

Federal Securities Laws and Regulations, Sec. 15F. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS

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The Dodd-Frank Wall Street Reform and Consumer Protection Act added Section 15F of the Securities Exchange Act of 1934 effective the later of July 16, 2011 or 60 days after publication of the final implementing rules, H.R. 4173, Sec. 764(a), Pub. Law 111-203, 124 Stat. 1376.



(a) REGISTRATION.—

(1) **SECURITY-BASED SWAP DEALERS**— It shall be unlawful for any person to act as a security-based swap dealer unless the person is registered as a security-based swap dealer with the Commission.

(2) **MAJOR SECURITY-BASED SWAP PARTICIPANTS**— It shall be unlawful for any person to act as a major security-based swap participant unless the person is registered as a major security-based swap participant with the Commission.

(b) REQUIREMENTS.—

(1) **IN GENERAL**— A person shall register as a security-based swap dealer or major security-based swap participant by filing a registration application with the Commission.

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(A) **IN GENERAL**— The application shall be made in such form and manner as prescribed by the Commission, and shall contain such information, as the Commission considers necessary concerning the business in which the applicant is or will be engaged.

(B) **CONTINUAL REPORTING**— A person that is registered as a security-based swap dealer or major security-based swap participant shall continue to submit to the Commission reports that contain such information pertaining to the business of the person as the Commission may require.

(3) **EXPIRATION**— Each registration under this section shall expire at such time as the Commission may prescribe by rule or regulation.

(4) **RULES**— Except as provided in subsections (d) and (e), the Commission may prescribe rules applicable to security-based swap dealers and major security-based swap participants, including rules that limit the activities of non-bank security-based swap dealers and major security-based swap participants.

(5) **TRANSITION**— Not later than 1 year after the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the Commission shall issue rules under this section to provide for the registration of security-based swap dealers and major security-based swap participants.

(6) **STATUTORY DISQUALIFICATION**— Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant, if the security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

(c) DUAL REGISTRATION.—

(1) SECURITY-BASED SWAP DEALER— Any person that is required to be registered as a security-based swap dealer under this section shall register with the Commission, regardless of whether the person also is registered with the Commodity Futures Trading Commission as a swap dealer.

(2) MAJOR SECURITY-BASED SWAP PARTICIPANT— Any person that is required to be registered as a major security-based swap participant under this section shall register with the Commission, regardless of whether the person also is registered with the Commodity Futures Trading Commission as a major swap participant.

(d) RULEMAKING.—

(1) IN GENERAL— The Commission shall adopt rules for persons that are registered as security-based swap dealers or major security-based swap participants under this section.

(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—

(A) IN GENERAL— The Commission may not prescribe rules imposing prudential requirements on security-based swap dealers or major security-based swap participants for which there is a prudential regulator.

(B) APPLICABILITY— Subparagraph (A) does not limit the authority of the Commission to prescribe rules as directed under this section.

(e) CAPITAL AND MARGIN REQUIREMENTS.—

(1) IN GENERAL.—

(A) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE BANKS— Each registered security-based swap dealer and major security-based swap participant for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the prudential regulator shall by rule or regulation prescribe under paragraph (2)(A).

(B) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE NOT BANKS— Each registered security-based swap dealer and major security-based swap participant for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe under paragraph (2)(B).

(2) RULES.—

(A) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE BANKS— The prudential regulators, in consultation with the Commission and the Commodity Futures Trading Commission, shall adopt rules for security-based swap dealers and major security-based swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is a prudential regulator imposing—

(i) capital requirements; and

(ii) both initial and variation margin requirements on all security-based swaps that are not cleared by a registered clearing agency.

(B) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE NOT BANKS— The Commission shall adopt rules for security-based swap dealers and major security-based swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is not a prudential regulator imposing—

(i) capital requirements; and

(ii) both initial and variation margin requirements on all swaps that are not cleared by a registered clearing agency.

