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November 23, 2010

Ms. Elizabeth M. Murphy
Secretary to the Commission
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Proposed 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 – 75 Fed. Reg. 65882 (October 26, 2010)

Dear Ms. Murphy:

Tradeweb Markets LLC ("Tradeweb") welcomes the opportunity to comment on the various rules proposed by the Securities and Exchange Commission ("Commission" or "SEC") regarding conflicts of interest under Section 765 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[1] As the Commission is aware, the Commodity Futures Trading Commission ("CFTC") also recently proposed rules regarding Section 726 of the Dodd-Frank Act and the comment period for those rules closed on November 17, 2010. See 75 Fed. Reg. 63732 (October 18, 2010). In response to the CFTC's request for public comment on such rules, Tradeweb submitted the attached comment letter. As the rules proposed by the SEC and the CFTC are materially similar, we also respectfully submit the attached letter as our comments to the SEC's proposed rules. We intend references contained in such letter to designated clearing organizations ("DCOs"), designated contract markets ("DCMs") and swap execution facilities ("SEFs") to apply equally to security-based swap clearing agencies, national securities exchanges that post or make available for trading security-based swaps ("SBS exchanges") and security-based swap execution facilities ("SB SEFs"), respectively. In addition, Tradeweb intends to register as soon as possible as both a SB SEF pursuant to Section 3D of the Securities Exchange Act of 1934 and as a SEF pursuant to Section 5h(a) of the Commodity

[1] Tradeweb operates three separate electronic trading platforms: (i) a global electronic multi-dealer to institutional customer platform through which institutional investors access market information, request bids and offers from, and effect transactions with, regulated dealers that are active market makers in fixed income securities and derivatives, (ii) an inter-dealer platform, called Dealerweb, for U.S. Government bonds and mortgage securities, and (iii) a platform for retail-sized, odd lot fixed income securities. Tradeweb operates the dealer-to-customer and odd-lot platforms through its registered broker-dealer, Tradeweb LLC, which is also registered as an alternative trading system ("ATS") under Regulation ATS promulgated by the SEC under the Securities Exchange Act of 1934, and operates its inter-dealer platform through its subsidiary, Hilliard Farber & Co., Inc., also a registered broker-dealer operating Dealerweb as an ATS. In Europe, Tradeweb offers its institutional dealer-to-customer platform through Tradeweb Europe Limited, which is authorized and regulated by the UK Financial Services Authority as an investment firm with permission to operate as a Multilateral Trading Facility. In addition, Tradeweb Europe Limited has registered branch offices in Hong Kong, Singapore and Japan and holds an exemption from registration in Australia.

Exchange Act. In this regard, Tradeweb strongly encourages further harmonization of the SEC's and CFTC's approaches to improving governance and mitigating conflicts of interest as such relates to security-based swap clearing agencies and DCOs, SBS exchanges and DCMs and SB SEFs and SEFs. In addition, we wish to enhance our comments set forth in the attached letter by providing the Commission with some additional comments directed at certain aspects of the Commission's proposed rules which deviate from those proposed by the CFTC.

Tradeweb is broadly supportive of the Commission's objectives to (i) improve governance, (ii) mitigate systemic risk, (iii) promote competition and (iv) mitigate conflicts of interest with respect to SB SEFs. See 75 Fed. Reg. 65882 (October 26, 2010). However, as discussed more fully in our attached comment letter, Tradeweb believes that final rules can and should satisfy these objectives without discouraging investment in and the formation of new SB SEFs, undermining the ability of existing platforms to benefit from additional capital or operate effectively, or denying existing owners and shareholders of SB SEFs the governance rights that they bargained for when investing their capital in the SB SEFs.

In terms of the distinctions between the Commission's and the CFTC's proposals, first, the Commission proposes that SB SEFs and SBS exchanges should be required to have a board (and board committees)[2] comprised of at least 51% independent directors in order to mitigate conflicts. In particular, the Commission indicates that it wishes to reduce the ability of owner-directors to improperly limit access to, or the products made available for trading on, the SB SEF or SBS exchange.[3] As noted in the attached comment letter, provided that the scope of duties and criteria for qualification of the independent directors are appropriate, Tradeweb believes that requiring SB SEF boards to have a specific, and yet sufficient, number of independent directors on its board (2), and vesting such directors with a significant percentage of the voting power of the board (20%) would establish a strong representation of the public interest in SB SEF board deliberations and decision-making and ensure that SB SEFs achieve the Commission's stated objectives without placing additional, unnecessary burdens and restrictions on the composition of SB SEF boards. Moreover, Tradeweb believes that the Commission's 51% composition requirement is not appropriate or necessary. Our view is based in part on our belief that the stated goals of the Dodd-Frank Act and the proposed rules for SB SEFs, would in large part already be achieved as a result of (i) the presence of public directors on a SB SEF's operating committees and (ii) the natural effects of healthy competition between SB SEFs and SBS exchanges to list the same security-based swap contracts as recently fostered by the adoption of Section 765 of the Dodd-Frank Act.[4] To that end, Tradeweb believes that a 51% composition requirement is overly

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[2] Tradeweb assumes that the proposed rules would not preclude any SB SEF board from creating advisory committees, whose composition does not include any public directors, to provide the SB SEF board with non-binding recommendations as to matters before the board or for such advisory committees to themselves create smaller ad hoc committees with a similar function.

