



**The Depository Trust &
Clearing Corporation**
55 Water Street
New York, NY 10041-0099

Larry E. Thompson
General Counsel

Tel: 212-855-3240
Fax: 212-855-3279
lthompson@dtcc.com

Via Agency Website & Courier

November 26, 2010

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

RE: RIN 3235-AK74, 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 Ms. Murphy:

The Depository Trust & Clearing Corporation (“DTCC”) appreciates the opportunity to provide comments to the Securities and Exchange Commission (“Commission”) on its proposed Regulation MC for security-based swap clearing agencies (“SBSCAs”), security-based swap execution facilities (“SB SEFs”) and national securities exchanges that post or make available for trading security-based swaps (“SBS exchanges” and, together with SB SEFs and SBSCAs, collectively, “Registered Entities” and, individually, each a “Registered Entity”) regarding the mitigation of conflicts of interest (“Regulation MC”).¹ Regulation MC contains (i) certain composition and governance requirements on the Boards and specified committees of Registered Entities (the “Structural Governance Requirements”) and (ii) certain limits on the ownership and voting power of members of Registered Entities (the “Ownership and Voting Limitations”).

I. SUMMARY OF RESPONSE

DTCC supports regulations designed to mitigate systemic risk, promote competition and mitigate conflicts of interest with respect to Registered Entities. DTCC does not currently operate a Registered Entity. DTCC is, however, concerned with the potential effect that Regulation MC (specifically, the Ownership and Voting Limitations) would have on DTCC and its shareholders if DTCC were to acquire an interest in a Registered

¹ 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. 65,882 (Oct. 26, 2010).

Entity. DTCC also offers its comments on Regulation MC from its perspective at the center of the financial market as a user-owned and governed, at-cost financial market utility that seeks to reduce systemic risk and ensure financial stability.

- It is DTCC's view that reliance on the proposed Structural Governance Requirements (subject to our further comments below) offers the best solution to meet the stated goals of Regulation MC while avoiding the potential negative impact on capital, liquidity and increased systemic risk that could result from the Ownership and Voting Limitations.
- DTCC strongly advocates that the Ownership and Voting Limitations be eliminated in their entirety because the Structural Governance Requirements alone are sufficient to deal with the conflicts of interest identified by the Commission in its notice of proposed rulemaking. DTCC supports the mitigation of conflicts of interest through the imposition of governance requirements designed to ensure an independent perspective on the Boards of Directors and committees of Registered Entities. This approach is supported by various experts, from both the public² and private sector,³ as an appropriate method to mitigate conflicts of interests.
- Should the Commission conclude that the Ownership and Voting Limitations are advisable measures to mitigate conflicts of interest, DTCC urges the Commission to clarify the "direct or indirect" language in the Ownership and Voting Limitations by expressly providing that the Ownership and Voting Limitations will not be applied to ownership or voting interests in a non-Registered Entity which has an ownership or voting interest in a Registered Entity *unless* such non-Registered Entity owns a majority of the equity interest in such Registered Entity and controls (including through the exercise of veto power) the day-to-day operations of such Registered Entity by virtue of such ownership interest, by contract or otherwise.
- Should the Commission conclude that the Ownership and Voting Limitations are advisable and reject DTCC's proposed clarification of the "direct or indirect" language in such Ownership and Voting Limitations, DTCC would, in the alternative, request that the Commission include in Regulation MC a general

² See, e.g., Comments from Hal Scott, Harvard Law School, ("[Ownership restrictions are] counterproductive in getting needed capital liquidity into the clearinghouses which, I think, should be our central focus in terms of systemic risk. In my view the potential conflicts should be generally handled by board governance rules and not by ownership restrictions.") Joint Public Roundtable on Governance and Conflicts of Interest in the Clearing and Listing of Swaps, August 20, 2010 ("Roundtable Transcript") at 109-110. Available at <http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/derivative9sub082010.pdf>.

