

SECURITIES AND EXCHANGE COMMISSION
Release No. 34-75919

September 15, 2015

**ORDER PURSUANT TO SECTIONS 15F(b)(6) AND 36 OF THE SECURITIES
EXCHANGE ACT OF 1934 EXTENDING CERTAIN TEMPORARY EXEMPTIONS
AND A TEMPORARY AND LIMITED EXCEPTION RELATED TO SECURITY-
BASED SWAPS**

I. Introduction

On June 15, 2011, the Securities and Exchange Commission (“Commission”) issued an order granting temporary exemptions and exceptions from compliance with certain provisions of the Securities Exchange Act of 1934 (“Exchange Act”)¹ applicable to security-based swaps (“SB swaps”), that were amended or added by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”).² The Temporary Exemptions Order provided, among other things, a temporary exemption from Section 3E(f) of the Exchange Act for security-based swap dealers and major security-based swap participants (together, “SBS Entities”), a temporary and limited exception from Section 15F(b)(6) of the Exchange Act with respect to persons then currently associated with SBS Entities, and temporary exemptions from Section 29(b) of the Exchange Act with respect to violations of Sections 3E(f) and 15F(b)(6) in connection with SB swap contracts entered into on or after July 16, 2011. The Commission is extending the exemption from Section 3E(f) and exception from Section 15F(b)(6) until the compliance date of rules we have adopted to establish a process by which SBS Entities can

¹ 15 U.S.C. 78a *et seq.*

² See Temporary Exemptions and Other Temporary Relief, Together With Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Security-Based Swaps, Exchange Act Release No. 64678 (June 15, 2011), 76 FR 36287 (June 22, 2011) (“Temporary Exemptions Order”).

register (and withdraw from registration) with the Commission.³ In addition, the Commission is specifying when the related exemption for Section 29(b) with respect to SB swap contracts that involve violations of Sections 3E(f) or 15F(b)(6) will expire.

II. Background

Title VII of the Dodd-Frank Act amended the Exchange Act to establish a new regulatory framework for the security-based swap markets. The provisions of Title VII generally were effective as of July 16, 2011, unless a rulemaking or other Commission action is required. The Temporary Exemptions Order provided guidance with respect to the compliance dates of Exchange Act provisions added by Title VII. It also identified those provisions with which compliance was required by the effective date of the Title VII amendments to the Exchange Act and those with which compliance is triggered by registration, adoption of final rules, or other action by the Commission.⁴ Where compliance was required by the effective date of Title VII, the Temporary Exemptions Order granted certain temporary exemptions and exceptions where necessary or appropriate in the public interest, and consistent with the protection of investors.⁵ The Temporary Exemptions Order included temporary exemptions from Sections 3E(f) and 29(b), and a temporary and limited exception from Section 15F(b)(6).⁶

³ See Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 75611 (Aug. 5, 2015), 80 FR 48964 (Aug. 14, 2015) (“Registration Adopting Release”).

⁴ See Temporary Exemptions Order.

⁵ See *id.*

⁶ Section 36(c) of the Exchange Act, 15 U.S.C. 78mm(c), limits the Commission’s exemptive authority with respect to certain provisions of the Exchange Act added by Title VII, including Section 15F. However, Section 15F(b)(6) expressly authorizes the Commission to establish exceptions to this provision by rule, regulation, or order.

Section 3E of the Exchange Act, added by Section 763(d) of the Dodd-Frank Act, regulates the collection and handling of collateral for SB swaps, and sets out certain rights of the counterparties who deliver such collateral.⁷ Section 3E(f) requires SBS Entities to segregate initial margin amounts delivered by their counterparties in uncleared SB swap transactions if requested to do so by such counterparties.⁸ The statutory compliance date for Section 3E(f) was July 16, 2011. As explained in the Temporary Exemptions Order, the segregation required under Section 3E(f) will require expenditures of resources and time, such as the establishment of accounts and the adoption of policies and procedures setting forth the proper collection and maintenance of collateral. The Commission found that a temporary exemption from Section 3E(f) for SBS Entities was necessary or appropriate in the public interest, and was consistent with the protection of investors because it would allow persons to register as an SBS Entity in accordance with the applicable registration requirements, once established, prior to expending resources to comply with the provisions of Section 3E(f), and because it would give SBS Entities additional time to establish the necessary accounts and adopt the policies and procedures required by Section 3E(f).⁹ Under the Temporary Exemption Order, the temporary exemption from Section 3E(f) would expire on the date upon which the rules adopted by the Commission to register SBS Entities become effective.

