1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until September 6, 2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to U.S. Office of Personnel Management, Linda Bradford (Acting), Deputy Associate Director, Retirement Operations, Retirement Services, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500, or sent via electronic mail to *Martha.Moore@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street, NW., Room 4332, Washington, DC 20415, Attention: Cyrus S. Benson or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: SF 2800, Application for Death Benefits under the Civil Service Retirement System, is needed to collect information so that OPM can pay death benefits to the survivors of Federal employees and annuitants. SF 2800A, Documentation and Elections in Support of Application for Death Benefits When Deceased Was an Employee at the Time of Death, is needed for deaths in service so that survivors can make the needed elections regarding military service.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Application for Death Benefits Under the Civil Service Retirement System and Documentation and Elections in Support of Application for Death Benefits When Deceased Was an Employee at the Time of Death.

OMB Number: 3206–0156.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: SF 2800 = 68,000 and SF 2800A = 6,800.

Estimated Time per Respondent: 45 minutes.

Total Burden Hours: 56,100.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–17080 Filed 7–6–11; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Marital Status Certification Survey, RI 25–7

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0033, Marital Status Certification Survey. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until September 6, 2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to U.S. Office of Personnel Management, Linda Bradford (Acting), Deputy Associate Director, Retirement Operations, Retirement Services, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500, or sent via electronic mail to *Martha.Moore@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street, NW., Room 4332, Washington, DC 20415, *Attention:* Cyrus S. Benson or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: RI 25–7, Marital Status Certification Survey, is used to determine whether widows, widowers, and former spouses receiving survivor annuities from OPM have remarried before reaching age 55 and, thus, are no longer eligible for benefits.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Marital Status Certification Survey.

OMB Number: 3206–0033.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 24,000.

Estimated Time per Respondent: 15 minutes.

Total Burden Hours: 6,000.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–17078 Filed 7–6–11; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64795; File No. S7–27–11]

Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With the Pending Revision of the Definition of ''Security'' To Encompass Security-Based Swaps, and Request for Comment

AGENCY: Securities and Exchange Commission.

ACTION: Exemptive order; request for comment.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is issuing an order granting temporary exemptive relief from compliance with certain provisions of the Securities Exchange Act of 1934 (''Exchange Act'') in connection with the pending revision of the Exchange Act definition of ''security'' to encompass security-based swaps and is requesting comments on the temporary relief granted.

DATES: This exemptive order is effective July 1, 2011. Comments must be received on or before July 15, 2011.

ADDRESSES: Comments may be submitted, identified by File Number S7–27–11, by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/other.shtml);* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–27–11 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 S7–27–11. 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/other.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: In general, Joshua Kans, Senior Special Counsel, at (202) 551–5550; or Leah Drennan, Attorney-Adviser, at (202) 551–5507; in connection with the section 5 and 6 relief, Constance Kiggins, Special Counsel, at (202) 551–5701; Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

I. Introduction and Background

On July 21, 2010, President Barack Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') into law.[1] Title VII of the Dodd-Frank Act (''Title VII'') establishes a regulatory regime applicable to the over-the-counter (''OTC'') derivatives markets by providing the Commission and the Commodity Futures Trading Commission (''CFTC'') with the authority to oversee these heretofore largely unregulated markets.[2] The Dodd-Frank Act provides that the CFTC will regulate ''swaps,'' the SEC will regulate ''security-based swaps,'' and the CFTC and the SEC jointly will regulate ''mixed swaps.''[3]

Title VII amends the Securities Exchange Act of 1934[4] (''Exchange Act'') to substantially expand the regulation of the security-based 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. Among other aspects, Title VII amends the Exchange Act to add new provisions concerning security-based swaps, including those related to: clearing; execution facilities; segregation requirements; antifraud prohibitions; position limits; transaction reporting; registration and regulation of security-based swap dealers and major security-based swap participants; and registration of clearing agencies that clear security-based swaps.[5]

The Title VII amendments generally are effective on July 16, 2011 (360 days after the enactment of the Dodd-Frank Act, referred to herein as the ''Effective Date''), unless a provision requires a rulemaking.[6] The Commission recently issued a release to provide guidance in connection with the effectiveness of Exchange Act provisions related to security-based swaps added by subtitle B of Title VII (which generally creates, and relates to, the regulatory regime for security-based swaps), and to provide temporary exemptions and other relief in connection with certain of those provisions.[7] Moreover, the Commission has proposed conditional exemptions under the Securities Act of 1933[8] (''Securities Act''), Exchange Act and the Trust Indenture Act of 1939[9] (''Trust Indenture Act'') for security-based swaps issued by certain clearing agencies.[10] Also, the Commission intends to provide temporary conditional exemptive relief for entities that provide certain clearing services for security-based swaps. In addition, the Commission will take other actions to address certain security-based swaps, such as providing guidance regarding—and where appropriate, temporary relief from—the various pre-Dodd Frank Act provisions that would otherwise apply to security-based swaps on the Effective Date, as well as extending existing temporary rules under the Securities Act, the Exchange Act, and the Trust Indenture Act for certain security-based swaps.[11]

This Order primarily addresses a change that the Title VII amendments will make to an already existing definition in the Exchange Act.[12]

[1] The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] *See generally* Securities Exchange Act Release No. 64678 (June 15, 2011) (''Effective Date Release'').

[3] 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 (''Federal Reserve''), shall further define the terms ''swap,'' ''security-based swap,'' ''swap dealer,'' ''security-based swap dealer,'' ''major swap participant,'' ''major security-based swap participant,'' ''eligible contract participant,'' and ''security-based swap agreement.'' The Commission and the CFTC jointly have proposed to further define these terms. *See* Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, Securities Act Release No. 9204, Securities Exchange Act Release No. 64372 (Apr. 29, 2011), 76 FR 29818 (May 23, 2011); Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' Securities Exchange Act Release No. 63452 (Dec. 7, 2010), 75 FR 80174 (Dec. 21, 2010).

Moreover, section 712(a)(8) of the Dodd-Frank Act provides that the Commission and the CFTC, after consultation with the Federal Reserve, shall jointly promulgate such regulations regarding mixed swaps as may be necessary to carry out the purposes of Title VII. The Commission and the CFTC have jointly proposed such regulations. *See* 76 FR 29818.

[4] 15 U.S.C. 78a *et seq.*

[5] *See generally* Effective Date Release, note 2, *supra.*

[6] If a Title VII provision requires a rulemaking, the provision will go into effect not less than 60 days after the publication of the related final rule or on the Effective Date, whichever is later. *See* Sections 754 and 774 of the Dodd-Frank Act.

[7] Effective Date Release, note 2, *supra.*

[8] 15 U.S.C. 77a *et seq.*

[9] 15 U.S.C. 77aaa *et seq.*

[10] *See* Exemptions for Security-Based Swaps Issued by Certain Clearing Agencies, Securities Act Release No. 9222, Securities Exchange Act Release No. 64639, Trust Indenture Act Release No. 2474 (June 9, 2011). These proposed exemptions will not be in place as of the Effective Date.

[11] *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).

[12] We also are providing guidance in connection with part I of subtitle A of Title VII, which includes certain provisions that relate to security-based swaps or to the Commission specifically. *See* part III, *infra.* The Exemptive Date Release addressed

Specifically, as of the Effective Date, the Exchange Act definition of ''security'' will expressly encompass security-based swaps. [13] In making this change, Congress intended for security-based swaps to be treated as securities under the Exchange Act and the underlying rules and regulations. Nonetheless, this expansion of the scope of the regulatory provisions of the Exchange Act raises certain complex issues of interpretation. Absent additional time to analyze those issues, and to consider whether to provide interpretive or operational guidance, these changes may lead to unnecessary market uncertainty.[14]

As is discussed in more detail below, we are addressing those issues in part through a temporary exemption from the application of the Exchange Act to security-based swaps, subject to certain exceptions to this exemption by which specific Exchange Act provisions nonetheless will apply to security-based swaps. Separate exemptions within this Order will address registered broker-dealers and exchange registration requirements. The overall approach is directed toward maintaining the *status quo* during the implementation process for the Dodd-Frank Act, by preserving the application of particular Exchange Act requirements that already are applicable in connection with instruments that will be ''security-based swaps'' following the Effective Date, but deferring the applicability of additional Exchange Act requirements in connection with those instruments explicitly being defined as ''securities'' as of the Effective Date.

The revision of the Exchange Act's ''security'' definition raises, among other things, issues related to the Exchange Act definition of ''broker,'' [15] particularly with regard to which activities (such as facilitating the central clearing of security-based swaps for customers) may lead to the requirement to register as a broker. The revision of the ''security'' definition also raises interpretive issues in the context of the Exchange Act definition of ''dealer'' in that, following the Effective Date, the definition of ''dealer'' under the Exchange Act will exclude security-based swap dealing activities only to the extent that these activities are with counterparties that constitute ''eligible contract participants.'' [16] In other words, while an entity's security-based swap activities involving eligible contract participants cannot cause the entity to be a ''dealer'' (though the entity may otherwise be a ''security-based swap dealer''), an entity's activities involving security-based swaps with counterparties that are not eligible contract participants could, depending on the facts and circumstances, still cause the entity to fall within the ''dealer'' definition. Separately, the Dodd-Frank Act has revised the definition of ''eligible contract participant,'' [17] and some market participants have raised concerns as to the proper interpretation of the revised ''eligible contract participant'' definition, and hence the proper interpretation of the new exclusion from the ''dealer'' definition.[18]

The expansion of the ''security'' definition, and hence the expansion of the scope of the regulatory provisions of the Exchange Act to security-based swaps, further raises other complex questions of interpretation that could warrant additional guidance by the Commission. These include questions as to how particular Exchange Act requirements may apply to security-based swap activities of registered broker-dealers.[19] We believe that it is appropriate to provide market participants with additional time to consider the potential impact on their businesses and the interpretive questions raised, and to provide the Commission with any related requests for guidance or relief, along with the underlying analysis.[20] Also, as is discussed below, application of the exchange registration requirements of sections 5 and 6 [21] of the Exchange Act to security-based swap activities will not be practical until certain rulemaking has been completed.[22]

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 deliberately in implementing the requirements of the Dodd-Frank Act, while minimizing unnecessary disruption and costs to the markets. Those include the disruptions and costs that may be expected to result if, as of the Effective Date, existing Exchange Act provisions were in general deemed to apply to security-based swap activities without additional time to consider the potential impact of the revision to the ''security'' definition.

