

Securities and Exchange Commission
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24 October 2011

- **17 CFR Parts 240 and 249**
- **File No. S7-40-11**
- **Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants**

Dear Sir,

Thank you for giving us the opportunity to comment on your Proposed Rule: Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants.

Section 764(a) of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires the Securities and Exchange Commission (SEC, or Commission) to issue rules to provide for the registration of security-based swap dealers (SBS Dealers) and major security-based swap participants (together, SBS Entities). Pursuant to this requirement, the SEC is proposing new Rules 15Fb1-1 through 15Fb6-1 under the Securities Exchange Act of 1934, as amended (Exchange Act), to provide for the registration of SBS Entities. The SEC is also proposing forms to facilitate registration (and withdrawal from registration) of these entities.

I generally support your proposed rules, which will certainly improve accountability and transparency in financial markets. The proposed registration process, involving a conditional registration process followed by permanent registration, the suggested timelines, and the forms-based approach is both a practical and cost-effective registration procedure that utilises existing processes and templates, where possible, and also integrates well for applicants registered or registering with the Commodity Futures Trading Commission (CFTC) as either a swap dealer or major swap participant.

You comment in Section III of the Proposed Rule that: "the Commission recognises that if the measures proposed in this release are adopted and are too onerous for new entrants, they could hinder the further development of a market for security-based swaps by unduly

discouraging competition and the formation of new SBS Dealers and major security-based swap participants”.¹ I would suggest that the proposed measures are clearly not onerous, and in any event, SBS Entities should already have prepared contingent plans and considered resource needs for the anticipated registration requirements. You also state in Section III that commenters “are urged to consider generally the role that regulation may play in fostering or limiting the development of the market for security-based swaps”.² I believe that regulation of the kind proposed here, which is both practical and cost-effective, will enhance the market for security-based swaps, by generally promoting confidence in, and the integrity of, financial markets.

Senior Officer Certification

The proposed Senior Officer Certification would require a senior officer to provide a certification as to the SBS Entity’s operational, financial and compliance capabilities to the SEC within a specified timeframe. I agree with you that “a requirement that an applicant or regulated entity certify as to its ability to engage in the business it would be registered to do is relatively new”.³ It is an unusual requirement, and one that demands careful consideration. Some of the issues to consider here include:

- does the proposal go beyond the statutory requirements?
- What are the definitions of “knowledgeable”, “due inquiry” and “reasonably determined” in proposed § 240.15Fb2-1(b)(1)?
- What form and level of documentation of the process to reach the determination would be appropriate?
- Is it reasonable for the SEC to devolve regulatory attestation to the regulated entity in this way?
- Does this create a precedent for future regulatory procedures?

Despite these considerations, it should not be too onerous for the senior officer to provide the required certification. The only SBS Entities that would have any major problems with the certification process should be those entities with questionable operational, financial or compliance capabilities. However, this would be both a reasonable and appropriate outcome.

In response to your specific requests for comment I would add the following:

2. Yes, the conditional process for SBS Entity registration does provide a practicable and cost effective solution to the potential timing issues raised by the implementation of Section 15F of the Exchange Act.
3. Yes, the conditional process for major security-based swap participant registration does provide a practicable solution to the potential timing issues raised by the look-back features in the proposed definition of “major security-based swap participant”.

¹ Quoted on page 86 of the Proposed Rule.

² Quoted on page 87 of the Proposed Rule.

³ Quoted on page 21 of the Proposed Rule.

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

8. Yes, it is clearly appropriate to seek to minimize duplication by permitting registered intermediaries to follow a registration process that uses simplified forms. This is more cost-effective and will reasonably reduce regulatory burden on such SBS Entities.

10. SBS Entities should not be afforded more time (beyond the Last Compliance Date) to prepare and provide their Senior Officer Certification. Please see my above comments.

11. Major security-based swap participants that file applications after the Last Compliance Date should not be afforded more than four months to prepare and provide their Senior Officer Certification. Please see my above comments.

67. The SEC should only require SBS Entities to promptly update their Forms SBSE, SBSE-A and SBSE-BD when they become "materially" inaccurate. The proportionality principle should apply here.

71. The information regarding associated persons in proposed § 240.15Fb6-1(b) is complete and would be sufficient for a CCO to make the required certification.

147. Form SBSE-A is properly and appropriately tailored to decrease costs for dual registration while still providing the SEC with information necessary on which to base its decision to grant or deny registration. Form SBSE-A is sufficient for this purpose.

Yours faithfully

Chris Barnard