

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

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-File No. S7-39-10

-Further Definition of “Swap Dealer”, “Security-Based Swap Dealer”, “Major Swap Participant”, “Major Security-Based Swap Participant” and “Eligible Contract Participant”.

Dear Sir.

Thank you for giving us the opportunity to comment on your joint proposed rule and proposed interpretations: Further Definition of “Swap Dealer”, “Security-Based Swap Dealer”, “Major Swap Participant”, “Major Security-Based Swap Participant” and “Eligible Contract Participant”.

In this context, in accordance with Section 712(d)(1) of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), you are proposing rules and interpretative guidance under the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. sec. 78a et seq., to further define the terms security-based swap dealer and major security-based swap participant.

I strongly support the principles based approach and substance over form, which you have employed for the proposed definitions. This will allow you to be more flexible now and in the future in regulating this arena. My main comments are as follows:

Security-based swap dealer

- I support the functional interpretation underlying the definition of security-based swap dealer
- I would agree in principle that the focus here should be “...on those persons whose function is to serve as the points of connection in those markets.” This should apply in relation to swaps and security-based swaps

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

- end-users that employ security-based swaps to hedge business risk should be considered traders rather than dealers
- I would recommend some flexibility in that an entity could be designated a security-based swap dealer for one category of security-based swaps without being designated as such for all categories.¹

Major security-based swap participant

- I generally support the definition, which is based more on objective calculations to determine the risk-significance and impact of security-based swap positions on the relevant entity
- positions should be marked to market
- I agree that the calculations should take account of whether the positions are cleared or uncleared, the quality and value of collateral held and should be netted

I agree with the proposed categorisation of security-based swaps into those based on debt or credit events and those based on equity. Finally I support that the decision as to whether a position is used to hedge or mitigate commercial risk should ideally be made at the time the security-based swap is entered into, considering the circumstances existing at that time, and taking into account management's general hedging and risk mitigation strategies.² This would be more objective and transparent and ensure a clear link to an entity's risk management.

I may comment again more fully as and when you propose further definitions for additional or related items.

Yours faithfully

Chris Barnard

¹ As allowed under the Dodd-Frank Act.

² See also my comment letter on S7-43-10, End-User Exception to Mandatory Clearing of Security-Based Swaps.