(C) CAPITAL— In setting capital requirements for a person that is designated as a security-based swap dealer or a major security-based swap participant for a single type or single class or category of security-based swap or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of security-based swaps or classes of security-based swaps or categories of security-based swaps engaged in and the other activities conducted by that person that are not otherwise subject to regulation applicable to that person by virtue of the status of the person.

(3) STANDARDS FOR CAPITAL AND MARGIN.—

(A) IN GENERAL— To offset the greater risk to the security-based swap dealer or major security-based swap participant and the financial system arising from the use of security-based swaps that are not cleared, the requirements imposed under paragraph (2) shall —

(i) help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant; and

(ii) be appropriate for the risk associated with the non-cleared security-based swaps held as a security-based swap dealer or major security-based swap participant.

(B) RULE OF CONSTRUCTION.—

(i) **IN GENERAL**— Nothing in this section shall limit, or be construed to limit, the authority—

(I) of the Commission to set financial responsibility rules for a broker or dealer registered pursuant to section 15(b) (except for section 15(b)(11) thereof) in accordance with section 15(c)(3); or

(II) of the Commodity Futures Trading Commission to set financial responsibility rules for a futures commission merchant or introducing broker registered pursuant to section 4f(a) of the Commodity Exchange Act (except for section 4f(a)(3) thereof) in accordance with section 4f(b) of the Commodity Exchange Act.

(ii) **FUTURES COMMISSION MERCHANTS AND OTHER DEALERS**— A futures commission merchant, introducing broker, broker, or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which such futures commission merchant, introducing broker, broker, or dealer is subject under this title or the Commodity Exchange Act.

(C) MARGIN REQUIREMENTS— In prescribing margin requirements under this subsection, the prudential regulator with respect to security-based swap dealers and major security-based swap participants that are depository institutions, and the Commission with respect to security-based swap dealers and major security-based swap participants that are not depository institutions shall permit the use of noncash collateral, as the regulator or the Commission determines to be consistent with—

(i) preserving the financial integrity of markets trading security-based swaps; and

(ii) preserving the stability of the United States financial system.

(D) COMPARABILITY OF CAPITAL AND MARGIN REQUIREMENTS.—

(i) **IN GENERAL**— The prudential regulators, the Commission, and the Securities and Exchange Commission shall periodically (but not less frequently than annually) consult on minimum capital requirements and minimum initial and variation margin requirements.

(ii) COMPARABILITY— The entities described in clause (i) shall, to the maximum extent practicable, establish and maintain comparable minimum capital requirements and minimum initial and variation margin requirements, including the use of noncash collateral, for—

- (I) security-based swap dealers; and
- (II) major security-based swap participants.

(f) REPORTING AND RECORDKEEPING.—

(1) IN GENERAL— Each registered security-based swap dealer and major security-based swap participant—

(A) shall make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition of the registered security-based swap dealer or major security-based swap participant;

(B)

(i) for which there is a prudential regulator, shall keep books and records of all activities related to the business as a security-based swap dealer or major security-based swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

(ii) for which there is no prudential regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

(C) shall keep books and records described in subparagraph (B) open to inspection and examination by any representative of the Commission.

(2) RULES— The Commission shall adopt rules governing reporting and recordkeeping for security-based swap dealers and major security-based swap participants.

(g) DAILY TRADING RECORDS.—

(1) IN GENERAL— Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records of the security-based swaps of the registered security-based swap dealer and major security-based swap participant and all related records (including related cash or forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as may be required by the Commission by rule or regulation.

(2) INFORMATION REQUIREMENTS— The daily trading records shall include such information as the Commission shall require by rule or regulation.

(3) COUNTERPARTY RECORDS— Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records for each counterparty in a manner and form that is identifiable with each security-based swap transaction.

(4) AUDIT TRAIL— Each registered security-based swap dealer and major security-based swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

(5) RULES— The Commission shall adopt rules governing daily trading records for security-based swap dealers and major security-based swap participants.

