

## Security-Based Swaps

### FINRA Adopts Amendments to Clarify the Application of FINRA Rules to Security-Based Swaps

Effective Dates: February 6, 2022 (Rules 0180, 4120 and 9610) and April 6, 2022 (Rules 4210, 4220 and 4240)

#### Summary

FINRA has adopted amendments to its rules to clarify the application of FINRA rules to security-based swaps (SBS):<sup>1</sup>

- ▶ FINRA has adopted a new Rule 0180 (Application of Rules to Security-Based Swaps), which, along with conforming amendments to Rule 9610 (Procedures for Exemptions—Application), will become effective February 6, 2022. The new rule replaces the expiring temporary Rule 0180 and generally applies FINRA rules to members' activities and positions with respect to SBS, with limited exceptions.
- ▶ FINRA has amended its financial responsibility and operational rules, including Rule 4120 (Regulatory Notification and Business Curtailment), to conform to the Securities and Exchange Commission's (SEC or Commission) SBS-related capital, margin and segregation requirements. These amendments will also become effective February 6, 2022.
- ▶ FINRA has adopted a new SBS-specific margin rule, Rule 4240 (Security-Based Swap Margin Requirements), which replaces the expiring interim pilot program establishing margin requirements for credit default swaps (CDS). The new margin rule, along with related amendments to Rules 4210 (Margin Requirements) and 4220 (Daily Record of Required Margin), will become effective April 6, 2022.

The amended text of the rules is set forth in [Attachment A](#).

Questions regarding this *Notice* should be directed to:

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#### Notice Type

- ▶ Rule Amendment

#### Suggested Routing

- ▶ Compliance
- ▶ Institutional
- ▶ Legal
- ▶ Margin
- ▶ Operations
- ▶ Risk
- ▶ Senior Management
- ▶ Systems
- ▶ Technology
- ▶ Trading
- ▶ Training

#### Key Topics

- ▶ Security-Based Swaps

#### Referenced Rules

- ▶ FINRA Rules 0180, 2030, 2090, 2111, 2210(d), 2232, 3110, 3120, 3130, 4120, 4210, 4220, 4240 and 9610
- ▶ FINRA Rule 4000 Series
- ▶ FINRA Rule 6000 Series
- ▶ FINRA Rule 7000 Series
- ▶ FINRA Rule 9600 Series
- ▶ FINRA Rule 11000 Series
- ▶ Exchange Act Rules 3a71-3, 3a71-6, 15Fi-3, 15Fh-3, 15c3-1, 17a-13, 18a-1 and 18a-3
- ▶ Exchange Act Sections 3(a)(10), 3(a)(68) and 15F(e)

- ▶ James Barry, Director, Credit Regulation, at (646) 315-8347 or [james.barry@finra.org](mailto:james.barry@finra.org); or
- ▶ Dror Kenett, Senior Economist, Office of the Chief Economist, at (202) 728-8208 or [dror.kenett@finra.org](mailto:dror.kenett@finra.org).

## Background and Discussion

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)<sup>2</sup> established a new framework for the regulation of SBS and amended the definition of “security” under the Securities Exchange Act of 1934 (Exchange Act or SEA) to expressly encompass SBS.<sup>3</sup> FINRA had previously adopted temporary relief from the application of most FINRA rules to SBS,<sup>4</sup> in tandem with temporary exemptive orders issued by the SEC relating to the definition of SBS as securities,<sup>5</sup> as well as an interim pilot program with respect to margin requirements for transactions in CDS held in an account at a member. Temporary Rule 0180, which broadly excepted SBS activities from most FINRA requirements, will automatically expire on February 6, 2022, and the interim CDS margin pilot program under Rule 4240 will automatically expire on April 6, 2022.<sup>6</sup>

In light of the expiration of the SEC’s temporary exemptive orders, the finalization of the SEC’s SBS regulatory framework, and the initial registration with the SEC of the first wave of SBS dealers (SBSDs) and major SBS participants (MSBSPs) (collectively, SBS Entities), FINRA has adopted amendments to its rules to clarify the application of FINRA rules to SBS when temporary Rules 0180 and 4240 expire. These amendments are described in greater detail below.