[3] See 75 Fed. Reg. 65882 at 65908-09.

[4] The CFTC expressed such a view in its recent rule proposal with respect to SEFs and DCMs. "[The CFTC recognized that] similar to the incentives that the enumerated entities may have with respect to the mandatory clearing requirement, if the enumerated entities control a DCM or SEF, they may cause such DCM or SEF to not list

broad and, among other things, would inappropriately and disproportionately divest equity holders of the SB SEF from participation in the decision-making process.[5]

While we are mindful that the Commission has extensive experience in monitoring operations and activities of national securities exchanges, we urge the Commission not to impose on SB SEFs the identical composition requirements that it established for national securities exchanges. As described in the attached letter, SB SEFs are a different category of industry participant that merit different considerations and criteria.[6] In particular, we note that given the scope of the definition of a SB SEF,[7] we anticipate that SB SEFs will be a much broader category of registered entity than national securities exchanges, composed of a broader array of public and private entities, with a much greater variety in ownership structures. Accordingly, the impact of a rigid 51% independent director requirement, though not yet known, is likely to be more profound for SB SEFs than it has been for national securities exchanges.

Finally, as also addressed in our attached comment letter, we believe that it is appropriate for a SB SEF or SBS exchange to have a nominating committee ("Nominating Committee") composed of 51% independent directors, not 100% as the Commission has proposed (Id. at 65911); provided further, that the Nominating Committee's jurisdiction is limited to the nomination of candidates for the independent director seats on the SB SEF's board.

Tradeweb believes that the Commission has properly identified the objectives of the proposed regulations and fully agrees with the Commission that improving governance and mitigating conflicts of interest that a SBS exchange or SB SEF may confront in balancing advancement of commercial interests and fulfillment of self-regulatory responsibilities are critical. However, for the foregoing reasons, Tradeweb further believes that the Commission can accomplish its objectives through the alternative means which we have described above (and in the attached comment letter) and without any potential associated harmful effects, including discouraging the formation of new SB SEFs, undermining the ability of existing SB SEFs to operate effectively, or denying existing owners and shareholders of SB SEFs the governance rights that they bargained for when investing their capital in the SB SEFs.

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a swap contract for trading, if it would be more profitable to keep such contract bilaterally negotiated. However, the [CFTC] notes that nothing would prevent another DCM or SEF from listing such contract, and that Section 723 of the Dodd-Frank Act would require that a DCO clearing such contract provide non-discriminatory access to such DCM or SEF." See 75 Fed. Reg. 63732 at 63737.

[5] The Commission has inquired whether it is appropriate to require that the SB SEF board submit to the Commission any recommendation of the ROC that it does not adopt or implement. Tradeweb believes that such a requirement would have a chilling effect on the ability of SB SEF boards to effectively discharge their duties, including adequately and responsibly balancing the regulatory and non-regulatory interests of the registered entity. This view is based on our belief that such a requirement would automatically taint any board decision which for legitimate reasons rejected a ROC recommendation in part or in whole and accordingly would improperly influence a board's decision-making.

[6] See attached comment letter at p.7.

[7] Section 3(a)(77) of the Securities Exchange Act of 1934.

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If you have any questions concerning our comments, please feel free to contact us. We welcome the opportunity to discuss these issues further with the Commission and its staff.

Sincerely,

Lee H. Olesky
Chief Executive Officer

Douglas L. Friedman
General Counsel

cc: Honorable Mary L. Schapiro, Chairman
Honorable Elisse B. Walter, Commissioner
Honorable Kathleen L. Casey, Commissioner
Honorable Luis A. Aguilar, Commissioner
Honorable Troy A. Paredes, Commissioner

November 17, 2010

Mr. David A. Stawick
Secretary to the Commission
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Re: Proposed Requirements for Derivatives Clearing Organizations, Designated Contract Markets and Swap Execution Facilities Regarding Mitigation of Conflicts of Interest – 75 Fed. Reg. 63732 (October 18, 2010)

Dear Mr. Stawick:

Tradeweb Markets LLC ("Tradeweb") welcomes the opportunity to comment on the various rules proposed by the Commodity Futures Trading Commission ("Commission" or "CFTC") to mitigate conflicts of interest in the operation of derivatives clearing organizations ("DCOs"), designated contract markets ("DCMs") and swap execution facilities ("SEFs"). Since 1998, Tradeweb has been at the forefront of creating solutions which support price transparency and reduce systemic risk, the hallmarks of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), and Tradeweb is broadly supportive of the Dodd-Frank Act and its stated goals. For these reasons and those set forth more fully below, Tradeweb has a significant interest in the proposed rules concerning conflicts of interest in SEFs, and it has been an active participant in the ongoing debate around how best to regulate the over-the-counter ("OTC") derivatives market – including multiple meetings with CFTC Commissioners and staff to discuss these issues and participating in each of the Public Roundtables jointly held by the CFTC and the Securities and Exchange Commission ("SEC") on August 20, September 14, and September 15, 2010.