⁷ 15 U.S.C. 78c-5.

⁸ 15 U.S.C. 78c-5(f).

⁹ *See* Temporary Exemptions Order n. 98 (providing that, “Notwithstanding the exemption granted, market participants in uncleared SB swaps may continue to voluntarily negotiate for and receive similar protections to those provided in section 3E(f) of the Exchange Act, 15 U.S.C. 78c-5(f), until compliance with such section 3E(f) is required.”).

Section 15F of the Exchange Act, added by Section 764(a) of the Dodd-Frank Act, establishes the regulatory framework for SBS Entities.¹⁰ Section 15F(b)(6) provides that “except to the extent otherwise provided by rule, regulation or order of the Commission,” it shall be unlawful for an SBS Entity to permit an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on its behalf, if the SBS Entity knew or should have known of the statutory disqualification.¹¹ In the Temporary Exemptions Order, the Commission exercised its authority under Section 15F(b)(6) to provide a temporary and limited exception for SBS Entities from the application of the prohibition in that section. Specifically, the Temporary Exemptions Order provides that persons subject to a statutory disqualification who were, as of July 16, 2011, associated with an SBS Entity and who effected or were involved in effecting security-based swaps on behalf of such SBS Entity could continue to be associated with an SBS Entity until the date upon which rules adopted by the Commission to register SBS Entities become effective. In providing this exception, the Commission explained that it intended to separately consider issues related to how an associated person that is subject to a statutory disqualification may be involved in the security-based swap business of the SBS Entity.¹² The Commission also noted that existing business relationships and market activity could be unnecessarily disrupted if market participants were required to comply with Section 15F(b)(6) before the Commission considers, through notice and comment rulemaking, whether to adopt a procedure for potential modifications of the effect of statutory

¹⁰ 15 U.S.C. 78o-10.

¹¹ 15 U.S.C. 78o-10(b)(6).

¹² *See* Temporary Exemptions Order at 36301.

disqualifications under Title VII of the Dodd-Frank Act for SBS Entities and what any such procedure would require.¹³

Section 29(b) of the Exchange Act generally provides that contracts made in violation of any provision of the Exchange Act, or the rules thereunder, shall be void “(1) as regards the rights of any person who, in violation of any such provision, . . . shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contracts, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contracts in violation of any such provision”¹⁴ In the Temporary Exemptions Order, the Commission temporarily exempted any SB swap contract entered into on or after July 16, 2011 from being void or considered voidable by reason of Section 29(b) because any person that is a party to a contract violated a provision of the Exchange Act that was amended or added by Title VII of Dodd-Frank and for which the Commission has taken the view that compliance will be triggered by registration of a person or by adoption of final rules by the Commission, or has provided an exception or exemption in the Temporary Exemptions Order, until such date as the Commission specifies. The temporary exemption from Section 29(b) applies to contracts that would otherwise involve violations of, among other provisions, Sections 3E(f) or 15F(b)(6) of the Exchange Act.

The Commission received several comments in response to the Temporary Exemptions Order.¹⁵ Although none of the commenters specifically referred to Sections 3E(f), 15F(b)(6), or

¹³ *See id.*

¹⁴ 15 U.S.C. 78cc(b).

