

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 231, 241, 271, and 276

Release Nos. 33-9850; 34-75250; IA-4122; IC-31684

Commission Guidance Regarding the Definition of the Terms “Spouse” and “Marriage” Following the Supreme Court’s Decision in *United States v. Windsor*

AGENCY: SECURITIES AND EXCHANGE COMMISSION

ACTION: Interpretation.

SUMMARY: The Securities and Exchange Commission is publishing interpretive guidance to clarify how the Commission will interpret the terms “spouse” and “marriage” in light of the Supreme Court’s ruling in *United States v. Windsor*.

EFFECTIVE DATE: [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Questions should be referred to Benjamin Schiffrin, Senior Litigation Counsel, Office of the General Counsel, at (202) 551-5003, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-9040.

SUPPLEMENTARY INFORMATION:

On June 26, 2013, the Supreme Court of the United States ruled in *United States v. Windsor* that Section 3 of the Defense of Marriage Act (“DOMA”) is unconstitutional.¹ Section 3 provides that in “determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States,” the “word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife,” and the “word ‘marriage’ means only a legal union between one man and one woman as husband and

¹ 133 S. Ct. 2675 (2013).

wife.”² This section, the Court stated, “enacts a directive applicable to over 1,000 federal statutes and the whole realm of federal regulations.”³ The Court found that this directive “undermines both the public and private significance of state-sanctioned same-sex marriages” and concluded that “no legitimate purpose overcomes the purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect in personhood and dignity.”⁴ The Court thus held that Section 3 of DOMA was invalid.⁵

In light of this decision, the Commission will read the terms “spouse” and “marriage,” where they appear in the federal securities statutes administered by the Commission, the rules and regulations promulgated thereunder, releases, orders, and any guidance issued by the staff or the Commission, to include, respectively, (1) an individual married to a person of the same sex if the couple is lawfully married under state law, regardless of the individual’s domicile, and (2) such a marriage between individuals of the same sex. This guidance is consistent with *Windsor*.

List of Subjects

17 CFR Parts 231, 241, 271, and 276

Securities.

Amendments to the Code of Federal Regulations

For the reasons set out above, the Commission is amending Title 17, chapter II of the Code of Federal Regulations as set forth below:

PART 231 – INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

² 1 U.S.C. § 7.

³ 133 S. Ct. at 2690.

⁴ *Id.* at 2694, 2696.

⁵ *Id.* at 2696.

1. Part 231 is amended by adding Release No. 33-9850 and the release date of June 19, 2015, to the list of interpretive releases as follows:

Subject	Release No.	Date	Fed. Reg. Vol. and Page
Commission Guidance Regarding the Definition of the Terms “Spouse” and “Marriage” Following the Supreme Court’s Decision in <i>United States v. Windsor</i>	33-9850	June 19, 2015	[Insert FR Volume Number] FR [Insert FR Page Number]

PART 241 – INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

2. Part 241 is amended by adding Release No. 34-75250 and the release date of June 19, 2015, to the list of interpretive releases as follows:

Subject	Release No.	Date	Fed. Reg. Vol. and Page
Commission Guidance Regarding the Definition of the Terms “Spouse” and “Marriage” Following the Supreme Court’s Decision in <i>United States v. Windsor</i>	34-75250	June 19, 2015	[Insert FR Volume Number] FR [Insert FR Page Number]

PART 271 – INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

3. Part 271 is amended by adding Release No. IC-31684 and the release date of June 19, 2015, to the list of interpretive releases as follows:

Subject	Release No.	Date	Fed. Reg. Vol. and Page
Commission Guidance Regarding the Definition of the Terms “Spouse” and “Marriage” Following the Supreme Court’s Decision in <i>United States v. Windsor</i>	IC-31684	June 19, 2015	[Insert FR Volume Number] FR [Insert FR Page Number]

PART 276 – INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT ADVISERS ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

4. Part 276 is amended by adding Release No. IA-4122 and the release date of June 19, 2015, to the list of interpretive releases as follows:

Subject	Release No.	Date	Fed. Reg. Vol. and Page
Commission Guidance Regarding the Definition of the Terms “Spouse” and “Marriage” Following the Supreme Court’s Decision in <i>United States v. Windsor</i>	IA-4122	June 19, 2015	[Insert FR Volume Number] FR [Insert FR Page Number]

By the Commission.

Robert W. Errett
Deputy Secretary

Dated: June 19, 2015