Accordingly, for the reasons discussed in this Order, the Commission is granting temporary exemptive relief that is necessary or appropriate in the public interest, and consistent with the protection of investors, from compliance

subtitle B of Title VII, while part II of subtitle A generally creates, and relates to, the regulatory regime for swaps. *See* sections 721 through 754 of the Dodd-Frank Act.

[13] *See* Exchange Act section 3(a)(10), 15 U.S.C. 78c(a)(10), as revised by section 761 of the Dodd-Frank Act.

[14] The Commission has received a request for relief by a number of industry participants in connection with the revised scope of the Exchange Act (as well as in connection with the new Exchange Act provisions we have addressed in the Effective Date Release). *See* letter to the Commission from the 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 and U.S. Chamber of Commerce, dated June 10, 2011 (''Trade Association Letter'').

[15] In relevant part, a ''broker'' is defined as a person ''in the business of effecting transactions in securities for the account of others.'' *See* Exchange Act section 3(a)(4), 15 U.S.C. 78c(a)(4). The Dodd-Frank Act did not modify this definition. As a result, absent an exemption or other relief, a person who meets this definition in connection with security-based swaps activities would be a broker and would be subject to the registration and other regulatory requirements applicable to brokers, absent an exception or exemption.

[16] As of the July 16 effectiveness of the Dodd-Frank Act amendments, the definition of ''dealer'' in Exchange Act Section 3(a)(5), 15 U.S.C. 78c(a)(5), will incorporate, in relevant part, ''any person engaged in the business of buying and selling securities (not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants), for such person's own account.''

At that time, the term ''eligible contract participant'' will be incorporated into Exchange Act section 3(a)(65), 15 U.S.C. 78c(a)(65), and will refer to the definition of that term in section 1a of the Commodity Exchange Act, 7 U.S.C. 1a.

[17] Most significantly, the Dodd-Frank Act revised paragraph (A)(xi) of the ''eligible contract participant'' definition in the Commodity Exchange Act (which the Exchange Act cross-references). Prior to its amendment, one portion of that definition encompassed individuals with ''total assets'' in excess of $10 million (or $5 million in the case of certain risk management agreements). As revised, that portion of the ''eligible contract participant'' definition instead will apply to individuals with those same amounts ''invested on a discretionary basis.'' *See* Commodity Exchange Act section 1a(18)(A)(xi), 7 U.S.C. 1a(18)(A)(xi) (as amended and redesignated by section 721(a)(9) of the Dodd-Frank Act).

[18] *See* Trade Association Letter, note 14, *supra* (particularly citing issues as to the interpretation of the term ''discretionary basis'' in the definition of ''eligible contract participant'').

[19] *See id.* (citing, among other aspects, issues related to the application of certain margin and customer protection rules to security-based swap activities of registered broker-dealers).

[20] In granting this relief, the Commission notes in particular that the signatories to the Trade Association Letter, note 14, *supra,* have represented that within three months of the Effective Date they will provide the Commission with a request for permanent exemption from the application of securities laws that they believe are particularly inapposite in connection with security-based swap activities. The signatories to that letter also anticipated that Commission guidance would be necessary with respect to some of the issues that would arise from the change to the scope of the Exchange Act.

The Commission expects that any industry request for guidance or relief will also address implementation issues related to the applicable requirements. The Commission invites all interested persons to submit views about whether specific relief would be necessary or appropriate in the public interest, and consistent with the protection of investors.

[21] 15 U.S.C. 78e, 78f.

[22] *See* parts II.C and II.D, *infra.*

with certain provisions of the Exchange Act that otherwise would apply to security-based swap activities 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.[23]

The temporary exemptive relief we are granting today in part combines an exemption from the application of the Exchange Act in connection with security-based swaps with specific exceptions from that exemption. As a result of these exceptions, certain provisions of the Exchange Act and underlying rules and regulations will apply to security-based swap activities.

For example, the instruments that (after the Effective Date) will constitute security-based swaps already are generally subject to certain antifraud and anti-manipulation provisions under the Exchange Act. This is because those instruments generally constitute ''security-based swap agreements'' under current law,[24] and the Exchange Act already provides that those security-based swap agreements are subject to certain specific antifraud and anti-manipulation provisions (including Exchange Act section 10(b)).[25] Accordingly, under the exemption, instruments that (before the Effective Date) were security-based swap agreements and (after the Effective Date) constitute security-based swaps will continue to be subject to the application of those Exchange Act antifraud and anti-manipulation provisions, as well as Securities Act antifraud provisions,[26] following the Effective Date. As discussed below, the exemption also is subject to certain other exceptions which will provide for the application of particular Exchange Act provisions to security-based swap activities (*e.g.,* ''broker'' and ''dealer'' registration provisions in certain circumstances, as well as Commission authority to act against broker-dealers and associated persons).[27]

In addition, we are providing targeted exemptive relief in connection with the application of Exchange Act requirements to registered broker-dealers,[28] as well as in connection with the exchange registration requirements of Exchange Act sections 5 and 6.[29] To promote legal certainty, moreover, we are providing temporary relief from the rescission provisions of Exchange Act section 29(b) [30] in connection with these exemptions.[31] Finally, we are providing additional guidance in connection with provisions of part I of subtitle A of Title VII.[32] The following tables summarize the scope—and limitations—of the relief we are granting (apart from the Exchange Act section 29(b) relief and the guidance related to part I of subtitle A of Title VII):

PART II.A—EXCHANGE ACT PROVISIONS THAT WILL APPLY TO PERSONS ENGAGING IN SECURITY-BASED SWAP ACTIVITIES NOTWITHSTANDING THE TEMPORARY EXEMPTION [33]

Nature of provisions	Exchange Act sections
Antifraud and anti-manipulation	Paragraphs (2) through (5) of section 9(a), and sections 10(b), 15(c)(1), 20(d) and 21A(a)(1).[34]
Dealer registration requirements	15(a)(1), but only in connection with security-based swaps with counterparties that are not eligible contract participants.[35]
Broker registration requirements	15(a)(1), but only with regard to members of central counterparties holding customer funds and securities in connection with security-based swaps.

[23] 15 U.S.C. 78mm. The Commission's exemptive authority under Exchange Act section 36 is not available for certain specified provisions of the Exchange Act added by Title VII that relate to security-based swaps, *see* section 36(c) of the Exchange Act, 15 U.S.C. 78mm(c). That limitation does not apply to the provisions for which the Commission is granting relief.

[24] Under the existing (pre-Dodd-Frank) framework, a ''security-based swap agreement'' is defined as a ''swap agreement'' in which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein. *See* section 206B of the Gramm-Leach-Bliley Act. Under existing law, moreover, the term ''swap agreement'' subsumes certain types of agreements for which certain ''material terms'' are ''subject to individual negotiation.'' *See* section 206A of the Gramm-Leach-Bliley Act. Thus, instruments that will be ''security-based swaps'' following the Effective Date in general currently are ''security-based swap agreements'' for purposes of the Exchange Act.

[25] Currently (prior to amendment by the Dodd-Frank Act), the Exchange Act provides that instruments that meet the definition of ''security-based swap agreement'' are subject to the following antifraud and anti-manipulation provisions: (a) Paragraphs (2) through (5) of Exchange Act section 9(a), 15 U.S.C. 78i(a), prohibiting the manipulation of security prices; (b) Exchange Act section 10(b), 15 U.S.C. 78j(b), (c) Exchange Act section 15(c)(1), 15 U.S.C. 78o(c)(1), which prohibits brokers and dealers from using manipulative or deceptive devices; (d) Exchange Act section 20(d), 15 U.S.C. 78t(d), providing for antifraud liability in connection with certain derivative transactions; and (e) Exchange Act section 21A(a)(1), 15 U.S.C. 78u–1(a)(1), related to the Commission's authority to impose civil penalties for insider trading violations. In addition, Exchange Act sections 16(a) and (b), 15 U.S.C. 78p(a) and (b) specifically apply to security-based swap agreements under current law.

Underlying rules prohibiting fraud, manipulation and insider trading (such as Exchange Act rule 10b–5, 17 CFR 240.10b–5, which prohibits the employment of manipulative or deceptive devices), also apply to security-based swap agreements. However, as currently (prior to amendment by the Dodd-Frank Act) provided by Exchange Act section 3A, 15 U.S.C. 78c–1, as well as provided by Exchange Act section 10(b), prophylactic reporting or recordkeeping requirements (such as Exchange Act rule 10b–10, 17 CFR 10b–10, regarding confirmation of transactions) do not apply to security-based swap agreements.

As of the Effective Date, Exchange Act antifraud and insider trading provisions still will apply to ''security-based swap agreements.'' The definition of ''security-based swap agreement,'' as revised by the Dodd-Frank Act, however, will no longer encompass those instruments that satisfy the ''security-based swap'' definition.

[26] The antifraud provisions of Securities Act section 17(a), 15 U.S.C. 77q(a), also apply to ''security-based swap agreements'' under current law.

[27] Also, as addressed below, the exemption does not address certain other Exchange Act provisions.

[28] *See* part II.B, *infra.*

[29] *See* parts II.C and II.D, *infra.*

[30] 15 U.S.C. 78cc(b).

[31] *See* part II.E, *infra.*

[32] *See* part III, *infra.*

PART II.A—EXCHANGE ACT PROVISIONS THAT WILL APPLY TO PERSONS ENGAGING IN SECURITY-BASED SWAP ACTIVITIES NOTWITHSTANDING THE TEMPORARY EXEMPTION [33]—Continued

Nature of provisions	Exchange Act sections
Authority to take actions against broker-dealers and associated persons.	15(b)(4), 15(b)(6).

