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June 10, 2022

Ms. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Submitted via email: rule-comments@sec.gov

Re: Rules Relating to Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities
Release No. 34-94615; File No. S7-14-22[1]

Dear Ms. Countryman:

Bloomberg L.P. and Bloomberg SEF LLC[2] appreciate the opportunity to provide the Securities and Exchange Commission ("SEC" or the "Commission") with our comments regarding the Commission's proposal to establish rules relating to the registration and regulation of security-based swap execution facilities (the "Proposal"). Bloomberg appreciates the importance of the Commission's effort to fulfill an important mandate under the Dodd-Frank Act[3], and this Proposal will help to increase transparency and provide regulatory certainty to the security-based swap market.

As the Commission has noted throughout the Proposal, the security-based swap ("SBS") market constitutes a small fraction of the overall swap market and "[b]ecause the swap markets are larger than the SBS markets, the opportunities for revenue capture from swap execution are much larger than from SBS execution. In view of the SBS market's size relative to the swap market, the Commission is sensitive to the economic impact that its final rules for SBSEFs could

[1] Rules Relating to Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities (April 6, 2022), *available at* https://www.sec.gov/rules/proposed/2022/34-94615.pdf.

[2] Bloomberg SEF LLC and Bloomberg L.P. are, together, referred to as "Bloomberg" in this letter. Bloomberg SEF LLC is a wholly owned subsidiary of Bloomberg L.P. operating a swap execution facility ("BSEF") that is registered with, and regulated by, the CFTC. BSEF provides its participants with access to liquidity across credit, interest rate, foreign exchange, and commodity (i.e., precious metals only) swaps. Bloomberg L.P. is a global leader in business and financial information, delivering trusted data, news, and insights that bring transparency, efficiency, and fairness to markets. The company helps connect influential communities across the global financial ecosystem via reliable technology solutions that enable our customers to make more informed decisions and foster better collaboration.

[3] Pub. L. No. 111-203 (2010).

have."[4] Consequently, we support the proposed approach to closely harmonize the Commission's rules with the swap execution facilities ("SEF") framework that has been implemented by the Commodity Futures Trading Commission ("CFTC"). In our experience, the CFTC framework serves the market well. Market participants, both in the U.S. and abroad, are familiar with the CFTC's approach and have organized their business, operations, and compliance programs to fit this framework. A harmonized framework has the potential to lower compliance and operations costs by allowing security-based swap execution facilities ("SBSEFs") and market participants to use their existing procedures and systems. On the other hand, it is possible that the adoption of different requirements for SBSEFs may lead existing SEFs to avoid registering as SBSEFs to the detriment of the markets as a whole.

We also support the Commission's decision to withdraw Proposed Regulation MC[5] and the 2011 SBSEF Proposal.[6] In light of the length of time that has passed since the proposals were issued, and the subsequent development of the swap and SBS markets, it is appropriate to start fresh with a new proposal.

Although the proposed Rules and existing CFTC rules are closely harmonized, any potential differences will require registrants to devote resources toward assessing the potential gaps and consequences of regulatory divergence. While we are supportive of the overall Proposal, we set forth below a number of concerns for the Commission's consideration that we believe should be addressed in any final rule.

As an initial matter, under the CFTC's regulatory framework, a series of no-action and staff letters have been issued since the introduction of the SEF regime. As the Commission promulgates rules in this space, in several instances, corresponding relief needs to be incorporated or adjusted in the Commission's framework to ensure a truly harmonized framework. We have outlined below a number of areas where additional no-action relief may be necessary.

We believe the proposed timeline to publish the "Daily Market Data Report" is not feasible, and we recommend aligning the timeline for the report's publication with CFTC requirements. Additionally, we are concerned the Commission's approach to administering the cross-border rules may lead to an unworkable framework for global market participants. We are also concerned that the financial resources requirements are not appropriately calibrated to the risks presented by an SBSEF's activities. Finally, In the Appendix to this letter, we provide responses to several of the Commission's specific questions posed in the Proposal.

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[4] Proposal at 12.

[5] 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, SEA Release No. 63107 (October 14, 2010), 75 FR 65882 (October 26, 2010) ("Regulation MC Proposal").

[6] Registration and Regulation of Security-Based Swap Execution Facilities, SEA Release No. 63825 (February 2, 2011), 76 FR 10948 (February 28, 2011) ("2011 SBSEF Proposal").

I. Commission No-Action Letters and Guidance

Proposed Rule 815(e) - Resolution of operational and clerical error trades.

Proposed Rule 815(e) requires an SBSEF to maintain rules and procedures that facilitate the resolution of error trades. However, with respect to cleared SBS, correcting an error trade that was rejected by a clearing agency is not feasible unless the rejected error trade is declared by the SBSEF void *ab initio*. If a trade is not declared void *ab initio*, the counterparties might be encumbered by unresolved obligations related to the rejected SBS trade, and this might further prevent a timely and efficient resolution of the error. In addition, SBS trades subject to the clearing requirement must be cleared through a clearing agency and cannot continue to exist on a bilateral basis, which would be the outcome of a rejected trade if not void *ab initio*.

The CFTC has taken this approach to resolving trades rejected for clearing. The CFTC previously noted that the price of a swap depends, in part, on whether it is intended to be cleared. Consequently, if a swap that is intended to be cleared is rejected, a material term to the contract is unfulfilled. Therefore, the CFTC issued staff guidance outlining its expectation that DCMs and SEFs have rules stating that trades that are rejected from clearing are deemed void *ab initio*.[7] The Commission should incorporate that same expectation into its SBSEF rules.

Proposed Rule 819(c) - Impartial Access Requirement

Proposed Rule 819(c) requires an SBSEF to provide any eligible contract participant and any independent software vendor with impartial access to its market and market services. SEC Rule 15Fi-5 under the SEA requires each SB SD to have trading relationship documentation with each counterparty.[8] The 15Fi-5 trading documentation requirement may at times conflict with the impartial access requirement of proposed Rule 819(c) as it is unlikely that all SBSEF members trading cleared swaps will have trading relationship documentation with all other members trading cleared SBS.

