

**§ 240.3b-17**

**17 CFR Ch. II (4-1-14 Edition)**

(B) As an incidental part of its market making activities, crosses or matches orders that are not displayed to any person other than the market maker and its employees.

(c) For purposes of this section the term *order* means any firm indication of a willingness to buy or sell a security, as either principal or agent, including any bid or offer quotation, market order, limit order, or other priced order.

(d) For the purposes of this section, the terms *bid* and *offer* shall have the same meaning as under §242.600 of this chapter.

(e) The Commission may conditionally or unconditionally exempt any organization, association, or group of persons from the definition in paragraph (a) of this section.

[63 FR 70918, Dec. 22, 1998, as amended at 70 FR 37617, June 29, 2005]

**§ 240.3b-17 [Reserved]**

**§ 240.3b-18 Definitions of terms used in Section 3(a)(5) of the Act.**

For the purposes of section 3(a)(5)(C) of the Act (15 U.S.C. 78c(a)(5)(C)):

(a) The term *affiliate* means any company that controls, is controlled by, or is under common control with another company.

(b) The term *consumer-related receivable* means any obligation incurred by any natural person to pay money arising out of a transaction in which the money, property, insurance, or services (being purchased) are primarily for personal, family, or household purposes.

(c) The term *member* as it relates to the term “syndicate of banks” means a bank that is a participant in a syndicate of banks and together with its affiliates, other than its broker or dealer affiliates, originates no less than 10% of the value of the obligations in a pool of obligations used to back the securities issued through a grantor trust or other separate entity.

(d) The term *obligation* means any note, draft, acceptance, loan, lease, receivable, or other evidence of indebtedness that is not a security issued by a person other than the bank.

(e) The term *originated* means:

(1) Funding an obligation at the time that the obligation is created; or

(2) Initially approving and underwriting the obligation, or initially agreeing to purchase the obligation, provided that:

(i) The obligation conforms to the underwriting standards or is evidenced by the loan documents of the bank or its affiliates, other than its broker or dealer affiliates; and

(ii) The bank or its affiliates, other than its broker or dealer affiliates, fund the obligation in a timely manner, not to exceed six months after the obligation is created.

(f) The term *pool* means more than one obligation or type of obligation grouped together to provide collateral for a securities offering.

(g) The term *predominantly originated* means that no less than 85% of the value of the obligations in any pool were originated by:

(1) The bank or its affiliates, other than its broker or dealer affiliates; or

(2) Banks that are members of a syndicate of banks and affiliates of such banks, other than their broker or dealer affiliates, if the obligations or pool of obligations consist of mortgage obligations or consumer-related receivables.

(3) For this purpose, the bank and its affiliates include any financial institution with which the bank or its affiliates have merged but does not include the purchase of a pool of obligations or the purchase of a line of business.

(h) The term *syndicate of banks* means a group of banks that acts jointly, on a temporary basis, to issue through a grantor trust or other separate entity, securities backed by obligations originated by each of the individual banks or their affiliates, other than their broker or dealer affiliates.

[68 FR 8700, Feb. 24, 2003]

**§ 240.3b-19 Definition of “issuer” in section 3(a)(8) of the Act in relation to asset-backed securities.**

The following applies with respect to asset-backed securities under the Act. Terms used in this section have the same meaning as in Item 1101 of Regulation AB (§229.1101 of this chapter).

(a) The depositor for the asset-backed securities acting solely in its capacity as depositor to the issuing entity is the “issuer” for purposes of the asset-

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backed securities of that issuing entity.

(b) The person acting in the capacity as the depositor specified in paragraph (a) of this section is a different “issuer” from that same person acting as a depositor for another issuing entity or for purposes of that person’s own securities.

[70 FR 1620, Jan. 7, 2005]

### CLEARING OF SECURITY-BASED SWAPS

#### **§ 240.3Ca-1 Stay of clearing requirement and review by the Commission.**

(a) After making a determination pursuant to a clearing agency’s security-based swap submission that a security-based swap, or any group, category, type or class of security-based swaps, is required to be cleared, the Commission, on application of a counterparty to a security-based swap or on the Commission’s own initiative, may stay the clearing requirement until the Commission completes a review of the terms of the security-based swap (or group, category, type, or class of security-based swaps) and the clearing of the security-based swap (or group, category, type, or class of security-based swaps) by the clearing agency that has accepted it for clearing.

(b) A counterparty to a security-based swap applying for a stay of the clearing requirement for a security-based swap (or group, category, type, or class of security-based swaps) shall submit a written statement to the Commission that includes:

(1) A request for a stay of the clearing requirement;

(2) The identity of the counterparties to the security-based swap and a contact at the counterparty requesting the stay;

(3) The identity of the clearing agency clearing the security-based swap;

(4) The terms of the security-based swap subject to the clearing requirement and a description of the clearing arrangement; and

(5) Reasons why such stay should be granted and why the security-based swap should not be subject to a clearing requirement, specifically addressing the same factors a clearing agency

must address in its security-based-swap submission pursuant to § 240.19b-4(o)(3).

(c) A stay of the clearing requirement may be granted with respect to a security-based swap, or the group, category, type, or class of security-based swaps, as determined by the Commission.

(d) The Commission’s review shall include a quantitative and qualitative assessment of the factors specified in § 240.19b-4(o)(3). Any clearing agency that has accepted for clearing a security-based swap, or any group, category, type or class of security-based swaps, that is subject to the stay of the clearing requirement shall provide information requested by the Commission as necessary to assess any of the factors it determines to be appropriate in the course of its review.

(e) Upon completion of its review, the Commission may:

(1) Determine, subject to any terms and conditions that the Commission determines to be appropriate in the public interest, that the security-based swap, or group, category, type, or class of security-based swaps must be cleared; or

(2) Determine that the clearing requirement will not apply to the security-based swap, or group, category, type, or class of security-based swaps, but clearing may continue on a non-mandatory basis.

[77 FR 41647, July 13, 2012]

#### **§ 240.3Ca-2 Submission of security-based swaps for clearing.**

Pursuant to section 3C(a)(1) of the Act (15 U.S.C. 78c-3(a)(1)), it shall be unlawful for any person to engage in a security-based swap unless that person submits such security-based swap for clearing to a clearing agency that is registered under this Act or a clearing agency that is exempt from registration under the Act if the security-based swap is required to be cleared. The phrase *submits such security-based swap for clearing to a clearing agency* in the clearing requirement of Section 3C(a)(1) of the Act shall mean that the security-based swap will be submitted