

November 24, 2010

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

Re: 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 (RIN 3235-AK74)

Dear Ms. Murphy:

Bloomberg LP appreciates the opportunity to provide the Securities and Exchange Commission ("SEC") with our comments regarding proposed rules to mitigate conflicts of interest in the operation of a Security-Based Swap Execution Facility ("SB SEF") under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Act").

Section 765 of the Act requires the SEC to adopt rules to mitigate conflicts of interest with regards to swap market facilities including SB SEFs.¹ Bloomberg is one of the largest, privately-held independent platforms for electronic trading and processing of OTC derivatives. Bloomberg intends to register as a SB SEF in order to facilitate trading in the security-based swap markets.

I. Conflicts of Interest in Market Facilities

Section 765 of the Act requires the SEC to promulgate rules regarding conflicts that may arise in the operation of SB SEFs. In particular, Section 765 (a) requires the adoption of rules that may, but are not required to, include numerical limits on the control or voting rights with respect to SB SEFs by enumerated entities.² Section 765 (b) mandates the SEC to determine the manner in which its rules may be deemed necessary or appropriate to improve governance, or to mitigate systemic risk, promote competition, or mitigate conflicts of interest in connection with the interaction between swap dealers

¹ The SEC proposal also addresses mitigating conflicts of interest associated with Securities-Based Swap Clearing Agencies and National Securities Exchanges with respect to securities-based swaps ("SBS exchanges") (collectively "market facilities").

² The enumerated entities are bank holding companies with \$50 billion or more in total consolidated assets, a nonbank financial company supervised by the Board of Governors of the Federal Reserve System, an affiliate of such bank holding company or nonbank financial company, a swap dealer or a major swap participant.

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and major swap participants on the one hand and SB SEFs on the other. Finally, Section 765 (c) requires the SEC to consider the manner in which its rules address conflicts of interest arising from SB SEF equity ownership, voting structure, or other governance arrangements.

The focus of Section 765 is to address conflicts of interest arising from control of market facilities, including SB SEFs, by OTC derivative market participants such as security-swap dealers, major security-swap participants and bank holding companies. Specifically, the concern is that these enumerated entities may have economic incentives inconsistent with the public policy objectives of the Act and their ownership in market facilities may exacerbate structural conflicts of interest.

II. Conflicts of Interest and Governance Proposals

The SEC's rule proposal seeks to mitigate potential conflicts of interest through ownership limits and structural governance requirements.³ The proposal includes ownership and voting interest limitations by SB SEF members.⁴ The structural governance proposal requires that a SB SEF Board of Directors be composed of a majority of independent directors.⁵ In addition, the SB SEF must establish a Nominating Committee to administer the process of nominating individuals as independent directors of the Board⁶ and a Regulatory Oversight Committee ("ROC") to oversee the SB SEF regulatory program.⁷ Separately, the Act requires SB SEFs to designate an individual to serve as a Chief Compliance Officer ("CCO") that reports directly to the Board with responsibility for implementing and administering an SB SEF's core principles.⁸

Following the discussion of the proposed governance structure the SEC includes a discussion of its exemptive authority pursuant to Section 36 of the Securities Exchange Act of 1934. Specifically, the SEC notes that Section 36 provides them with the authority to grant an exemption from any SEC rule or rule provision subject to conditions that could be revoked at any time. More specifically, the SEC notes that it could grant an exemption where an SB SEF "demonstrated that it established alternative means to effectively mitigate conflicts of interest as contemplated under Regulation MC".

³ 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 (Oct. 26, 2010).

⁴ The SEC proposal imposes a restriction on a SB SEF member from individually owning or voting more than 20% of any class of equity in the SB SEF.

⁵ The SEC is not proposing that the Board composition requirement apply to parent companies of a SB SEF. We support this approach as we agree that the composition of a SB SEF parent Board does not raise conflict concerns that require rulemaking.

⁶ Under the proposal a Nominating Committee must be composed solely of independent directors.

⁷ Under the proposal the ROC must be composed solely of independent directors.

⁸ Section 763(c) of the Act.

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As a preliminary matter, we do not believe it is necessary for the SEC to require a SB SEF to have a ROC where the Act requires a CCO with very similar responsibilities and who reports directly to the SB SEF's Board. We believe that requiring a ROC is an unnecessary redundancy that adds little to the already existing CCO requirement. A CCO, among other things, is responsible for ensuring compliance with the Act and the rules and regulations issued under the Act, monitoring adherence to applicable statutory, regulatory and self-regulatory requirements, and resolving any conflicts of interest that may arise. A CCO that undertakes the duties obligated under Act and who reports to the SEF Board is fully adequate to oversee a SB SEF's regulatory program.⁹

Bloomberg supports the SEC's efforts to address potential conflicts of interest that arise when market participants have ownership interest in a SB SEF. We believe, however, that the conflicts of interest rules must be applied appropriately. We strongly support the application of the exemptive authority in Section 36 to Regulation MC's governance requirements where relevant facts for a particular SB SEF diminish or eliminate the risk of a conflict of interest. The primary rationale for ownership and governance requirements stems from a concern about conflicts that may arise from SB SEFs owned by market participants. The SEC should consider exempting an SB SEF from the obligation to conform with any of the proposed governance requirements where a SB SEF is not owned by its members or other market participants and where the SB SEF can demonstrate a sufficient mitigation of other potential conflicts of interest.

We believe that as part of the registration process a SB SEF should be provided the opportunity to submit facts and circumstances which may demonstrate that the governance structure, as reflected in the instant proposed rule, is not necessary or appropriate. Included among the variables that should be considered in exempting an SB SEF from prescribed governance requirements are information regarding a SB SEF's ownership structure, its fee structure, and the means by which it seeks to fulfill its regulatory responsibilities, including the use of an independent, third-party utility to meet its self-regulatory organization obligations.¹⁰ As noted by the SEC in its request for comments, the exemption process should allow consideration of waiver for any governance structure rule or regulatory provision. The SEC would be able to revoke the exemption at any time if subsequent events or circumstances warranted such action; in such case, the SEC could require a SB SEF to institute the requisite governance structure.

We think the SEC appropriately identifies the key variables in identifying conflicts of interest and generally proposes appropriate measures to improve the governance of SB SEFs. We believe, however, that the governance requirements need to be applied meaningfully and appropriately. As such, we support use of Section 36 to exempt an SB SEF from governance requirements depending on their ownership structure and other relevant facts and circumstances. We also believe, separate from

⁹ *See id.*

¹⁰ A utility with direct authority to enforce compliance with SB SEF rules and monitoring of trade and trade processing would provide a level of independent oversight consistent with a self-regulatory organization.

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application of the Section 36 exemptive authority, it is unnecessary to require a SB SEF to have a ROC where the Act requires the designation of a CCO with regulatory oversight responsibility who reports directly to the Board.¹¹

We appreciate the opportunity to provide our comments on the proposed rules, and would be pleased to discuss any questions that the SEC may have with respect to this letter.

Very Truly Yours,



Ben Macdonald
Global Head Fixed Income
Bloomberg LP

¹¹ Alternatively, should the SEC determine that a ROC is necessary, we believe that the ROC should be composed of a majority of independent directors instead of solely independent directors. We believe that 51% independent director requirement is sufficient given the CCO requirement.