³ See Comments from Ms. Lynn Martin, NYSE Euronext, Inc., ("Specifically on the topic of ownership limitations and voting caps, NYSE Euronext opposes specific ownership limitations. We think that a more effective manner in controlling conflicts of interest is around good governance structure at a board level."). Roundtable Transcript at 120-121.

exception from the Ownership and Voting Limitations, providing that the Ownership and Voting Limitations will not be applied to ownership or voting interests in a non-Registered Entity which has an ownership or voting interest in a Registered Entity if the non-Registered Entity is a financial market utility (such as DTCC). As a complex user-owned and governed financial market utility with multiple subsidiaries, DTCC is regulated and supervised by banking and securities regulators. Its ownership and corporate governance structures (further described below) are designed, under applicable regulations, to be representative of its user shareholders which are also regulated financial institutions. Certain of these shareholders may fall directly within the scope of Regulation MC and be covered accordingly so that dual coverage should not be necessary; those that are not otherwise subject to Regulation MC should not be indirectly regulated merely by virtue of their interests in DTCC. The Ownership and Voting Limitations under Regulation MC could adversely destabilize DTCC's ownership and corporate governance structure and conflict with its obligations under other regulatory regimes.

II. OVERVIEW OF DTCC AND ITS WHOLLY OWNED SUBSIDIARIES

DTCC, through its subsidiaries, provides clearing, settlement, and information services for equities, corporate and municipal bonds, government and mortgage-backed securities, money market instruments and over-the-counter derivatives. DTCC is also a leading processor of mutual funds and insurance transactions, linking funds and carriers with their distribution networks.

DTCC has three wholly-owned subsidiaries which are registered clearing agencies under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), subject to regulation by the Commission.⁴ These three clearing agency subsidiaries are The Depository Trust Company ("DTC"), National Securities Clearing Corporation ("NSCC") and Fixed Income Clearing Corporation ("FICC"). DTC is also a limited purpose trust company organized under the New York State Banking Law, subject to regulation by the New York State Banking Department (the "NYSBD"), and a State Member Bank of the Federal Reserve System, subject to regulation by the Federal Reserve Bank of New York ("FRBNY"). DTCC is also a bank holding company under New York law (but not Federal law), subject to supervision by the NYSBD. Accordingly, DTCC and its clearing agency subsidiaries are collectively subject to the supervision and regulation of both banking and securities regulators.

DTC currently provides custody and asset servicing for 3.6 million securities issues from the United States and 121 other countries and territories, valued at almost \$34 trillion. In 2009, DTC settled more than \$1.48 quadrillion in securities transactions. NSCC provides clearing, risk management, central counterparty services and a guarantee of

⁴ DTCC also has a number of wholly-owned subsidiaries which are not in regulated businesses and has a 50% equity interest in three joint venture companies.

completion for certain transactions. FICC provides clearing, risk management and central counterparty services (through its Government Securities Division) in the fixed income, mortgage-backed and government securities markets. These clearance and settlement services reduce risks for investors and the entire financial system by guaranteeing the completion of stock and bond transactions in the event of a participant default. Thus, DTCC, through its subsidiaries, processes huge volumes of transactions – more than 30 billion a year on an at-cost basis.

DTCC believes that its own governance structure may provide a useful model for the Commission as the Commission considers and further develops the Structural Governance Requirements for Registered Entities.

To satisfy the “fair representation” requirements of Section 17A of the Exchange Act applicable to registered clearing agencies, the participants of DTC, NSCC and FICC are required (or, in some cases, permitted but not required) to purchase and own shares in DTCC and are thereby entitled to vote for its directors. The participant community includes domestic and international broker/dealers, custodian, correspondent and clearing banks, mutual fund companies and investment banks. As a financial market utility, DTCC and its clearing agency subsidiaries operate on an “at-cost basis,” charging transaction fees for services at levels sufficient to cover the utility’s costs and appropriate provisions for necessary reserves.

