

Statement

Standing Up the Security-Based Swap Regime: Statement on Proposed Rules for Antifraud, Position Reporting and CCO Support



Commissioner Allison Herren Lee

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This year marks the thirteenth anniversary of the 2008 financial crisis and the 11th anniversary of the Dodd Frank Act.^[1] Title VII of Dodd-Frank, which established a new regulatory framework for swaps and security-based swaps, and was among the Act's most significant reforms.^[2]

Today, with a new generation of Wall Street bankers who were in high-school or college at the time of the crisis, the Commission has finally completed most of those reforms. The proposed antifraud and anti-manipulation rules comprise a critical component of the overall rule package. That's because it is vital to have antifraud rules that are tailored to the specific structure and trading patterns of the security-based swap market. Thus, the Commission is re-proposing an antifraud rule that would prohibit specific misconduct in connection with security-based swaps, accounting for their unique characteristics by, among other things, explicitly addressing misconduct involving the ongoing payments and deliveries occurring during the life of a security-based swap. The re-proposed rule reflects the Commission's experience with the security-based swap market as well as more recent market developments such as the proliferation of manufactured credit events and other opportunistic credit default swap strategies.

Today's proposal also includes a rule aimed at protecting the independence and objectivity of security-based swap entities' chief compliance officers (CCOs) by prohibiting actions to coerce, manipulate, mislead, or otherwise interfere with them. CCOs play a very important role in preventing fraud and manipulation, and today's proposal is designed to help promote their independence and effectiveness by targeting undue influence and encouraging forthright communication.

Finally, today's proposal would include proposed new rule 10B-1 generally requiring any person with a security-based swap position that exceeds a certain threshold to file with the Commission a schedule disclosing certain information related to its security-based swap position, its position in any security or loan underlying the security-based swap, and its position in other instruments related thereto.^[3] This increased transparency could benefit both regulators and market participants, including promoting enhanced risk management by security-based swap counterparties.^[4]

I'm pleased to support today's proposal which is thoughtfully tailored to address the specific fraud risks in this complex market, and, importantly, to facilitate enhanced transparency and oversight for the protection of investors. I want to thank the staff for their diligent and thoughtful work on these proposed rules, and I look forward to reviewing comments.

[1] See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010) ("Dodd-Frank Act").

[2] See Pub. L. 111-203, 701 through 774.

[3] The public disclosure in proposed rule 10B-1 would cover the reporting of the security-based swap position, positions in any security or loan underlying the security-based swap position and any other instrument relating to the underlying security or loan, or group or index of securities or loans. 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, Exchange Act Release No. 93784 (Dec. 15, 2021).

[4] See e.g., <https://www.federalreserve.gov/supervisionreg/srletters/SR2119.htm> (discussing the March collapse of Archegos Capital Management and the significant losses sustained by certain prime brokers showed, among other things, the risks of concentrated exposure to a counterparty and the importance of robust due diligence and risk management practices to identify, assess and mitigate risks).