

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-76922; File No. S7-15-15]

RIN 3235-AL74

Access to Data Obtained by Security-Based Swap Data Repositories and Exemption from Indemnification Requirement

AGENCY: Securities and Exchange Commission.

ACTION: Reopening of comment period.

SUMMARY: The Securities and Exchange Commission (“Commission”) is reopening the comment period for proposed amendments to rule 13n-4 under the Securities Exchange Act of 1934 (“Exchange Act”) related to regulatory access to security-based swap data held by security-based swap data repositories. The proposed rule amendments would implement Exchange Act provisions that conditionally require that security-based swap data repositories make data available to certain regulators and other authorities. Recent legislation has modified certain underlying statutory provisions.

DATES: Submit comments on or before February 22, 2016.

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>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-15-15 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 to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-15-15. 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/proposed.shtml>). Comments are also available for website viewing and printing in the Commission'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 Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the SEC's website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at www.sec.gov to receive notifications by e-mail.

FOR FURTHER INFORMATION CONTACT: Carol McGee, Assistant Director, Joshua Kans, Senior Special Counsel, or Kateryna P. Imus, Attorney-Adviser, at (202) 551-5870; Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-7010.

SUPPLEMENTARY INFORMATION:**I. Introduction****A. Proposed Rule**

Exchange Act sections 13(n)(5)(G) and (H), which were added by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, conditionally require security-based swap data repositories to make data available to certain regulators and other entities. The statute identifies certain entities as being eligible to access data, and states that the Commission may determine that other persons are appropriate to access such data. The statute further provides that the Commission must be notified of requests for access, and also conditions data access on the security-based swap data repository receiving certain confidentiality-related agreements. Moreover, under the statute as it was originally enacted in 2010, data access was conditional on the recipient entity agreeing to indemnify the repository and the Commission for expenses arising from litigation relating to the information provided.¹

On September 14, 2015, the Commission proposed rules to implement those data access provisions.² Key features of the proposal included:

- (i) Designation of entities that may access data. The proposal provided that, in addition to the entities identified by the statute, the Federal Reserve Banks and the Office of Financial Research (“OFR”) may access data.³ The proposal also specified factors and conditions that the Commission would consider in making

¹ See generally Access to Data Obtained by Security-Based Swap Data Repositories and Exemption From Indemnification Requirement, Exchange Act Release No. 75845 (Sept. 14, 2015), 80 FR 55182 (Sept. 14, 2015) (“Data Access Proposing Release”).

² The proposal built upon two prior Commission proposals to implement the data access provisions and to provide an exemption from the indemnification requirement. See *id.* at 55182-84.

³ See proposed Exchange Act rule 13n-4(b)(9)(ix).

future determinations regarding entities eligible to access data and the scope of such entities' access to data. In that regard the Commission stated that it preliminarily expected that such determination orders "typically would incorporate conditions that specify the scope of a relevant authority's access to data, and that limit this access in a manner that reflects the relevant authority's regulatory mandates or legal responsibility or authority."⁴

- (ii) Confidentiality condition to data access. To implement the statutory confidentiality condition, the proposal provided that there must be a memorandum of understanding ("MOU") or other arrangement between the Commission and the recipient of data to address the confidentiality of the data provided to the recipient.⁵ The Commission stated that it expected this approach would help avoid the possibility of uneven and potentially inconsistent application of the confidentiality condition.⁶
- (iii) Notification requirement. The proposal provided that a security-based swap data repository could satisfy the statutory notification requirement by notifying the Commission of the first data access request by an entity, and maintaining a record of subsequent requests.⁷
- (iv) Indemnification exemption. The proposal included an exemption from the indemnification requirement. This exemption would have been conditioned, in

⁴ See Data Access Proposing Release, 80 FR 55187-88.

⁵ See proposed Exchange Act rule 13n-4(b)(10).

⁶ See Data Access Proposing Release, 80 FR 55190.

