Securities and Exchange Commission

§ 240.3a55–4 Exclusion from definition of narrow-based security index for indexes composed of debt securities.

(a) An index is not a narrow-based security index if:

(i) Each of the securities of an issuer included in the index is a security, as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) and section 3(a)(10) of the Act (15 U.S.C. 78c(a)(10)) and the respective rules promulgated thereunder;

(ii) None of the securities of an issuer included in the index is an equity security, as defined in section 3(a)(11) of the Act (15 U.S.C. 78c(a)(11)) and the rules promulgated thereunder;

(iii) The index is comprised of more than nine securities that are issued by more than nine non-affiliated issuers;

(iv) The securities of any issuer included in the index do not comprise more than 30 percent of the index’s weighting;

(v) The securities of any five non-affiliated issuers included in the index do not comprise more than 60 percent of the index’s weighting;

(vi) Except as provided in paragraph (a)(1)(vii) of this section, for each security of an issuer included in the index one of the following criteria is satisfied:

(A) The issuer of the security is required to file reports pursuant to section 13 or section 15(d) of the Act (15 U.S.C. 78m and 78o(d));

(B) The issuer of the security has a worldwide market value of its outstanding common equity held by non-affiliates of $71 million or more;

(C) The issuer of the security has outstanding securities that are notes, bonds, debentures, or evidences of indebtedness having a total remaining principal amount of at least $1 billion;

(D) The security is an exempted security as defined in section 3(a)(12) of the Act (15 U.S.C. 78c(a)(12)) and the rules promulgated thereunder;

(E) The issuer of the security is a government of a foreign country or a political subdivision of a foreign country;

(vii) Except as provided in paragraph (a)(1)(viii) of this section, for each security of an issuer included in the index one of the following criteria is satisfied:

(A) The security has a total remaining principal amount of at least $250,000,000; or

(B) The security is a municipal security, as defined in section 3(a)(29) of the Act (15 U.S.C. 78c(a)(29)) and the rules promulgated thereunder that has a total remaining principal amount of at least $200,000,000 and the issuer of such municipal security has outstanding securities that are notes, bonds, debentures, or evidences of indebtedness having a total remaining principal amount of at least $1 billion; and

(viii) Paragraphs (a)(1)(vi) and (a)(1)(vii) of this section will not apply to securities of an issuer included in the index if:

(A) All securities of such issuer included in the index represent less than 5 percent of the index’s weighting; or

(B) Securities comprising at least 90 percent of the index’s weighting satisfy the provisions of paragraphs (a)(1)(vi) and (a)(1)(vii) of this section; or

(2) The index includes exempted securities, other than municipal securities, as defined in section 3(a)(28) of the Act and the rules promulgated thereunder, that are:
(A) Notes, bonds, debentures, or evidences of indebtedness; and
(B) Not equity securities, as defined in section 3(a)(11) of the Act (15 U.S.C. 78c(a)(11)) and the rules promulgated thereunder; and
(ii) Without taking into account any portion of the index composed of such exempted securities, other than municipal securities, the remaining portion of the index would not be a narrow-based security index: meeting all the conditions under paragraph (a)(1) of this section.

(b) For purposes of this section:
(1) An issuer is affiliated with another issuer if it controls, is controlled by, or is under common control with, that issuer.
(2) For purposes of this section, control means ownership of 20 percent or more of an issuer's equity, or the ability to direct the voting of 20 percent or more of the issuer's voting equity.
(3) The term issuer includes a single issuer or group of affiliated issuers.

[71 FR 39542, July 13, 2006]

SECURITY-BASED SWAP DEALER AND PARTICIPANT DEFINITIONS

SOURCE: 77 FR 30751, May 23, 2012, unless otherwise noted.

§ 240.3a67–1 Definition of “major security-based swap participant.”

(a) General. Major security-based swap participant means any person:
(1) That is not a security-based swap dealer; and
(2)(i) That maintains a substantial position in security-based swaps for any of the major security-based swap categories, excluding both positions held for hedging or mitigating commercial risk, and positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan;
(ii) Whose outstanding security-based swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or
(iii) That is a financial entity that:
(A) Is highly leveraged relative to the amount of capital such entity holds and that is not subject to capital requirements established by an appropriate Federal banking agency (as defined in 15 U.S.C. 78c(a)(72)); and
(B) Maintains a substantial position in outstanding security-based swaps in any major security-based swap category.

(b) Scope of designation. A person that is a major security-based swap participant in general shall be deemed to be a major security-based swap participant with respect to each security-based swap it enters into, regardless of the category of the security-based swap or the person's activities in connection with the security-based swap, unless the Commission limits the person's designation as a major security-based swap participant to specified categories of security-based swaps.

§ 240.3a67–2 Categories of security-based swaps.

For purposes of section 3(a)(67) of the Act, 15 U.S.C. 78c(a)(67), and the rules thereunder, the terms major security-based swap category, category of security-based swaps and any similar terms mean either of the following categories of security-based swaps:

(a) Debt security-based swaps. Any security-based swap that is based, in whole or in part, on one or more instruments of indebtedness (including loans), or on a credit event relating to one or more issuers or securities, including but not limited to any security-based swap that is a credit default swap, total return swap on one or more debt instruments, debt swap, debt index swap, or credit spread.

(b) Other security-based swaps. Any security-based swap not described in paragraph (a) of this section.

§ 240.3a67–3 Definition of “substantial position.”

(a) General. For purposes of section 3(a)(67) of the Act, 15 U.S.C. 78c(a)(67), and § 240.3a67–1, the term substantial position means security-based swap positions that equal or exceed either of the