The 2010 DTCC Board of Directors is composed of nineteen directors. Thirteen directors are representatives of clearing agency participants, including international broker/dealers, custodian and clearing banks and investment institutions. Three directors are not representatives of participants (also referred to as “non-participant directors” or as “independent directors” below). Two directors are designated by DTCC’s preferred shareholders, NYSE Euronext and FINRA. The remaining three directors are the Chairman and Chief Executive Officer, President, and Chief Operating Officer of DTCC. The individuals who serve as directors of DTCC also serve as directors of the three clearing agency subsidiaries. Individuals are nominated for election as directors based on their ability to represent DTCC’s diverse base of participants, and DTCC’s governance is specifically structured to help achieve this objective. The non-participant directors are individuals with specialized knowledge of financial services, who bring an independent perspective because they are not affiliated with firms that use DTCC services. Board members serve on a variety of Board committees with responsibility to oversee various aspects of DTCC’s operation. In addition, to ensure broad industry representation and expertise on key industry subjects, industry representatives who are non-Board members also serve on a number of advisory committees to the Board.

As DTCC serves virtually the entire financial industry, from broker/dealers to banks to insurance carriers to mutual funds, its governance structure represents the entirety of the marketplace. DTCC has approximately 330 shareholders and no single shareholder holds more than a 6% interest in DTCC. DTCC shares are allocated based on usage of

the regulated clearing agency subsidiaries. Roughly every three years DTCC shares are reallocated to align ownership with usage. DTCC shares are not traded, so no one firm or group of firms may gain control of the Board of Directors by purchasing shares outside the periodic reallocation.

III. DISCUSSION OF REGULATION MC

In describing the conflicts of interest that may confront an SBSCA, the Commission identifies three key areas where a conflict of interest may present itself: (i) limiting access to an SBSCA, (ii) limiting the scope of products eligible for clearing at the SBSCA and (iii) participants influencing the risk management controls of an SBSCA to reduce the amount of collateral required as margin or a guaranty fund. The Commission also notes that these potential conflicts of interest could undermine the mandatory clearing provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”), “thereby affecting transparency, investor protection, risk management, efficiency, and competition in the security-based swaps market.”⁵

As described in greater detail below, DTCC believes that the Ownership and Voting Limitations are an imprecise tool with which to achieve the policy goals of the Commission regarding conflicts of interest. DTCC is concerned that the Ownership and Voting Limitations are more restrictive than necessary to meet the stated goals of the Commission and, at the same time, create the risk of unintended adverse consequences. DTCC takes the view that the policy goals can be best met by the Structural Governance Requirements, by strengthening SBSCA Board governance through the presence of independent board members and the establishment of certain Board committees.

A. Structural Governance Requirements

Section II of this comment letter describes the ownership and corporate governance structure of DTCC. As a user-owned and governed financial market utility that operates on an at-cost basis, DTCC complies with certain statutory requirements of “fair representation,” which require that its Board of Directors represent its user shareholders. In addition, DTCC’s governance rules require it to have three independent directors (and, as a practical matter, there are four, including FINRA). DTCC’s extremely sophisticated operations also require its Board and committee members (participant and non-participant alike) to have considerable expertise in financial markets.

Based on DTCC’s experience with this governance structure, DTCC believes that such a structure provides a positive model for mitigating conflicts of interest among competing constituencies within the organization. Also, for these reasons and those set forth below,

⁵ See 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. at 65,885.

DTCC would respectfully suggest that the Commission recognize the unique circumstances faced by DTCC and other financial market utilities. Accordingly, DTCC would urge the Commission to structure the composition requirements in a way that does not jeopardize the ability of DTCC and other financial market utilities to identify and mitigate systemic risk, while nevertheless addressing the stated concerns for conflicts of interest.

i. Independence

The Commission indicates that the Structural Governance Requirements set forth in Regulation MC will mitigate conflicts of interest because “[t]he presence of a significant number of independent directors on the Board of a security-based swap clearing agency should provide the addition of strong and independent oversight within the security-based swap clearing agency to serve as a potential check against conflicts of interest that could pose a detriment to the security-based swap clearing agency, other firms, or the security-based swaps market generally.”⁶