(h) BUSINESS CONDUCT STANDARDS.—

(1) IN GENERAL— Each registered security-based swap dealer and major security-based swap participant shall conform with such business conduct standards as prescribed in paragraph (3) and as may be prescribed by the Commission by rule or regulation that relate to—

- (A)** fraud, manipulation, and other abusive practices involving security-based swaps (including security-based swaps that are offered but not entered into);
- (B)** diligent supervision of the business of the registered security-based swap dealer and major security-based swap participant;
- (C)** adherence to all applicable position limits; and
- (D)** such other matters as the Commission determines to be appropriate.

(2) RESPONSIBILITIES WITH RESPECT TO SPECIAL ENTITIES.—

(A) ADVISING SPECIAL ENTITIES— A security-based swap dealer or major security-based swap participant that acts as an advisor to special entity regarding a security-based swap shall comply with the requirements of paragraph (4) with respect to such special entity.

(B) ENTERING OF SECURITY-BASED SWAPS WITH RESPECT TO SPECIAL ENTITIES— A security-based swap dealer that enters into or offers to enter into security-based swap with a special entity shall comply with the requirements of paragraph (5) with respect to such special entity.

(C) SPECIAL ENTITY DEFINED— For purposes of this subsection, the term ‘special entity’ means—

- (i)** a Federal agency;
- (ii)** a State, State agency, city, county, municipality, or other political subdivision of a State or;
- (iii)** any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);
- (iv)** any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or
- (v)** any endowment, including an endowment that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

(3) BUSINESS CONDUCT REQUIREMENTS— Business conduct requirements adopted by the Commission shall—

- (A)** establish a duty for a security-based swap dealer or major security-based swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;
- (B)** require disclosure by the security-based swap dealer or major security-based swap participant to any counterparty to the transaction (other than a security-based swap dealer, major security-based swap participant, security-based swap dealer, or major security-based swap participant) of—
 - (i)** information about the material risks and characteristics of the security-based swap;
 - (ii)** any material incentives or conflicts of interest that the security-based swap dealer or major security-based swap participant may have in connection with the security-based swap; and
 - (iii)**
 - (I)** for cleared security-based swaps, upon the request of the counterparty, receipt of the daily mark of the transaction from the appropriate derivatives clearing organization; and

- (II) for uncleared security-based swaps, receipt of the daily mark of the transaction from the security-based swap dealer or the major security-based swap participant;
- (C) establish a duty for a security-based swap dealer or major security-based swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith; and
- (D) establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

(4) SPECIAL REQUIREMENTS FOR SECURITY-BASED SWAP DEALERS ACTING AS ADVISORS.—

(A) IN GENERAL— It shall be unlawful for a security-based swap dealer or major security-based swap participant—

- (i) to employ any device, scheme, or artifice to defraud any special entity or prospective customer who is a special entity;
- (ii) to engage in any transaction, practice, or course of business that operates as a fraud or deceit on any special entity or prospective customer who is a special entity; or
- (iii) to engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative.

(B) DUTY— Any security-based swap dealer that acts as an advisor to a special entity shall have a duty to act in the best interests of the special entity.

(C) REASONABLE EFFORTS— Any security-based swap dealer that acts as an advisor to a special entity shall make reasonable efforts to obtain such information as is necessary to make a reasonable determination that any security-based swap recommended by the security-based swap dealer is in the best interests of the special entity, including information relating to—

- (i) the financial status of the special entity;
- (ii) the tax status of the special entity;
- (iii) the investment or financing objectives of the special entity; and
- (iv) any other information that the Commission may prescribe by rule or regulation.

