

## **SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 240, 242, and 249**

**Release No. 34-69491; File Nos. S7-27-10, S7-32-10, S7-34-10, S7-35-10, S7-43-10, S7-03-11, S7-06-11, S7-08-11, S7-25-11, S7-40-11, S7-05-12, S7-08-12**

**RIN 3235-AK74, 3235-AK77, 3235-AK80, 3235-AK79, 3235-AK88, 3235-AK91, 3235-AK93, 3235-AL13, 3235-AL10, 3235-AL05, 3235-AL12**

### **REOPENING OF COMMENT PERIODS FOR CERTAIN RULEMAKING RELEASES AND POLICY STATEMENT APPLICABLE TO SECURITY-BASED SWAPS PROPOSED PURSUANT TO THE SECURITIES EXCHANGE ACT OF 1934 AND THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Reopening of comment periods.

**SUMMARY:** The Securities and Exchange Commission (“Commission”) is reopening the comment periods for its outstanding rulemaking releases, published in the Federal Register and listed herein, that concern security-based swaps (“SB swaps”) and SB swap market participants and were proposed pursuant to certain provisions of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) and the Securities Exchange Act of 1934 (the “Exchange Act”), among other provisions (together, the “Proposed Rules”). The Commission is also reopening the comment period for its Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps adopted pursuant to the Exchange Act and the Dodd-Frank Act, published in the Federal Register on June 14, 2012 (the “Policy Statement”). The reopening of these comment periods is intended to allow interested persons additional time to analyze and comment upon the Proposed Rules and the Policy Statement in light of the Commission’s proposal of substantially all of the rules required to be adopted by Title VII of the Dodd-Frank Act, its proposal of rules and interpretations addressing the application of the SB swap provisions of Title VII of the Dodd-

Frank Act to cross-border SB swap transactions and non-U.S. persons that act in capacities regulated under the Dodd-Frank Act (the “Cross-Border Proposed Rules”), and the Commodity Futures Trading Commission’s (the “CFTC”) adoption of substantially all of the rulemakings establishing the new regulatory framework for swaps. All comments received to date on the Proposed Rules and the Policy Statement will be considered and need not be resubmitted.

**DATES:** For the Proposed Rules and the Policy Statement, the comment periods are re-opened until July 22, 2013.

**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/proposed.shtml>);
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include the file number for the specific action being commented upon 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 the file number for the specific action being commented upon.

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. We will post all comments on the Commission’s Internet website (<http://www.sec.gov>). Comments also are available for website viewing and printing at the Commission’s Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm.

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:** With respect to this release, Ann Parker McKeehan, Special Counsel, at (202) 551-5797, or Jason Williams, Attorney-Adviser, at (202) 551-5763, Office of Derivatives Policy, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549. With respect to a particular action discussed herein, the Commission staff member listed in the action.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Subtitle B of Title VII of the Dodd Frank Act<sup>1</sup> (“Title VII”) amends the Securities Act of 1933 (“Securities Act”)<sup>2</sup> and the Exchange Act<sup>3</sup> to substantially expand the regulation of the SB swap market with a goal of establishing a new regulatory framework within which this market can evolve in a more transparent, efficient, fair, accessible, and competitive manner.<sup>4</sup> Under the Dodd-Frank Act, regulatory authority over derivatives is divided between the Commission and the CFTC, with the Commission having authority over SB swaps, the CFTC having authority over swaps, which represent the overwhelming majority of the overall market for derivatives subject to the Dodd-Frank Act, and the Commission and the CFTC jointly regulating mixed swaps.<sup>5</sup>

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<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> 15 U.S.C. 77a et seq.

<sup>3</sup> 15 U.S.C. 78a et seq.

<sup>4</sup> See generally Subtitle B of Title VII.

<sup>5</sup> 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, shall further define the terms “swap” and “security-based

The Title VII amendments to the Exchange Act generally require, among other things: (1) the registration and comprehensive oversight of security-based swap dealers and major security-based swap participants;<sup>6</sup> (2) the reporting of SB swaps to a registered security-based swap data repository (“SDR”), or to the Commission (if the SB swap is uncleared and no SDR will accept the SB swap), and dissemination of SB swap information to the public;<sup>7</sup> (3) the clearing of SB swaps at a registered clearing agency (or a clearing agency that is exempt from registration) if the Commission makes a determination that such SB swaps are required to be cleared, unless an exception from the mandatory clearing requirement applies;<sup>8</sup> and (4) if an SB swap is subject to the clearing requirement, the execution of the SB swap transaction on an exchange, on a security-based swap execution facility (“SB SEF”) registered under the Exchange Act,<sup>9</sup> or on an

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swap,” among others. These terms are defined in sections 721 and 761 of the Dodd-Frank Act and the Commission and the CFTC have adopted further definitions of these terms in a joint rulemaking. See Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Security-Based Swap Agreement Recordkeeping, Release No. 33-9338 (July 18, 2012); 77 FR 48208 (Aug. 13, 2012) (“Product Definitions Rules”).

