Franklin, VA, Franklin Muni-John Beverly Rose, Takeoff Minimums and Obstacle DP, Amdt 2
Clintonville, WI, Clintonville Muni, NDB RWY 32, Amdt 7, CANCELLED
Manitowoc, WI, Manitowoc County, ILS OR LOC RWY 17, Amdt 5
Medford, WI, Taylor County, GPS RWY 27, Orig-A, CANCELLED
Medford, WI, Taylor County, NDB RWY 34, Amdt 7
Medford, WI, Taylor County, RNAV (GPS) RWY 27, Orig
Medford, WI, Taylor County, Takeoff Minimums and Obstacle DP, Amdt 2

[FR Doc. E9–324 Filed 1–21–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 230, 240 and 260

[Release Nos. 33–8999; 34–59246; 39–2549; File No. S7–02–09]

RIN 3235–AK26

Temporary Exemptions for Eligible Credit Default Swaps To Facilitate Operation of Central Counterparties To Clear and Settle Credit Default Swaps

AGENCY: Securities and Exchange Commission.

ACTION: Interim final temporary rules; request for comments.

SUMMARY: We are adopting interim final temporary rules providing exemptions under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939 for certain credit default swaps to facilitate the operation of one or more central counterparties for those credit default swaps. The interim final temporary rules define such credit default swaps as ''eligible credit default swaps'' and exempt them from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provisions, as well as from Exchange Act registration requirements and from the provisions of the Trust Indenture Act, provided certain conditions are met. Our interim final temporary rules also define as a ''qualified purchaser,'' for purposes of the ''covered securities'' provisions of Section 18 of the Securities Act, any ''eligible contract participant,'' as defined in Section 1a(12) of the Commodity Exchange Act (''CEA''), other than a person who is an eligible contract participant under Section 1a(12)(C) of the CEA, to whom a sale of a eligible credit default swap is made in reliance on the interim final temporary Securities Act exemption.

DATES: *Effective Date:* The interim final temporary rules are effective January 22, 2009 until September 25, 2009.

Comment Date: Comments on the interim final temporary rules should be received on or before March 23, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/interim-final-temp.shtml*);
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–02–09 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 S7–02–09. 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/interim-final-temp.shtml*). Comments are also available for public inspection and copying 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 change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Amy M. Starr, Senior Special Counsel, or Kim McManus, Special Counsel, Office of Chief Counsel, Division of Corporation Finance, at (202) 551–3500, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are adopting interim final temporary Rule 239T and a temporary amendment to Rule 146 under the Securities Act of 1933 (''Securities Act'').[1] We are also adopting interim final temporary Rule 12a–10T and Rule 12h–1(h)T under the Securities Exchange Act of 1934 (''Exchange Act'')[2] and interim final temporary Rule 4d–11T under the Trust Indenture Act of 1939 (''Trust Indenture Act'').[3]

I. Background

In response to the recent turmoil in the financial markets, we have taken multiple actions to protect investors and ensure the integrity of the nation's securities markets.[4] Today we are taking further action designed to address concerns related to the market in credit default swaps (''CDS''). The over-the-counter (''OTC'') market for CDS has been a source of concerns to us and other financial regulators. These concerns include the systemic risk posed by CDS, highlighted by the possible inability of parties to meet their obligations as counterparties and the potential resulting adverse effects on other markets and the financial system.[5] Recent credit market events have demonstrated the seriousness of these risks in a CDS market operating without meaningful regulation, transparency,[6] or

[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 78a *et seq.*

[3] 15 U.S.C. 77aaa *et seq.*

[4] A nonexclusive list of the Commission's actions to stabilize financial markets during this credit crisis include: adopting a package of measures to strengthen investor protections against naked short selling, including rules requiring a hard T+3 close-out, eliminating the options market maker exception of Regulation SHO, and expressly targeting fraud in short selling transactions (*See* Securities Exchange Act Release No. 58572 (September 17, 2008), 73 FR 54875 (September 23, 2008)); issuing an emergency order to enhance protections against naked short selling in the securities of primary dealers, Federal National Mortgage Association (''Fannie Mae''), and Federal Home Loan Mortgage Corporation (''Freddie Mac'') (*See* Securities Exchange Act Release No. 58166 (July 15, 2008), 73 FR 42379 (July 21, 2008)); taking temporary emergency action to ban short selling in financial securities (*See* Securities Exchange Act Release No. 58592 (September 18, 2008), 73 FR 55169 (September 24, 2008)); approving emergency rulemaking to ensure disclosure of short positions by hedge funds and other institutional money managers (*See* Securities Exchange Act Release No. 58591A (September 21, 2008), 73 FR 55557 (September 25, 2008)); proposing rules to strengthen the regulation of credit rating agencies and making the limits and purposes of credit ratings clearer to investors (*See* Securities Exchange Act Release No. 57967 (June 16, 2008), 73 FR 36212 (June 25, 2008); entering into a Memorandum of Understanding with the Board of Governors of the Federal Reserve System (''FRB'') to make sure key federal financial regulators share information and coordinate regulatory activities in important areas of common interest (*See* Memorandum of Understanding Between the U.S. Securities and Exchange Commission and the Board of Governors of the Federal Reserve System Regarding Coordination and Information Sharing in Areas of Common Regulatory and Supervisory Interest (July 7, 2008), *http://www.sec.gov/news/press/2008/2008-134_mou.pdf*).

[5] In addition to the potential systemic risks that CDS pose to financial stability, we are concerned about other potential risks in this market, including operational risks, risks relating to manipulation and fraud, and regulatory arbitrage risks.

[6] *See* Policy Objectives for the OTC Derivatives Market, The President's Working Group on

Continued

central counterparties (''CCPs'').[7] These events have emphasized the need for CCPs as mechanisms to help control such risks.[8] A CCP for CDS could be an important step in reducing the counterparty risks inherent in the CDS market, and thereby help mitigate potential systemic impacts. In November 2008, the President's Working Group on Financial Markets stated that the implementation of a CCP for CDS was a top priority [9] and, in furtherance of this recommendation, the Commission, the FRB and the Commodity Futures Trading Commission (''CFTC'') signed a Memorandum of Understanding [10] that establishes a framework for consultation and information sharing on issues related to CCPs for CDS. Given the continued uncertainty in this market, taking action to help foster the prompt development of CCPs, including granting conditional exemptions from certain provisions of the federal securities laws, is in the public interest. The interim final temporary rules we are adopting are intended to facilitate the ability of one or more CCPs for CDS to operate by providing exemptions from certain regulatory provisions that might otherwise prevent them from engaging in such activities.

