SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94896 / May 11, 2022]

Data Collection Initiation Date and Contingent Phase-In Termination Date for the De Minimis Notional Thresholds of Security-Based Swap Dealing

AGENCY: Securities and Exchange Commission.

ACTION: Commission announcement.

SUMMARY: The definition of "security-based swap dealer" is subject to a *de minimis* exception whereby a person is deemed not to be a security-based swap dealer as a result of security-based swap dealing activity that falls below certain *de minimis* thresholds. These *de minimis* thresholds are subject to temporarily higher, phase-in levels of security-based swap dealing activity that will be in effect until the "phase-in termination date." The phase-in termination date will be determined in part by reference to a "data collection initiation date." The Commission is making this announcement to confirm that the data collection initiation date was November 8, 2021, and, absent additional Commission action, the phase-in termination date shall be November 8, 2026.

DATES: The data collection initiation date referenced in 17 CFR 240.3a71-2 and 240.3a71-2A, was November 8, 2021. Absent additional action by the Commission pursuant to 17 CFR 240.3a71-2(a)(2)(ii)(A), the phase-in termination date will be November 8, 2026.

FOR FURTHER INFORMATION CONTACT: Carol McGee, Assistant Director, Laura Compton, Senior Special Counsel, Office of Derivatives Policy, Division of Trading and Markets, at (202) 551-5870.

SUPPLEMENTARY INFORMATION: For purposes of this announcement, the Commission uses the following terms:

Commission Reference		CFR Citation (17 CFR)
Securities Exchange Act of 1934[1] ("Exchange Act")	Rule 3a71-2	§ 240.3a71-2
	Rule 3a71-2(a)	§ 240.3a71-2(a)
	Rule 3a71-2(a)(1)(i)	§ 240.3a71-2(a)(1)(i)
	Rule 3a71-2(a)(1)(ii)	§ 240.3a71-2(a)(1)(ii)
	Rule 3a71-2(a)(2)(i)	§ 240.3a71-2(a)(2)(i)
	Rule 3a71-2(a)(2)(ii)(A)	§ 240.3a71-2(a)(2)(ii)(A)
	Rule 3a71-2(a)(2)(ii)(B)	§ 240.3a71-2(a)(2)(ii)(B)
	Rule 3a71-2(a)(2)(iii)	§ 240.3a71-2(a)(2)(iii)
	Rule 3a71-2A	§ 240.3a71-2A
	Rule 3a71-2A(a)(1)	§ 240.3a71-2A(a)(1)
	Rule 3a71-2A(b) through (c)	§§ 240.3a71-2A(b) through (c)
	Rule 3a71-2A note	§ 240.3a71-2A note
	Regulation SBSR	§§ 242.900 through 242.909

BACKGROUND

Section 3(a)(71) of the Exchange Act[2] defines the term "security-based swap dealer" ("SBSD") and provides in relevant part that a person shall be deemed not to be an SBSD as a

[1] 15 U.S.C. 78a *et seq*.

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

result of security-based swap dealing activity that falls below certain *de minimis* thresholds.[3] In 2012, the Commission adopted Exchange Act Rule 3a71-2(a), 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 three separate thresholds.[4] 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.[5] For credit default swaps that are 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.[6] For security-based swaps that are not credit default swaps, 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.[7]

The phase-in period for these *de minimis* security-based swap dealing activity thresholds is available until the "phase-in termination date."[8] The phase-in termination date, in turn, depends in part on the "data collection initiation date" established pursuant to Exchange Act Rule 3a71-2(a)(2)(iii). That rule provides that the data collection initiation date was the later of (1) the last compliance date for the registration and regulatory requirements for SBSDs and

---

3 See Exchange Act Section 3(a)(71)(D).

4 See Exchange Act 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, 30727 (May 23, 2012)].

5 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 Exchange Act Rule 3a71-2(a)(2)(i).

6 Exchange Act Rule 3a71-2(a)(1)(i).

7 Exchange Act Rule 3a71-2(a)(1)(ii).

8 Exchange Act Rule 3a71-2(a)(2)(i).

major security-based swap participants under Exchange Act Section 15F,[9] and (2) the first date on which compliance with the trade-by-trade reporting rules for credit-related and equity-related security-based swaps to a registered security-based swap data repository is required. With respect to the first prong of Exchange Act Rule 3a71-2(a)(2)(iii), the compliance date for registration and regulatory requirements for SBSDs and major security-based swap participants under Exchange Act Section 15F was October 6, 2021.[10] With respect to the second prong of Exchange Act Rule 3a71-2(a)(2)(iii), on May 7, 2021, DTCC Data Repository registered with the Commission, which definitively set November 8, 2021, as the first compliance date for Regulation SBSR's requirements regarding reporting of credit-related and equity-related security-based swaps.[11] Pursuant to Exchange Act Rule 3a71-2(a)(2)(iii), the data collection initiation date thus was November 8, 2021.