I. Background

Tradeweb is a leading global provider of electronic trading platforms and related data services for the OTC fixed income and derivatives marketplaces. Tradeweb operates three separate electronic trading platforms: (i) a global electronic multi-dealer to institutional customer platform through which institutional investors access market information, request bids and offers from, and effect transactions with, regulated dealers that are active market makers in fixed income securities and derivatives, (ii) an inter-dealer platform, called Dealerweb, for U.S. Government bonds and mortgage securities, and (iii) a platform for retail-sized, odd lot fixed income securities.[1]

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[1] Tradeweb operates the dealer-to-customer and odd-lot platforms through its registered broker-dealer, Tradeweb LLC, which is also registered as an alternative trading system ("ATS") under Regulation ATS promulgated by the SEC under the Securities Exchange Act of 1934. Tradeweb operates its inter-dealer platform through its subsidiary, Hilliard Farber & Co., Inc., which is also a registered broker-dealer and operates Dealerweb as an ATS. In Europe, Tradeweb offers its institutional dealer-to-customer platform through Tradeweb Europe Limited, which is authorized and regulated by the UK Financial Services Authority as an investment firm with permission to operate as a Multilateral Trading Facility. In addition, Tradeweb Europe Limited has registered branch offices in Hong Kong, Singapore and Japan and holds an exemption from registration in Australia.

Founded as a multi-dealer online marketplace for U.S. Treasury securities in 1998, Tradeweb has been a pioneer in providing market data, electronic trading and trade processing in OTC marketplaces for over 10 years, and has offered electronic trading in OTC derivatives on its institutional dealer-to-customer platform since 2005. Active in 20 global fixed income, money market and derivatives markets, with an average notional daily trading volume of $250 billion, Tradeweb's leading institutional dealer-to-customer platform enables more than 2,000 institutional buy-side clients to access liquidity from more than 40 sell-side liquidity providers by putting the dealers in real-time competition for client business in a fully-disclosed auction process. These buy-side clients comprise the majority of the world's leading asset managers, pension funds, and insurance companies, as well as most of the major central banks.

Since the launch of interest rate swap ("IRS") trading in 2005, the notional amount of interest rate derivatives traded on Tradeweb has exceeded $5 trillion from more than 65,000 trades. Tradeweb has spent the last 5 years building on its derivatives functionality to enhance real-time execution, provide greater price transparency and reduce operational risk. Today, the Tradeweb system provides its institutional clients with the ability to (i) view live, real-time IRS (in 6 currencies, including U.S., Euro, Sterling), and Credit Default Swap Indices (CDX and iTraxx) prices from swap dealers throughout the day; (ii) participate in live, competitive auctions with multiple dealers at the same time, and execute an array of trade types (e.g., outrights, spread trades, or rates switches); and (iii) automate their entire workflow with integration to Tradeweb so that trades can be processed in real-time from Tradeweb to customers' middle and back offices, to third-party affirmation services like Markitwire and DTCC Deriv/SERV, and to all the major derivatives clearing organizations. With such tools and functionality in place, Tradeweb is providing the OTC marketplace with a front-end swap execution facility. Moreover, given that it has the benefit of offering electronic trading solutions to the buy-side and sell-side, Tradeweb believes that it can provide the Commission with a unique and valuable perspective on the proposed rules.

As additional background, Tradeweb was established in 1998 with financial backing from 4 global banks that were active in, and interested in expanding and fostering liquidity in, fixed income (U.S. Government bond) markets. After 6 years of growth and expansion into 15 markets globally, in 2004, Tradeweb's bank-owners (which had grown from 4 to 8 over that time) sold Tradeweb to The Thomson Corporation, which wholly-owned it until January 2008. Although the original bank-owners continued to be a resource for Tradeweb from 2004 to 2008, The Thomson Corporation recognized that bank ownership was an important catalyst of Tradeweb's development and sold a strategic interest in Tradeweb back to a consortium comprised of the 8 original global bank owners and 3 additional banks. Today, Tradeweb is majority owned by Thomson Reuters Corporation (successor to The Thomson Corporation) and minority stakes are held by the bank consortium and Tradeweb management. Accordingly, Tradeweb was launched by market participants and has benefitted from their investment of capital, market expertise and efforts to develop and foster more transparent and efficient markets. With the support of its ownership and its board comprised of market and non-market participants, Tradeweb has, since its inception, brought transparency and efficiency to the OTC fixed income and derivatives marketplace.

Tradeweb intends to register its execution facility as a SEF as soon as possible pursuant to Section 5h(a) of the Commodity Exchange Act (the "CEA").