[33] The general temporary exemption provided in this Order does not address the following additional provisions: securities registration, reporting, proxy, short-swing profits and related requirements (Exchange Act sections 12, 13, 14, 15(d) and 16); clearing agency registration requirements (Exchange Act section 17A); and certain provisions added by subtitle B of Title VII. We separately have addressed or are addressing certain of those other requirements in the context of security-based swaps. In addition, this exemption does not address certain provisions related to government securities (Exchange Act sections 3(a)(42)–(45) and 15C). Exchange registration provisions are the subject of separate exemptions in this Order. In particular, persons other than clearing agencies acting as central counterparties will be exempt from the exchange registration requirements of Exchange Act sections 5 and 6 solely in connection with security-based swap activities, while broker-dealers effecting or reporting security-based swap transactions on those exempt exchanges will be exempt from Exchange Act section 5. In addition, three existing central counterparties that clear CDS will be exempt from Exchange Act sections 5 and 6 (in connection with their ''forced trade'' procedures) subject to certain conditions, and members that use those central counterparties' clearance and risk management process to effect or report Cleared CDS transactions will be exempt from section 5 unconditionally.

[34] Underlying rules prohibiting fraud, manipulation or insider trading, such as Exchange Act rule 10b–5, also remain applicable (but not prophylactic reporting or recordkeeping requirements, such as Exchange Act rule 10b–10). This is consistent with the current application of antifraud and anti-manipulation provisions to security-based swap agreements, as provided by Exchange Act sections 3A and 10(b) (which generally prohibit the application of ''reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading'' with respect to any security-based swap agreement''). In addition, all provisions of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential violations of such provisions also remain applicable.

[35] This will be based on whether a person is an ''eligible contract participant'' as set forth in the definition of that term in effect on July 20, 2010 (prior to the Dodd-Frank Act).

PART II.B—ADDITIONAL EXCHANGE ACT PROVISIONS THAT WILL APPLY TO SECURITY-BASED SWAP ACTIVITIES AND POSITIONS OF REGISTERED BROKER-DEALERS NOTWITHSTANDING THE TEMPORARY EXEMPTION [36]

Nature of provisions	Exchange Act section or rule
Extension of credit	Section 7(c)
Extension of credit	Regulation T (12 CFR 220.1 *et seq.*).
Rulemaking authority over broker-dealers	Section 15(c)(3).
Net capital	Rule 15c3–1.
Reserves and custody of securities	Rule 15c3–3.
Books and records	Sections 17(a)–(b).
Records and reports	Rules 17a–3, 17a–4, 17a–5, 17a–8.
Quarterly security counts	Rule 17a–13.

[36] In general, these provisions will apply to security-based swap activities or positions of registered broker-dealers only to the extent that they are applicable to those activities and positions as of July 15, 2011. Exchange Act rule 15c3–3, however, also will fully apply to the activities and positions of a registered broker-dealer related to cleared security-based swaps, to the extent that the registered broker-dealer is a member of a clearing agency that functions as a central counterparty for security-based swaps, and holds customer funds or securities in connection with cleared security-based swaps.

II. Temporary Exemption in Connection With Certain Exchange Act Requirements

The Commission is issuing temporary exemptions to address the issues and concerns arising from the revision of the Exchange Act ''security'' definition and the application of the Exchange Act to security-based swaps. These include a temporary exemption for certain persons, along with a temporary exemption specific to broker-dealers; both of those exemptions will remain in effect until the compliance date for final rules that we may adopt further defining the terms ''security-based swap'' and ''eligible contract participant.'' [37] These also include temporary exemptions related to Exchange Act sections 5 and 6, and related to Exchange Act section 29(b), which, as addressed below, will have other durations.

A. Temporary Exemption From Certain Exchange Act Requirements in Connection With Security-Based Swaps

As the first part of the relief provided by this Order, the Commission is temporarily exempting certain persons from the application of certain Exchange Act provisions in connection with security-based swaps. As discussed below, this exemption will be subject to certain key exceptions by which particular statutory provisions (or underlying rules or regulations) or particular activities will not be exempted.

The temporary exemption will be available to any person that meets the definition of ''eligible contract participant'' that was in effect as of July 20, 2010 (the day prior to the enactment of the Dodd-Frank Act), other than a registered broker-dealer [38] or, except in limited circumstances, a self-regulatory organization.[39] The availability of this

[37] *See* SEC and CFTC joint proposing releases defining those terms, note 3, *supra.*

[38] A separate temporary exemption addresses the security-based swap activities of registered broker-dealers. *See* part II.B, *infra.*

[39] Registered securities associations can take advantage of this exemption in certain limited circumstances. In particular, the exemption will be available to any registered securities association solely with respect to its obligations under Exchange Act section 19(g)(1)(B), 15 U.S.C. 78s(g)(1)(B), to enforce compliance in connection with security-based swaps with provisions of its rules (and with provisions of the rules of the Municipal Securities Rulemaking Board) that do not apply to positions or activities involving security-based swaps as of July 15, 2011. Section 19(g)(1)(B) in relevant part requires national securities associations to enforce compliance with their own rules. As discussed below, *see* part II.B, *infra,* under the Commission's exemption registered broker-dealers will be required to comply with certain Exchange Act requirements in connection with security-based swaps, but not to the extent that those provisions or rules do not apply to the broker's or dealer's security-based swap positions or activities as of July 15, 2011. The application of this exemption to national securities associations is consistent with that approach.

Also, we expect the Financial Industry Regulatory Authority (''FINRA''), a national securities association that is a self-regulatory organization for registered broker-dealers, to file a proposed rule

Continued

temporary exemption will be limited to persons that meet the ''eligible contract participant'' definition in order to provide relief to persons currently participating in the security-based swap markets.[40]

Subject to exclusions discussed below, persons covered by the temporary exemption will be exempt from the provisions of the Exchange Act, and the applicable rules and regulations thereunder, solely in connection with their activities involving security-based swaps. The temporary exemption's scope is to be construed narrowly, and does not apply to a person's activities involving securities other than security-based swaps, even if those other securities-related activities also involve security-based swaps.[41]

As noted above, however, this temporary exemption does not extend to certain Exchange Act provisions and underlying rules and regulations.

First, for the reasons discussed above, the temporary exemption applicable to security-based swaps does not extend to the antifraud and anti-manipulation provisions of the Exchange Act, and underlying rules or regulations, that already apply to ''security-based swap agreements'' under current law. Thus, even with the temporary exemption, paragraphs (2) through (5) of section 9(a), section 10(b), section 15(c)(1), section 20(d) and section 21A(a)(1) of the Exchange Act[42] will apply to security-based swaps. Underlying rules prohibiting fraud, manipulation or insider trading, such as Exchange Act rule 10b–5 (but not prophylactic reporting or recordkeeping requirements such as the confirmation requirements of Exchange Act rule 10b–10) also will apply to security-based swaps. Consistent with the Commission's current authority, moreover, the temporary exemption will not affect the Commission's investigative, enforcement, and procedural authority related to those provisions and rules.[43]

The temporary exemption also does not extend to Exchange Act provisions related to security-based swaps that were added or amended by Subtitle B of Title VII of the Dodd-Frank Act. The Commission separately has addressed those new provisions and amendments[44] (apart from the change to the ''security'' definition that underpins the exemptions that are the subject of this Order).

In addition, even under the temporary exemption, the Exchange Act ''broker'' registration requirements will apply to broker activities involving security-based swaps by persons that are members of a clearing agency that functions as a central counterparty[45] (''CCP'') for security-based swaps, and that hold customer funds and securities in connection with security-based swaps. Based on the Commission's experience in granting, and representations made by recipients of, previous exemptive orders for CCPs, the Commission understands that there currently are no CCPs offering customer clearing of security-based swaps.[46] Apart from that limitation, and for the reasons discussed above, the exemption from registration requirements will extend to broker activity involving security-based swaps.[47]

Moreover, even under the temporary exemption, the Exchange Act ''dealer'' registration requirements will apply to security-based swap dealing activities unless those activities involve counterparties that meet the definition of ''eligible contract participant'' that was in effect as of July 20, 2010 (the day prior to the enactment of the Dodd-Frank Act). Accordingly, conducting security-based swap activities with counterparties that do not meet that July 20, 2010 definition of ''eligible contract participant'' could, depending on the facts and circumstances, still cause an entity to be a ''dealer'' under the Exchange Act. In light of market participants' concerns regarding interpretive issues resulting from the statutory changes to the ''eligible contract participant'' definition, the exemption is intended to appropriately implement the legislative goal of applying the ''dealer'' definition to security-based swap activities involving counterparties that are not eligible contract participants, while maintaining the *status quo* with respect to activities involving ''eligible contract participants'' as that term was defined on July 20, 2010.[48]

This temporary exemption further does not excuse compliance with certain additional provisions under the Exchange Act. The exemption does not apply to the exchange registration requirements of Exchange Act sections 5 and 6, as those provisions instead are being addressed by a separate conditional exemption described below.[49] This exemption further does not extend to: the requirements of Exchange Act sections 12, 13, 14, 15(d), and 16[50]; the Commission's administrative proceeding authority under Exchange Act sections 15(b)(4) and (b)(6)[51]; or to certain provisions

change related to the application of FINRA's rules to security-based swaps.

[40] The exemption relies on the pre-Dodd-Frank Act definition of ''eligible contract participant'' due to outstanding issues discussed above, *see* note 17, *supra,* and accompanying text, regarding the meaning of ''eligible contract participant'' under the Dodd-Frank Act.

[41] In other words, for example, if a person were to enter into an arrangement involving the purchase of a debt security in conjunction with the purchase of credit protection in the form of a credit default swap referencing that debt security, the person's credit default swap transaction would be subject the temporary exemption, but the person's purchase of the debt security would not.

[42] *See* note 25, *supra.*

[43] Thus, for example, the Commission retains the ability to investigate potential violations and bring enforcement actions in the federal courts as well as in administrative proceedings, and to seek the full panoply of remedies available in such cases.

