

**COMMODITY FUTURES TRADING COMMISSION**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-67927; File No. S7-32-11]**

**Acceptance of Public Submissions Regarding the Study of Stable Value Contracts**

**AGENCY:** Commodity Futures Trading Commission; Securities and Exchange Commission.

**ACTION:** Request for comment; reopening of comment period.

**SUMMARY:** The Commodity Futures Trading Commission (the “CFTC”) and the Securities and Exchange Commission (the “SEC” and, together with the CFTC, the “Commissions”) are reopening the comment period for a study to determine whether stable value contracts (“SVCs”) fall within the definition of a swap. The study is required by Section 719(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). The original comment period for the study closed on September 26, 2011. The Commissions did not complete the study pending adoption of final rules further defining the terms “swap” and “security-based swap.” The Commissions are considering the study in light of the recent adoption of these final rules. Accordingly, the Commissions are reopening for 30 days the time period in which to provide the Commissions with comments.

**DATES:** Comments should be received on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

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

**CFTC:**

- Agency website, via its Comments Online process: <http://comments.cftc.gov>.

Follow the instructions for submitting comments through the website.

- Mail: Sauntia S. Warfield, Assistant Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.
- Hand Delivery/Courier: Same as mail above.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Please submit your comments using only one method. “Stable Value Contract Study” must be in the subject field of responses submitted via e-mail, and clearly indicated on written submissions. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to [www.cftc.gov](http://www.cftc.gov). You should submit only information that you wish to make available publicly. If you wish the CFTC to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in section 145.9 of the CFTC’s regulations.<sup>1</sup>

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from [www.cftc.gov](http://www.cftc.gov) that it may deem to be inappropriate for publication, including obscene language. All submissions that have been

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<sup>1</sup> 17 CFR 145.9.

redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under applicable laws, and may be accessible under the Freedom of Information Act.

**SEC:**

Electronic comments:

- Use the SEC's Internet comment form (<http://www.sec.gov/rules/other>);
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-32-11 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 Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-32-11. 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 SEC will post all comments on the SEC's Internet web site (<http://www.sec.gov/rules/other>). Comments will also be available for website viewing and printing in the SEC's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the SEC does not edit personal identifying information

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

**FOR FURTHER INFORMATION CONTACT:** CFTC: Stephen A. Kane, Research Economist, Office of the Chief Economist, (202) 418-5911, skane@cftc.gov; or David E. Aron, Counsel, Office of the General Counsel, (202) 418-6621, daron@cftc.gov, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581; SEC: Donna Chambers, Senior Special Counsel, (202) 551-5870, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-8010.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 719(d)(1)(A) of the Dodd-Frank Act, the Commissions jointly must conduct a study to determine whether SVCs fall within the definition of a swap.<sup>2</sup> Section 719(d)(1)(A) of the Dodd-Frank Act also requires the Commissions, in making such determination, jointly to consult with the Department of Labor, the Department of the Treasury, and the State entities that regulate the issuers of SVCs.

If the Commissions determine that SVCs fall within the definition of a swap, they jointly must determine if an exemption for SVCs from the definition of a swap is appropriate and in the public interest and issue regulations implementing such determination.<sup>3</sup> Until the effective date of any such regulations, and notwithstanding any other provision of Title VII of

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<sup>2</sup> The term “swap” is defined in Commodity Exchange Act (“CEA”) section 1a(47), 7 U.S.C. 1a(47). The term “security-based swap” is defined as an agreement, contract, or transaction that is a “swap” (without regard to the exclusion from that definition for security-based swaps) and that also has certain characteristics specified in the Dodd-Frank Act. See section 3(a)(68) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(68). Thus, a determination regarding whether SVCs fall within the definition of a swap also is relevant to a determination of whether SVCs fall within the definition of the term “security-based swap.”

<sup>3</sup> See section 719(d)(1)(B) of the Dodd-Frank Act.

the Dodd-Frank Act, the Title VII requirements will not apply to SVCs.<sup>4</sup>

On August 18, 2011, the Commissions requested comment regarding the study of SVCs required by Section 719(d) of the Dodd-Frank Act.<sup>5</sup> Specifically, the request for comment included 29 questions and encouraged commenters to provide additional relevant information beyond that specified in the questions. The Commissions originally requested that comments be received by September 26, 2011.<sup>6</sup>

Given the regulatory developments since the initial request for comment was issued, specifically the adoption of final rules further defining the terms “swap” and “security-based swap,”<sup>7</sup> the Commissions believe that it would be appropriate to solicit additional public comments on the study of SVCs required by Section 719(d) of the Dodd-Frank Act. Accordingly, the Commissions are reopening the public comment period for 30 days. The Commissions are reopening the comment period for the limited purpose of soliciting additional or updated comments regarding the impact of the final rules further defining the terms “swap” and “security-based swap” on the SVC study.<sup>8</sup> The Commissions have received and reviewed the comments

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<sup>4</sup> See section 719(d)(1)(C) of the Dodd-Frank Act.

<sup>5</sup> See Acceptance of Public Submissions Regarding the Study of Stable Value, 76 FR 53162 (Aug. 25, 2011).

<sup>6</sup> Id.

<sup>7</sup> The Commission and the CFTC have approved the final rules further defining the terms “swap” and “security-based swap” but did not address therein whether SVCs are swaps or SBSs. See 77 FR 48208 (Aug. 13, 2012).

<sup>8</sup> Question 4 in the request for comment related to the applicability and usefulness of the proposed rules further defining the terms “swap” and “security-based swap” (“Proposed Definitions”):

Are the proposed rules and the interpretive guidance set forth in the [Proposed Definitions] useful, appropriate, and sufficient for persons to consider when evaluating whether SVCs fall within the definition of a swap? If not, why not? Would SVCs satisfy the test for insurance provided in the [Proposed Definitions]? Why or why not? Is additional guidance necessary with regard to SVCs in this context? If so, what further guidance would be appropriate? Please explain.

previously submitted in response to the initial request for comment. Commenters do not need to resubmit comments that have already been provided.

By the Commodity Futures Trading Commission.

Sauntia S. Warfield  
Assistant Secretary

Date: September 26, 2012

By the Securities and Exchange Commission.

Elizabeth M. Murphy  
Secretary

Date: September 26, 2012

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See Acceptance of Public Submissions Regarding the Study of Stable Value Contracts, supra note 5, at 53163.