## New Rule 0180: Presumption of Applicability and Exceptions

New Rule 0180(a) provides that, except as otherwise provided in the rule, FINRA rules shall apply to members’ activities and positions with respect to SBS. Thus, the presumption under the previous, expiring Rule 0180 that FINRA rules do not apply to SBS is flipped, and the presumption going forward is that FINRA rules do apply to SBS, with certain limited exceptions as discussed below. As a result, unless otherwise specified in Rule 0180, all FINRA rules applicable to members’ activities involving a security, securities business, a transaction involving a security or a securities position apply by their terms to SBS.

Paragraphs (b) through (g) of new Rule 0180 provide limited, specific exceptions from the application of particular FINRA rules to SBS, subject to the conditions set forth in the rule.<sup>7</sup>

First, Rule 0180(b) provides an exception from applying certain FINRA rules to SBS because these rules were intended for other types of securities and could create operational difficulties if applied to SBS. These rules are:

- ▶ Rule 6000 Series (Quotation, Order, and Transaction Reporting Facilities);
- ▶ Rule 7000 Series (Clearing, Transaction and Order Data Requirements, and Facility Charges); and
- ▶ Rule 11000 Series (Uniform Practice Code).

Second, Rules 0180(c) and (d) provide limited exceptions from applying specified FINRA rules to SBS where the SEC has finalized business conduct and related requirements applicable to SBS Entities that are similar to such FINRA rules. Importantly, these exceptions are expressly limited to circumstances where: (1) the member is acting in its capacity as a registered SBS Entity or the associated person of the member is acting in his or her capacity as an associated person of a registered SBS Entity, as applicable; and (2) the SBS activities or positions relate to the business of the registered SBS Entity within the meaning of the SEC's supervision rule for SBS Entities, Exchange Act Rule 15Fh-3(h). These conditions are intended to ensure that the SBS activity for which the exception has been provided is subject to the parallel SEC rule and within the scope of a registered SBS Entity's business and related supervisory system. Thus, these exceptions do not apply to SBS activity engaged in by a member that is not a registered SBS Entity, nor to a member engaged in other types of SBS activity, including brokerage activity. The applicability of these exceptions differs depending on whether the registered SBS Entity is an SBSD or MSBSP.

Subject to these conditions, exceptions from the following rules are available for any registered SBS Entities and their associated persons:

- ▶ Rule 2210(d) (Communications with the Public—Content Standards);
- ▶ Rule 2232 (Customer Confirmations); and
- ▶ Rules 3110 (Supervision), 3120 (Supervisory Control System), and 3130 (Annual Certification of Compliance and Supervisory Processes).

Subject to the conditions described previously, exceptions from the following rules are available for any registered SBSDs and their associated persons, but not MSBSPs:

- ▶ Rule 2030 (Engaging in Distribution and Solicitation Activities with Government Entities);
- ▶ Rule 2090 (Know Your Customer); and
- ▶ Rule 2111 (Suitability).

Third, Rule 0180(e) provides an exception from specified FINRA rules with respect to SBS where a member is acting as the U.S. registered affiliate for a foreign affiliate pursuant to the cross-border SBS exception in Exchange Act Rule 3a71-3(d), which includes as a condition compliance with specified parallel SEC rules. Specifically, Rule 0180(e) provides that the following rules shall not apply to members' activities and positions with respect to SBS, to the extent that the member or the associated person of the member, as applicable, is arranging, negotiating or executing SBS on behalf of a non-U.S. affiliate pursuant to, and in compliance with the conditions of, the exception from counting certain SBS under Exchange Act Rule 3a71-3(d)(1):

- ▶ Rule 2111 (Suitability);
- ▶ Rule 2210(d) (Communications with the Public—Content Standards); and
- ▶ Rule 2232 (Confirmations).

Fourth, Rule 0180(f) provides that the following rules shall not apply to members' activities and positions with respect to SBS: (1) to the extent that the member is acting in its capacity as a registered SBS Entity and the customer's account solely holds SBS and collateral posted as margin in connection with such SBS; and (2) provided that the member complies with the portfolio reconciliation requirements of Exchange Act Rule 15Fi-3 with respect to such account and that such portfolio reconciliations include collateral posted as margin in connection with SBS in the account:

- ▶ Rule 2231 (Customer Account Statements); and
- ▶ Rule 4512 (Customer Account Information).