As described above, DTCC’s shareholding and Board representation are determined by the principle of fair representation under the Exchange Act. DTCC’s long experience with this composition demonstrates the effectiveness of this approach in affording the industry a forum for the resolution of differing, sometimes competing, interests of the constituent users. At the same time, DTCC greatly values the perspective and contribution of independent directors. Currently, DTCC’s Board of Directors includes three non-participant directors who are not affiliated with firms that use DTCC’s services as well as a representative of FINRA (as a preferred shareholder). These non-participant directors include individuals with specialized knowledge of financial services and key regulatory and market concerns, including systemic risk, who bring an independent perspective because they are not customers of DTCC’s services.

ii. Board Requirements

Regulation MC requires that an SBSCA choose between one of two alternative Board composition requirements. The first alternative requires the Board of Directors of an SBSCA to be composed of at least 35% independent directors.⁷ The second alternative requires the Board of Directors of an SBSCA to be composed of a majority of independent directors.⁸ Regulation MC also requires the Board of Directors of an SB SEF or SBS exchange to be composed of a majority of independent directors.⁹ Further,

⁶ *Id.* at 65,896.

⁷ *See id.* at 65,930.

⁸ *See id.* at 65,931.

⁹ *See id.*

Regulation MC extends such composition requirements to any committee of the Board of Directors that has the authority to act on behalf of the Board of Directors.¹⁰

DTCC supports the Commission's objective of reducing conflicts of interest through the imposition of Board of Director and committee composition requirements. However, such requirements should ensure that an entity's governing body (i) represents a broad base of market participants in the relevant markets and (ii) has the necessary expertise in the relevant markets.

DTCC would urge the Commission to eliminate the specified percentage and majority independent composition requirements. DTCC believes that mandating a 35% or majority independent composition requirement (i) imposes too high a threshold, which may be onerous for start-up initiatives or entities that have smaller Boards of Directors and (ii) creates a substantial risk of dilution of market expertise, especially for entities that have smaller Boards of Directors. DTCC further believes that any regulatory specification of any numerical or percentage requirement is inadvisable because it might discourage start-up initiatives and limit competition.

Independent perspectives can provide substantial value to a Board of Directors, but those who do not directly participate in markets may not have the targeted expertise to exercise timely judgment on issues critical to the complex financial operations of Registered Entities. Registered Entities require expertise at the Board of Directors level in such diverse areas as strategic planning, risk management, technology, operations, management, finance, audit, government relations, regulatory affairs, compensation and human resources, as well as legal, regulatory, and compliance expertise. Therefore, it is essential to the safety and soundness of Registered Entities that the composition of their Boards of Directors sufficiently incorporates the range of necessary expertise as well as independent judgment.

iii. Committee Requirements

Regulation MC sets forth requirements for Registered Entities to establish certain committees, including a requirement for such entities to establish a Nominating Committee for the purpose of identifying individuals qualified to become Board members.¹¹

Regulation MC requires that an SBSCA choose between one of two alternative Nominating Committee composition requirements. The first alternative, which correlates with the 35% independent Board composition alternative, requires the SBSCA to establish a Nominating Committee composed of a majority of independent directors.¹²

¹⁰ See *id.* at 65,930-32.

¹¹ See *id.* at 65,930-31.

¹² See *id.* at 65,930.

The second alternative, which correlates with the majority independent Board alternative, requires an SBSCA to establish a Nominating Committee composed solely of independent directors.¹³ Regulation MC also requires the Nominating Committee of an SB SEF and SBS exchange to be composed solely of independent directors.¹⁴

Consistent with DTCC's position on Board composition requirements, DTCC is opposed to the independent composition requirements for key committees of the Board. DTCC refers to the arguments above regarding the experience and interests of independent directors, which are equally applicable to representation on Board committees.