<sup>6</sup> See section 15F of the Exchange Act, 15 U.S.C. 78o-10.

<sup>7</sup> See section 3(a)(75) of the Exchange Act, 15 U.S.C. 78c(a)(75) (defining the term “security-based swap data repository”); section 13(m) of the Exchange Act (regarding public availability of SB swap data); section 13(n) of the Exchange Act (regarding requirements related to SDRs); and section 13A of the Exchange Act (regarding reporting and recordkeeping requirements for certain SB swaps). See also Security-Based Swap Data Repository Registration, Duties, and Core Principles, Release No. 34-63347 (Nov. 19, 2010), 75 FR 77306 (Dec. 10, 2010); corrected at 75 FR 79320 (Dec. 20, 2010) and 76 FR 2287 (Jan. 13, 2011); and Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, Release No. 34-63346 (Nov. 19, 2010), 75 FR 75208 (Dec. 2, 2010).

<sup>8</sup> See section 3C(a)(1) of the Exchange Act, 15 U.S.C. 78c-3(a)(1). See also Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b-4 and Form 19b-4 Applicable to All Self-Regulatory Organizations, Release No. 34-63557 (Dec. 15, 2010), 75 FR 82490 (Dec. 30, 2010).

<sup>9</sup> 15 U.S.C. 78c-4.

SB SEF that has been exempted from registration by the Commission under the Exchange Act,<sup>10</sup> unless no SB SEF or exchange makes such SB swap available for trading.<sup>11</sup>

The Commission has proposed substantially all of the rules required to be adopted by Title VII.<sup>12</sup> The Commission also has adopted the following rules:

- Joint rules with the CFTC that further define the terms “swap dealer,” “security-based swap dealer,” “major swap participant,” “major security-based swap participant,” and “eligible contract participant;”<sup>13</sup>
- Rules that establish the procedure by which clearing agencies submit SB swaps for a determination as to whether those instruments should be subject to mandatory clearing;<sup>14</sup>
- Joint rules with the CFTC that further define the terms “swap,” “security-based swap,” and “security-based swap agreement” and regarding the regulation of mixed swaps and SB swap agreement recordkeeping;<sup>15</sup> and
- Rules that establish standards for how registered clearing agencies should manage their risks and run their operations.<sup>16</sup>

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<sup>10</sup> Id. at 78c-4(e).

<sup>11</sup> See section 3C(g) of the Exchange Act, 15 U.S.C. 78c-3(g) and section 3C(h) of the Exchange Act, 15 U.S.C. 78c-3(h). See also section 3(a)(77) of the Exchange Act, 15 U.S.C. 78c(77) (defining the term “security-based swap execution facility”). See also Registration and Regulation of Security-Based Swap Execution Facilities, Release No. 34-63825 (Feb. 2, 2011), 76 FR 10948 (Feb. 28, 2011).

<sup>12</sup> The Commission has not yet proposed rules regarding the reporting and recordkeeping requirements to which security-based swap dealers and major security-based swap participants will be subject pursuant to Exchange Act section 15F(f). 15 U.S.C. 78o-10(f).

<sup>13</sup> See Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant”, Release No. 34-66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012) (“Entity Definitions Rules”).

<sup>14</sup> See Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b-4 and Form 19b-4 Applicable to All Self-Regulatory Organizations, Release No. 34-67286 (June 28, 2012), 77 FR 41602 (July 13, 2012) (“Clearing Procedures Rules”).

<sup>15</sup> See Product Definitions Rules, supra note 5.

Most recently, the Commission has proposed the Cross-Border Proposed Rules, which address the treatment of cross-border SB swap transactions and non-U.S. persons acting in capacities regulated under Title VII.<sup>17</sup> While the Commission may propose additional rules pertaining to SB swaps that are not mandated by Title VII, SB swap market participants and other members of the public now have a substantially complete picture of the Commission’s proposed regulatory framework for SB swaps. Additionally, the CFTC has adopted nearly all of the rules establishing the swaps regulatory regime.<sup>18</sup>

## II. Reopening of Comment Periods

In light of the substantially complete picture of the proposed SB swap regulatory regime and the CFTC’s adoption of many of the rulemakings creating the swaps regulatory regime, the Commission is reopening the comment period of the Proposed Rules and the Policy Statement until *[insert date 60 days from publication in the Federal Register]* to provide the public with an additional opportunity to analyze and comment upon the proposed SB swap regulatory framework, either in part or as a whole. Commenters may submit, and the Commission will consider, comments on any aspect of the Proposed Rules and the Policy Statement. In addition to the questions raised in the Proposed Rules and the Policy Statement, the Commission specifically seeks comments on the following:

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<sup>16</sup> See Clearing Agency Standards, Release No. 34-68080 (Oct. 22, 2012), 77 FR 66219 (Nov. 2, 2012) (“Clearing Agency Standards”).

