

Securities and Exchange Commission  
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Washington, DC 20549-1090  
United States

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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 “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”.

I welcome your main proposals. The security-based swap market has been largely unregulated, and your proposals will better protect investors here. The proposals aim to mitigate conflicts of interest by requiring security-based swap clearing agencies, SB SEFs and SBS exchanges to introduce ownership and voting limitations, and additional governance requirements.

I would first comment that the proposed regulation MC is similar to rules proposed by the Commodity Futures Trading Commission for non-security-based swaps<sup>1</sup>. I would suggest that there is no rationale for proposing different rules, and I would recommend that the SEC and the CFTC should work together to propose one set of robust rules to mitigate conflicts of interest in the security-based and non-security-based swap markets. This will reduce complexity, and is in itself a strong signal to the markets that regulators are seen to work more closely together, rather than within their individual silos.

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<sup>1</sup> See CFTC reference RIN 3038-AD01.

In the context of your current proposals, I would strongly recommend that you adopt a mixed approach to ownership and voting limitations, as follows:

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 do not believe that requiring independent directors will promote independence over expertise. Independent directors are not gung-ho, and in my experience members of a board defer to the various expertise on the board in different cases. The important point is that boards are seen to be acting independently.

In response to your specific request for comment I would add the following:

P.27. I agree with the potential conflict concerns that the Commission has identified.

P.27. There is not enough evidence to conclude that mandating the trading of derivatives over a centralised clearinghouse increases or reduces either conflicts of interest or systemic risk.

P.29. Directors would be less likely to act to meet the policy objectives in Section 765 of the Dodd-Frank Act if they were selected by shareholders seeking to maximize the profits of the security-based swap clearing agency, as shareholders would be likely to select directors who would act in such a way as to create conflicts of interest in their favour.

P.41. The Commission has identified all of the significant potential conflicts concerns.

P.62. The scope of the definitions of “affiliate,” “immediate family member,” and “related person” are appropriate.

P.64. The proposed definitions of “independent director” and “material relationship” are appropriate.

P.103 (and generally). Requiring the Board of a SB SEF, SBS exchange, or SBS exchange facility to be composed of a majority of independent directors would improve the governance of the SB SEF, SBS exchange, or SBS exchange facility, and mitigate conflicts of interest that could arise.

P.104. The proposed definitions of “independent director” and “material relationship” are appropriate.

P.105. A nominal fee and covering expenses should not disqualify a candidate from being deemed independent.

P.115. Such exemptive authority would be useful to facilitate the purposes of Section 765, and exemptions should only be granted in limited circumstances. The Commission should potentially consider granting exemptions from any and all rules, based on its discretion, on a case-by-case basis.

P.117 (and generally). Mandating ownership and voting limitations and governance requirements together would be appropriate to mitigate conflicts of interest.

P.160. The Commission's estimates are reasonable.

Yours faithfully

Chris Barnard