II. Summary

In connection with implementing the new comprehensive regulatory framework for swaps established by the Dodd-Frank Act, Section 726 of the Dodd-Frank Act requires the Commission to adopt rules to mitigate conflicts of interest in the operation of certain DCOs, DCMs and SEFs. Pursuant thereto, the Commission is proposing with respect to DCOs, DCMs and SEFs (i) structural governance requirements and (ii) limitations on ownership of voting equity and the exercise of voting power. In this letter, Tradeweb has focused on those aspects of the proposed rules which would be applicable to SEFs and DCMs.

The Commission's stated goals in proposing these rules are to (i) improve governance, (ii) mitigate systemic risk, (iii) mitigate conflicts of interest that a DCM or SEF may confront in balancing advancement of commercial interests and fulfillment of self-regulatory responsibilities and (iv) encourage competition in the industry. See 75 Fed. Reg. 63732 (October 18, 2010). Tradeweb is broadly supportive of the Commission's objectives and mindful of the potential conflicts of interest that could arise in the governance and operation of a SEF. However, Tradeweb believes that final rules can and should satisfy these objectives without discouraging investment in and the formation of new SEFs, undermining the ability of existing platforms to benefit from additional capital or operate effectively, or denying existing owners and shareholders of SEFs the governance rights that they bargained for when investing their capital in the SEFs. Indeed, if the Commission's final rules are too rigid, they could hinder, rather than promote, robust competition in the swap market by reducing the number and variety of SEFs able to comply with the requirements and thereby undermine the goal of promoting the trading of swaps on SEFs. In connection with adopting final rules, the Commission should also be mindful that imposing specific requirements in one area may satisfy many of its objectives and lessen or eliminate the need to adopt restrictions in other areas. Consequently, the Commission should not view each set of requirements or restrictions in isolation.

In this regard, Tradeweb believes that before setting the minimum number and/or voting thresholds for composition of the board of a SEF, due consideration must first be given to the definition and scope of duties of a public director. Consistent with the views of the Commission, Tradeweb agrees that public directors can provide SEF boards with an independent perspective and in bringing that perspective, public directors should be charged not only with duties relating to self-regulation but also to act in the interests of the SEF and its equity holders, as with other directors. With such scope of duty in mind and provided that the criteria for qualification for public directors are appropriate, Tradeweb believes that the goal of mitigating conflicts of interest can be achieved by requiring SEF boards to have a specific, and yet sufficient, number of public directors on its board (2), particularly when the independent voice of such directors is strengthened with control over a significant percentage of the voting power of the board, which Tradeweb believes is 20%. This view is based on our belief that (i) 2 is a sufficient number for the public directors to have a meaningful voice in a full board setting and (ii) 20% voting power would establish strong representation of the public interest in SEF decision-making without placing additional, unnecessary burdens and restrictions on the composition of SEF boards.

Tradeweb believes that separating the approach to voting power and voice of the public directors in this way would create a stronger independent presence on SEF boards by focusing on adding a sufficient number of quality public directors (2) and providing them with a real presence in decision-making (20% voting power), rather than simply mandating the presence of more public directors on SEF boards. For the foregoing reasons, Tradeweb does not believe that requiring SEF boards to have a specific percentage (e.g., 35%) of public directors is necessary or appropriate to achieve the stated goals of these proposed rules.

With these general comments in mind, Tradeweb wishes to provide the following specific comments on the Commission's proposed rules.

III. Discussion

The Commission's proposed structural governance requirements embody six main elements. First, DCMs and SEFs (and, if applicable, the parent operating the DCM or SEF) would be required to have a board (and board committees, to the extent such committees exercise delegated authority with respect to the management of the DCM or SEF)[2] comprised of at least 35%, and not less than 2, "public" directors. Second, the board of each DCM or SEF would be required to establish a ROC comprised solely of "public" directors, with certain specified responsibilities and obligations to oversee regulatory and self-regulatory functions. Third, the board would be required to establish a Nominating Committee comprised of at least 51% "public" directors and chaired by a "public" director. Fourth, the board would be required to establish a Membership Committee comprised of at least 35% "public" directors to address fair and open access issues. Fifth, each DCM or SEF would be required to include in its disciplinary panel at least one "public participant," who would also chair the panel, to maintain impartiality. Finally, in considering the acceptable levels of "public" director representation on the DCM or SEF board and board committees, the Commission is proposing a standard for who would qualify as a "public" director.

In addition, the Commission's proposed ownership and voting power limitations embody two main elements. First, no single member (or related persons) of the SEF execution platform may own more than 20% of the voting equity of a SEF. Second, the Commission has sought public comment on whether SEF members (and related persons) should be permitted to own, in the aggregate, more than 40% of the voting equity of a SEF.

A. Definition and Scope of Duties of Public Director

As noted above, Tradeweb believes that before the minimum number and/or voting thresholds for composition of the board of a SEF can be set, due consideration must first be given to the definition and scope of duties of a public director. The proposed rules include a definition of "public director" which would preclude any director that is an officer or employee of a "SEF member" or of an affiliate of the "SEF" from being a "public director" of the SEF. Id.

