

## [Securities Regulation Daily Wrap Up, DERIVATIVES—Commissioner Peirce lays out vision for SEC securities-based derivatives regime, \(Oct. 10, 2018\)](#)

Securities Regulation Daily Wrap Up

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Ahead of an SEC meeting about key SEC securities-based derivatives rules, Commissioner Hester Peirce addressed the current state of the SEC derivatives regime, core principles that should guide the SEC as it proceeds with rulemaking, and some issues that may pose obstacles in this area. Peirce has been helping lead the SEC's derivatives reform efforts at the request of Chairman Clayton.

In her remarks before the ISDA 2018 Annual North America Conference, "[Why and Whither Title VII?](#)", Peirce noted that the SEC's derivatives rulemaking has somewhat lagged the CFTC's pace, and that regulators around the world have also made significant progress. Peirce agrees with Chairman Clayton that the SEC needs to move forward with its rules. The slow pace, though, has allowed the SEC to observe and avoid mistakes made by other regulators, as well as identify gaps and differences with other regulators that need to be harmonized.

**Current rules.** The SEC has adopted many of its security-based swap dealer rules and security-based swap reporting rules. However, Peirce explained that even though the rules are effective, compliance requirements are not yet in force. The SEC has conditioned compliance on the finalization of three remaining security-based swap dealer rules:

1. Rules establishing capital, margin, and segregation requirements for security-based swap dealers and major participants;
2. Rules establishing record keeping and reporting requirements for these entities; and
3. Rule of Practice 194, which would establish a process that would allow a statutory disqualified associated person to effect or be involved in effecting security-based swaps on behalf of the registered entity.

Peirce believes the SEC needs to finalize these three remaining rules "expeditiously." Adjustments may have to be made in other areas—including rules that have already been finalized—to allow dealers to register and come into compliance in a way that avoids unnecessary market disruption. After this, the SEC needs to work on getting transactions reported and disseminated to the public.

**Principles to guide rulemaking.** Peirce identified four principles to guide the SEC in developing rules:

1. The SEC should aim to achieve the policy objectives of the Dodd-Frank statutory framework without burdening the market in ways that are unnecessary to achieve those objectives. This may include reconsidering existing rules to avoid interfering with the ability of registrants to do business with firms regulated by other domestic or foreign authorities, or otherwise increasing the risk of geographic market fragmentation.
2. The Commission needs to articulate clear rules and provide its own guidance rather than relying on subsequent staff no-action letters or other staff-level guidance to make the regime workable.
3. The SEC needs to mitigate challenges that market participants will face as they come into compliance with an entirely new, comprehensive, and extremely complicated regulatory regime. This can be addressed by providing adequate compliance periods and working with the CFTC to minimize differences between rulesets. Peirce expects to see more instances where either the SEC or CFTC aligns its rules to the other, instead of taking joint action.

4. The SEC needs to carefully consider the effect of its regulations outside the United States. The Commission's implementation of Title VII must allow for robust substituted compliance with broadly comparable foreign requirements.

**What's next.** The Commission will hold an [open meeting](#) to consider whether to reopen the comment period and request additional comment—including potential modifications to proposed rule language— regarding capital, margin, and segregation requirements for security-based swap dealers and major security-based swap participants, including the cross-border treatment of these requirements. If the comment period is reopened, Peirce hopes that the rules are quickly finalized.

Other issues that Peirce believes need to be considered include:

- The certification and opinion of counsel requirement adopted in the Registration Release;
- The associated person definition and background check requirements;
- The ability of dealers to rely on representations made in connection with the CFTC external business conduct requirements;
- Whether it is appropriate to impose certain risk mitigation requirements on dealers and whether the Commission should consider possible alternative approaches to the arrange-negotiate-and-execute (ANE) requirement;
- Whether the current compliance period is consistent with an orderly registration process both for the Commission and for market participants. A phased approach should be considered.

Peirce closed by saying she hopes the SEC and CFTC will hold a public round table soon on regulatory harmonization. She also hopes to join CFTC Commissioner Quintenz in visits to market participants, and invites anyone interested in meeting to reach out to their offices.

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