-certification are typically made by the registrant's board of directors or a board committee, with market participants only learning of the rule after the registrant has self-certified the rule or amendment.

Notwithstanding our recommendations for a robust certification approval process for mandatory SBSEF trading, it is important to clarify that SIFMA AMG is not suggesting that additional obstacles be put in place that could chill the listing of products on a SBSEF for which there is no MAT determination, as voluntary trading can serve to build liquidity. As described in the next section, SIFMA AMG's concern is with respect to the possibility of a product being prematurely "made available to trade" ("MAT") self-certified by an SBSEF without any meaningful opportunity for market participants to engage with the Commission at the point of the MAT determination.

VI. Made Available to Trade Determination

SIFMA AMG supports the harmonization with the CFTC's MAT standards and the proposed carve-out for package transactions under the Proposed Rule.

That being said, SIFMA AMG is concerned with the current framework for determining whether mandatorily cleared swaps should also be mandated for SBSEF trading through the "made available to trade" process. There needs to be a substantive analysis of whether a SB swap has sufficient liquidity available to market participants on the SBSEF. Absent a robust MAT process requiring the SBSEF to demonstrate voluntary exchange trading has met minimum liquidity and other standards, an absence of liquidity for the newly MATED product on the SBSEF could shut out asset managers from accessing liquidity for their clients once over-the-counter trading is prohibited.

In addition, even if adequate liquidity exists on a particular SBSEF, as asset managers are not typically connected to all or most SBSEFs, there will need to be a reasonable implementation period for managers to onboard the relevant SBSEF. A foreshortened implementation period could lead to an asset manager's limit on access to liquidity until it spends the time and resources to connect to the relevant SBSEF.

SIFMA AMG recognizes that the MAT determination is dependent upon the Commission first issuing a clearing determination. However, given the lack of Commission authority to delay or decline a SBSEF petition for a MAT determination, particularly without comment from market participants, SIFMA AMG believes its concerns about the MAT process are appropriate in the context of the Proposed Rule.

To that end, SIFMA AMG recommends that the Commission address known and identified shortcomings with the CFTC's MAT protocol without making the MAT standards synonymous with the clearing requirement standards. Certain market conditions should be met in order to require SB swap execution on a SBSEF, separate and apart from market conditions needed to require central clearing. Based on current market conditions, SIFMA AMG believes that few, if any, SB swaps should be required to be executed on an SBSEF. In fact, SIFMA AMG believes that very few SB swaps are appropriate for mandatory central clearing and, of those SB swaps, only a small subset might have some liquidity and enough volume to even be considered for mandatory trade execution. And as liquidity may be limited to a single SBSEF, SIFMA AMG also encourages the Commission to provide an extended duration of time until any MAT determination becomes effective so that asset managers and other market participants have adequate time to make the necessary operational and market structure arrangements to accommodate the trade execution requirement.

SIFMA AMG's assessment reflects the fact that the necessary market conditions that make central clearing appropriate are different from the necessary market conditions that make mandatory SBSEF execution appropriate. For this reason, there needs to be different standards for an SB swap to be subject to the SBSEF trading requirement than for an SB swap to be subject to the clearing requirement.

To that point, the Proposed Rule incorporates the same six factors enumerated in CFTC regulation 37.10(b).⁸ In making a MAT determination for a SB swap, an SBSEF would have to consider: (1) whether there are ready and willing buyers and sellers; (2) the frequency or size of transactions; (3) the trading volume; (4) the number and types of market participants; (5) the bid/ask spread; and (6) the usual number of resting firm or indicative bids and offers (collectively, the "**MAT Factors**").⁹

The Proposed Rule requires that an SBSEF's submission "consider" the above factors when making a MAT determination. Under CFTC regulation 37.10, SEFs are to consider the factors "as appropriate" and are not required to demonstrate that all MAT Factors support the MAT determination. SIFMA AMG proposes that all of the MAT Factors must be considered for requiring mandatory trading and that market participants must have a meaningful opportunity to review and opine on the petitioning SBSEF's proposed determination. The MAT Factors are intended to measure trading liquidity that is available and that assessment should include the perspectives of market participants. Further, SIFMA AMG believes that the Commission should assess the MAT Factors on the basis of the current trading activity of the relevant SB swaps on the SBSEF against stringent standards, and in the aggregate, in order to determine whether there is proven liquidity on SBSEFs to support mandatory trading.

⁸ 17 C.F.R. § 37.10.