¹⁵ *See* Letter from American Bankers Association, Financial Services Roundtable, Futures Industry Association, Institute of International Bankers, International Swaps and Derivatives Association, Investment Company Institute, Securities Industry and Financial Markets

29(b), one commenter noted that the Temporary Exemptions Order was, in general, reasonable in terms of its scope and duration.¹⁶ In particular, the commenter stated that the exemption from specific requirements under the Dodd-Frank Act was appropriate where the Commission had not completed “other steps, such as finalizing rules, setting up the registration regime, or establishing infrastructure.”¹⁷ Another commenter urged the Commission “to align the implementation of the self-operative provisions with the provisions that are dependent on rulemaking to ensure a coherent realization of the new swaps regulatory regime.”¹⁸

III. Discussion

In August, 2015, the Commission adopted rules to establish a process by which SBS Entities can register (and withdraw from registration) with the Commission (“Registration Rules”).¹⁹ These rules will become effective October 13, 2015, but compliance with the Registration Rules will not be required until the later of: six months after the date of publication in the Federal Register of final rules establishing capital, margin and segregation requirements

Association, and U.S. Chamber of Commerce, (June 10, 2011); Letter from Jirí Król, Alternative Investment Management Association Limited (July 1, 2011); Letter from Bruce C. Bennett, Covington and Burling LLP (July 1, 2011); Letter from Dennis M. Kelleher, Stephen W. Hall, Better Markets, Inc. (July 6, 2011); Letter from Jeff Gooch, MarkitSERV (July 15, 2011); Letter from Kevin Gould, Markit North America, Inc. (July 26, 2011), *available at* <http://www.sec.gov/comments/s7-24-11/s72411.shtml>.

¹⁶ See Letter from Dennis M. Kelleher, Stephen W. Hall, Better Markets, Inc. (July 6, 2011), at 2, *available at* <http://www.sec.gov/comments/s7-24-11/s72411-3.pdf>.

¹⁷ See *id.*

¹⁸ See Letter from American Bankers Association, Financial Services Roundtable, Futures Industry Association, Institute of International Bankers, International Swaps and Derivatives Association, Investment Company Institute, Securities Industry and Financial Markets Association, and U.S. Chamber of Commerce (June 10, 2011).

¹⁹ See Registration Adopting Release.

for SBS Entities;²⁰ the compliance date of final rules establishing recordkeeping and reporting requirements for SBS Entities;²¹ the compliance date of final rules establishing business conduct requirements under Sections 15F(h) and 15F(k) of the Exchange Act;²² or the compliance date for final rules establishing a process for a registered SBS Entity to make an application to the Commission to allow an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on the SBS Entity's behalf ("Registration Compliance Date"). At the same time, the Commission also proposed rules that would, if adopted, establish a process for an SBS Entity to make an application to the Commission to allow an associated person subject to statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the SBS Entity.²³

Under the terms of the Temporary Exemptions Order, the temporary exemption from Section 3E(f) of the Exchange Act and exception from Section 15F(b)(6) of the Exchange Act

²⁰ The Commission previously has proposed rules to establish capital, margin and segregation requirements for SBS Entities. *See* Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers, Exchange Act Release No. 68071 (Oct. 18, 2012), 77 FR 70213 (Nov. 23, 2012).

²¹ The Commission previously has proposed rules to establish recordkeeping and reporting requirements for SBS Entities. *See* Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers, Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25193 (May 2, 2014).

²² The Commission previously has proposed rules to establish business conduct standards for SBS Entities. *See* Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 64766 (June 29, 2011), 76 FR 42395 (July 18, 2011).

²³ Applications by Security-Based Swap Dealers or Major Security-Based Swap Participants for Consent for Associated Persons to Effect or Be Involved in Effecting Security-Based Swaps, Exchange Act Release No. 75612 (Aug. 5, 2015), 80 FR 51683 (Aug. 25, 2015) (proposing new Rule of Practice 194).

will expire when rules adopted by the Commission to register SBS Entities become effective. Accordingly, absent an extension, the temporary exemption from the segregation requirements in Section 3E(f) and exception from the prohibition in Section 15F(b)(6) in the Temporary Exemptions Order will expire upon the effective date of the Registration Rules, even though SBS Entities would not be required to register until the Registration Compliance Date. As stated in the Temporary Exemptions Order, the Commission continues to believe that persons should be able to register in accordance with the applicable registration requirements prior to expending resources to comply with Section 3E(f). Therefore, the Commission is extending the temporary exemption from the requirements of Section 3E(f) until the Registration Compliance Date.²⁴

