

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

Chris Barnard

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- **17 CFR Parts 240 and 249**
- **File No. S7-35-10**
- **Security-Based Swap Data Repository Registration, Duties, and Core Principles**

Dear Sir.

Thank you for giving us the opportunity to comment on your proposed Rule: Security-Based Swap Data Repository Registration, Duties, and Core Principles.

In accordance with Section 763(i) of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank), you are proposing new rules under the Securities Exchange Act of 1934 governing the security-based swap data repository (SDR) registration process, duties, and core principles.

I generally support the proposed Rules. I agree that establishing SDRs will enhance transparency and promote standardization in the security-based swaps (SBS) market. I am less convinced that SDRs themselves will reduce systemic risk, but rather they should provide the meaningful input for reports or other data sets that could be used by prudential regulators in monitoring risk and the build up of systemic risk in the SBS market. Such reports and data sets must be standardized and use a common terminology in order to optimise this role. This is not adequately discussed in the proposed Rule or elsewhere. I would therefore recommend that further attention should be given to determining the data and reporting requirements that would facilitate such meaningful prudential oversight of risk and systemic risk issues. This should also tie in with the purpose of such monitoring. What will prudential regulators do with this information? How much risk is excessive? What is an acceptable level of systemic risk? What are the trigger levels, and what are the potential regulatory levers that could mitigate excessive risk and reduce systemic risk? Without such an integrated framework we risk creating data systems and monitoring mechanisms for the

sake of doing so. I would hope to see some positive developments here in the future, as accurate and relevant data capture and monitoring is but a first step on the road towards a globally integrated risk management framework.

Recordkeeping requirements

Proposed Rules 13n-5 and 13n-7 establish certain recordkeeping requirements for SDRs. I would recommend that SBS data records should be required to be kept indefinitely rather than the general “not less than five years” proposed here.¹ Any original documents should be scanned. There is no technological or practical reason for limiting the retention period, and it would be useful to keep this information for future analytical purposes.²

Duties to monitor, screen and analyze swap data

Proposed § 13n-4(b)(7) requires an SDR to establish automated systems for “monitoring, screening, and analyzing” SBS data at such time and in such manner as may be directed by the SEC. I understand that this closely tracks the statutory language, and I support the broad concept that an SDR should monitor, screen and analyze SBS data as input for the SEC to facilitate its oversight and monitoring responsibilities. However, the proposed Rule is too broad, and is not clear enough on the level of detail required and on the level of responsibility imposed on SDRs. I would therefore recommend that you should provide additional details on the anticipated requirements in order to better manage the expectations of SDRs and wider market participants concerning their duties in this area.

Conflicts of interest

I have commented on this in some detail before.³ I believe that mitigating conflicts of interest is most critical to promoting transparency and market integrity. I strongly recommend that a mixture of governance requirements and control, ownership and voting limits would optimally address conflicts of interest issues in this arena. Concerning any such board membership requirements and ownership and voting limits, there should be a level playing field between at least SDRs and other swap entities. As a minimum I would recommend that you propose something similar to the CFTC’s “Independent Perspective”⁴ by requiring a registered SDR to have independent public directors on (i) its board of directors and (ii) any committee that has the authority to (A) act on behalf of the board of directors or (B) amend or constrain the action of the board of directors.

¹ See for example proposed § 13n-5(b)(4): “Every security-based swap data repository shall maintain transaction data for not less than five years after the applicable security-based swap expires and historical positions for not less than five years”.

² These comments are similar to my comment letter on the CFTC’s notice of proposed rulemaking: Swap Data Repositories, RIN 3038-AD20, 75 FR 80898, December 2010.

³ Please see my comment letter on the CFTC’s notice of proposed rulemaking: Swap Data Repositories, RIN 3038-AD20, 75 FR 80898, December 2010.

⁴ Defined in § 49.2(a)(6) of the CFTC’s Final Rule on Swap data Repositories. See 76 FR 54576, September 2011.

Chief compliance officer

Proposed Rule 13n-11 concerns the chief compliance officer (CCO) role. I fully support the intent of the proposed Rule. The CCO role is the single most important compliance role in an SDR and it is critical that its job description, the SDR's rules and the SDR's structures and procedures, act to secure and maintain the CCO's independence. For example the CCO should have a single compliance role and no other competing role or responsibility that could create conflicts of interest or threaten its independence, and therefore I would suggest that you should promulgate rules that restrict the CCO from serving as the General Counsel or other attorney within the legal department of the SDR. Furthermore the remuneration of the CCO must be specifically designed in such a way that avoids potential conflicts of interest with its compliance role.

Given the pressures that bear on the CCO with regard to managing conflicts of interest and maintaining independence, I would strongly recommend one specific change to the proposed Rule. I would recommend that you amend the wording under proposed § 13n-11(a) such that the authority and sole responsibility to appoint or remove the CCO, or to materially change its duties and responsibilities, only vests with the independent public directors or "Independent Perspective" (see above) and not the full board. This would help to ensure the independence of the CCO within the SDR, and would possibly mitigate the need for you to promulgate additional measures that could be required to adequately protect CCOs from undue influence or coercion in the performance of their duties.⁵

Access and fees

Proposed § 13n-4(c)(1) states that an SDR shall not adopt policies and procedures or take any action that unreasonably restrains trade or imposes material anticompetitive burdens. Additionally, proposed § 13n-4(c)(1)(i) requires an SDR to levy fees in a fair, reasonable and not unreasonably discriminatory manner. I strongly support these requirements as they should encourage market participants to use SDRs' services. The only reason for charging different charge / fee structures would relate to differing costs of providing access or service to particular categories. Anything else would be discrimination⁶ by definition. I would suggest that any preferential pricing such as volume discounts or reductions should be generally viewed as discriminatory. Such volume discounts or reductions tend to discriminate in favour of the large players, and a small number of large players dominate the SBS swaps market anyway. Regarding bundling of services, I support that SDRs should be able to offer ancillary services, whether bundled or not. However, I would not support bundling of ancillary services with mandatory or regulatory services.

I agree with proposed § 13n-10(b)(8) that full disclosure should be required here, including all explicit and implicit charges and fees. This would formalise the market practice and ensure that informed decisions were being made.⁷

⁵ These comments are similar to my comment letter on the CFTC's notice of proposed rulemaking: Swap Data Repositories, RIN 3038-AD20, 75 FR 80898, December 2010.

⁶ E.g. hidden and unfair cross-subsidy or other anticompetitive measure.

⁷ These comments are similar to my comment letter on the CFTC's notice of proposed rulemaking: Swap Data Repositories, RIN 3038-AD20, 75 FR 80898, December 2010.

Please note that the comments expressed herein are solely my personal views

Summary

I generally support the proposed Rules, which will establish sufficient business conduct and compliance standards for security-based swap data repositories. I have recommended some changes, the most important of which concern conflicts of interest and the role of the chief compliance officer. I believe that strengthening these areas will help you to meet your objectives of enhancing transparency and promoting standardization in the security-based swaps market.

Yours faithfully

C.R.B.

Chris Barnard