A CDS is a bilateral contract between two parties, known as counterparties. The value of this financial contract is based on underlying obligations (''reference obligations'') of a single entity (a ''reference entity'') or on a particular security or other debt obligation (''reference security''), or an index of several such entities, securities, or obligations. The obligation of a seller to make payments under a CDS contract is triggered by a default or other credit event as to such entity or entities or such security or securities. Investors may use CDS for a variety of reasons, including to offset or insure against risk in their fixed-income portfolios, to take synthetic positions in bonds or in segments of the debt market as represented by an index, or to capitalize on the volatility in credit spreads during times of economic uncertainty. In recent years, CDS market volumes have rapidly increased.[11] This growth has coincided with a significant rise in the types and number of entities participating in the CDS market.[12]

The operation of a well-regulated CCP can significantly reduce counterparty risks by preventing the failure of a single market participant from having a disproportionate effect on the overall market. A CCP would novate bilateral trades, which would result in the CCP entering into separate contractual arrangements with both counterparties—becoming buyer to one and seller to the other.[13] Today, CDS agreements generally are negotiated and entered into bilaterally, but both parties may agree that one party may novate the agreement and substitute another party to take responsibility for performance, by acting as the counterparty, under the agreement. In a CCP arrangement, both parties entering a CDS would novate their trades to the CCP, and the CCP would stand in as the counterparty to all parties of the CDS it clears. Through this novation process, the counterparty risk of a CDS would be effectively concentrated in the CCP.

In companion actions to these interim final temporary rules, we are temporarily exempting, subject to conditions, a clearing agency acting as a CCP from the requirement to register as a clearing agency under Section 17A of the Exchange Act [14] solely to perform the functions of a clearing agency for certain CDS transactions, and also certain eligible contract participants [15] and others from certain Exchange Act requirements with respect to certain CDS.[16] We also are temporarily exempting any exchange that effects transactions in certain CDS from the requirements under Sections 5 and 6 of the Exchange Act [17] to register as a national securities exchange, and any broker or dealer that effects transactions on an exchange in certain CDS from the requirements of Section 5 of the Exchange Act.

In connection with these actions to facilitate the operation of these CCPs for the CDS market, we believe that it is appropriate and necessary to provide temporary exemptions from certain provisions of the Securities Act, the Exchange Act and the Trust Indenture Act, subject to certain conditions described in the companion exemptive orders and in the exemptions themselves. We believe that these interim final temporary rules, and the exemptive orders we are providing under the Exchange Act, will facilitate the operation of one or more CCPs that will clear and settle CDS transactions while enabling us to provide oversight to the CDS market.

We believe that the operation of one or more CCPs in accordance with our exemptions likely would improve the efficiency and effectiveness of the CDS market, provide for increased transparency of exposures to particular reference entities or reference securities, and increase available information about reference entities or reference securities. The conditions in the companion exemptive orders will enable us to oversee the development of CDS CCPs and exchanges as they evolve, and to take such additional action as we may deem necessary to promote the public interest and the protection of investors. Moreover, the limited duration of the exemptions and the interim final temporary rules provided today will enable one or more CCPs and CDS exchanges to become operational while we gain useful experience with the CDS market and evaluate the public input, including comments, we receive on the temporary rules and exemptions.

II. Discussion of the Interim Final Temporary Rules and Amendments

We are adopting interim final temporary rules and amendments to

Financial Markets (November 14, 2008), *http://www.ustreas.gov/press/releases/reports/policyobjectives.pdf* (''Public reporting of prices, trading volumes and aggregate open interest should be required to increase market transparency for participants and the public.'').

[7] *See* The Role of Credit Derivatives in the U.S. Economy Before the H. Agric. Comm., 110th Cong. (2008) (Statement of Erik Sirri, Director of the Division of Trading and Markets, Commission).

[8] *See id.*

[9] *See* Policy Objectives for the OTC Derivatives Market, The President's Working Group on Financial Markets (November 14, 2008), *http://www.ustreas.gov/press/releases/reports/policyobjectives.pdf. See also* Policy Statement on Financial Market Developments, The President's Working Group on Financial Markets (March 13, 2008), *http://www.treas.gov/press/releases/reports/pwgpolicystatemktturmoil_03122008.pdf*; Progress Update on March Policy Statement on Financial Market Developments, The President's Working Group on Financial Markets (October 2008), *http://www.treas.gov/press/releases/reports/q4progress%20update.pdf*.1

[10] *See* Memorandum of Understanding Between the Board of Governors of the Federal Reserve System, the U.S. Commodity Futures Trading Commission and the U.S. Securities and Exchange Commission Regarding Central Counterparties for Credit Default Swaps (November 14, 2008), *http://www.treas.gov/press/releases/reports/finalmou.pdf* (''MOU'').

[11] *See* Semiannual OTC derivatives statistics at end-December 2007, Bank for International Settlements (''BIS''), available at *http://www.bis.org/statistics/otcder/dt1920a.pdf*.

[12] CDS were initially created to meet the demand of banking institutions looking to hedge and diversify the credit risk attendant with their lending activities. However, financial institutions such as insurance companies, pension funds, securities firms and hedge funds have entered the CDS market.

[13] ''Novation'' is a ''process through which the original obligation between a buyer and seller is discharged through the substitution of the CCP as seller to buyer and buyer to seller, creating two new contracts.'' Committee on Payment and Settlement Systems, Technical Committee of the International Organization of Securities Commissioners, *Recommendations for Central Counterparties* (November 2004) at 66.

[14] 15 U.S.C. 78q–1.

[15] *See* 7 U.S.C. 1a(12).

[16] *See* Securities Exchange Act Release Nos. 59164 and 59165 (December 24, 2008).

[17] 15 U.S.C. 78e and 78f.

existing rules (collectively, ''interim final temporary rules'') to provide certain conditional exemptions under the Securities Act, the Exchange Act and the Trust Indenture Act.