The CFTC addressed a similar conflict between the impartial access requirement and the trading documentation requirement through staff guidance. As the staff noted in the CFTC's Guidance on Application of Certain Commission Regulation to Swap Execution Facilities,[9] the requirement to have trading relationship documentation will result in the implementation of

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[7] *See* CFTC Staff Guidance on Swaps Straight-Through Processing (September 26, 2013) ("2013 Staff STP Guidance"), available at https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/stpguidance.pdf.

[8] 17 CFR 240.15Fi-5.

[9] See 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 (November 14, 2013) (2013 Staff Guidance), available at https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/dmostaffguidance111413.pdf. ("2013 Staff Impartial Access Guidance")

"enablement mechanisms" that are inconsistent with the intent of CFTC Core Principle 2, which requires that a SEF establish and enforce participation rules that "provide market participants with impartial access to the market".[10] The staff noted that "enablement mechanisms" were historically used to eliminate credit risk, and such risk would not exist for SBS intended to be cleared if an SBSEF has the ability to declare any trade rejected from clearing void *ab initio*.

We encourage the Commission to follow the CFTC's approach on this point. In order to ensure impartial access to its markets with respect to cleared SBS, an SBSEF must have the ability to prohibit trading relationship documentation and other "enablement arrangements."

Proposed Rule 823 and Core Principle 6 - Financial integrity of transactions, and Proposed Rule 812 - Enforceability

With respect to cleared SBS, Proposed Rule 823 requires an SBSEF to ensure that it has the capacity to route transactions to a registered clearing agency in a manner acceptable to the clearing agency.[11] It is our experience with CFTC-registered clearing houses that are also registered clearing agencies that such clearing houses require a SEF to represent that any transaction executed on a SEF is final and irrevocable. We expect that an SEC-registered clearing agency would ask for the same representation for clearing SBS transactions.

The SEC has proposed in Rule 812 that an SBSEF confirmation would be limited in scope to "all of the terms that were agreed to on the facility."[12] Proposed Rule 812 may be appropriate for uncleared SBS, but it creates problems for cleared SBS executed on an SBSEF. If an SBSEF were only able to confirm the terms of the transaction that are agreed to on the facility, an SBSEF would not necessarily know all terms related to the SBS it executes if additional terms were agreed to by the counterparties outside of the SBSEF. The SBSEF would therefore not be able to represent to a registered clearing agency that an SBS submission is "final and irrevocable," which will create a roadblock for adopting straight-through processing and full adoption of clearing for SBS.

Instead, proposed Rule 812 should require that, for a cleared SBS transaction entered into on the facility, an SBSEF confirm ***ALL*** of the terms of the transaction. To ensure that all terms of a cleared SBS are negotiated on an SBSEF, an SBSEF should have the ability to prohibit trading relationship documentation for cleared SBS executed on an SBSEF, as it is required for CFTC-registered SEFs in accordance with the CFTC's 2013 Staff Impartial Access Guidance.[13]

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[10] 2013 Staff Impartial Access Guidance at 2.

[11] Proposed Rule 823(c)(2).

[12] Proposed Rule 812(b). We understand and appreciate the Commission's rationale behind this limiter but believe proposed Rule 812 will result in unintended negative consequences to the cleared SBS market.

[13] *See* 2013 Staff Impartial Access Guidance.

Proposed Rule 825(f) - Trading SBS on Anonymous Order Book

Proposed Rule 815(f) requires an SBSEF to establish rules prohibiting disclosure of the identity of a counterparty to an SBS transaction that was executed anonymously and intended to be cleared. SEC Rule 15Fi-5 requires each SB SD to have trading relationship documentation with each counterparty. There is an exception from the 15Fi-5 trading documentation requirement for cleared anonymous transactions, but this exemption would not apply to an SBS trade that was rejected by a clearing agency and not deemed void *ab initio* under an SBSEF's rules.

If an SBSEF does not have the right to implement rules stating that trades that are rejected from clearing are void *ab initio*, as SEFs are required to do under the 2013 Staff STP Guidance,[14] then anonymous order book trading will not be feasible. For any trade that is rejected from clearing, an SBSEF would have to disclose the identities of the counterparties to the rejected SBS to allow them to enter into trading relationship documentation on an emergency basis to deal with the rejected SBS. It is likely that such post-trade disclosure of identities of the counterparties would be a violation of proposed Rule 815(f). Accordingly, we recommend the Commission consider following the CFTC's adopted approach and require SBSEFs to implement rules stating that trades that are rejected from clearing are void *ab initio*.

II. Proposed Rule 825 – Timely Publication of Trading Information

Proposed Rule 825 requires an SBSEF to publish on a daily basis certain information on price, trading volume, and other trading data with respect to SBS transactions executed on or through the facility.[15] Proposed Rule 825 is modelled on the corresponding CFTC Part 16, with a few key differences. The Commission is proposing in paragraph (c) of Rule 825 to require the publication of a "Daily Market Data Report" no later than the SBSEF's "commencement of trading on the next business day after the day to which the information pertains."[16]

In our experience with the reports required under CFTC Part 16, which requires the compilation of similar information, the timeline for publication proposed under proposed Rule 825(c)(4) would be impractical, if not technologically impossible. BSEF's trading hours run from 00:01 to 24:00 Sunday through Friday (24/6 trading). We envision SBS trading to be permitted during the same trading hours as other asset classes on BSEF. The break between the end of trading one day and the beginning of trading the next day is only one minute. On this timeline, to compile the required report "no later than the SBSEF's commencement of trading on the next business day," is likely not possible. We propose synchronizing proposed Rule 825(c)(4) with CFTC Rule 16.01(d)(2) to allow additional time for the publication of the Daily Market Data Report.

[14] *See* 2013 Staff STP Guidance.

[15] Proposed Rule 825.

[16] Proposed Rule 825(c)(4).

