

not an eligible OTC derivative instrument, except as permitted under paragraphs (a)(3), (a)(4), and (a)(5) of this section.

(d) For purposes of this section, the term *hybrid security* means a security that incorporates payment features economically similar to options, forwards, futures, swap agreements, or collars involving currencies, interest or other rates, commodities, securities, indices, quantitative measures, or other financial or economic interests or property of any kind, or any payment or delivery that is dependent on the occurrence or nonoccurrence of any event associated with a potential financial, economic, or commercial consequence (or any combination, permutation, or derivative of such contract or underlying interest).

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§ 240.3b-13 Definition of eligible OTC derivative instrument.

(a) Except as otherwise provided in paragraph (b) of this section, the term *eligible OTC derivative instrument* means any contract, agreement, or transaction that:

(1) Provides, in whole or in part, on a firm or contingent basis, for the purchase or sale of, or is based on the value of, or any interest in, one or more commodities, securities, currencies, interest or other rates, indices, quantitative measures, or other financial or economic interests or property of any kind; or

(2) Involves any payment or delivery that is dependent on the occurrence or nonoccurrence of any event associated with a potential financial, economic, or commercial consequence; or

(3) Involves any combination or permutation of any contract, agreement, or transaction or underlying interest, property, or event described in paragraphs (a)(1) or (a)(2) of this section.

(b) The term *eligible OTC derivative instrument* does not include any contract, agreement, or transaction that:

(1) Provides for the purchase or sale of a security, on a firm basis, unless:

(i) The settlement date for such purchase or sale occurs at least one year following the trade date or, in the case of an eligible forward contract, at least

four months following the trade date; or

(ii) The material economic features of the contract, agreement, or transaction consist primarily of features of a type described in paragraph (a) of this section other than the provision for the purchase or sale of a security on a firm basis; or

(2) Provides, in whole or in part, on a firm or contingent basis, for the purchase or sale of, or is based on the value of, or any interest in, any security (or group or index of securities), and is:

(i) Listed on, or traded on or through, a national securities exchange or registered national securities association, or facility or market thereof; or

(ii) Except as otherwise determined by the Commission by order pursuant to § 240.15a-1(b)(2), one of a class of fungible instruments that are standardized as to their material economic terms.

(c) The Commission may issue an order pursuant to § 240.15a-1(b)(3) clarifying whether certain contracts, agreements, or transactions are within the scope of eligible OTC derivative instrument.

(d) For purposes of this section, the term *eligible forward contract* means a forward contract that provides for the purchase or sale of a security other than a government security, provided that, if such contract provides for the purchase or sale of margin stock (as defined in Regulation U of the Regulations of the Board of Governors of the Federal Reserve System, 12 CFR Part 221), such contract either:

(1) Provides for the purchase or sale of such stock by the issuer thereof (or an affiliate that is not a bank or a broker or dealer); or

(2) Provides for the transfer of transaction collateral in an amount that would satisfy the requirements, if any, that would be applicable assuming the OTC derivatives dealer party to such transaction were not eligible for the exemption from Regulation T of the Regulations of the Board of Governors of the Federal Reserve System, 12 CFR part 220, set forth in § 240.36a1-1.

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