

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Mondell Field Airport, Newcastle, WY.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

#### PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

#### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### ANM WY E5 Newcastle, WY [Modified]

Mondell Field Airport, WY

(Lat. 43°53'08" N., long. 104°19'05" W.)

Ellsworth AFB, SD

(Lat. 44°08'42" N., long. 103°06'13" W.)

That airspace extending upward from 700 feet above the surface within 4 miles northeast and 8.3 miles southwest of the Mondell Field Airport 154° and 334° bearings extending from 5.3 miles northwest to 16.1 miles southeast of the airport; that airspace extending upward from 1,200 feet above the surface bounded on the north by the north edge of V-86, on the east by a 45.6-mile radius of Ellsworth AFB, on the south by the south edge of V-26, on the west by a line 4.3 miles west of and parallel to the Mondell Field Airport 360° bearing and 180° bearing; that airspace extending upward from 7,000 feet MSL bounded on the north by the north edge of V-26, on the east by a 45.6-mile radius of Ellsworth AFB, on the south by the south edge of V-26, on the west by a line 4.3 miles west of and parallel to the Mondell Field Airport 360° bearing and 180° bearing.

Issued in Seattle, Washington on June 13, 2011.

**John Warner,**

*Manager, Operations Support Group, Western Service Center.*

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#### SECURITIES AND EXCHANGE COMMISSION

#### 17 CFR Part 240

[Release No. 34-64678; File No. S7-24-11]

#### Temporary Exemptions and Other Temporary Relief, Together With Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Security-Based Swaps

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Exemptive order.

**SUMMARY:** The Securities and Exchange Commission (“Commission”) is issuing an exemptive order granting temporary exemptive relief and other temporary relief from compliance with certain provisions of the Securities Exchange Act of 1934 (“Exchange Act”) concerning security-based swaps. The Commission also is providing guidance regarding compliance with other provisions of the Exchange Act concerning security-based swaps that were amended or added by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) and requesting comments on such guidance and the temporary relief granted.

**DATES:** This exemptive order is effective June 15, 2011. Comments must be received on or before July 6, 2011.

**ADDRESSES:** Comments may be submitted, identified by File Number

S7-24-11, by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/interp.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-24-11 on the subject line; or
- Use the Federal Rulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

#### Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number S7-24-11. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without charge; the Commission does not edit personal identifying information from submissions. You should only submit information that you wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Jack Habert, Attorney Fellow, at (202) 551-5063; Leah Drennan, Attorney-Adviser, at (202) 551-5507; or Ann McKeahan, Attorney-Adviser, at (202) 551-5797, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-7010.

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## I. Introduction and Background.

On July 21, 2010, President Barack Obama signed the Dodd-Frank Act into law.<sup>1</sup> The Dodd-Frank Act was enacted, among other reasons, to promote the financial stability of the United States by improving accountability and transparency in the financial system.<sup>2</sup> The recent financial crisis demonstrated the need for enhanced regulation of the over-the-counter (“OTC”) derivatives markets, which have experienced dramatic growth in recent years<sup>3</sup> and are capable of affecting significant sectors of the U.S. economy.<sup>4</sup> Title VII of the Dodd-Frank Act (“Title VII”) establishes a regulatory regime applicable to the OTC derivatives markets by providing the Commission and the Commodity Futures Trading Commission (“CFTC”) with the tools to oversee these heretofore largely unregulated markets. The Dodd-Frank Act provides that the CFTC will regulate “swaps,” the Commission will regulate “security-based swaps,” and the CFTC and the Commission will jointly regulate “mixed swaps.”<sup>5</sup>

<sup>1</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> *Id.* at preamble.

<sup>3</sup> From their beginnings in the early 1980s, the notional value of these markets has grown to almost \$600 trillion globally. *See Monetary and Econ. Dep’t, Bank for Int’l Settlements, Triennial and Semiannual Surveys—Positions in Global Over-the-Counter (OTC) Derivatives Markets at End-June 2010* (Nov. 2010), available at [http://www.bis.org/publ/otc\\_hy1011.pdf](http://www.bis.org/publ/otc_hy1011.pdf).

<sup>4</sup> *See* 156 Cong. Rec. S5878 (daily ed. July 15, 2010) (statement of Sen. Dodd).

<sup>5</sup> Section 712(d) of the Dodd-Frank Act provides that the Commission and the CFTC, in consultation with the Board of Governors of the Federal Reserve System, shall further define the terms “swap,” “security-based swap,” “swap dealer,” “security-based swap dealer,” “major security-based swap participant,” “eligible contract participant,” and “security-based swap agreement.” These terms are defined in sections 721 and 761 of the Dodd-Frank Act and the Commission and the CFTC have proposed to further define these terms in proposed joint rulemaking. *See Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping*, 76 FR 29818 (May 23, 2011); *Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap*

Title VII amends the Exchange Act<sup>6</sup> to substantially expand the regulation of the security-based swap (“SB swap”) markets, establishing a new regulatory framework within which such markets can continue to evolve in a more transparent, efficient, fair, accessible, and competitive manner.<sup>7</sup> The Dodd-Frank Act amendments to the Exchange Act impose, among other requirements, the following: (1) Registration and comprehensive oversight of SB swap dealers (“SBSBs”) and major SB swap participants (“MSBSPs” and, collectively with SBSBs, “SBS Entities”);<sup>8</sup> (2) reporting of SB swaps to a registered SB swap data repository (“SDR”), to the Commission, and to the public;<sup>9</sup> (3) clearing of SB swaps through a registered clearing agency or through a clearing agency that is exempt from registration<sup>10</sup> if such SB swaps are of a type that the Commission determines is required to be cleared, unless an exemption or exception from such mandatory clearing applies;<sup>11</sup> and (4) if an SB swap is subject to the

Participant” and “Eligible Contract Participant,” 75 FR 80174 (Dec. 21, 2010) (“Entity Definitions Release”).

<sup>6</sup> 15 U.S.C. 78a *et seq.*

<sup>7</sup> *See generally* subtitle B of Title VII. Citations to provisions of the Exchange Act in this Order refer to the numbering of those provisions after the amendments made by the Dodd-Frank Act, except as otherwise provided.

<sup>8</sup> As required by the Dodd-Frank Act, the Commission will propose rules regarding the registration of SBS Entities and a process for revocation of such registration. *See* section 15F of the Exchange Act, 15 U.S.C. 78o–10.

<sup>9</sup> *See* section 3(a)(75) of the Exchange Act, 15 U.S.C. 78c(a)(75) (defining the term “security-based swap data repository”). The registration of an SDR and the reporting of SB swaps are the subject of separate Commission rulemakings. *See Security-Based Swap Data Repository Registration, Duties, and Core Principles*, 75 FR 77305 (Dec. 10, 2010), corrected at 75 FR 79320 (Dec. 20, 2010) and 76 FR 2287 (Jan. 13, 2011); *Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information*, 75 FR 75207 (Dec. 2, 2010).

<sup>10</sup> *See* Clearing Agency Standards for Operation and Governance, 76 FR 14472 (Mar. 16, 2011). The Commission has proposed rules regarding registration of clearing agencies and standards for the operation and governance of clearing agencies, including rules that would exempt certain SBSBs and SB SEFs from the definition of a clearing agency.

<sup>11</sup> *See* section 3C(a)(1) of the Exchange Act, 15 U.S.C. 78c–3(a)(1). The Commission has proposed rules regarding the manner in which clearing agencies provide information to the Commission about SB swaps that the clearing agency plans to accept for clearing and that would, in turn, be used by the Commission in determining whether such SB swaps are required to be cleared. *See* Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b–4 and Form 19b–4 Applicable to All Self-Regulatory Organizations, 75 FR 82489 (Dec. 30, 2010).

clearing requirement,<sup>12</sup> execution of the SB swap transaction on an exchange, on an SB swap execution facility (“SB SEF”) registered under section 3D of the Exchange Act,<sup>13</sup> or on an SB SEF that has been exempted from registration by the Commission under section 3D(e) of the Exchange Act,<sup>14</sup> unless no SB SEF or exchange makes such SB swap available for trading.<sup>15</sup> Title VII also amends the Exchange Act and the Securities Act of 1933<sup>16</sup> (“Securities Act”) to include “security-based swaps” in the definition of “security” for purposes of those statutes.<sup>17</sup> As a result, “security-based swaps” will be subject to the provisions of the Securities Act and the Exchange Act and the rules thereunder applicable to “securities.”<sup>18</sup> The Commission has proposed exemptions<sup>19</sup> under the Securities Act, the Exchange Act, and the Trust Indenture Act of 1939<sup>20</sup> (“Trust Indenture Act”) for SB swaps issued by certain clearing agencies satisfying certain conditions.<sup>21</sup> In addition, the Commission will take other actions to address certain SB swaps, such as providing guidance regarding—and where appropriate, temporary relief from—the various pre-Dodd Frank Act provisions that would otherwise apply to SB swaps on July 16, 2011, as well as extending existing temporary rules under the Securities Act, the Exchange

<sup>12</sup> *See* section 3C(g) of the Exchange Act, 15 U.S.C. 78c–3(g) (providing an exception to the clearing requirement for certain persons).

<sup>13</sup> 15 U.S.C. 78c–4.

<sup>14</sup> 15 U.S.C. 78c–4(e).

<sup>15</sup> *See* section 3C(g) of the Exchange Act, 15 U.S.C. 78c–3(g). *See* section 3C(h) of the Exchange Act, 15 U.S.C. 78c–3(h). *See also* section 3(a)(77) of the Exchange Act, 15 U.S.C. 78c(77) (defining the term “security-based swap execution facility”). The Commission has proposed an interpretation of the definition of “security-based swap execution facility” and has proposed rules to implement registration requirements, duties, and core principles for SB SEFs. *See* Registration and Regulation of Security-Based Swap Execution Facilities, 76 FR 10946 (Feb. 28, 2011).

<sup>16</sup> 15 U.S.C. 77a *et seq.*

<sup>17</sup> *See* sections 761(a)(2) and 768(a)(1) of the Dodd-Frank Act (amending sections 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10), and 2(a)(1) of the Securities Act, 15 U.S.C. 77b(a)(1), respectively).

<sup>18</sup> The Commission has considered similar issues raised by the treatment of credit default swaps as securities in connection with taking action in the past to facilitate clearing of certain credit default swaps (“CDS”) by clearing agencies functioning as central counterparties (“CCPs”). *See* *infra* notes 222 and 223.

<sup>19</sup> *See* Exemptions for Security-Based Swaps Issued by Certain Clearing Agencies, Securities Act Release No. 9222, Exchange Act Release No. 64639, Trust Indenture Act Release No. 2474 (June 9, 2011) (“Proposed Cleared SB Swap Exemptions”).

<sup>20</sup> 15 U.S.C. 77aaa *et seq.*

<sup>21</sup> *See* discussion *infra* note 223.

Act, and the Trust Indenture Act for certain SB swaps.<sup>22</sup>

The provisions of Title VII generally are effective on July 16, 2011 (360 days after enactment of the Dodd-Frank Act, referred to herein as the “Effective Date”), unless a provision requires a rulemaking. Specifically, if a Title VII provision requires a rulemaking, such provision will not necessarily go into effect on the Effective Date, but instead will go into effect “not less than” 60 days after publication of the related final rule or on July 16, 2011, whichever is later.<sup>23</sup> A substantial number of Title VII provisions require a rulemaking and thus will not go into effect on the Effective Date. A number of Title VII provisions also expressly (or implicitly) apply only to “registered” persons. Until the related registration processes for such persons have been established by final Commission rules, and such persons have become registered pursuant to such rules, they will not be required to comply with these Title VII provisions.<sup>24</sup> Other provisions of Title VII impose requirements that require compliance by market participants as a result of, or in response to, Commission action other than rulemaking and thus do not impose a compliance obligation upon market participants in the absence of such Commission action.

In addition, Title VII provides the Commission with flexibility to establish effective dates beyond the minimum 60 days specified therein for Title VII provisions that require a rulemaking.<sup>25</sup> Furthermore, as with other rulemakings under the Exchange Act, the Commission may set compliance dates (which may be later than the effective dates) for rulemakings under the Title VII amendments to the Exchange Act. Together, this provides the Commission with the ability to sequence the implementation of the various Title VII requirements in a way that effectuates the policy goals of Title VII while minimizing unnecessary disruption or costs.

Title VII also includes certain provisions that authorize or direct the Commission to take specified action

<sup>22</sup> See SEC Announces Steps to Address One-Year Effective Date of Title VII of Dodd-Frank Act, available at <http://www.sec.gov/news/press/2011/2011-125.htm> (June 10, 2011).

<sup>23</sup> See section 774 of the Dodd-Frank Act, 15 U.S.C. 77b note.

<sup>24</sup> See, e.g., sections 15F(e)(1) of the Exchange Act, 15 U.S.C. 78o-10(e)(1) (capital and margin requirements); 15F(f)(1) (reporting and recordkeeping); 15F(h)(1) (business conduct standards).

<sup>25</sup> See *id.* (specifying that the effective date for a provision requiring a rulemaking is “not less than 60 days after publication of the final rule or regulation implementing such provision”).

that, once undertaken, may impose compliance obligations upon market participants.<sup>26</sup> These provisions will become effective on the Effective Date, but, by their plain language, pertain to Commission action. Accordingly, these provisions do not require compliance by market participants on the Effective Date unless the relevant Commission action already has been undertaken. The Commission does not expect to complete all of the rulemaking it is directed to carry out pursuant to these provisions prior to the Effective Date.

In furtherance of the Dodd-Frank Act’s stated objective of promoting financial stability in the U.S. financial system, the Commission intends to move forward expeditiously with the implementation of the new SB swap requirements in an efficient manner, while minimizing unnecessary disruption and costs to the markets. The Commission recognizes that many market participants will find compliance with Title VII to be a substantial undertaking. SB swap markets already exist, are global in scope, and have generally grown in the absence of regulation in the United States and elsewhere. In addition, the SB swap markets are interconnected with other financial markets, including the traditional securities markets. In order to comply with Title VII provisions and related rules, the Commission recognizes that market participants will need additional time to acquire and configure necessary systems or to modify existing practices and systems, engage and train necessary staff, and develop and implement necessary policies and procedures.<sup>27</sup> Furthermore, some of these changes cannot be finalized until certain rules are effective. Accordingly, it is necessary or appropriate to defer some of these tasks until certain rules are effective, as more fully described below.

In order to effectuate the purposes of Title VII, and in response to comments received from market participants,<sup>28</sup> the

<sup>26</sup> See, e.g., section 3D(f) of the Exchange Act, 15 U.S.C. 78c-4(f) (requiring the Commission to prescribe rules governing the regulation of SB SEFs). Certain of these provisions relate to the CFTC or another government agency in addition to, or instead of, the Commission.

<sup>27</sup> The Commission expects that it will not, by July 16, 2011, have completed implementing Title VII. As a result, the Commission believes it would not be reasonable to require market participants to put systems in place or hire personnel based on a regulatory scheme that is not fully in place. To require otherwise, depending on the content of the final rules, might require these entities to incur costs to change their systems again in a relatively short period of time.

<sup>28</sup> The Commission has received comments from a wide range of commenters inquiring as to the effective dates and related compliance dates of

Commission is providing guidance as to the provisions of the Exchange Act added by Title VII with which industry compliance will be required as of the Effective Date.<sup>29</sup>

In addition, and for the reasons discussed in this Order, the Commission

certain provisions and requesting that the Commission propose a compliance schedule for the statutory provisions of subtitle B of Title VII and the rules being promulgated thereunder. *See, e.g.*, letter from American Bankers Association, Financial Services Roundtable, Futures Industry Association, Institute of International Bankers, International Swaps and Derivatives Association, Investment Company Institute, Securities Industry and Financial Markets Association, U.S. Chamber of Commerce (June 10, 2011) (“Trade Association Letter”); letter from Stephen Merkel, Chairman, Wholesale Markets Brokers’ Association Americas (June 3, 2010) (“WMBA Letter”); letter from Richard M. Whiting, Executive Director and General Counsel, Financial Services Roundtable (May 12, 2011); letter from Andrew Downes, Managing Director, and James B. Fuqua, Managing Director, UBS Securities LLC (Feb. 7, 2011); letter from Craig S. Donohue, CME Group Inc. (Jan. 18, 2011); letter from R. Glenn Hubbard, Co-Chair, John L. Thornton, Co-Chair, and Hal S. Scott, Director, the Committee on Capital Markets Regulation (Jan. 18, 2011) (“Committee on Capital Markets Regulation Letter”); letter from Larry E. Thompson, General Counsel, the Depository Trust & Clearing Corporation (Jan 18, 2011) (“DTCC Letter”); letter from Mr. James Hill, Managing Director, Morgan Stanley (Nov. 1, 2010) (“Morgan Stanley Letter”).