---

9 15 U.S.C. 78o-10.

10 See Cross-Border Application of Certain Security-Based Swap Requirements, Release No. 34-87780 (Dec. 18, 2019) [85 FR 6270, 6345 (Feb. 4, 2020)] ("Cross-Border Amendments Release"). In the Cross-Border Amendments Release, the Commission set the compliance date for registration and regulatory requirements for SBSDs and major security-based swap participants as 18 months after the effective date described therein; that effective date was 60 days after publication of the Cross-Border Amendments Release in the *Federal Register*. The Cross-Border Amendments Release was published in the *Federal Register* on Feb. 4, 2020; 60 days after that date was Apr. 6, 2020. Eighteen months after Apr. 6, 2020, was Oct. 6, 2021.

11 The first compliance date for Regulation SBSR with respect to a security-based swap asset class was the first Monday that was the later of: (1) Six months after the date on which the first security-based swap data repository that can accept transaction reports in that asset class registers with the Commission; or (2) one month after the compliance date for registration and regulatory requirements for SBSDs and major security-based swap participants. See Cross-Border Amendments Release, 85 FR 6346. DTCC Data Repository (U.S.), LLC registered as a security-based swap data repository for credit and equity asset classes (i.e., the asset classes referenced in Exchange Act Rule 3a71-2(a)(2)(iii)) on May 7, 2021. See Security-Based Swap Data Repositories; DTCC Data Repository (U.S.), LLC; Order Approving Application for Registration as a Security-Based Swap Data Repository, Release No. 34-91798 (May 7, 2021) [86 FR 26115 (May 12, 2021)]. Nov. 8, 2021, was both the first Monday that was six months after May 7, 2021, and the first Monday that was one month after the Oct. 6, 2021, compliance date for registration and regulatory requirements for SBSDs and major security-based swap participants. See also SEC Approves Registration of First Security-Based Swap Data Repository; Sets the First Compliance Date for Regulation SBSR, Press Release No. 2021-80 (May 7, 2021), available at https://www.sec.gov/news/press-release/2021-80 ("Today's SEC action sets Nov. 8, 2021, as the first compliance date for Regulation SBSR, which governs regulatory reporting and public dissemination of security-based swap transactions.").

The phase-in termination date is determined through a separate mechanism that depends in part on the data collection initiation date and also, as explained below, in part upon the timing 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] The report must be published in the *Federal Register* for public comment no later than three years following the data collection initiation date, or November 8, 2024, and could be published earlier.[13] Nine months after the publication of the 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 Commission's order in either case shall establish the phase-in termination date.[14] Alternatively, if the phase-in termination date has not been previously established in such an order, the phase-in termination date shall be five years after the data collection initiation date,[15] or November 8, 2026.

---

[12] See Exchange Act Rule 3a71-2A note. As appropriate, based on the availability of data and information, the report generally should assess whether any of the *de minimis* thresholds should be increased or decreased. See Exchange Act Rule 3a71-2A(a)(1). The Commission intends to consider this report in reviewing the effect and application of the *de minimis* thresholds based on the evolution of the security-based swap market following the implementation of the registration and regulatory requirements of Exchange Act Section 15F; the report may also be informative as to potential changes to the rules further defining the term "security-based swap dealer." See Exchange Act Rule 3a71-2A note. The Commission directed staff also to report on 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 Exchange Act Rule 3a71-2 do not apply.

[13] See Exchange Act Rule 3a71-2A(b) through (c).

[14] See Exchange Act Rule 3a71-2(a)(2)(ii)(A).

[15] Exchange Act Rule 3a71-2(a)(2)(ii)(B).

COMMISSION ANNOUNCEMENT:

The data collection initiation date referenced in Exchange Act Rules 3a71-2 and 3a71-2A was November 8, 2021. Absent additional Commission action establishing the phase-in termination date pursuant to Exchange Act Rule 3a71-2(a)(2)(ii)(A), the phase-in termination date shall be November 8, 2026.

By the Commission.

Dated: May 11, 2022.

Eduardo A. Aleman,

Deputy Secretary.