⁹ Proposed Rule at 28898.

SIFMA AMG also proposes that the Commission expand the MAT Factors to require evidence demonstrating that the SBSEF has the requisite infrastructure to support mandatory SBSEF trading by: (a) adding an assessment of technological readiness, and (b) requiring threshold numbers of SBSEFs as well as liquidity providers on the SBSEF transacting in the relevant SB swap. While the expansion of the MAT Factors may be viewed as requiring more intervention and resources by the Commission, we believe that ultimately the revised approach will lead to a streamlined process while at the same time avoiding a potential sacrifice of liquidity if a particular SB swap is mandated for SBSEF trading prematurely.

VII. Methods of Execution for Required and Permitted Transactions

In proposed Rule 815 of Regulation SE, the Commission adopts the rules promulgated under CFTC regulation 37.9 for SBSEFs, which introduces the concepts of “Required Transaction” and “Permitted Transaction.”¹⁰ The Proposed Rule would require an SBSEF that offers an RFQ system in connection with a Required Transaction to communicate any firm bid or offer pertaining to the SB swap resting on any of the SBSEF’s order books at the same time the requester receives the first responsive bid or offer.¹¹ The SBSEF would also have to provide the requester with the ability to execute against the firm’s resting bids or offers, along with any responsive orders, and be required to ensure its trading protocols provide each of its members with equal priority in receiving requests for quotes and transmitting responsive orders. Additionally, proposed Rule 815 requires a time delay for Required Transactions on an order book.

The Commission notes that the CFTC’s rules relating to Required Transactions are designed to promote price competition in products that are subject to the trade execution requirements, and that additional or different criteria could also promote price competition. The Commission also states that, “it is debatable, for example, where slightly different standards – such as RFQ-to-4 or RFQ-to-2 in lieu of RFQ-to-3, or a 30-second book-exposure requirement instead of 15 seconds – might promote these ends more effectively.”¹²

SIFMA AMG agrees with the general proposition that SBSEFs should be permitted to allow additional methods of execution. The Commission should be a leader in establishing a more flexible approach and the CFTC should amend its current rules to mirror the Commission’s approach. We believe that the Commission should expand permitted modes of SB swap execution for swaps mandated for trading on SBSEFs in order to provide for a less prescriptive, more principles-based approach that balances transparency, competition, and liquidity through a flexible set of rules. Any means of execution that provides sufficient pre-trade price transparency and preserves competitive execution should be available.

¹⁰ *Id.* at 28894.

¹¹ *Id.*

¹² *Id.*

While SIFMA AMG supports general harmonization on trading protocols and methods of execution, we believe that these rules need to also balance harmonization with the need to reflect the unique and sensitive liquidity conditions that exist in SB swap markets. For example, an RFQ-to-3 requirement for Required Transactions that are SB swaps means something completely different in the SB swap landscape than for a CFTC swap that is a Required Transaction. While we cannot project what will be deemed as a Required Transaction today, SIFMA AMG believes that the Commission should consider a lower RFQ threshold given the nature of the SB swap market.

In some cases, for an asset manager to seek three quotes would effectively require the asset manager to contact many of the primary price makers in the SB swap market. There simply isn't the same number of liquidity providers, particularly for less liquid, more thinly traded SB swaps. The number of participants, the trading volume, and the depth of market liquidity are very different. All products are not created alike, nor do they have the same liquidity or depth of liquidity. Requesting quotes from two participants, for example, would allow the asset manager to retain some control over the information disseminated about its interest to the market while preserving the statute's "multiple to multiple" definition requirement.

VIII. Straight-Through Processing.

The Commission's proposed Rule 821 is intended to harmonize with the CFTC's approach to trading and trade processing as codified in the CFTC's regulation and in guidance and acceptable practices set forth in Appendix B to Part 37.

SIFMA AMG supports harmonization on this point and encourages both the Commission and the CFTC to codify the guidance in Appendix B to Part 37 and the CFTC's staff guidance from 2013.¹³ SIFMA AMG believes that the straight-through processing requirements, while originally determined through guidance and not rulemaking, have been successfully implemented by market participants for nearly a decade, and modifying them now would introduce significant market, operational, and credit risk, along with additional complexity and cost for market participants.

IX. Block Trades.

Within the proposed definition of "block trade," the Commission proposes a \$5 million block threshold for credit SB swaps. Following the CFTC's approach, there is not a proposed block threshold for any type of equity swap.¹⁴ In the Proposed Rule, the Commission notes that the

¹³ *Supra* note 4.