<sup>17</sup> See Cross-Border Application of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, Release No. 34-\_\_\_\_\_ (\_\_\_\_, 2013).

<sup>18</sup> CFTC Chairman Gary Gensler has noted that the CFTC has “largely completed the swaps market rulemaking, with 80 percent behind us....” Gary Gensler, Chairman, Commodity Futures Trading Comm’n, Opening Remarks at CFTC Public Roundtable on “Futurization of Swaps” (Jan. 31, 2013) (transcript available at <http://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-130>).

- The economic consequences and effects, including costs and benefits, of the Proposed Rules, either individually or as a whole, including any related quantitative or qualitative information. Please specify whether such information includes the costs and benefits of systems, policies, or procedures already implemented to comply with the CFTC’s adoption of final rules and interpretive orders pertaining to Title VII (together, the “CFTC Rules”);
- The overall framework and approach to implementation detailed in the Proposed Rules and the Policy Statement;
- The relationship of the Proposed Rules to any parallel requirements of other authorities, including the CFTC and relevant foreign regulatory authorities;
- With respect to the CFTC Rules, whether and to what extent the Commission in adopting its own rules should emphasize consistency with the CFTC Rules versus adopting rules that are more tailored to the SB swap market, with inclusion of any specific examples where consistency or tailoring of a particular rule or rule set is more critically important; and
- Whether there are any areas where additional rules or interpretations should be proposed or formal guidance provided and if so, why.

The comment periods for the following actions are being reopened until [*insert date 60 days from publication in the Federal Register*]:<sup>19</sup>

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<sup>19</sup> The comment periods for the Entity Definitions Rules, the Clearing Procedures Rules, the Product Definitions Rules, and the Clearing Agency Standards are not being reopened given that, as noted in Section I above, these rules have been adopted by the Commission.

<b>Date Published in the Federal Register</b>	<b>Title and Release Number of Rulemaking</b>	<b>Date Closed</b>
10/26/2010	Ownership Limitations and Governance Requirements for Security-Based Swap Clearing Agencies, Security-Based Swap Execution Facilities, and National Securities Exchanges with Respect to Security-Based Swaps under Regulation MC (Release No. 34-63107, <b>File No. S7-27-10</b> ) and Reopening of Comment Period (Release No. 34-64018)	4/29/2011
11/8/2010	Prohibition Against Fraud, Manipulation, and Deception in Connection with Security-Based Swaps (Release No. 34-63236, <b>File No. S7-32-10</b> )	12/23/2010
12/2/2010	Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information (Release No. 34-63346, <b>File No. S7-34-10</b> )	1/18/2011
12/10/2010	Security-Based Swap Data Repository Registration, Duties, and Core Principles (Release No. 34-63347, <b>File No. S7-35-10</b> )	1/24/2011
12/21/2010	End-User Exception to Mandatory Clearing of Security-Based Swaps (Release No. 34-63556, <b>File No. S7-43-10</b> )	2/4/2011
1/21/2011	Trade Acknowledgement and Verification of Security-Based Swap Transactions (Release No. 34-63727, <b>File No. S7-03-11</b> )	2/22/2011
2/28/2011	Registration and Regulation of Security-Based Swap Execution Facilities (Release No. 34-63825, <b>File No. S7-06-11</b> )	4/4/2011
3/16/2011	Clearing Agency Standards for Operation and Governance (Release No. 34-64017, <b>File No. S7-08-11</b> ), other than those portions adopted by the Clearing Agency Standards (Release No. 34-68080)	4/29/2011
7/18/2011	Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants (Release No. 34-64766, <b>File No. S7-25-11</b> )	8/29/2011
10/24/2011	Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants (Release No. 34-65543, <b>File No. S7-40-11</b> )	12/19/2011
6/14/2012	Statement of General Policy on the Sequencing of the Compliance Rules Applicable to the Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Release No. 34-67177, <b>File No. S7-05-12</b> )	8/13/2012
11/23/2012	Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers (Release No. 34-68071, <b>File No. S7-08-12</b> ) and Extension of Comment Period (Release No. 34-68660)	2/22/2013



All comments received to date on the Proposed Rules and the Policy Statement will be considered and need not be resubmitted.

By the Commission.

Elizabeth M. Murphy  
Secretary

Date: May 1, 2013