A. Scope of the Interim Final Temporary Rules

Our authority over the OTC market for CDS is limited. Specifically, Section 2A of the Securities Act and Section 3A of the Exchange Act limit our authority over ''swap agreements'' as defined in Section 206A of the Gramm-Leach-Bliley Act.[18] For those CDS that are swap agreements, the exclusion from the definition of security in Section 2A of the Securities Act and Section 3A of the Exchange Act and related provisions will continue to apply. Our action today does not affect these CDS, and these interim final temporary rules do not apply to them. For those CDS that are not swap agreements (''non-excluded CDS''), our action today provides certain conditional exemptions from the provisions of the Securities Act, the Exchange Act, and the Trust Indenture Act and is designed to encourage the development and operation of one or more CDS CCPs and CDS exchanges.[19]

B. Securities Act Rule 239T

We are adopting interim final temporary Securities Act Rule 239T to exempt certain CDS (''eligible CDS'')[20] that are being or will be issued or cleared by a CCP satisfying the conditions set forth in the companion exemptions, or registered as a clearing agency under Section 17A of the Exchange Act (''Registered or Exempt CCP''), to eligible contract participants from all provisions of the Securities Act, except the anti-fraud provisions of Section 17(a) of the Securities Act.[21] Securities Act Rule 239T will permit the offer and sale of such eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP without requiring compliance with Section 5 of the Securities Act, and communications used in connection with such offers and sales will not be subject to Section 12(a)(2) liability under the Securities Act.

Absent this exemption, the Securities Act may require registration of the offer and sale of eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP. We believe that the interim final temporary rules exempting offers and sales of such eligible CDS by a Registered or Exempt CCP will facilitate the use by eligible contract participants of CCPs for eligible CDS. Indeed, without also exempting the offers and sales of the eligible CDS by a Registered or Exempt CCP from the registration requirements of the Securities Act and the Exchange Act and the provisions of the Trust Indenture Act, we believe that the CCPs would not be able to operate in the manner contemplated by the Exchange Act exemptive orders. In addition, the Securities Act, Exchange Act and Trust Indenture Act exemptions should encourage market participants to clear their CDS through the CCPs.

Under Securities Act Rule 239T, an eligible CDS would be exempt from the registration requirements of the Securities Act if it is or will be issued or cleared by a Registered or Exempt CCP, and if the eligible CDS is offered and sold only to an ''eligible contract participant'' (as defined in Section 1a(12) of the CEA as in effect on the date of adoption of this rule, other than a person who is an eligible contract participant under Section 1a(12)(C) of the CEA).[22] We have included a definition of eligible CDS solely for purposes of the interim final temporary rules. Under this definition, an eligible CDS is a bilateral executory derivative contract not subject to individual negotiation (1) in which a buyer makes payments to the seller and, in return, receives a payout if there is a default or other credit event involving the reference obligation(s) or reference entity(ies) within a certain time, and (2) the agreement for which includes the:

- Specification of the reference obligation or obligor; or, in the case of a reference group or index thereof, all of the reference obligations or obligors comprising any such group or index);
- Term of the agreement;
- Notional amount upon which payment obligations are calculated;
- Credit-related events that trigger a settlement obligation; and
- Obligations to be delivered if there is a credit-related event or, if it is a cash settlement, the obligations whose value is to be used to determine the amount of settlement obligation under the eligible credit default swap.

Securities Act Rule 239T will permit the offer and sale of eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP without requiring compliance with Section 5 of the Securities Act, while assuring the availability of information to buyers and sellers of CDS, due to certain information conditions in the companion exemptive orders,[23] and preserving anti-fraud liability under Section 17(a) of the Securities Act, which currently applies to security-based swap agreements. Securities Act Rule 239T also provides an exemption from the liability provisions of Securities Act Section 12. Thus, oral or written communications used in connection with the offer and sale of eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP in reliance on the rule will not be

[18] 15 U.S.C. 77b(b)–1 and 15 U.S.C. 78c–1. Section 2A of the Securities Act and Section 3A of the Exchange Act excludes both a non-security-based and a security-based ''swap agreement'' from the definition of ''security'' under Section 2(a)(1) of the Securities Act, 15 U.S.C. 77b(a)(1) and Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10). Section 206A of the Gramm-Leach-Bliley Act defines a ''swap agreement'' as ''any agreement, contract, or transaction between eligible contract participants (as defined in section 1a(12) of the Commodity Exchange Act * * *) * * * the material terms of which (other than price and quantity) are subject to individual negotiation. * * *'' 15 U.S.C. 78c note.

[19] Section 28 of the Securities Act authorizes us to exempt any person, security or transaction from any provision of the Securities Act by rule or regulation to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors. 15 U.S.C. 77z–3. Similarly, Section 36 of the Exchange Act gives us the authority to exempt any person, security or transaction from any Exchange Act provision by rule, regulation or order, to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors. 15 U.S.C. 78mm. Finally, Section 304(d) of the Trust Indenture Act authorizes us to exempt conditionally or unconditionally any person, security or transaction from any Trust Indenture Act provision by rules or regulation to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the Trust Indenture Act. 15 U.S.C. 77ddd(d).

[20] As we discuss below, we have included a definition of ''eligible credit default swap'' in interim final temporary Securities Act Rule 239T.

[21] 15 U.S.C. § 77q. This exemption is consistent with the Securities Act exemptions for standardized options and security futures products. *See* Section 3(a)(14) [15 U.S.C. § 77c(a)(14)] and Securities Act Rule 238 [17 CFR 230.238].

[22] *See* 7 U.S.C. 1(a)(12). The exemption would be limited to those persons defined as eligible contract participants in the statute and would not extend to those persons that are included in the definition through regulatory action by the CFTC. *See* 7 U.S.C. 1(a)(12)(C).

[23] We note that among the conditions of the exemptions, or representations in the exemptive requests on which we are relying, from clearing registration are that: (1) Information is available about the terms of the CDS, the creditworthiness of the CCP or any guarantor, and the clearing and settlement process for the CDS; and (2) the reference entity, the issuer of the reference security, or the reference security is one of the following: an entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available; a foreign private issuer that has securities listed outside the United States and has its principal trading market outside the United States; a foreign sovereign debt security; an asset-backed security, as defined in Regulation AB [17 CFR 229.1100], issued in a registered transaction with publicly available distribution reports; an asset-backed security issued or guaranteed by Fannie Mae, Freddie Mac or the Government National Mortgage Association (''Ginnie Mae''); or indexes in which 80 percent or more of the index's weight is comprised of these reference entities or reference securities.

subject to liability under Securities Act Section 12(a)(2).