With respect to governance as it relates to the risk committee of the Board, or its equivalent, DTCC does not support the approach suggested in the discussion in the notice of proposed rulemaking, to provide separate composition requirements applicable only to the risk committee that reflect the highly specialized risk management expertise required of directors serving on that committee. Consistent with DTCC's views expressed above in this comment letter, DTCC believes that the balance of expertise and independent judgment for the Board and its key committees should be the guiding principle. For the reasons set forth above, DTCC would oppose requiring that the risk committee be composed of at least 35% independent directors or any specified percentage, including a majority, (where such committee is delegated authority to act on the Board's behalf). In order to achieve objective balance, guidance might be offered to include other interested persons that are not participants, such as customers of participants, as representatives on the risk committee.

iv. Definition of Independent Director

DTCC agrees that independent directors are a valuable institutional resource and serve to balance the interests of directors who may represent particular constituents on the Board of Directors. The goal of requiring independent directors is to identify individuals of stature, experience and good conscience who will exercise independent judgment in the best interests of the Registered Entity. To this end, DTCC recommends a qualitative definition that stresses positive features of industry knowledge and experience, personal probity and prior service, while specifying a limited and objective set of disqualifications.

DTCC finds the proposed definition of "independent director" to be both over and under-specified. Further, it has the potential to be damaging to critical financial market infrastructures. DTCC recommends prescriptive guidelines which are more clear-cut and, as guidance only, may be applied with greater flexibility to the governance needs of each Registered Entity.

¹³ See *id.* at 65,931.

¹⁴ See *id.* at 65,932.

One key element of the definition of “independent director” in Regulation MC is that director shall have no “material relationship” with a list of specified parties.¹⁵ The list of specified parties is very broad and would severely limit the pool of candidates with any industry expertise that might best serve the interest of the Registered Entity, its Board and committees. Moreover, the term “material relationship” is so vaguely defined that the evaluation of any qualified candidate would become an exercise in assessing whether that individual has any relationship, compensatory or otherwise, that reasonably could affect the candidate’s independent judgment or decision-making as a director.¹⁶ This makes the process of selecting an independent director potentially onerous for both the Registered Entity and the candidates.

Another key element of the definition of “independent director” is the express exclusion of specified circumstances¹⁷ which are similarly broad-reaching and, hence, overly restrictive. It is also not clear from the drafting whether these “circumstances” should be equated with prohibited “material relationships.”

In complex financial institutions, the appropriate implementation of these exclusions may be difficult enough to determine, and even more so to imagine additional unspecified “material relationships.” This overly restrictive definition of “independent director” could have a chilling effect on encouraging independent representation and limit the pool of candidates in a manner adverse to the best interests of the Registered Entity. DTCC might instead recommend an approach which relies less on detailed exclusions of the type proposed and more on guiding principles. For instance, a provision that limits compensation to a reasonable amount is an example of an objective determinant. More narrowly drawn exclusions based on direct and material relationships together with “safe harbor” provisions might also ease the compliance burden.

DTCC would also urge the Commission not to adopt a specific (3 year) look-back period within which to determine whether a “material relationship” exists, because of the difficulty of assessing the already vague criteria retrospectively and because this would further narrow the willing pool of candidates.

B. Ownership and Voting Limitations

i. Reject Ownership and Voting Limitations

The Commission’s proposed Ownership and Voting Limitations require that an SBSCA choose between one of two alternative limitations on ownership of voting equity and the

¹⁵ *See id.* at 65,928.