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[2] Tradeweb assumes that the proposed rules would not preclude any SEF board from creating advisory committees, whose composition does not include any public directors, to provide the SEF board with non-binding recommendations as to matters before the board or for such advisory committees to themselves create smaller ad hoc committees with a similar function.

at 63742. We believe that such a sweeping prohibition goes beyond what is necessary to implement Section 726 of the Dodd-Frank Act, which directs the Commission to mitigate conflicts of interest in connection with the interaction between swap dealers and major swap participants, on the one hand, and DCOs, DCMs and SEFs. In this regard, this definition would not permit an officer or employee of an affiliate of the SEF such as a parent, even if the affiliate is not a swap dealer or a major swap participant and does not participate in trading or have trading privileges on the SEF, from being a public director. We see no persuasive reason for such a categorical prohibition in that an officer or employee of an affiliate who is engaged in a different line of business should be able to bring an independent perspective to the board. Moreover, we believe that a significant and unintended consequence of the restrictive scope of the definition of "public director," is an unnecessary and appreciable increase in the cost to SEFs in locating and retaining the limited number of individuals who can actually fulfill the proposed requirements. We do not believe that any of the foregoing is what the Commission intended.

As also noted above, Tradeweb agrees with the Commission that public directors can provide boards with an independent perspective and in bringing that perspective, public directors should be charged to act not only to ensure effective self-regulation, but also in the interests of the SEF and its equity holders, as with other directors.[3]

B. Specific Composition Requirements

i. Board Composition

As a preliminary matter, the Commission apparently does not intend to extend the composition requirements to an entity, including a parent, "that does not exert active and recurrent control over the operations" of a SEF or DCM. Id. at 63738. We believe that, for this purpose, the Commission means that an entity must exert direct, day-to-day authority or control over the SEF's or DCM's ordinary course operations and activities, including its self-regulatory program, in order to be subject to the proposed composition requirements. We would like the Commission to confirm that our understanding is correct.

Second, as noted above, Tradeweb is supportive of the idea of having public directors on SEF boards, but believes that the goal of mitigating conflicts of interest can be achieved by requiring SEF boards to have a specific, and yet sufficient, number of public directors on its board (2), particularly when the independent voice of such directors is strengthened with control over a significant percentage (20%) of the voting power of the board. This view is based on our belief that 2 is a sufficient number for the public directors to have a meaningful voice in a full board setting and to discharge the voting power attributed to them. Moreover, this view is consistent with one of the alternatives to the board composition requirements which the Commission proposed for consideration and public comment (i.e., that 1 or 2 public directors

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[3] "While [exchange] boards do have fiduciary obligations to their owners, they are also required by the [CEA] to ensure effective self-regulation... [P]ublic directors...will approach their responsibilities without the conflicting demands faced by industry insiders. They will be free to consider both the needs of the [exchange] and of its regulatory mission, and may best appreciate the manner in which vigorous, impartial, and effective self-regulation will serve the interests of the [exchange] and the public at large." 72 Fed. Reg. 6936 at 6947 (February 14, 2007).

could be sufficient if the main purpose of the 35% composition requirement is to introduce an independent perspective into SEF governance).[4] Tradeweb also believes that the appropriate voting power of the public directors is 20% rather than 35% as proposed by the Commission.[5] This view is based on our belief that the presence of public directors on a SEF's operating committees already, in large part, would achieve the stated goals of the Dodd-Frank Act and the proposed rules for a SEF and therefore 35% voting power is unnecessarily high because it places additional, unnecessary burdens and restrictions on the composition of SEF boards. We believe that 20% voting power translates into strong representation of the public interest in SEF decision-making and sufficiently bolsters the independent voice of the 2 public directors in board deliberations without unnecessarily restricting how SEFs, and in particular privately-held SEFs, structure their governance. Tradeweb believes that separating the approach to voting power and voice of the public directors in this way would create a stronger independent presence on SEF boards by adding a sufficient number of quality public directors and providing them with a real presence in decision-making rather than simply mandating the presence of more public directors on SEF boards.

We therefore do not believe that requiring SEF boards to have a specific percentage (e.g., 35%) of public directors is necessary or appropriate to achieve the stated goals of the proposed rules. A mandated percentage of directors raises real concerns for SEFs as it could require enormous increases in the size and costs of a SEF board without any associated benefit or more effective public voice.

As noted above, we believe a key objective of the proposed rules is to assure an independent voice on SEF boards in order to improve governance and mitigate conflicts of interest, without unnecessarily disrupting SEF decision-making or transferring control of SEFs to the public. We believe that mandating SEF boards to include a specific percentage of public directors would likely discourage investment in both new and existing SEFs, significantly increase the costs of operating a SEF, and require many existing SEFs to incur significant costs in revising their governance arrangements, without providing any commensurate benefit or more effective independent voice than would be provided by mandating a specific number of public directors and vesting such directors with a significant percentage of the voting power (i.e., 20%) of the board. Consequently, we believe that the proposed rules should focus less on mandating the presence of more public directors on SEF boards through a specific percentage or otherwise, and more on establishing effective representation through the quality, qualifications and selection process of the public directors (as discussed more fully below) who will be charged with effecting the public voice in board deliberations and discharging the public vote.