In addition, many letters from market participants have advocated for a phased-in approach to compliance with the requirements of Title VII. *See, e.g.*, WMBA Letter (suggesting a “progression” of finalization of specific Title VII rules); Committee on Capital Markets Regulation Letter (stating that “the reporting and recordkeeping requirements should be implemented gradually over time”); letter from Financial Services Forum, Futures Industry Association, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association (May 4, 2011) (stating that “[t]he Commissions should phase in requirements based on the state of readiness of each particular asset class”); letter from G14 Member dealers and others (Mar. 31, 2011) (suggesting a “phased-in implementation schedule”); letter from Richard H. Baker, President & Chief Executive Officer, Managed Funds Association (Mar. 24, 2011) (recommending “milestones for clearing access and voluntary clearing with a phase-in period before clearing becomes mandatory”); DTCC Letter (recommending a “phased-in” approach to implementation of reporting requirements under Regulation SBSR); Morgan Stanley Letter (urging the Commission and the CFTC “to phase in the clearing, execution and other requirements product-by-product over time”).

Some of the commenters cited above addressed issues regarding effective dates, compliance, and implementation that will be addressed by other action to be taken the Commission. *See supra* note 22 and accompanying text.

<sup>29</sup> While this release provides guidance with respect to the provisions of the Exchange Act added by Title VII, as indicated above, the Commission will take other actions to address SB swaps under various provisions of the Federal securities laws. *See supra* note 22 and accompanying text. In addition, after proposing all of the key rules under Title VII, the Commission intends to consider publishing a detailed implementation plan in order to enable the Commission to move forward expeditiously with the roll-out of the new SB swap requirements in an efficient manner, while minimizing unnecessary disruption and costs to the markets. *Id.*

is granting temporary exemptive and other relief that is necessary or appropriate in the public interest, and consistent with the protection of investors, from compliance with certain of those provisions of the Exchange Act with which compliance would otherwise be required as of the Effective Date. Generally, section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt, by rule, regulation, or order, any person, security, or transaction (or any class or classes of persons, securities, or transactions) from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.<sup>30</sup> This exemptive authority is

not available for certain specified provisions of the Exchange Act that relate to SB swaps.<sup>31</sup> Where such exemptive authority is not provided, the Commission is using other available authority to provide appropriate temporary relief.

## II. Discussion

### A. Clearing for Security-Based Swaps

Section 3C of the Exchange Act, added by section 763(a) of the Dodd-Frank Act, generally provides that, if an SB swap is required to be cleared, it is unlawful for any person to engage in such SB swap unless that person submits such SB swap for clearing to a clearing agency that is registered under the Exchange Act or to a clearing agency that is exempt from registration under the Exchange Act.<sup>32</sup> Table A below lists each provision of section 3C of the

Exchange Act and identifies those with which compliance will be required on the Effective Date and those with which compliance will be triggered by registration of a person as a clearing agency, adoption of final rules, or other action by the Commission.<sup>33</sup> For the provisions with which compliance will be required on the Effective Date, Table A notes whether temporary relief from compliance is granted. The rationale and duration for such relief is explained in the text following the table. The table also includes provisions that authorize or direct the Commission to take specified action that, once undertaken, may impose compliance obligations upon market participants.<sup>34</sup> Unless otherwise noted in the table below, these provisions do not require compliance by market participants on the Effective Date.

TABLE A—CLEARING FOR SECURITY-BASED SWAPS—COMPLIANCE DATES

Exchange act section <sup>35</sup>	Compliance date		Authorizes/directs commission action <sup>36</sup>	Relief granted
	Upon effective date (July 16, 2011)	Upon registration, publication of final rules, or other commission action <sup>37</sup>		
3C(a)(1): In general—standard for clearing .....	.....	✓	.....	N/A. <sup>38</sup>
3C(a)(2): In general—open access .....	.....	✓	.....	N/A. <sup>39</sup>
3C(b)(1): Commission review—Commission-initiated review .....	.....	.....	✓	N/A.
3C(b)(2)(A) and (B): Commission review—swap submission .....	.....	✓	.....	N/A. <sup>40</sup>
3C(b)(2)(C): Commission review—swap submission .....	.....	.....	✓	N/A.
3C(b)(3): Commission review—deadline .....	.....	.....	✓	N/A.
3C(b)(4): Commission review—determination .....	.....	.....	✓	N/A.
3C(b)(5): Commission review—rules .....	.....	.....	✓	N/A.
3C(c): Stay of clearing requirement .....	.....	.....	✓	N/A.
3C(d): Prevention of evasion .....	.....	.....	✓	N/A.
3C(e)(1): Reporting transition rules—pre-enactment SB swaps .....	.....	.....	✓	Yes. <sup>41</sup>
3C(e)(2): Reporting transition rules—post-enactment SB swaps .....	.....	.....	✓	N/A. <sup>42</sup>
3C(f)(1): Clearing transition rules .....	.....	✓	.....	N/A. <sup>43</sup>
3C(f)(2): Clearing transition rules .....	.....	✓	.....	N/A. <sup>44</sup>
3C(g)(1)–(2), (4): Exceptions—in general; option to clear; treatment of affiliates .....	.....	✓	.....	N/A. <sup>45</sup>
3C(g)(3)(A): Exceptions —financial entity definition—in general .....	.....	✓	.....	N/A. <sup>46</sup>
3C(g)(3)(B): Exceptions—financial entity definition—exclusion .....	.....	.....	✓	N/A.
3C(g)(5)(A): Exceptions—election of counterparty—SB swaps required to be cleared .....	.....	✓	.....	N/A.
3C(g)(5)(B): Exceptions—election of counterparty—SB swaps not required to be cleared .....	✓	.....	.....	Yes.
3C(g)(6): Exceptions—abuse of exception .....	.....	.....	✓	N/A.
3C(h): Trade execution .....	.....	✓	.....	N/A.
3C(i): Board approval .....	.....	✓	.....	N/A. <sup>47</sup>
3C(j)(1)–(2): Designation of chief compliance officer—in general; duties .....	.....	✓	.....	Yes. <sup>48</sup>
3C(j)(3): Designation of chief compliance officer—annual reports .....	.....	✓	.....	N/A.

As indicated in Table A, the Commission is providing temporary

exemptive relief from compliance with section 3C(e)(1) of the Exchange Act.<sup>49</sup>

<sup>30</sup> 15 U.S.C. 78mm.

<sup>31</sup> See section 36(c) of the Exchange Act, 15 U.S.C. 78mm(c) (limiting the Commission's exemptive authority with respect to certain provisions of the Exchange Act added by Title VII, such as sections 13A, 15F, and 17A(g) through (l) of the Exchange

Act, 15 U.S.C. 78m–1, 78o–10, and 78q–1(g) through (l)). The Commission notes that the Securities Act provides for exemptive authority to be exercised through rulemaking and, as a result, this Order does not provide for any exemptive action with respect to the Securities Act.

<sup>32</sup> 15 U.S.C. 78c–3.

<sup>33</sup> *Id.*

<sup>34</sup> See *supra* note 26 and accompanying text.

<sup>35</sup> References to section 3C of the Exchange Act in this table are to 15 U.S.C. 78c–3.

<sup>36</sup> These provisions do not require compliance by market participants on the Effective Date, unless the relevant Commission action already has been undertaken. *See supra* note 26 and accompanying text.

<sup>37</sup> A number of Title VII provisions expressly (or implicitly) apply only to “registered” persons. Until the related registration processes for such persons have been established by final Commission rules, and such persons have become registered pursuant to such rules, they will not be required to comply with these Title VII provisions. If a Title VII provision requires a rulemaking, such provision will not necessarily go into effect on the Effective Date, but instead will go into effect “not less than” 60 days after publication of the related final rule or on July 16, 2011, whichever is later. *See* section 774 of the Dodd-Frank Act, 15 U.S.C. 77b note.

<sup>38</sup> Section 3C(b)(5) of the Exchange Act, 15 U.S.C. 78c-3(b)(5), requires the Commission to “adopt rules for a clearing agency’s submission for review \* \* \* of a security-based swap, or a group, category, type, or class of [SB swaps], that it seeks to accept for clearing.”

<sup>39</sup> Section 3C(a)(2) of the Exchange Act, 15 U.S.C. 78c-3(a)(2), is applicable to “rules of a clearing agency described in [section 3C(a)(1) of the Exchange Act, 15 U.S.C. 78c-3(a)(1)].” The clearing agencies described in section 3C(a)(1) of the Exchange Act, 15 U.S.C. 78c-3(a)(1), are required to be registered, or exempt from registration, and clearing SB swaps subject to the clearing requirement. As a result, the requirements of section 3C(a)(2) of the Exchange Act, 15 U.S.C. 78c-3, will not be triggered until a clearing agency is registered or exempt from registration and also is clearing SB swaps that are subject to the clearing requirement. Three entities will be deemed registered on the Effective Date. *See* discussion *infra* part 0. However, no SB swaps will be subject to the clearing requirement on the Effective Date.

<sup>40</sup> Section 3C(b)(2)(B) of the Exchange Act, 15 U.S.C. 78c-3(b)(2)(B), states in part that SB swaps “listed for clearing by a clearing agency as of the date of enactment of [section 3C(b) of the Exchange Act, 15 U.S.C. 78c-3(b)], shall be considered submitted to the Commission.” However, pursuant to section 3C(b)(3) of the Exchange Act, 15 U.S.C. 78c-3(b)(3), a clearing agency may agree to extend the time for action required under the section. The relevant clearing agencies have agreed to an extension of the deadline for a determination by the Commission “until 90 days after the Commission has published final rules governing the process by which SB swaps shall be submitted to the Commission for a clearing determination.” Until the rulemaking is completed, therefore, no SB swaps will be considered submitted. *See* letter from Lisa Dunsky, Chicago Mercantile Exchange Inc., to Robert Cook, Director, Division of Trading and Markets, Commission (Aug. 26, 2010); letter from Thomas Book, Eurex Clearing AG, to Robert Cook, Director, Division of Trading and Markets, Commission (Aug. 19, 2010); and letter from Trabue Bland, regarding ICE Trust U.S. LLC and ICE Clear Europe Limited, to Robert Cook, Director, Division of Trading and Markets, Commission (Sept. 2, 2010).

<sup>41</sup> The Commission has proposed rules pursuant to this provision. *See* *infra* note 172.

<sup>42</sup> The Commission has proposed rules pursuant to this provision. *See* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, *supra* note 9 (providing by rule a deadline by which post-enactment SB swaps must be reported).

<sup>43</sup> Because the exemption from the clearing requirement in this provision requires the reporting of SB swaps pursuant to section 3C(e)(1) of the Exchange Act, 15 U.S.C. 78c-3(e)(1), market participants cannot comply with this provision until final rules have been adopted pursuant to such section 3C(e)(1).

for market participants with reporting obligations under section 13A of the Exchange Act.<sup>50</sup>

Section 3C(e)(1) of the Exchange Act requires the Commission to adopt rules that provide that “[s]ecurity-based swaps entered into before the date of enactment of this section [(‘pre-enactment SB swaps’)] shall be reported to a registered security-based swap data repository or the Commission no later than 180 days after the effective date of [section 3C of the Exchange Act].”<sup>51</sup> Section 3C of the Exchange Act becomes effective on July 16, 2011, and 180 days after that date is January 12, 2012.

The Commission is exercising its authority under section 36 of the Exchange Act<sup>52</sup> to exempt any person from having to report any pre-enactment SB swaps as set forth in the rules adopted by the Commission pursuant to section 3C(e)(1) of the Exchange Act<sup>53</sup> until six (6) months after an SDR that is capable of accepting the asset class of the pre-enactment SB swaps is registered by the Commission. The Commission finds that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors, because, even

<sup>44</sup> Because the exemption from the clearing requirement in this provision requires the reporting of SB swaps pursuant to section 3C(e)(2) of the Exchange Act, 15 U.S.C. 78c-3(e)(2), market participants cannot comply with this provision until final rules have been adopted pursuant to such section 3C(e)(2).

<sup>45</sup> Because the mandatory clearing requirement is a predicate requirement for the end-user clearing exception set forth in section 3C(g) of the Exchange Act, 15 U.S.C. 78c-3(g), end users will not need to rely upon that exception until such time as an SB swap is determined by the Commission to be required to be cleared. Accordingly, the provisions of sections 3C(g)(1), (2) and (4) of the Exchange Act, 15 U.S.C. 78c-3(g)(1), (2) and (4), will not be triggered until that time.

<sup>46</sup> Since the mandatory clearing requirement is a predicate requirement for the end-user clearing exception set forth in section 3C(g) of the Exchange Act, 15 U.S.C. 78c-3(g), end users will not need to rely upon that exception until such time as a SB swap is determined by the Commission to be required to be cleared.

<sup>47</sup> Since the mandatory clearing requirement is a predicate requirement for any exemptions to it, this provision will not be triggered until such time as a SB swap is determined by the Commission to be required to be cleared.

<sup>48</sup> Section 3C(j) of the Exchange Act, 15 U.S.C. 78c-3(j), applies only to registered clearing agencies, including clearing agencies that provide clearance and settlement services for securities other than SB swaps. Accordingly, compliance with such requirements will be required on the later of the Effective Date and registration of the clearing agency. As noted above, three clearing agencies will be deemed registered on the Effective Date, in addition to clearing agencies already registered with the Commission. *See* discussion *infra* part II.H.

<sup>49</sup> 15 U.S.C. 78c-3(e)(1).

<sup>50</sup> 15 U.S.C. 78m-1.

<sup>51</sup> 15 U.S.C. 78c-3(e)(1).

<sup>52</sup> 15 U.S.C. 78mm.

<sup>53</sup> 15 U.S.C. 78c-3(e)(1).

after an SDR is registered, market participants will need additional time to establish connectivity and develop appropriate policies and procedures to be able to deliver information to the registered SDR. Therefore, under this exemption, no person will be required to report a pre-enactment SB swap in an asset class until six (6) months after an SDR that is capable of accepting SB swaps in that asset class has registered with the Commission.<sup>54</sup>

The Commission also is exercising its authority pursuant to section 36 of the Exchange Act to grant a temporary exemption from section 3C(g)(5)(B) of the Exchange Act.<sup>55</sup> Section 3C(g)(5)(B) of the Exchange Act<sup>56</sup> permits a counterparty to an SB swap that is not subject to the mandatory clearing requirement to elect to clear its SB swap with an SBS Entity. The Commission finds that it is necessary or appropriate in the public interest, and consistent with the protection of investors to grant a temporary exemption to SBS Entities from section 3C(g)(5)(B) of the Exchange Act<sup>57</sup> because the Commission understands that there are currently no CCPs offering customer clearing of SB swaps and additional action by the Commission will be necessary to address segregation and other customer protection issues. Therefore, under this exemption, section 3C(g)(5)(B) of the Exchange Act<sup>58</sup> will not apply until the earliest compliance date set forth in any of the final rules regarding section 3C(b) of the Exchange Act.<sup>59</sup>

In addition, the Commission is exercising its authority pursuant to section 36 of the Exchange Act to grant temporary exemptions from sections 3C(j)(1) and (2) of the Exchange Act.<sup>60</sup> Section 3C(j)(1) of the Exchange Act<sup>61</sup> requires that each registered clearing agency designate an individual to serve as a chief compliance officer. The chief compliance officer will be required to comply with the duties specified in

<sup>54</sup> Similarly, we proposed—in rule 910 of Regulation SBSR—that no transaction reports for any SB swap executed on or after July 21, 2010 would have to be submitted to a registered SDR until six months after the date that an SDR registers with the Commission. *See* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, *supra* note 9. As we stated in the Regulation SBSR proposing release, before reporting to a registered SDR could commence, persons with a duty to report would have to know the policies and procedures of the SDR and have time to implement necessary systems changes. *Id.*

<sup>55</sup> 15 U.S.C. 78c-3(g)(5)(B).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> 15 U.S.C. 78c-3(b).

<sup>60</sup> 15 U.S.C. 78c-3(j)(1) and (2).

<sup>61</sup> 15 U.S.C. 78c-3(j)(1).

section 3C(j)(2) of the Exchange Act,<sup>62</sup> as well as, following rulemaking, the reporting provisions of section 3C(j)(3) of the Exchange Act.<sup>63</sup> The Commission finds that it is necessary or appropriate in the public interest, and consistent with the protection of investors to grant temporary exemptions from sections 3C(j)(1) and (2) of the Exchange Act<sup>64</sup> because there is potential uncertainty regarding the duties of a chief compliance officer as required by section 3C(j)(2).<sup>65</sup> Therefore, under this exemption, no person will be required to comply with section 3C(j)(1) or (2) of the Exchange Act<sup>66</sup> until the earliest compliance date set forth in any of the final rules regarding section 3C(j)(2) of the Exchange Act.<sup>67</sup>

With respect to the remaining provisions of section 3C of the Exchange Act, unless and until the Commission makes a determination that an SB swap is required to be cleared, section 3C of the Exchange Act, by its terms, does not require any SB swap to be cleared through a registered clearing agency or

a clearing agency that is exempt from registration.<sup>68</sup> The Commission is required to adopt rules for clearing agencies' submissions to the Commission for review of SB swaps that clearing agencies seek to accept for clearing.<sup>69</sup> Thus, no SB swaps will be required to be submitted to the Commission for review until the compliance date set forth in such rules.