[44] *See* Effective Date Release, note 2, *supra.*

[45] For these purposes, a ''central counterparty'' means a clearing agency that interposes itself between the counterparties to security-based swap transactions, acting functionally as the buyer to every seller and the seller to every buyer.

[46] 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 A&M and LCH.Clearnet Ltd. *See* notes 71 and 76, *infra.*

To the extent that CCPs plan to offer customer clearing of security-based swaps during the duration of this exemption, the Commission will consider requests for relief from broker-related requirements by such CCPs on behalf of their participants, based on the applicable facts and circumstances.

[47] In light of the exemption from broker registration requirements and from the dealer registration requirements addressed below (but subject to the exemption's limitations associated with those requirements), non-U.S. persons that act as brokers or dealers solely in connection with security-based swaps involving U.S. counterparties need not rely on the exemptions from broker-dealer registration requirements that are set forth in Exchange Act rule 15a–6, 17 CFR 240.15a–6. Thus, non-U.S. persons will not have to comply with the requirements and conditions of rule 15a–6, including, for example, the requirement to use a registered U.S. broker-dealer to effect a transaction in a security-based swap, as provided in paragraph (a)(3) of the rule.

[48] In a similar way, the Commission has targeted the exemptive relief it previously granted in connection with section 6(*l*) of the Exchange Act, 15 U.S.C. 78f(l), which was added by the Dodd-Frank Act. This relief will permit persons that currently participate in the security-based swap markets, but that potentially may not be considered eligible contract participants under the definition 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. *See* Effective Date Release, note 2, *supra.*

[49] *See* parts II.C and II.D, *infra.*

[50] 15 U.S.C. 78*l,* 78m, 78n, 78o(d), 78p. These provisions address, among other things, securities registration, reporting by issuers and other persons, proxies and short-swing profits.

[51] Exchange Act sections 15(b)(4) and 15(b)(6), 15 U.S.C. 78o(b)(4) and (b)(6), grant the Commission authority to take action against brokers and dealers and associated persons in certain situations. Accordingly, while this exemption extends to certain persons that may otherwise act as brokers or dealers in the market for security-based swaps, such brokers or dealers may still be subject to actions under sections 15(b)(4) and (b)(6) of the Exchange Act.

In addition, such brokers or dealers may be subject to actions under Exchange Act section

related to government securities.[52] The temporary exemption further does not extend to the clearing agency registration requirement of Exchange Act section 17A,[53] as the Commission separately intends to provide targeted exemptive relief in connection with that requirement.

B. Temporary Exemption From Certain Exchange Act Requirements in Connection With Security-Based Swap Activities by Registered Broker-Dealers

In addition to the temporary exemption addressed above, the Commission separately is providing exemptive relief to registered broker-dealers in connection with the revised ''security'' definition and the application of existing Exchange Act provisions to security-based swaps. In granting this relief, we have sought to recognize concerns raised by market participants—*e.g.,* the application of current broker-dealer margin rules to security-based swap activities—while also being mindful that certain regulations applicable to broker-dealers play a critical role in promoting market integrity and protecting customers (including broker-dealer customers that are not involved in security-based swap transactions).

This temporary exemption will be available to any registered broker-dealer solely with respect to its activities and positions involving security-based swaps. In general—and subject to the additional provisions addressed below—this temporary exemption has the same scope as the temporary exemption addressed above, and is subject to the same exclusions. Thus, for example, security-based swap activity by registered broker-dealers will be subject to the same Exchange Act antifraud and anti-manipulation provisions as will be effective under the temporary exemption addressed above.

Moreover, we are limiting the scope of the exemption for registered broker-dealers in connection with certain Exchange Act provisions and rules that apply specifically to registered broker-dealers. In particular (and subject to additional limitations in connection with Exchange Act rule 15c3–3 as addressed below), registered broker-dealers will solely be exempt from those provisions and rules to the extent that those provisions or rules do not apply to the broker's or dealer's security-based swap positions or activities as of July 15, 2011—the day before the effectiveness of the change to the ''security'' definition. In other words, during the exemptive period the application of current law will remain unchanged, and those particular Exchange Act requirements will continue to apply to registered broker-dealers' security-based swap activities and positions to the same extent they apply currently. This approach is intended to help avoid undue market disruptions resulting from the change to the ''security'' definition, while at the same time preserving the current application of those particular provisions or rules to security-based swap activity by registered broker-dealers.

Thus, under this approach of preserving the *status quo,* no exemption will be provided in connection with the following requirements under the Exchange Act to the extent that those requirements currently apply to registered broker-dealer activities or positions involving instruments that will be security-based swaps (but registered broker-dealers will be exempted in connection with those requirements to the extent that the requirements do not already apply to activities or positions involving those instruments): [54]

- Section 7(c),[55] regarding the extension of credit by broker-dealers; and Regulation T,[56] a Federal Reserve Board regulation regarding broker-dealer extension of credit.
- Section 15(c)(3),[57] which provides the Commission with rulemaking authority in connection with broker-dealer financial responsibility; Exchange Act rule 15c3–1,[58] regarding broker-dealer net capital; and Exchange Act rule 15c3–3,[59] regarding broker-dealer reserves and custody of securities. In the case of Exchange Act rule 15c3–3, moreover, the exemption will not be applicable to the activities and positions of a registered broker-dealer related to cleared security-based swaps, to the extent that the registered broker-dealer is a member of a clearing agency that functions as a central counterparty for security-based swaps, and holds customer funds or securities in connection with cleared security-based swaps.[60]
- Section 17(a),[61] regarding broker-dealer obligations to make, keep and furnish information; section 17(b),[62] regarding broker-dealer records subject to examination; Exchange Act rules 17a–3 through 17a–5,[63] regarding records to be made and preserved by broker-dealers and reports to be made by broker-dealers; Exchange Act rule 17a–8,[64] regarding broker-dealer recordkeeping and reporting under the Bank Secrecy Act; and Exchange Act rule 17a–13,[65] regarding quarterly security counts to be made by certain exchange members and broker-dealers.

C. Temporary Exemptions From Sections 5 and 6 of the Exchange Act for Brokers, Dealers and Exchanges

Section 5 of the Exchange Act states that ''[i]t shall be unlawful for any broker, dealer, or exchange,[66] directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce for the purpose of using any facility of an exchange * * * to effect any transaction in a security, or to report any such transactions, unless such exchange (1) Is registered as a national securities exchange under section 6 of [the Exchange Act], or (2) is exempted from such registration * * * by reason of the limited volume

15(c)(1), 15 U.S.C. 78o(c)(1), which prohibits brokers and dealers from using manipulative or deceptive devices. Sections 15(b)(4), 15(b)(6) and 15(c)(1), of course, would not apply to persons subject to this exemption who do not act as broker-dealers or associated persons of broker-dealers.

[52] The exemption specifically does not extend to the Exchange Act provisions applicable to government securities, as set forth in section 15C, 15 U.S.C. 78o–5, and its underlying rules and regulations. The exemption also does not extend to related definitions found at paragraphs (42) through (45) of section 3(a), 15 U.S.C. 78c(a). The Commission does not have authority under section 36 to issue exemptions in connection with those provisions. *See* Exchange Act section 36(b), 15 U.S.C. 78mm(b).

[53] 15 U.S.C. 78q–1.

[54] Solely for purposes of this temporary exemption, in addition to the general requirements under the referenced Exchange Act sections, registered broker-dealers shall only be subject to the enumerated rules under the referenced Exchange Act sections in connection with security-based swaps.

[55] 15 U.S.C. 78g(c).

[56] 12 CFR 220.1 *et seq.*

[57] 15 U.S.C. 78o(c)(3).

[58] 17 CFR 240.15c3–1.

[59] 17 CFR 240.15c3–3.

[60] This is consistent with the exclusion from the temporary exemption addressed above with regard to the broker registration requirement. *See* note 45, *supra,* and accompanying text.

[61] 15 U.S.C. 78q(a).

[62] 15 U.S.C. 78q(b).

[63] 17 CFR 240.17a–3 through 17a–5

[64] 17 CFR 240.17a–8.

[65] 17 CFR 240.17a–13.

[66] Section 3(a)(1) of the Exchange Act, 15 U.S.C. 78c(a)(1), defines ''exchange'' to mean ''any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such an exchange.'' Rule 3b–16 under the Exchange Act, 17 CFR 240.3b–16, defines certain terms used in the statutory definition of exchange. *See* Securities Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70844 (Dec. 22, 1998) (''Regulation ATS Adopting Release'') (adopting Rule 3b–16 in addition to Regulation ATS).

of transactions effected on such exchange * * *.'' Section 6 of the Exchange Act sets forth a procedure whereby an exchange may register as a national securities exchange.[67]

Certain persons, particularly those that would meet the statutory definition of security-based swap execution facility (''SB SEF''),[68] may today engage in activities that would subject them to the restrictions and requirements of sections 5 and 6 of the Exchange Act as of the Effective Date, once security-based swaps are included within the definition of ''security.'' The Commission has proposed, but not acted on, registration requirements for SB SEFs. Therefore, the Commission is using its authority under section 36 of the Exchange Act to provide a temporary exemption from the requirement to register as a national securities exchange in sections 5 and 6 of the Exchange Act to any person, other than a clearing agency acting as a central counterparty in security-based swaps,[69] that, solely due to its activities relating to security-based swaps, would fall within the definition of exchange and thus be required to register as an exchange. Persons who can take advantage of this exemption include those entities that would meet the statutory SB SEF definition,[70] but that otherwise would not be subject to the requirements under sections 5 and 6 of the Exchange Act.