The Securities Act exemption in the interim final temporary rule is limited to offers and sales to eligible contract participants (as defined in Section 1a(12) of the CEA as in effect on the date of adoption of the rule, other than a person that is an eligible contract participant under Section 1a(12)(C) of the CEA). Under Securities Act Section 2A, a security-based swap agreement that is entered into between eligible contract participants is not permitted to be registered under the Securities Act, but the provisions of Securities Act Section 17(a) continue to apply to such transactions. The operation of one or more CCPs pursuant to the actions we are taking today will allow such security-based swap agreements to continue to be entered into between eligible contract participants and then be novated to the CCP. The Securities Act exemption is intended to limit investor involvement in eligible CDS that are issued or cleared by a Registered or Exempt CCP to eligible contract participants, who are those persons Congress determined were qualified to engage in activities in the generally unregulated (other than with respect to the antifraud provisions of the Securities Act and the Exchange Act) [24] OTC CDS market.

The Securities Act interim final temporary rule also provides that any offer or sale of an eligible CDS that is or will be issued or cleared by a Registered or Exempt CCP by or on behalf of the issuer of a security, an affiliate of such issuer, or an underwriter, if such security is delivered in settlement or whose value is used to determine the amount of the settlement obligation, will constitute a ''contract for sale of,'' ''sale of,'' ''offer for sale,'' or ''offer to sell'' such security under Section 2(a)(3) of the Securities Act. This provision is intended to ensure that an eligible CDS that is or will be issued or cleared by a Registered or Exempt CCP cannot be used by an issuer, affiliate of an issuer or underwriter to circumvent the registration requirements of Section 5 with respect to an issuer's security for such eligible CDS.[25] As a result, a transaction by such persons in an eligible CDS that is or will be issued or cleared by a Registered or Exempt CCP having such securities of the issuer also is a transaction in the issuer's securities that must be registered under the Securities Act, unless an exemption from registration is available.

Further, we are adopting on an interim final temporary basis an amendment to Securities Act Rule 146. Under the temporary amendment to Securities Act Rule 146, eligible contract participants that are sold eligible CDS in reliance on interim final temporary Securities Act Rule 239T will be defined as ''qualified purchasers'' under Section 18(b)(3) of the Securities Act and thereby such eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP will be considered ''covered securities'' under Section 18 of the Securities Act and exempt from state blue sky laws.[26] We are adopting this amendment because we believe that eligible contract participants are the kinds of sophisticated investors who do not require the protections of registration under state securities laws. In this regard, as we discuss above, Congress determined that eligible contract participants were the types of persons that were able to engage in activities in the OTC CDS market unregulated by the Commission and preempted the application of certain state laws to transactions in OTC security-based swap agreements, including CDS.[27] We believe that defining such eligible contract participants as ''qualified purchasers'' for purposes of engaging in transactions in eligible CDS in reliance on temporary Securities Act Rule 239T would be consistent with such Congressional intent.

C. Exchange Act Rule 12a–10T and Rule 12h–1(h)T

We also are adopting two interim final temporary rules relating to Exchange Act registration of eligible CDS that are or have been issued or cleared by a Registered or Exempt CCP. We are adopting interim final temporary Exchange Act Rule 12a–10T to exempt eligible CDS that are or have been issued or cleared by a Registered or Exempt CCP from the provisions of Section 12(a) of the Exchange Act under certain conditions.[28] We also are adopting an interim final temporary amendment to Exchange Act Rule 12h–1 to exempt eligible CDS that are or have been issued or cleared by a Registered or Exempt CCP from the provisions of Section 12(g) of the Exchange Act under certain conditions.[29] This exemption is the same as that available to standardized options issued by a registered options clearing agency and security futures products issued by a registered clearing agency, and this temporary rule should facilitate the operation of the CCPs.

D. Trust Indenture Act Rule 4d–11T

We are adopting a new interim final temporary rule under Section 304(d) of the Trust Indenture Act that would exempt any eligible CDS, as defined in Securities Act Rule 239T and offered and sold in reliance on Securities Act Rule 239T, from having to comply with the provisions of the Trust Indenture Act.[30] We believe an exemption from the Trust Indenture Act is appropriate in this situation.

The Trust Indenture Act is aimed at addressing problems that unregulated debt offerings posed for investors and the public,[31] and provides a mechanism for debtholders to protect and enforce their rights with respect to the debt. We do not believe that the protections contained in the Trust Indenture Act are needed at this time to protect eligible contract participants to whom a sale of an eligible CDS is made in reliance on interim final temporary Securities Act Rule 239T. The identified problems that the Trust Indenture Act is intended to address do not occur in the offer and sale of eligible CDS.[32] For example, eligible CDS are contracts between two parties and, as a result, do not raise the same problem regarding the ability of parties to enforce their rights under the instruments as would, for example, a

[24] *See* Title III of the Commodity Futures Modernization Act of 2000 (Pub. L. 106–554) and the definition of eligible contract participant in Title I of the Commodity Futures Modernization Act of 2000 [7 U.S.C. 1a(12)]. The term ''eligible contract participant'' generally includes various regulated financial institutions, business enterprises that meet certain tests relating to total assets or net worth, certain pension funds, state and local governments, and certain wealthy individuals.

In addition, the provisions of Section 16 of the Exchange Act apply to security-based swap agreements. *See* 15 U.S.C. 78p(g). The exemptions are available only with regard to non-excluded CDS satisfying the exemption's conditions and not other types of derivative contracts.

[25] This provision is similar to the condition in the Securities Act exemption in Rule 238 for standardized options [17 CFR 230.238] and in Securities Act Section 2(a)(3) [15 U.S.C. 77b(a)(3)] relating to security futures products.

[26] State securities regulation of covered securities generally is limited under Section 18(b). Under Section 18(b)(3), covered securities are securities offered and sold to qualified purchasers, as defined by the Commission.

[27] *See* 7 U.S.C. 16(e)(2).

[28] 15 U.S.C. 78l(a).

[29] 15 U.S.C. 78l(g).

[30] The Trust Indenture Act applies to debt securities sold through the use of the mails or interstate commerce. Section 304 of the Trust Indenture Act exempts from the Act a number of securities and transactions. Section 304(a) of the Trust Indenture Act exempts securities that are exempt under Securities Act Section 3(a) but does not exempt from the Trust Indenture Act securities that are exempt by Commission rule. Accordingly, while Securities Act Rule 239T would exempt the offer and sale of eligible CDS satisfying certain conditions from all the provisions of the Securities Act (other than Section 17(a)), the Trust Indenture Act would continue to apply.

[31] *See* 15 U.S.C.77bbb(a).

