BARCLAYS CAPITAL

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United States

February 11, 2010

Ms. Elizabeth M. Murphy, Secretary
Security and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Dear Ms. Murphy,

Barclays Capital Inc. ("Barclays") appreciates this opportunity to provide our views to the Securities and Exchange Commission ("SEC" or "Commission") in relation to elements of the Dodd-Frank Act (the "Act"). First and foremost, Barclays wishes to emphasize our full support of the objectives of the Dodd-Frank Act to reform aspects of the derivatives markets. We endorse the public policy goals the Act seeks to accomplish for increased transparency, fair competition, and effective price discovery. We commend the SEC for the thorough analysis and careful rule-making process it has undertaken. It is evident that the SEC has made a significant effort to carefully address many nuances of the securities-based swaps ("SBS") markets.

Barclays fully recognizes the need to embrace a significant change to market conventions, particularly to improve transparency and reduce systemic risk. Given the scope and scale of the proposed overhauls to very large financial markets, we also believe it is imperative to transition the affected markets carefully, with detailed analysis of the potential economic impact of all changes. Failure to do so could undermine the stability of U.S. and global markets during an already precarious financial environment. With these considerations in mind, Barclays wishes to:

1. Provide comment on the SEC's Proposed *Reporting and Dissemination of Security-Based Swap Information*, published to the Federal Register on November 19, 2010 ("Regulation SBSR").

2. Provide comment on the SEC's Block Trade Memorandum *Security-Based Swap Block Trade Definition Analysis*, published to the Federal Register on January 13, 2011 ("Memorandum").

3. Provide comment on the SEC's Proposed *Registration and Regulation of Security-Based Swap Execution Facilities*, made available to the public on February 2, 2011 ("Regulation SBSEF").

I. Issues Inherent to Specific Markets

Barclays commends the SEC's accurate observations regarding differences between SBS markets and other securities markets. Given the many different markets within the scope of the Dodd-Frank Act, we believe it is critical to analyze each market individually, and meet the statutory requirements of the Act with a custom-tailored approach to each market. Implementing overly broad requirements may not only hurt liquidity and trading in a particular market, but also have knock-on effects on a myriad of markets globally.

With respect to single-name Credit Default Swaps ("CDS"), Barclays particularly agrees with the SEC assessment that: a) "*relative to the overall equity markets, SBSs trade much less frequently*" and b) "*the SBS market does not generally have the equivalent of a 'retail' segment characterized by a high volume of small-sized trades.*" (Regulation SBSR, p. 75209) Barclays wishes to highlight three additional factors for consideration with respect to the single-name CDS market:

1. Liquidity can fluctuate markedly among traded instruments. Given the event-driven nature and default risk inherent to credit markets, an instrument can migrate between being liquid and illiquid in a matter of weeks or months. This characteristic is more pronounced in Credit than Rates or FX, as there is a high likelihood that market participants seek to position themselves in the same direction around a general corporate view, or a specific event. Also, large market cap companies that trade actively in Equities do not always trade actively in CDS. Liquidity providers therefore play a particularly important role in volatile and often one-sided markets to promote market stability.

2. Liquidity may be substantially better: a) at or near the 5 year maturity than other maturities, or b) at a particular liquidity point for a given entity (e.g. the maturity of a large bond or loan). Liquidity is better near the 5 year maturity because this tenor has become the accepted benchmark of an entity's credit quality. For a given reference entity, there are 40 tradable CDS contracts at one time. This is because the CDS market has standardized such that contracts a) are not written past 10 years, and b) expire quarterly on the 20th of March, June, September, and December, in similar fashion to the International Monetary Market ("IMM") dates used for futures and options contracts. Per entity, the majority of these 40 contracts trade with very low frequency.

3. Single-name CDS is often traded for different purposes than Corporate bonds. U.S. Corporate bonds are subject to public reporting via the Trade Reporting and Compliance Engine ("TRACE"). While TRACE may be a useful guideline for real-time reporting, the same time delays and size disclosures may not be appropriate for large single-name CDS transactions. In our experience, block trades are more prevalent in CDS than Corporate bonds. Many of these CDS block trades are to hedge credit exposure, which may be difficult or impossible to accomplish in the Corporate bond market. This is a key difference in utilization of Corporate bonds versus single-name CDS.