In addition, while we are mindful that the Commission received and considered extensive comment in deciding the public director standards in respect of DCMs in its prior rulemaking,

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[4] The Commission sought comment on its proposed 35% composition requirement indicating that "if the main purpose of the 35% composition requirement is to introduce an independent perspective into DCO, DCM, and SEF governance, would requiring one or two public directors be sufficient, regardless of the size of the DCO, DCM, or SEF Board of Directors...." See 75 Fed. Reg. 63732 at 63739.

[5] However, Tradeweb notes that this same framework (i.e., imbuing a fixed number of public directors with a specific percentage of board voting power) can work equally with another percentage if the Commission concludes that 20% is too low.

we believe that the Commission should not impose on SEFs the identical percentage of public directors which it established for DCMs, which as described below is a different category of industry participant that merits different considerations and criteria. Further, for the reasons discussed below, SEFs should be permitted greater latitude than DCMs in the composition of their boards for a number of reasons. First, SEFs are a new category of registered entity and the Commission does not yet have the same extensive experience in monitoring SEF operations and activities, including with respect to conflict of interest issues, as it has with DCMs. Second, given the scope of the definition of a SEF,[6] we anticipate that SEFs will be a much broader category of registered entity with much greater variety in ownership structure than seen in DCMs and accordingly the impact of a rigid 35% public director requirement, though not yet known, is likely to be more profound for SEFs than it has been for DCMs. As the Commission is aware, there are only approximately 16 active DCMs today and virtually all are publicly traded or owned by publicly traded companies.[7] Fourth, the scope of trading activities for SEFs will be more restrictive than for DCMs. For example, SEFs will not be able to list agricultural swaps for trading except pursuant to CFTC rules permitting such activity and members of the public (i.e., persons who are not "eligible contract participants" as defined) will not be permitted to engage in swap transactions listed on SEFs.[8] Finally, one of the overarching goals of the Dodd-Frank Act is to move as much trading in swaps as possible from the OTC market to regulated execution facilities and trading platforms, in particular SEFs.[9] Tradeweb believes that SEFs would serve a significant role in providing the additional capacity necessary to absorb the growing OTC trading volume on regulated trading platforms. Structural governance and ownership regulations that are overly burdensome and inflexible could establish substantial hurdles that will ultimately inhibit, rather than encourage, the creation of new SEFs and maintenance and expansion of existing SEFs. We believe such an outcome would ultimately jeopardize the achievement of the desired goals of the Dodd-Frank Act and the Commission. Accordingly, for the foregoing reasons, we believe that SEFs should be given greater latitude in the composition of their boards.

In short, we believe that mandating a minimum of 2 public directors on any SEF board and vesting such directors with 20% of the voting power of the board would establish a strong representation of the public interest in SEF board deliberations and decision-making and ensure that SEFs meet their statutory, regulatory and self-regulatory requirements. In addition, Tradeweb believes that the flexibility afforded SEFs by such an approach would enable SEFs to address the Commission's concerns regarding mitigation of conflicts of interest in a manner which does not (i) discourage the formation of new SEFs, (ii) unduly interfere with the ability of existing SEFs to operate effectively, or (iii) deny existing owners and shareholders of SEFs the governance rights that they bargained for when investing their capital in the SEFs.

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[6] The term "swap execution facility" means "a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that (A) facilitates the execution of swaps between persons; and (B) is not a designated contract market." See Section 1a(50) of the CEA (Emphasis added).

[7] See Anna Raff, CFTC's Gensler Offers Look at Swap Contract Regulation to Come, Dow Jones Newswires (September 16, 2010). See also 72 Fed. Reg. 6936 at 6945.

[8] See Section 5h(b)(2) of the CEA and Section 2(e) of the CEA, respectively.

[9] See Section 5h(e) of the CEA ("The goal of this section is to promote the trading of swaps on swap execution facilities....").

While Tradeweb does not support the mandate of a specific percentage requirement, if the Commission includes a specific percentage requirement in its final rules, Tradeweb encourages the Commission, for the reasons stated above, to permit SEFs the additional flexibility to comply with such requirements either by having 2 public directors sit on the SEF board and vesting them with 20% of the voting power of the board or by having a specific percentage of the SEF board (20%) be composed of public directors. If the Commission ultimately determines to mandate that a SEF board, like the board of a DCM, be composed of a percentage of public directors without permitting this alternative means of compliance, Tradeweb believes that such rules may intrude too deeply into the governance of SEFs, potentially curtailing the flow of private capital into this space and preventing the emergence of new competing trading platforms in the swap market, with the notable exception of affiliates or subsidiaries of existing, publicly-owned exchanges. Such an outcome would be clearly at odds with promoting more competitive and efficient markets, which is among the principal objectives of the Dodd-Frank Act.

