Securities Regulation Daily Wrap Up, SWAPS—Comment period on large SBS position reporting reopened, (Jun. 21, 2023)

Securities Regulation Daily Wrap Up

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Comments are reopened so that commenters can consider new analysis in a DERA memo in relation to proposed reporting thresholds.

The SEC has reopened the comment period for a proposed rule requiring position reporting of large security-based swap positions. New Rule 10B-1 would require anyone with a security-based swap position exceeding a certain threshold to file a schedule disclosing certain information about that position. The comment period has been reopened to allow comment on additional analysis and data contained in a staff memorandum. The comment period for the proposing release, No. 34-93784, is reopened for 30 days after publication in the *Federal Register* or August 21, 2023, whichever is later (*Reopening of Comment Period for Position Reporting of Large Security-Based Swap Positions*, Release No. 34-97762, June 20, 2023).

Proposed rule. The Commission proposed Rule 10B-1 on December 15, 2021, in Release No. 34-93784: *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*. The proposing release contained additional rules which were adopted on June 7, 2023. The Commission noted that it was not finalizing Rule 10B-1 in that release because it was still continuing to consider comments received in connection with the proposed rule.

As proposed, Rule 10B-1 would require any person with a security-based swap position exceeding a certain threshold to promptly file with the Commission a new Schedule 10B disclosing, among other items:

- the applicable security-based swap position;
- positions in any security or loan underlying the security-based swap position; and
- positions in 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. The filings received pursuant to proposed Rule 10B-1 would be made available to the public, with the goal of increasing transparency and oversight in the security-based swap market.

DERA memo. The staff of the Division of Economic and Risk Analysis has prepared a memorandum providing supplemental data and analysis related to the anticipated economic effects of the proposed rule. The memo notes in particular that at the time of the proposal, the Commission had access to only one month of security-based swap data reported to registered security-based-swap data repositories ("SBSDRs") pursuant to Regulation SBSR and that this data was not used in the proposal. The memo's analysis incorporates equity security-based swap data reported to SBSDRs and information from Schedule 13D filings from November 1, 2021, through November 25, 2022. Given the information in the memo, the Commission specifically seeks comment on whether the proposed rule's reporting threshold amounts should be higher or lower.

This is Release No. 34-97762.

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