

§ 230.238

17 CFR Ch. II (4-1-10 Edition)

States under an exemption from registration.

(2) Has not asserted that Canadian law, or the jurisdiction of the courts of Canada, does not apply in a proceeding involving an Eligible Security.

[65 FR 37676, June 15, 2000]

§ 230.238 Exemption for standardized options.

(a) *Exemption.* Except as expressly provided in paragraphs (b) and (c) of this section, the Act does not apply to any standardized option, as that term is defined by section 240.9b-1(a)(4) of this chapter, that is:

(1) Issued by a clearing agency registered under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1); and

(2) Traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)) or on a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 780-3(a)).

(b) *Limitation.* The exemption provided in paragraph (a) of this section does not apply to the provisions of section 17 of the Act (15 U.S.C. 77q).

(c) *Offers and sales.* Any offer or sale of a standardized option by or on behalf of the issuer of the securities underlying the standardized option, an affiliate of the issuer, or an underwriter, will constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities as defined in section 2(a)(3) of the Act (15 U.S.C. 77b(a)(3)).

[68 FR 192, Jan. 2, 2003]

§ 230.239T Temporary exemption for eligible credit default swaps.

(a) Except as expressly provided in paragraph (b) and (c) of this section, the Act does not apply to any eligible credit default swap that is:

(1) Issued or cleared by a clearing agency registered as a clearing agency under Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1) or exempt from registration under Section 17A of the Securities Exchange Act of 1934 pursuant to a rule, regulation, or order of the Commission; and

(2) Offered and sold only to an eligible contract participant (as defined in Section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)) as in effect on the date of adoption of this section, other than a person who is an eligible contract participant under Section 1(a)(12)(C) of the Commodity Exchange Act).

(b) The exemption provided in paragraph (a) of this section does not apply to the provisions of Section 17(a) of the Act (15 U.S.C. 77q(a)).

(c) *Offers and sales.* Any offer or sale of an eligible credit default swap pursuant to this section by or on behalf of the issuer of an identified security that is to be delivered if there is a credit-related event or whose value is used to determine the amount of the settlement obligation, an affiliate of such issuer, or an underwriter, will constitute a “contract for sale of,” “sale of,” “offer for sale,” or “offer to sell” such identified security under Section 2(a)(3) of the Act (15 U.S.C. 77b(a)(3)).

(d) *Definition of eligible credit default swap.* For purposes of this section, an eligible credit default swap is a bilateral executory derivative contract not subject to individual negotiation:

(1) in which a buyer makes payments to the seller and, in return, receives a payout if there is a default or other credit event involving identified obligation(s) or identified entity(ies) within a certain time; and

(2) The agreement for which includes the:

(i) Specification of the identified obligation or obligor; or, in the case of an identified group or index thereof, all of the identified obligations or obligors comprising any such group or index;

(ii) Term of the agreement;

(iii) Notional amount upon which payment obligations are calculated;

(iv) Credit-related events that trigger a settlement obligation; and

(v) Obligations to be delivered if there is a credit-related event or, if it is a cash settlement, the obligations whose value is to be used to determine the amount of settlement obligation under the eligible credit default swap.

(e) This temporary rule will expire on November 30, 2010.

EFFECTIVE DATE NOTE: At 74 FR 3974, Jan. 22, 2009, § 230.239T was added, effective Jan.