

Securities and Exchange Commission
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Chris Barnard

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- **File No. S7-32-11**
- **75 FR 53162**
- **Stable Value Contract Study**

Dear Sir,

Thank you for giving us the opportunity to contribute to your Stable Value Contracts Study.

Section 719(d) of the Dodd-Frank Act mandates that the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) jointly conduct a study to determine whether stable value contracts (SVCs) fall within the definition of a swap. Further, Section 719(d) of the Dodd-Frank Act provides that if the Commissions determine that SVCs fall within the definition of a swap, they jointly shall determine if an exemption for SVCs from the definition of a swap is appropriate and in the public interest.

An SVC is an investment that is mainly offered to certain defined contribution plans, and which offers principal protection, a credited interest rate and a liquidity guarantee on book value prior to maturity. Importantly, stable value contracts only transact at book value, which is one of the key differences compared to a swap, which transacts at its market value.

The basic SVC offer is a stable investment option for retirement planning. SVCs are not leveraged in the same way that swaps are; they do not offer volatile returns for relatively small investments; and they are certainly not used for speculation. Furthermore, the issuer normally underwrites the fund and plan characteristics, and considers such things as the investment options available within the plan, the stability of the plan and the demography of the plan's participants. Stable value contracts are therefore tailored to the specific fund and plan, and are not traded in the same way that swaps are.

The above characteristics of stable value contracts are very different from typical swap characteristics. I would argue that the differences are significant, and imply that SVCs are not swaps as defined under Dodd-Frank. I do accept that you could plausibly argue in terms of replication that SVCs are similar to swaps, but I suggest that this would not be an appropriate result, and would surely not be in the spirit and intention of Dodd-Frank:

- SVCs have proved to be remarkably robust and stable during the recent financial crisis
- SVCs are generally simple products, and are transparent
- SVCs pose little or no systemic risk
- SVCs do not lend themselves to the mandated clearing requirements in the same way that standardized swaps do

If you do decide that stable value contracts are swaps as defined by Dodd-Frank, then I would strongly recommend that they should be exempted from the swaps regulatory regime. In answer to your specific question 4, I would say that SVCs could plausibly satisfy the test for insurance provided in the Product Definitions Proposing Release. As I argued in my comment letter thereon, in relation to variable annuity contracts and variable universal life insurance,¹ the SVC includes a risk rider (or wrapper), which provides the necessary element of insurance risk.

Yours faithfully

Chris Barnard

¹ Please see joint CFTC-SEC proposed rule: Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, File No. S7-16-11, 76 FR 29818, and my comment letter thereon.