Finally, if the Commission decides that a specific percentage higher than 20% is required in its final rules (whether as voting power or composition), Tradeweb believes that such percentage should not be higher than 35%. Tradeweb believes that any percentage higher than 35% would unreasonably restrict SEFs from including on their boards the broad array of non-public directors (i.e., commercial representatives, highly experienced industry professionals, and persons representing affiliated entities) needed for SEFs to continue to compete effectively in the market. Moreover, Tradeweb believes that any higher percentage would result in much larger, more costly and unmanageable boards, hindering the competitive edge of domestic SEFs in the U.S. and elsewhere. Such a result would dramatically impair the number of SEF/DCMs in the marketplace and deprive the marketplace of the competition which these rules seek to achieve.[10]

ii. Regulatory Oversight Committee

Tradeweb agrees with the Commission that the proper role for public directors is to monitor the SEF's self-regulatory program for sufficiency, effectiveness, and independence, and a SEF and a DCM should have a ROC chaired by a public director. However, Tradeweb believes that, in the case of a SEF, it should be composed 51% of public directors, not 100%. Again, Tradeweb is mindful that DCMs must have a ROC composed of only public directors and that the Commission is proposing to maintain this requirement for DCMs and extend it to SEFs. Id. at 63741. However, (a) given that a SEF (unlike a DCM) must have, in accordance with Section 5h(f)(15) of the CEA, a chief compliance officer to (i) monitor adherence to applicable statutory, regulatory and self-regulatory requirements and (ii) to resolve any conflicts of interest that may arise and (b) given that the chief compliance officer must report to the SEF board of

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[10] The Commission has asked for comment on whether the standard of fair representation is a better approach to mitigating conflicts of interest in respect of governance. Id. at 63738-63739. In our view, a fair representation standard would be far less preferable to, and further would not be complementary to, mandating specific numbers or even percentages of public directors to mitigate SEF conflicts of interest. We believe that the fair representation standard is an ill-defined, amorphous standard which would create difficulty for SEFs in determining how to comply with the new regulations. Moreover, a fair representation standard could intrude more deeply into the existing governance of SEFs than mandating specific numbers or even percentages of public directors, without any offsetting public benefit.

directors or the senior SEF officer having the responsibility for overseeing such officer (including with respect to the resolution of conflicts of interest), Tradeweb believes that a 51% public director requirement for a SEF's ROC would be more effective in protecting the self-regulatory function of the SEF from commercial interests and that of the SEF's constituencies. Id. at 63741-42. Tradeweb believes that this approach would allow for public directors to control the ROC, but give such directors greater and more consistent access to the voice of the SEF's organization and management, who may provide valuable insights and expertise, and aid the public directors in discharging their duties more effectively.

iii. Nominating Committee

We also believe that it is appropriate for a SEF or DCM to have a Nominating Committee composed of 51% public directors and that the chair be a public director (Id. at 63739-63740) *provided* that, the Nominating Committee's jurisdiction is limited to the nomination of candidates for the public director seats on the SEF's board. First, we believe that a 51% public director Nominating Committee properly insulates the nomination of public directors from the commercial interests of the SEF while still permitting the public directors adequate access to the diverse insights and networks of other members of the board which can aid them in discharging their duties more effectively. More importantly, we do not believe it is appropriate for the jurisdiction of the Nominating Committee to include the selection of non-public director candidates. To provide otherwise (particularly in respect of private companies) would eliminate the right of SEF shareholders to make alternative nominations for elections to the board, deprive SEF shareholders of existing rights to select board members, and eliminate the existing rights of SEF shareholders to appoint a certain number of directors to the SEF's board – effectively contradicting the concept of shareholder democracy which is at the foundation of the corporate governance model in the United States.

iv. Disciplinary Panel

Tradeweb agrees with the Commission that each SEF disciplinary panel should include at least one "public participant" to maintain impartiality and that the chair of each SEF disciplinary panel should be a public participant. Id. at 63740.

v. Membership Committee

Tradeweb would not object to a requirement that a SEF have a Membership Committee which includes a specific number of public directors (i.e., 2) vested with 20% of the voting power of the committee or, if the Commission mandates that a specific percentage of such committee be composed of public directors, no higher than 35%, to address fair and open access issues (i.e., assure non-discriminatory access). Id. at 63741. Again, because of the distinctive issues presented by SEFs, Tradeweb believes that the composition requirement of this Committee should be consistent with that of the SEF board.

vi. Petitions for Waiver

Tradeweb believes that the Commission should institute a procedure to permit a SEF to request a waiver of, or partial exemption from, the board and/or committee composition requirements ultimately adopted by the Commission in order to address circumstances where complying with the requirements would place an undue hardship on the SEF. For example, if the Commission adopts a percentage composition requirement and a SEF has a large board representing the various interests of its shareholders, the Commission should favorably consider a waiver of, or partial exemption from, the board and/or committee composition requirements where the objectives of the final rules are otherwise met. If the rules ultimately adopted by the Commission require a SEF to hire an impractical number of public directors, the SEF may instead be required to reduce the number of its non-public directors, depriving shareholders of representation and disincentivizing investment in the SEF.