(5) SPECIAL REQUIREMENTS FOR SECURITY-BASED SWAP DEALERS AS COUNTERPARTIES TO SPECIAL ENTITIES.—

(A) IN GENERAL— Any security-based swap dealer or major security-based swap participant that offers to or enters into a security-based swap with a special entity shall—

- (i) comply with any duty established by the Commission for a security-based swap dealer or major security-based swap participant, with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) of section 1a(18) of the Commodity Exchange Act, that requires the security-based swap dealer or major security-based swap participant to have a reasonable basis to believe that the counterparty that is a special entity has an independent representative that—
 - (I) has sufficient knowledge to evaluate the transaction and risks;
 - (II) is not subject to a statutory disqualification;

(III) is independent of the security-based swap dealer or major security-based swap participant;

(IV) undertakes a duty to act in the best interests of the counterparty it represents;

(V) makes appropriate disclosures;

(VI) will provide written representations to the special entity regarding fair pricing and the appropriateness of the transaction; and

(VII) in the case of employee benefit plans subject to the Employee Retirement Income Security Act of 1974, is a fiduciary as defined in section 3 of that Act (29 U.S.C. 1002); and

(ii) before the initiation of the transaction, disclose to the special entity in writing the capacity in which the security-based swap dealer is acting.

(B) COMMISSION AUTHORITY— The Commission may establish such other standards and requirements under this paragraph as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

(6) RULES— The Commission shall prescribe rules under this subsection governing business conduct standards for security-based swap dealers and major security-based swap participants.

(7) APPLICABILITY— This subsection shall not apply with respect to a transaction that is—

(A) initiated by a special entity on an exchange or security-based swaps execution facility; and

(B) the security-based swap dealer or major security-based swap participant does not know the identity of the counterparty to the transaction.

(i) DOCUMENTATION STANDARDS.—

(1) IN GENERAL— Each registered security-based swap dealer and major security-based swap participant shall conform with such standards as may be prescribed by the Commission, by rule or regulation, that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.

(2) RULES— The Commission shall adopt rules governing documentation standards for security-based swap dealers and major security-based swap participants.

(j) DUTIES— Each registered security-based swap dealer and major security-based swap participant shall, at all times, comply with the following requirements:

(1) MONITORING OF TRADING— The security-based swap dealer or major security-based swap participant shall monitor its trading in security-based swaps to prevent violations of applicable position limits.

(2) RISK MANAGEMENT PROCEDURES— The security-based swap dealer or major security-based swap participant shall establish robust and professional risk management systems adequate for managing the day-to-day business of the security-based swap dealer or major security-based swap participant.

(3) DISCLOSURE OF GENERAL INFORMATION— The security-based swap dealer or major security-based swap participant shall disclose to the Commission and to the prudential regulator for the security-based swap dealer or major security-based swap participant, as applicable, information concerning—

(A) terms and conditions of its security-based swaps;

(B) security-based swap trading operations, mechanisms, and practices;

- (C) financial integrity protections relating to security-based swaps; and
- (D) other information relevant to its trading in security-based swaps.

(4) ABILITY TO OBTAIN INFORMATION— The security-based swap dealer or major security-based swap participant shall—

- (A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and
- (B) provide the information to the Commission and to the prudential regulator for the security-based swap dealer or major security-based swap participant, as applicable, on request.

(5) CONFLICTS OF INTEREST— The security-based swap dealer and major security-based swap participant shall implement conflict-of-interest systems and procedures that—

- (A) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any security-based swap or acting in a role of providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this title; and
- (B) address such other issues as the Commission determines to be appropriate.

(6) ANTITRUST CONSIDERATIONS— Unless necessary or appropriate to achieve the purposes of this title, the security-based swap dealer or major security-based swap participant shall not—

- (A) adopt any process or take any action that results in any unreasonable restraint of trade; or
- (B) impose any material anticompetitive burden on trading or clearing.

(7) RULES— The Commission shall prescribe rules under this subsection governing duties of security-based swap dealers and major security-based swap participants.

(k) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

(1) IN GENERAL— Each security-based swap dealer and major security-based swap participant shall designate an individual to serve as a chief compliance officer.