The Commission also continues to believe that existing business relationships and market activity may be unnecessarily disrupted if market participants were required to comply with Section 15F(b)(6) of the Exchange Act before the Commission considered, through notice and comment rulemaking, whether to adopt a procedure for potential modifications of the effect of statutory disqualifications under Title VII for SBS Entities, and what any such procedure would require.²⁵ As noted above, the Commission has proposed rules relating to the requirements of

²⁴ The Commission also notes that this extension will allow persons to have the ability to review the final capital, margin and segregation rules before being required to comply with the requirements of Section 3E(f), as the compliance date of the Registration Rules will occur no earlier than six months after the date of publication in the Federal Register of final rules establishing capital, margin and segregation requirements for SBS Entities.

²⁵ *See supra* note 23. The Commission has provided guidance in the Registration Adopting Release regarding the dates on which SBS Entities will become subject to registration requirements based on their status as either a SBS Dealer or Major SBS Participant. *See* Registration Adopting Release, 80 FR at 48988. In accordance with this guidance, we do not believe that any entity will have the status of an SBS Entity prior to the Registration Compliance Date. However, for the avoidance of doubt and possible legal uncertainty, the Commission is extending the previously granted temporary exemption from Section 3E(f) and the temporary and limited exception from Section 15F(b)(6) until the Registration Compliance Date.

Section 15F(b)(6). The Registration Compliance Date will occur no earlier than final rules establishing a process for a registered SBS Entity to make an application to the Commission to allow an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on the SBS Entity's behalf. Accordingly, the Commission is extending the temporary and limited exception from the requirements of Section 15F(b)(6) until the Registration Compliance Date.

As discussed in the Temporary Exemptions Order, the Commission does not believe that Section 29(b) of the Exchange Act would apply to the provisions of Title VII for which the Commission has taken the view that compliance will either be triggered by registration of a person or by adoption of final rules by the Commission, or for which the Commission has provided an exception or exemption in that order. For the avoidance of doubt and to avoid possible legal uncertainty or market disruption, the Temporary Exemptions Order granted a temporary exemption from Section 29(b) until such date as the Commission specifies.²⁶ The Commission believes that the exemption from Section 29(b) provided under the Temporary Exemptions Order with respect to Sections 3E(f) and 15F(b)(6) of the Exchange Act will continue to apply during the period of time covered by the extensions in this Order. However, to avoid any doubt or possible legal uncertainty regarding the continuing availability of the temporary exemption from Section 29(b) with respect to Sections 3E(f) and 15(b)(6), the Commission is exercising its authority under Section 36 of the Exchange Act to continue the exemption from Section 29(b) with respect to Sections 3E(f) and 15(b)(6) until the Registration Compliance Date.

²⁶ See Temporary Exemptions Order at 36305-06.

IV. Conclusion

IT IS HEREBY ORDERED, pursuant to Section 36 of the Exchange Act, that SBS Entities are exempt from the requirements of Section 3E(f) of the Exchange Act until the Registration Compliance Date.

IT IS HEREBY FURTHER ORDERED, pursuant to Section 15F(b)(6) of the Exchange Act, that SBS Entities are temporarily excepted from the prohibition of Section 15F(b)(6) with respect to persons subject to a statutory disqualification who were associated with an SBS Entity as of July 16, 2011, and who effect or are involved in effecting SB swaps on behalf of such SBS Entity until the Registration Compliance Date.

IT IS HEREBY FURTHER ORDERED, pursuant to Section 36 of the Exchange Act, that no SB 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 Section 3E(f) of the Exchange Act prior to the Registration Compliance Date.

IT IS HEREBY FURTHER ORDERED, pursuant to Section 36 of the Exchange Act, that no SB 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 Section 15F(b)(6) of the Exchange Act prior to the Registration Compliance Date.

By the Commission.

Brent J. Fields
Secretary