This temporary exemption will remain in effect until the earliest compliance date set forth in any of the final rules regarding the registration of SB SEFs. It specifically will permit security-based swaps to continue to be traded on or through entities (other than central counterparties) following the Effective Date, until the registration requirements and other provisions applicable to SB SEFs have been implemented. As noted above, this temporary exemption is available to persons (other than central counterparties) that meet the definition of exchange solely because of their activities relating to transactions in security-based swaps. Thus, to the extent that a person otherwise satisfies the definition of ''exchange'' in section 3(a)(1) of the Exchange Act and the criteria of rule 3b–16 under the Exchange Act, it must register with the Commission as a national securities exchange under section 6 of the Exchange Act and the rules and regulations thereunder or comply with the terms of another exemption.

In addition, absent an exemption, section 5 of the Exchange Act would prohibit brokers and dealers from effecting transactions in security-based swaps on an exchange that is not a national securities exchange, even if that exchange was operating in reliance on the exemption addressed above. The Commission therefore is using its authority under section 36 of the Exchange Act to provide a temporary exemption to brokers and dealers that effect transactions in security-based swaps on an exchange that is operating without registering as a national securities exchange in reliance on that exemption. Temporarily exempting brokers and dealers that effect transactions in security-based swaps on such an exchange from this restriction in section 5 will facilitate brokers' and dealers' continued use of such facilities without the disruptions and costs that might be expected to result from the application of those provisions prior to the earliest compliance date of final rules regarding the registration of SB SEFs. Without also exempting brokers and dealers from this section 5 requirement, the Commission's temporary exemption of persons that meet the definition of exchange with respect to the trading of security-based swaps would be ineffective, because brokers and dealers would not be permitted to effect transactions on those exchanges. A broker or dealer is exempt from the prohibition in section 5 pursuant to this temporary exemption solely to the extent that it effects transactions in security-based swaps on an exchange operating in reliance on the exemption addressed above, or reports security-based swap transactions on such an exempted exchange.

D. Exemption From Sections 5 and 6 for Certain CCPs

The Commission is also exercising its authority under section 36 of the Exchange Act to extend specific existing exemptions from the exchange registration requirements of sections 5 and 6 of the Exchange Act provided to three central counterparties—ICE Trust U.S. LLC (''ICE Trust''), Chicago Mercantile Exchange Inc. (''CME''), and ICE Clear Europe, Limited (''ICE Clear Europe'') (collectively, ''CDS CCPs'')[71]—that clear ''Cleared CDS.''[72] These exemptions will remain in effect until the earliest compliance date set forth in any of the final rules regarding the registration of SB SEFs.

As described in the Temporary Cleared CDS Exemptions,[73] as part of the clearing and risk management

[67] *See generally* Exchange Act section 6(a) and the rules thereunder. Section 6 of the Exchange Act also sets forth various requirements to which a national securities exchange is subject. *See, e.g.,* Exchange Act section 6(b).

[68] *See* Exchange Act section 3(a)(77), 15 U.S.C. 78c(a)(77).

[69] The status of central counterparties in security-based swaps is addressed in part II.D, *infra.*

[70] While the Exchange Act currently does not prohibit registered alternative trading systems from trading security-based swaps, after the Effective Date any alternative trading system that meets the definition of SB SEF would no longer be permitted to do so absent an exemption or registration as a national securities exchange or SB SEF. *See* section 763 of the Dodd-Frank Act, adding Exchange Act section 3D(a)(1), 15 U.S.C. 78c–4(a)(1) (''[n]o person may operate a facility for the trading or processing of security-based swaps, unless the facility is registered as a security-based swap execution facility or as a national securities exchange under this section'') and Securities Exchange Act Release No. 34–63825 (Feb. 2, 2011), 76 FR 10948 (Feb. 28, 2011) (''SB SEF Proposing Release'') at note 10 (''The Commission views [Section 3D(a)(1) of the Exchange Act] as applying only to facilities that meet the definition of ''security-based swap execution facility'' in Section 3(a)(77) of the Exchange Act). The Commission has granted temporary relief from the requirements of section 3D(a)(1) of the Exchange Act to allow alternative trading systems and other entities trading security-based swaps to continue to trade security-based swaps until the exemption expires. *See* Effective Date Release, note 2, *supra.* Following the expiration of the temporary exemption, any entity trading security-based swaps that meets the definition of SB SEF would be required to register as a national securities exchange or a SB SEF.

[71] *See generally* Securities Exchange Act Release Nos. 60372 (July 23, 2009), 74 FR 37748 (July 29, 2009); 61973 (April 23, 2010), 75 FR 22656 (April 29, 2010); and 63389 (November 29, 2010), 75 FR 75520 (December 3, 2010) (temporary exemptions in connection with CDS clearing by ICE Clear Europe); 59578 (March 13, 2009), 74 FR 11781 (March 19, 2009); 61164 (December 14, 2009), 74 FR 67258 (December 18, 2009); 61803 (March 30, 2010), 75 FR 17181 (April 5, 2010); and 63388 (November 29, 2010), 75 FR 75522 (December 3, 2010) (temporary exemptions in connection with CDS clearing by CME); 59527 (March 6, 2009), 74 FR 10791 (March 12, 2009); 61119 (December 4, 2009), 74 FR 65554 (December 10, 2009); 61662 (March 5, 2010), 75 FR 11589 (March 11, 2010), 63387 (November 29, 2010), 75 FR 75502 (December 3, 2010) (temporary exemptions in connection with CDS clearing by ICE Trust) (collectively, ''Temporary Cleared CDS Exemptions'').

[72] ''Cleared CDS'' means a credit default swaps that is a security-based swap that is submitted (or offered, purchased, or sold on terms providing for submission) to a CDS CCP, and that is offered only to, purchased only by, and sold only to persons that meet the pre Dodd-Frank definition of eligible contract participant. In addition, to be a Cleared CDS, either: (i) The reference entity, the issuer of the reference security, or the reference security is one of the following: (A) an entity reporting under the Exchange Act, providing Securities Act rule 144A(d)(4) (17 CFR 230.144A(d)(4)) information, or about which financial information is otherwise publicly available; (B) a foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States; (C) a foreign sovereign debt security; (D) an asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or (E) an asset-backed security issued or guaranteed by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association; or (ii) the reference index is an index in which 80% or more of the index's weighting is comprised of the entities or securities described in subparagraph (i).

[73] *See, e.g.,* 74 FR at 37748 (ICE Clear Europe); 74 FR at 65560 (ICE Trust); 74 FR at 67262 (CME).

processes, each CDS CCP calculates, based on prices or quotations submitted by its participants, an end-of-day settlement price for each contract in which any of its participants has a cleared position.[74] As part of this process, each CDS CCP has periodically used a ''forced trade'' mechanism to require clearing members at randomly selected times to execute certain CDS trades.[75] This mechanism, which is designed to promote the integrity of the price-submission process, involves bringing together buyers and sellers of CDS. Therefore, absent an exemption, this activity would cause each CDS CCP to meet the definition of ''exchange'' under the Exchange Act, thereby triggering the applicability of sections 5 and 6. Accordingly, the Commission, in connection with previous exemptions from clearing agency registration under section 17A of the Exchange Act, also provided each CDS CCP a temporary conditional exemption from the exchange registration requirements of Sections 5 and 6 of the Exchange Act. Following the Effective Date, the CDS CCPs will not require further exemptions from section 17A.[76]

As part of these Temporary Cleared CDS Exemptions, the Commission also temporarily exempted each CDS CCP's participants that were brokers or dealers from the prohibitions of Section 5, to the extent that they use a CDS CCP to effect or report any transaction in Cleared CDS in connection with the CDS CCP's calculation of settlement prices for open positions in Cleared CDS. The definition of ''Cleared CDS'' used here is consistent with the Temporary Cleared CDS Exemptions.[77]

Consistent with our findings in previous exemptive orders, and with the discussion in this Order, and particularly in light of the risk management and systemic benefits in continuing to facilitate CDS clearing by CDS CCPs during the transition period before full implementation of Title VII, the Commission is extending the temporary conditional exemptions of the CDS CCPs from the registration requirements of sections 5 and 6 of the Exchange Act. The Commission also finds that it is necessary or appropriate in the public interest and is consistent with the protection of investors to extend the temporary exemption of any broker or dealer effecting any transaction in a security, or reporting any such transaction, on a CDS CCP with respect to section 5 of the Exchange Act. These exemptions are solely with respect to the ''forced trade'' mechanism used to calculate settlement prices for Cleared CDS. The exemption for CDS CCPs, moreover, is subject to the following terms and conditions:[78]

First, each CDS CCP, in order to rely on the exemption, is required to report to the Commission the following information with respect to its calculation of settlement prices for Cleared CDS within 30 days of the end of each quarter, and to preserve such reports during the life of the enterprise and of any successor enterprise: (a) The total dollar volume of transactions executed during the quarter, broken down by reference entity, security, or index; and (b) the total unit volume and/or notional amount executed during the quarter, broken down by reference entity, security, or index. Reporting of this information will assist the Commission in carrying out its responsibility to supervise and regulate the securities markets.

Second, each CDS CCP, as a condition to relying on the exemption, is required to establish and maintain adequate safeguards and procedures to protect participants' confidential trading information. Such safeguards and procedures include: (a) Limiting access to the confidential trading information of participants to those employees of the CDS CCP who are operating the systems or are responsible for their compliance with this exemption or any other applicable rules; and (b) establishing and maintaining standards controlling employees of the CDS CCP trading for their own accounts. The CDS CCP is required to establish and maintain adequate oversight procedures to ensure that the safeguards and procedures established pursuant to this condition are followed. This condition is designed to prevent any misuse of trading information that may be available to a CDS CCP in connection with the ''forced trade'' mechanism. This should strengthen confidence in CCPs, thus promoting participation.

Third, each CDS CCP, as a condition to relying on the exemption, is required to directly or indirectly make available to the public on terms that are fair and reasonable and not unreasonably discriminatory: (a) All end-of-day settlement prices and any other prices with respect to Cleared CDS that it may establish to calculate mark-to-market margin requirements for its clearing members; and (b) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by the CDS CCP. This condition is appropriate to maintain

[74] As part of the clearing process, eligible trades are submitted to the CDS CCP for novation, which results in the bilateral contract being extinguished and replaced by two new contracts where the CDS CCP is the buyer to the seller and the seller to the buyer. ''Novation'' is a process through with the original obligation between a buyer and seller is discharged through the substitute of the CCP as functionally the seller to buyer and buyer to seller, creating new substitute contracts. *See, e.g.,* Committee on Payment and Settlement Systems, Technical Committee of the International Organization of Securities Commissioners, Recommendations for Central Counterparties (Nov. 2004) at 66.

