

MEMO# 25593

October 28, 2011

SEC Proposes Rules for Registration of Security-Based Swap Entities; Call Scheduled for November 10

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TO: DERIVATIVES MARKETS ADVISORY COMMITTEE No. 42-11

SEC RULES COMMITTEE No. 91-11 RE: SEC PROPOSES RULES FOR REGISTRATION OF SECURITY-BASED SWAP ENTITIES; CALL SCHEDULED FOR NOVEMBER 10

The Securities and Exchange Commission (the "Commission") recently proposed rules to provide for the registration of security-based swap dealers ("SBS Dealers") and major security-based swap participants ("SBS MSPs") ("Proposed Rules"). [\[1\]](#) The Proposed Rules are summarized briefly below.

Comments on the Proposed Rules are due to the SEC no later than December 19, 2011. We will hold a conference call on November 10, 2011, at 2 p.m. Eastern time, to discuss possible Institute comments relating to the SEC's Proposed Rules. The dial-in number is 888-790-3349 and the passcode is 38919. Please let Jennifer Odom (jodom@ici.org or 202-326-5833) know if you will participate on the call.

Proposed Rules

The Dodd-Frank Act prohibits any person from acting as an SBS Dealer or an SBS MSP (together, "SBS Entities") without being registered with the Commission, and requires that the Commission issue rules to provide for registration of SBS Entities. [\[2\]](#) The Proposed Rules would implement this requirement by establishing procedures for SBS Entities to register with the Commission, as well as addressing additional registration-related issues. The application process would be based on the Commission's existing broker-dealer registration forms (primarily Form BD), but would provide that SBS Entities that are registered or registering with the Commission as broker-dealers or with the Commodity Futures Trading Commission ("CFTC") as swap dealers ("SDs") or major swap participants ("MSPs") could submit a shorter SBS Entity registration form along with a copy of their existing registration form. [\[3\]](#)

Generally, the registration process would require an SBS Entity to apply for registration with

the Commission by filing a Form SBSE, or one of the simplified application forms, if applicable, and a “Senior Officer Certification.” The proposed Senior Officer Certification would require a senior officer of the SBS Entity to state that, “after due inquiry, he or she has reasonably determined that the security-based swap dealer or major security-based swap participant has the operational, financial, and compliance capabilities to act as a security-based swap dealer or major security-based swap participant, as applicable, and has documented the process by which he or she reached such determination.” [4] Form SBSE would require disclosure of information similar to that required by Form BD, along with several additional items of information. [5]

The Proposed Rules, under some circumstances, would provide for a conditional registration process, including for SBS MSPs. Under the conditional registration process for SBS MSPs, an entity whose security-based swap portfolio crosses the thresholds in a given fiscal quarter, causing it to be deemed an SBS MSP, would have a two-month grace period to file for conditional registration. It would apply for registration by filing Form SBSE or the applicable simplified registration form, but not a Senior Officer Certificate. Once granted, the conditional registration would expire after four months, unless the Commission extended it. To convert a conditional registration to an ongoing registration, an SBS MSP would be required to file a Senior Officer Certification with the Commission within that four-month period. The Commission explains that the proposal is intended to provide new SBS MSPs with the additional time they may need to build out their compliance structures. The conditional registration process also would be available for SBS Entities that may be required to file for registration before all of the initial rules applicable to those entities are effective. [6]

After proposing all of the key rules under Title VII of the Dodd-Frank Act, the Commission states that it intends to seek comment on a detailed implementation plan “that will permit a roll-out of the new securities-based swap requirements in a logical, progressive, and efficient manner, while minimizing unnecessary disruption and costs to the markets.”

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endnotes

[1] Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 65543 (October 12, 2011), available at <http://www.sec.gov/rules/proposed/2011/34-65543.pdf>.

[2] Section 764(a) of the Dodd-Frank Act.

[3] In lieu of the standard proposed registration Form SBSE, Form SBSE-A would be required for applicants that are not registered with the Commission as broker-dealers, but that are registered or registering with the CFTC as either an SD or an MSP. Form SBSE-BD would be required for applicants that also are registered or registering with the Commission as broker-dealers, or for any entity that is registered or registering with the Commission as a broker-dealer and that also is registered or registering with the CFTC as an SD or an MSP.

[4] Proposed Rule 15Fb2-1 under the Securities Exchange Act of 1934 (“Exchange Act”).

[5] For example, an SBS MSP would be required to disclose whether it is registering as such

because it maintains a substantial position, has substantial counterparty exposure, or is highly leveraged relative to its capital position. See Item 2b of Proposed Form SBSE.

[\[6\]](#) Conditional registration for these applicants would expire on the “last compliance date,” which is the latest date, which will be clearly designated by the Commission, by which SBS Entities must begin complying with all of the initial rules applicable to them under Section 15F of the Exchange Act. Prior to the last compliance date, these SBS Entities can apply for ongoing registration by, among other things, submitting a Senior Officer Certificate.

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