

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68864; File No. S7-27-11)

February 7, 2013

Order Extending Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Revision of the Definition of “Security” to Encompass Security-Based Swaps, and Request for Comment

I. Introduction

On July 1, 2011, the Securities and Exchange Commission (“Commission”) issued an order granting temporary exemptive relief from compliance with certain provisions of the Securities Exchange Act of 1934 (“Exchange Act”) in connection with the revision of the Exchange Act definition of “security” to encompass security-based swaps (“Exchange Act Exemptive Order”).¹ Certain temporary exemptions contained in the Exchange Act Exemptive Order are set to expire upon the compliance date for final rules further defining the terms “security-based swap” and “eligible contract participant,” which is scheduled to occur on February 11, 2013 (“Expiring Temporary Exemptions”).² The Commission is extending the expiration date for these Expiring Temporary Exemptions until February 11, 2014³ and

¹ See Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revisions of the Definition of “Security” to Encompass Security-Based Swaps, Exchange Act Release No. 64795 (Jul. 1, 2011), 76 FR 39927 (Jul. 7, 2011).

² Id. See also Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, Exchange Act Release No. 67453 (Jul. 18, 2012), 77 FR 48207 (Aug. 13, 2012) (Joint Final Rule with the CFTC) (“Product Definitions Adopting Release”), which postpones the Expiring Temporary Exemptions expiration date to February 11, 2013. The Financial Industry Regulatory Authority (“FINRA”) filed a proposed rule change, which was effective upon receipt by the Commission, extending the expiration date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps), which temporarily limits the application of certain FINRA rules with respect to security-based swaps, to July 17, 2013. See Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Expiration Date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps), Exchange Act Release No. 68471 (Dec. 19, 2012).

³ The Exchange Act Exemptive Order also provided a temporary exemption from Sections 5 and 6 of the Exchange Act until the earliest compliance date set forth in any of the final rules regarding registration of security-based swap execution facilities. The Exchange Act Exemptive Order also provided a temporary exemption that no security-based swap contract entered into on or after July 16, 2011 shall be void or considered voidable by reason of Section 29(b) of the Exchange Act because any person that is a party to the contract violated a provision of the

requesting comment on any exemption contained in the Exchange Act Exemptive Order and any additional relief that should be granted upon the expiration of the extension.

II. Discussion

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended the Exchange Act definition of “security” to expressly encompass security-based swaps.⁴ The expansion of the definition of the term “security” results in the expansion of the scope of the regulatory provisions of the Exchange Act to security-based swaps. This expansion has raised certain complex questions that require further consideration by the staff.

On July 1, 2011, the Commission granted temporary relief from compliance with certain provisions of the Exchange Act by providing for the Expiring Temporary Exemptions.⁵ Specifically, the Expiring Temporary Exemptions, which are set to expire on the compliance date for final rules further defining the terms “security-based swap” and “eligible contract participant,” provide for the following exemptions from Exchange Act: (a) temporary exemptions in connection with security-based swap activity by certain “eligible contract participants”; and (b) temporary exemptions specific to security-based swap activities by

Exchange Act for which the Commission has provided exemptive relief in the Exchange Act Exemptive Order, until such time as the underlying exemptive relief expires. This Order does not affect the timing of the expiration of either of these exemptions.

⁴ The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124, Stat. 1376 (2010); Exchange Act Section 3(a)(10), 15 U.S.C. 78c(a)(10), as revised by Section 761(a)(2) of the Dodd-Frank Act.

Title VII established a new regulatory framework for swaps and security-based swaps. Under the comprehensive framework established in Title VII, the Commission is given authority over security-based swaps, the CFTC is given regulatory authority over swaps, and the CFTC and SEC are provided with joint regulatory authority over mixed swaps. See Section 3(a)(68) of the Exchange Act, 15 U.S.C.78c(a)(68) (as added by Section 761(a)(6) of the Dodd-Frank Act) and Section 1a(47) of the CEA, 7 U.S.C. 1a(47) (as added by Section 721(a) of the Dodd-Frank Act) for the definitions of security-based swap and swap, respectively. See also Product Definitions Adopting Release.