[75] *See* Letter from Russell D. Sacks, on behalf of ICE Clear Europe, to Elizabeth Murphy, Secretary, Commission, Nov. 29, 2010; Letter from Ann K. Shuman, Managing Director and Deputy General Counsel, CME, to Elizabeth Murphy, Secretary, Commission, Nov. 29, 2010; *See* Letter from Kevin McClear, ICE Trust, to Elizabeth Murphy, Secretary, Commission, Nov. 29, 2010.

[76] Title VII of the Dodd-Frank Act provides that a depository institution or derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act that is required to be registered as a clearing agency is deemed to be registered as a clearing agency solely for the purpose of clearing security-based swaps to the extent that, before July 21, 2010: (A) the depository institution cleared swaps as a multilateral clearing organization, or (B) the derivative clearing organization cleared swaps pursuant to an exemption from registration as a clearing agency. *See* section 763(b) of the Dodd-Frank Act (adding new Section 17A(*l*) to the Exchange Act, 15 U.S.C. 78q–1(1)) (''Deemed Registered Provision''). The Deemed Registered Provision, along with other general provisions of Title VII of the Dodd-Frank Act, becomes effective on July 16, 2011. *See* Effective Date Release, note 2, *supra.*

CME, ICE Clear Europe, and ICE Trust satisfy the requirements of the Deemed Registered Provision and thus will no longer need temporary exemptions from registration as a clearing agency under Section 17A of the Exchange Act. However, because the Deemed Registered Provision does not apply with respect to sections 5 and 6 of the Exchange Act, the CDS CCPs would, absent an exemption, have to either register as national securities exchanges or discontinue use of their forced trading mechanisms.

A fourth CCP, Eurex Clearing AG (''Eurex''), also received from the Commission temporary exemptions from sections 5, 6, and 17A of the Exchange Act in relation to its CDS clearing activities. *See, e.g.,* Exchange Act Release No. 63390 (November 29, 2010). Unlike the CDS CCPs, Eurex will not be deemed registered with the Commission because it is neither a depository institution nor a derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act. Eurex will not be registered with the Commission as a clearing agency for security-based swaps as of July 16, 2011. Thus, the Commission is not granting Eurex an exemption from sections 5 and 6 of the Exchange Act with respect to any activities relating to security-based swaps. In addition, the Commission previously extended a temporary exemption from section 17A (but not sections 5 and 6) in connection with CDS clearing by LIFFE A&M and LCH.Clearnet Ltd., but that exemption has since expired. *See* Securities Exchange Act Release No. 59164 (Dec. 24, 2008), 74 FR 139 (Jan. 2, 2009).

[77] *See, e.g.,* Securities Exchange Act Release No. 63387 (Nov. 29, 2010), 75 FR 75502, 75504 n. 18 (Dec. 3, 2010).

[78] These terms and conditions are the same as the terms and conditions of the existing exemptive relief that is being extended. Therefore, the CDS CCPs should already be complying with these conditions.

transparency by continuing to make this useful pricing data available to the public on terms that are fair and reasonable and not unreasonably discriminatory.

Finally, each CDS CCP, as a condition to relying on the exemption, is required to implement policies and procedures designed to ensure compliance with these terms and conditions, and to conduct periodic internal reviews related to its compliance program.

E. 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 * * * .'' The Commission does not believe that section 29(b) would apply to provisions for which the Commission has provided exemptive relief. To make this clear to all market participants, however, and to eliminate any possible legal uncertainty or market disruption, the Commission is granting temporary exemptive relief from section 29(b).

In particular, the Commission is exercising its authority under section 36 of the Exchange Act to temporarily exempt any security-based 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 on the basis that any person that is a party to the security-based swap contract is alleged to have violated any of the provisions for which the Commission has provided exemptive relief herein, until the compliance date for final rules that we may adopt further defining the terms ''security-based swap'' and ''eligible contract participant.'' This temporary exemption will remain in effect until the time the underlying exemptive relief expires.[79]

The legal uncertainty that would result if, for the period in which these temporary exemptions are effective, contracts entered into after the Effective Date could be voided under section 29(b), would undermine the purposes of these exemptions and lead to unnecessary disruption and wasteful litigation.

As previously discussed, as of the Effective Date, persons effecting transactions in security-based swaps, or engaged in acts, practices, and courses of business involving security-based 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. Persons would retain all available rights as a result of any violation of these general antifraud and anti-manipulation provisions.

III. Guidance Related to Part I of Subtitle A

We also are providing guidance regarding the status, as of the Effective Date, of certain provisions of part I of subtitle A of Title VII (''Part I'') that address security-based swaps. Our recent Effective Date Release[80] separately provided guidance and targeted exemptive relief in connection with the status of those Exchange Act provisions related to security-based swaps that were added or amended by subtitle B of Title VII.

As discussed in the Effective Date Release, while certain Title VII provisions applicable to security-based swaps in general will be effective as of the Effective Date, there are a number of reasons why—as of that date—particular provisions will not be effective or compliance with particular provisions will not be required. For example, if a provision requires a rulemaking, that provision will not go into effect until after the final rulemaking.[81] If a provision expressly or implicitly applies only to ''registered'' persons, then persons will not have to comply with the provision until the related registration processes for such persons have been established by final Commission rules, and such persons have become registered.[82] Other Title VII provisions require or permit 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.[83] Also, certain Title VII provisions authorize or direct the Commission or another agency to take specified action that may impose compliance obligations upon market participants;[84] thus, while these provisions will become effective on the Effective Date, they will not require compliance by market participants until the relevant action has been undertaken.

The table below lists each provision of Part I, and identifies provisions for which compliance will be required on the Effective Date. The table also identifies provisions for which compliance is predicated on some other action (*e.g.,* registration, adoption of final rules, or other action by the Commission or another agency) and thus will not be required as of that date. The table further addresses certain provisions with which compliance will be required on a date other than the Effective Date, as specified by law.

The Commission does not believe it is necessary to grant, and thus is not granting, temporary relief from compliance with those Part I provisions for which compliance will be required on the Effective Date, for the reasons discussed below.

[79] The temporary exemption and the broker-dealer specific exemption addressed above will remain in effect until the compliance date for final rules that we may adopt further defining the terms ''security-based swap'' and ''eligible contract participant.'' The exemption from the exchange registration requirements of sections 5 and 6 will remain in effect until the earliest compliance date set forth in any of the final rules regarding registration of SB SEFs.

[80] *See* note 2, *supra.*

[81] *See* section 754 of the Dodd-Frank Act. In particular, the Dodd-Frank Act provides that if a Part I provision requires a rulemaking, the provision will go into effect the later of ''not less than'' 60 days after publication of the related final rule or July 16.

[82] *See, e.g.,* section 716(b)(2) of the Dodd-Frank Act (providing that the term ''swaps entity'' means any swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant that is registered under the Commodity Exchange Act or the Exchange Act).

[83] *See, e.g.,* section 714 of the Dodd-Frank Act (permitting, pursuant to an exemption or rule, a dually registered futures commission merchant and broker-dealer to hold futures, and options on futures, in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the CFTC and to hold cash and securities in a portfolio margining account carried as a futures account pursuant to a portfolio margining program approved by the Commission).

[84] *See, e.g.,* section 712(a)(8) of the Dodd-Frank Act (requiring the Commission and the CFTC, after consultation with the Board of Governors, to prescribe jointly such regulations regarding mixed swaps as may be necessary to carry out the purposes of Title VII).

TABLE—PART I OF SUBTITLE A OF TITLE VII OF THE DODD-FRANK ACT.

Dodd-Frank Act section	Compliance date		Authorizes/directs/limits commission and/or CFTC action [86]	Relief granted
	Upon effective date (July 16, 2011)	Upon registration, publication of final rules, or other action [85]		
711: Definitions	✓			No [87]
712(a): Review of regulatory authority—consultation			✓	N/A [88]
712(b)(1)–(2): Review of regulatory authority—consultation; limitation.			✓	N/A [89]
712(b)(3): Review of regulatory authority—consultation; prohibitions.	✓			No [90]
712(c): Objection to Commission regulation			✓	N/A [91]
712(d): Joint rulemaking			✓	N/A [92]
712(e): Global rulemaking timeframe			✓	N/A [93]
712(f): Rules and registration before final effective dates			✓	N/A [94]
713(a)-(b): Portfolio margining conforming changes		✓		N/A [95]
713(c): Portfolio margining conforming changes—duty of CFTC			✓	N/A [96]
714: Abusive swaps			✓	N/A [97]
715: Authority to prohibit participation in swaps activities			✓	N/A [98]
716(a)–(j): Prohibition against federal government bailouts of swaps entities.		✓		N/A[99]
716(k)–(l): Prohibition against federal government bailouts of swaps entities; rules and authority.			✓	N/A [100]
716(m): Prohibition against federal government bailouts of swaps entities; ban on proprietary trading.		✓		No [101]
717(a)–(b): New product approval CFTC—SEC process—amendments to the Commodity Exchange Act.			✓	N/A [102]
717(c)–(d), 718: Determining the Status of Novel Derivative Products.	✓			N/A[103]
719: Studies			✓	N/A [104]
720: Memorandum			✓	N/A [105]

[85] These provisions do not require compliance by market participants on the Effective Date unless the relevant Commission action already has been undertaken.

[86] A number of Title VII provisions expressly (or implicitly) apply only to ''registered'' persons. As discussed above, until the related registration processes for such persons have been established by final Commission or other rules, and such persons have become registered pursuant to such rules, they will not be required to comply with these Title VII provisions. Similarly, 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 July16, 2011, whichever is later. *See* section 754 of the Dodd-Frank Act, 7 U.S.C. 1a note. Provisions for which compliance is not required as of the Effective Date for some other reason, such as another effective date specified by law, are also included in this column and noted below.

