SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104573]

Order Granting Temporary Exemptive Relief, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934, from Certain Aspects of Rule 3a71-2(a)(1)

January 9, 2026.

I. Introduction

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") established a statutory framework to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things, providing for the registration and regulation of security-based swap dealers ("SBSDs") and major security-based swap participants.[1] Section 3(a)(71)[2] of the Securities Exchange Act of 1934 ("Exchange Act"),[3] which was added by Title VII of the Dodd-Frank Act, defines the term "security-based swap dealer" and provides in relevant part that the Commission shall exempt from designation as an SBSD an entity that engages in a *de minimis* quantity of security-based swap dealing in connection with transactions with or on behalf of its customers.[4]

In 2012, the Commission adopted 17 CFR 240.3a71-2 ("Rule 3a71-2") under the Exchange Act, which provides that to qualify for this *de minimis* exception all security-based swap positions connected with the person's and its affiliates' dealing activity over the immediately preceding twelve months must fall below one of three separate thresholds, as

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1 Public Law 111-203, 124 Stat. 1376 (2010).

2 15 U.S.C. 78c(a)(71).

3 15 U.S.C. 78a *et seq*.

4 *See* 15 U.S.C. 78c(a)(71)(D).

applicable.[5] Two of the thresholds are subject to temporarily higher, phase-in levels of aggregate gross notional amounts of *de minimis* security-based swap dealing activity.[6] As set forth in Rule 3a71-2(a)(1)(i), for credit default swaps ("CDSs") that constitute security-based swaps, the *de minimis* threshold is an aggregate gross notional amount of no more than $3 billion, subject to a phase-in level of an aggregate gross notional amount of no more than $8 billion.[7] As set forth in Rule 3a71-2(a)(1)(ii), for security-based swaps that do not constitute CDSs, the *de minimis* threshold is an aggregate gross notional amount of no more than $150 million, subject to a phase-in level of an aggregate gross notional amount of no more than $400 million.[8]

The phase-in period for these *de minimis* security-based swap dealing activity thresholds ends on the "phase-in termination date."[9] In 2022, the Commission announced that the phase-in termination date is November 8, 2026 (the "default phase-in termination date"), absent additional Commission action pursuant to Rule 3a71-2(a)(2)(ii)(A),[10] as discussed below. The Commission calculated the default phase-in termination date pursuant to a formula specified in Rule 3a71-2(a)(2)(ii)(B), which provided that the phase-in termination date will be five years after the "data

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5 *See* Rule 3a71-2(a); Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant," Release No. 34-66868 (Apr. 27, 2012), 77 FR 30596, 30726–27 (May 23, 2012) ("Intermediaries Adopting Release").

6 The higher phase-in levels of *de minimis* security-based swap dealing activity are not available to the extent that a person engages in security-based swap dealing activity with counterparties that are natural persons, other than natural persons who qualify as eligible contract participants by virtue of section 1a(18)(A)(xi)(II) of the Commodity Exchange Act, 7 U.S.C. 1a(18)(A)(xi)(II). *See* Rule 3a71-2(a)(2)(i).

7 Rule 3a71-2(a)(1)(i).

8 Rule 3a71-2(a)(1)(ii).

9 Rule 3a71-2(a)(2)(i).

10 *See* Data Collection Initiation Date and Contingent Phase-In Termination Date for the De Minimis Notional Thresholds of Security-Based Swap Dealing, Release No. 34-94896 (May 11, 2022), 87 FR 29986 (May 17, 2022).

collection initiation date," which the Commission established, pursuant to Rule 3a71-2(a)(2)(iii), as November 8, 2021.[11]

Under Rule 3a71-2(a)(2)(ii)(A), the Commission may terminate the phase-in period and establish a phase-in termination date, which would replace the default phase-in termination date, after the publication in the *Federal Register* of a Commission staff report addressing the rules and interpretations further defining the Exchange Act's definition of the term "security-based swap dealer," including the *de minimis* exception to that definition.[12] Specifically, nine months after the publication of the report in the *Federal Register*, the Commission may by order either: (i) terminate the phase-in period for the *de minimis* thresholds; or (ii) provide notice of its determination that it is necessary or appropriate in the public interest to propose through rulemaking an alternative to the $3 billion and $150 million *de minimis* thresholds. The Commission's order in either case shall establish a phase-in termination date which would replace the default phase-in termination date.[13] If the Commission does not establish a phase-in termination date as discussed above, the phase-in period will terminate on November 8, 2026.

