

Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090  
United States

Chris Barnard

21 November 2010

**-File No. S7-32-10  
-Prohibition Against Fraud, Manipulation, and Deception in Connection with  
Security-Based Swaps**

Dear Sir.

Thank you for giving us the opportunity to comment on your proposed rule “Prohibition Against Fraud, Manipulation, and Deception in Connection with Security-Based Swaps”.

You are proposing a new rule, Exchange Act Rule 9j-1 under the Securities Exchange Act of 1934, as amended (Exchange Act), which is intended to prohibit fraud, manipulation, and deception in connection with the offer, purchase or sale of any security-based swap, as well as in connection with the exercise of any right or performance of any obligation under a security-based swap, including the avoidance of such exercise or performance. This rule is long overdue and finally grants the SEC enforcement powers specific to the nature, term and complexity of security-based swaps.

The proposed rule is as follows<sup>1</sup>:

It shall be unlawful for any person, directly or indirectly, 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,

- (a) To employ any device, scheme, or artifice to defraud or manipulate;
- (b) To knowingly or recklessly make any untrue statement of a material fact, or to knowingly or recklessly omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

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<sup>1</sup> §240.9j-1.

- (c) To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (d) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

The proposed rule would apply to both positive misconduct as well as misconduct that avoids the exercise of any right or performance of any obligation under a security-based swap. The rules extend existing antifraud and antimanipulation provisions to the cash flows, payments, deliveries, and other ongoing obligations and rights that are specific to security-based swaps. This is entirely appropriate given the ongoing nature of the rights and obligations underlying security-based swaps.

The wording of the proposed rule requires scienter<sup>2</sup> in (a) and (b), and does not require scienter in (c) and (d). Again this is entirely appropriate, and maintains consistency with existing provisions.

In response to your specific request for comment I would add that the reference in the proposed rule to “in connection with the offer, purchase or sale of a 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” does address the full scope of potentially fraudulent, manipulative, or deceptive conduct that pertains to security-based swaps. Also the proposed rule would not negatively affect the nature of the security-based swap market in general, including the extent or nature of information shared between market participants. I would argue that the proposed rule is likely to lead to more responsible behaviour, and clearer and more complete communication between participants, which can only benefit the market.

I fully agree with the assessment of prospective benefits and costs associated with the proposed rule. Costs would be minimal, as this is only an extension, in parallel, to existing provisions. The benefits in terms of potential price efficiency and thus confidence and integrity in the security-based swap market would be considerable, and would by far outweigh the costs of implementing the proposed rule.

Yours faithfully

Chris Barnard

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<sup>2</sup> Specific intent or prior knowledge of wrongdoing.