#### Request for Comment

- Are there other provisions of section 3C of the Exchange Act for which the Commission should grant temporary exemptive relief? Please specify which provisions and provide a detailed explanation of why granting such exemption would be necessary or appropriate in the public interest, and consistent with the protection of investors.

#### B. Security-Based Swap Execution Facilities

Section 3D of the Exchange Act, added by section 763(c) of the Dodd-

Frank Act, contains the provisions regarding the registration of SB SEFs and the core principles with which registered SB SEFs must comply.<sup>70</sup> Table B below lists each provision of section 3D of the Exchange Act and identifies those with which compliance will be required on the Effective Date and those with which compliance will be triggered by registration of a person as a SB SEF, adoption of final rules, or other action by the Commission.<sup>71</sup> For the provisions with which compliance will be required on the Effective Date, Table B notes whether temporary relief from compliance is granted. The rationale and duration for such relief is explained in the text following the table. The table also includes provisions that authorize or direct the Commission to take specified action that, once undertaken, may impose compliance obligations upon market participants. Unless otherwise noted in the table below, these provisions do not require compliance by market participants on the Effective Date.

TABLE B—SECURITY-BASED SWAP EXECUTION FACILITIES—COMPLIANCE DATES

Exchange act section <sup>72</sup>	Compliance date		Authorizes/directs commission action <sup>73</sup>	Relief granted
	Upon effective date (July 16, 2011)	Upon registration, publication of final rules, or other commission action <sup>74</sup>		
3D(a)(1): Registration—in general .....	.....	✓	.....	Yes. <sup>75</sup>
3D(a)(2): Registration—dual registration .....	.....	✓	.....	N/A.
3D(b): Trading and trade processing .....	.....	✓	.....	N/A.
3D(c): Identification of facility used to trade SB swaps by national securities exchanges .....	✓	.....	.....	Yes.
3D(d): Core principles for SB SEFs—compliance with core principles—in general and Commission rules and information requests .....	.....	✓	.....	N/A. <sup>76</sup>
3D(e): Exemptions .....	.....	.....	✓	N/A.
3D(f): Rules .....	.....	.....	✓	N/A.

As indicated in Table B, the Commission finds, pursuant to section

36 of the Exchange Act,<sup>77</sup> that it is necessary or appropriate in the public

interest, and is consistent with the protection of investors, to grant

<sup>62</sup> 15 U.S.C. 78c-3(j)(2).

<sup>63</sup> 15 U.S.C. 78c-3(j)(2).

<sup>64</sup> 15 U.S.C. 78c-3(j)(1) and (2).

<sup>65</sup> See Letter from DTCC (April 29, 2011) (stating that “[w]hile DTCC fully supports the principle of a clearing agency designating a CCO, DTCC believes that some of the duties of the CCO specified in Proposed Rule 3Cj-1 require clarification in order to avoid an overly broad reading of those duties. DTCC believes that some of the duties of the CCO specified in the Proposed Rule go beyond those duties traditionally understood to be part of the compliance function.”).

<sup>66</sup> 15 U.S.C. 78c-3(j)(1) or (2).

<sup>67</sup> 15 U.S.C. 78c-3(j)(2).

<sup>68</sup> See *supra* note 45.

<sup>69</sup> See section 3C(b)(5) of the Exchange Act, 15 U.S.C. 78c-3(b)(5). The Commission published proposed rules regarding the submission process. See Process for Submissions for Review of Security-

Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b-4 and Form 19b-4 Applicable to All Self-Regulatory Organizations, *supra* note 11.

<sup>70</sup> 15 U.S.C. 78c-4.

<sup>71</sup> *Id.*

<sup>72</sup> References to section 3D of the Exchange Act in this table are to 15 U.S.C. 78c-4.

<sup>73</sup> These provisions do not require compliance by market participants on the Effective Date, unless the relevant Commission action already has been undertaken. See *supra* note 26 and accompanying text.

<sup>74</sup> A number of Title VII provisions expressly (or implicitly) apply only to “registered” persons. Until the related registration processes for such persons have been established by final Commission rules, and such persons have become registered pursuant to such rules, they will not be required to comply with these Title VII provisions. If a Title VII

provision requires a rulemaking, such provision will not necessarily go into effect on the Effective Date, but instead will go into effect “not less than” 60 days after publication of the related final rule or on July 16, 2011, whichever is later. See section 774 of the Dodd-Frank Act, 15 U.S.C. 77b note.

<sup>75</sup> Rulemaking is necessary to establish the form and manner of registration.

<sup>76</sup> Section 3D(d)(1) of the Exchange Act, 15 U.S.C. 78c-4(d)(1), states in part that “[t]o be registered, and to maintain registration, as a security-based swap execution facility, the security-based swap execution facility shall comply with \* \* \* any requirement that the Commission may impose by rule or regulation.” Accordingly, compliance with such requirements will be required on the later of the registration of the SB SEF and the compliance date of any Commission rule establishing such requirements under section 3D of the Exchange Act, 15 U.S.C. 78c-4.

temporary exemptions from sections 3D(a)(1) and 3D(c) of the Exchange Act.<sup>78</sup> Section 3D(a)(1) of the Exchange Act states that no person may operate a facility for the trading or processing of SB swaps unless the facility is registered as a SB SEF or as a national securities exchange under section 3D of the Exchange Act.<sup>79</sup> The temporary exemption from section 3D(a)(1) would allow an entity that trades SB swaps and is not currently registered as a national securities exchange, or that cannot yet register as a SB SEF because final rules for such registration have not yet been adopted,<sup>80</sup> to continue trading SB swaps during this temporary period without registering as a national securities exchange or SB SEF.<sup>81</sup> The Commission finds that such action is necessary or appropriate in the public interest, and consistent with the protection of investors, to facilitate the operation of entities that trade SB swaps so that these instruments can continue to be traded without the need for entities that trade such instruments to register as national securities exchanges before the Commission has put in place a registration regime for SB SEFs, at which time the entities that operate these facilities would be able to choose

between registration as a national securities exchange and a SB SEF. Section 3D(c) of the Exchange Act requires that a national securities exchange (to the extent that it also operates an SB SEF and uses the same electronic trade execution system for listing and executing trades of SB swaps on or through the exchange and the facility) identify whether electronic trading of such SB swaps is taking place on or through the national securities exchange or the SB SEF.<sup>82</sup> The temporary exemption from section 3D(c) of the Exchange Act<sup>83</sup> would avoid legal uncertainty regarding whether a national securities exchange is operating as a SB SEF until further guidance is available.

The temporary exemptions from sections 3D(a)(1) and 3D(c) of the Exchange Act<sup>84</sup> will expire on the earliest compliance date set forth in any of the final rules regarding registration of SB SEFs.

#### Request for Comment

- Are there other provisions of section 3D of the Exchange Act for which the Commission should grant temporary exemptive relief? Please provide a detailed explanation of why granting such an exemption would be necessary or appropriate in the public

interest, and consistent with the protection of investors.

#### C. Segregation of Collateral in Security-Based Swaps

Section 3E of the Exchange Act, added by section 763(d) of the Dodd-Frank Act, regulates the collection and handling of collateral that counterparties to SB swaps deliver to secure their obligations arising from such SB swaps and sets out certain rights of the counterparties who deliver such collateral.<sup>85</sup> Certain of these provisions require rulemaking by the Commission and thus will not require compliance on the Effective Date because the Commission will not have adopted a segregation rule by that date. Table C below lists each provision of section 3E of the Exchange Act and identifies those provisions that will require compliance on the Effective Date and those with which compliance will be triggered by the adoption of final rules or other action by the Commission.<sup>86</sup> For the provisions with which compliance will be required on the Effective Date, Table C notes whether temporary relief from compliance is granted. The rationale and duration for such relief is explained in the text following the table.

TABLE C—SEGREGATION OF COLLATERAL IN SECURITY-BASED SWAPS—COMPLIANCE DATES.

Exchange act section <sup>87</sup>	Compliance date		Authorizes/directs commission action <sup>88</sup>	Relief granted
	Upon effective date (July 16, 2011)	Upon registration, publication of final rules, or other commission action <sup>89</sup>		
3E(a): Registration requirement .....	✓	.....	.....	No. <sup>90</sup>
3E(b): Cleared SB swaps—segregation required; commingling prohibited .....	✓	.....	.....	No. <sup>91</sup>
3E(c)(1): Exceptions—use of funds .....	✓	.....	.....	N/A.
3E(c)(2): Exceptions—Commission action .....	✓	.....	.....	N/A. <sup>92</sup>
3E(d): Permitted investments .....	✓	.....	.....	N/A.
3E(d): Permitted investments—specified as permitted investments by the Commission .....	.....	✓	.....	N/A.
3E(e): Prohibition .....	✓	.....	.....	No. <sup>93</sup>
3E(f): Segregation requirements for uncleared SB swaps .....	✓	.....	.....	Yes.
3E(g): Bankruptcy .....	✓	.....	.....	N/A. <sup>94</sup>

As indicated in Table C, the Commission is granting temporary

<sup>77</sup> 15 U.S.C. 78mm.

<sup>78</sup> 15 U.S.C. 78c–4(a)(1) and 78c–4(c).

<sup>79</sup> 15 U.S.C. 78c–4(a)(1).

<sup>80</sup> Such an entity could, for example, be an alternative trading system or a trading platform that is currently not registered with the Commission in any capacity. The Commission notes that, if such an entity were doing business as an alternative trading system, it would continue to be subject to the requirements of Regulation ATS (17 CFR 242.300 *et seq.*) during this temporary period.

<sup>81</sup> The Commission intends to separately consider temporary relief from the exchange registration requirements of Sections 5 and 6 of the Exchange Act, 15 U.S.C. 78f.

<sup>82</sup> 15 U.S.C. 78c–4(c).

<sup>83</sup> *Id.*

<sup>84</sup> 15 U.S.C. 78c–4(a)(1) and (c).

<sup>85</sup> 15 U.S.C. 78c–5.

<sup>86</sup> Section 3E of the Exchange Act, 15 U.S.C. 78c–5, contains no provisions that expressly apply only to registered SBSEFs.

<sup>87</sup> References to section 3E of the Exchange Act in this table are to 15 U.S.C. 78c–5.

<sup>88</sup> These provisions do not require compliance by market participants on the Effective Date, unless the relevant Commission action already has been undertaken. *See supra* note 26 and accompanying text.

<sup>89</sup> A number of Title VII provisions expressly (or implicitly) apply only to “registered” persons. Until the related registration processes for such persons have been established by final Commission rules, and such persons have become registered pursuant

Continued

exemptions from compliance with section 3E(f) of the Exchange Act for SBS Entities.<sup>95</sup> Section 3E(f) of the Exchange Act requires SBS Entities to segregate initial margin amounts delivered by their counterparties in uncleared SB swap transactions if requested to do so by such counterparties.<sup>96</sup> Such segregation would require the establishment of accounts in which to segregate collateral with independent third-party custodians.<sup>97</sup> The establishment of these accounts and the adoption of policies and procedures setting forth the proper collection and maintenance of collateral will require expenditures of resources and time.<sup>98</sup>

The Commission finds that temporary exemption from section 3E(f) of the Exchange Act for SBS Entities is necessary or appropriate in the public interest, and is consistent with the protection of investors, because it would allow persons to register as an SBS Entity in accordance with the applicable registration requirements, once established, prior to expending resources to comply with the provisions of section 3E(f) of the Exchange Act as discussed above.<sup>99</sup> In addition, the Commission believes the exemption will give SBS Entities additional time to establish the necessary accounts and

to such rules, they will not be required to comply with these Title VII provisions. If a Title VII provision requires a rulemaking, such provision will not necessarily go into effect on the Effective Date, but instead will go into effect “not less than” 60 days after publication of the related final rule or on July 16, 2011, whichever is later. *See* section 774 of the Dodd-Frank Act, 15 U.S.C. 77b note.

<sup>90</sup> As explained below, the Commission will consider requests for relief from compliance with this provision by CCPs on behalf of participants.

<sup>91</sup> As explained below, the Commission will consider requests for relief from compliance with this provision by CCPs on behalf of participants.

<sup>92</sup> As explained below, the Commission will consider requests for relief from CCPs on behalf of participants.

<sup>93</sup> As explained below, the Commission will consider requests for relief from CCPs on behalf of participants.

<sup>94</sup> This section incorporates “security-based swap” into certain provisions of the Bankruptcy Code, 11 U.S.C. 1 *et seq.*

<sup>95</sup> 15 U.S.C. 78c-5(f).

<sup>96</sup> *Id.*

<sup>97</sup> 15 U.S.C. 78c-5(f)(1)(B) and (3).

<sup>98</sup> Notwithstanding the exemption granted, market participants in uncleared SB swaps may continue to voluntarily negotiate for and receive similar protections to those provided in section 3E(f) of the Exchange Act, 15 U.S.C. 78c-5(f), until compliance with such section 3E(f) is required.

<sup>99</sup> 15 U.S.C. 78c-5(f).

adopt the policies and procedures required by section 3E(f) of the Exchange Act.<sup>100</sup> Accordingly, the Commission is providing a temporary exemption pursuant to section 36 of the Exchange Act<sup>101</sup> from section 3E(f) of the Exchange Act<sup>102</sup> for SBS Entities. The temporary exemption will expire on the date upon which the rules adopted by the Commission to register SBSDs and MSBSPs become effective.

Section 3E(a) of the Exchange Act prohibits a person not registered as a broker, dealer, or SBSD from undertaking specified actions pertaining to the collection of margin associated with clearing an SB swap for an SB swap customer through a clearing agency.<sup>103</sup> Section 3E(a) of the Exchange Act requires that a person register with the Commission as a broker, dealer, or SBSD in order to comply with the provision.<sup>104</sup> Section 3E(b) of the Exchange Act obligates such persons to segregate initial margin amounts delivered by their counterparties in cleared SB swaps.<sup>105</sup> Sections 3E(c), (d), and (e) of the Exchange Act,<sup>106</sup> respectively, contain exceptions to section 3E(b) of the Exchange Act<sup>107</sup> permitting the commingling of funds for convenience in certain circumstances, prescribe certain obligations of the United States government in which margin collected may be invested, and contain other prohibitions on the use of margin.

The Commission is not granting exemptions from the requirements of sections 3E(a), (b), (c) or (e) of the Exchange Act.<sup>108</sup> Based on the Commission’s experience in granting, and representations made by recipients of, previous exemptive orders for CCPs, the Commission understands that there are currently no CCPs offering customer clearing of SB swaps.<sup>109</sup> However, for

<sup>100</sup> *Id.*

<sup>101</sup> 15 U.S.C. 78mm.

<sup>102</sup> 15 U.S.C. 78c-5(f)(1), (f)(3), and (f)(4).

<sup>103</sup> 15 U.S.C. 78c-5(a).

<sup>104</sup> *Id.*

<sup>105</sup> 15 U.S.C. 78c-5(b).

<sup>106</sup> 15 U.S.C. 78c-5(c), (d), and (e).

<sup>107</sup> 15 U.S.C. 78c-5(b).

<sup>108</sup> 15 U.S.C. 78c-5(a), (b), (c) or (e).

<sup>109</sup> The Commission has granted temporary conditional exemptions to facilitate CDS clearing in connection with requests on behalf of ICE Clear Europe Limited; Eurex Clearing AG; Chicago Mercantile Exchange Inc.; ICE Trust US LLC; and LIFFE Administration and Management and LCH.Clearnet Ltd. *See infra* note 222 and accompanying text.

CCPs that are planning to offer customer clearing of SB swaps before the compliance date for any of the final rules regarding registration of SBS Entities, the Commission will consider requests for relief from such CCPs on behalf of their participants from sections 3E(a), (b), and (e) of the Exchange Act, as appropriate, based on the applicable facts and circumstances.<sup>110</sup>

#### Request for Comment

- Under the stock-broker bankruptcy provisions of the Bankruptcy Code,<sup>111</sup> the description of which persons have the status as a customer of a broker-dealer with respect to their posted margin includes persons whose margin is required to be segregated. Given that reference to a segregation requirement, is any temporary exemption from section 3E(f) of the Exchange Act appropriate?