¹⁴ *Id.* at 28896.

Financial Industry Regulatory Authority (“**FINRA**”) applies a \$5 million cap when disseminating transaction reports of economically similar cash debt securities.¹⁵

SIFMA AMG believes that the general approach to block trades under CFTC regulations is appropriate, and therefore, support the Commission’s harmonization with the CFTC’s approach to block trades. Under the CFTC’s SEF rules, block trades may be executed on or pursuant to the rules of a SEF after bilateral prearrangement enhances the client’s ability to avoid risks of front-running. Such manner of execution permits fluidity of workflow and communications. SIFMA AMG would not want these aspects of transacting to change under the Commission’s SBSEF rules. A flexible block execution regime permits trading of larger-sized transactions in a manner that incentivizes dealers to provide liquidity and capital without creating market distortions.

However, SIFMA AMG provides these comments without any sense of what SB swaps might be deemed block trades and how the threshold may impact liquidity and price discovery. Further, the justification for the \$5 million threshold seems to be more of a convenient reference rather than the result of any empirical analysis on market conditions for credit SB swaps. As the SB swap market (and the equity SB swap market particularly) develops and grows, it may become more appropriate for amendments to the credit SB swap threshold or the introduction of a block trade size for equity SB swaps. Further, if there is the ability to have fungible, single-name total return swaps in equity products, and they become subject to mandatory clearing in the future, SIFMA AMG would expect there to be appropriately calibrated block size thresholds that are applied to those equity-based swaps.

X. Post-Trade Name Give-Up.

In the Proposed Rule, the Commission states that it believes that prohibiting post-trade name give-up is necessary to facilitate and promote price transparency by encouraging a greater number of participants to anonymously post bids and offers on regulated markets.¹⁶ Proposed Rule 815(f), which is modeled after CFTC regulation 37.9(f), incorporates the prohibition into the SBSEF framework. SIFMA AMG strongly supports harmonization with CFTC rules regarding post-trade name give-up. Post-trade name give-up is generally not an issue for uncleared SB swaps as each party to the transactions needs to know the identity of its counterparty pre-execution because it has ongoing economic obligations to and is exposed to the credit risk of its counterparty for the duration of the SB swap.

We believe the Commission should prohibit post-trade name give-up for anonymously-traded cleared SB swaps. We support this approach not just for the sake of harmonization, but also because SIFMA AMG believes that the practice of post-trade name give-up for anonymously-executed cleared SB swaps is unnecessary and it does not provide any advantages to our members. Post-trade name give-up leads to uncontrolled information leakage. For example, a regulated fund

¹⁵ FINRA Regulatory Notice 12-39, available at <https://www.finra.org/rules-guidance/notices/12-39>.

¹⁶ Proposed Rule at 28897.

transacting anonymously has no control over who it will be matched with, and if such fund's identity is revealed to the other trading counterparty, it provides that trading counterparty with information about the fund's trading activity, strategies, etc. As information about the trade would leak into the market in an uncontrolled manner, other market participants would be enabled to anticipate future trading intentions.

Based on the foregoing, if the Commission prohibits post-trade name give-up for anonymously executed cleared SB swaps, the Commission's policy would mirror the CFTC's approach and certain traders would be more likely to participate on venues that offer anonymous execution, including order book functionality. This in turn could result in deeper liquidity pools on SBSEFs and promote the development of more open, competitive, and less fragmented markets. The Commission's rules would be designed to better promote the development, innovation, and growth of the swaps market, with the intent of attracting liquidity formation onto SBSEFs in a manner that adds to efficiency for the market and market participants.

XI. Cross-Border Rules.

In order to address trade execution requirements as they apply to cross-border SB swap transactions, the Proposed Rule provides that the trade execution requirements within Section 3C(h) of the Securities Exchange Act will not apply to an SB swap unless at least one counterparty is a "covered person," on a transaction-by-transaction basis.¹⁷ The Commission notes the difficulties that may result when a binary requirement applies in two separate jurisdictions and provides exemptions for foreign SB swap trading venues.

More specifically, the Commission proposes to incorporate the "arrange, negotiate, or execute" concept into the SBSEF rules. SIFMA AMG is concerned about the complexities and over-broad reach associated with the "ANE" regime and any potential negative impact the Proposed Rule would have on the current construct for SEFs registered with the CFTC and subsequent amendments that could change how our members interact with SEFs. Thus, SIFMA AMG asks that the Commission be mindful of the whether CFTC-registered SEFs would be forced to change their rules in order to comply with the new proposed SBSEF rules, generally, and the ANE approach, specifically.