[87] Section 711 of the Dodd-Frank Act provides that certain definitions in subtitle A of Title VII have the meaning given in section 1a of the Commodity Exchange Act, 7 U.S.C. 1a.

[88] Section 712(a) of the Dodd-Frank Act requires the Commission and the CFTC to consult and coordinate with each other before commencing rulemaking or issuing orders in certain Title VII areas and also specifies certain requirements and parameters regarding such activity by the Commission and the CFTC.

[89] Sections 712(b)(1) and (2) of the Dodd-Frank Act relate to the authority of the Commission and the CFTC under Title VII.

[90] Section 712(b)(3) of the Dodd-Frank Act provides that, unless otherwise authorized by Title VII and except for enforcement of, and examination for compliance with, its rules on capital adequacy, no futures association registered under section 17 of the Commodity Exchange Act, 7 U.S.C. 21, may regulate security-based swaps and no national securities associations registered under section 15A of the Exchange Act, 15 U.S.C. 78o–3, may regulate swaps. This provision will require compliance as of the Effective Date.

[91] Section 712(c) of the Dodd-Frank Act outlines a process by which the Commission and the CFTC may request by filing a petition in court, under certain circumstances, that a rule published by the other be set aside.

[92] Section 712(d) of the Dodd-Frank Act requires certain joint rulemaking by the Commission and the CFTC and prescribes certain requirements for such joint rulemaking, as well as for interpretations and guidance by the Commission and the CFTC. It also requires the CFTC to share information with the Commission about security-based swap agreements that are not cleared.

[93] Section 712(e) of the Dodd-Frank Act requires the Commission and the CFTC, unless otherwise provided in Title VII or an amendment thereto, to promulgate rules required under Title VII not later than the Effective Date.

[94] Section 712(f) of the Dodd-Frank Act details actions the Commission and the CFTC are permitted to take to prepare for the effective dates of the provisions of the Dodd-Frank Act.

[95] Sections 713(a) and (b) of the Dodd-Frank Act provide that, pursuant to an exemption or rule, a dually registered futures commission merchant and broker-dealer may hold futures, and options on futures, in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the CFTC and may hold cash and securities in a portfolio margining account carried as a futures account pursuant to a portfolio margining program approved by the Commission. Persons cannot comply with this provision in the absence of an appropriate exemption or rule.

[96] Section 713(c) of the Dodd-Frank Act amends the Commodity Exchange Act to require to CFTC to exercise its authority to ensure that securities held in a portfolio margining account carried as a futures account are customer property and the owners of those accounts are customers for the purposes of the Bankruptcy Code, 11 U.S.C. 1 *et seq.*

[97] Section 714 of the Dodd-Frank Act provides that the Commission, the CFTC, or both may collect information as may be necessary concerning the markets for swaps and security-based swaps and issue a report regarding abusive swaps and security-based swaps that the Commission or the CFTC determine are detrimental to the stability of a financial market or participants in a financial market.

[98] Section 715 of the Dodd-Frank Act provides that, if the Commission or the CFTC determine that a foreign country's swap or security-based swap regulation undermines the stability of the United States financial system, either the Commission or the CFTC, in consultation with the Secretary of the Treasury, may prohibit an entity domiciled in the foreign country from participating in the United States in swap or security-based swap activities.

[99] Section 716(a) of the Dodd-Frank Act prohibits any ''swaps entity'' from receiving Federal assistance with respect to any swap, security-based swap, or other activity of the swaps entity. Section 716(h) of the Dodd-Frank Act provides that the prohibition in section 716(a) of the Dodd-Frank Act ''shall be effective 2 years following the date on which this Act is effective.'' In addition, the term ''swaps entity'' is defined in section 716(b)(2) of the Dodd-Frank Act to mean a swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant that is registered under the Commodity Exchange Act or the Exchange Act, meaning that the prohibition in section 716(a) of the Dodd-Frank is not applicable unless a registration regime exists for such persons under either the Commodity Exchange Act or Exchange Act.

Many of the other provisions of section 716 of the Dodd-Frank Act relate to the prohibition in section 716(a) of the Dodd-Frank Act and thus will not require compliance until such prohibition is in effect. *See, e.g.,* section 716(e) of the Dodd-Frank Act (limiting the scope of the prohibition in section 716(a) of the Dodd-Frank Act). Other provisions of section 716 of the Dodd-Frank Act relate to the applicability of the term ''swaps entity'' and thus will not require compliance until persons can become ''swaps entities,'' which requires registration regimes to be in place. *See, e.g.,* sections 716(g) and (*l*) of the Dodd-Frank Act (limiting the applicability of the term ''swaps entity'' and detailing certain liquidation and other requirements for certain swaps entities, respectively).

[100] Section 716(k) of the Dodd-Frank Act states that, ''[i]n prescribing rules, the prudential regulator for a swaps entity shall consider'' certain factors. Section 716(l) of the Dodd-Frank Act provides the Financial Stability Oversight Council authority to make certain determinations regarding swaps entities.

[101] Section 716(m) of the Dodd-Frank Act requires insured depository institutions to comply with the prohibition on proprietary trading in derivatives in section 619 of the Dodd-Frank Act, which adds new section 13 to the Bank Holding Company Act of 1956, 12 U.S.C. 1841 *et seq.* (''BHC Act''). Section 13 of the BHC Act, 12 U.S.C. 1851, pursuant to section 13(c)(1) thereof, 12 U.S.C. 1851(c)(1), takes effect on the earlier of 12 months after final rules are issued under section 13(b) of the BHC Act, 12 U.S.C. 1851(b), or 2 years after the date of enactment of the Dodd-Frank Act. As a general matter, a banking entity must bring its activities and investments into compliance with section 13 of the BHC Act not later than 2 years after that section becomes effective. Section 716(m) of the Dodd-Frank Act thus does not impose any compliance obligations until insured depository institutions are required to comply with section 13 of the BHC Act.

[102] Section 717(a) of the Dodd-Frank Act amends section 2(a)(1)(C) of the Commodity Exchange Act, 7 U.S.C. 2a(1)(C), to provide that the CFTC shall have jurisdiction over certain accounts, agreements, and transactions that the Commission has exempted under section 36(a)(1) of the Exchange Act, 15 U.S.C. 78mm(a)(1), with the condition that the CFTC exercise concurrent jurisdiction over such accounts, agreements, and transactions. Section 717(b) of the Dodd-Frank Act adds new section 3B of the Exchange Act, 15 U.S.C. 78c–2, which provides that an agreement, contract, or transaction (or class thereof) that is exempted by the CFTC pursuant to section 4(c)(1) of the Commodity Exchange Act, 7 U.S.C. 6(c)(1), with the condition that the Commission exercise concurrent jurisdiction over it shall be deemed a security for purposes of the securities laws and includes certain details regarding the applicability of the federal securities laws to such deemed securities. These provisions relate to the jurisdiction and authority of the Commission and the CFTC and do not themselves impose compliance obligations upon market participants. Action by the Commission or the CFTC to which these provisions are applicable however, could result in compliance obligations for market participants. For example, an agreement, contract, or transaction that is deemed a security as a result of section 717(b) of the Dodd-Frank Act would, as a security, be subject to the requirements of the federal securities laws.

[103] Section 718 of the Dodd-Frank Act creates a process through which a person filing a proposal to list or trade a novel derivative product that may have elements of both securities and contracts of sale of a commodity for future delivery (or options on such contracts or options on commodities) may concurrently provide notice and a copy of such filing to the Commission and the CFTC and details the specific requirements of the process and obligations of the Commission and the CFTC pursuant to the process. Market participants are not obligated to make submissions pursuant to this provision. Sections 717(c) and (d) of the Dodd-Frank Act make related amendments to section 19(b) of the Exchange Act, 15 U.S.C. 78s(b), and section 5c(c)(1) of the Commodity Exchange Act, 7 U.S.C. 7a–2(c)(1), respectively.

[104] Section 719 of the Dodd-Frank Act requires the Commission and the CFTC to undertake a number of studies.

[105] Section 720 of the Dodd-Frank Act includes two provisions requiring the CTFC and the Federal Energy Regulatory Commission to negotiate a memorandum of understanding.

IV. 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, including:

1. Does the approach set forth by these exemptions—including the approach of continuing to apply certain regulatory requirements that already are applicable to instruments that will be security-based swaps following the Effective Date, but not adding new regulatory requirements in connection with those instruments—appropriately serve the goals of providing for the effective implementation of the Dodd-Frank Act without causing unwarranted market disruption during the implementation process? Would alternative approaches be more effective?

2. Are there other provisions of the Exchange Act as amended by the Dodd-Frank Act for which temporary exemptive relief should be granted? Alternatively, are there particular provisions, for which relief has been granted here, that do not warrant an exemption? Please provide section references and provide a detailed explanation of why granting such an exemption, or terminating an existing exemption, would be necessary or appropriate in the public interest, and consistent with the protection of investors.

3. What should be the appropriate duration of the temporary exemptions granted in this Order?

4. Should any additional conditions be placed on any of these exemptions, or should any conditions that have been placed on any of these exemptions be removed or modified? If so, which exemptions? Please explain and provide specific examples.