- Please explain the steps that must be taken for an SBSD to segregate initial margin for uncleared SB swap transactions. How long would it take to put in place such an arrangement with an independent third-party custodian? Would any existing documentation between the parties need to be amended?

- Are there other provisions of section 3E of the Exchange Act for which the Commission should consider granting a temporary exemption? Please specify the provision or provisions for which exemptions should be granted and provide a detailed explanation of why granting such exemptions would be necessary or appropriate in the public interest, and consistent with the protection of investors.

#### D. Security-Based Swap Antifraud Provisions

Section 9(j) of the Exchange Act,<sup>112</sup> added by 763(g) of the Dodd-Frank Act, includes a provision regarding the prevention of fraud, manipulation, and deception in connection with SB swaps. As indicated in Table D below, section 9(j) of the Exchange Act requires rulemaking.<sup>113</sup>

<sup>110</sup> 15 U.S.C. 78c-5(a), (b), and (e).

<sup>111</sup> *See generally* 11 U.S.C. 741 *et seq.*

<sup>112</sup> 15 U.S.C. 78i(j).

<sup>113</sup> *Id.* In the context of Section 774 of the Dodd-Frank Act, which addresses provisions that require rulemaking, we believe Section 9(j) requires rulemaking.

TABLE D—SECURITY-BASED SWAP ANTIFRAUD PROVISIONS—COMPLIANCE DATES

Exchange act section <sup>114</sup>	Compliance date		Authorizes/directs commission action <sup>115</sup>	Relief granted
	Upon effective date (July 16, 2011)	Upon registration, publication of final rules, or other commission action <sup>116</sup>		
9(j): Amends Exchange Act to make unlawful fraud, manipulation and deception in connection with SB swaps directs the Commission to engage in rulemaking to define and prescribe means reasonably designed to prevent, such fraud, manipulation and deception.	.....	✓	.....	N/A.

The Commission notes that, as of the Effective Date, SB swaps will be securities.<sup>117</sup> Thus, once the relevant provisions of the Dodd-Frank Act take effect,<sup>118</sup> persons effecting transactions in, or engaged in acts, practices, and courses of business involving, SB swaps will be subject to the Commission's rules and regulations that define and prescribe acts and practices involving securities that are manipulative, deceptive, fraudulent, or otherwise unlawful for purposes of the general antifraud and anti-manipulation provisions of the Federal securities

laws, including sections 9(a) and 10(b)<sup>119</sup> of the Exchange Act, rule 10b-5 thereunder<sup>120</sup> (and the prohibitions against insider trading), section 15(c) of the Exchange Act,<sup>121</sup> and section 17(a) of the Securities Act,<sup>122</sup> among others.

*E. Position Limits for Security-Based Swaps.*

Section 10B of the Exchange Act, added by section 763(h) of the Dodd-Frank Act, provides that the Commission "shall, by rule or regulation, as necessary or appropriate in the public interest or for the

protection of investors" establish limits on the size of positions in any SB swap that may be held by any person.<sup>123</sup> As indicated in Table E below, the provisions of section 10B authorize and direct the Commission to undertake certain actions pertaining to position limits.<sup>124</sup> These provisions will become effective on the Effective Date, but, by their plain language, pertain to Commission action. Accordingly, these provisions do not require compliance by market participants on the Effective Date.

TABLE E—POSITION LIMITS FOR SECURITY-BASED SWAPS—COMPLIANCE DATES

Exchange act section <sup>125</sup>	Compliance date		Authorizes/directs commission action <sup>126</sup>	Relief granted
	Upon effective date (July 16, 2011)	Upon registration, publication of final rules, or other commission action		
10B(a): Position limits .....	.....	.....	✓ .....	N/A.
10B(b): Exemptions .....	.....	.....	✓ .....	N/A.
10B(c): SRO rules .....	.....	.....	✓ .....	N/A.
10B(d): Large trader reporting .....	.....	.....	✓ .....	N/A.

*F. Reporting of Security-Based Swaps*

i. Public Availability of Security-Based Swap Data

Section 13(m) of the Exchange Act, added by section 763(i) of the Dodd-Frank Act, includes provisions regarding the reporting of SB swap transactions and the public dissemination of such reported

information.<sup>127</sup> As set forth in Table F-1 below, certain of the statutory provisions of section 13(m) of the Exchange Act require Commission rulemaking or other action or are only applicable once there are registered SDRs to accept SB swap transaction data.<sup>128</sup> The table also includes provisions that authorize or direct the Commission to take specified action

that, once undertaken, may impose compliance obligations upon market participants.<sup>129</sup> Unless otherwise noted in the table below, these provisions do not require compliance by market participants on the Effective Date. The remaining provisions of section 13(m) of the Exchange Act will require compliance on the Effective Date but do not impose any self-executing duties or

<sup>114</sup> References to section 9 of the Exchange Act in this table are to 15 U.S.C. 78i.

<sup>115</sup> These provisions do not require compliance by market participants on the Effective Date, unless the relevant Commission action already has been undertaken. *See supra* note 26 and accompanying text.

<sup>116</sup> A number of Title VII provisions expressly (or implicitly) apply only to "registered" persons. Until the related registration processes for such persons have been established by final Commission rules, and such persons have become registered pursuant to such rules, they will not be required to comply with these Title VII provisions. If a Title VII provision requires a rulemaking, such provision

will not necessarily go into effect on the Effective Date, but instead will go into effect "not less than" 60 days after publication of the related final rule or on July 16, 2011, whichever is later. *See section 774 of the Dodd-Frank Act, 15 U.S.C. 77b note.*

<sup>117</sup> *See discussion infra.* Section 761(a)(2) of the Dodd-Frank Act amends the definition of "security" in section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10), to include SB swaps. Section 768(a)(1) of the Dodd-Frank Act amends the Securities Act to include SB swaps in the definition of "security" in section 2(a)(1) thereof, 15 U.S.C. 77b(a)(1).

<sup>118</sup> *See section 774 of the Dodd-Frank Act.*

<sup>119</sup> 15 U.S.C. 78i(a) and 78j(b).

<sup>120</sup> 17 CFR 240.10b-5.

<sup>121</sup> 15 U.S.C. 78o(c).

<sup>122</sup> 15 U.S.C. 77q(a).

<sup>123</sup> 15 U.S.C. 78j-2.

<sup>124</sup> *Id.*

<sup>125</sup> References to section 10B of the Exchange Act in this table are to 15 U.S.C. 78j-2.

<sup>126</sup> These provisions do not require compliance by market participants on the Effective Date, unless the relevant Commission action already has been undertaken. *See supra* note 26 and accompanying text.

<sup>127</sup> 15 U.S.C. 78m(m).

<sup>128</sup> *Id.*

<sup>129</sup> *See supra* note 26 and accompanying text.

requirements upon market participants.<sup>130</sup> Accordingly, the

Commission is not granting temporary relief from compliance with any

provisions of section 13(m) of the Exchange Act.

TABLE F—PUBLIC AVAILABILITY OF SECURITY-BASED SWAP DATA—COMPLIANCE DATES

Exchange Act Section <sup>131</sup>	Compliance Date		Authorizes/directs commission action <sup>132</sup>	Relief granted
	Upon effective date (July 16, 2011)	Upon registration, publication of final rules, or other commission action <sup>133</sup>		
13(m)(1)(A): In general—definition of real-time public reporting .....	✓	.....	.....	N/A. <sup>134</sup>
13(m)(1)(B): In general—purpose .....	✓	.....	.....	N/A. <sup>135</sup>
13(m)(1)(C): In general—general rule .....	.....	.....	✓	N/A.
13(m)(1)(D): In general—registered entities and public reporting .....	.....	.....	✓	N/A.
13(m)(1)(E): In general—rulemaking required .....	.....	.....	✓	N/A.
13(m)(1)(F): In general—timeliness of reporting .....	.....	✓	.....	N/A.
13(m)(1)(G): In general—reporting of swaps to registered SDRs .....	.....	✓	.....	N/A.
13(m)(1)(H): In general—registration of clearing agencies .....	.....	✓	.....	N/A.
13(m)(2): Semiannual and annual public reporting of aggregate SB swap data.	.....	.....	✓	N/A.

ii. Security-Based Swap Data Repositories.

Section 13(n) of the Exchange Act, added by section 763(i) of the Dodd-Frank Act, provides for the registration, operation, and governance of SDRs.<sup>136</sup> Certain of the statutory provisions in section 13(n) of the Exchange Act either require a rulemaking or other Commission action or apply only to SDRs once registered, rather than to SDRs generally.<sup>137</sup> Compliance with those provisions will not be required on

the Effective Date because the Commission will not have adopted final rules (including rules regarding the manner and form of registration) by that date. The table also includes provisions that authorize or direct the Commission to take specified action that, once undertaken, may impose compliance obligations upon market participants.<sup>138</sup> Unless otherwise noted in the table below, these provisions do not require compliance by market participants on the Effective Date. Table F-2 below lists each provision of section 13(n) of the

Exchange Act and identifies those provisions with which compliance will be required on the Effective Date and those with which compliance will be triggered by registration of a person as an SDR or by adoption of final rules by the Commission.<sup>139</sup> For the provisions with which compliance will be required on the Effective Date, Table F-2 notes whether temporary relief from compliance is granted. The rationale and duration for such relief is explained in the text following the table.

TABLE F-2—SECURITY-BASED SWAP DATA REPOSITORIES—COMPLIANCE DATES

Exchange act section <sup>140</sup>	Compliance date		Authorizes/directs commission action <sup>141</sup>	Relief granted
	Upon effective date (July 16, 2011)	Upon registration, publication of final rules, or other commission action <sup>142</sup>		
13(n)(1): Registration requirement .....	.....	✓	.....	N/A. <sup>143</sup>
13(n)(2): Inspection and examination .....	.....	✓	.....	N/A.
13(n)(3)(A): Compliance with core principles .....	.....	✓	.....	N/A.
13(n)(3)(B): Compliance with core principles—reasonable discretion of SDR ..	.....	✓	.....	N/A.
13(n)(4)(A): Standard setting—data identification .....	.....	.....	✓	N/A.
13(n)(4)(B): Standard setting—data collection and maintenance .....	.....	.....	✓	N/A.
13(n)(4)(C): Standard setting—comparability .....	.....	.....	✓	N/A.
13(n)(5)(A), (B), <sup>144</sup> (C), (D)(ii), and (E): Duties .....	.....	✓	.....	N/A.
13(n)(5)(D)(i), (F), (G), and (H): Duties .....	✓	.....	.....	Yes.
13(n)(6)(A)—(B): Designation of chief compliance officer—in general; duties ..	.....	✓	.....	N/A. <sup>145</sup>
13(n)(6)(C): Designation of chief compliance officer—annual reports .....	.....	✓	.....	N/A.

<sup>130</sup> *Id.*

<sup>131</sup> References to section 13(m) of the Exchange Act in this table are to 15 U.S.C. 78m(m).

<sup>132</sup> These provisions do not require compliance by market participants on the Effective Date, unless the relevant Commission action already has been undertaken. *See supra* note 26 and accompanying text.

<sup>133</sup> A number of Title VII provisions expressly (or implicitly) apply only to “registered” persons. Until

the related registration processes for such persons have been established by final Commission rules, and such persons have become registered pursuant to such rules, they will not be required to comply with these Title VII provisions. If a Title VII provision requires a rulemaking, such provision will not necessarily go into effect on the Effective Date, but instead will go into effect “not less than” 60 days after publication of the related final rule or on July 16, 2011, whichever is later. *See* section 774 of the Dodd-Frank Act, 15 U.S.C. 77b note.

<sup>134</sup> This section defines “real-time public reporting” for the purposes of section 13(m) of the Exchange Act, 15 U.S.C. 78m(m).

<sup>135</sup> This section sets forth the purpose of section 13(m) of the Exchange Act, 15 U.S.C. 78m(m).

<sup>136</sup> 15 U.S.C. 78m(n).

<sup>137</sup> *Id.*

<sup>138</sup> *See supra* note 26 and accompanying text.

<sup>139</sup> *Id.*

TABLE F-2—SECURITY-BASED SWAP DATA REPOSITORIES—COMPLIANCE DATES—Continued

Exchange act section <sup>140</sup>	Compliance date		Authorizes/directs commission action <sup>141</sup>	Relief granted
	Upon effective date (July 16, 2011)	Upon registration, publication of final rules, or other commission action <sup>142</sup>		
13(n)(7)(A): Core principles applicable to SDRs—market access to services and data.	✓	.....	.....	Yes.
13(n)(7)(B): Core principles applicable to SDRs—governance arrangements ..	✓	.....	.....	Yes.
13(n)(7)(C): Core principles applicable to SDRs—Conflicts of interest .....	✓	.....	.....	Yes.
13(n)(7)(D): Core principles applicable to SDRs—additional duties developed by Commission.	.....	.....	✓	N/A.
13(n)(8): Required registration for SDRs .....	.....	✓	.....	N/A.
13(n)(9): Rules .....	.....	✓	✓	N/A.

As indicated in Table F-2, the Commission finds, pursuant to section 36 of the Exchange Act,<sup>146</sup> that it is necessary or appropriate in the public interest, and is consistent with the protection of investors, to grant temporary exemptions from the provisions of sections 13(n)(5)(D)(i), 13(n)(5)(F), 13(n)(5)(G), 13(n)(5)(H), and 13(n)(7)(A) through (C) of the Exchange Act<sup>147</sup> that would otherwise impose obligations on SDRs as of the Effective Date. These temporary exemptions will allow SDRs additional time to develop

<sup>140</sup> References to section 13(n) of the Exchange Act in this table are to 15 U.S.C. 78m(n).

<sup>141</sup> These provisions do not require compliance by market participants on the Effective Date, unless the relevant Commission action already has been undertaken. *See supra* note 26 and accompanying text.

<sup>142</sup> A number of Title VII provisions expressly (or implicitly) apply only to “registered” persons. Until the related registration processes for such persons have been established by final Commission rules, and such persons have become registered pursuant to such rules, they will not be required to comply with these Title VII provisions. If a Title VII provision requires a rulemaking, such provision will not necessarily go into effect on the Effective Date, but instead will go into effect “not less than” 60 days after publication of the related final rule or on July 16, 2011, whichever is later. *See section 774 of the Dodd-Frank Act*, 15 U.S.C. 77b note.

<sup>143</sup> In order to provide for orderly registration of SDRs, the Commission will need to propose rules regarding the form and manner of registration with the Commission as an SDR.

<sup>144</sup> The data for which an SDR needs to confirm the accuracy first needs to be prescribed by the Commission pursuant to section 13(n)(5)(A).

<sup>145</sup> Section 13(n)(6) of the Exchange Act, 15 U.S.C. 78m(n)(6), requires each SDR to designate a chief compliance officer who shall perform certain specified duties and prepare annual reports. Although the provision does not explicitly limit its application to registered SDRs, within the context of Title VII and section 13(n) of the Exchange Act, 15 U.S.C. 78m(n), which addresses registered SDRs, the Commission believes that Congress intended these requirements to apply only to SDRs that are registered or are required to register with the Commission.

<sup>146</sup> 15 U.S.C. 78mm.

<sup>147</sup> 15 U.S.C. 78m(n)(5)(D)(i), (n)(5)(F), (n)(5)(G), (n)(5)(H), and (n)(7)(A) through (C).

the policies, procedures, and systems necessary to comply with the requirements of section 13(n) of the Exchange Act.<sup>148</sup>

The Commission finds that granting a temporary exemption from compliance with the requirements of section 13(n)(5)(D)(i) of the Exchange Act<sup>149</sup> is necessary or appropriate in the public interest, and is consistent with the protection of investors. Section 13(n)(5)(D)(i) of the Exchange Act requires an SDR to provide direct electronic access to the Commission or any designee of the Commission.<sup>150</sup> The Commission believes that this provision will require investment of significant time and resources by an SDR to implement the technology to be used to enable this direct electronic access and to coordinate with the Commission to establish its direct electronic access to data maintained by the SDR. The form and manner in which an SDR will provide direct electronic access may vary, depending in part on the amount of data stored at the SDR and how the SDR maintains that data. In addition, this requirement would obligate SDRs to make changes to existing systems and practices, or develop entirely new systems and practices, all of which would require significant investment of time and resources. The Commission believes it would be inefficient for an SDR to expend time and resources to develop the technological systems necessary to provide the direct electronic access required by section 13(n)(5)(D)(i) of the Exchange Act prior to knowing the capabilities the Commission rules will require these systems to have.<sup>151</sup>

Section 13(n)(5)(F) of the Exchange Act requires and SDR to maintain the

privacy of any and all SB swap transaction information that the SDR receives from an SBSD, counterparty, or other registered entity.<sup>152</sup> The Commission finds that granting a temporary exemption from compliance with section 13(n)(5)(F) of the Exchange Act<sup>153</sup> is necessary or appropriate in the public interest because it will provide SDRs additional time to establish and implement robust policies and procedures to protect the privacy of data reported to them.