II. Discussion and Exemptive Relief

The Commission has not yet published a report prepared by Commission staff examining the effect and application of the definitions of "security-based swap dealer" and "major security-

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11 Rule 3a71-2(a)(2)(ii)(B).

12 *See* 17 CFR 240.3a71-2A ("Rule 3a71-2A"). As appropriate, based on the availability of data and information, the report generally should assess topics including whether any of the *de minimis* thresholds should be increased or decreased. *See* Rule 3a71-2A(a)(1). Following the completion of the report, the report shall be published in the *Federal Register* for public comment. *See* Rule 3a71-2A(c). The Commission also directed staff to address in this report the rules and interpretations further defining the Exchange Act's definition of the term "major security-based swap participant," to which the *de minimis* thresholds in Rule 3a71-2 do not apply. *See* Rule 3a71-2A.

13 *See* Rule 3a71-2(a)(2)(ii)(A).

based swap participant" pursuant to Rule 3a71-2A.[14] As explained above, nine months after publication of the staff report, the Commission may by order either terminate the phase-in period for the *de minimis* thresholds or provide notice of its determination that it is necessary or appropriate in the public interest to propose through rulemaking an alternative to the $3 billion and $150 million *de minimis* thresholds. The phase-in period will otherwise terminate on the default phase-in termination date of November 8, 2026. The staff report is currently in progress and its publication has been delayed; therefore, it is possible that, pursuant to Rule 3a71-2(a)(2)(ii), the Commission may alter the *de minimis* thresholds based on the staff report and public comments thereon after November 8, 2026, or otherwise change the phase-in termination date.

The requirement to register as an SBSD due to meeting the *de minimis* thresholds is based on the immediately preceding twelve-month period.[15] As a result, market participants may have begun counting their transactions towards the $3 billion and $150 million, rather than the $8 billion and $400 million, *de minimis* thresholds starting on November 8, 2025. Absent exemptive relief, market participants who are not yet registered with the Commission as SBSDs would either have to manage their activities to stay below those *de minimis* thresholds or begin expending efforts and resources to prepare for registration and compliance with the SBSD regime that may prove unnecessary should the Commission, pursuant to Rule 3a71-2(a)(2)(ii)(A), determine to set the *de minimis* thresholds at levels above $3 billion and $150 million, respectively, or otherwise change the phase-in termination date.

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[14] Rule 3a71-2A(b) provides that the staff report should be completed no later than three years following the data collection initiation date established pursuant to Rule 3a71-2(a)(2)(iii). Three years following the data collection initiation date was November 8, 2024.

[15] *See* Rule 3a71-2(a)(1).

When adopting these provisions under Rule 3a71-2(a), the Commission stated its intent that the Commission should have sufficient time after the staff report is published to receive and review public comment on the report, and to draw conclusions regarding establishing the phase-in termination date or proposing potential changes to the rule implementing the *de minimis* exception, in a way that also promotes the orderly and predictable termination of the phase-in period.[16]

To facilitate the orderly and predictable termination of the phase-in period,[17] the Commission is providing until May 8, 2028, a temporary exemption, pursuant to section 36(a) of the Exchange Act, from Rules 3a71-2(a)(1)(i) and 3a71-2(a)(1)(ii). Under this exemption, a person that is not currently registered as a security-based swap dealer and that exceeds the *de minimis* thresholds in Rules 3a71-2(a)(1)(i) and 3a71-2(a)(1)(ii) of $3 billion and $150 million, respectively, shall be deemed not to be an SBSD, and therefore shall not be subject to section 15F of the Exchange Act, provided that the security-based swap positions connected with the dealing activity in which the person – or any other entity controlling, controlled by or under common control with the person – engages over the course of the immediately preceding twelve months have an aggregate gross notional amount of no more than (a) $8 billion with regard to CDSs that constitute security-based swaps and (b) $400 million with regard to non-CDSs that constitute security-based swaps. The effect of this exemption is to continue to apply the phase-in *de minimis* thresholds for CDSs and non-CDSs that constitute security-based swaps until May 8, 2028. Similarly, to ensure the thresholds are consistent for registration and de-registration, the Commission is providing a temporary exemption for a registered SBSD applying to withdraw its

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16 *See* Intermediaries Adopting Release, 77 FR at 30641.