Barclays also wishes to highlight three factors for consideration with respect to the Equity Total Rate of Return Swap ("TRS") market:

1. The Equity TRS market provides an equity exposure alternative to both a) cash execution and b) financing through prime brokers. In a cash transaction, the liquidity taker trades a cash security with an execution broker and typically finances the transaction with a prime broker. In an Equity TRS transaction, the liquidity taker can achieve a similar economic exposure, but executes and finances with the same liquidity provider. As it is customary to transact with many more swaps counterparties than cash prime brokers, this market serves to increase diversification across counterparties, effectively reducing systemic risk.

2. Equity TRS transactions are directly linked to the cash Equities and Futures markets. After providing a TRS to a liquidity taker, liquidity providers generally execute follow-on hedges for

each TRS in these liquid and transparent markets. These hedge transactions executed in the cash market are reported in real-time, just as any other Equity market transaction. Requiring instantaneous reporting of TRS transactions would not enhance transparency, and may even confuse market participants, as the underlying hedge transactions are already publicly reported. Swap data repositories ("SDRs") would need to be mindful not to double-count transactions by aggregating both swap volumes and hedge volumes in the underlying Equity and reporting them in the same manner.

3. There are many types of bespoke Equity TRS, such as portfolio swaps, custom baskets, and swaps with bespoke margining. These TRS may be dynamic and customized in nature so as to make it imprudent to report in real-time. For example, portfolio swaps and custom baskets may change underlying Equity positions daily and even intra-daily.

II. Block Trade Size Calculation

Barclays recognizes that the SEC has carefully considered the calculation of block trade thresholds in Section 5C of Regulation SBSR, as well as the Block Trade Memorandum. Barclays believes it is important to take into account the diversity and fluctuation of liquidity among SBS instruments when devising block trade sizes and reporting requirements. For example, the factors mentioned in the previous section influence our opinions regarding appropriate block trade sizes for single-name CDS and Equity TRS. As it relates to the Equity TRS market, Barclays believes it is practical to adopt the standard calculation for block trades employed in the cash Equity markets, so as to be consistent with the underlying market protocol and not create dislocations.

With respect to single-name CDS, Barclays agrees with the limitations presented by the SEC in using a fixed block size threshold, particularly that "*disproportionately more trades would qualify as block trades in liquid SBS instruments*" and "*offsetting trades might be more difficult for liquidity providers in less liquid instruments where there were fewer potential counterparties.*" (Memorandum, p. 2) We believe that analysis of the existing DTCC data on single-name CDS would reveal significant disparities in trading volume and frequency by reference entity. Therefore, we believe that this method is the least desirable approach to determining block trade sizes. Barclays believes using either a) a dynamic threshold based on a look-back to recent trading volumes, or b) a combination of a dynamic threshold with a fixed minimum is the best way to ensure the thresholds are market-appropriate. We agree with the Commission's assertion that "*a dynamic volume-base block trade threshold could account for both the variation in liquidity providers' costs across SBS and the variation in these costs in an SBS over time.*" (Memorandum, p.3)

An accommodation we believe is important to preserve liquidity in single-name CDS is different thresholds per entity based on transaction maturity. For example, the 5 year bucket could be comprised of trades on the 4.5, 4.75, 5.0, and 5.25 year IMM dates (or any non-standard maturities in this range). The justification for these buckets is to account for the variation in liquidity by maturity, as discussed in Section I. Barclays would like to recommend an empirical analysis using historical DTCC CDS data to compare the differences in block trade sizes thresholds using a maturity bucketed vs. non-bucketed approach. Barclays believes maturity-based thresholds will result in the desirable outcome of higher thresholds around 5 year maturity and natural liquidity points per entity, while lowering the thresholds for less liquid points adequately.

Barclays understands and appreciates the three concerns with a maturity-based approach that the Commission outlined in Regulation SBSR. We would like to address each of these concerns with respect to the CDS market:

1. *"The larger the number of distinctions between SBS instruments that are created by the proposed rule, the larger the number of potentially illogical categorizations at the margins. For example, there would be little economic rationale to draw a distinction between SBS alike in all respects except that they had maturities one day apart."* (Regulation SBSR, p. 75232) In the standardized single-name CDS market, liquidity is focused exclusively around quarterly IMM dates. Inherent differences in liquidity exist between different IMM dates along a credit curve, which can be measured by the bid-offer spread as well as the notional size of the market. Barclays believes the economic rationale for different block size thresholds is the difference in liquidity along a credit curve, and therefore the categorizations by maturity bucket are logical.