Section 13(n)(5)(G) of the Exchange Act requires that SDRs, on a confidential basis, and after notifying the Commission of the request, make available all data obtained by the SDR, including individual counterparty trade and position data, to certain enumerated entities.<sup>154</sup> Section 13(n)(5)(H) of the Exchange Act<sup>155</sup> requires that an SDR, before sharing information with any of the entities listed in section 13(n)(5)(G) of the Exchange Act,<sup>156</sup> (i) receive a written agreement from such entity that the entity will abide by certain confidentiality provisions relating to the information on SB swap transactions that is provided and (ii) each such entity shall agree to indemnify the SDR and the Commission for any expenses arising from litigation relating to the information provided. The Commission finds that granting a temporary exemption from compliance with the notification and indemnification requirements of sections 13(n)(5)(G) and 13(n)(5)(H) of the Exchange Act,<sup>157</sup> is necessary or appropriate in the public interest, and is consistent with the protection of investors, because it would enable relevant authorities to continue

<sup>148</sup> 15 U.S.C. 78m(n).

<sup>149</sup> 15 U.S.C. 78m(n)(5)(D)(i).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> 15 U.S.C. 78m(n)(5)(G).

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> 15 U.S.C. 78m(n)(5)(G).

<sup>156</sup> 15 U.S.C. 78m(n)(5)(H).

<sup>157</sup> 15 U.S.C. 78m(n)(5)(G) and 78m(n)(5)(H).

to have access to data maintained by SDRs necessary to fulfill their respective mandates while the Commission considers various issues related to these requirements.

The Commission also finds that it is necessary or appropriate in the public interest, and is consistent with the protection of investors, to grant temporary exemptions from section 13(n)(7)(B) of the Exchange Act's<sup>158</sup> requirement that SDRs establish transparent governance arrangements for certain enumerated reasons. Delaying compliance with this requirement until the Commission's final rules setting forth the full panoply of duties applicable to SDRs have been adopted would avoid possible complications and unnecessary expenditures of time and resources by an SDR. It also would avoid unnecessary disruption of an SDR's governance structure, which could adversely impact the SDR's operations and could result in unnecessary expenditures of time and resources by the SDR. In addition, the Commission finds that it is necessary or appropriate in the public interest, and is consistent with the protection of investors, to grant temporary relief from compliance with (i) section 13(n)(7)(A) of the Exchange Act,<sup>159</sup> which prohibits an SDR from adopting any rule or taking any action that results in any unreasonable restraint of trade or impose any material

anticompetitive burden on the trading, clearing, or reporting of transactions and (ii) section 13(n)(7)(C) of the Exchange Act,<sup>160</sup> which requires that SDRs establish rules to minimize conflicts of interest and establish a process for resolving conflicts of interest. The Commission believes that, until SDRs can register with the Commission, they should be given additional time to establish and implement the policies and procedures required by these provisions. In addition, providing additional time through a temporary exemption for SDRs to examine current business practices and any past issues they may have dealt with will likely result in more robust policies and procedures that will better protect market participants.

The temporary exemption granted by the Commission from compliance with the requirements of sections 13(n)(5)(D)(i), 13(n)(5)(F), 13(n)(5)(G), 13(n)(5)(H), 13(n)(7)(A), 13(n)(7)(B), and 13(n)(7)(C) of the Exchange Act<sup>161</sup> will expire on the earlier of (1) the date the Commission grants registration to the SDR and (2) the earliest compliance date set forth in any of the final rules regarding the registration of SDRs.

*Request for Comment:*

- Are there other provisions in addition to those identified above for which compliance is required as of the Effective Date but exemptive relief is or is not appropriate? If so, please specify those provisions and provide a detailed

explanation of why granting such an exemption is or is not necessary or appropriate in the public interest, or consistent with the protection of investors.

iii. Reporting and Recordkeeping for Security-Based Swaps

Section 13A of the Exchange Act, added by section 766(a) of the Dodd-Frank Act, generally sets forth reporting requirements for SB swaps that are not cleared.<sup>162</sup> As set forth in Table F-3 below, certain of the statutory provisions of section 13A of the Exchange Act require Commission rulemaking or other action or are only applicable if a registered SDR will accept reports.<sup>163</sup> The table also includes provisions that authorize or direct the Commission to take specified action that, once undertaken, may impose compliance obligations upon market participants.<sup>164</sup> Unless otherwise noted in the table below, these provisions do not require compliance by market participants on the Effective Date. The remaining provisions of section 13A of the Exchange Act will become effective on the Effective Date but do not impose any duties or requirements upon market participants.<sup>165</sup> Accordingly, the Commission is not granting temporary relief from compliance with any provisions of section 13A of the Exchange Act.<sup>166</sup>

TABLE F-3—REPORTING AND RECORDKEEPING FOR SECURITY-BASED SWAPS—COMPLIANCE DATES

Exchange act section <sup>167</sup>	Compliance Date		Authorizes/directs commission ac- tion <sup>168</sup>	Relief granted
	Upon effective date (July 16, 2011)	Upon registration, publication of final rules, or other commission ac- tion <sup>169</sup>		
13A(a)(1)(A): Required reporting of SB swaps not accepted by a clearing agency or derivatives clearing organization—in general—reporting to SDRs.	.....	✓	.....	N/A. <sup>170</sup>
13A(a)(1)(B): Required reporting of SB swaps not accepted by a clearing agency or derivatives clearing organization—in general—reporting to the Commission.	.....	✓	.....	N/A. <sup>171</sup>
13A(a)(2)(A): Required reporting of SB swaps not accepted by a clearing agency or derivatives clearing organization—transition rule pre-enactment SB swaps.	.....	✓	.....	N/A. <sup>172</sup>
13A(a)(2)(B): Required reporting of SB swaps not accepted by a clearing agency or derivatives clearing organization—rulemaking for transition rule pre-enactment SB swaps.	.....	.....	✓	N/A.
13A(a)(2)(C): Required reporting of SB swaps not accepted by a clearing agency or derivatives clearing organization—effective date.	✓	.....	.....	N/A. <sup>173</sup>
13A(a)(3): Reporting obligations <sup>174</sup>	.....	✓	.....	N/A.
13A(b): Duties of certain individuals	.....	✓	.....	N/A. <sup>175</sup>

<sup>158</sup> 15 U.S.C. 78m(n)(7)(B).

<sup>159</sup> 15 U.S.C. 78m(n)(7)(A).

<sup>160</sup> 15 U.S.C. 78m(n)(7)(C).

<sup>161</sup> 15 U.S.C. 78m(n)(5)(D)(i), (n)(5)(G), (n)(5)(H)(ii), (n)(7)(A), (n)(7)(B), and (n)(7)(C).

<sup>162</sup> 15 U.S.C. 78m-1.

<sup>163</sup> *Id.*

<sup>164</sup> See *supra* note 26 and accompanying text.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

TABLE F-3—REPORTING AND RECORDKEEPING FOR SECURITY-BASED SWAPS—COMPLIANCE DATES—Continued

Exchange act section <sup>167</sup>	Compliance Date		Authorizes/directs commission ac- tion <sup>168</sup>	Relief granted
	Upon effective date (July 16, 2011)	Upon registration, publication of final rules, or other commission ac- tion <sup>169</sup>		
13A(c)(1): Requirements—provision of reports on SB swaps to the Commission.	.....	✓	.....	N/A.
13A(c)(2): Requirements—recordkeeping requirement .....	.....	✓	.....	N/A.
13A(d): Identical data .....	.....	✓	✓	N/A.

## Request for Comment

- Are there provisions of section 13A of the Exchange Act for which the Commission should grant temporary exemptive relief? Please specify which provisions and provide a detailed explanation of why granting such exemption would be necessary or appropriate in the public interest, and consistent with the protection of investors.

*G. Registration and Regulation of Security-Based Swap Dealers and Major Security-Based Swap Participants*

Section 15F of the Exchange Act, added by section 764(a) of the Dodd-Frank Act, establishes requirements for

registration and comprehensive oversight of SBS Entities.<sup>176</sup> Many of the provisions of section 15F of the Exchange Act either require rulemaking or other action by the Commission<sup>177</sup> or apply only to SBS Entities once registered, rather than to SBS Entities generally.<sup>178</sup> Those provisions that either require rulemaking or other action by the Commission or apply only to registered SBS Entities will not require compliance on the Effective Date because the Commission will not have adopted final rules (including rules regarding the manner and form of registration) or taken other required action by that date. Table G below lists each provision of section 15F of the Exchange Act<sup>179</sup> and identifies those provisions with which compliance will

be required on the Effective Date and those with which compliance will be triggered by registration of SBS Entities or by the adoption of final rules or other action by the Commission. The table also includes provisions that authorize or direct the Commission to take specified action that, once undertaken, may impose compliance obligations upon market participants.<sup>180</sup> Unless otherwise noted in the table below, these provisions do not require compliance by market participants on the Effective Date. For the provisions with which compliance will be required on the Effective Date, Table G notes whether the Commission is providing temporary relief from compliance. The rationale and duration for such relief is explained in the text following the table.

<sup>167</sup> References to section 13A of the Exchange Act in this table are to 15 U.S.C. 78m–1.

<sup>168</sup> These provisions do not require compliance by market participants on the Effective Date, unless the relevant Commission action already has been undertaken. *See supra* note 26 and accompanying text.

<sup>169</sup> A number of Title VII provisions expressly (or implicitly) apply only to “registered” persons. Until the related registration processes for such persons have been established by final Commission rules, and such persons have become registered pursuant to such rules, they will not be required to comply with these Title VII provisions. If a Title VII provision requires a rulemaking, such provision will not necessarily go into effect on the Effective Date, but instead will go into effect “not less than” 60 days after publication of the related final rule or on July 16, 2011, whichever is later. *See* section 774 of the Dodd-Frank Act, 15 U.S.C. 77b note.

<sup>170</sup> Section 13A(a)(1) of the Exchange Act, 15 U.S.C. 78m–1(a)(1), states in part that “[e]ach security-based swap that is not accepted for clearing by any clearing agency or derivatives clearing organization shall be reported to (A) a security-based swap data repository described in section 13(n) [of the Exchange Act, 15 U.S.C. 78m(n)].” Because the SDRs described in section 13(n) of the Exchange Act, 15 U.S.C. 78m(n), are required by section 13(n)(1) of the Exchange Act, 15 U.S.C. 78m(n)(1), to be registered, the Commission believes this requirement is not triggered until an SDR is registered.

<sup>171</sup> Section 13A(a)(1)(B) of the Exchange Act, 15 U.S.C. 78m–1(a)(1)(B), provides for an alternative method of reporting if there is no SDR that will accept a report; however, the time frame for that

reporting requirement must be established by Commission rule.

<sup>172</sup> Section 13A(a)(2) of the Exchange Act, 15 U.S.C. 78m–1(a)(2), required the Commission to promulgate an interim final rule regarding reporting of pre-enactment SB swaps and states in part that each such pre-enactment SB swap, the terms of which have not expired as of such date, “shall be reported to a registered security-based swap data repository or the Commission by a date that is not later than (i) 30 days after issuance of the interim final rule; or (ii) such other period as the Commission determines to be appropriate.” The effective date of the interim final rule was October 20, 2010. However, pursuant to the interim final temporary rule issued by the Commission on reporting of pre-enactment SB swap data, specified counterparties to such pre-enactment SB swaps are required to (1) report certain information to a registered SDR or the Commission by the compliance date established in the reporting rules required under sections 3C(e) and 13A(a)(1) of the Exchange Act, 15 U.S.C. 78c–3(e) and 78m–1(a)(1), or within 60 days after a registered SDR commences operations to receive and maintain data concerning such SB swap, whichever occurs first, and (2) report to the Commission any information relating to such pre-enactment SB swaps upon request of the Commission. No SDR is registered yet to accept SB swap data and the reporting rules under section 3C(e) have not yet been adopted. In addition, the Commission stated, in an interpretive note to the interim final rule, its belief that it is necessary for a counterparty, that may be required to report transactions under the interim final rule, to retain all information relating to the terms of pre-enactment security-based swaps in order for that counterparty to be able to comply with the

reporting requirements of the interim final rule. *See* Reporting of Security-Based Swap Transaction Data, 75 FR 64643 (Oct. 20, 2010). The reporting rules under sections 3C(e) and 13A(a)(1) of the Exchange Act, 15 U.S.C. 78c–3(e) and 78m–1(a)(1), are included in a separate release. *See* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, *supra* note 9.

<sup>173</sup> This section provides that the effective date of section 13A of the Exchange Act, 15 U.S.C. 78m–1, is the date of enactment of section 13A of the Exchange Act, 15 U.S.C. 78m–1. However, compliance will not be required until applicable rules and regulations regarding registered SDRs are in place.

<sup>174</sup> *See supra* note 170.

<sup>175</sup> This section defines the individuals and entities to which the requirements of section 13A(c) of the Exchange Act, 15 U.S.C. 78m–1(c), apply.

<sup>176</sup> 15 U.S.C. 78o–10.

<sup>177</sup> *See, e.g.*, section 15F(b)(2) of the Exchange Act, 15 U.S.C. 78o–10(b)(2) (providing that the registration application of SBS Entities “shall be made in such form and manner as prescribed by the Commission”).

<sup>178</sup> *See, e.g.*, section 15F(h)(1) of the Exchange Act, 15 U.S.C. 78o–10(h)(1) (providing that registered SBS Entities shall conform to certain prescribed business conduct standards); section 15F(h)(6) of the Exchange Act, 15 U.S.C. 78o–10(h)(6) (directing the Commission to prescribe rules to implement the business conduct requirements of subsection (h) of such section 15F applicable to registered SBS Entities).

<sup>179</sup> 15 U.S.C. 78o–10.

<sup>180</sup> *See supra* note 26 and accompanying text.

TABLE G—REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS—COMPLIANCE DATES

Exchange act section <sup>181</sup>	Compliance date		Authorizes/directs/limits commission action <sup>182</sup>	Relief granted
	Upon effective date (July 16, 2011)	Upon registration, publication of final rules, or other commission action <sup>183</sup>		
15F(a): Registration of SBSDs and MSBSPs .....	.....	✓	.....	N/A. <sup>184</sup>
15F(b)(1)–(3): Requirements—in general; contents; expiration .....	.....	✓	.....	N/A.
15F(b)(4): Requirements—rules .....	.....	.....	✓	N/A.
15F(b)(5): Requirements—transition .....	.....	.....	✓	N/A.
15F(b)(6): Requirements—statutory disqualification .....	✓	.....	.....	Yes
15F(c): Dual registration—SBS Entities .....	.....	✓	.....	N/A.
15F(d): Rulemaking .....	.....	.....	✓	N/A.
15F(e)(1): Capital and margin requirements—in general .....	.....	✓	.....	N/A. <sup>185</sup>
15F(e)(2): Capital and margin requirements—rules .....	.....	.....	✓	N/A. <sup>186</sup>
15F(e)(3)(A): Capital and margin requirements .....	.....	.....	✓	N/A.
15F(e)(3)(B)(i): Capital and margin requirements—rule of construction; in general .....	.....	.....	✓ <sup>187</sup>	N/A.
15F(e)(3)(B)(ii): Capital and margin requirements—rule of construction; futures commission merchants and other dealers .....	✓	.....	.....	N/A. <sup>188</sup>
15F(e)(3)(C), (D): Capital and margin requirements—rule of construction; margin requirements and; comparability .....	.....	.....	✓	N/A. <sup>189</sup>
15F(f)(1): Reporting and recordkeeping—in general .....	.....	✓	.....	N/A. <sup>190</sup>
15F(f)(2): Reporting and recordkeeping—rules .....	.....	.....	✓	N/A.
15F(g)(1)–(4): Daily trading records—in general; information requirements; counterparty records; audit trail .....	.....	✓	.....	N/A. <sup>191</sup>
15F(g)(5): Daily trading records—rules .....	.....	.....	✓	N/A.
15F(h)(1): Business conduct standards .....	.....	✓	.....	N/A. <sup>192</sup>
15F(h)(2): Business conduct standards—responsibilities with respect to special entities .....	.....	✓	.....	N/A. <sup>193</sup>
15F(h)(3): Business conduct standards—business conduct requirements .....	.....	.....	✓	N/A. <sup>194</sup>
15F(h)(4): Business conduct standards—special requirements for SBSDs acting as advisors .....	.....	✓	.....	N/A. <sup>195</sup>
15F(h)(5)(A): Business conduct standards—special requirements for SBSDs as counterparties to special entities .....	.....	✓	.....	N/A. <sup>196</sup>
15F(h)(5)(B): Business conduct standards—Commission authority .....	.....	.....	✓	N/A.
15F(h)(6): Business conduct standards—rules .....	.....	.....	✓	N/A.
15F(h)(7): Business conduct standards—applicability .....	✓	.....	.....	N/A. <sup>197</sup>
15F(i)(1): Documentation standards—in general .....	.....	✓	.....	N/A. <sup>198</sup>
15F(i)(2): Documentation standards—rules .....	.....	.....	✓	N/A.
15F(j)(1)–(6): Duties—monitoring of trading; risk management procedures; disclosure of general information; ability to obtain information; conflicts of interest; antitrust considerations .....	.....	.....	.....	N/A.
15F(j)(7): Duties—rules .....	.....	.....	✓	N/A.
15F(k)(1)–(2): Designation of chief compliance officer—in general; duties .....	.....	✓	.....	N/A. <sup>199</sup>
15F(k)(3): Designation of chief compliance officer—annual reports .....	.....	✓	.....	N/A.
15F(l): Enforcement and administrative proceeding authority. <sup>200</sup> .....	.....	.....	✓ <sup>201</sup>	N/A.

