

registration of the predecessor security-based swap data repository shall cease to be effective 90 days after the publication of notice of the filing of the application for registration on Form SDR filed by the successor security-based swap data repository.

(b) Notwithstanding paragraph (a) of this section, if a security-based swap data repository succeeds to and continues the business of a registered predecessor security-based swap data repository, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor security-based swap data repository on Form SDR (17 CFR 249.1500) to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor.

[80 FR 14550, Mar. 19, 2015]

§ 240.13n-4 Duties and core principles of security-based swap data repository.

(a) *Definitions.* For purposes of this section—

(1) *Affiliate* of a security-based swap data repository means a person that, directly or indirectly, controls, is controlled by, or is under common control with the security-based swap data repository.

(2) *Board* means the board of directors of the security-based swap data repository or a body performing a function similar to the board of directors of the security-based swap data repository.

(3) *Control* (including the terms *controlled by* and *under common control with*) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. A person is presumed to control another person if the person:

(i) Is a director, general partner, or officer exercising executive responsibility (or having similar status or functions);

(ii) Directly or indirectly has the right to vote 25 percent or more of a class of voting securities or has the power to sell or direct the sale of 25 percent or more of a class of voting securities; or

(iii) In the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25 percent or more of the capital.

(4) *Director* means any member of the board.

(5) *Direct electronic access* means access, which shall be in a form and manner acceptable to the Commission, to data stored by a security-based swap data repository in an electronic format and updated at the same time as the security-based swap data repository's data is updated so as to provide the Commission or any of its designees with the ability to query or analyze the data in the same manner that the security-based swap data repository can query or analyze the data.

(6) *Market participant* means any person participating in the security-based swap market, including, but not limited to, security-based swap dealers, major security-based swap participants, and any other counterparties to a security-based swap transaction.

(7) *Nonaffiliated third party* of a security-based swap data repository means any person except:

(i) The security-based swap data repository;

(ii) Any affiliate of the security-based swap data repository; or

(iii) A person employed by a security-based swap data repository and any entity that is not the security-based swap data repository's affiliate (and "non-affiliated third party" includes such entity that jointly employs the person).

(8) *Person associated with a security-based swap data repository* means:

(i) Any partner, officer, or director of such security-based swap data repository (or any person occupying a similar status or performing similar functions);

(ii) Any person directly or indirectly controlling, controlled by, or under common control with such security-based swap data repository; or

(iii) Any employee of such security-based swap data repository.

(b) *Duties.* To be registered, and maintain registration, as a security-based swap data repository, a security-based swap data repository shall:

(1) Subject itself to inspection and examination by any representative of the Commission;

(2) Accept data as prescribed in Regulation SBSR (17 CFR 242.900 through 242.909) for each security-based swap;

(3) Confirm, as prescribed in Rule 13n-5 (§240.13n-5), with both counterparties to the security-based swap the accuracy of the data that was submitted;

(4) Maintain, as prescribed in Rule 13n-5, the data described in Regulation SBSR in such form, in such manner, and for such period as provided therein and in the Act and the rules and regulations thereunder;

(5) Provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity);

(6) Provide the information described in Regulation SBSR in such form and at such frequency as prescribed in Regulation SBSR to comply with the public reporting requirements set forth in section 13(m) of the Act (15 U.S.C. 78m(m)) and the rules and regulations thereunder;

(7) At such time and in such manner as may be directed by the Commission, establish automated systems for monitoring, screening, and analyzing security-based swap data;

(8) Maintain the privacy of any and all security-based swap transaction information that the security-based swap data repository receives from a security-based swap dealer, counterparty, or any registered entity as prescribed in Rule 13n-9 (§240.13n-9); and

(9) [Reserved]

(10) [Reserved]

(11) Designate an individual to serve as a chief compliance officer.

(c) *Compliance with core principles.* A security-based swap data repository shall comply with the core principles as described in this paragraph.

