Securities Regulation Daily Wrap Up, TOP STORY—SEC issues long-awaited final rules on capital, margin, and segregation requirements for security swap-based participants, (Jun. 21, 2019)

Securities Regulation Daily Wrap Up

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By Brad Rosen, J.D.

As called for by Dodd-Frank Act, the Securities and Exchange Commission is adopting capital and margin requirements for security-based swap dealers and major security-based swap participants.

In a major regulatory development, the SEC adopted a package of rules and rule amendments towards establishing a regime for security-based swap dealers which enhances the risk mitigation practices of firms that stand at the center of the security-based swap market. In its 738-page final rule, the SEC is adopting capital and margin requirements for security-based swap dealers (SBSDs) and major security-based swap participants (MSBSPs), segregation requirements for SBSDs, and notification requirements with respect to segregation for SBSDs and MSBSPs. In so doing, the SEC is adding to the comprehensive interagency framework for swaps regulation as mandated by Title VII of the Dodd-Frank Act.

Central objectives underlying the rules. SEC Chairman Jay Clayton stated, "These rules help ensure that the firms who are at the center of the security-based swap market manage counterparty risk appropriately and in so doing protect investors and the market more generally." Additionally, an SEC press release describes four key areas addressed by the rules as follows:

- They establish minimum capital requirements for security-based swap dealers and major security-based swap participants for which there is not a prudential regulator (nonbank SBSDs and MSBSPs). They also increase the minimum net capital requirements for broker-dealers that use internal models to compute net capital. In addition, they establish capital requirements tailored to security-based swaps and swaps for broker-dealers that are not registered as an SBSD or MSBSP to the extent they trade these instruments.
- They establish margin requirements for nonbank SBSDs and MSBSPs with respect to non-cleared security-based swaps.
- They establish segregation requirements for SBSDs and stand-alone broker-dealers for cleared and non-cleared security-based swaps.
- They amend the Commission's existing cross-border rule to provide a means to request substituted compliance with respect to the capital and margin requirements for foreign SBSDs and MSBSPs and provide guidance on how the Commission will evaluate requests for substituted compliance.

The press release includes a fact sheet which describes the rules in more detail.

Commissioner Peirce takes a lead role. Chairman Clayton also credited Commissioner Peirce for her excellent leadership in the agency's efforts to stand up the Dodd-Frank Title VII regulatory regime. Pierce declared, "These final rules are designed to ensure the financial integrity of dealers at the center of the critically important security-based swap market and represent an enormous effort on the part of our staff, particularly in the Divisions of Trading and Markets and Economic and Risk Analysis." Peirce also led the Commission's efforts to coordinate and collaborate with counterparts at the CFTC. She also issued a comprehensive written statement summarizing and commenting on the new rules.

The CFTC offers coordination, collaboration, and congratulations. CFTC Chairman J. Christopher Giancarlo also issued a statement congratulating the SEC for issuing the final rules. He observed these rules further provide "a framework of an alternative compliance mechanism for non-broker-dealer entities that are registered as both swap dealers with the CFTC and security-based swap dealers with the SEC." He also noted that this action by the SEC "reflects constructive dialogue and determined efforts at harmonization between the two Federal market regulators and represents the final piece of the margin regime for uncleared swap and security-based swap products in the U.S." CFTC Commissioner Brian Quintenz, the point person at the Commodity Futures Trading Commission, also weighed in, noting, "This SEC final rule represents a gigantic leap forward in the harmonization of swap dealer and security-based swap dealer regulations." He added, "This unprecedented progress came about as a result of a robust and consistent dialogue between the agencies at all levels and across multiple divisions."

The road to implementation. The rules will become effective 60 days after publication in the *Federal Register*. The compliance date for the rule amendments and new rules is 18 months after the later of: (1) the effective date of the final rules establishing recordkeeping and reporting requirements for SBSDs and MSBSPs; or (2) the effective date of the final rules addressing the cross-border application of certain security-based swap requirements.

The release is No. 34-86175.

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