(2) DUTIES— The chief compliance officer shall—

- (A) report directly to the board or to the senior officer of the security-based swap dealer or major security-based swap participant;
- (B) review the compliance of the security-based swap dealer or major security-based swap participant with respect to the security-based swap dealer and major security-based swap participant requirements described in this section;
- (C) in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise;
- (D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;
- (E) ensure compliance with this title (including regulations) relating to security-based swaps, including each rule prescribed by the Commission under this section;

(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

- (i)** compliance office review;
- (ii)** look-back;
- (iii)** internal or external audit finding;
- (iv)** self-reported error; or
- (v)** validated complaint; and

(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(3) ANNUAL REPORTS.—

(A) IN GENERAL— In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

- (i)** the compliance of the security-based swap dealer or major swap participant with respect to this title (including regulations); and
- (ii)** each policy and procedure of the security-based swap dealer or major security-based swap participant of the chief compliance officer (including the code of ethics and conflict of interest policies).

(B) REQUIREMENTS— A compliance report under subparagraph (A) shall—

- (i)** accompany each appropriate financial report of the security-based swap dealer or major security-based swap participant that is required to be furnished to the Commission pursuant to this section; and
- (ii)** include a certification that, under penalty of law, the compliance report is accurate and complete.

(I) ENFORCEMENT AND ADMINISTRATIVE PROCEEDING AUTHORITY.—

(1) PRIMARY ENFORCEMENT AUTHORITY.—

(A) SECURITIES AND EXCHANGE COMMISSION— Except as provided in subparagraph (B), (C), or (D), the Commission shall have primary authority to enforce subtitle B, and the amendments made by subtitle B of the Wall Street Transparency and Accountability Act of 2010, with respect to any person.

(B) PRUDENTIAL REGULATORS— The prudential regulators shall have exclusive authority to enforce the provisions of subsection (e) and other prudential requirements of this title (including risk management standards), with respect to security-based swap dealers or major security-based swap participants for which they are the prudential regulator.

(C) REFERRAL.—

(i) VIOLATIONS OF NONPRUDENTIAL REQUIREMENTS— If the appropriate Federal banking agency for security-based swap dealers or major security-based swap participants that are depository institutions has cause to believe that such security-based swap dealer or major security-based swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of this section or rules adopted by the Commission thereunder, the agency may recommend in writing to the Commission that the Commission initiate an enforcement

proceeding as authorized under this title. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(ii) VIOLATIONS OF PRUDENTIAL REQUIREMENTS— If the Commission has cause to believe that a securities-based swap dealer or major securities-based swap participant that has a prudential regulator may have engaged in conduct that constitute a violation of the prudential requirements of subsection (e) or rules adopted thereunder, the Commission may recommend in writing to the prudential regulator that the prudential regulator initiate an enforcement proceeding as authorized under this title. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(D) BACKSTOP ENFORCEMENT AUTHORITY.—

(i) INITIATION OF ENFORCEMENT PROCEEDING BY PRUDENTIAL REGULATOR— If the Commission does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the Commission receives a written report under subsection (C)(i), the prudential regulator may initiate an enforcement proceeding.

(ii) INITIATION OF ENFORCEMENT PROCEEDING BY COMMISSION— If the prudential regulator does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the prudential regulator receives a written report under subsection (C)(ii), the Commission may initiate an enforcement proceeding.

(2) CENSURE, DENIAL, SUSPENSION; NOTICE AND HEARING— The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or revoke the registration of any security-based swap dealer or major security-based swap participant that has registered with the Commission pursuant to subsection (b) if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, or revocation is in the public interest and that such security-based swap dealer or major security-based swap participant, or any person associated with such security-based swap dealer or major security-based swap participant effecting or involved in effecting transactions in security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, whether prior or subsequent to becoming so associated—

(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

(3) ASSOCIATED PERSONS— With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a security-based swap dealer or major security-based swap participant for the purpose of effecting or being involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a security-based swap dealer or major security-based swap participant, if the Commission finds, on the record after notice and opportunity for

a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

(4) UNLAWFUL CONDUCT— It shall be unlawful—

(A) for any person as to whom an order under paragraph (3) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a security-based swap dealer or major security-based swap participant in contravention of such order; or

(B) for any security-based swap dealer or major security-based swap participant to permit such a person, without the consent of the Commission, to become or remain a person associated with the security-based swap dealer or major security-based swap participant in contravention of such order, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such order.