(1) *Market access to services and data.* Unless necessary or appropriate to achieve the purposes of the Act and the rules and regulations thereunder, the security-based swap data repository shall not adopt any policies or proce-

dures or take any action that results in an unreasonable restraint of trade or impose any material anticompetitive burden on the trading, clearing, or reporting of transactions. To comply with this core principle, each security-based swap data repository shall:

(i) Ensure that any dues, fees, or other charges imposed by, and any discounts or rebates offered by, a security-based swap data repository are fair and reasonable and not unreasonably discriminatory. Such dues, fees, other charges, discounts, or rebates shall be applied consistently across all similarly-situated users of such security-based swap data repository's services, including, but not limited to, market participants, market infrastructures (including central counterparties), venues from which data can be submitted to the security-based swap data repository (including exchanges, security-based swap execution facilities, electronic trading venues, and matching and confirmation platforms), and third party service providers;

(ii) Permit market participants to access specific services offered by the security-based swap data repository separately;

(iii) Establish, monitor on an ongoing basis, and enforce clearly stated objective criteria that would permit fair, open, and not unreasonably discriminatory access to services offered and data maintained by the security-based swap data repository as well as fair, open, and not unreasonably discriminatory participation by market participants, market infrastructures, venues from which data can be submitted to the security-based swap data repository, and third party service providers that seek to connect to or link with the security-based swap data repository; and

(iv) Establish, maintain, and enforce written policies and procedures reasonably designed to review any prohibition or limitation of any person with respect to access to services offered, directly or indirectly, or data maintained by the security-based swap data repository and to grant such person access to such services or data if such person has been discriminated against unfairly.

(2) *Governance arrangements.* Each security-based swap data repository shall

establish governance arrangements that are transparent to fulfill public interest requirements under the Act and the rules and regulations thereunder; to carry out functions consistent with the Act, the rules and regulations thereunder, and the purposes of the Act; and to support the objectives of the Federal Government, owners, and participants. To comply with this core principle, each security-based swap data repository shall:

(i) Establish governance arrangements that are well defined and include a clear organizational structure with effective internal controls;

(ii) Establish governance arrangements that provide for fair representation of market participants;

(iii) Provide representatives of market participants, including end-users, with the opportunity to participate in the process for nominating directors and with the right to petition for alternative candidates; and

(iv) Establish, maintain, and enforce written policies and procedures reasonably designed to ensure that the security-based swap data repository's senior management and each member of the board or committee that has the authority to act on behalf of the board possess requisite skills and expertise to fulfill their responsibilities in the management and governance of the security-based swap data repository, have a clear understanding of their responsibilities, and exercise sound judgment about the security-based swap data repository's affairs.

(3) *Conflicts of interest.* Each security-based swap data repository shall establish and enforce written policies and procedures reasonably designed to minimize conflicts of interest in the decision-making process of the security-based swap data repository and establish a process for resolving any such conflicts of interest. Such conflicts of interest include, but are not limited to: conflicts between the commercial interests of a security-based swap data repository and its statutory and regulatory responsibilities; conflicts in connection with the commercial interests of certain market participants or linked market infrastructures, third party service providers, and others; conflicts between, among, or with per-

sons associated with the security-based swap data repository, market participants, affiliates of the security-based swap data repository, and nonaffiliated third parties; and misuse of confidential information, material, nonpublic information, and/or intellectual property. To comply with this core principle, each security-based swap data repository shall:

(i) Establish, maintain, and enforce written policies and procedures reasonably designed to identify and mitigate potential and existing conflicts of interest in the security-based swap data repository's decision-making process on an ongoing basis;

(ii) With respect to the decision-making process for resolving any conflicts of interest, require the recusal of any person involved in such conflict from such decision-making; and

(iii) Establish, maintain, and enforce reasonable written policies and procedures regarding the security-based swap data repository's non-commercial and/or commercial use of the security-based swap transaction information that it receives from a market participant, any registered entity, or any other person.

NOTE TO §240.13N-4: This rule is not intended to limit, or restrict, the applicability of other provisions of the federal securities laws, including, but not limited to, section 13(m) of the Act (15 U.S.C. 78m(m)) and the rules and regulations thereunder.

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§ 240.13n-5 Data collection and maintenance.

(a) *Definitions.* For purposes of this section—

(1) *Asset class* means those security-based swaps in a particular broad category, including, but not limited to, credit derivatives and equity derivatives.

(2) *Position* means the gross and net notional amounts of open security-based swap transactions aggregated by one or more attributes, including, but not limited to, the:

(i) Underlying instrument, index, or reference entity;

(ii) Counterparty;

(iii) Asset class;

(iv) Long risk of the underlying instrument, index, or reference entity; and