III. Proposed Rule 833 - Cross-Border Exemptions

We believe the Commission should revise the process that foreign trading venues must follow to obtain an exemption from registration as an SBSEF and for exemptions from the application of the trade execution requirement. The CFTC process, while imperfect, provides a more streamlined and workable approach for the Commission.

Under proposed Rule 833, the Commission has offered two separate exemptions. Proposed Rule 833(a) provides a process to grant an exemption from registration to a foreign trading venue that has one or more members who are covered persons. Under subsection 833(a), the Commission would consider granting an exemption from registration to a foreign trading venue if the applicant demonstrated that the exemption was "necessary or appropriate in the public interest" and "consistent with the protection of investors."[17]

The second exemption, under proposed Rule 833(b), would establish a process that would allow a covered person to execute an SBS that is subject to the trade execution requirement on a foreign trading venue. Under subsection 833(b), the Commission would consider granting an exemption from the trade execution requirement based upon the same factors articulated under proposed Rule 833(a) in addition to a four factor test, which includes a determination that the foreign jurisdiction has a "comparable" trade execution requirement.[18] The Proposal notes that the trade execution requirement would not be considered "comparable" if the foreign jurisdiction does not require SBS products to be executed through means comparable to Required Transactions as described in proposed Rule 815."[19] Proposed Rule 815, in turn, would require either an order book or a request-for-quote system that transmits a request to no less than three market participants ("RFQ to 3") that operates in conjunction with an order book.[20] So in sum, a foreign jurisdiction's trade execution requirement would not be deemed comparable unless the foreign jurisdiction required RFQ to 3 and an order book for Required Transactions.

As an initial matter, it is not clear that many, if any, foreign trading venues would be able to satisfy the standard that is being advanced under proposed Rule 833(b). Few jurisdictions require RFQ to 3, and some do not require SBS to be traded on an organized trading venue. It seems likely that most of these foreign trading venues would not be able to demonstrate comparability, and covered persons would therefore not be able to fulfill the trade execution requirement by trading on these venues. Market participants would then be forced to trade on a

[17] *See* 15 U.S.C. 78mm(a)(1).

[18] Proposed Rule 833(b)(2)(i). The Commission may consider "[t]he extent to which the security-based swaps traded in the foreign jurisdiction covered by the request are subject to a trade execution requirement comparable to that in section 3C(h) of the Act (15 U.S.C. 78c-3(h)) and the Commission's rules thereunder."

[19] Proposal at 199.

[20] Proposed Rule 815(a).

limited subset of venues. Liquidity would be disrupted. Market participants would need to expend time and additional resources in onboarding to a compliant trading venue.

We believe the Commission's focus on a rule-by-rule comparison under proposed Rule 833(b) to assess comparability is unduly burdensome and at odds with the overall goal of achieving comparable outcomes. The CFTC, in applying a very similar statutory standard for granting exemptions, has found that MTFs and OTFs meet the requirements for comparability articulated under the Commodity Exchange Act and therefore merit an exemption from SEF registration.[21] These MTFs and OTFs are not required to have order books or satisfy the RFQ to 3 requirement. In addition, the CFTC has extended equivalence to organized markets operated by designated approved exchanges ("AEs") and recognized market operators ("RMOs") in Singapore.[22] The CFTC's flexible, outcomes-based approach serves market participants well. We believe a similarly flexible approach is required here to prevent unanticipated disruptions in liquidity.

We also believe the additional requirements provided for under 833(b), as compared with 833(a) are unnecessary. Under proposed Rule 833(a), a foreign trading venue would be eligible for exemption to the extent the Commission finds that it is necessary or appropriate in the public interest and consistent with the protection of investors. This standard should be sufficient for the purposes of trading SBS on foreign trading venues, even when the trade execution requirement applies. We therefore ask the Commission to remove the 833(b) exemption and clarify that for all SBS that are subject to the trade execution requirement, if a foreign trading venue has been granted an 833(a) exemption by the Commission, a market participant should be permitted to trade SBS on that venue.

It is also important to note that the Commission need not start from scratch in evaluating these cross-border exemptions. As noted in response to the questions below, the CFTC, which is guided by a very similar statutory standard, has already granted exemptions to a number of foreign trading venues across jurisdictions in Europe and Asia. The Commission should build off the groundwork laid by the CFTC and grant automatic exemptions for trading venues that are currently exempt under the CFTC's rules and in good standing with the CFTC.

IV. Proposed Rule 829 - Financial Resources Requirements

Proposed Rule 829(a) would require an SBSEF to have adequate financial, operational, and managerial resources to discharge each responsibility of the SBSEF as determined by the Commission. Subsection (a)(2) of this rule states that the financial resources of an SBSEF "shall be considered to be adequate if the value of the financial resources: (i) *enables the SBSEF to meet its financial obligations to its members and participants notwithstanding a default by the*

[21] See https://www.cftc.gov/International/ForeignMarketsandProducts/ExemptSEFs (listing all exemption orders issued by the CFTC under section 5h(g) of the CEA and subsequent amendments to those orders).

[22] See https://www.cftc.gov/International/ForeignMarketsandProducts/ExemptSEFs#Singapore.

member or participant creating the largest financial exposure for the SBSEF in extreme but plausible market conditions; and (ii) exceeds the amount that would enable the SBSEF to cover operating costs of the SBSEF for one year period, as calculated on a rolling basis."[23]

Proposed Rule 829(b) clarifies that "Financial resources shall be considered adequate if their value exceeds the total amount that would enable the security-based swap execution facility to cover its projected operating costs necessary for the security-based swap execution facility to comply with section 3D of the Act and applicable Commission rules for a one-year period, as calculated on a rolling basis pursuant to paragraph (e) of this section."[24]

We ask the Commission to remove subsection (i) of proposed Rule 829(a)(2). This requirement would add significantly to the amount of capital required to operate an SBSEF with little corresponding benefit to the market. Trading platforms such as SEFs and SBSEFs will have credit exposure to a member in limited circumstances and for very limited periods of time. Credit risk with non-cleared SBS resides with the non-cleared counterparty. For cleared SBS, the default risk resides with the clearinghouse. Requiring a trading platform to maintain capital sufficient to cover the largest financial exposure of a member trading on the SBSEF, when the trading platform will not be called upon to cover the cost of a default, is unnecessary and overly burdensome to the platform operator. We also note that the requirements of subsection (i) of proposed Rule 829(a) are not included in the parallel CFTC rule.[25] Under the CFTC's rules, SEFs are required to maintain sufficient financial resources that would enable the SEF to cover operating costs for one year. This makes sense for SEFs registered with the CFTC, as well as for an SBSEF registered with the Commission.

