

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67480; File No. S7-24-11)

July 20, 2012

**ORDER EXTENDING TEMPORARY CONDITIONAL EXEMPTION IN
CONNECTION WITH THE EFFECTIVENESS OF THE DEFINITION OF ELIGIBLE
CONTRACT PARTICIPANT**

I. Background

Title VII of the Dodd Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)¹ amended the definition of the term “eligible contract participant” in the Commodity Exchange Act (“CEA”).² This amended definition was incorporated by reference into the Securities Exchange Act of 1934 (“Exchange Act”).³ Section 6(l) of the Exchange Act,⁴ which was added by the Dodd-Frank Act,⁵ made it unlawful, as of the July 16, 2011 effective date of Title VII (360 days after enactment of the Dodd-Frank Act), for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant, unless such transaction is effected on a national securities exchange registered pursuant to section 6(b) of the Exchange Act.⁶

¹ Pub. L. No. 111-203 (July 21, 2010).

² Section 721(a) of the Dodd-Frank Act redesignated section 1a(12) of the Commodity Exchange Act, which contained the pre-Dodd-Frank Act definition of eligible contract participant, as section 1a(18), 7 U.S.C. 1a(18), and amended certain provisions of that definition.

³ Exchange Act section 3(a)(65), 15 U.S.C. 78c(a)(65). Section 761(a) of the Dodd-Frank Act added section 3(a)(65) to the Exchange Act.

⁴ 15 U.S.C. 78f(l).

⁵ Section 761(e) of the Dodd-Frank Act.

⁶ 15 U.S.C. 78f(b).

In June 2011, the Securities and Exchange Commission (“Commission”) granted a temporary conditional exemption from section 6(l) of the Exchange Act to certain persons.⁷ This temporary conditional exemption allowed those persons that met the definition of eligible contract participant as set forth in section 1a(12) of the Commodity Exchange Act (as in effect on July 20, 2010),⁸ but that could potentially be considered non-eligible contract participants under the definition of eligible contract participant as amended by Title VII of the Dodd-Frank Act, to continue to be treated as eligible contract participants until the term eligible contract participant was further defined in final rulemaking. The Commission specified in the Effective Date Relief that the temporary exemption would expire on the effective date for the final rules further defining the term eligible contract participant.

II. Discussion

A. Post-Exemption Developments

Subsequent to the Commission’s publication of the Effective Date Relief in June 2011, the Commission adopted, jointly with the Commodity Futures Trading Commission (“CFTC”), rules further defining the term eligible contract participant, which will be effective July 23, 2012.⁹ In the Entity Definitions Adopting Release, the Commission reiterated that the temporary conditional exemption from section 6(l) of the Exchange Act would expire upon the effectiveness of the Entity Definitions Adopting Release.¹⁰ The Commission provided further

⁷ Order Pursuant to Sections 15F(b)(6) and 36 of the Securities Exchange Act of 1934 Granting 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, and Request for Comment, 76 FR 36287 (June 22, 2011) (“Effective Date Relief”).

⁸ 7 U.S.C. 1a(12) (as in effect on July 20, 2010).

⁹ See Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant”, 77 FR 30596 (May 23, 2012) (“Entity Definitions Adopting Release”).

¹⁰ See 77 FR at 30700.

notice of the July 23, 2012 expiration of section 6(l) relief in its June 2012 policy statement regarding implementation of the Dodd-Frank Act (the “Implementation Policy Statement”).¹¹

On July 13, 2012, in response to the request for comment in the Implementation Policy Statement, the Financial Services Roundtable (“Roundtable”) submitted a comment letter¹² requesting an extension of this relief until the effective date of the final rules defining the terms “swap” and “security-based swap.”¹³

B. Roundtable Request

In support of its request for an extension of section 6(l) relief, the Roundtable stated that the extension is necessary in order to give the industry more time to “review the requirements and implement the systems necessary to conform to the newly finalized definition of [eligible contract participant].”¹⁴ The Roundtable further stated that linking the expiration of the section 6(l) relief to the effective date of the Product Definitions Adopting Release will be more efficient for market participants due to the large number of CFTC Title VII provisions that are already tied to the effectiveness of that release.¹⁵ Finally, the Roundtable stated that the requested extension would result in harmonization with the CFTC.¹⁶

¹¹ 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, 77 FR 35625, 35631 (June 14, 2012).

¹² Letter from Richard M. Whiting, Executive Director and General Counsel, Financial Services Roundtable, to Elizabeth M. Murphy, Secretary, Commission (July 13, 2012) (“Roundtable Extension Request”), available at: <http://www.sec.gov/comments/s7-05-12/s70512-9.pdf>.

¹³ The Commission and the CFTC have approved the final rules (“Product Definitions Adopting Release”). See <http://sec.gov/rules/final/2012/33-9338.pdf>.

¹⁴ Roundtable Extension Request at 2.

¹⁵ Id. at 3.

¹⁶ Id. The CFTC’s existing relief from the CEA analogue to section 6(l) expires on the effective date of the Product Definitions Adopting Release. See Second Amendment to July 14, 2011 Order for Swap Regulation, 77 FR 41260, 41263 n.42 (July 13, 2012).

In light of the concerns expressed by the commenter, the Commission finds that it is necessary or appropriate in the public interest, and is consistent with the protection of investors, to extend the section 6(l) relief provided in the Effective Date Relief for the limited time requested, that is, until the effective date of the Product Definitions Adopting Release. Specifically, pursuant to the Commission's authority under Section 36 of the Exchange Act,¹⁷ the Commission is extending the temporary conditional exemption provided in the Effective Date Relief from section 6(l) of the Exchange Act for persons that meet the definition of eligible contract participant as set forth in section 1a(12) of the CEA (as in effect on July 20, 2010). This temporary conditional exemption will expire on the effective date of the Product Definitions Adopting Release.

III. Conclusion

IT IS HEREBY ORDERED, pursuant to section 36(a) of the Exchange Act, that the temporary conditional exemption from section 6(l) of the Exchange Act provided in the Effective Date Release for persons that meet the definition of eligible contract participant as set forth in section 1a(12) of the Commodity Exchange Act (as in effect on July 20, 2010) is extended until 60 days after publication of the Product Definitions Adopting Release (Rel. No. 33-9338, 34-67453; File No. S7-16-11) in the Federal Register.

By the Commission.

Elizabeth M. Murphy
Secretary

¹⁷ 15 U.S.C. 78mm. Subject to certain exceptions, section 36 of the Exchange Act authorizes the Commission, by rule, regulation, or order, to conditionally or unconditionally exempt 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 that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.