2. *"SBSs in the same asset class, with the same underlying reference asset, reference issuer, or reference index have pricing impacts on each other, regardless of their maturities. This is because market participants typically price SBSs based on the same reference issuer or index along a curve, whereby prices at points along the curve where no hard data exist may be interpolated or extrapolated from different points along the curve where harder data may exist."* (Regulation SBSR, p. 75232) Barclays concurs that for a given reference entity, the price for less liquid maturity points is often impacted by trading in more liquid maturity points, such as the 5 year tenor. While this relationship exists with respect to the mid-market price for the less liquid maturity, there are typically significant differences in liquidity for various parts of a credit curve. This difference in liquidity can again be observed by measuring data such as the width of the bid-offer spread, notional size quoted, and average daily trading volumes.

3. *"A regime that differentiated SBSs based on maturities could invite market participants to fragment the market by creating SBS with non-standard maturities in an effort to gain more favorable block treatment."* (Regulation SBSR, p. 75232) Barclays believes that this concern is self-correcting by using frequently updated dynamic block size thresholds. For instance, if market participants began to trade the 3 year maturity bucket more actively than the 5 year maturity bucket to gain more favorable block treatment, then the next calculation of block trade thresholds would produce a higher threshold for the 3 year maturity bucket. Likewise, trading of any non-IMM maturity dates would still be assigned to the appropriate maturity bucket, which would preclude this type of gaming. Furthermore, there are different risks associated with trading different maturities or less liquid parts of the curve. For all of these reasons, Barclays believes the risk of market fragmentation for favorable block treatment is low.

With respect to single-name CDS, Barclays believes the approach outlined below would produce the precise and relevant block trade thresholds to preserve liquidity:

1. Per entity, the average and median daily trading volume for various maturity buckets could be calculated over a designated look-back period. Each maturity bucket could include trades spanning several IMM dates. Each trading day within the look-back period would be considered in the calculation of the average and median.

2. The dynamic threshold could be set using a multiplier of the average or median daily trading volume in each bucket. This is similar to the "social size test" proposed by the CFTC in 17 CFR Part 43 *Real-Time Public Reporting of Swap Transaction Data* (p.76162), as opposed to a

distribution test suggested in Regulation SBSR and the Memorandum. Barclays believes that a distribution test will yield inaccurate results in less liquid entities, where there are not enough trades in a given time period. We believe that the lower figure between average and median is the appropriate statistic to use in a "social size test", to avoid skew from one or two very large trades in a given bucket.

3. Two baseline minimum thresholds could be set to avoid too many trades being categorized as blocks. In accordance with current market conventions, Barclays believes that different thresholds should be set for the Investment Grade ("IG") and High Yield ("HY") markets. These baseline thresholds could be set according to the current "social size" market-making protocol of USD 5mm IG and USD 2mm HY. The credit's quoted spread (outright or converted) could be used to create a rules-based, objective definition of IG and HY markets. All trades occurring at a quoted spread below 500 bps would be subject to the IG minimum threshold (a multiple of USD 5mm), and all trades occurring at a quoted spread at or above 500 bps would be subject to the HY minimum threshold (a multiple of USD 2mm). Barclays suggests that this multiple be no higher than 2.

Barclays likewise supports the Commission's proposal to set a relatively short look-back to determine block trade size thresholds. We endorse the 30 calendar days look-back suggested in the Memorandum, or perhaps a slightly longer period to account for trading seasonality. For example, CDS trading volumes in the months of IMM dates will be higher than other months to account for "roll trades", when market participants often trade out of off-the-run contracts and into new on-the-run contracts. A quarterly look-back recalculated monthly may help alleviate the seasonality issue.

III. Delay of Reporting Block Trades

Barclays wishes to emphasize our support that all SBS transactions be reported immediately to the regulators and the SDRs for the purpose of systemic risk mitigation. We also support real-time public reporting of non-block trades on highly standardized SBS such as single-name CDS. Barclays believes that implementation of these provisions of the Dodd-Frank Act will add significant protection for market participants and the economy.

In the case of block transactions or non-standardized swaps, Barclays believes it is important to weigh the benefits of immediate public reporting against the potential cost of execution and impact to market liquidity. As the SEC has noted, *"it could be argued that post-trade transparency in the SBS market, particularly for large-sized trades, might even adversely impact liquidity by increasing the costs of dealers to hedge."* (Regulation SBSR, p. 75225)

Barclays fully agrees with this concern, particularly for markets which trade less frequently and therefore require a liquidity provider to hold market exposure for a significant period of time before being able to hedge the risk. This dynamic is prevalent in the trading of many SBSs, and may be a key difference from the cash Equities market. To illustrate this point, we recommend analysis of market activity in non 5-year CDS contracts of less liquid entities. It appears that the SEC has already considered this issue as well, in commenting that *"the structure of the SBS market and the way in which participants manage risk in this market might be sufficiently different from other financial markets to warrant different approaches to post-trade transparency."* (Regulation SBSR, p. 75225)