<sup>181</sup> References to section 15F of the Exchange Act in this table are to 15 U.S.C. 78o–10.

<sup>182</sup> These provisions do not require compliance by market participants on the Effective Date, unless the relevant Commission action already has been undertaken. See *supra* note 26 and accompanying text.

<sup>183</sup> A number of Title VII provisions expressly (or implicitly) apply only to “registered” persons. Until the related registration processes for such persons have been established by final Commission rules, and such persons have become registered pursuant to such rules, they will not be required to comply with these Title VII provisions. If a Title VII provision requires a rulemaking, such provision will not necessarily go into effect on the Effective

Date, but instead will go into effect “not less than” 60 days after publication of the related final rule or on July 16, 2011, whichever is later. See section 774 of the Dodd-Frank Act, 15 U.S.C. 77b note.

<sup>184</sup> Section 15F(b)(2)(A) of the Exchange Act, 15 U.S.C. 78o–10(b)(2)(A), requires SBSDs to register as such “in such form and manner as prescribed by the Commission \* \* \*.”

<sup>185</sup> Section 15F(e)(1) of the Exchange Act, 15 U.S.C. 78o–10(e)(1), states in part that registered SBSDs for which there is not a prudential regulator “shall meet such minimum capital requirements and minimum initial and variation and margin requirements as the Commission shall by rule or regulation prescribe \* \* \*.” Accordingly, compliance with such requirements will be required on the later of the registration of a person

as an SBSD and the compliance date of any Commission rule establishing these capital and margin requirements.

<sup>186</sup> For SBSDs for which there is a prudential regulator, the prudential regulator shall consult with the Commission and the CFTC in establishing capital and margin requirements.

<sup>187</sup> Section 15F(e)(3)(B)(i) of the Exchange Act, 15 U.S.C. 78o–10(e)(3)(B)(i), provides that nothing in section 15F of the Exchange Act, 15 U.S.C. 78o–10, shall limit the authority of the Commission or the CFTC to set financial responsibility rules for SBSDs over which they have jurisdiction, respectively.

<sup>188</sup> Section 15F(e)(3)(B)(ii) of the Exchange Act, 15 U.S.C. 78o–10(e)(3)(B)(ii), provides that a futures commission merchant, introducing broker, broker,

or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which such futures commission merchant, introducing broker, broker, or dealer is subject to under section 15(f) of the Exchange Act, 15 U.S.C. 78o–10(f), or the Commodity Exchange Act.

<sup>189</sup> Section 15F(e)(3)(C) of the Exchange Act, 15 U.S.C. 78o–10(e)(3)(C), provides, *inter alia*, that prudential regulators, the Commission, and the CFTC shall consult and “to the maximum extent practicable” establish and maintain comparable minimum capital and margin requirements.

<sup>190</sup> Section 15F(f)(1) of the Exchange Act, 15 U.S.C. 78o–10(f)(1), states in part that registered SBS Entities “shall make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition of the registered security-based swap dealer or major security-based swap participant” and “shall keep books and records \* \* \* in such form and manner and for such period as may be prescribed by the Commission by rule or regulation \* \* \*.” Accordingly, compliance with such reporting and recordkeeping requirements will be required on the later of the registration of a person as an SBS Entity and the compliance date of any Commission rule establishing these reporting and recordkeeping requirements.

<sup>191</sup> Section 15F(g)(1) of the Exchange Act, 15 U.S.C. 78o–10(g)(1), states in part that each registered SBS Entity shall maintain daily trading records and recorded communications “for such period as may be required by the Commission by rule or regulation.” In addition, section 15F(g)(2) of the Exchange Act, 15 U.S.C. 78o–10(g)(2) provides that the daily trading records shall include “such information as the Commission shall require by rule or regulation.” Accordingly, compliance with such recordkeeping requirements will be required on the later of the registration of a person as an SBS Entity and the compliance date of the Commission rule establishing these recordkeeping requirements.

<sup>192</sup> Section 15F(h)(6) of the Exchange Act, 15 U.S.C. 78o–10(h)(6), directs the Commission to “prescribe rules under this subsection [(h) of the Exchange Act, 15 U.S.C. 78o–10(h),] governing business conduct standards.” Accordingly, business conduct standards pursuant to section 15F(h) of the Exchange Act, 15 U.S.C. 78o–10(h), will be established by rule and compliance will be required on the compliance date of the Commission rule establishing these business conduct standards. *See also infra* note 195.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Id.* The Commission notes, however, that, as of the Effective Date, SB swaps will be securities and will be subject to the Commission’s authority under sections 9(a) and 10(b) of the Exchange Act, 15 U.S.C. 78i(a) and 78j(b), including rule 10b–5 thereunder, 17 CFR 240.10b–5, section 15(c) of the Exchange Act, 15 U.S.C. 78o(c), and section 17(a) of the Securities Act, 15 U.S.C. 77q(a), among others. *See discussion supra* note 117 and accompanying text.

<sup>196</sup> *See supra* note 192.

<sup>197</sup> This section limits the applicability of section 15F(h) of the Exchange Act, 15 U.S.C. 78o–10(h).

<sup>198</sup> Section 15F(i) of the Exchange Act, 15 U.S.C. 78o–10(i), states in part that each registered SBS Entity “shall conform with such standards as may be prescribed by the Commission, by rule or regulation, that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.” Accordingly, compliance with such requirements will be required on the later of the registration of a person as an SBS Entity and the compliance date of the Commission rule establishing these documentation standards.

<sup>199</sup> Section 15F(k) of the Exchange Act, 15 U.S.C. 78o–10(k), requires each SBS Entity to designate a

As indicated in Table G, the Commission is providing a temporary exception for SBS Entities from compliance with section 15F(b)(6) of the Exchange Act.<sup>202</sup> Section 15F(b)(6) of the Exchange Act prohibits an SBS Entity from permitting an associated person who is subject to a statutory disqualification, as defined in section 3(a)(39) of the Exchange Act,<sup>203</sup> to effect or be involved in effecting SB swaps on its behalf if the SBS Entity knew or should have known of the statutory disqualification.<sup>204</sup> Section 15F(b)(6) expressly authorizes the Commission to establish exceptions to this provision by rule, regulation, or order.<sup>205</sup> This authority is similar to authority provided to the Commission with respect to the “traditional” securities industry, *i.e.*, the industry regulated under the Exchange Act prior to the Dodd-Frank Act amendments. This existing Exchange Act authority permits self-regulatory organizations (“SROs”), subject to Commission review, to allow, among other things, a person subject to a statutory disqualification to associate with a broker-dealer.<sup>206</sup>

chief compliance officer who shall perform certain specified duties and prepare annual reports. Although the provision does not explicitly limit its application to a registered SBS Entity, within the context of Title VII and section 15F of the Exchange Act, 15 U.S.C. 78o–10, which regulates registered SBS Entities, the Commission believes that Congress intended these requirements to apply only to SBS Entities that are registered or are required to register with the Commission.

<sup>200</sup> As discussed above, provisions in this column that require Commission action will be effective on the Effective Date. In particular, if (after the Effective Date) the Commission has issued an order pursuant to section 15F(l)(3) of the Exchange Act, 15 U.S.C. 78o–10(l)(3), then, section 15F(l)(4) of the Exchange Act, 15 U.S.C. 78o–10(l)(4), will be applicable and will require Commission consent for persons subject to such an order to be associated with a SBS Entity.

<sup>201</sup> In addition to Commission authority, section 15F(l) of the Exchange Act, 15 U.S.C. 78o–10(l), also provides enforcement authority to prudential regulators for SBS Entities for which they are the prudential regulator.

<sup>202</sup> 15 U.S.C. 78o–10(b)(6).

<sup>203</sup> 15 U.S.C. 78c(a)(39).

<sup>204</sup> 15 U.S.C. 78o–10(b)(6).

<sup>205</sup> *Id.*

<sup>206</sup> When such a person seeks admission to or continuance in membership or association, the Commission and the SRO have the opportunity to give special review to such person and to restrict or prevent entry into, or continuance in, the business where appropriate in the public interest and for the protection of investors. *See Senate Comm. on Banking, Housing, and Urban Affairs, The Securities Act Amendments of 1989, S. Rep. No. 101–105, at 39 (1989); Provision for Notices by Self-Regulatory Organizations of Stays of Such Actions; Appeals; and Admissions to Membership or Association of Disqualified Persons, 42 FR 36409 (Jul. 14, 1977) (adopting rule 19h–1 under the Exchange Act, 17 CFR 240.19h–1, and providing rules for process of filing notices, content of notices, and Commission determination).*

Similarly, Commission rule 193 (Applications by Barred Individuals for Consent to Associate) provides a process by which persons that are not regulated by a SRO (*e.g.*, an investment adviser, an investment company, or a transfer agent) can seek to reenter the securities industry despite previously being barred by the Commission.<sup>207</sup>

The Commission intends to separately consider issues relating to how an associated person of an SBS Entity subject to a statutory disqualification may be involved in the SB swap business of the SBS Entity. The Commission believes that existing business relationships and market activity may be unnecessarily disrupted if market participants were required to comply with section 15F(b)(6) of the Exchange Act<sup>208</sup> before the Commission considered, through notice and comment rulemaking, whether to adopt a procedure for potential modifications of the effect of statutory disqualifications under Title VII for SBS Entities and what any such procedure would require. The Commission, therefore, by this Order and pursuant to the authority granted in section 15F(b)(6) of the Exchange Act, is providing a temporary and limited exception for SBS Entities from the application of the prohibition in section 15F(b)(6) of the Exchange Act.<sup>209</sup> Specifically, persons subject to a statutory disqualification (as defined in section 3(a)(39) of the Exchange Act<sup>210</sup>) who are, as of the Effective Date, currently associated with an SBS Entity and who effect or are involved in effecting SB swaps on behalf of such SBS Entity may continue to be associated with any SBS Entity until the date upon which rules adopted by the Commission to register SBS Entities become effective.

#### Request for Comment:

- Are there certain persons subject to statutory disqualification who should not be permitted to remain associated with an SBS Entity during the time period of the exception, for example, based upon the nature of the underlying conduct or sanction that resulted in the disqualification?

- Should there be any differentiation in relief from section 15F(b)(6) of the Exchange Act based upon the nature of the person, *e.g.*, a natural person or an entity? If so, how and why?

- Are there persons who are not currently associated with an SBS Entity but who should be able to associate with

<sup>207</sup> 17 CFR 201.193.

<sup>208</sup> 15 U.S.C. 78o–10(b)(6).

<sup>209</sup> *Id.*

<sup>210</sup> 15 U.S.C. 78c(a)(39).

such entities notwithstanding their statutory disqualification until such time as a procedural rule defining the application of section 15F(b)(6) of the Exchange Act is in place?

*H. Registration of Clearing Agencies for Security-Based Swaps*

Section 17A of the Exchange Act, amended by section 763(b) of the Dodd-Frank Act,<sup>211</sup> requires registration of persons performing the functions of a clearing agency with respect to SB swaps. Many of the provisions of section 17A of the Exchange Act either require rulemaking or other action by

the Commission or apply only to clearing agencies once registered. Those provisions that either require rulemaking or other action by the Commission or apply only to registered clearing agencies will not require compliance on the Effective Date. Table H below lists each provision of section 17A of the Exchange Act<sup>212</sup> that was added by the Dodd-Frank Act and identifies those provisions with which compliance will be required on the Effective Date and those with which compliance will be triggered by registration of clearing agencies or by

the adoption of final rules or other action by the Commission. The table also includes provisions that authorize or direct the Commission to take specified action that, once undertaken, may impose compliance obligations upon market participants.<sup>213</sup> Unless otherwise noted in the table below, these provisions do not require compliance by market participants on the Effective Date. For the provisions with which compliance will be required on the Effective Date, Table H notes whether temporary relief from compliance is granted.

TABLE H—REGISTRATION OF CLEARING AGENCIES FOR SECURITY-BASED SWAPS—COMPLIANCE DATES

Exchange Act Section <sup>214</sup>	Compliance Date		Authorizes/directs commission action <sup>215</sup>	Relief granted
	Upon effective date (July 16, 2011)	Upon registration, publication of final rules, or other commission action <sup>216</sup>		
17A(g): Registration requirement .....	.....	✓	.....	N/A <sup>217</sup>
17A(h): Voluntary registration .....	✓	.....	.....	No. <sup>218</sup>
17A(i): Standards for clearing agencies clearing SB swap transactions .....	.....	✓	.....	N/A. <sup>219</sup>
17A(j): Rules .....	.....	.....	✓	N/A.
17A(k): Exceptions .....	.....	.....	✓	N/A.
17A(l)(1)–(2): Existing depository institutions and derivative clearing organizations—in general; conversion of depository institutions.	✓	.....	.....	No. <sup>220</sup>
17A(l)(3): Existing depository institutions and derivative clearing organizations—sharing of information.	.....	.....	✓	N/A. <sup>221</sup>
17A(m): Modification of core principles .....	.....	.....	✓	N/A.

As of July 16, 2011, ICE Trust U.S. LLC, ICE Clear Europe Limited and the

Chicago Mercantile Exchange Inc., which are operating pursuant to

exemptive authority granted by the Commission to clear CDS,<sup>222</sup> will be

<sup>211</sup> 15 U.S.C. 78q–1.

<sup>212</sup> *Id.*

<sup>213</sup> *See supra* note 26 and accompanying text.

<sup>214</sup> References to section 17A of the Exchange Act in this table are to 15 U.S.C. 78q–1.

<sup>215</sup> These provisions do not require compliance by market participants on the Effective Date, unless the relevant Commission action already has been undertaken. *See supra* note 26 and accompanying text.

<sup>216</sup> A number of Title VII provisions expressly (or implicitly) apply only to “registered” persons. Until the related registration processes for such persons have been established by final Commission rules, and such persons have become registered pursuant to such rules, they will not be required to comply with these Title VII provisions. If a Title VII provision requires a rulemaking, such provision will not necessarily go into effect on the Effective Date, but instead will go into effect “not less than” 60 days after publication of the related final rule or on July 16, 2011, whichever is later. *See* section 774 of the Dodd-Frank Act, 15 U.S.C. 77b note.

<sup>217</sup> Section 17A(g) of the Exchange Act, 15 U.S.C. 78q–1(g), will not require compliance as of the Effective Date because sections 17A(i) and (j) of the Exchange Act, 15 U.S.C. 78q–1(i) and (j), require rulemaking regarding registration of clearing agencies that clear SB swap transactions. The Commission notes that the general clearing agency registration requirement under section 17A(b) of the Exchange Act, 15 U.S.C. 78q–1(b), also will apply to SB swap clearing agencies when the provisions amending the definitions of “security” to include

SB swaps become effective on the Effective Date. *See supra* note 17. As noted above, however, the Commission intends to provide temporary relief from certain provisions of the Exchange Act that would otherwise be applicable to SB swaps. *See supra* note 22 and accompanying text. This includes temporary relief from the clearing agency registration requirement to certain persons with respect to SB swaps. Specifically, persons that currently provide important post-trade, non-CCP clearance and settlement processing services for SB swaps may be required to register as a clearing agency as of the Effective Date (including trade matching, collateral management, and tear-up/compression services). Temporary relief for such persons would provide time for the Commission to consider comments from industry on the issue of registration of these non-CCP clearance and settlement service providers, and to consider possible alternatives to full registration as clearing agencies. *See infra* note 223 and accompanying text.

<sup>218</sup> Section 17A(h) provides that a person that clears trades that are not required to be cleared may nevertheless register as a clearing agency with the Commission. It is a voluntary provision.