⁵ See Exchange Act Exemptive Order.

registered brokers and dealers.⁶ As previously noted, these Expiring Temporary Exemptions are currently scheduled to expire on February 11, 2013 for purposes of the Exchange Act Exemptive Order.⁷

The Commission recently received a request to extend the Expiring Temporary Exemptions until July 17, 2013, citing concerns that key issues and questions regarding the application of the federal securities laws to security-based swaps remain unresolved and that the expiration of these exemptions on February 11, 2013 would be premature.⁸ The request also noted concerns about the potential for unnecessary disruption to the security-based swap market.⁹

To date, the Commission has proposed substantially all of the rules related to the new regulatory regime for derivatives under Title VII and has recently begun the process of adopting these rules.¹⁰ In furtherance of the Dodd-Frank Act's stated objective of promoting financial stability in the U.S. financial system, the Commission has expressed its intent to move forward

⁶ See Exchange Act Exemptive Order at 39-44.

⁷ See Product Definitions Adopting Release.

⁸ See SIFMA Request for Extension of the Expiration Date of the SEC's Exchange Act Exemptive Order and SBS Interim final Rules (Dec. 20, 2012), which is available at <http://www.sec.gov/comments/s7-27-11/s72711-12.pdf>. The Commission has also received a request for certain permanent exemptions upon the expiration of the exemptions contained in the Exchange Act Exemptive Order. See SIFMA SBS Exemptive Relief Request (Dec. 5, 2011), which is available at <http://www.sec.gov/comments/s7-27-11/s72711-10.pdf>.

⁹ See SIFMA Request for Extension of the Expiration Date of the SEC's Exchange Act Exemptive Order and SBS Interim final Rules (Dec. 20, 2012).

¹⁰ See Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act, Exchange Act Release No. 67177 (Jun. 11, 2012). See also Product Definitions Adopting Release; Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant", Exchange Act Release No. 66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012) ("Entity Definitions Adopting Release"); 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, Exchange Act Release No. 67286 (Jun. 28, 2012), 88 FR 41602 (Jul. 13, 2012); Clearing Agency Standards, Exchange Act Release No. 68080, (Oct. 22, 2012), 77 FR 66219 (Nov. 2, 2012).

deliberatively in implementing the requirements of the Dodd-Frank Act, while minimizing unnecessary disruption and costs to the markets.¹¹

The Commission believes it is necessary or appropriate in the public interest and consistent with the protection of investors to extend the Expiring Temporary Exemptions until February 11, 2014 in order to both avoid a potential unnecessary disruption to the security-based swap market that may result without an extension,¹² and provide the Commission with additional time to consider the potential impact of the revision of the Exchange Act definition of “security” in light of recent Commission rulemaking efforts under Title VII of the Dodd-Frank Act. Extending the Expiring Temporary Exemptions also would facilitate a coordinated consideration of these issues with related relief provided by FINRA under its rulebook.¹³ While the comment letter recommended extending the temporary relief to July 17, 2013, we have determined to extend the relief to February 11, 2014. Accordingly, pursuant to the Commission’s authority under Section 36 of the Exchange Act,¹⁴ the Commission is extending the expiration date for the Expiring Temporary Exemptions contained in the Exchange Act Exemptive Order until February 11, 2014.¹⁵

¹¹ See Exchange Act Exemptive Order.

¹² See supra note 8 and 9.

¹³ See supra note 2.

¹⁴ 15 U.S.C. 78mm. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt, by rule, regulation, or order any person, security or transaction (or any class or classes of persons, securities, or transactions) from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

¹⁵ The expiration date coincides with the Commission’s recent amendment to the expiration dates in interim final rules that provide exemptions under the Securities Act of 1933, the Exchange Act, and the Trust Indenture Act of 1939 for those security-based swaps that prior to July 16, 2011 were security-based swap agreements and are defined as “securities” under the Securities Act and the Exchange Act as of July 16, 2011 due solely to the provisions of Title VII of the Dodd-Frank Act. See Extension of Exemptions for Security-Based Swaps, Release No. 33-9383 (Jan. 29, 2013), 78 FR 7654 (Feb. 4, 2013).

III. Request for Comment

The Commission believes that it would be useful to continue to provide interested parties opportunity to comment on any exemption contained in the Exchange Act Exemptive Order and any additional relief that should be granted upon the expiration of the extension for the Expiring Temporary Exemptions. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/exorders.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-27-11 on the subject line; or
- Use the Federal eRulemaking 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 St., NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7-27-11. 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 website (<http://www.sec.gov/rules/exorders.shtml>). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F St. 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; the Commission does not edit personal

identifying information from submissions. You should submit only information that you wish to make available publicly.

IV. Conclusion

IT IS HEREBY ORDERED, pursuant to Section 36 of the Exchange Act, that, the Expiring Temporary Exemptions contained in the Exchange Act Exemptive Order in connection with the revision of the Exchange Act definition of “security” to encompass security-based swaps are extended until February 11, 2014.

By the Commission.

Elizabeth M. Murphy
Secretary