

## Public Statement

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# Statement at Open Meeting on Commission Actions Relating to Implementation of Title VII of the Dodd- Frank Act



**Commissioner Hester M. Peirce**

**Dec. 18, 2019**

Thank you, Chairman Clayton.

I am happy to see the culmination of many years of work by our staff in the recommendations before us today. When the Chairman asked me nearly two years ago to help lead the Commission's effort to stand up these rules, I agreed to do so because I thought it was important that the Commission finish the implementation of one of the key statutory mandates that came out of the 2007-2009 financial crisis. Since early last year, the Commission's staff has risen to the challenge, preparing for our consideration, under very tight time constraints, an impressive number of proposed and final rules, as well as solicitations of comment, and Commission statements and orders.

Taken together, these actions represent a significant accomplishment: This Commission, under Chairman Clayton's leadership, has now completed long-delayed rules governing the registration and regulation of security-based swap dealers and major security-based swap participants ("SBS Entities"), while making appropriate modifications and providing relief where necessary to minimize disruption to our financial markets. The security-based swap provisions of Title VII of the Dodd-Frank Act are finally coming to life.

The first item that the Commission will consider today is a set of rules that requires SBS Entities to apply risk mitigation techniques to their portfolios of security-based swaps. These techniques are prudent business practices that should help reduce counterparty, operational, and legal risks that may arise out of security-based swap transactions. In fact, most firms that will register with the Commission likely already have incorporated these techniques into their own internal policies and procedures.

Next, the Commission will consider rule amendments and guidance related to the cross-border application of certain SBS Entity requirements, as well as time-limited relief that is designed to allow firms to start reporting security-based swap transactions using existing systems built to work with the Commodity Futures Tradition Commission's reporting regime. We also will consider a related order identifying certain jurisdictions as "listed jurisdictions" for purposes of the exception from the *de minimis* counting requirement that is being considered in the companion adopting release.

Before I turn the proceedings over to staff to describe their recommendations in more detail, I would like to offer the following comments about these recommendations.

First, the recommended rules and guidance are designed to enable the Commission to regulate its piece of the security-based swap market effectively, efficiently, and with due regard for the jurisdiction and competence of other regulators and the importance of this market to the effective functioning of the broader economy. Disrupting a large, global market in security-based swap dealing activity was clearly not Congress's objective in giving us the Title VII mandate, but that would have been the unintended consequence of the prior version of our rules. Congress did not want participants in these markets to shun the United States, but our earlier attempts at these rules laid the foundation for just such a result. The refined rule amendments and guidance, if adopted, will address several areas that were creating particular challenges for potential registrants that are engaged in cross-border security-based swap dealing activity. Today's measures allow foreign SBS Entities a realistic path to register with the Commission, maintain an active presence in U.S. markets, and use U.S. personnel to serve their clients here and abroad. In each of the areas addressed by the amendments and guidance, the Commission has worked hard to find pragmatic solutions that address real-world problems without surrendering important regulatory objectives.

Second, as with other Commission actions over the past fifteen months, we have continued to work closely with the CFTC to reduce the need for market participants to build out separate compliance systems for our two sets of rules. You can see the fruits of these efforts particularly in the risk mitigation rules, as well as in the relief for security-based swap data reporting requirements. These initial steps set the stage for continued cooperation; the reporting relief should help firms avoid the cost of building out a Commission-specific reporting system, for example, while the Commission and the CFTC continue to work on harmonizing our respective rules in this area.

Our cooperation with the CFTC also has included comparing notes as we have struggled with how appropriately to address risks arising from activity in our markets—and with risks that might flow back into the United States from foreign firms operating in the U.S. Significant differences remain, however, in our approach to “arranging, negotiating, and executing” (or ANE) activity in the United States. Continuing differences reflect in part differences in our statutory authority and in part differences in our underlying markets. One consideration that helped shaped our approach, for example, is the close link between the security-based swap market and the underlying securities markets, a feature that distinguishes our market from the CFTC's swap market. As each agency watches its markets develop under its respective rule set, of course, we will continue to compare notes, learn from one another, and look for appropriate opportunities for harmonization. Today's cross-border release directs staff to consider developments in the market in the study required under Exchange Act Rule 3a71-2A and to repeat the analysis every five years.

Third, although we and the staff have worked very hard to get these rules right, I have no doubt that a number of implementation challenges will arise over the next twenty months or so. As with the introduction of any new regulatory framework, I hope that market participants will continue to engage with us as they prepare to comply with the new rules.

Finally, market participants should start this implementation work immediately. The 18-month clock starts ticking toward the registration compliance deadline as soon as March 1 of next year, and our security-based swap dealer regime is only one of several significant regulatory initiatives that will be placing demands on market participants' resources over the next two years. The compliance date for the transaction reporting requirements will follow shortly thereafter, if a swap data repository has registered with the Commission. As the Commission stated earlier this year, we are open for business in connection with reviewing requests for substituted compliance. Our staff recently published guidance regarding what they expect to see in those applications, and time is of the essence in getting those applications filed. Also, the staff is recommending several jurisdictions for listed jurisdiction status, and the rules being considered today provide for the submission of applications relating to other jurisdictions.

In closing, I would like to commend the Commission's teams for their extensive work on these actions. I cannot tell you how impressed I am with their commitment to this effort—commitment that has not flagged in the face of demanding deadlines and a host of difficult decisions. In particular, I want to thank:

- *from the Division of Trading and Markets*, Director Brett Redfearn and his staff including: Lizzie Baird, Mark Wolfe, Carol McGee, Laura Compton, Andrew Bernstein, Pam Carmody, Katia Imus, Emily Westerberg Russell, Joanne Rutkowski, Devin Ryan, Bonnie Gauch, Joseph Levinson, Edward Schellhorn, Michael Gaw, Justin Pica, Claire O'Sullivan, and Ajay Sutaria;
  - *from the Division of Economic and Risk Analysis*, Director S.P. Kothari and his staff, including: Chyhe Becker, Hari Phatak, Lauren Moore, Diana Knyazeva, Y.C. Loon, Burt Porter, Sai Rao, and Anne Yang;
  - *from the Office of Compliance Inspections and Examinations*, Director Peter Driscoll and his staff, including: Dan Kahl, Jennifer McCarthy, Christine Sibille, and Carrie O'Brien;
  - *from the Office of the General Counsel*, General Counsel Bob Stebbins and his staff, including: Meridith Mitchell, Lori Price, Robert Teply, Donna Chambers, William Miller, and Maureen Johansen;
  - *from the Office of International Affairs*, Director Raquel Fox and her staff, including: Katherine Martin, Jonathan Balcom, Kathleen Hutchinson, Natasha Kaden, and Stephen Benham; and
  - *from the Office of the Chief Accountant*, Giles Cohen.
- I also want to thank staff in the other Divisions and Offices for their contributions to this release.
  - Finally, I want to thank Alan Cohen, Kay Smith, and Jeff Dinwoodie in the Chairman's office and Richard Gabbert in my own office. Their hard work; remarkable tolerance for long discussions, some of which occurred without chocolate; and unnatural passion for reading, editing, and rereading lengthy, technical releases were central to this effort.

Now, I will turn it over to Brett Redfearn, Director of the Division of Trading and Markets, who will discuss these actions in more detail.