

## Securities and Exchange Commission

## § 240.3a68-2

(2) The securities that satisfy paragraph (a)(1)(iv) of this section comprise at least 80 percent of the index's weighting.

(c) For purposes of this section:

(1) An issuer of securities included in the index is affiliated with another issuer of securities included in the index (for purposes of paragraph (c)(4) of this section) or another entity (for purposes of paragraph (c)(5) of this section) if it controls, is controlled by, or is under common control with, that other issuer or other entity, as applicable; provided that each issuer of securities included in the index that is an issuing entity of an asset-backed security as defined in section 3(a)(77) of the Act (15 U.S.C. 78c(a)(77)) will not be considered affiliated with any other issuer of securities included in the index or any other entity that is an issuing entity of an asset-backed security.

(2) Control for purposes of this section means ownership of more than 50 percent of the equity of an issuer of securities included in the index (for purposes of paragraph (c)(4) of this section) or another entity (for purposes of paragraph (c)(5) of this section), or the ability to direct the voting of more than 50 percent of the voting equity an issuer of securities included in the index (for purposes of paragraph (c)(4) of this section) or another entity (for purposes of paragraph (c)(5) of this section).

(3) In identifying an issuer of securities included in the index for purposes of this section, the term *issuer* includes:

(i) An issuer of securities; and

(ii) An issuer of securities that is an issuing entity of an asset-backed security as defined in section 3(a)(77) of the Act (15 U.S.C. 78c(a)(77)).

(4) For purposes of calculating the thresholds in paragraphs (a)(1)(i) through (a)(1)(iii) of this section, the term *issuer of the security included in the index* includes a single issuer of securities included in the index or a group of affiliated issuers of securities included in the index as determined in accordance with paragraph (c)(1) of this section (with each issuer of securities included in the index that is an issuing entity of an asset-backed security as

defined in section 3(a)(77) of the Act (15 U.S.C. 78c(a)(77)) being considered a separate issuer of securities included in the index).

(5) For purposes of determining whether one of the criterion in either paragraphs (a)(1)(iv)(A) through (a)(1)(iv)(D) of this section or paragraphs (a)(1)(iv)(H)(1) and (a)(1)(iv)(H)(2) of this section is met, the term *issuer of the security included in the index* includes a single issuer of securities included in the index or a group affiliated entities as determined in accordance with paragraph (c)(1) of this section (with each issuing entity of an asset-backed security as defined in section 3(a)(77) of the Act (15 U.S.C. 78c(a)(77)) being considered a separate entity).

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### § 240.3a68-2 Requests for interpretation of swaps, security-based swaps, and mixed swaps.

(a) *In general.* Any person may submit a request to the Commission and the Commodity Futures Trading Commission to provide a joint interpretation of whether a particular agreement, contract, or transaction (or class thereof) is:

(1) A swap, as that term is defined in section 3(a)(69) of the Act (15 U.S.C. 78c(a)(69)) and the rules and regulations promulgated thereunder;

(2) A security-based swap, as that term is defined in section 3(a)(68) of the Act (15 U.S.C. 78c(a)(68)) and the rules and regulations promulgated thereunder; or

(3) A mixed swap, as that term is defined in section 3(a)(68)(D) of the Act and the rules and regulations promulgated thereunder.

(b) *Request process.* In making a request pursuant to paragraph (a) of this section, the requesting person must provide the Commission and the Commodity Futures Trading Commission with the following:

(1) All material information regarding the terms of the agreement, contract, or transaction (or class thereof);

(2) A statement of the economic characteristics and purpose of the agreement, contract, or transaction (or class thereof);

(3) The requesting person's determination as to whether the agreement, contract, or transaction (or class thereof) should be characterized as a swap, a security-based swap, or both (i.e., a mixed swap), including the basis for such determination; and

(4) Such other information as may be requested by the Commission or the Commodity Futures Trading Commission.

(c) *Request withdrawal.* A person may withdraw a request made pursuant to paragraph (a) of this section at any time prior to the issuance of a joint interpretation or joint proposed rule by the Commission and the Commodity Futures Trading Commission in response to the request; provided, however, that notwithstanding such withdrawal, the Commission and the Commodity Futures Trading Commission may provide a joint interpretation of whether the agreement, contract, or transaction (or class thereof) is a swap, a security-based swap, or both (i.e., a mixed swap).

(d) *Request by the Commission or the Commodity Futures Trading Commission.* In the absence of a request for a joint interpretation under paragraph (a) of this section:

(1) If the Commission or the Commodity Futures Trading Commission receives a proposal to list, trade, or clear an agreement, contract, or transaction (or class thereof) that raises questions as to the appropriate characterization of such agreement, contract, or transaction (or class thereof) as a swap, a security-based swap, or both (i.e., a mixed swap), the Commission or the Commodity Futures Trading Commission, as applicable, promptly shall notify the other of the agreement, contract, or transaction (or class thereof); and

(2) The Commission or the Commodity Futures Trading Commission, or their Chairmen jointly, may submit a request for a joint interpretation as described in paragraph (a) of this section; such submission shall be made pursuant to paragraph (b) of this section, and may be withdrawn pursuant to paragraph (c) of this section.

(e) *Timeframe for joint interpretation.*

(1) If the Commission and the Commodity Futures Trading Commission

determine to issue a joint interpretation as described in paragraph (a) of this section, such joint interpretation shall be issued within 120 days after receipt of a complete submission requesting a joint interpretation under paragraph (a) or (d) of this section.

(2) The Commission and the Commodity Futures Trading Commission shall consult with the Board of Governors of the Federal Reserve System prior to issuing any joint interpretation as described in paragraph (a) of this section.

(3) If the Commission and the Commodity Futures Trading Commission seek public comment with respect to a joint interpretation regarding an agreement, contract, or transaction (or class thereof), the 120-day period described in paragraph (e)(1) of this section shall be stayed during the pendency of the comment period, but shall recommence with the business day after the public comment period ends.

(4) Nothing in this section shall require the Commission and the Commodity Futures Trading Commission to issue any joint interpretation.

(5) If the Commission and the Commodity Futures Trading Commission do not issue a joint interpretation within the time period described in paragraph (e)(1) or (e)(3) of this section, each of the Commission and the Commodity Futures Trading Commission shall publicly provide the reasons for not issuing such a joint interpretation within the applicable timeframes.

(f) *Joint proposed rule.* (1) Rather than issue a joint interpretation pursuant to paragraph (a) of this section, the Commission and the Commodity Futures Trading Commission may issue a joint proposed rule, in consultation with the Board of Governors of the Federal Reserve System, to further define one or more of the terms swap, security-based swap, or mixed swap.

(2) A joint proposed rule described in paragraph (f)(1) of this section shall be issued within the timeframe for issuing a joint interpretation set forth in paragraph (e) of this section.

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