

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Part 240**

**[Release No. 34-97762; File No. S7-32-10]**

**RIN 3235-AN27**

**Reopening of Comment Period for Position Reporting of Large Security-Based Swap Positions**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** The Securities and Exchange Commission (“SEC” or “Commission”) is reopening the comment period for its proposal, *Position Reporting of Large Security-Based Swap Positions*, Release No. 34-93784, (Dec. 15, 2021) (“Proposing Release”). In the Proposing Release, the Commission proposed for comment a new rule, which would require any person with a security-based swap position that exceeds a certain threshold to promptly file with the Commission a schedule disclosing certain information related to its security-based swap position (“Proposed Rule”). The Commission is reopening the comment period to allow interested persons an opportunity to comment on the additional analysis and data contained in a staff memorandum that was added to the public comment file on June 20, 2023, including providing comment on questions identified below.

**DATES:** The comment period for the Proposing Release published February 4, 2022, at 87 FR 6652, is reopened. Comments should be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER OR August 21, 2023 (WHICH IS 60 DAYS AFTER ISSUANCE), WHICHEVER IS LATER].

**ADDRESSES:** Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/submitcomments.htm>); or

Paper comments:

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-32-10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all submitted comments on the Commission's website (<https://www.sec.gov/rules/proposed.shtml>). Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the SEC's website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at [www.sec.gov](http://www.sec.gov) to receive notifications by email.

**FOR FURTHER INFORMATION CONTACT:** Rajal B. Patel, Senior Special Counsel, Richard Mo, Senior Special Counsel, Pamela Carmody, Special Counsel, or Carol M. McGee, Associate Director, Office of Derivatives Policy, Division of Trading and Markets, at (202) 551-5870, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** This release relates to the Commission’s Proposed Rule under the Exchange Act of 1934 (“Exchange Act”), new rule 17 CFR 240.10B-1 (“Rule 10B-1”), which would require any person with a security-based swap position that exceeds a certain threshold to promptly file with the Commission a schedule disclosing among other things: (1) the applicable security-based swap position; (2) positions in any security or loan underlying the security-based swap position; and (3) any other instrument relating to the underlying security or loan, or group or index of securities or loans. The Proposed Rule includes different reporting thresholds for security-based swaps tied to debt securities and security-based swaps tied to equity securities. Under the proposal, the Commission would make all filings received pursuant to the Proposed Rule available to the public, with the goal of increasing transparency and oversight in the security-based swap market.

## **I. BACKGROUND**

As described more fully in the Proposing Release, the Commission proposed Rule 10B-1, which would be a large trader position reporting rule for security-based swaps.<sup>1</sup> The Proposed Rule would require public reporting of, among other things: (1) certain large positions in security-based swaps; (2) positions in any security or loan underlying the security-based swap

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<sup>1</sup> See *Prohibition Against Fraud, Manipulation, or Deception in Connection With Security-Based Swaps; Prohibition Against Undue Influence Over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions*, Release No. 34-93784 (Dec. 15, 2021) [87 FR 6652 (Feb. 4, 2022)]. On June 7, 2023, the Commission adopted rules regarding a prohibition against fraud, manipulation, or deception in connection with security-based swaps, and a prohibition against undue influence over chief compliance officers, which the Commission proposed along with Rule 10B-1 in the Proposing Release.

position; and (3) positions in any other instrument relating to the underlying security or loan or group or index of securities or loans. The Proposed Rule would include a specific quantitative threshold for when public reporting is required. Specifically, the Proposed Rule would, among other things:

1. Require any person (and any entity controlling, controlled by or under common control with such person), or group of persons, who through any contract, arrangement, understanding or relationship, after acquiring or selling directly or indirectly, any security-based swap, is directly or indirectly the owner or seller of a Security-Based Swap Position<sup>2</sup> that exceeds the Reporting Threshold Amount, to promptly file with the Commission a statement containing the information required by Schedule 10B on the Commission's EDGAR system. These reports would be made publicly available immediately upon filing;<sup>3</sup>
2. Require that any Schedule 10B be filed promptly, but in no event later than the end of the first business day following the day of execution of the security-based swap transaction that results in the Security-Based Swap Position first exceeding the Reporting Threshold Amount;<sup>4</sup>
3. Provide that a group's filing obligation may be satisfied either by a single joint filing or by each of the group members making an individual filing;<sup>5</sup>
4. Contain a provision intended to prevent evasion of the reporting requirement;<sup>6</sup>

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<sup>2</sup> Capitalized terms not defined in this release have the meaning set forth in the Proposing Release.

<sup>3</sup> See proposed Rule 10B-1(a)(1).

<sup>4</sup> See proposed Rule 10B-1(a)(2).

