

Statement

Statement on Exchange Act 10B and Rule 9j-1



Chair Gary Gensler

Dec. 15, 2021

Today, the Commission is considering a suite of three rules related to the security-based swaps market. I support these proposals because, if adopted, they would improve the transparency and integrity of the security-based swaps market.

The '08 crisis had many chapters, but a form of security-based swaps — credit default swaps — played a lead role throughout the story.

A London affiliate of the large insurance company AIG built up a credit default portfolio, largely in mortgages. The U.S. government stepped in to lend AIG \$180 billion in the midst of this terrible crisis in which millions of Americans lost their jobs and their houses.

Thus, as part of the Dodd-Frank Act of 2010, Congress granted this agency broad authority with regard to security-based swaps, including three important authorities we're acting upon here today.

First, Congress under Exchange Act section 10B gave us "large trader reporting" authority — authority to mandate disclosure for positions in security-based swaps and related securities.

Today's proposed rule would require public reporting of large security-based swap positions. This aggregated reporting is another step toward increasing transparency in this previously opaque market.

In March, 13 years after the collapse of AIG, when Archegos Capital Management collapsed, we saw once again the risks that might arise from the use of another security-based swap — total return swaps. At the core of that story was Archegos' use of total return swaps based on underlying stocks, as well as significant exposure that the prime brokers had to the family office.

It wasn't just Archegos and AIG, though. In 1998, Long-Term Capital Management failed, bringing with it a \$100-billion balance sheet and more than \$1 trillion of derivatives contracts, many of which were total return swaps. I was a young person serving at the U.S. Department of the Treasury at the time, sent along with the Federal Reserve to examine the failure of this firm.

Thus, the jitters and lack of transparency in 1998, 2008, and 2021 inform how I think about the security-based swaps market.

Second, under Section 9(j), Congress gave us authority to strengthen investor protection in security-based swaps. Today's second proposed rule would do just that. Specifically, we are re-proposing new Exchange Act rule 9j-1 to prevent fraud, manipulation, and deception in connection with security-based swap transactions.

The rule is designed to take into account the unique features of a security-based swap. Namely, it would explicitly reach misconduct in connection with the ongoing payments and deliveries that typically occur throughout the lifecycle of these instruments. Thus, this rule is designed to guard against problematic behavior while protecting beneficial activity. I encourage commenters to give us feedback on how we can strike the right balance here.

Third, I support the proposal under section 15F of Dodd-Frank to prohibit the personnel of security-based swap dealers from unduly influencing their chief compliance officers. This gets to our mission to protect investors and safeguard market integrity.

I'm pleased to support today's proposals and, subject to Commission approval, look forward to the public's feedback.

I'd like to extend my gratitude to the members of the SEC staff who worked on this rule, including:

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