⁷ See *id.* at 55188-89; proposed Exchange Act rule 13n-4(e).

part, on the information provided relating to “persons or activities within the recipient entity’s regulatory mandate, or legal responsibility or authority.”⁸

B. Statutory Amendment

On December 4, 2015, President Obama signed into law Public Law 114-94, the Surface Transportation Reauthorization and Reform Act of 2015. This law, among other things, amended the statutory data access provisions by eliminating the indemnification requirement discussed above.⁹ The law also revised the data access provisions in two other ways.¹⁰

The elimination of the indemnification requirement makes unnecessary paragraph (d) of proposed rule 13n-4, which would have implemented the conditional exemption from the indemnification requirement.¹¹ The statutory amendments, however, do not affect the proposed provisions: (i) addressing the designation of additional entities as being eligible to access data (potentially including the Federal Reserve Banks and the OFR); (ii) implementing the confidentiality condition to data access; and (iii) implementing the statutory notification requirement.

⁸ See proposed Exchange Act rule 13n-4(d). The proposal also would require the Commission and the recipient of data to enter into an MOU or other arrangement to specify the type of information that would fall within this regulatory mandate, or legal responsibility or authority. See *id.*

⁹ See Pub. L. No. 114-94, sec. 86011(c)(2).

¹⁰ In part, the statutory revision clarified that the scope of the data access provision applies to security-based swap data, not all data maintained by the repository. See Pub. L. No. 114-94, sec. 86011(c)(1)(A) (striking “all” and adding “security-based swap” in the introductory part of Exchange Act section 13(n)(5)(G)). That focus on security-based swaps already was incorporated into the proposal. See proposed Exchange Act rule 13n-4(b)(9).

The statutory revision also added the term “other foreign authorities” to the nonexclusive statutory list of entities that the Commission may determine appropriate to access data under these provisions. See Pub. L. No. 114-94, sec. 86011(c)(1)(B). That change is consistent with the proposal, which used the term “including, but not limited to” in the relevant portion of the rule text (preceding the specific references to foreign financial supervisors, foreign central banks, and foreign ministries). See proposed Exchange Act rule 13n-4(b)(9)(x).

¹¹ See Data Access Proposing Release, 80 FR at 55211.

II. Request for Comments

Commenters are invited to discuss the proposal in light of the recent statutory amendments. Commenters particularly are invited to address the impact, on the remaining aspects of the proposal, arising from the elimination of the proposed indemnification exemption, including the exemption's proposed condition limiting access to security-based swap data to persons or authorities within a relevant authority's regulatory mandate or legal responsibility or authority. For example, to what extent should those criteria related to an entity's regulatory mandate or legal responsibility and authority be used by the Commission as it implements the confidentiality condition and/or the Commission's determination authority?

Commenters further are invited to address whether the use of that limitation should vary depending on the type of recipient entity. For example, should those criteria be considered exclusively in conjunction with recipient authorities not specifically named in the statute, including the Federal Reserve Banks and the OFR, or should those criteria instead be considered in conjunction with access to data by all entities under these provisions?¹²

In addition, commenters are requested to address whether the proposal should be revised to address the other statutory changes to the data access provisions – such as addition of the term “other foreign authorities” to the list of entities that the Commission may determine appropriate to access data. For example, should the Commission revise proposed paragraph (b)(9)(x) of rule 13n-4 to specifically note that it may determine that “other foreign authorities” also may access data pursuant to these provisions?

¹² As noted above, the Commission stated that it preliminarily expected that subsequent determination orders under the statute and proposed rule “typically would incorporate conditions that specify the scope of a relevant authority's access to data, and that limit this access in a manner that reflects the relevant authority's regulatory mandates or legal responsibility or authority.”

Commenters are also invited to address the impact of the statutory amendments on the Commission's economic analysis.

By the Commission.

Date: January 15, 2016

Brent J. Fields
Secretary