



December 23, 2010

Ms. Elizabeth M. Murray
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Proposed Rule – Prohibition Against Fraud, Manipulation, and Deception in
Connection With Security-Based Swaps
(File Number S7-27-10)

Dear Ms. Murray:

Better Markets, Inc.¹ appreciates the opportunity to comment on the above-captioned proposed rule (the "Proposed Rule") of the Securities and Exchange Commission ("SEC"), the purpose of which is to prevent fraud, manipulation and deception in connection with the offer, purchase or sale of any security-based swap, the exercise of any right or performance of any right or performance of any obligation under a security-based swap, or the avoidance of such exercise or performance, as necessary to implement the Dodd-Frank Financial Services Reform Act (the "Dodd-Frank Act").

We fully support the SEC's approach represented by the Proposed Rule. The SEC has wisely recognized that security-based swaps have important characteristics in the form of "ongoing payments or deliveries between the parties throughout the life of the security-based swap pursuant to their rights and obligations."² The very fact that a new rule is required even though security-based swaps are securities subject to the existing anti-fraud regulations highlights the opportunities for abuse embedded in complex derivatives. Our comments are limited to a clarification of the

¹ Better Markets, Inc. is a nonprofit organization that promotes the public interest in the capital and commodity markets, including in particular the rulemaking process associated with the Dodd-Frank Act.

² Proposed Rule, Preamble page 68561.

scope of the activities covered by the Proposed Rule to assure that these complex opportunities for abuse are covered.

In the request for Supplemental Information, the SEC has correctly identified the purpose of the Proposed Rule: “making explicit the liability of persons that engage in misconduct to trigger, avoid, or affect the *value* of such ongoing payments or deliveries...”[Emphasis added]³

The above-quoted language clearly and correctly identifies the harm which can be created by actions which change the value of ongoing payments or deliveries. Swaps typically involve settlements, margin or collateral payments which are calculated with reference to specified factors. This is a critical sub-set of the activities which the Proposed Rule is intended to address. For example, consider the potential that a seller of a credit default swap influences an index provider to employ a valuation methodology for a class of swaps which is favorable to it and whose influence is exercised in a way which constitutes a device, scheme or artifice to defraud or manipulate. The economic results of the affected transactions could be dramatic because of the effect on ongoing payments.

The Proposed Rule establishes the scope of behavior covered as follows:

in connection with the offer, purchase or sale of any security-based swap, the exercise of any right or performance of any obligation under a security-based swap, or the avoidance of such exercise or performance....⁴

It is important that the Proposed Rule unambiguously covers actions which alter the value of any right or the performance of any obligation. We propose that the following language be added to the end of the quoted language from the Proposed Rule:

(including the valuation of any right or the performance of any obligation under a security-based swap)

While the quoted language of the Proposed Rule is clearly intended to encompass activities which alter the value of any right or the performance of any obligation, we believe that specific reference adds clarity.

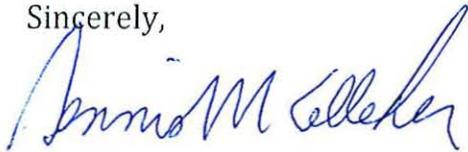
³ Id.

⁴ Proposed Rule, Section 240.9j-1.

Ms. Elizabeth M. Murray
Page 3

We hope these comments are helpful.

Sincerely,



Dennis M. Kelleher
President & CEO

Wallace C. Turbeville
Derivatives Specialist

Better Markets, Inc.
Suite 307
1225 Eye Street, N.W.
Washington, D.C. 20005
(202) 481-8224
dkelleher@bettermarkets.com
wturbeville@bettermarkets.com

www.bettermarkets.com