<sup>219</sup> Rules adopted under section 17A(i) of the Exchange Act, 15 U.S.C. 78q–1(i), apply only to registered clearing agencies. Accordingly, compliance with such requirements will be required on the later of the registration of the clearing agency and the compliance date of the Commission rule establishing these clearing agency standards.

<sup>220</sup> Section 17A(l)(1)–(2) provides for the deemed registration of certain clearing agencies. *See infra* note 223.

<sup>221</sup> Section 17A(l)(3) of the Exchange Act, 15 U.S.C. 78q–1(l)(3), provides that the CFTC shall share certain information with the Commission regarding derivatives clearing organizations deemed to be registered.

<sup>222</sup> The Commission has authorized five entities to clear credit default swaps. *See* Exchange Act Release Nos. 60372 (July 23, 2009), 74 FR 37748 (July 29, 2009), 61973 (Apr. 23, 2010), 75 FR 22656 (Apr. 29, 2010) and 63389 (Nov. 29, 2010), 75 FR 75520 (Dec. 3, 2010) (CDS clearing by ICE Clear Europe Limited); 60373 (July 23, 2009), 74 FR 37740 (July 29, 2009), 61975 (Apr. 23, 2010), 75 FR 22641 (Apr. 29, 2010) and 63390 (Nov. 29, 2010), 75 FR 75518 (Dec. 3, 2010), (CDS clearing by Eurex Clearing AG); 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009), 61164 (Dec. 14, 2009), 74 FR 67258 (Dec. 18, 2009), 61803 (Mar. 30, 2010), 75 FR 17181 (Apr. 5, 2010) and 63388 (Nov. 29, 2010), 75 FR 75522 (Dec. 3, 2010) (CDS clearing by Chicago Mercantile Exchange Inc.); 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009), 61119 (Dec. 4, 2009), 74 FR 65554 (Dec. 10, 2009), 61662 (Mar. 5, 2010), 75 FR 11589 (Mar. 11, 2010) and 63387 (Nov. 29, 2010), 75 FR 75502 (Dec. 3, 2010) (CDS clearing by ICE Trust US LLC); 59164 (Dec. 24, 2008), 74 FR 139 (Jan. 2, 2009) (temporary CDS clearing by Liffe Administration and Management and LCH.Clearnet Ltd.) (collectively, “CDS Clearing Exemption Orders”). Liffe Administration and Management

deemed registered with the Commission solely for the purpose of clearing SB swaps pursuant to the Dodd-Frank Act.<sup>223</sup>

By virtue of the broad definition of the term “clearing agency” in section 3(a)(23)(A) of the Exchange Act,<sup>224</sup> certain entities that provide non-CCP clearing agency services with respect to SB swaps would be required to register as a clearing agency under section 17A(b) of the Exchange Act as of the Effective Date.<sup>225</sup> This issue arises for these entities as of the Effective Date, and not before, because prior to such time SB swaps (other than in limited circumstances) were not deemed to be securities. Non-CCP clearing agency services include such services such as

trade matching,<sup>226</sup> collateral management,<sup>227</sup> and tear-up/<sup>228</sup> compression services,<sup>229</sup> which are important post-trade processing services for the SB swap markets (“non-CCP clearing agency services”). On March 2, 2011, the Commission proposed exempting certain market participants from the definition of clearing agency as part of its clearing agency standards release.<sup>229</sup> As noted above, the Commission also intends to separately consider temporary relief from section 17A(b) of the Exchange Act<sup>230</sup> for persons that provide non-CCP clearing agency services in connection with SB swaps so that those persons are not required to be registered as a clearing agency on the Effective Date.<sup>231</sup>

#### Request for Comment:

• Are there any provisions of section 17A of the Exchange Act for which the Commission should grant temporary exemptive relief? Please specify which provisions and provide a detailed explanation of why granting such exemption would be necessary or appropriate in the public interest, and consistent with the protection of investors.

#### I. Other Amendments to the Federal Securities Laws Relating to Security-Based Swaps.

Table I lists the remaining statutory provisions of Title VII of the Dodd-Frank Act that have not been addressed above.

TABLE I—OTHER AMENDMENTS TO FEDERAL SECURITIES LAWS RELATING TO SECURITY-BASED SWAPS—COMPLIANCE DATES

Exchange act section	Compliance date		Authorizes/directs/limits commission action <sup>232</sup>	Relief granted
	Upon effective date (July 16, 2011)	Upon registration, publication of final rules, or other commission action <sup>233</sup>		
761(a): Amendments to section 3(a) of the Exchange Act <sup>234</sup> —Definitions (other than the definition of substantial position in section 3(a)(67)(B)). <sup>235</sup>	✓	.....	.....	No. <sup>236</sup>
761(a): Amendments to section 3(a) of the Exchange Act <sup>237</sup> —Definition of substantial position in section 3(a)(67)(B). <sup>238</sup>	.....	.....	✓	N/A.
761(b): Authority to further define terms .....	.....	.....	✓	N/A.
762(a): Repeals section 206B and 206C of the Gramm-Leach-Bliley Act (“GLBA”). <sup>239</sup>	✓	.....	.....	No.
762(b): Section 206A of GLBA: conforming amendment. <sup>240</sup> ....	✓	.....	.....	No.
762(c): Sections 2A and 17 of the Securities Act: conforming amendments. <sup>241</sup>	✓	.....	.....	No.
762(d): Sections 3A, 9, 10, 15, 16, 20, and 21A of the Exchange Act: conforming amendments. <sup>242</sup>	✓	.....	.....	No.
763(e): Section 6(l) of the Exchange Act: trading in SB swaps. <sup>243</sup>	✓	.....	.....	Yes.

and LCH.Clearnet Ltd. allowed their order to lapse without seeking renewal.

There are currently four clearing agencies authorized to provide CCP services for SB swap transactions pursuant to these orders. Eurex Clearing AG will not be deemed registered as a clearing agency.

<sup>223</sup> See section 17A(l) of the Exchange Act, 15 U.S.C. 78q-1(1). To be deemed registered, a clearing agency must be a depository institution that cleared swaps as a multilateral clearing organization or a derivative clearing organization that cleared swaps pursuant to an exemption from registration as a clearing agency. *Id.* Section 17A(l) of the Exchange Act, 15 U.S.C. 78q-1(l), provides that certain SB swap clearing agencies will be deemed registered for the purpose of clearing SB swaps (“Deemed Registered Provision”). Under this Deemed Registered Provision, a deemed registered clearing agency will be required to comply with all requirements of the Exchange Act, and the rules thereunder, applicable to registered clearing agencies, including, for example, the obligation to file proposed rule changes under section 19(b) of the Exchange Act, 15 U.S.C. 78s(b). After the Deemed Registered Provision becomes effective on the Effective Date, *see supra* Table H, certain clearing agencies will no longer need an exemption from registration as a clearing agency under section

17A of the Exchange Act, 15 U.S.C. 78q-1, in order to clear SB swaps. As noted above, ICE Trust U.S. LLC, ICE Clear Europe Limited, and the Chicago Mercantile Exchange Inc., are eligible for the Deemed Registered Provision based on the specified criteria in section 17A(l) of the Exchange Act, 15 U.S.C. 78q-1(l). In addition, to facilitate the operation of clearing agencies as CCPs for eligible CDS, the Commission also adopted interim temporary exemptions (“Temporary Exemptions”) from certain provisions of the Securities Act, the Exchange Act and the Trust Indenture Act, 15 U.S.C. 77aaa *et seq.*, subject to certain conditions. *See* Temporary Exemptions for Eligible Credit Default Swaps to Facilitate Operation of Central Counterparties to Clear and Settle Credit Default Swaps, 74 FR 3967 (Jan. 22, 2009). The Commission extended the expiration date of the final temporary rules until July 16, 2011. *See* Extension of Temporary Exemptions for Eligible Credit Default Swaps to Facilitate Operation of Central Counterparties to Clear and Settle Credit Default Swaps, 75 FR 72660 (Nov. 26, 2010). The Commission is considering extending the Temporary Exemptions. Once extended, the Temporary Exemptions would continue to be available to those clearing agencies that are deemed registered. The Commission also has proposed exemptions that would allow clearing agencies in

their function as CCPs to offer or sell SB swaps subject to certain conditions. These proposed exemptions, if adopted, would replace the Temporary Exemptions and would extend to all SB swaps. *See* Proposed Cleared SB Swap Exemptions, *supra* note 19.

<sup>224</sup> 15 U.S.C. 78c(a)(23)(A).

<sup>225</sup> 15 U.S.C. 78q-1(b). As discussed above, the new registration requirement for SB swap clearing agencies in section 17A(g) of the Exchange Act, 15 U.S.C. 78q-1(g), will not apply until at least 60 days after rulemaking is completed.

<sup>226</sup> *See* Clearing Agency Standards for Operation and Governance, *supra* note 10 (discussing trade matching services).

<sup>227</sup> *Id.* (discussing collateral management activities).

<sup>228</sup> *Id.* (discussing tear-up and compression services).

<sup>229</sup> *Id.* at 14494–96 (proposing, under section 36 of the Exchange Act, 15 U.S.C. 78mm, an exemption to certain persons from the definition of clearing agency in section 3(a)(23) of the Exchange Act, 15 U.S.C. 78c(a)(23), and asking questions regarding whether there are other persons for whom the Commission should grant a similar exemption).

<sup>230</sup> 15 U.S.C. 78q-1(b).

<sup>231</sup> *See supra* note 217.

TABLE I—OTHER AMENDMENTS TO FEDERAL SECURITIES LAWS RELATING TO SECURITY-BASED SWAPS—COMPLIANCE DATES—Continued

Exchange act section	Compliance date		Authorizes/directs/limits commission action <sup>232</sup>	Relief granted
	Upon effective date (July 16, 2011)	Upon registration, publication of final rules, or other commission action <sup>233</sup>		
763(f): Amends sections 9(b)(1)–(3) of the Exchange Act to add “security-based swaps”. <sup>244</sup>	✓	.....	.....	No.
764(b): Savings clause regarding Federal banking agency authority.	.....	.....	✓ <sup>245</sup>	N/A.
765: Rulemaking on conflicts of interest .....	.....	.....	✓	N/A.
766(b): Sections 13(d)(1) and (g)(1) of the Exchange Act: beneficial ownership reporting. <sup>246</sup>	✓	.....	.....	No.
766(c): Section 13(f)(1) of the Exchange Act: reports by institutional investment managers. <sup>247</sup>	✓	.....	.....	No.
766(d): Sections 15(b)(4)(C) and (b)(4)(F) of the Exchange Act: administrative proceeding authority. <sup>248</sup>	✓	.....	.....	No.
766(e): Section 13(o) of the Exchange Act: SB swap beneficial ownership. <sup>249</sup>	.....	✓ <sup>250</sup>	.....	No.
767: Section 28(a) of the Exchange Act: state gaming and bucket shop laws. <sup>251</sup>	✓	.....	.....	N/A. <sup>252</sup>
768: Sections 2(a) and 5(d) of the Securities Act: amendments to the Securities Act; treatment of SB swaps. <sup>253</sup>	✓	.....	.....	No. <sup>254</sup>
769: Conforming definition in section 2(a)(54) of the Investment Company Act of 1940. <sup>255</sup>	✓	.....	.....	No.
770: Conforming definition in section 202(a)(29) of the Investment Advisers Act of 1940. <sup>256</sup>	✓	.....	.....	No.
771: Other authority of other agencies .....	✓	.....	.....	N/A.
772(a): Section 36(c) of the Exchange Act: jurisdiction—in general. <sup>257</sup>	✓	.....	.....	N/A.
772(b): Section 30(c) of the Securities Act: jurisdiction—rule of construction. <sup>258</sup>	✓	.....	.....	N/A.
773: Section 21B(f) of the Exchange Act: civil penalties <sup>259</sup> .....	✓	.....	.....	N/A.
774: Effective date .....	✓	.....	.....	N/A.

As indicated in Table I, the Commission finds, pursuant to section

<sup>232</sup> These provisions do not require compliance by market participants on the Effective Date, unless the relevant Commission action already has been undertaken. *See supra* note 26 and accompanying text.

<sup>233</sup> A number of Title VII provisions expressly (or implicitly) apply only to “registered” persons. Until the related registration processes for such persons have been established by final Commission rules, and such persons have become registered pursuant to such rules, they will not be required to comply with these Title VII provisions. If a Title VII provision requires a rulemaking, such provision will not necessarily go into effect on the Effective Date, but instead will go into effect “not less than” 60 days after publication of the related final rule or on July 16, 2011, whichever is later. *See* section 774 of the Dodd-Frank Act, 15 U.S.C. 77b note.

<sup>234</sup> 15 U.S.C. 78c(a).

<sup>235</sup> 15 U.S.C. 78c(a)(67)(B).

<sup>236</sup> *See supra* note 22 and accompanying text.

<sup>237</sup> 15 U.S.C. 78c(a).

<sup>238</sup> 15 U.S.C. 78c(a)(67)(B).

<sup>239</sup> 15 U.S.C. 78c note. This amendment, along with the amendments in sections 762(b), (c), and (d) of the Dodd-Frank Act, repeals GLBA, Securities Act, and Exchange Act provisions (as added by the Commodity Futures Modernization Act of 2000) limiting the Commission’s authority over security-based swap agreements (as defined in section 206B of the GLBA, 15 U.S.C. 78c note).

<sup>240</sup> *Id.*

<sup>241</sup> 15 U.S.C. 77b–1 and 77q.

<sup>242</sup> 15 U.S.C. 78c-1, 78i, 78j, 78o, 78p, 78t, and 78u–1. *See supra* note 224.

<sup>243</sup> 15 U.S.C. 78f(l).

<sup>244</sup> 15 U.S.C. 78i(b)(1)–(3). Section 763(f) makes conforming amendments to the Exchange Act.

<sup>245</sup> Section 764(b) provides that no appropriate Federal banking agency shall be divested of any authority for any entity over which it has authority.

<sup>246</sup> 15 U.S.C. 78m(d)(1) and (g)(1).

<sup>247</sup> 15 U.S.C. 78m(f)(1).

<sup>248</sup> 15 U.S.C. 78o(b)(4)(C) and (b)(4)(F).

<sup>249</sup> 15 U.S.C. 78m(o).

<sup>250</sup> *See* Beneficial Ownership Reporting Requirements and Security-Based Swaps, Exchange Act Release No. 64628 (June 8, 2011), available at <http://www.sec.gov/rules/final/2011/34-64628.pdf>.

<sup>251</sup> 15 U.S.C. 78bb(a).

<sup>252</sup> This section limits the scope of applicability of certain provisions of the Exchange Act and addresses certain state law issues.

<sup>253</sup> 15 U.S.C. 77b(a) and 77e(d).

<sup>254</sup> The Commission has proposed exemptions from the registration requirements of the Securities Act for offers or sales of SB swaps issued by certain clearing agencies satisfying certain conditions. *See* Proposed Cleared SB Swap Exemptions, *supra* note 19.

<sup>255</sup> 15 U.S.C. 80a–2(a)(54). Section 769 of the Dodd-Frank Act makes conforming amendments to section 2(a)(54) of the Investment Company Act of 1940.

<sup>256</sup> 15 U.S.C. 80b–2(a)(29). Section 770 of the Dodd-Frank Act makes conforming amendments to section 202(a)(2) of the Investment Advisers Act of 1940.

<sup>257</sup> 15 U.S.C. 78mm(c).

36 of the Exchange Act,<sup>260</sup> that it is necessary or appropriate in the public interest, and is consistent with the protection of investors, to grant a temporary conditional exemption from section 6(l) of the Exchange Act to certain persons.<sup>261</sup> Section 6(l) of the Exchange Act<sup>262</sup> would make it unlawful, as of the Effective Date, for any person to effect a transaction in an SB swap with or for a person that is not an eligible contract participant,<sup>263</sup> unless such transaction is effected on a national securities exchange registered pursuant to section 6(b) of the Exchange Act.<sup>264</sup>

Title VII amended the definition of eligible contract participant in the Commodity Exchange Act.<sup>265</sup> A number

<sup>258</sup> 15 U.S.C. 78dd(c).

<sup>259</sup> 15 U.S.C. 78u–2(f).

<sup>260</sup> 15 U.S.C. 78mm.

<sup>261</sup> 15 U.S.C. 78f(l).

<sup>262</sup> *Id.*

<sup>263</sup> *See* section 1a(18) of the Commodity Exchange Act, 7 U.S.C. 1a(18).

<sup>264</sup> 15 U.S.C. 78f(b).