¹⁶ *See id.*

¹⁷ *See id.* at 65,896.

exercise of voting rights.¹⁸ The first alternative, which correlates with the 35% independent Board and majority independent Nominating Committee requirement, limits to 20% the amount of voting equity that any SBSCA participant, either alone or together with its related persons, may, directly or indirectly own or vote, and limits to 40% the amount of voting equity of such SBSCA that SBSCA participants and their related persons may, in the aggregate, directly or indirectly own or vote.¹⁹ The second alternative, which correlates with the majority independent Board and 100% independent Nominating Committee requirement, limits to 5% the amount of voting equity of such SBSCA that any SBSCA participant, either alone or together with its related persons, may, directly or indirectly, own or vote, and does not have an aggregate ownership restriction on all SBSCA participants.²⁰

The Commission's proposed Ownership and Voting Limitations also would prohibit a member of an SBS exchange or SB SEF, either alone or together with its related persons, from directly or indirectly owning or voting more than 20% of any class of ownership interest of the SBS exchange or SB SEF, as applicable, entitled to vote.²¹

The conflicts of interest provisions of Regulation MC are designed to meet policy objectives which include "improving governance, mitigating systemic risk, promoting competition, and mitigating conflicts of interest with respect to security-based swap clearing agencies, SB SEFs and SBS exchanges."²²

a. Hard Ownership Caps Rejected by Congress; European Commission

DTCC urges that relying upon proposed numerical ownership or voting caps for Registered Entities is too blunt an approach for these specific market circumstances. DTCC believes that fair representation and governance requirements (other than percentage composition requirements) are better suited to the achievement of the stated policy goals.

Further, it is important to recognize that hard ownership limitations are not specifically required by Section 765 of the Dodd-Frank Act.²³ Additionally, an aggregate ownership cap approach was recently rejected by the European Commission (the "EC"). The

¹⁸ *See id.* at 65,930.

¹⁹ *See id.* at 65,930.

²⁰ *See id.* at 65,930.

²¹ *See id.* at 65,931.

²² *Id.* at 65,883

²³ Dodd-Frank Act Section 765 ("The Securities and Exchange Commission shall adopt rules which **may include** numerical limits on the control of, or the voting rights with respect to, any clearing agency that clears security-based swaps, or the control of any security-based swap execution facility or national securities exchange." [Emphasis added.]

language used by the EC in rejecting ownership limitations is clear, and its logic is compelling. The EC found that there are a number of governance solutions that provide better protections against conflicts of interest than ownership limitations, and also found that such ownership limitations create a new risk of adverse unintended consequences. As the EC stated in its current proposed rule:

“[A] CCP must have in place robust governance arrangements. These will respond to any potential conflicts of interest between owners, management, clearing members and indirect participants. The role of independent board members is particularly relevant. The roles and responsibilities of the risk committee are also clearly defined in the Regulation: its risk management function should report directly to the board and not be influenced by other business lines. The Regulation also requires governance arrangements to be publicly disclosed. In addition, a CCP should have adequate internal systems, operational and administrative procedures, and should be subject to independent audits. All of these measures are considered more effective in addressing any potential conflicts of interest that may limit the capacity of CCPs to clear, than any other form of regulation which may have undesirable consequence on market structures (e.g. limitation of ownership, which would need to extend also to so-called vertical structures in which exchanges own a CCP).”²⁴

b. Unintended Consequences of Aggregate Ownership Limitations

As a user-owned and governed financial market utility with a cooperative-style ownership structure, DTCC has significant concerns that any proposal which relies upon aggregate ownership restrictions may undermine the safety and soundness of financial markets. An effective prohibition of industry ownership of a market-created initiative would have (i) a profound negative impact on the existing clearance and settlement system in the United States, which has served as a source of stability, resiliency and efficiency over the past 35 years and is responsible for mitigating systemic risk, driving down post-trade costs and helping attract global capital to our markets and (ii) a chilling effect on new initiatives.

²⁴ Proposal for a Regulation of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories {SEC(2010) 1058} {SEC(2010) 1059}. Available at http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/20100915_proposal_en.pdf.

ii. Clarify the “Direct or Indirect” Language in the Ownership and Voting Limitations

Regulation MC provides that the Ownership and Voting Limitations apply to indirect as well as direct ownership and voting interests in Registered Entities. In the discussion in the notice of proposed rulemaking regarding the application of the Ownership and Voting Limitations to indirect interests in SB SEFs and SBS exchanges (but not in the actual text of Regulation MC), the Commission notes that such Ownership and Voting Limitations would apply to ownership of voting interests in a parent company of an SB SEF or SBS exchange (and provides as an example that if an SB SEF were wholly-owned by a holding company, an SB SEF participant would be prohibited from owning or voting more than the specified limit of voting interest in the parent company).