[32] 15 U.S.C. 77bbb(a).

debt offering to the public. Moreover, through novation, the CCP becomes the counterparty to the buyer and the seller, and each would look directly to the CCP to satisfy the obligations under the eligible CDS. As a consequence, enforcement of contractual rights and obligations under the eligible CDS would occur directly between such parties, and the Trust Indenture Act provisions would not provide any additional meaningful substantive or procedural protections.

Accordingly, due to the nature of eligible CDS as bilateral contracts that will have been issued or cleared by Registered or Exempt CCPs, we do not believe the protections contained in the Trust Indenture Act are currently needed with respect to these instruments. Therefore, we believe the exemption is necessary or appropriate in the public interest, consistent with the protection of investors and the purposes fairly intended by the Trust Indenture Act.

E. Request for Comment

We request and encourage any interested person to submit comments regarding the interim final temporary rules. In particular, we solicit comment on the following questions:

- We are interested in understanding what type of non-excluded CDS would not be eligible for these exemptions. Are there credit swaps that would not be encompassed within the scope of the exemptions and that should be covered?
- What are the amounts and types of CDS that may not satisfy the conditions for the exemptions?
- Is the definition of eligible CDS appropriate and does it include the types of CDS that should be within the exemptions or should there be another definition? Does the definition of eligible CDS include all the appropriate or relevant material terms of a CDS? Should we require more specificity as to the terms, including final settlement valuations?
- Each of the temporary exemptions contains particular conditions. Should the Securities Act exemption in temporary Securities Act Rule 239T be conditioned on the eligible CDS being issued or cleared by a Registered or Exempt CCP? If not, why not?
- Should there be information conditions in the Securities Act exemptions themselves regarding the reference entities or reference securities similar to the information requirements in the CCP exemptive orders? If so, what type of information conditions should be included and why? Is additional or different information from that contained in the CCP exemption orders appropriate?
- Are the Securities Act, Exchange Act and Trust Indenture Act exemptions appropriate? If not, why not? Given the voluntary nature of using a CCP, should we take a different approach?
- The Securities Act exemption also provides that eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP and are entered into with an issuer of a security, or an underwriter or affiliate of such issuer, if such security is delivered in settlement or whose value is used to determine the amount of the settlement obligation, will be considered an offer and sale of such security at that time. Are there circumstances in which the application of the Securities Act to such security of the issuer should not apply at the time of the offer and sale of eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP? Are there securities or obligations used in CDS transactions that are not debt obligations? If yes, please explain.
- The Securities Act exemption is limited to offers and sales to eligible contract participants. Should the exemption be limited in this manner? If not, why not? Are there persons who invest in CDS now in the OTC market that would not be able to take advantage of the exemptions? If yes, please explain the categories of persons and why the exemptions should include such persons.
- The definition of ''qualified purchaser'' for purposes of the interim final temporary amendment to Securities Act Rule 146 applies only to eligible contract participants that have been sold eligible CDS in reliance on the new interim final temporary exemption in Securities Act Rule 239T. Is this an appropriate definition and should eligible contract participants that are sold eligible CDS pursuant to Securities Act Rule 239T be considered ''qualified purchasers'' for purposes of Section 18 of the Securities Act?
- Should the Securities Act exemption be limited to an exemption from Section 5 and Section 12 of the Securities Act? Please explain your reasoning in detail.
- Should we exempt eligible CDS that have been issued or cleared by a Registered or Exempt CCP from the registration requirements of the Exchange Act? If not, why?
- The conditions of the temporary Exchange Act and Trust Indenture Act exemptions are the same as the conditions to the temporary Securities Act exemption. Is this appropriate or should there be different conditions relating to the Exchange Act and Trust Indenture Act exemptions? If yes, please explain.
- The interim final temporary rules include an exemption from the application of the Trust Indenture Act for eligible CDS that are offered and sold in reliance on interim final Securities Act Rule 239T. Is this exemption appropriate or are there contractual protections in the Trust Indenture Act that should be included as mandatory provisions of an eligible CDS contract that is or will be issued or cleared by a Registered or Exempt CCP? If yes, please explain in detail.

III. Transition and Expiration Date of Interim Final Temporary Rules

We are adopting the interim final rules on a temporary basis until September 25, 2009. We anticipate that this term of this exemption will provide us with adequate time to evaluate the availability of the exemptions applicable to CDS CCPs and non-excluded CDS, and whether any conditions or provisions of such exemptions should be modified.

Adoption of the interim final temporary rules, which will be effective on [effective date] and will continue in effect until September 25, 2009, will facilitate the development of one or more CCPs as well as our review of the CDS market. We have included several requests for comment in this release. We will consider the public comments we receive in determining whether we should revise the interim final temporary rules in any respect, as well as whether we should consider extending the exemptions. The rules will expire and cease to be effective on September 25, 2009 unless we act to extend the effective date or revise the interim final temporary rules.

IV. Other Matters

The Administrative Procedure Act generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register**.[33] This requirement does not apply, however, if the agency ''for good cause finds * * * that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.''[34] Further, the Administrative Procedure Act also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[35] This requirement does not apply, however, if the agency finds good cause for making the rule effective sooner.[36] We, for good cause,

[33] *See* 5 U.S.C. 553(b).

[34] *Id.*

[35] *See* 5 U.S.C. 553(d).

[36] *Id.*

find that notice and solicitation of comment before adopting the new rules is impracticable, unnecessary, or contrary to the public interest.