17 *See id*.

registration pursuant to Rule 3a71-2(c) to the extent that the security-based swap positions connected with the dealing activity in which the SBSD – or any other entity controlled, controlled by or under common control with the SBSD – engages over the course of the immediately preceding twelve months have an aggregate gross notional amount of (a) over $3 billion but no more than $8 billion with regard to CDSs that constitute security-based swaps and (b) over $150 million but no more than $400 million with regard to non-CDSs that constitute security-based swaps until May 8, 2028.[18]

Section 36 of the Exchange Act, subject to certain limitations, authorizes the Commission 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 of 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.[19]

This temporary exemption is necessary or appropriate in the public interest and consistent with the protection of investors because it will help to facilitate an effective and orderly implementation of the applicable requirements of Rule 3a71-2(a) in a way that promotes the orderly and predictable termination of the phase-in period[20] while preventing entities from incurring potentially unnecessary burdens, depending upon any action the Commission may take to address the *de minimis* thresholds and the phase-in termination date pursuant to Rule 3a71-2(a)(2)(ii)(A). Effectively extending the phase-in period by 18 months by preventing the lower

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18 *See* Rule 3a71-2(c) (A currently registered SBSD may apply to withdraw that registration, while continuing to engage in security-based swap dealing activity in reliance on Rule 3a71-2, so long as that person has been registered as an SBSD for at least 12 months and satisfies the conditions of the paragraph (a) of the *de minimis* exception.).

19 15 U.S.C. 78mm.

20 *See* Intermediaries Adopting Release, 77 FR at 30641.

de minimis thresholds in Rule 3a71-2(a)(1) from going into effect before the Commission has the opportunity to consider the staff report and public comments thereon, is in the public interest because it would (1) prevent the potential for multiple changes to the *de minimis* thresholds in relatively quick succession, which could impose burdens that later prove unnecessary, and (2) allow time for the Commission to take the staff report and public comments thereon into consideration in assessing the appropriate *de minimis* thresholds.

The additional time provided by a temporary exemption strikes an appropriate balance between continuing the implementation of Title VII of the Dodd-Frank Act and ensuring an orderly termination of the phase-in period.

III. Conclusion

Accordingly, *IT IS HEREBY ORDERED*, pursuant to section 36(a) of the Exchange Act, that the Commission grants temporary exemptive relief, as set forth in this order, from Rules 3a71-2(a)(1)(i) and 3a71-2(a)(1)(ii), such that a person that is not currently registered as a security-based swap dealer and that exceeds the *de minimis* thresholds in Rules 3a71-2(a)(1)(i) and 3a71-2(a)(1)(ii) of $3 billion and $150 million, respectively, shall be deemed not to be an SBSD, and therefore shall not be subject to section 15F of the Exchange Act, provided that the security-based swap positions connected with the dealing activity in which the person—or any other entity controlling, controlled by or under common control with the person—engages over the course of the immediately preceding twelve months have an aggregate gross notional amount of no more than (a) $8 billion with regard to CDSs that constitute security-based swaps and (b) $400 million with regard to non-CDSs that constitute security-based swaps, absent additional Commission action, until May 8, 2028.

IT IS FURTHER ORDERED, pursuant to section 36(a) of the Exchange Act, that the Commission grants temporary exemptive relief, as set forth in this order, from Rules 3a71-2(a)(1)(i) and 3a71-2(a)(1)(ii) to the extent referenced as a condition in Rule 3a71-2(c), such that a person who currently is registered as a security-based swap dealer may apply to withdraw that registration so long as that person has been registered as a security-based swap dealer for at least twelve months and exceeds the *de minimis* thresholds in Rules 3a71-2(a)(1)(i) and 3a71-2(a)(1)(ii) of $3 billion and $150 million, respectively, provided that the security-based swap positions connected with the dealing activity in which the person—or any other entity controlling, controlled by or under common control with the person—engages over the course of the immediately preceding twelve months have an aggregate gross notional amount of no more than (a) $8 billion with regard to CDSs that constitute security-based swaps and (b) $400 million with regard to non-CDSs that constitute security-based swaps, absent additional Commission action, until May 8, 2028.

By the Commission.

J. Matthew DeLesDernier,

Deputy Secretary.