

## Securities Regulation Daily Wrap Up, SWAPS—SEC again extends exemptive relief for security-based swaps, (Feb. 6, 2018)

Securities Regulation Daily Wrap Up

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The SEC has issued an order extending temporary relief pertaining to security-based swaps. The order grants temporary relief from compliance with the Dodd-Frank Act provision which amended the definition of "security" under the Exchange Act to encompass security-based swaps. The SEC had previously extended the original July 2011 relief in 2014 and 2018. In the order, the SEC advised that the exemptive relief is necessary to evaluate the rules pertaining to security-based swaps once they are finalized ([Release No. 34-82626](#), February 2, 2018).

**Original exemptive relief.** Title VII of the Dodd-Frank Act expanded the Exchange Act definition of "security" to include security-based swaps. The Commission's original 2011 [order](#) granted temporary exemptive relief from these provisions for security-based swap activity for any person who meets the definition of "eligible contract participant" under the Commodity Exchange Act prior to the signing of Dodd-Frank and who is a SEC-registered broker or dealer. According to the order, the SEC was seeking to maintain the status quo during Dodd-Frank's implementation.

**Relief extended in 2014 and 2017.** The Commission's 2014 [order](#) extending the expiration dates for the temporary exemptions distinguished between temporary exemptions related to pending security-based swap rulemakings ("Linked Temporary Exemptions") and temporary exemptions that generally were not directly related to a specific security-based swap rulemaking ("Unlinked Temporary Exemptions"). The Linked Temporary Exemptions were tied to the compliance date of the specific rulemaking to which they were "linked." The Unlinked Temporary Exemptions were set to expire in three years—February 5, 2017. The SEC explained that the Commission needed this flexibility while Dodd-Frank rulemaking was ongoing.

The Commission again [extended](#) the expiration date in 2017 to February 5, 2018. One of the comments on the 2017 extension called for permanent exemptive and other relief for security-based swap market participants.

**Latest extension.** The Commission's latest order notes that, while a substantial portion of the Title VII regulatory regime for security-based swaps has been implemented, it is still in the process of finalizing its rules. To avoid potential market disruption stemming from the application of certain Exchange Act provisions and rules to security-based swap activities, the SEC stated it was in the public interest to further extend the Unlinked Temporary Exemptions for another year.

Regarding the suggestion that the Commission provide permanent relief, the SEC's order advises that, because some rules have been proposed but not finalized, including rules relating to the capital, margin, and segregation requirements for security-based swap dealers and participants, additional time is needed to evaluate the new regulatory regime before making a determination on whether permanent relief should be provided.

The Commission is welcoming comments on whether further relief should be granted with respect to any specific Unlinked Temporary Exemptions past the new expiration date of February 5, 2019.

The release is [No. 34-82626](#).

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