<sup>265</sup> Section 721(a) of the Dodd-Frank Act amended section 1a(18) of the Commodity Exchange Act, 7 U.S.C. 1a(18), to include a new definition of the term “eligible contract participant.”

of commenters have raised concerns about potential uncertainty regarding the definition of “eligible contract participant” as a result of the Title VII amendments to that definition.<sup>266</sup> They have suggested, among other things, that market participants may cease or limit their business with counterparties that could potentially be considered non-eligible contract participants when the Dodd-Frank Act amendments to the definition of eligible contract participant go into effect.<sup>267</sup>

The Commission finds that temporary exemption from section 6(l) of the Exchange Act<sup>268</sup> for persons that meet the definition of eligible contract participant as set forth in section 1a(12) of the Commodity Exchange Act (as in effect on July 20, 2010)<sup>269</sup> is necessary or appropriate in the public interest, and is consistent with the protection of investors, because it would allow persons currently participating in the SB swap markets that could potentially be considered non-eligible contract participants under the definition of eligible contract participant as amended by Title VII of the Dodd-Frank Act, to continue to do so until the term eligible contract participant is further defined in final rulemaking. Accordingly, the Commission is providing a temporary conditional exemption pursuant to section 36 of the Exchange Act<sup>270</sup> from section 6(l) of the Exchange Act<sup>271</sup> for eligible contract participants under current law. The temporary exemption will expire on the effective date for the final rules further defining the term eligible contract participant.

In addition, the Commission has received comments<sup>272</sup> expressing concern regarding the implication of the incorporation of SB swaps into the

<sup>266</sup> See, e.g., Trade Association Letter, *supra* note 28 (“The definition of [eligible contract participant] was amended by [the Dodd-Frank Act], and the [Commission and the CFTC] have sought comments in [the Entity Definitions Release] on how to further define such term, including how to interpret the phrase “discretionary basis.” Until the term [eligible contract participant] is further defined in a final rulemaking, market participants will not know whether they are dealing with an [eligible contract participant], and where the line is between their institutional and retail businesses. As a result, they will not know \* \* \* whether certain transactions are subject to the new requirement for [non-eligible contract participant] transactions to be executed on an exchange \* \* \*. As a result, market participants may cease or severely limit their business with counterparties that could potentially be considered [non-eligible contract participants] under the Dodd-Frank statutory definition of [eligible contract participant].”).

<sup>267</sup> *Id.*

<sup>268</sup> 15 U.S.C. 78(f)(l).

<sup>269</sup> 7 U.S.C. 1a(12) (as in effect on July 20, 2010).

<sup>270</sup> 15 U.S.C. 78mm.

<sup>271</sup> 15 U.S.C. 78f(l).

<sup>272</sup> See *supra* note 28.

definition of “security.”<sup>273</sup> Commenters have indicated that they are still analyzing the full implication of such expansion of the definition of security, but that it will take time.<sup>274</sup> Market participants therefore have requested temporary relief from certain provisions of the Exchange Act that will impose new obligations on counterparties to SB swaps so that they may complete their analysis and submit requests for more targeted relief.<sup>275</sup> The Commission intends to separately address relief in this area.<sup>276</sup>

Moreover, the Commission has proposed exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for SB swaps issued by certain clearing agencies satisfying certain conditions.<sup>277</sup> The proposed exemptive rules would exempt transactions by clearing agencies in these SB swaps from all provisions of the Securities Act, other than the section 17(a)<sup>278</sup> antifraud provisions, as well as exempt these SB swaps from Exchange Act registration requirements and from the provisions of the Trust Indenture Act, provided certain conditions are met.<sup>279</sup>

*Request for Comment:*

- Is the temporary exemption from section 6(l) of the Exchange Act appropriate? If not, why not? Is the condition that transactions be limited to eligible contract participants as defined under current law sufficient to protect SB swap market participants that would otherwise receive the protection of the exchange-trading requirement of section 6(l) of the Exchange Act?
- Are there any provisions set out in Table I above, other than those for which the Commission has indicated that it will be providing guidance, and

<sup>273</sup> The Commission notes however that it has not received any comments regarding the definition of “security future” or the possibility that SB swaps may be characterized as security futures. Section 3(a)(55) of the Exchange Act, 15 U.S.C. 78c(a)(55), excludes from the definition of security future “any agreement, contract, or transaction excluded from the Commodity Exchange Act under section 2(c), 2(d), 2(f), or 2(g) of the Commodity Exchange Act (as in effect on the date of enactment of the Commodity Futures Modernization Act of 2000) or title IV of the Commodity Futures Modernization Act of 2000.” Although the Dodd-Frank Act repealed certain provisions of the Commodity Exchange Act added by the CFMA, Title VII did not affect this exclusion or otherwise affect the legal certainty provided by section 3(a)(55) of the Exchange Act regarding the potential scope of the definition of security future.

<sup>274</sup> See *supra* note 28 and note 275.

<sup>275</sup> See Trade Association Letter, *supra* note 28.

<sup>276</sup> See *supra* note 22 and accompanying text.

<sup>277</sup> See Proposed Cleared SB Swap Exemptions, *supra* note 19 and discussion *supra* note 223.

<sup>278</sup> 15 U.S.C. 77q(a).

<sup>279</sup> See Proposed Cleared SB Swap Exemptions, *supra* note 19.

where appropriate, temporary relief, for which the Commission should grant temporary exemptive relief? Please specify which provisions and provide a detailed explanation of why granting such exemption would be necessary or appropriate in the public interest, and consistent with the protection of investors.

*J. Section 29(b) of the Exchange Act*

Section 29(b) of the Exchange Act generally provides that contracts made in violation of any provision of the Exchange Act, or the rules thereunder, shall be void “(1) as regards the rights of any person who, in violation of any such provision, \* \* \* shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contracts, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contracts in violation of any such provision \* \* \*.<sup>280</sup> As discussed above, the Commission does not believe that provisions of Title VII for which the Commission has taken the view that compliance will either be triggered by registration of a person or by adoption of final rules by the Commission, or for which the Commission has provided an exception or exemptive relief herein, require compliance as of the Effective Date. The Commission thus does not believe that section 29(b) of the Exchange Act<sup>281</sup> would apply to such provisions. For the avoidance of doubt, however, and to avoid possible legal uncertainty or market disruption, the Commission is granting temporary exemptive relief from section 29(b) of the Exchange Act.<sup>282</sup>

The Commission is exercising its authority under section 36 of the Exchange Act<sup>283</sup> to temporarily exempt any SB swap contract entered into on or after the Effective Date from being void or considered voidable by reason of section 29 of the Exchange Act<sup>284</sup> because any person that is a party to the SB swap contract violated a provision of the Exchange Act that was amended or added by subtitle B of Title VII of the Dodd Frank Act and for which the Commission has taken the view that compliance will be triggered by registration of a person or by adoption of final rules by the Commission, or for which the Commission has provided an exception or exemptive relief herein,

<sup>280</sup> 15 U.S.C. 78cc(b).

<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

<sup>283</sup> 15 U.S.C. 78mm.

<sup>284</sup> 15 U.S.C. 78cc(b).

until such date as the Commission specifies.

The Commission finds that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors, because the legal uncertainty that could result if contracts entered into after the Effective Date were void or voidable under section 29(b) of the Exchange Act<sup>285</sup> could be disruptive to the financial markets, create confusion for both financial institutions and their customers, or result in unnecessary and wasteful litigation.

As previously discussed, once the relevant provisions of the Dodd-Frank Act take effect,<sup>286</sup> persons effecting transactions in SB swaps, or engaged in acts, practices, and courses of business involving SB swaps, will be subject to the general antifraud and anti-manipulation provisions of the Federal securities laws that were in place before the enactment of the Dodd-Frank Act, including sections 9(a) and 10(b) of the Exchange Act,<sup>287</sup> rule 10b-5 thereunder<sup>288</sup> (and the prohibitions against insider trading), section 15(c) of the Exchange Act,<sup>289</sup> and section 17(a) of the Securities Act,<sup>290</sup> among others. Persons would retain all available rights as a result of any violation of these general antifraud and anti-manipulation provisions.

### III. Solicitation of Comments

The Commission intends to monitor closely the transition of the derivatives markets to regulated markets and to determine to what extent, if any, additional regulatory action may be necessary. The Commission is soliciting public comment on all aspects of these exemptions and the guidance it provided regarding compliance dates, including:

1. Is the guidance provided in this section useful, appropriate, and sufficient for persons to determine which amendments to the Exchange Act by Title VII require compliance on July 16, 2011? If not, please explain and provide examples of which provisions require additional guidance.

2. Are there other provisions of the Exchange Act as amended by the Dodd-Frank Act for which temporary exemptive relief should be granted? Please provide section references and provide a detailed explanation of why granting such an exemption would be

necessary or appropriate in the public interest, and consistent with the protection of investors.

3. Is the duration of the temporary exemptions granted in this Order appropriate? If not, for which exemptions are the duration not appropriate and what should be the appropriate duration?

4. Should any conditions be placed on any of these exemptions? If so, which exemptions? Please explain and provide specific examples.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

### IV. Temporary Exemptions and Other Temporary Relief

For the reasons discussed above in Part II, the Commission is granting the following temporary relief:

*It is hereby ordered*, pursuant to section 36 of the Securities Exchange Act of 1934, that no reporting party (as defined in 17 CFR 242.900) shall be required to report any pre-enactment security-based swap (as defined in 17 CFR 242.900) under section 3C(e)(1) of the Securities Exchange Act of 1934 until the date six (6) months after the date a security-based swap data repository that is capable of accepting the asset class (as defined in 17 CFR 242.900) of such security-based swap is registered by the Commission.

*It is hereby further ordered*, pursuant to section 36 of the Securities Exchange Act of 1934, that security-based swap dealers and major security-based swap participants are exempt from the requirements of section 3C(g)(5)(B) of the Securities Exchange Act of 1934 until the earliest compliance date set forth in any of the final rules regarding section 3C(b) of the Securities Exchange Act of 1934.

*It is hereby further ordered*, pursuant to section 36 of the Securities Exchange Act of 1934, that registered clearing agencies under section 17A of the Securities Exchange Act of 1934 are exempt from the requirements of sections 3C(j)(1) and (2) of the Securities Exchange Act of 1934 until the earliest compliance date set forth in any of the final rules regarding section 3C(j)(2) of the Securities Exchange Act of 1934.

*It is hereby further ordered*, pursuant to section 36 of the Securities Exchange Act of 1934, that persons that operate a facility for the trading or processing of security-based swaps that is not currently registered as a national securities exchange or that cannot yet register as a security-based swap

execution facility because final rules for such registration have not yet been adopted are exempt from the requirements of section 3D(a)(1) of the Securities Exchange Act of 1934 until the earliest compliance date set forth in any of the final rules regarding registration of security-based swap execution facilities.

*It is hereby further ordered*, pursuant to section 36 of the Securities Exchange Act of 1934, that registered clearing agencies under section 17A of the Securities Exchange Act of 1934 are exempt from the requirements of section 3D(c) of the Securities Exchange Act of 1934 until the earliest compliance date set forth in any of the final rules regarding registration of security-based swap execution facilities.

*It is hereby further ordered*, pursuant to section 36 of the Securities Exchange Act of 1934, that security-based swap dealers and major security-based swap participants are exempt from the requirements of section 3E(f) of the Securities Exchange Act of 1934 until the date upon which the rules adopted by the Commission to register security-based swap dealers and major security-based swap participants become effective.

*It is hereby further ordered*, pursuant to section 36 of the Securities Exchange Act of 1934, that entities that meet the definition of security-based swap data repository as set forth in section 3(a)(75) of the Securities Exchange Act of 1934 are exempt from requirements of sections 13(n)(5)(D)(i), 13(n)(5)(F), 13(n)(5)(G), 13(n)(5)(H), and 13(n)(7)(A) through (C) of the Securities Exchange Act of 1934 until the earlier of (1) the date the Commission grants registration to the security-based swap data repository and (2) the earliest compliance date for any of the final rules regarding the registration of security-based swap data repositories.

*It is hereby further ordered*, pursuant to section 15F(b)(6) of the Securities Exchange Act of 1934, that security-based swap dealers and major security-based swap participants are temporarily excepted from the prohibition of section 15F(b)(6) of the Securities Exchange Act of 1934 with respect to persons subject to a statutory disqualification (as defined in section 3(a)(39) of the Securities Exchange Act of 1934) who are currently associated with a security-based swap dealer or major security-based swap participant and who effect or are involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant until the date upon which rules adopted by the Commission to register security-based

<sup>285</sup> *Id.*

<sup>286</sup> See section 774 of the Dodd-Frank Act.

<sup>287</sup> 15 U.S.C. 78i(a) and 78j(b).

<sup>288</sup> 17 CFR 240.10b-5.

<sup>289</sup> 15 U.S.C. 78o(c).

<sup>290</sup> 15 U.S.C. 77q(a).

swap dealers and major security-based swap participants become effective.

*It is hereby further ordered*, pursuant to section 36 of the Securities Exchange Act of 1934, that any person that meets the definition of eligible contract participant as set forth in section 1a(12) of the Commodity Exchange Act (as in effect on July 20, 2010) is exempt from the requirements of section 6(l) of the Securities Exchange Act of 1934 with respect to a transaction in a security-based swap until the effective date for the final rules further defining the term eligible contract participant, provided that such person effects such transaction with or for a person that also meets the definition of eligible contract participant as set forth in section 1a(12) of the Commodity Exchange Act (as in effect on July 20, 2010).

*It is hereby further ordered*, pursuant to section 36 of the Securities Exchange Act of 1934, that no contract entered into on or after July 16, 2011 shall be void or considered voidable by reason of section 29(b) of the Securities and Exchange Act of 1934 because any person that is a party to the contract violated a provision of the Securities Exchange Act of 1934 that was amended or added by subtitle B of the Wall Street Transparency and Accountability Act of 2010 and for which the Commission has taken the view that compliance will be triggered by registration of a person or by adoption of final rules by the Commission, or for which the Commission has provided an exception or exemptive relief herein, until such date as the Commission specifies.

By the Commission.

Dated: June 15, 2011.

**Elizabeth M. Murphy,**

Secretary.

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**BILLING CODE 8011-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 333

[Docket No. FDA-2011-D-0404]

### Guidance for Industry on Topical Acne Drug Products for Over-the-Counter Human Use—Revision of Labeling and Classification of Benzoyl Peroxide as Safe and Effective; Small Entity Compliance Guide; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; guidance.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance for small business entities entitled “Topical Acne Drug Products for Over-the-Counter Human Use—Revision of Labeling and Classification of Benzoyl Peroxide as Safe and Effective.” This guidance is intended to help small businesses understand and comply with the requirements of the final rule that adds benzoyl peroxide as a generally recognized as safe and effective (GRASE) active ingredient in over-the-counter (OTC) topical acne drug products and provides new labeling requirements applicable to all OTC topical acne products marketed under the monograph (75 FR 9767, March 4, 2010) (final rule). The guidance describes the requirements of the final rule in plain language and provides answers to common questions on how to comply with the rule. This guidance was prepared in accordance with the Small Business Regulatory Fairness Act.

**DATES:** Submit either electronic or written comments on Agency guidances at any time.

**ADDRESSES:** Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to <http://www.regulations.gov>. Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

#### FOR FURTHER INFORMATION CONTACT:

Arlene H. Solbeck, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 5426, Silver Spring, MD 20993-0002, 301-796-2090.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

FDA is announcing the availability of a guidance for small business entities entitled “Topical Acne Drug Products for Over-the-Counter Human Use—Revision of Labeling and Classification of Benzoyl Peroxide as Safe and Effective; Small Entity Compliance Guide.” This guidance summarizes the March 4, 2010, final rule regarding topical acne drug products for OTC use

that makes the following changes to the OTC regulations:

- Adds benzoyl peroxide as a GRASE active ingredient in OTC topical acne drug products.
- Sets forth new warnings and a direction that must be included in labeling of OTC topical acne drug products that contain benzoyl peroxide.
- Revises labeling requirements for all OTC topical acne drug products to ensure consistency with the standardized drug facts formatting and requirements set forth in § 201.66 (21 CFR 201.66).

The guidance summarizes in table form the requirements for specific warnings and directions in the labeling that apply to all OTC acne drug products marketed under the monograph (*i.e.*, products that contain any of the active ingredients permitted under the OTC topical acne drug monograph, including benzoyl peroxide, resorcinol, resorcinol monoacetate, salicylic acid, and/or sulfur) (21 CFR part 333, subpart D)). The summaries include new warnings and a new “direction for use” required specifically for OTC topical acne products that contain benzoyl peroxide. The revised labeling requirements ensure that the labeling of OTC topical acne drug products is consistent with the standardized drug facts labeling content and format requirements in § 201.66.

FDA is issuing this small entity compliance guide as level 2 guidance consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency’s current thinking on the classification of benzoyl peroxide as GRASE in the OTC topical acne drug monograph, and revised labeling requirements for OTC topical acne products, as set forth in the final rule. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

#### II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.