

Final Rules: SBS Fraud & Manipulation; CCO Independence



The Securities and Exchange Commission adopted new Rule 9j-1 under the Securities Exchange Act of 1934 to prevent fraud, manipulation, and deception in connection with security-based swap transactions.

In addition, the Commission adopted Rule 15fh-4(c) under the Exchange Act to prohibit undue influence over the Chief Compliance Officer (CCO) of a security-based swap dealer or a major security-based swap participant (each, an SBS Entity).

Why This Matters

The security-based swap market has a gross notional amount outstanding of approximately \$8.5 trillion as of late 2022, and the particular aspects and characteristics of security-based swaps provide opportunities and incentives for misconduct. Rule 9j-1 will be an important additional tool to augment the Commission's oversight of the security-based swap markets and will aid the Commission in its pursuit of actions that directly target misconduct that reaches security-based swaps. Rule 15fh-4(c) will protect the independence and objectivity of an SBS Entity's CCO by preventing the personnel of an SBS Entity from taking actions to coerce, mislead, or otherwise interfere with the CCO.

How This Rule Applies

Rule 9j-1 will:

- Make it unlawful for any person, directly or indirectly, to effect any transaction in, or attempt to effect any transaction in, any security-based swap, or to purchase or sell, or induce or attempt to induce the purchase or sale of, any security-based swap in connection with the following misconduct:
 - Employing or attempting to employ any device, scheme, or artifice to defraud or manipulate;
 - Making or attempting to make not misleading any untrue statement of a material fact, or omitting a material fact necessary to make the statements made, in the light of the circumstances under which they were made;
 - Obtaining money or property by means of any untrue statement of a material fact or any omission of a material fact;

- Engaging in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;
- Attempting to obtain money or property by means of any untrue statement of a material fact or omission of a material fact, or attempting to engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person; or
- Manipulating or attempting to manipulate the price or valuation of any security-based swap or any payment or delivery related thereto.
- Provide two affirmative defenses for actions taken in accordance with binding rights and obligations in written security-based swap documentation and for transactions by entities when the individual at the entity making the investment decision was not aware of material nonpublic information and the entity had implemented reasonable policies and procedures to prevent violations of the rule; and
- Provide that a person cannot escape liability for trading based on possession of material non-public information about a security by purchasing or selling a security-based swap based on that security and cannot escape liability under the rule by purchasing or selling the underlying security (as opposed to purchasing or selling a security-based swap that is based on that security).

Exchange Act Rule 15fh-4(c) will:

- Prohibit any officer, director, supervised person, or employee of an SBS Entity, or any person acting under such person's direction, to take any action to coerce, manipulate, mislead, or fraudulently influence the SBS Entity's CCO in the performance of their duties under the federal securities laws.

What's Next

The final rules will become effective 60 days after the date of publication of the adopting release in the Federal Register.