Finally, Rule 0180(g) provides that persons associated with a member whose functions are related solely and exclusively to SBS undertaken in such person's capacity as an associated person of a registered SBS Entity are not required to be registered with FINRA. This exception from registration is not available for associated persons of a member engaged in any other securities activity or to associated persons of members that are not also registered SBS Entities.

### Financial Responsibility and Operational Amendments

The SEC has adopted capital, margin and segregation requirements for SBS Entities, along with amendments to the capital and segregation requirements for broker-dealers.<sup>8</sup> In doing so, the SEC amended the net capital rule for broker-dealers, Exchange Act Rule 15c3-1, in two key respects:

- ▶ First, the SEC adopted new minimum net capital requirements for broker-dealers that are also registered as SBSs, but that do not operate pursuant to the alternative net capital (ANC) requirements of the rule. These entities

- must comply with a new minimum dollar net capital requirement and a new component for determining their minimum capital requirement that is based on a percentage of initial margin computed for SBS (in addition to other minimum requirements applicable to the broker-dealer). These changes do not apply to broker-dealers that operate pursuant to the ANC requirements of the rule (ANC Firms). These new minimum net capital requirements also do not impact non-ANC Firms that are not also registered SBSDs, regardless of whether such firms engage in SBS activities below the SBS registration threshold.
- ▶ Second, the SEC changed the minimum net capital requirements for ANC Firms, regardless of whether they transact in SBS.<sup>9</sup> For these broker-dealers, the SEC increased the minimum dollar net capital requirement and added a new component for determining their minimum capital requirement that is based on a percentage of initial margin computed for SBS (in addition to other minimum requirements applicable to the broker-dealer), added a minimum tentative net capital requirement and amended the early warning notification requirement for tentative net capital.

Rule 4120 sets forth early warning notification and business curtailment requirements if a carrying or clearing member's capital falls below certain thresholds. In addition to notification requirements, Rule 4120 allows FINRA to restrict a member from expanding its business in certain circumstances, and to require a member to reduce its business if its net capital falls below certain specified levels (generally lower than those required for notification). These requirements are based on the minimum capital requirements applicable to a member broker-dealer under Exchange Act Rule 15c3-1. Accordingly, FINRA has amended Rule 4120 to conform the rule to the new and increased capital requirements for non-ANC Firms that are also registered as SBSDs and for ANC Firms, respectively, as described above.

In addition, FINRA has amended its rules to apply FINRA's financial and operational rules more broadly to firms that enter into, or otherwise have exposure to, SBS. Specifically, certain rules in the Rule 4000 Series (Financial and Operational Rules) include provisions that impose higher standards, or provide FINRA the authority to impose additional requirements, on firms that carry or clear transactions or accounts (generally referred to as "carrying or clearing firms"). This tiering structure was built into certain rules so that firms that only introduce their customer accounts and do not have exposure to the settlement system are provided relief from the higher standards required of firms that carry or clear transactions and accounts.

For reference, below is a list of rules in the Rule 4000 Series where tiering has been used for carrying or clearing firms:

FINRA Rule	Description of the Tier for Carrying Firms
4110 (Capital Compliance)	Requirement to keep greater net capital, seek permission for withdrawals and seek approval for add-backs to net capital.
4120 (Regulatory Notification and Business Curtailment)	Restrictions on expanding, or requirements to reduce business, if sufficient capital levels are not maintained.
4521 (Notifications, Questionnaires and Reports)	Allows FINRA to collect additional data and requires reporting of a drop in Tentative Net Capital.
4522 (Periodic Security Counts, Verification and Comparison)	Requires more frequent counts than would be required under Exchange Act Rule 17a-13.
4523 (Assignment of Responsibility for General Ledger Accounts And Identification of Suspense Accounts)	Requires a record of primary and supervisory named individuals over general ledger bookkeeping accounts.

SBS are complex transactions that require detailed recordkeeping, margining, legal agreements, collateral management, reconciliation and risk management. As such, FINRA has amended its rules to also apply all requirements that apply to a member that clears or carries customer accounts to any member that acts as a principal counterparty to an SBS, clears or carries an SBS, guarantees an SBS or otherwise has financial exposure to an SBS.

