

MEMO# 28857

March 26, 2015

SEC Finalizes Rules on Security-Based Swap Data Repository Registration, Duties, and Core Principles

[28857]

March 26, 2015

TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 10-15
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 21-15
INVESTMENT ADVISER MEMBERS No. 9-15
REGISTERED FUND CPO ADVISORY COMMITTEE
SEC RULES MEMBERS No. 20-15 RE: SEC FINALIZES RULES ON SECURITY-BASED SWAP
DATA REPOSITORY REGISTRATION, DUTIES, AND CORE PRINCIPLES

The Securities and Exchange Commission (“SEC” or “Commission”) recently adopted rules under the Securities Exchange Act of 1934 (“1934 Act”) governing the security-based swap data repository (“SDR”) [\[1\]](#) registration process, duties, and core principles (“Regulation SDR”). [\[2\]](#) Regulation SDR includes requirements for the SDR registration process, a new SDR registration form, the duties and core principles of SDRs, and the rules governing SDR data collection and maintenance.

The effective date of Regulation SDR is May 18, 2015 and the compliance date is March 18, 2016. This memorandum briefly summarizes Regulation SDR and highlights some of the relevant issues for registered funds.

Background

Under proposed Regulation SBSR, Reporting and Dissemination of Security-Based Swap Information (“Regulation SBSR”), [\[3\]](#) a registered clearing agency is required to report to a registered SDR any security-based swap to which it is a counterparty. Regulation SBSR also would require a platform (i.e., a national securities exchange or security-based swap execution facility (“SB SEF”)) to report to an SDR a security-based swap (“SBS”) executed on the platform that will be submitted to clearing. Regulation SDR governs the registration obligations, and duties and core principles of SDRs, as well as how SDRs should collect, maintain, report, and preserve this SBS data.

Rules Governing Registration of SDRs

Regulation SDR specifies the registration requirements for SDRs and includes a new

registration form.

New Form SDR

The Commission modified Regulation SDR from the proposal to allow an SDR to register as both an SDR and a securities information processor (“SIP”) on the same form; however, the Commission did not adopt a joint form for registration with the SEC as an SDR and with the CFTC as a swap data repository. Final Form SDR requires information in seven categories: (1) general information, (2) business organization, (3) financial information, (4) operational capability, (5) access to services and data, (6) other policies and procedures, and (7) legal opinion. Within the first 90 days of the publication of notice of filing for application for SDR registration, the SEC will either grant the registration by order or institute proceedings to grant or deny registration.

SDR Core Principles

Market Access to Services and Data

Regulation SDR mandates that any dues, fees, or other charges that an SDR imposes, as well as any discounts or rebates that it offers, must be fair and reasonable and not unreasonably discriminatory. The final rules provide that any dues, fees, discounts, or rebates must be applied uniformly for all similarly-situated users of an SDR’s services. These users include market participants, market infrastructures (including central counterparties), venues from which data can be submitted to the SDR (including exchanges, SB SEFs, electronic trading venues, and matching and confirmation platforms), and third party service providers. In general, an SDR’s fees for a service should reflect the cost of providing the service.

In response to a commenter, the Commission noted that it does not think that the “dealer pays” or “sell-side pays” model is unreasonably discriminatory per se; however, Regulation SDR does not prohibit different fee structures, as long as there is a fair and reasonable basis for the fee structure and it is not unreasonably discriminatory.

Data Collection and Maintenance

SBS Transaction Data

Regulation SDR defines “transaction data” as all information, including life cycle events, required to be reported to an SDR under Rule 901 of Regulation SBSR. SDRs are prevented from rejecting SBSs for arbitrary or anti-competitive reasons; however, SDRs are allowed to specify the methods and channels that participants need to use to connect to SDRs, as long as the methods are reasonable. At this point, the Commission has not required persons who report SBSs to the SDR to use any specified formats or taxonomies. In the future, the Commission will likely propose for public comment detailed specifications of acceptable formats and taxonomies that would facilitate an accurate interpretation, aggregation, and analysis of SBS data by the Commission.

Before an SDR can accept any SBS data from a market participant the SDR must provide certain disclosures to the market participant. [\[4\]](#)

Maintaining Accurate Data

SDRs are required to confirm the accuracy of each SBS transaction reported to the SDR with both counterparties. Regulation SDR also requires every SDR to prevent any valid provision in an SBS from being invalidated or modified by the SDR.

Privacy of SBS Transaction Data

Regulation SDR mandates that SDRs meet certain privacy requirements. SDRs must protect the privacy of all SBS transaction information that SDRs receive from a SBS dealer, counterparty, or any registered entity covered by Rule 13n-9 under the 1934 Act.

Sarah A. Bessin
Associate General Counsel

endnotes

[1] A “security-based swap data repository” is defined as “any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for security-based swaps.” See 1934 Act Section 3(a)(75).

[2] Security-Based Swap Data Repository Registration, Duties, and Core Principles, 80 FR 14438 (Mar. 19, 2015), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-03-19/pdf/2015-03127.pdf> (“Final Rules”).

[3] Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, 80 FR 14564 (Mar. 19, 2015), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-03-19/pdf/2015-03124.pdf> (“Proposed Rules”). For background on the Proposed Rules, please see ICI Memorandum No. 28758 (Feb. 23, 2015), available at http://www.ici.org/my_ici/memorandum/memo28758.

[4] The SDR is required to disclose: (1) the SDR’s criteria for providing others with access to services offered and data maintained by the SDR, (2) the SDR’s criteria for those seeking to connect to or link with the SDR, (3) a description of the SDR’s policies and procedures regarding its safeguarding of data and operational reliability, (4) a description of the SDR’s policies and procedures reasonably designed to protect the privacy of any and all SBS transaction information that the SDR receives from an SBS dealer, counterparty, or any registered entity, (5) a description of the SDR’s policies and procedures regarding its non-commercial and/or commercial use of the SBS transaction information that it receives from a market participant, any registered entity, or any other person, (6) a description of the SDR’s dispute resolution procedures involving market participants, (7) a description of all the SDR’s services, including any ancillary services, (8) the SDR’s updated schedule of any dues; unbundled prices, rates, or other fees for all of its services, including any ancillary services; any discounts or rebates offered; and the criteria to benefit from such discounts or rebates, and (9) a description of the SDR’s governance arrangements.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.