V. Conclusion

For the reasons discussed above, the Commission finds that the temporary exemptions provided in this Order are necessary or appropriate in the public interest, and are consistent with the protection of investors, to avoid unnecessary disruption and uncertainty among participants in activities involving security-based swaps, and to provide for the orderly implementation of the requirements of the Dodd-Frank Act. Accordingly,

It Is Hereby Ordered, pursuant to section 36 of the Exchange Act, that, until the compliance date for final rules that we may adopt further defining the terms ''security-based swap'' and ''eligible contract participant,'' the following exemptions from Exchange Act requirements will apply:

(a) Temporary exemption in connection with security-based swap activity:

(1) Persons eligible. The exemption in paragraph (a)(2) of this exemption is available to 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), other than:

(i) A broker or dealer registered under section 15(b) of the Exchange Act (other than paragraph (11) thereof);[106] or

(ii) A self-regulatory organization, as defined in section 3(a)(26) of the Exchange Act; provided, however, that this temporary exemption shall be available to a registered securities association solely with respect to its obligations under section 19(g)(1)(B) of the Exchange Act to enforce compliance with provisions of its rules (and

[106] Registered broker-dealers are addressed in paragraph (b) of this exemption.

provisions of the rules of the Municipal Securities Rulemaking Board) that do not apply to positions or activities involving security-based swaps as of July 15, 2011.

(2) General scope of exemption. Subject to the exclusions in paragraph (a)(3) of this exemption, such person shall be exempt from the provisions of the Exchange Act, and the rules and regulations thereunder, solely in connection with the person's activities involving security-based swaps.

(3) Exclusions from exemption. The exemption in paragraph (a)(2) of this exemption does not extend to the following provisions under the Exchange Act, and the applicable rules or regulations thereunder:

(i) Antifraud and anti-manipulation provisions. The antifraud and anti-manipulation provisions of sections 9(a)(2)–(5), 10(b), 15(c)(1), 20(d) and 21A(a)(1) of the Exchange Act, as well as underlying rules prohibiting fraud, manipulation or insider trading (but not prophylactic reporting or recordkeeping requirements), and any provision of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential violations of such provisions.

(ii) Provisions added or amended by subtitle B of Title VII of the Dodd-Frank Act. All Exchange Act provisions related to security-based swaps added or amended by subtitle B of Title VII of the Dodd-Frank Act, including the amended definition of ''security'' in section 3(a)(10) of the Exchange Act.

(iii) Provisions applicable to certain securities brokers. The broker registration requirements of section 15(a)(1) of the Exchange Act, and the other requirements of the Exchange Act and the rules and regulations thereunder that apply to a broker that is not registered with the Commission; provided, however, that this exclusion shall apply only to broker activities by persons that are members of a clearing agency that functions as a central counterparty for security-based swaps and that hold customer funds or securities in connection with security-based swaps. Otherwise, paragraph (a)(2) of this exemption will be available in connection with broker activities involving security-based swaps by persons other than registered broker-dealers or self-regulatory organizations. For these purposes, the term ''central counterparty'' means a clearing agency that interposes itself between the counterparties to security-based swap transactions, acting functionally as the buyer to every seller and the seller to every buyer.

(iv) Provisions applicable to certain securities dealers. The dealer registration requirements of section 15(a)(1) of the Exchange Act, and the other requirements of the Exchange Act and the rules and regulations thereunder that apply to a dealer that is not registered with the Commission; provided, however, that this exclusion shall not apply, and paragraph (a)(2) of this exemption will be available, in connection with dealing activities involving security-based swaps with counterparties 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).

(v) Additional provisions. The following additional provisions under the Exchange Act, or the rules and regulations thereunder:

(A) Paragraphs (42), (43), (44), and (45) of Section 3(a);

(B) Section 5;

(C) Section 6;[107]

(D) Section 12;

(E) Section 13;

(F) Section 14;

(G) Paragraphs (4) and (6) of Section 15(b);

(H) Section 15(d);

(I) Section 15C;

(J) Section 16; and

(K) Section 17A.

(b) Temporary exemption specific to security-based swap activities by registered brokers and dealers.

(1) In general. Subject to paragraph (b)(2) of this exemption, a broker or dealer registered under section 15(b) of the Exchange Act (other than paragraph (11) thereof) shall be exempt from the provisions of the Exchange Act and the rules and regulations thereunder specified in paragraph (a)(2) (subject to the exclusions in paragraph (a)(3) of this exemption) solely with respect to security-based swaps.

(2) Limited exemption in connection with certain provisions and rules. A registered broker or dealer shall be exempt from the following provisions and rules in connection with security-based swaps solely to the extent that those provisions or rules do not apply to the broker's or dealer's security-based swap positions or activities as of July 15, 2011; provided, however, that the exemption from rule 15c3–3 under the Exchange Act shall not be available for activities and positions of the registered broker or dealer related to cleared security-based swaps, to the extent that the registered broker or dealer is a member of a clearing agency that functions as a central counterparty for security-based swaps, and holds customer funds or securities in connection with cleared security-based swaps:[108]

(i) Section 7(c);

(ii) Section 15(c)(3);

(iii) Section 17(a);

(iv) Section 17(b);

(v) Regulation T, 12 CFR 220.1 *et seq.;*

(vi) Rule 240.15c3–1;

(vii) Rule 240.15c3–3;

(viii) Rule 240.17a–3;

(ix) Rule 240.17a–4;

(x) Rule 240.17a–5;

(xi) Rule 240.17a–8; and

(xii) Rule 240.17a–13.

It Is Hereby Further Ordered, pursuant to section 36 of the Exchange Act, that, until the earliest compliance date set forth in any of the final rules regarding registration of security-based swap execution facilities, the following exceptions from Exchange Act requirements will apply:

(a) Temporary exemption from sections 5 and 6 of the Exchange Act.

(1) Any person other than a clearing agency acting as a central counterparty in security-based swaps shall be exempt from the requirements to register as a national securities exchange under sections 5 and 6 of the Exchange Act and the rules and regulations thereunder solely in connection with the person's activities involving security-based swaps.

(2) A broker or dealer shall be exempt from section 5 of the Exchange Act solely in connection with the broker's or dealer's activities involving security-based swaps that it effects or reports on an exchange that is exempted from registration pursuant to paragraph (a)(1) of this exemption.

(3) Each CDS CCP shall be exempt from the requirements of sections 5 and 6 of the Exchange Act and the rules and regulations thereunder solely in connection with its calculation of mark-to-market prices for open positions in Cleared CDS, subject to the following conditions:

(i) Each CDS CCP shall report the following information with respect to the calculation of mark-to-market prices for Cleared CDS to the Commission within 30 days of the end of each quarter, and preserve such reports during the life of the enterprise and of any successor enterprise:

(A) The total dollar volume of transactions executed during the

[107] Exchange Act sections 5 and 6 are addressed in a separate exemption in this Order.

[108] Solely for purposes of this temporary exemption, in addition to the general requirements under the referenced Exchange Act sections, registered broker-dealers shall only be subject to the enumerated rules under the referenced Exchange Act sections in connection with security-based swaps.

quarter, broken down by reference entity, security, or index; and

(B) The total unit volume and/or notional amount executed during the quarter, broken down by reference entity, security, or index;

(ii) The CDS CCP shall establish and maintain adequate safeguards and procedures to protect members' confidential trading information. Such safeguards and procedures shall include:

(A) Limiting access to the confidential trading information of members to those employees of the CDS CCP who are operating the system or responsible for its compliance with this exemption or any other applicable rules; and

(B) Establishing and maintaining standards controlling employees of the CDS CCP trading for their own accounts. The CDS CCP must establish and maintain adequate oversight procedures to ensure that the safeguards and procedures established pursuant to this condition are followed; and

(iii) Each CDS CCP shall directly or indirectly make available to the public on terms that are fair and reasonable and not unreasonably discriminatory:

(A) All end-of-day settlement prices and any other prices with respect to Cleared CDS that it may establish to calculate mark-to-market margin requirements for its clearing members; and

(B) Any other pricing or valuation information with respect to Cleared CDS as is published or distributed by the CDS CCP.

(4) Any member of an CDS CCP shall be exempt from the requirements of section 5 of the Exchange Act solely to the extent such member uses any facility of the CDS CCP to effect any transaction in Cleared CDS, or to report any such transaction, in connection with the CDS CCP's clearance and risk management process for Cleared CDS.

(b) Definitions.

(1) For purposes of this exemption, the term ''central counterparty'' means a clearing agency that interposes itself between the counterparties to security-based swap transactions, acting functionally as the buyer to every seller and the seller to every buyer.

(2) For purposes of this exemption, the term ''CDS CCP'' shall mean ICE Trust U.S. LLC, Chicago Mercantile Exchange Inc., and ICE Clear Europe, Limited.

(3) For purposes of this exemption, the term ''Cleared CDS'' shall mean a credit default swap that is a security-based swap that is submitted (or offered, purchased, or sold on terms providing for submission) to a CDS CCP, that is offered only to, purchased only by, and sold only to 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), and in which:

(i) The reference entity, the issuer of the reference security, or the reference security is one of the following:

(A) An entity reporting under the Exchange Act, providing Securities Act rule 144A(d)(4) information, or about which financial information is otherwise publicly available;

(B) A foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States;

(C) A foreign sovereign debt security;

(D) An asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or

(E) An asset-backed security issued or guaranteed by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association; or

(ii) The reference index is an index in which 80% or more of the index's weighting is comprised of the entities or securities described in subparagraph (i).

It Is Hereby Further Ordered, pursuant to section 36 of the Exchange Act, 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 Exchange Act because any person that is a party to the contract violated a provision of the Exchange Act for which the Commission has provided exemptive relief herein, until such time as the underlying exemptive relief expires.

By the Commission.

Dated: July 1, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–17040 Filed 7–6–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64779; File No. SR–BX–2011–041]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposal To Extend a Pilot Program That Permits BOX to Have No Minimum Size Requirement for Orders Entered Into the Price Improvement Period (PIP) Process Until July 18, 2012

June 30, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2011, NASDAQ OMX BX, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend proposes to amend [sic] the Supplementary Material to Chapter V, Section 18 (The Price Improvement Period ''PIP'') of the Rules of the Boston Options Exchange Group, LLC (''BOX'') to extend a pilot program that permits BOX to have no minimum size requirement for orders entered into the PIP process (''PIP Pilot Program''). The text of the proposed rule change is available at the Exchange's principal office, at *http://www.nasdaqomx.com,* at the Commission's Public Reference Room, and at the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the PIP Pilot Program under the BOX Rules for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).