

## Statement

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# Statement on Re-Proposed Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps



**Commissioner Caroline A. Crenshaw**

**Dec. 15, 2021**

Thank you, Chair Gensler, and thank you to my fellow Commissioners. It is always helpful and instructive to hear your views, even where we differ. And I'll reiterate my thanks to the staff, who have worked incredibly hard over the last several months to allow us to propose a number of significant Commission actions. In particular, I appreciate the work of the staff of the Division of Trading and Markets, the Office of General Counsel, and the Division of Economic and Risk Analysis to prepare this proposal – which is really three proposals, so triple thanks to this team.

The three actions we are considering here relate to the security-based swap market. Although it is in some ways obscure, the security-based swap market was at the heart of the 2008 financial crisis, and it continues to be a multi-trillion dollar behemoth.<sup>[1]</sup> We were reminded earlier this year of how events in that market can reverberate throughout the financial system, when a family office that was heavily invested in total return swaps collapsed. The result was billions of dollars in losses for its counterparties, including several major financial institutions.<sup>[2]</sup>

This fall, the SEC took final steps to implement our security-based swap registration and reporting rules.<sup>[3]</sup> These were important milestones that should give the SEC more oversight and visibility into the market for security-based swaps, as envisioned in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. I congratulate the staff and the Chair on these significant accomplishments. However, while we have now finalized a majority of our Title VII rules related to security-based swaps, there remains work to be done. I am therefore pleased that today we are furthering our work to fulfill our Title VII mandate by re-proposing one security-based swap rule and proposing two others.

First, we are re-proposing Rule 9j-1. This rule would fulfill our statutory mandate to define, and prescribe means reasonably designed to prevent, fraudulent, manipulative, and deceptive behavior in connection with security-based swaps.<sup>[4]</sup> Among other types of misconduct, the proposed rule would address manufactured credit events and other opportunistic strategies in the credit derivatives market. These strategies, which have been widely reported over the last several years,<sup>[5]</sup> have the potential to threaten the integrity of the security-based swap markets, and it is important that we are taking steps to address them in this proposal. The rule would also provide additional specificity and precision regarding the application of existing antifraud and anti-manipulation laws to

other types of misconduct. This clarity should enhance the SEC's oversight of this market, and benefit market participants of all types.

Second, we are proposing a new rule prohibiting undue influence over the Chief Compliance Officers (CCOs) of security-based swap dealers and major security-based swap participants. CCOs play a crucial role in promoting entities' compliance with all of the federal securities laws, and this is no different in the security-based swap market. The proposed rule would seek to safeguard the independence and objectivity of a security-based swap entity's CCO by preventing the personnel of that entity from taking actions to coerce, mislead, or otherwise interfere with the CCO. This common-sense safeguard should help empower and support CCOs in establishing a strong and committed culture of compliance among SBS entities as they begin to fulfill their obligations under the Title VII regulatory framework.

The final piece of today's security-based swap package is a proposal to exercise our Title VII authority to require the disclosure of large security-based swap positions. As I've noted in the past,<sup>[6]</sup> it's absolutely vital that we ensure that our security-based swap regime allows for the detection of the buildup of concentration and risk in the market. Position reporting should help advance this goal by allowing both the SEC staff and relevant market participants – including counterparties – to understand the risk posed by a counterparty's concentrated exposure. The availability of this type of information should allow market participants to take steps to mitigate their own risks, as needed.

I congratulate staff on these thoughtful proposals, and on their continued work to stand up the Title VII regime. Together, the three actions we are considering today should help strengthen and safeguard the security-based swap market, and I am pleased to support them. Thank you.

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[1] 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-XXX (December 15, 2021), at [125].

[2] See, e.g., Juliet Chung & Margot Patrick, [What Is Archegos and How Did It Rattle the Stock Market?](#), Wall St. J. (Apr. 6, 2021).

[3] See Commissioner Allison Herren Lee and Commissioner Caroline Crenshaw, [Statement on the Registration Deadline for Security-Based Swap Dealers](#) (November 1, 2021).

[4] See 15 U.S.C. 78i(j).

[5] See, e.g., Gina-Gail S. Fletcher, [Engineered Credit Default Swaps: Innovative or Manipulative?](#) 94 N.Y.U. L. Rev. 1073 (2019); see also Andras Danis & Andrea Gamba, [Dark Knights: The Rise in Firm Intervention by CDS Investors](#), Ga. Inst. Of Tech. Scheller Coll. of Bus. Working Paper, Paper No. 3479635 & WBS Fin. Grp. Working Paper, Paper No. 265 (Nov. 2019); see also Henry T.C. Hu, [Corporate Distress, Credit Default Swaps, and Defaults: Information and Traditional, Contingent, and Empty Creditors](#), 13 Brook. J. Corp. Fin. & Com. L. 26-27 (Nov. 2018).

[6] See Commissioner Allison Herren Lee and Commissioner Caroline Crenshaw, [Statement on the Registration Deadline for Security-Based Swap Dealers](#) (November 1, 2021).