#### **New Rule 4240: SBS-Specific Margin Requirements**

The SEC has adopted new Exchange Act Rule 18a-3, to require a nonbank SBS to collect and deliver variation margin, and to collect (but not deliver) initial margin with respect to uncleared SBS. Exchange Act Rule 18a3 also provides certain exceptions from the margin requirements, establishes thresholds and minimum transfer amounts, specifies collateral requirements (including collateral haircuts), and establishes risk monitoring requirements.

For its part, FINRA has adopted a new margin rule specifically applicable to SBS, which will replace the expiring interim CDS margin pilot program under temporary Rule 4240. The new margin requirements under new Rule 4240 apply to all SBS, not just CDS. However, new Rule 4240 does not apply to any member that is registered as an SBSB, as such members are subject to the margin requirements of Exchange Act Rule 18a-3. Additionally, and consistent with Exchange Act Rule 18a-3, new Rule 4240 defers to registered clearing agencies to set the margin requirements for cleared SBS, and as such only specifies new variation margin and initial margin requirements for uncleared SBS. Therefore, the new SBS-specific margin requirements under new Rule 4240 apply only to uncleared SBS transacted by members that are not registered SBSBs.

The margin requirements under Rule 4240 are similar to those applicable to nonbank SBSBs under Exchange Act Rule 18a-3, with certain modifications to account for the fact that members subject to the rule will not be subject to the SEC's comprehensive regulatory framework for SBSBs. Thus, subject to certain exceptions set forth in the rule, Rule 4240 requires members that are not SBSBs to collect and deliver variation margin on a daily basis to cover the member's current exposure to or from each uncleared SBS counterparty, and also to collect (but not deliver) initial margin from each uncleared SBS counterparty.

At a high level, new Rule 4240 has the following characteristics:<sup>10</sup>

#### Scope of Rule

- ▶ The new margin rule applies to every member that is a party to an SBS with a customer, broker or dealer, or other counterparty, or who has guaranteed or otherwise become responsible for any other person's SBS obligations.
- ▶ The new margin rule does *not* apply to:
  - ▶ any member registered as an SBSB, which must instead comply with the SEC margin requirements under Exchange Act Rule 18a-3;
  - ▶ any SBS carried by a member in a portfolio margin account subject to the requirements of Rule 4210(g) if the SBS is of a type addressed in the comprehensive written risk analysis methodology filed by the member with FINRA in compliance with Rule 4210(g)(1); or
  - ▶ any SBS carried in a commodity account or other account under the jurisdiction of the Commodity Futures Trading Commission in accordance with an SEC rule, order, or no-action letter permitting SBS and swaps to be carried and portfolio margined together in such an account.

### Margin Requirements

- ▶ The new margin rule generally requires members, on a daily basis, to collect from, or deliver to, each counterparty margin (variation margin) equal to any current exposure on uncleared SBS with such counterparty.
- ▶ The new margin rule generally requires members, on a daily basis, to compute an initial margin amount on uncleared “plain vanilla” SBS with each counterparty as follows:
  - ▶ for any uncleared “Basic CDS,”<sup>11</sup> initial margin must be computed based on the term and spread of the CDS, using the chart and offsets set out in Exchange Act Rule 15c3-1(c)(2)(vi)(P); and
  - ▶ for any uncleared SBS (other than a CDS) that is the economic equivalent of a margin account containing a portfolio of long or short positions in securities or options (a Basic SBS), initial margin must be computed by applying Rule 4210 to that equivalent margin account.
- ▶ Initial margin may be computed on a combination of multiple uncleared Basic SBS, or on a combination of uncleared Basic SBS and securities or options positions held together with the uncleared Basic SBS if the firm has an enforceable netting or collateral agreement with a counterparty covering those Basic SBS and securities or options positions. Similarly, initial margin may be computed on a combination of multiple uncleared Basic CDS, or on a combination of uncleared Basic CDS and securities held together with the uncleared Basic CDS if the firm has an enforceable netting or collateral agreement with a counterparty covering those Basic CDS and securities.
- ▶ The new margin rule requires any member that intends to engage in a type of uncleared SBS other than Basic CDS or Basic SBS to obtain prior approval from FINRA of an appropriate initial margin requirement for that type of uncleared SBS. After approving a firm’s initial margin requirement for a particular type of SBS, FINRA may publish a *Regulatory Notice*, or similar communication, approving the general use of that initial margin requirement for that type of SBS. No member may become a party to an SBS other than a Basic CDS or Basic SBS unless FINRA has approved an initial margin requirement for such member’s use with respect to that type of SBS.
- ▶ The new margin rule generally requires members to obtain variation margin and the computed initial margin amount from each counterparty as promptly as possible and no later than the close of business on the business day after the day on which a deficiency occurs, unless FINRA has specifically granted the member additional time.
- ▶ The new margin rule permits only cash and marginable securities to be deposited as margin for uncleared SBS. Any securities deposited as margin for uncleared SBS must themselves be margined in accordance with Rule 4210.