We also note that proposed Rule 829(b) appears to acknowledge that an SBSEF's financial resources will be considered adequate if their value exceeds the total amount that would enable the SBSEF to cover its projected operating costs necessary for a one-year period. We encourage the Commission to eliminate the 829(a)(2)((i) requirement or, in the alternative, affirm that the financial requirements, as articulated in proposed Rule 829(b), are sufficient to meet the requirements of Core Principle 12 and proposed Rule 829(a).

[23] Proposed Rule 829(a).

[24] Proposed Rule 829(b).

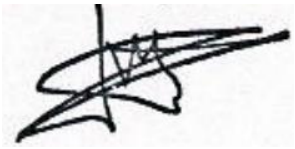
[25] Proposal at 172.

Conclusion

We appreciate your willingness to consider comments on this issue and would be pleased to discuss any questions that you may have with respect to this letter. Thank you.

Very truly yours,

Derek J. Kleinbauer
Vice-President
Bloomberg SEF LLC



Benjamin MacDonald
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APPENDIX

ANSWERS TO SPECIFIC QUESTIONS TO PROPOSED RULES

(Question 6) If, in a particular area, the Commission were to harmonize closely with a CFTC rule, to what extent would this reduce, or perhaps eliminate entirely, any incremental costs or burdens on dually registered SEF/SBSEFs and their members?

As noted above, a harmonized framework has the potential to lower compliance costs by allowing SBSEFs and market participants to integrate with existing operational and compliance frameworks. Any potential differences would require SBSEF registrants to devote resources toward assessing the potential gaps and consequences of regulatory divergence.

(Question 9) Do you believe that the Commission should adopt different or additive requirements for SBSEFs, even if there is no analog to such provisions in the CFTC's SEF rules? If so, please explain, with particular regards to the economic impacts and/or PRA burdens. For example, do you believe that the SEC-specific provision would impose additional costs or burdens on SBSEFs and/or their members that are nevertheless appropriate in view of new and additional benefits? Or do you believe that an SEC-specific provision would be appropriate because it would relieve costs or burdens that are imposed on the swap business by a CFTC rule that is unnecessary or inappropriate in the SBS market?

Over the years, the CFTC staff has acknowledged a number of technological, operational, and regulatory challenges posed by certain CFTC rules. In response, the staff has issued a series of no-action letters and other guidance that market participants and SEFs have come to rely upon in compliance and market practices with respect to certain rules. We believe it is important to fully incorporate this relief, in the appropriate manner, to ensure the SEC's proposed rules are aligned with the CFTC's existing rules and interpretations. We have highlighted above in **Section I** several areas in which we believe the SEC should incorporate or consider the corresponding CFTC no-action relief and staff guidance.

(Question 10) If the Commission ultimately adopts SBSEF rules that are closely harmonized with the CFTC's SEF rules, do you believe this could result in ambiguities or potential conflicts between the SEC's SBSEF rules and the other SEC rules (pertaining, for example, to exchanges or alternative trading systems)? If so, please indicate where this might occur and suggest ways that the Commission could reduce these ambiguities or potential conflicts.

It is difficult for market participants to provide meaningful comments to rule proposals when other rule proposals that may affect the same subject matter are simultaneously pending. Careful thought should be given by the Staff to the interplay between simultaneously proposed rules and rule amendments to prevent unintended consequences and conflicts. In this regard, it would be prudent for the rule proposing and adopting processes to be conducted in a more deliberate and considered fashion. The Staff should consider an additional comment period applicable to all related pending proposals to allow market participants an opportunity to comment on the totality of the changes.

(Question 14) Do you believe in general that the Commission should closely harmonize the rules for SBSEF registration with the CFTC's rules for SEF registration? Why or why not?

Yes. We believe the Commission should closely harmonize the rules for SBSEF registration with the CFTC's rules, with some exceptions.[26] With the benefit of nearly a decade, market participants have experience with the current registration process and regulatory framework.

The Commission should also move forward with providing a streamlined registration process for SEFs currently registered and in good standing with the CFTC. A streamlined registration process has the potential to lower the costs of registration and encourage the entry of market participants.

(Question 21) Do you believe in general that the Commission should utilize its authority under Section 36(a)(1) of the SEA to establish an abbreviated procedure for entities wishing to register as SBSEFs that are already registered with the CFTC as SEFs? Why or why not?

Yes. See the response to **Question 14**.

(Question 42) Do you agree with the requirement for an SBSEF to report its platform ID on the cover sheet? Should the disclosure of standard identifiers such as the LEI, the Financial Instrument Global Identifier ("FIGI"), and the Unique Product Identifier ("UPI") be included in an SBSEF's other reporting obligations under the proposed rules?

We believe that standard identifiers such as LEI, FIGI, and UPI should be included in an SBSEF's other reporting obligations under the Proposal. In particular, we would like to highlight a number of the potential benefits that FIGI may bring to the market when included as a standard identifier option available for use in reporting.

[26] We believe the requirements in Exhibits D and H of Form SBSEF, which require a) a list of all affiliates of the Applicant, as well as a description of any material pending legal proceeding(s) of such affiliates are overly burdensome and not fit for purpose, and should not be required unless any such affiliate provides support services to the Applicant or is otherwise involved in the Applicant's proposed operation of the SBSEF. Additionally, we do not believe that providing the details of any material legal proceeding of all affiliates of the Applicant is necessary unless such legal proceedings are anticipated to have a material impact on the Applicant or its proposed operation of the Applicant's SBSEF. To the extent that the Applicant currently has financial resources which satisfy the requirements of the Commission, we also do not believe that the financial statements of the Applicant's parent company are relevant or should be contemplated to be disclosed. Lastly, we do not believe that requiring the financial statements of any affiliate of the Applicant which engages in SBSEF activities should also be required, as such statements are irrelevant to the proposed operation of the Applicant's SBSEF.

FIGI, a unique, publicly-available identifier that covers financial instruments across asset classes that arise, expire, and change on a daily basis, was developed by Bloomberg to help solve licensing challenges and shortcomings in data organizations and governance that persist in the current regional-based security identifier numbering approaches.[27] FIGI became a free, open data standard in 2014 after Bloomberg assigned all rights and interests in FIGI to the Object Management Group ("OMG"), an international non-profit technology standards consortium. FIGI is in the public domain with no commercial terms or restrictions on usage, and available free of charge for use by all market participants. This is one of the many attributes that sets FIGI apart from other similar identifiers that may result in the imposition of significant licensing or other fees for users.

One of the many benefits of FIGI is that it enables interoperability between other identification systems and does not force the use of a single identification system. Enabling interoperability between different identification systems may actually lower costs when interacting between legacy systems, which may depend upon a single identifier, and newer systems, which typically have a more modern architecture. This interoperability reduces complexity, dependencies, and the costs of interacting across different user groups and communities that have different needs. This allows for better management of data, increases data quality, and facilitates the sharing of critical and universal information among different user communities without the costs associated with forcing changes to core systems and processes.

Firms should be permitted to choose among identifiers and have the flexibility to adopt, integrate, or switch to other identifiers as appropriate. Choice in this area would allow firms to orient decisions around reducing costs of integration or realizing added benefits that offset any such integration cost concerns.

(Question 61) Do you believe in general that Regulation SE should include a rule regarding enforceability of contracts entered into on an SBSEF that is modelled on § 37.6? Why or why not?

We believe in general that Regulation SE should include a rule regarding enforceability of contracts entered into on an SBSEF that is modelled on § 37.6. As noted above in **Section I** and in response to **Question 9**, the SEC has proposed in Rule 812(b) that an SBSEF confirmation would be limited in scope to "all of the terms that were agreed to on the facility."[28] Proposed Rule 812 may be appropriate for uncleared SBS, but it creates problems for cleared SBS executed on an SBSEF. If an SBSEF were only able to confirm the terms of the transaction that were agreed to on the facility, an SBSEF would not necessarily know all terms related to the SBS it executes if additional terms are agreed to by the counterparties outside of the SBSEF. An SBSEF's inability to confirm ALL terms of a cleared SBS executed on the SBSEF would

[27] In 2021, the Accredited Standards Committee X9 Inc. ("X9"), a non-profit organization accredited by the American National Standards Institute ("ANSI"), accepted the FIGI as a U.S. national standard and designated it as ANSI X9.145-2021.

[28] Proposed Rule 812(b).

prevent straight-through processing because an SBSEF will not be able to represent to a clearing agency that a cleared SBS, as submitted, is irrevocable.

Instead, proposed Rule 812 should require that, for a cleared SBS transaction entered into on the facility, an SBSEF confirm ALL of the terms of the transaction. In order to ensure that all terms of a cleared SBS are negotiated on an SBSEF, an SBSEF should have the ability to prohibit trading relationship documentation or "enablements" for cleared SBS executed on an SBSEF, as it is required for CFTC-registered SEFs in accordance with the 2013 Staff Impartial Access Guidance.

(Question 62) In particular, do you agree with the specific language proposed by the Commission to adapt § 37.6 into proposed Rule 812? If not, how would you revise that language?

We do not agree with the specific language proposed by the Commission to adapt ***§***37.6 into Proposed Rule 812. Specifically, we think the language provided in subsection (b) of the proposed rule that allows for terms that are not agreed on an SBSEF would create problems for cleared SBS transactions executed on an SBSEF. See **Section I** of the letter and the response to **Question 61** for proposed amendments to proposed Rule 812.

(Question 63) Are there any provisions of § 37.6 that the Commission is proposing to adapt into Rule 812 that you believe would be inappropriate, or fail to create any benefit, in a Commission rule applicable to SBSEFs? If so, please identify any such provision, explain why it would be inappropriate or unnecessary for SBSEFs, and what economic benefit that you believe would result from omitting it from the Commission's final rule.

All terms for cleared SBS executed on an SBSEF should be confirmed by the SBSEF. See **Section I** and the response to **Question 61** for proposed amendments to proposed Rule 812.

(Question 65) Rule 15Fi-2(f)(1) under the SEA provides SBS dealers and major SBS participants with an exception from the trade acknowledgment and verification requirements for SBS transactions "executed on [an SBSEF] or national securities exchange, provided that the rules, procedures or processes of the [SBSEF] or national securities exchange provide for the acknowledgment and verification of all terms of the security-based swap transaction no later than the time required by [Rule 15Fi-2(b) and (d)(2)]" (emphasis added). Proposed Rule 812(b) would require an SBSEF to provide a written record only of the terms of the transaction that are agreed to on the SBSEF. As a result, if the Commission were to adopt Rule 812(b) substantially as proposed, the exception in Rule 15Fi-2(f)(1) would not be available where the counterparty pair has agreed to other terms of the SBS transaction away from the SBSEF. Do you agree with this result? If not, how would an SBSEF be able to provide a record of all terms of an SBS transaction effected on or pursuant to the rules of the SBSEF when there are one or more pre-existing agreements between the counterparty pair where the counterparties agree to additional terms?

We do not agree with this result. As the CFTC's experience has shown, there is no reason to have trading relationship documentation with respect to cleared swaps executed on an SBSEF. Eliminating trading relationship documentation for SBS that are intended to be cleared will allow an SBSEF to confirm all terms of such SBS and would allow SB SDs to avoid involvement in issuing confirmations for SBS intended to be cleared.

(Question 75) Do you agree in general with excepting block trades from the required methods of execution? Why or why not?

Yes. We agree with the Commission's approach here and support the effort to closely align with the approach taken by the CFTC. We agree with the Proposal's assessment that the block exception to the required methods of execution balances the promotion of price competition and all-to-all trading against the potential costs to the market participants who wish to trade large orders.[29] The importance of balancing these competing interests is particularly acute in the SBS market, which is a smaller and less liquid than the swap market.

(Question 78) Do you believe in general that the Commission, like the CFTC in § 37.9(d), should allow for flexible means of execution for an SBS subject to the trade execution requirement when it is part of a package trade? Why or why not?

Yes. We agree that the Commission should allow for flexible means of execution for an SBS subject to the trade execution requirement when it is part of a package trade.

(Question 81) Do you believe in general that the Commission, like the CFTC in § 37.9(e), should allow for flexible means of execution for products that otherwise would be subject to the trade execution requirement when an SBSEF is performing a correcting, error, or offsetting trade? Why or why not?

Yes. The Commission should allow for flexible means of execution for products that otherwise would be subject to the trade execution requirement when an SBSEF is performing a correcting, error, or offsetting trade.

In addition, to allow for a fast and efficient resolution of error trades in cleared swaps, an SBSEF should be able to declare void *ab initio* any trade rejected by a clearing agency.

(Question 83) Do you agree in general that the SEC rules for SBSEFs, like the CFTC rules for SEFs, should prohibit post-trade name give-up? Why or why not? If so, do you agree with the manner in which the Commission is proposing to implement it (i.e., close harmonization with § 37.9(f))? Why or why not?

We agree that the SEC rules for SBSEFs, like the rules for SEFs, should prohibit post-trade name give-up, and we believe that the Commission should, as proposed, seek to closely harmonize with the CFTC's approach.

[29] Proposal at 90.

We also agree with the Commission's preliminary observations that prohibiting post-trade name give-up facilitates and promotes trading on SEFs, and the practice of requiring disclosure of one counterparty's name to the other counterparty increases the risk of information leakage and can deter participation by liquidity seekers on SEFs and SBSEFs. Prohibiting post-trade name give-up will also promote pre-trade price transparency by encouraging more participants to bid anonymously.

The practice of post-trade name give-up was a more important feature of the market when few swaps were centrally cleared and market participants needed to know their counterparty's identity to manage the associated credit risk. However, with the prevalence of central clearing, the need for post-trade name give-up is diminished for cleared swaps. When the CFTC moved to prohibit post-trade name give-up under § 37.9(f), the CFTC Commissioners noted that some have criticized the practice as anticompetitive and an obstacle to broad and diverse participation on SEFs.[30] Accordingly, we agree with the Commission's approach and believe post-trade name give-up should be prohibited if executed anonymously and intended to be cleared. The Commission should augment this rule with the prohibition on trade relationship documentation for SBS that are intended to be cleared and the grant to an SBSEF of the ability to void *ab initio* trades rejected from clearing to avoid the necessity of post-trade name disclosure in case of an error trade.

(Question 84) Do you believe in general that Regulation SE should establish a process whereby an SBSEF can MAT an SBS product that harmonizes closely with § 37.10? Why or why not?

The Proposal's rules governing the MAT process, which align with the CFTC's process, should be revised to include a broader range of stakeholders, including the Commission. Under the Proposal, an SBSEF is granted the authority to make MAT determinations based on an evaluation of the SBS's trading characteristics on its platform. The MAT determination, as proposed, rests solely with the SBSEF.

We believe this process, which dictates the manner in which market participants are permitted to trade, should include input from market participants and the Commission. Market participants may trade on multiple venues and in multiple jurisdictions and have a greater or different perspective from the SBSEF making the determination. Additionally, the Commission may have a different perspective and access to different information, and the Commission's input should be considered as well.

Second, we note that the CFTC has, through the Market Risk Advisory Committee and in other settings, raised concerns regarding the current MAT process. Public sector officials have previously called for greater exploration of the efficacy of the process and have indicated a willingness to revise the rules. In fact, reforming the MAT process is currently included as an

[30] Joint Statement of Chairman Heath Tarbert, Commissioner Rostin Behnam, and Commissioner Dan Berkovitz in Support of Final Rule Restricting Post-Trade Name Give-Up (June 25, 2020) available at https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertbehnamberkovitzjointstatement062520 .

agenda item in the CFTC 2021 fall rulemaking agenda. We believe the Commission should align with the MRAC recommendations, or in the alternative, coordinate with the CFTC to ensure that the MAT process applicable to both types of products is aligned and conducted in a manner that allows for input from a variety of stakeholders and the Commission.

(Question 92) Do you believe in general that Regulation SE should include a trade execution compliance schedule similar to that in § 37.12? Why or why not?

After a MAT determination has been made, market participants should be provided with sufficient time to comply with any new trade execution requirement. We believe the market would benefit from 90 days to comply.

(Question 95) Do you agree generally with the manner in which the Commission is proposing to implement Core Principle 2? Why or why not?

As noted in **Section I** above, the CFTC previously issued the 2013 Staff Impartial Access Guidance[31] to resolve conflicts arising between the impartial access requirement and the trading documentation requirement. We encourage the Commission to follow the CFTC's approach on this point. An SBSEF should have the ability to prohibit trading relationship documentation and other "enablement arrangements."

(Question 98) Do you believe that SBSEFs, like SEFs, should be able to utilize regulatory service providers? What entities currently serve as regulatory service providers for SEFs? Do you believe that the types of regulatory service providers that could be utilized by SBSEFs under proposed Rule 819(e)(1) are appropriate? If not, what other regulatory service providers should be permitted?

We believe that SBSEFs, like SEFs, should be able to utilize regulatory service providers. The types of regulatory service providers that could be utilized by SBSEFS under proposed Rule 819(e)(1) are appropriate. We believe that regulatory outsourcing arrangements are common in other contexts and serve the market well.[32] As the Commission notes, the SBSEF would at all times remain responsible for the performance of any regulatory services received and retain exclusive authority in all substantive decisions made by its regulatory service provider.[33]

(Question 129) In particular, do you believe that closely harmonizing with Subpart H of the CFTC's rules is appropriate? Why or why not? If not, please identify any provision(s) in the CFTC rules that you believe should not be adapted for SBSEFs and explain your reasoning.

[31] See 2013 Staff Impartial Access Guidance.

[32] For example, Regulation ATS allows self-regulatory organization ("SRO") functions to be done by a third-party entity. See Regulation of Exchanges and Alternative Trading Systems, 63 FR 70844, 70863 (December 22, 1998).

[33] Proposal at 115.

We believe that closely harmonizing with Subpart H of the CFTC's rules is appropriate. However, as noted above in response to **Question 9**, it is important for the Commission to consider the interaction of proposed Rule 823 and proposed Rule 812 and whether no-action relief or adjusting proposed Rule 812 is necessary to ensure smooth and efficient clearing and straight through processing.

(Question 135) Do you agree with the fields proposed by the Commission for the Daily Market Data Report in paragraphs (c)(1) and (c)(2) of proposed Rule 825? If not, which fields do you believe are not appropriate, and why?

With regard to the content of the report, we believe that the settlement price required under proposed section 825(c)(1) should only be included in the report to the extent it is calculated by an SBSEF. If a settlement price is not calculated by an SBSEF, SBSEFs should be permitted to leave this section blank in the report.

(Question 140) Do you agree with the proposed requirement in Rule 825(c)(4) that an SBSEF must publish the Daily Market Data Report on its website no later than the SBSEF's commencement of trading on the next business day after the day to which the information pertains? Why or why not? What is the current practice for the approximate time of day at which CFTC reporting markets make available their daily market data?

Please see our response in **Section II** of the letter.

(Question 143) Do you believe that the Commission should subject registered SBSEFs to Section 17(a) of the SEA and the Commission's rules thereunder? Why or why not? If not, are there nevertheless specific provisions of the Commission's rules under Section 17(a) that you believe should nevertheless be incorporated into Rule 826 using the Commission's statutory authority over SBSEFs in Section 3D of the SEA? If so, which provision(s) and why?

We believe the Commission should not subject registered SBSEFs to Section 17(a) of the SEA and the Commission's rules thereunder, and we believe the Commission is taking the correct approach in proposed Rule 826 by adopting a set of requirements that are specifically tailored to SBSEFs and generally consistent with those currently applicable to SEFs. The Core Principles for recordkeeping and reporting are substantively identical under both the SEC and CFTC regimes. It is therefore appropriate for both sets of rules to reflect this common directive.

The CFTC has developed a set of rules for recordkeeping and reporting that is practical, tested, and appropriate for SEF and SBSEFs alike. As the Commission notes, SEFs are familiar with the CFTC requirements and have invested in systems, policies, and procedures to comply with them.

We believe the Commission should adopt a set of rules that allow for the use of the same systems, policies, and procedures to comply with parallel SEC requirements. By contrast, Section 17(a), while appropriate for other entities subject to Commission oversight, should not apply to SBSEFs for the reasons noted above. The requirements of section 17(a) would result in

a less-harmonized approach and would achieve no incremental benefits over the current CFTC framework.

(Question 158) In particular, do you believe that close harmonization with Subpart O of the CFTC's rules is appropriate? If not, is there another framework for system safeguards that would be more appropriate for SBSEFs? What would be the economic impact of the SEC adopting different or additive system safeguard requirements in the case of dually registered SEF/SBSEFs?

We believe that close harmonization with Subpart O of the CFTC's rules is appropriate. The economic impact of the SEC adopting a different or additive system safeguard requirements in the case of dually registered SEF/SBSEFs would be significant. As noted below in response to **Question 159**, subpart O is appropriately tailored to the operational risks presented.

(Question 159) As noted above, the Commission previously determined not to subject SBSEFs to Regulation SCI. Do you see any changes in the SBS market that should cause the Commission to revisit that decision?

Subpart O is reasonably designed to promote SEF operational capability. We have seen no changes in the SBS market that should cause the Commission to revisit that decision. As the Commission notes, the greatest operations risk to a dually registered entity is likely to arise from the swap business rather than the SBS business.[34] From this standpoint, it is appropriate for the Commission to align with the CFTC approach to ensure that SEFs and SBSEFs alike have adequate system safeguards and business continuity protocols that are aligned with this risk.

(Question 170) Do you believe in general that the Commission should establish a rule for granting exemptions regarding a foreign SBS trading venue's status under the SEA and mandatory trade execution of cross-border SBS transactions? Why or why not?

The Commission should establish a rule for granting exemptions regarding a foreign SBS trading venue's status under the SEA and mandatory trade execution of cross-border SBS transactions. The swap and SBS markets are global in nature. The Commission recognizes that there are difficulties that can arise when the trade execution requirement applies in two separate jurisdictions. In such instances, the counterparties to the trade could violate the rules of one jurisdiction by executing the SBS in one jurisdiction but not the other, or the trade could be executed in a manner that is consistent with the rules of one jurisdiction but potentially not of the other jurisdiction.[35] Given the relative frequency of cross-border SBS transactions, it is important for market participants and trading venues to have regulatory certainty while maintaining flexibility in where transactions may be consummated.

We believe, at a minimum, the Commission should automatically grant an exemption from registration to all foreign trading venues that are currently exempt from the CFTC

[34] Proposal at 181.

[35] Proposal at 192.

registration requirements and in good standing with the CFTC. This automatic exemption would be in keeping with the Commission's general approach of harmonizing closely with the CFTC SEF rules where appropriate. Maintaining a consistent approach to the treatment of foreign trading venues is particularly important in this context, as many foreign jurisdictions do not maintain a separate regulatory framework for swaps and SBS.

(Question 172) Do you expect that there are foreign SBS trading venues that would seek an exemption under proposed Rule 833(a)? If so, how many?