If the Ownership and Voting Limitations are not eliminated in their entirety as suggested in Section III(B)(i) of this comment letter, then the “direct or indirect” language in such Ownership and Voting Limitations should be made more specific, to make it clear exactly when such Ownership and Voting Limitations will be applied to the ownership or voting interests in a non-Registered Entity which has an ownership or voting interest in a Registered Entity.

DTCC suggests that the “direct or indirect” language in the Ownership and Voting Limitations be clarified to expressly provide that such Ownership and Voting Limitations will not be applied to ownership or voting interests in a non-Registered Entity which has an ownership or voting interest in a Registered Entity *unless* such non-Registered Entity owns all or a majority of the equity interest in such Registered Entity and controls (including through the exercise of veto power) the day-to-day operations of such Registered Entity by virtue of such ownership interest, by contract or otherwise.

iii. Exemptive Authority

Regulation MC recognizes that the Commission “may grant an exemption from any rule or any provision of any rule under Regulation MC.”²⁵ The Commission may generally grant such exemption when “necessary or appropriate in the public interest and consistent with the protection of investors” or when the petitioning entity has “established alternative means to effectively mitigate conflicts.”²⁶

If the Ownership and Voting Limitations are not eliminated in their entirety as suggested in Section III(B)(i) of this comment letter, and if the clarifying language suggested in

²⁵ See 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. at 65,912.

²⁶ See *id.* at 65,913.

Section III(B)(ii) above is not accepted, DTCC would request that the Commission incorporate a general exception from the Ownership and Voting Limitations of Regulation MC providing that such Ownership and Voting Limitations will not be applied to ownership or voting interests in a non-Registered Entity which has an ownership or voting interest in a Registered Entity if the non-Registered Entity is a financial market utility (i.e., an organization which is member-owned) and satisfies the above-referenced governance provisions.

iv. Alternative Approach

In response to the request for comment solicited in Regulation MC, DTCC suggests that the Commission consider one alternative approach that addresses the identified conflicts of interest. DTCC's proposal addresses the issue of maximizing the use of SBSCAs to clear swaps where regulators determine that activity could be accomplished in a safe and sound manner.

The Commission could mandate that SBSCA governance rules require the Board of Directors of an SBSCA to include representatives across the broad base of participants in the relevant markets (i.e., not from only one class of market participants and not representative of any shareholder or management of the SBSCA), as well as independent directors (as discussed above). There should also be a means of assuring, through shareholder agreements or otherwise through actual shareholding and governance documents, that such directors appointed to represent any particular class of market participants be generally acceptable to shareholders of that class. This approach to governance has been used in the past to address the risk of non-alignment of interests among various market participants, for instance in the formation of the Government Securities Clearing Corporation in the late 1980s as an industry owned utility to clear US Government Securities.

DTCC would urge that those involved in the SBSCA decision-making process to introduce new instruments for clearing (other than the independent directors) be required to bear some financial risk in the event the SBSCA mismanages the risks associated with clearing these instruments. Otherwise, parties with no financial risk could, with impunity, force others to take on risk with no incentive for appropriate risk mitigation in the introduction of such new products.

Ms. Elizabeth M. Murphy, Secretary
RIN 3235-AK74
November 26, 2010
Page 14 of 14

IV. CONCLUSION

We appreciate the opportunity to comment on the Commission's Regulation MC and provide the information set forth above. Should you wish to discuss these comments further, please contact me at 212-855-3240 or lthompson@dtcc.com.

Regards,

A handwritten signature in cursive script that reads "Larry E. Thompson".

Larry E. Thompson
General Counsel