Equity TRS trades are typically comprised of two separate transactions for the liquidity provider. First, the derivative transaction (the TRS) is executed to provide the liquidity taker synthetic exposure to an underlying Equity. Second, the liquidity provider may hedge the exposure created by the TRS by trading the underlying security in the cash market. If the total rate of return swap is reported to the market prior to cash hedges being executed, this reporting may signal future activity to the cash market participants. In order to provide competitive TRS pricing, liquidity providers require a delay in reporting of swap transactions to allow time to execute the hedge leg. Eliminating the delay in reporting of block trades will result in less efficient pricing to liquidity takers, as the liquidity provider's ability to execute a hedge efficiently would be impaired. Even disclosing only the price of the TRS would prematurely signal to the market both direction and size. The liquidity provider would be forced to pass on this additional execution risk in the form of worse prices to the liquidity taker. Barclays believes that end-of-day reporting for Equity TRS transactions is sufficient to allow for execution of hedges in the cash Equity market. Barclays also recommends end-of-day reporting for the sake of clarity. In the often fast-moving Equities market, an interim print with a time delay during the trading session may confuse market participants, while waiting until end-of-day will avoid this risk.

With respect to single-name CDS where risk may take longer to hedge, Barclays urges the Commission to consider a public post-trade reporting regime for SBS that makes accommodations based on trading volumes. For any trades qualifying as block trades, Barclays encourages a delay in public reporting that would allow the liquidity provider time to disseminate risk. For example, the time delay in public reporting could take into account the average daily risk transfer for the particular category of CDS. The larger the size of a block trade, the longer the time interval should be to report the trade to the public. This accommodation would allow liquidity providers to disseminate risk and provide better execution to liquidity takers. This system would be easy to implement using historical data reported to the SDRs. This delay in public reporting could help sustain liquidity in less liquid entities or tenors.

IV. SEF Trading Protocols

Barclays supports the objectives of the Dodd-Frank Act to improve market transparency by mandating that suitable instruments trade on a swap execution facility ("SEF" or "SB SEF"). Electronic execution and the ability to engage multiple market participants simultaneously is an important enhancement to the SBS markets. We believe implementation of SEF trading will help pre-trade transparency, and provide market participants greater efficiency in execution.

Barclays commends the Commission for its recent proposed rulemaking (Regulation SBSEF) in allowing flexibility of trading protocols supported by the SEFs. We believe the Commission has been mindful in its proposal to accommodate the diversity of markets on the liquidity spectrum. Barclays particularly agrees with the Commission's observations and approach:

1. *"When compared with the Equities markets, certain aspects of the SB swap market are still evolving. In considering ways in which the Commission could approach the definition of SB SEF, the Commission has sought to facilitate competition and innovations in the SB swap market that could be used to promote more efficient trading in organized, transparent, and regulated trading venues. The Commission does not believe it should simply overlay the same regulatory structure that is currently in place for Equities, given important differences in the nature and maturity of the SB swap and Equities markets."* (Draft Regulation SBSEF, p. 18-9)

2. *"The Commission's proposed interpretation of the definition of SB SEF would result in permitting to be registered as SB SEFs systems or platforms for the trading of SB swaps with a variety of features, and not just those systems or platforms with exchange-like features (for example, systems requiring all trading interest to be firm and displayed to all participants in the market). The concern with taking the latter approach is that the market for many SB swaps is fairly illiquid."* (Draft Regulation SBSEF, p. 28)

Barclays agrees that a flexible approach will help preserve liquidity, and also promote the natural transition of less liquid markets to more competitive trading protocols, such as a central order book. We likewise believe that overly prescriptive protocols could adversely impact less liquid markets and stifle their progression.

Barclays believes that request for quote ("RFQ") is an important trading protocol for less liquid markets or large trades. It allows liquidity takers the flexibility to direct inquiry to as many or as few liquidity providers as necessary to gain optimal execution. In current markets which support RFQ trading protocols, such as the Corporate bond market, the number of respondents invited to an RFQ by the requestor may vary based on factors such as: the specific security, market conditions, trade size, and the liquidity taker's preferences. Barclays believes that the SEC's proposal will maintain the desired market function of an RFQ by preserving the right of the liquidity taker to determine the number of respondents invited to the RFQ. We believe this will allow the market participant to determine the manner in which to gain optimal execution, by balancing the desire for pre-trade transparency with the availability of liquidity in the market. Barclays wishes to emphasize that for the SBS markets, this is a significant change from current methodology, in that market participants would be able to efficiently and simultaneously request quotes from multiple counterparties. In this way, we agree with the SEC that the RFQ protocol meets the statutory requirements and "multiple-to-multiple" provision of the Dodd-Frank Act.