In response to question 169, SIFMA AMG does not believe that the rule text for proposed Rule 832 and the exemptions in proposed Rule 833 are sufficiently clear. SIFMA AMG encourages the Commission to provide additional clarity about the application of this part of the Proposed Rule, and to consider setting forth charts or examples to better facilitate compliance with this section of Regulation SE. SIFMA AMG notes that the CFTC has done this in the context of cross-

¹⁷ With respect to a particular SB swap, "covered person" is any person that is a U.S. person; a non-U.S. person whose performance under an SB swap is guaranteed by a U.S. person; or a non-U.S. person who, in connection with its SB swap dealing activity, uses U.S. personnel located in a U.S. branch or office, or personnel of an agent of such non-U.S. person located in a U.S. branch or office, to arrange, negotiate, or execute a transaction.

border application of swap dealer business conduct standards, and additional clarity, explanatory materials, and other guidance would be beneficial to market participants when assessing the jurisdictional reach of SB swap market regulation.

XII. Ownership and Governance.

Under the Proposed Rule, the Commission would partially implement Section 765 of Dodd-Frank, which has not yet been adopted by the CFTC. In the Proposed Rule, the Commission states its belief that to satisfy the requirement under Dodd-Frank, there should be a cap on the size of the voting rights held by an individual member of an SBSEF or SB swap exchange. Proposed Rule 834 would prohibit SBSEF and SB swap exchange members from directly or indirectly owning 20 percent or more of any class of voting securities or other voting interest in the SBSEF or SB swap exchange. In addition, members would not be permitted to vote any interest directly or indirectly above 20 percent of the voting power of any class of securities or other ownership interest in the SBSEF or SB swap exchange.

SIFMA AMG supports the Commission's goal to adopt rules that aim to achieve better governance and mitigation of conflicts of interest that arise of the operation of SBSEFs. However, we are opposed to Commission proposed Rule 834. This rule, if adopted, would disrupt the closely harmonized rules with the CFTC, as the CFTC has not adopted corresponding provisions for its SEF registrants. If the Commission seeks to address governance and conflicts of interest, SIFMA AMG recommends that the Commission, like the CFTC, should focus on board governance, conflicts of interest, and antitrust considerations rather than proscriptive, bright line rules. Moreover, we believe that the Commission's concerns regarding conflicts of interest can best be addressed by ensuring compliance with the SBSEF core principles rather than an additional regulation.

The Proposed Rule's 20 percent limitation on the voting interest that members of any SBSEF or SB swap exchange goes beyond what is necessary to effectively mitigate conflicts of interest. Rather, the ownership limit would limit access to necessary capital and act as barriers to entry for SBSEFs and SB swap Exchanges. In addition, Section 765 of Dodd-Frank does not require the Commission to restrict the ability to hold significant ownership interests in SBSEFs. The statutory language provides that the Commission is authorized to adopt rules upon determining, after review, that such are necessary or appropriate to improve the governance of SBSEFs or to mitigate systemic risk, to promote competition, or mitigate conflicts of interest.¹⁸ Thus, imposing ownership limits is not mandatory in implementing Section 765 of Dodd-Frank. Although we agree with and strongly support the Commission's goal of reducing risk, we believe the limits under the Proposed Rule are unduly restrictive and should be reconsidered.

* * * * *

¹⁸ Dodd-Frank, 765(b).

We appreciate the Commission's consideration of our response. SIFMA AMG believes that certain aspects of the swaps market regulations are appropriately calibrated. Any reforms should focus on the impact to all market participants and should not threaten the progress that has already been made towards fair competition, liquidity, and price transparency.

As discussed above, SIFMA AMG is supportive of the aspects of the Proposed Rule that would result in greater price transparency and trading opportunities for asset managers. We believe that any changes to the swap and SB swap trading rules should promote the development, innovation, and the growth of the swap and SB swap markets with the intent of attracting liquidity formation onto SEFs and SBSEFs.

Should you have any questions, please do not hesitate to contact Lindsey Keljo at (202) [REDACTED], or William Thum at (202) [REDACTED]

Respectfully submitted,



Lindsey Weber Keljo
Managing Director, Head of
SIFMA Asset Management Group



William Thum
Managing Director and Associate General
Counsel
SIFMA Asset Management Group

cc: The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner