

Please note that the comments expressed herein are solely my personal views

Securities and Exchange Commission
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- File No. S7-27-10
- 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

Dear Sir,

Thank you for giving us the opportunity to comment on your proposed rule, reopening of comment period on: Ownership Limitations and Governance Requirements for Security-Based Swap Clearing Agencies, Security-Based Swap Execution Facilities, and National Securities Exchanges with Respect to Security-Based Swaps under Regulation MC.

You are reopening the period for public comment on proposed Regulation MC under the Securities Exchange Act of 1934 (Exchange Act), which is designed to mitigate potential conflicts of interest at clearing agencies that clear security-based swaps (security-based swap clearing agencies), security-based swap execution facilities (SB SEFs), and national securities exchanges that post or make available for trading security-based swaps (SBS exchanges).¹ The Commission is reopening the period for public comment to solicit further comment on Regulation MC in light of other more recent proposed rulemakings that concern conflicts of interest at security-based swap clearing agencies and SB SEFs.²

¹ See S7-27-10, published 14 October 2010, and my comment letter thereon.

² See S7-06-11, published 2 February 2011 and S7-08-11, published 3 March 2011, and my comment letters thereon.

Holistic proposals concerning conflicts of interest

I do not believe that we can effectively control and mitigate conflicts of interest with a series of prescribed rules, nor do I believe that a purely principles-based approach here would be objective and transparent enough to be effective. I would instead recommend that conflicts of interest should be recognised and dealt with under a mixed approach, with a broad principle concerning the identification and mitigation of conflicts of interest and specific rules on governance and voting, and any other relevant factors.

I recommended the following rule concerning ownership limitations and governance requirements under the Regulation MC Proposing Release:

with respect to security-based swap clearing agencies

- limit an individual clearing agency participant from beneficially owning or voting more than 5 percent of any voting interest in the security-based swap clearing agency
- limit clearing agency participants from beneficially owning or voting more than 40 percent of any voting interest in the security-based swap clearing agency in the aggregate with any other clearing agency participants.

With respect to SB SEFs and SBS exchanges

- limit participants or members from owning or holding more than 5 percent of any voting interest in such entities.

In all cases, the board of directors and any acting committee, including the nominating committee and any regulatory oversight committee, should be composed of a majority of independent directors.

The disciplinary panels of a security-based swap clearing agency, SB SEF or SBS exchange should be composed of a majority of people who would qualify as independent directors.

I also support proposed Rule 820 under proposed S7-06-11, which covers the fair representation of participants and investors in the selection of directors of a SB SEF and also requires a fair process for participants to nominate an alternative candidate or candidates to the Board by petition.

I also support the proposed Rule 17Ad-25 under proposed S7-08-11, which states that:

Each clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to identify and address existing or potential conflicts of interest. Such policies and procedures must also be reasonably designed to minimize conflicts of interest in decision making by the clearing agency.

I also agree with proposed rule 3Cj-1 here, that in general, each clearing agency should designate a chief compliance officer in order to ensure compliance with rules, and to resolve any conflicts of interest that may arise.

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I would like to add that a strong compliance function is necessary for the proper management of conflicts of interest, and that this should include remuneration policy, including variable / performance related remuneration.

The above mixture of principles and rules would be the right approach to mitigate conflicts of interest at clearing agencies that clear security-based swaps. These are complete and should be sufficient in order to meet this main objective.

Yours faithfully

Chris Barnard