<sup>5</sup> See proposed Rule 10B-1(a)(3).

<sup>6</sup> See proposed Rule 10B-1(a)(4).

5. Require a person who has previously filed a Schedule 10B with the Commission to file an amendment if any material change occurs in the facts set forth in a previously filed Schedule 10B including, but not limited to, any material increase in the Security-Based Swap Positions or if a Security-Based Swap Position falls back below the applicable Reporting Threshold Amount;<sup>7</sup>
6. Contain key definitions for determining the scope of the position to be disclosed, including for the terms “Reporting Threshold Amount” and “Security-Based Swap Position”;<sup>8</sup>
7. Specify the information required to be included in a Schedule 10B;<sup>9</sup>
8. Specify the territorial scope of the reporting requirements;<sup>10</sup> and
9. Require filers to submit Schedule 10B using a structured, machine-readable data language.<sup>11</sup>

## II. REOPENING OF COMMENT PERIOD

Since the publication of the Proposing Release, the staff of the Division of Economic and Risk Analysis has prepared a memorandum that provides supplemental data and analysis related to anticipated economic effects of the Proposed Rule.<sup>12</sup>

We believe that the information presented in the memorandum has the potential to be informative for purposes of further evaluating the Proposed Rule. We are, therefore, reopening

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<sup>7</sup> See proposed Rule 10B-1(c).

<sup>8</sup> See proposed Rule 10B-1(b).

<sup>9</sup> See proposed Rule 10B-101.

<sup>10</sup> See proposed Rule 10B-1(d).

<sup>11</sup> See Proposing Release, 87 FR at 6675.

<sup>12</sup> Memorandum of the Staff of the Division of Economic and Risk Analysis, *Supplemental data and analysis regarding the proposed reporting thresholds in the equity security-based swap market* (June 20, 2023), available at <https://www.sec.gov/comments/s7-32-10/s73210.htm>.

the comment period to permit interested parties to comment on the staff memorandum, which has been included in the comment file. Given the information presented in the memorandum, we seek comment regarding whether the Reporting Threshold Amounts in the Proposed Rule should be higher or lower. Specifically, in addition to the requests for comment included in the Proposing Release, the Commission seeks comments on the following:

Request for Comment

1. In general, the Commission requests comment on the proposed Reporting Threshold Amount for each asset class (*e.g.*, equity security-based swaps, CDS, non-CDS debt security-based swaps, etc.).
2. With respect to each asset class, should the Reporting Threshold Amount in any final rule be higher or lower than the proposed Reporting Threshold Amount if:
  - a. Consistent with the Proposed Rule, such final rule requires, at an interim threshold, the inclusion of the value of related securities owned by the holder of the security-based swap position in the calculation of the Reporting Threshold Amount?
  - b. Such final rule does not require the inclusion of related securities owned by the holder of the security-based swap position in those calculations?
  - c. Such final rule permits offsetting of security-based swap positions with identical terms (*e.g.*, offsetting long positions with short positions, but only if the security-based swap positions reference the same product identifier)?
  - d. Consistent with the Proposed Rule, such final rule requires aggregation of security-based swap positions by any person (and any entity controlling, controlled by or under common control with such person) or group of persons, who through any contract, arrangement, understanding or relationship, after acquiring or selling directly or

indirectly, any security-based swap, is directly or indirectly the owner or seller of a security-based swap position that exceeds the Reporting Threshold Amount?

e. Such final rule does not require aggregation of security-based swap positions across entities that are both separately legally established and capitalized (unless a guarantee exists)?

f. Such final rule does not require aggregation of security-based swap positions across entities that are both separately legally established and capitalized (unless a guarantee exists), unless acting as a group with a common purpose?

g. Such final rule requires aggregation of security-based swap positions established by transactions effected for such person's own account and of security-based swap positions established by transactions effected for the account of others, when that person shares in the economic risk in the other accounts or otherwise controls the account?

h. Such final rule does not require the Reporting Threshold Amount to include security-based swap positions entered into by a person with an entity or person controlling, controlled by, or under common control with that person?

i. Such final rule requires or does not require aggregation or inclusion of transactions pursuant to any combination of the options listed in items (a) through (h) above?

We encourage any interested person to submit comments, including comments on the data or methodology used in the analysis contained in the memorandum and on how this analysis should inform our consideration of the economic effects of the Proposed Rule. If any commenters who have already submitted a comment letter wish to provide supplemental or

updated comments, we encourage them to do so. Comments are of particular assistance if accompanied by supporting data and analysis of the issues addressed in those comments.

By the Commission.

Dated: June 20, 2023.

**Vanessa A. Countryman,**

*Secretary.*