C. Ownership and Voting Limitations

The Commission has also proposed imposing limitations on ownership levels for DCOs, SEFs and DCMs. Specifically, the Commission seeks to impose (i) a 20% limitation on the voting equity that any single member (or related person) may own in a DCO, SEF or DCM; and (ii) a 40% limitation on the voting equity that the enumerated entities (and their affiliates), which include, among other things, bank holding companies with $50 billion in total consolidated assets may own in the aggregate of a DCO. See 75 Fed. Reg. 63732 at 63742-45. Tradeweb endorses the Commission's view that aggregate ownership limitations are not appropriate for SEFs for the reasons explained below, and also wishes to confirm our understanding of certain aspects of the proposed single member limitation.

As we have stated publicly and as is evident from our own beginnings, electronic markets benefit greatly from market participant investment in platforms and in trading venues. They possess critical market expertise, and provide capital for innovation and more efficient workflow solutions, and are a significant source of funding and liquidity for the creation and ongoing operation of SEFs. Tradeweb believes imposing hard limits on ownership would adversely affect the ability of existing SEFs to continue to access capital and operate effectively. Indeed, had such restrictions been in place historically, most of these platforms would have failed to launch and succeed. Moreover, imposing rigid limits on SEFs may significantly hinder the ability of sponsors of new platforms to find seed capital and thus undermine the formation of new platforms and diminish competition in the swap market. See Commissioner Jill E. Sommers, Dissenting, Id. at 63753 ("I also note that the [EU] explicitly rejected ownership limitations … because such limitations may have negative consequences for market structures.").

In addition, the Commission's proposed limitations on ownership of SEFs would not further the Commission's objective of reducing potential conflicts of interest. SEFs by their nature pose fewer conflict of interest concerns than do DCOs or DCMs. DCOs play a critical role in reducing systemic risk by mitigating credit risk for swap market participants and have the ability to keep swap contracts out of the mandatory clearing requirement and therefore also out of the trading requirement. SEFs, by contrast, have no such ability. Moreover, the participants trading on SEFs rather than DCMs generally are larger institutional parties and do not include

members of the general public. As such, we support the Commission's view that the benefit of sustained competition between new SEFs and DCMs outweighs any marginal benefit of improved governance that could result from these limitations. Id. at 63745.

With respect to the single member ownership limitation, Tradeweb seeks to confirm our understanding that the proposed 20% ownership limitation (i) would not apply to an entity that is not a participant, and does not have the same ultimate parent as a participant, on the SEF; (ii) would represent the maximum ownership that a single participant on the SEF (together with the affiliates of the participant having the same ultimate parent) may own in the SEF, directly or indirectly; and (iii) would not apply to an entity (e.g., a holding company) that is owned by more than one such participant (together with their respective affiliates), so long as the 20% (direct or indirect) ownership limitation continues to apply to each such participant (together with its respective affiliates having the same ultimate parent).

Finally, Tradeweb believes that if it determines to impose a single member limit on equity for SEFs in the final rules, the Commission should institute a procedure to permit a SEF to request a waiver to address circumstances where exceeding such a limit would occur. For example, if an owner fails to make a required capital contribution and another owner makes more than its pro rata share of a required capital contribution to compensate for the defaulting owner, the Commission should favorably consider a waiver of any ownership limitation. Without the ability of an owner to increase its ownership in such a case, a SEF would not be able to operate, creating a detriment not only to its owners, but to market participants as well.

IV. Conclusion

Tradeweb believes that the Commission has properly identified the objectives of the proposed regulations and fully agrees with the Commission that improving governance and mitigating conflicts of interest that a DCM or SEF may confront in balancing advancement of commercial interests and fulfillment of self-regulatory responsibilities are critical. However, for the foregoing reasons, Tradeweb further believes that the Commission can accomplish its objectives through the alternative means which we have described above and without any potential associated harmful effects, including discouraging the formation of new SEFs, undermining the ability of existing SEFs to operate effectively, or denying existing owners and shareholders of SEFs the governance rights that they bargained for when investing their capital in the SEFs.

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If you have any questions concerning our comments, please feel free to contact us. We welcome the opportunity to discuss these issues further with the Commission and its staff.

Sincerely,

Lee H. Olesky
Chief Executive Officer

Douglas L. Friedman
General Counsel

cc: Honorable Gary Gensler, Chairman
Honorable Michael Dunn, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott O'Malia, Commissioner
Dan Berkovitz, General Counsel, Office of the General Counsel
Richard Shilts, Acting Director, Division of Market Oversight
Ananda Radhakrishnan, Director, Division of Clearing and Intermediary Oversight