For the reasons we discussed throughout this release, we believe that we have good cause to act immediately to adopt these rules on an interim final temporary basis. The OTC market for CDS has been a source of concerns to us and other financial regulators. These concerns include the systemic risk posed by CDS, highlighted by the possible inability of parties to meet their obligations as counterparties and the potential resulting adverse effects on other markets and the financial system.[37] Recent credit market events have demonstrated the seriousness of these risks in a CDS market operating without meaningful regulation, transparency,[38] or CCPs.[39] These events have emphasized the need for CCPs as mechanisms to help control such risks.[40] A CCP for CDS could be an important step in reducing the counterparty risks inherent in the CDS market, and thereby help mitigate potential systemic impacts. In November 2008, the President's Working Group on Financial Markets stated that the implementation of a CCP for CDS was a top priority[41] and, in furtherance of this recommendation, the Commission, the FRB and the CFTC signed a Memorandum of Understanding[42] that establishes a framework for consultation and information sharing on issues related to CCPs for CDS. Given the continued uncertainty in this market, taking action to help foster the prompt development of CCPs, including granting conditional exemptions from certain provisions of the federal securities laws, thus is in the public interest. The interim final temporary rules we are adopting are intended to facilitate the ability of one or more CCPs for CDS to operate by providing exemptions from certain regulatory provisions that might otherwise prevent them from engaging in such activities. Absent an exemption, the offer and sale of eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP may have to be registered under the Securities Act, the eligible CDS that have been so issued or cleared may have to be registered as a class under the Exchange Act and the provisions of the Trust Indenture Act may need to be complied with. We believe that the interim final temporary rules exempting the registration of eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP under certain conditions will facilitate the use by eligible contract participants of CDS CCPs. Without also exempting the offers and sales of the eligible CDS from the registration requirements of the Securities Act and the Exchange Act and the provisions of the Trust Indenture Act, we believe that the CCPs would not be able to operate in the manner contemplated by the exemptive orders. We emphasize that we are requesting comments on the interim final temporary rules and will carefully consider any comments that we receive and respond to them in a subsequent release. Moreover, these interim final temporary rules will expire on September 25, 2009. Setting a termination date for the interim final temporary rules will necessitate further Commission action no later than the end of that period if we determine to continue the same, or similar, requirements contained in the interim final temporary rules. We find that there is good cause to have the rules effective as interim final temporary rules on January 22, 2009 and that notice and public procedure in advance of effectiveness of the interim final temporary rules is impracticable, unnecessary and contrary to the public interest.[43]

V. Paperwork Reduction Act

The interim final temporary rules do not impose any new ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA''),[44] nor do they create any new filing, reporting, recordkeeping, or disclosure reporting requirements for a CCP that is or will be issuing or clearing eligible CDS. Accordingly, we are not submitting the interim final temporary rules to the Office of Management and Budget for review in accordance with the PRA.[45] We request comment on whether our conclusion that there are no collections of information is correct.

VI. Cost-Benefit Analysis

We are adopting interim final temporary rules under the Securities Act, the Exchange Act and the Trust Indenture Act that would exempt eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP and offered and sold only to eligible contract participants from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provision, as well as from the registration requirements under Section 12 of the Exchange Act and from the provisions of the Trust Indenture Act. These interim final temporary rules are intended to facilitate the operation of one or more CCPs to act as a clearing agency in the CDS market to reduce some of the risks in the CDS market.

A CDS is a bilateral contract between two parties, known as counterparties. The value of this financial contract is based on underlying obligations of a single entity or on a particular security or other debt obligation, or an index of several such entities, securities, or obligations. The obligation of a seller to make payment under a CDS contract is triggered by a default or other credit event as to such entity or entities or such security or securities. Investors may use CDS for a variety of reasons, including to offset or insure against risk in their fixed-income portfolios, to take synthetic positions in bonds or in segments of the debt market as represented by an index, or to capitalize on the volatility in credit spreads during times of economic uncertainty. In recent years, CDS market volumes have rapidly increased.[46] This growth has coincided with a significant rise in the types and

[37] In addition to the potential systemic risks that CDS pose to financial stability, we are concerned about other potential risks in this market, including operational risks, risks relating to manipulation and fraud, and regulatory arbitrage risks.

[38] *See* Policy Objectives for the OTC Derivatives Market, The President's Working Group on Financial Markets (November 14, 2008), *http://www.ustreas.gov/press/releases/reports/policy objectives.pdf* (''Public reporting of prices, trading volumes and aggregate open interest should be required to increase market transparency for participants and the public.'')

[39] *See* The Role of Credit Derivatives in the U.S. Economy Before the H. Agric. Comm., 110th Cong. (2008) (Statement of Erik Sirri, Director of the Division of Trading and Markets, Commission).

[40] *See id.*

[41] *See* Policy Objectives for the OTC Derivatives Market, The President's Working Group on Financial Markets (November 14, 2008), *http://www.ustreas.gov/press/releases/reports/policy objectives.pdf. See also* Policy Statement on Financial Market Developments, The President's Working Group on Financial Markets (March 13, 2008), *http://www.treas.gov/press/releases/reports/pwgpolicystatemktturmoil_03122008.pdf*; Progress Update on March Policy Statement on Financial Market Developments, The President's Working Group on Financial Markets (October 2008), *http://www.treas.gov/press/releases/reports/q4progress%20update.pdf.*

[42] *See* MOU, *supra* note 10.

[43] This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rule amendment to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are ''impractical, unnecessary or contrary to the public interest,'' a rule ''shall take effect at such time as the federal agency promulgating the rule determines'').

[44] 44 U.S.C. 3501 *et seq.*

[45] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[46] *See* Semiannual OTC derivatives statistics at end-December 2007, Bank for International Settlements (''BIS''), available at *http://www.bis.org/statistics/otcder/dt1920a.pdf.*

number of entities participating in the CDS market.[47]

In a CCP arrangement, both parties entering a CDS would novate their trades to the CCP, and the CCP would stand in as the counterparty to all parties of the CDS it clears. Through this novation process, the counterparty risk of a CDS would be effectively concentrated in the CCP.

A. Benefits

We are providing exemptive orders that will facilitate the operation of CCPs for the CDS market. In connection with these actions, we are adopting exemptions from certain provisions of the Securities Act, the Exchange Act and the Trust Indenture Act, subject to certain conditions described in the companion exemptive orders and in the exemptions themselves. The conditions and representations in the companion exemptive orders and exemptions require that information be available about the terms of the CDS, the creditworthiness of the CCP or any guarantor, and the clearing and settlement process for the CDS. Additionally, the conditions require that financial information about the reference entity, the issuer of the reference security, or the reference security be publicly available. We believe that these interim final temporary rules and the exemptions we are providing under the Exchange Act, will facilitate the operation of CCPs while enabling us to provide oversight to the non-excluded CDS market. We believe that the operation of one or more CCPs in accordance with our exemptions likely would improve the efficiency and effectiveness of the CDS market, provide clearing participants with increased transparency of exposures to particular reference entities or reference securities, and increase available information about reference entities or reference securities.

Absent an exemption, the offer and sale of eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP would have to be registered under the Securities Act, the eligible CDS that are or have been issued or cleared by a Registered or Exempt CCP would have to be registered as a class under the Exchange Act, and the provisions of the Trust Indenture Act would apply. We believe that the interim final temporary rules exempting the registration of eligible CDS issued or cleared by a Registered or Exempt CCP under certain conditions will facilitate the use by eligible contract participants of CDS CCPs. Without also exempting the offers and sales of eligible CDS issued or cleared by a Registered or Exempt CCP from the registration requirements of the Securities Act and the Exchange Act and the provisions of the Trust Indenture Act, we believe that the CCPs would not be able to operate in the manner contemplated by the exemptive orders.

