SEC Adopts New Rules Governing the Reporting and Dissemination of Swaps Data

In January 2015, the U.S. Securities and Exchange Commission ("SEC") voted to approve recommendations from its staff to adopt new rules governing the reporting and public dissemination of security-based swap data.[1] At the same time, the SEC voted to propose further rules, rule amendments, and guidance governing the reporting of such data. The new and proposed rules are intended to further reforms to the federal securities laws mandated by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"),[2] and will be issued or proposed under the Securities Exchange Act of 1934, as amended.[3]

I. Overview

In her remarks at the meeting in which the SEC adopted the new rules, SEC Chair Mary Jo White summarized the backdrop of the SEC's rulemaking authority, observing that Title VII of the Dodd-Frank Act created a new regulatory framework for U.S. derivatives markets and assigned to the SEC oversight authority for security-based swaps.[4] The new rules are intended to implement a "central principle of Title VII by: first, setting the foundation for robust and well-governed security-based swap data repositories; and second, establishing the regime for reporting and publicly disseminating security-based swap transaction information."[5]

The first group of rules concerns the regulation of security-based swap data repositories, or SDRs, including the registration process for and duties of SDRs, and the SEC Core Principles applicable to them. The second group of rules, known collectively as Regulation SBSR, requires market participants to report certain information about security-based swaps, and requires SDRs to publicly disseminate information about security-based swap transactions, volume and pricing. In addition, the SEC voted to propose further rules, rule amendments, and guidance related to Regulation SBSR that would address reporting requirements for cleared and certain platform-executed security-based swap transactions.

II. Regulation of Security-Based SDRs

Among other requirements, the new rules require SDRs to register with the SEC, which in turn will subject them to direct oversight through the SEC's inspection and examination program, while providing an

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[1] Subject to certain exceptions related to swap master agreements, "the term 'security-based swap' means any agreement, contract, or transaction that . . . (i) is a swap, as that term is defined under section 1a of the Commodity Exchange Act [7 U.S.C. § 1a] (without regard to paragraph (47)(B)(x) of such section); and (ii) is based on . . . (I) an index that is a narrow-based security index, including any interest therein or on the value thereof; (II) a single security or loan, including any interest therein or on the value thereof; or (III) the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer." 15 U.S.C. § 78c(a)(68).

[2] Pub. L. No. 111-203, §§ 701-74, 124 Stat. 1641-1802 (2010).

[3] The final rules, *Security-Based Swap Data Repository Registration, Duties, and Core Principles*, Release No. 34-74246 (Feb. 11, 2015) and *Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information*, Release No. 34-74244 (Feb. 11, 2015), are available at http://www.sec.gov/rules/final.shtml. The proposed rules, *Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information*, Release No. 34-74245 (Feb. 11, 2015), are available at http://www.sec.gov/rules/proposed.shtml.

[4] *See Jan. 14, 2015 Statement of Chair Mary Jo White at Open Meeting Concerning Rules Regarding Security-Based Swap Data Repositories and Regulation SBSR*, available at http://www.sec.gov/news/statement/2015-spch011415mjw.html.

[5] *Id.*

exemption from registration for certain non-U.S. SDRs that meet specific conditions. SDRs will also be required to designate a chief compliance officer ("CCO") tasked with carrying out certain functions enumerated in the rules, including preparing a compliance report which will be filed with the SEC, and certifying the report's accuracy and completeness. Further, the SDR rules contain provisions designed to ensure the CCO's independence and effectiveness by, for example, requiring that a majority of an SDR's board of directors approve the compensation, appointment, and removal of the CCO (instead of leaving those decisions to a single SDR officer), and by prohibiting SDR personnel from seeking to improperly influence the CCO in the performance of his or her duties.

Finally, the new rules establish four governance obligations applicable to SDRs: (1) the establishment of "well-defined" governance arrangements with "effective" internal controls; (2) fair representation of market participants; (3) the opportunity for representatives of market participants (including "end users") to participate in the process for nominating and electing directors of the SDR; and (4) the implementation of written policies and procedures designed to ensure that the SDRs' senior leadership have the skills and expertise necessary to fulfill their responsibilities.[6]

Persons and entities subject to the new rules governing SDRs are required to comply with them within 365 days after they are published in the Federal Register.

III. Regulation SBSR: Reporting and Dissemination of Security-Based Swap Information

The newly-adopted rules known collectively as Regulation SBSR apply broadly to any transaction involving a U.S. person or registered broker-dealer (including transactions guaranteed by such person or broker-dealer), and are designed to provide "transparency through the reporting and public dissemination of the information collected by SDRs."[7] Among other mandates, Regulation SBSR requires security-based swap transactions to be reported to an SDR within twenty-four hours after execution, at which point data related to the transactions would be available to the SEC. The regulation further requires SDRs to publicly disseminate a report of any transaction they receive, immediately upon receipt. The regulation encompasses transactions by both registered and unregistered swap market participants, including some end users (in the SEC's jurisdiction, primarily unregistered financial funds), an approach that, according to Chair White, is "consistent with the [Commodity Futures Trading Commission's] treatment of unregistered swap participants in its rules."[8]

Finally, Regulation SBSR inaugurates a mandatory "global legal entity identifier system" designed to facilitate reporting and analysis across SDRs.[9] Among other requirements, the new system requires certain reporting entities to use trader IDs when reporting security-based swap information, which will permit the SEC and other regulators to gain visibility into activities that could pose risks to investors and the financial system.

The compliance date for certain provisions of Regulation SBSR is the "effective date," which is 60 days after the new rules are published in the Federal Register.

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[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

IV. Proposed Rules, Rule Amendments and Guidance

In addition to the foregoing rules, the SEC voted to propose a number of additional rules, rule amendments, and guidance governing the reporting of security-based swap transactions. If adopted, the proposed rules and guidance "would assign reporting duties for certain security-based swaps not addressed by the adopted rules, prohibit registered SDRs from charging fees to or imposing usage restrictions on the users of publicly disseminated security-based swap transaction data, and provide a compliance schedule for certain provisions of Regulation SBSR."[10]

The SEC has not yet determined the compliance dates for these proposed rules and rule amendments.

V. Conclusion

The new rules adopted by the SEC to implement the swaps provisions of the Dodd-Frank Act will require significant changes in the processes for collecting, warehousing, and disseminating security-based swaps data. Although this will impose additional burdens on market participants, the SEC believes that the rules will enhance the transparency of security-based swap markets, as well as the SEC's ability to safeguard the compliance function within SDRs, which in turn form the hub of the SEC's swap oversight regime.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Charles A. Gilman at 212.701.3403 or cgilman@cahill.com; Jon Mark at 212.701.3100 or jmark@cahill.com; John Schuster at 212.701.3323 or jschuster@cahill.com; or David Slovick at 212.701.3978 or dslovick@cahill.com.

[10] *See* SEC Release No. 2015-6, *SEC Adopts Rules to Increase Transparency in Security-Based Swap Market*, available at http://www.sec.gov/news/pressrelease/2015-6.html.