### Exceptions

- ▶ Members are not required to collect variation margin or initial margin from registered clearing agencies.
- ▶ Members are permitted to take capital charges in lieu of collecting variation margin or initial margin from:
  - ▶ any counterparty to a legacy SBS (provided that the member collects and delivers margin on legacy SBS to the extent of its contractual rights or obligations to do so);<sup>12</sup>
  - ▶ sovereign entities;<sup>13</sup> and
  - ▶ certain multilateral organizations.<sup>14</sup>
- ▶ Members are permitted to take capital charges in lieu of collecting initial margin (but not variation margin) from:
  - ▶ financial market intermediaries;<sup>15</sup> and
  - ▶ majority owners of the member.<sup>16</sup>
- ▶ ANC Firms are permitted to take credit risk charges in lieu of collecting initial margin (but not variation margin) from their majority owners and certain affiliated registered or foreign SBSDs.<sup>17</sup>

### Risk Management Procedures

- ▶ The new margin rule requires members engaged in uncleared SBS to monitor the risk of such SBS and maintain a comprehensive written risk analysis methodology for assessing the potential risk to the member's capital over a specified range of possible market movements over a specified time period.
- ▶ Each member must employ the risk monitoring procedures and guidelines set forth in Rule 4240, and must review, in accordance with the member's written procedures, at reasonable periodic intervals, the member's SBS activities for consistency with such risk monitoring procedures and guidelines.

## Endnotes

1. See Securities Exchange Act Release No. 93914 (January 6, 2022), 87 FR 1962 (January 12, 2022) (Order Approving File No. SR-FINRA-2021-008).
2. Pub. L. No. 111-203, 124 Stat. 1376 (2010).
3. See Dodd-Frank Act Section 761(a)(2) (inserting “security-based swap” in the definition of “security” in SEA Section 3(a)(10)).  
  
For purposes of Rule 0180 and this *Notice*, “security-based swap” has the same meaning as defined in SEA Section 3(a)(68) and the rules and guidance of the SEC or its staff. See Supplementary Material .01 to Rule 0180. The amendments discussed in this *Notice* do not modify the definition of “security-based swap” in Supplementary Material .01.
4. See Securities Exchange Act Release No. 64884 (July 14, 2011), 76 FR 42755 (July 19, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-FINRA-2011-033). Rule 0180 was adopted with an expiration date of January 17, 2012, which was subsequently extended a number of times.
5. See, e.g., Securities Exchange Act Release No. 64795 (July 1, 2011), 76 FR 39927 (July 7, 2011) (Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With the Pending Revision of the Definition of “Security” To Encompass Security-Based Swaps, and Request for Comment); Securities Exchange Act Release No. 71485 (February 5, 2014), 79 FR 7731 (February 10, 2014) (Order Extending Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With the Revision of the Definition of “Security” to Encompass Security-Based Swaps, and Request for Comment); Securities Exchange Act Release No. 84991 (January 25, 2019) (Order Granting a Limited Exemption from the Exchange Act Definition of “Penny Stock” for Security-Based Swap Transactions between Eligible Contract Participants; Granting a Limited Exemption from the Exchange Act Definition of “Municipal Securities” for Security-Based Swaps; and Extending Certain Temporary Exemptions under the Exchange Act in Connection with the Revision of the Definition of “Security” to Encompass Security-Based Swaps); Securities Exchange Act Release No. 90308 (November 2, 2020), 85 FR 70667 (November 5, 2020) (Order Granting Exemptions from Sections 8 and 15(a)(1) of the Securities Exchange Act of 1934 and Rules 3b-13(b)(2), 8c-1, 10b-10, 15a-1(c), 15a-1(d) and 15c2-1 Thereunder in Connection with the Revision of the Definition of “Security” to Encompass Security-Based Swaps and Determining the Expiration Date for a Temporary Exemption from Section 29(b) of the Securities Exchange Act of 1934 in Connection with Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants).
6. See Securities Exchange Act Release No. 92837 (Sep. 1, 2021), 86 FR 50391 (Sep. 8, 2021) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-FINRA-2021-021).
7. In addition to the specific exceptions discussed above, new Rule 0180(i) provides that, pursuant to the Rule 9600 Series, FINRA may, taking into consideration all relevant factors, exempt a person unconditionally or on specified terms from the application of FINRA rules (other than an exemption from the general application of Rule 0180(a)) to the person’s SBS activities or positions as it deems appropriate consistent with the protection of investors and the public interest. The amendments also update Rule 9610 to add Rule 0180 to the list of rules pursuant to which FINRA has exemptive authority.