The interim final temporary exemptions also will treat eligible CDS issued or cleared by a Registered or Exempt CCP under the Securities Act and the Exchange Act in the same manner as certain other types of derivative contracts, such as security futures products and standardized options.[48] A Registered or Exempt CCP issuing or clearing eligible CDS will benefit from the temporary exemptions because it will not have to file registration statements with us covering the offer and sale of the eligible CDS. The registration form most applicable to a CCP is a Form S–20, which is the form that is used by options clearing houses that do not qualify for our exemption in Securities Act Rule 238[49] from registering the offer and sale of standardized options. If a CCP is not required to register the offer and sale of eligible CDS (on Form S–20, for example), it would not have to incur the costs of such registration, including legal and accounting costs. Some of these costs, of course, such as the costs of obtaining audited financial statements, may still be incurred as a result of the operations of the entity as a CCP and the regulatory oversight of the central counterparty operations. In addition, if any of the CCPs are entities that are subject to the periodic reporting requirements of the Exchange Act, the cost of filing a registration statement covering the eligible CDS would be lessened further as the information regarding the CCP already would be prepared. The availability of exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act also would mean that CCPs would not incur the costs of preparing disclosure documents describing eligible CDS and from preparing indentures and arranging for the services of a trustee.

B. Costs

The interim final temporary rules exempting offers and sales of eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP should facilitate the use by eligible contract participants of CDS CCPs that are the subject of exemptive orders at minimal cost to the CCP or investors. Because the interim final temporary rules are self-executing, the costs of being able to rely on such exemptions, we believe, are minimal.

Absent an exemption, a CCP may have to file a registration statement covering the offer and sale of the eligible CDS, may have to satisfy the applicable provisions of the Trust Indenture Act, and may have to register the class of eligible CDS that it has issued or cleared under the Exchange Act, which would provide investors with civil remedies in addition to antifraud remedies. While a CCP registration statement covering eligible CDS (or the offer and sale of such eligible CDS) may provide certain information about the CCP, CDS contract terms, and the identification of reference entities or reference securities, it would not necessarily provide the type of information necessary to assess the credit risk of the reference entity or reference security. Further, while a CCP registration statement would provide information to the CDS market participants, as well as to the market as a whole, a condition of the clearing agency exemption in the exemptive orders is that the CCPs make their audited financial statements and other information about themselves publicly available. We recognize that a consequence of the exemptions would be the unavailability of certain remedies under the Securities Act and the Exchange Act and certain protections under the Trust Indenture Act. While an investor would be able to pursue an antifraud action in connection with the purchase and sale of eligible CDS under Exchange Act Section 10(b),[50] it would not be able to pursue civil remedies under Sections 11 or 12 of the Securities Act.[51] We could still pursue an antifraud action in the offer and sale of eligible CDS issued or cleared by a CCP.[52]

[47] CDSs were initially created to meet the demand of banking institutions looking to hedge and diversify the credit risk attendant with their lending activities. However, financial institutions such as insurance companies, pension funds, securities firms and hedge funds have entered the CDS market.

[48] *See, e.g.*, Securities Act Section 3(a)(14) [15 U.S.C. 77c(a)(14)], Securities Act Rule 238 [17 CFR 230.238]; Exchange Act Section 12(a) [15 U.S.C. 78*l*], and Exchange Act Rule 12h–1(d) and (e) [17 CFR 240.12h–1(d) and (e)].

[49] 17 CFR 230.238.

[50] 15 U.S.C. 78j(b).

[51] 15 U.S.C. 77k and 77*l*.

[52] *See* 15 U.S.C. 77q and 15 U.S.C. 78j(b).

VII. Consideration of Impact On the Economy, Burden On Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[53] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, Section 2(b)[54] of the Securities Act and Section 3(f)[55] of the Exchange Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to also consider whether the action will promote efficiency, competition, and capital formation.

We are adopting interim final temporary rules that would exempt eligible CDS issued or cleared by a Registered or Exempt CCP from all provisions of the Securities Act, other than the Section 17(a) antifraud provision, as well as from the registration requirements under Section 12 of the Exchange Act and the provisions of the Trust Indenture Act. Because our interim final temporary exemptions will be available to any Registered or Exempt CCP offering and selling eligible CDS, we do not believe that our actions today will impose a burden on competition. We also believe that the ability to settle CDS through CCPs will improve the transparency of the CDS market and provide greater assurance to participants as to the capacity of the eligible CDS counterparty to perform its obligations under the eligible CDS. We believe that increased transparency in the CDS market could help to decrease further market turmoil and thereby facilitate the capital formation process.

VIII. Regulatory Flexibility Act Certification

The Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the interim final temporary rules contained in this release will not have a significant economic impact on a substantial number of small entities. The interim final temporary rules exempt eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP. None of the entities that are eligible to meet the requirements of the exemption from registration under Section 17A is a small entity. For this reason, the interim final temporary rules should not have a significant economic impact on a substantial number of small entities.

IX. Statutory Authority and Text of the Rules and Amendments

The rules and amendments described in this release are being adopted under the authority set forth in Sections 18, 19 and 28 of the Securities Act; Sections 12(h), 23(a) and 36 of the Exchange Act; and Section 304(d) of the Trust Indenture Act.

List of Subjects

17 CFR Parts 230, 240 and 260.

Reporting and recordkeeping requirements, Securities.

Text of the Rules and Amendments

■ For the reasons set out in the preamble, the Commission amends Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

■ 2. Section 230.146 is amended by adding paragraph (c)T to read as follows:

§ 230.146 Rules under section 18 of the Act.

* * * * *

(c)T *Temporary definition of eligible contract participant as qualified purchaser*. For purposes of Section 18(b)(3) of the Act (15 U.S.C. 77r(b)(3)), the term ''qualified purchaser'' shall mean any eligible contract participant (as defined in Section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)) as in effect on the date of adoption of this section, other than a person who is an eligible contract participant under Section 1(a)(12)(C) of the Commodity Exchange Act) that has been sold an eligible credit default swap (as defined in Rule 239T of this Act) in reliance on Rule 239T of this Act. This temporary rule will expire on September 25, 2009.

■ 3. Section 230.239T is added to read as follows:

§ 230.239T Temporary exemption for eligible credit default swaps.