In detailing the RFQ protocol, the Commission has made reference to a "composite indicative quote: *"...if the SB SEF operates a RFQ mechanism, the rules of the SB SEF should specify that any response to an RFQ that is provided to the participant submitting the RFQ should be included in the composite indicative quote of the SB SEF."* (Draft Regulation SBSEF, p. 89) Barclays is supportive of the general concept of indicative quotes to promote transparency. With respect to Regulation SBSEF, Barclays seeks clarification on two points regarding the composite indicative quote:

1. Barclays wishes to understand the process by which the responses to an RFQ would be incorporated into a composite indicative quote.

2. Barclays wishes to understand whether all SBS instruments will be subject to the composite indicative quote requirement. In the case of highly standardized products, a composite indicative quote will provide the market useful information. However, in the case of customized or dynamic products that may be traded via an RFQ, the dissemination of a composite indicative quote may be irrelevant or misleading. For example, Equity TRS portfolio swaps or custom baskets with dynamic composition may not be suitable for dissemination of composite indicative quotes.

V. Public Policy Implications

Barclays believes that a) overly broad block trade thresholds or b) premature public reporting of block trades could adversely impact liquidity and pricing of SBSs, and therefore be harmful to the markets, and by extension to the economy.

Regarding single-name CDS, one possible adverse outcome is higher funding costs for corporations. As the SEC is aware, a corporate entity's CDS spread is highly correlated to its cost of accessing the capital markets. This is because an important and primary purpose of single-name CDS is to allow banks to hedge credit risk and lower exposure to its banking clients. For example, a common utilization of single-name CDS is by Loan portfolio groups buying CDS protection. These groups within a bank often purchase large blocks of CDS on a given reference entity to hedge exposure on term or revolving loans. The anticipated cost of hedging this risk must be taken into account when pricing debt. These hedges are often completed in several large transactions over the span of several weeks.

If each of these large trades is always reported immediately to the marketplace, before the liquidity provider has had a chance to disseminate the risk, the price at which the trade has occurred will reveal valuable information as to the direction of the liquidity taker. Specifically, a large trade executed at a higher price than "mid-market" would reveal that there is a buyer of CDS protection. The adverse consequence is that multiple large trades could push the cost for CDS protection on this corporation higher. The anticipation by the Loan portfolio of higher hedging costs could therefore create a higher funding cost for the corporation receiving the loan. Higher funding costs increase the likelihood of default for a corporation, which is dangerous for market stability. There are several adverse implications that could stem from higher costs. From the banking perspective, higher hedging costs may impair lending to corporations and hurt the capital markets. From the perspective of the corporation, higher funding costs could mean fewer jobs, diminished pension funding, or even corporate bankruptcy.

This effect could be particularly harmful to smaller, less known corporations and put them at a disadvantage to actively traded companies. Since the bid-offer spread on these smaller corporations is typically larger than the bid-offer spread on actively traded credits, each incremental trade could impact the next market even more. In this way, premature public reporting of large single-name CDS transactions may be most punitive to smaller corporations' cost of funding.

With respect to Equity TRS, the value provided by this market today is optimal execution or financing for liquidity takers. If liquidity in this market is impaired, liquidity takers may migrate away from a diversified universe of swap counterparties to a more concentrated set of cash prime brokers. The unintended consequence of such a migration could be an increase in systemic risk by concentrating large risk positions with a small number of prime brokers.

VI. Conclusion

Barclays appreciates the SEC's time and consideration of the issues presented in this comment letter in relation to SBS market regulation. We respect the complexity of the SEC's task in implementing the Dodd-Frank Act. We wish to commend the SEC for its thorough market analysis and careful rule-making process. It is clear the Commission is taking careful steps to meet the public policy goals of increased transparency and fair competition, while balancing the need to preserve liquidity in evolving markets. We understand that any plan to address potential issues must be statutorily compliant with the Act, as well as objective and easily implemented. We hope that the Commission finds the comments we have provided meet each of these criteria. Barclays welcomes the opportunity to discuss any part of this document in greater detail.

Very truly yours,

Patrick Durkin
Managing Director
Barclays Capital Inc.