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8. See Securities Exchange Act Release No. 86175 (June 21, 2019), 84 FR 43872 (Aug. 22, 2019) (Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers).
9. See SEA Rule 15c3-1(a)(7).
10. FINRA has also amended Rule 4220 to ensure that required daily margin records include records with respect to SBS margin required under new Rule 4240 and made technical amendments to Rule 4210 in connection with the new margin requirements under Rule 4240.
11. For this purpose, the new margin rule uses the following definitions:
  - “Basic CDS” means a Basic Single-Name CDS or a Basic Narrow-Based Index CDS.
  - “Basic Narrow-Based Index CDS” means an SBS consisting of multiple component Basic Single-Name CDS.
  - “Basic Single-Name CDS” means an SBS in which one party pays either a single fixed amount or periodic fixed amounts or floating amounts determined by reference to a specified notional amount, and the other party pays either a fixed amount or an amount determined by reference to the value of one or more loans, debt securities or other financial instruments issued, guaranteed or otherwise entered into by a third party (the “Reference Entity”) upon the occurrence of one or more specified credit events with respect to the Reference Entity (for example, bankruptcy or payment default). The term “Basic Single-Name CDS” also includes a swap that, upon the occurrence of one or more specified credit events with respect to the Reference Entity, is physically settled by payment of a specified fixed amount by one party against delivery by the other party of eligible obligations of the Reference Entity.
12. For this purpose, a legacy SBS means an uncleared SBS entered into before April 6, 2022, the effective date of new Rule 4240.
13. Consistent with SEA Rule 18a-3(c)(1)(iii)(F), this exception applies to any counterparty that is a central government (including the U.S. government) or an agency, department, ministry, or central bank of a central government if the member has determined that the counterparty has only a minimal amount of credit risk pursuant to policies and procedures or credit risk models established pursuant to SEA Rule 15c3-1.
14. Consistent with SEA Rule 18a-3(c)(1)(iii)(E), this exception applies to SBS with a counterparty that is the Bank for International Settlements, the European Stability Mechanism, the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, or any other multilateral development bank that provides financing for national or regional development in which the U.S. government is a shareholder or contributing member.

15. Consistent with SEA Rule 18a-3(c)(1)(iii)(B), this exception applies to any counterparty that is an SBSB, swap dealer, broker or dealer, futures commission merchant, bank, foreign bank, or foreign broker or dealer.
16. For purposes of Rule 4240, a counterparty is considered to be a majority owner of the member if it is a direct or indirect owner of a majority of the equity and voting interests in the member.
17. For purposes of this exception, a registered or foreign SBSB is (A) any person registered with the SEC as an SBSB, or (B) any foreign person if the SEC has made a substituted compliance determination under SEA Rule 3a71-6(a)(1) that compliance by a registered SBSB or class thereof with specified requirements of a foreign regulatory system that are applicable to such foreign person may satisfy the capital requirements of SEA Section 15F(e) and SEA Rule 18a-1 that would otherwise apply to such SBSB or class thereof.