

Corporate & Financial Weekly Digest

Posted at 12:59 PM on February 4, 2011 by [Marilyn Selby Okoshi](#)

SEC Proposes Rules for Registration and Regulation of Security-Based Swap Execution Facilities

At its open meeting on February 2, the Securities and Exchange Commission proposed Regulation SB SEF under the Securities Exchange Act of 1934 to implement Section 763 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. In addition, it proposed (1) an interpretation of the definition of "security-based swap execution facility" added as Section 3(a)(77) of the Exchange Act by the Dodd-Frank Act; (2) to amend Rule 3a-1 under the Exchange Act to exempt a registered security-based swap execution facility (SB SEF) from regulation as an "exchange"; and (3) to add Rule 15a-12 under the Exchange Act to exempt a registered SB SEF from regulation as a broker-dealer, subject to certain conditions. A security-based swap is broadly defined as a swap over (a) a single security, (b) a loan, (c) a narrow-based group or index of securities, or (d) events relating to a single issuer or issuers of securities in a narrow-based security index.

The proposal includes provisions to implement the requirement of the Dodd-Frank Act that SB SEFs comply with 14 core principles and proposes rules requiring SB SEFs to register with the SEC by filing Form SB SEF and updating such form at least annually and when the information otherwise becomes inaccurate. The proposals do not dictate the exact trading platform the SB SEF must use, but prohibit the SB SEF from limiting the number of liquidity providing participants from whom quotes could be requested, and require that the SB SEF provide a functionality that allows any participant to display executable bids and offers that may be accepted by any other participant. The proposals also require that the SB SEF must create and disseminate indicative quotes for all swaps that trade on the SB SEF to all participants.

The SEC noted that the Commodity Futures Trading Commission is proposing rules to govern swap execution facilities under Section 733 of the Dodd-Frank Act and explained that due to the difference between the markets for securities and other products, the SEC and CFTC rules differ. The SEC asked market participants to point out if there are duplicative or inconsistent requirements and if there are gaps in the regulatory regimes. The proposal also asks specifically for comment on consistency of the SEC's proposed rules with those of foreign regulators.

Comments on the proposals must be submitted by April 4.

The SEC press release and fact sheet may be found [here](#).
The proposal may be found [here](#).