We anticipate that a number of foreign SBS trading venues would seek an exemption under proposed Rule 833(a), given the global nature of the derivatives market and the current various sources of liquidity. At present we anticipate that at least three Bloomberg-affiliated non-U.S. SBS trading venues would seek an exemption under the proposal. However, we note that certain Singaporean SBS trading venues, including one Bloomberg-affiliated Singaporean SBS trading venue, may be ineligible to receive the exemption provided under Rule 833(a) and effectively barred at the door by the Proposal's requirement that security-based swaps are subject to a trade execution requirement in the foreign jurisdiction that is comparable to that in 15 U.S.C. 78c-3(h) and the Commission's rules thereunder, unless an outcomes-based approach toward granting exemptions is adopted by the Commission, which is comparable to the approach taken by the CFTC. We note that the CFTC exempted certain RMOs in Singapore from SEF registration, despite the fact that currently only certain types of rates swaps are subject to a trading obligation in Singapore. Additionally, Bloomberg's UK and Dutch MTFs will also face the same obstacle in their efforts to receive an exemption from the Commission. Notably, credit swaps (that are SBS) are not subject to any trading obligation requirements in Singapore, the UK or the EU, however, we note this did not foreclose CFTC exemptive relief from being available to such foreign trading platforms. If the Commission maintains a strict, prescriptive rules-based posture toward granting exemptions, the unanticipated ripple effect of such a rigid posture, which is at odds with principles of comity, risks fragmenting global SBS liquidity and isolating Asian/European participants which may not wish to be forced to onboard, contract with and trade on a U.S. SBSEF. Additionally, such participants would be forced to toggle between trading platforms to trade the full range of required instruments they are otherwise accustomed to trading on one platform.

Section 5h(g) of the Commodity Exchange Act authorizes the CFTC to grant an exemption from SEF registration if it determines that a foreign swap trading facility is subject to "comparable, comprehensive supervision and regulation on a consolidated basis" by the appropriate governmental authorities in the facility's home country. Foreign swap trading facilities that have been granted an exemption under section 5h(g) can be used to execute swaps that are subject to the trade execution requirement under section 2(h)(8), as well as swaps that are not subject to the trade execution requirement. We recommend that the Commission adopt the same outcomes-based approach as the CFTC on this matter.

(Question 200) Would EDGAR be an appropriate system for these filings? Or should the Commission use its Electronic Form Filing System/SRO Rule Tracking System ("EFFS/SRTS") or another file transfer system instead? Would requiring these materials to

be filed in EDGAR, EFFS/SRTS, or another file transfer system be more beneficial for SBSEFs and other market participants? If so, why? How would the use of these different systems impact the usability and accessibility of the materials for data users? Is there another method of electronic submission that is preferable? If so, please identify that method, why you believe it should be used, and the estimated costs of such system for filers.

Various provisions of proposed Regulation SE would require registered SBSEFs to file certain information electronically using the EDGAR system in Inline XBRL, including filings required to bring new products to market and to establish or amend SBSEF rules, as well as disclosures on Form SBSEF.[36] We do not believe EDGAR is the appropriate system for these filings, and instead believe the Electronic Form Filing System/SRO Tracking System, or another file transfer system, would be a more appropriate system.

Filings submitted to EDGAR in the form and manner proposed by the Commission must be prepared, formatted, and submitted in accordance with a very particular set of requirements. Most filers, in order to comply with these specifications, retain a third-party vendor, and will incur substantial costs. These costs will be particularly acute here as every product and rule-related filing would need to conform with the EDGAR and XBRL requirements.

As the Commission notes elsewhere in the Proposal, the SBS market is significantly smaller than the swap market, and the opportunities for revenue capture from SBS execution are comparatively much smaller. Requiring use of the EDGAR filing system, which is substantially more onerous and costly than the corresponding CFTC filing process, would be disproportionate to the benefits provided to the market and the Commission. These requirements have the potential to deter market participants from entering this space.

Further, a more appropriate alternative filing process is already available. Self-regulatory organizations, which are similarly situated to SBSEFs in that they are called upon to file collectively hundreds if not thousands of rule changes with the Commission annually, are required by Exchange Act Section 19(b) and rule 19b-4 thereunder to file proposed rule changes with the Commission on Form 19b-4.[37] These filings are submitted through the Commission's Electronic Form Filing System.[38] This process works well for both the SROs, as well as for market participants, the Commission, and the general public.

It is also worth noting that, under proposed Regulation SE, it appears that national securities exchanges that trade SBS products would be permitted to file rule changes for SBS products pursuant to SEA Rule 19b-4, rather than using the EDGAR system and complying with the XBRL requirements.[39] This would create an unlevel playing field in which the costs for

[36] *See, e.g.* proposed Rules 804(a)(1), 805(a)(1), 806(a)(1), 807(a)(1), and 807(d).

[37] *See* Securities Exchange Act Section 19(b) and Securities Exchange Act Rule 19b-4, respectively.

[38] See Form 19b-4.

[39] Proposal at 99, FN 107.

SBSEFs to file would be dramatically higher than the costs for an SBS exchange to make a corresponding filing. To harmonize the filing approach with SBS exchanges, and more broadly with the approach taken by the CFTC, the Commission should allow SBSEFs to use the EFFS system.

Alternatively, we encourage the Commission to adopt the process used by the CFTC, which permits filings (including initial registration filings, quarterly financial filings and rulebook filings) to be made via a dedicated portal in PDF form.

(Question 209) If the Commission were to substantially harmonize its SBSEF rules and registration procedures with those of the CFTC, as proposed, how long would respondents need to submit a Form SBSEF to the Commission after Regulation SE and Form SBSEF are adopted (assuming that the applicant is not registered as a SEF with the CFTC)?

While substantial harmonization should lower compliance and operations costs by allowing SBSEFs and market participants to use their existing procedures and systems, it is still important to allow sufficient lead time for potential SBSEFs and market participants to come into compliance with the new regulatory framework. Existing SEFs will need to make certain technological changes to the platform to conform to the new rules. Additional time will be required for testing, finalizing a new rulebook, and putting in place the requisite agreements with SBSEF clients. In our experience, the Commission should set a compliance date that is at least 18 months from the date of effectiveness of any final rule.