(a) Except as expressly provided in paragraph (b) and (c) of this section, the Act does not apply to any eligible credit default swap that is:

(1) Issued or cleared by a clearing agency registered as a clearing agency under Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1) or exempt from registration under Section 17A of the Securities Exchange Act of 1934 pursuant to a rule, regulation, or order of the Commission; and

(2) Offered and sold only to an eligible contract participant (as defined in Section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)) as in effect on the date of adoption of this section, other than a person who is an eligible contract participant under Section 1(a)(12)(C) of the Commodity Exchange Act).

(b) The exemption provided in paragraph (a) of this section does not apply to the provisions of Section 17(a) of the Act (15 U.S.C. 77q(a)).

(c) *Offers and sales*. Any offer or sale of an eligible credit default swap pursuant to this section by or on behalf of the issuer of an identified security that is to be delivered if there is a credit-related event or whose value is used to determine the amount of the settlement obligation, an affiliate of such issuer, or an underwriter, will constitute a ''contract for sale of,'' ''sale of,'' ''offer for sale,'' or ''offer to sell'' such identified security under Section 2(a)(3) of the Act (15 U.S.C. 77b(a)(3)).

(d) *Definition of Eligible Credit Default Swap*. For purposes of this section, an eligible credit default swap is a bilateral executory derivative contract not subject to individual negotiation:

(1) in which a buyer makes payments to the seller and, in return, receives a payout if there is a default or other credit event involving identified obligation(s) or identified entity(ies) within a certain time; and

(2) The agreement for which includes the:

(i) Specification of the identified obligation or obligor; or, in the case of an identified group or index thereof, all of the identified obligations or obligors comprising any such group or index;

(ii) Term of the agreement;

(iii) Notional amount upon which payment obligations are calculated;

(iv) Credit-related events that trigger a settlement obligation; and

(v) Obligations to be delivered if there is a credit-related event or, if it is a cash settlement, the obligations whose value is to be used to determine the amount of settlement obligation under the eligible credit default swap.

(e) This temporary rule will expire on September 25, 2009.

[53] 15 U.S.C. 78w(a)(2).

[54] 15 U.S.C. 77b(b).

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

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 4. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*, and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 5. Section 240.12a–10T is added to read as follows:

§ 240.12a–10T Temporary exemption of eligible credit default swaps from Section 12(a) of the Act.

(a) The provisions of Section 12(a) of the Act (15 U.S.C. 78l(a)) do not apply in respect of any eligible credit default swap, as defined in Rule 239T of the Securities Act of 1933 (17 CFR 230.239T) issued or cleared by a clearing agency registered as a clearing agency under Section 17A of the Act (15 U.S.C. 78q–1) or exempt from registration under Section 17A of the Act pursuant to a rule, regulation, or order of the Commission, that will be purchased by or sold to an eligible contract participant (as defined in Section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)) as in effect on the date of adoption of this section, other than a person who is an eligible contract participant under Section 1(a)(12)(C) of the Commodity Exchange Act.

(b) This temporary rule will expire on September 25, 2009.

■ 6. Section 240.12h–1 is amended by adding paragraph (h)T to read as follows:

§ 240.12h–1 Exemptions from registration under section 12(g) of the Act.

* * * * *

(h)T any eligible credit default swap, as defined in Rule 239T of the Securities Act of 1933 (17 CFR 230.239T), issued or cleared by a clearing agency registered as a clearing agency under Section 17A of the Act (15 U.S.C. 78q–1) or exempt from registration under Section 17A of the Act pursuant to a rule, regulation, or order of the Commission that will be purchased by or sold to an eligible contract participant (as defined in Section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)) as in effect on the date of adoption of this section, other than a person who is an eligible contract participant under Section 1(a)(12)(C) of the Commodity Exchange Act. This temporary rule will expire on September 25, 2009.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

■ 7. The authority citation for Part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d), 80b–3, 80b–4, and 80b–11.

■ 8. Section 260.4d–11T is added to read as follows:

§ 260.4d–11T Temporary exemption for eligible credit default swaps offered and sold in reliance on Securities Act of 1933 Rule 239T (§ 230.239T).

Any eligible credit default swap (as defined in Rule 239T of this chapter, 17 CFR 230.239T), whether or not issued under an indenture, is exempt from the Act if offered and sold in reliance on Rule 239T of this chapter. This temporary rule will expire on September 25, 2009.

By the Commission.

Dated: January 14, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–1123 Filed 1–21–09; 8:45 am]

BILLING CODE 8011–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2008–0705; FRL–8748–7]

Approval and Promulgation of Implementation Plans; Nevada; Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act, EPA is approving certain revisions, and disapproving certain other revisions, to the Nevada State Implementation Plan submitted by the Nevada Division of Environmental Protection. These revisions relate to the application of the State's vehicle inspection and maintenance program to vehicles operated on Federal installations. EPA is also correcting certain plan revisions related to this subject that EPA previously approved in error. The intended effect is to ensure that vehicles operated on Federal installations are subject only to those requirements of the State's vehicle inspection and maintenance program that apply in the same manner and to the same extent to nongovernmental entities.

DATES: *Effective Date:* This rule is effective on February 23, 2009.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2008–0705 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Eleanor Kaplan, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 947–4147, *kaplan.eleanor@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we'', ''us'' and ''our'' refer to EPA.

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I. Proposed Action

On September 25, 2008 (73 FR 55466), under the Clean Air Act (CAA or ''Act''), EPA proposed to approve certain revisions, and to disapprove certain other revisions, to the Nevada State Implementation Plan (SIP) submitted by the Nevada Division of Environmental Protection (NDEP). These revisions relate to the application of the State's vehicle inspection and maintenance (I/M) program to vehicles operated on Federal installations. EPA also proposed to correct certain SIP revisions related to this subject that EPA previously approved in error.

Specifically, EPA proposed to approve paragraphs (a), (b) and (c) of subsection (2) of Nevada Administrative Code (NAC) section 445B.595 (''Inspections of vehicles owned by State or political subdivisions or operated on federal installations''). NDEP submitted NAC 445B.595 to EPA on May 11, 2007. We proposed to approve these paragraphs of NAC 445B.595(2) because they extend the same vehicle I/M testing, standards, and certification requirements to motor vehicles operated on Federal installations as apply to nongovernmental entities, consistent with CAA section 118(a). See our September 25, 2008 proposed rule at 73 FR 55467. By the same token, we