

**MEMO# 26239**

June 14, 2012

## **SEC Statement on Sequencing of Compliance Dates for Final Rules for Security-Based Swaps**

[26239]

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TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 19-12  
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 22-12  
SEC RULES COMMITTEE No. 39-12 RE: SEC STATEMENT ON SEQUENCING OF COMPLIANCE DATES FOR FINAL RULES FOR SECURITY-BASED SWAPS

The Securities and Exchange Commission (“SEC”) published a statement of general policy on the anticipated sequencing of the compliance dates of final rules to be adopted for security-based (“SB”) swaps under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). [\[1\]](#) The Statement explains the general order in which SB swap market participants might prepare for compliance with the final rules and discusses the sequencing of the rules in relation to one another. The Statement does not provide specific compliance dates for the final rules nor does it provide a conclusive sequencing of compliance dates. In contrast to the proposed implementation schedules by the Commodity Futures Trading Commission, the Statement does not propose to establish compliance deadlines based on the type of market participants entering into a swap transaction. [\[2\]](#) A summary of the Statement is provided below.

Comments on the Statement are due by August 13. We will hold a conference call on Thursday, July 19 at 2:00 pm ET to discuss the Statement and possible ICI comments. The dial-in number for the call is 888-950-7562 and the passcode is 49555. If you plan to participate, please RSVP to Ruth Tadesse via email ([rtadesse@ici.org](mailto:rtadesse@ici.org)).

To implement the new requirements that will be applicable to SB swaps in a practical and efficient manner that avoids unnecessary disruptions to the SB swap market, the SEC proposes an order of compliance dates by five groups of SB swap rules categorized as follows:

- (1) rules further defining, among others, the terms “security-based swap,” “security-based swap agreement,” and “mixed swap,” (“Definitional Rules”) and the rules concerning the treatment of cross-border SB swap transactions and non-U.S. persons acting in capacities regulated under Title VII of the Dodd-Frank

Act (“Cross-Border Rules”);

(2) rules pertaining to the registration and regulation of security-based swap data repositories (“SDRs”), the reporting of SB swap transaction data to SDRs, and the public dissemination of SB swap transaction data;

(3) rules pertaining to the mandatory clearing process of SB swap transactions, clearing agency standards, and the end-user exception from mandatory clearing;

(4) rules pertaining to the registration and regulation of SB swap dealers (“SBSDs”) and major SB swap participants (“MSBSPs”); and

(5) rules pertaining to the mandatory trading of SB swap transactions, including the rules on the registration and regulation of SB swap execution facilities (“SB SEFs”). [\[3\]](#)

## **Definitional and Cross-Border Rules**

Generally, the SEC believes the Definitional Rules should be the first set of rules that is adopted and effective. [\[4\]](#) Thereafter, the SEC expects to propose the Cross-Border Rules to address the application of the SB swap requirements to cross-border SB swap transactions and non-U.S. persons acting in capacities regulated under the Dodd-Frank Act. These rules would address the extent to which non-U.S. swap market participants would be subject to the requirements arising from the Dodd-Frank Act.

## **SDR Registration, SB Swap Transaction Reporting, and Block Trades**

The SEC believes the next step in the implementation process should be requiring SDRs to register with the SEC and to comply with applicable duties and core principles. The SEC also would require the reporting of SB swap transactions to registered SDRs earlier in the implementation process to enable the SEC to use the data reported to registered SDRs to inform other aspects of the SEC’s rulemaking. The SEC anticipates that compliance with the SDR registration and other requirements and the requirement to report SB swap transactions to registered SDRs should be required approximately at the same time to facilitate the comprehensiveness of SB swap data contained in the SDRs.

With respect to defining block trade thresholds for purposes of delayed SB swap reporting, the SEC intends to propose specific block trade thresholds simultaneously with the adoption of final rules on SB swap data reporting. Recognizing that the current data on the nature and size of SB swap transactions reflect a market that is not yet subject to any of the requirements to be adopted under the Dodd-Frank Act, the SEC is considering various methods of establishing block trade thresholds and requests comment on different approaches to block trades.

The SEC is considering whether to establish an initial period during which information regarding SB swaps would be reported on a delayed basis. The SEC also requests comment whether certain issues related to block trades – such as the required time delays – should be reopened for comment in connection with the future SEC proposal regarding how to define block thresholds. The SEC also asks whether it should defer its proposed rulemaking

regarding block thresholds until after SDRs register with the SEC and the SEC begins to receive and analyze data required to be reported under the final rules or until after SB swap transaction information begins to be publicly reported.

## **Mandatory Clearing**

The SEC notes that it may be appropriate for the procedural rules related to mandatory clearing determinations and certain clearing agency standards to be adopted before the Definitional Rules are adopted and/or effective or before the Cross-Border Rules are proposed so that registered clearing agencies that are designated by FSOC as systemically important can comply with certain requirements under Title VIII of the Dodd-Frank Act. [\[5\]](#) The SEC, however, is considering bifurcating the effectiveness of the rules for purposes of Title VII and VIII of the Dodd-Frank Act and making the mandatory clearing process for purposes of Title VII effective later than the rules relating to requirements under Title VIII.

The SEC believes that the first subset of clearing agency standards with which compliance should be required is the rules on clearing agency governance, operation, participation standards, and risk management practices. The SEC expects compliance with this subset of final rules would be necessary before any SB swaps are required to be cleared. Moreover, before SB swaps are required to be cleared, the SEC believes compliance with the end-user clearing exception should be required. The SEC also would need to determine whether to propose amendments to the existing net capital and customer protection requirements for broker-dealers with regard to SB swap clearing and whether to address portfolio margining with swaps.

The SEC next expects compliance with a second subset of rules for clearing agencies that focuses on matters of governance and mitigation of conflicts of interest followed by compliance with a third subset composed of requirements addressing a clearing agency's internal operations and administrative practices and other rules concerning clearance and settlement services.

## **SBSD and MSBSP Registration and Regulation**

The SEC must adopt rules pertaining to SBSDs and MSBSPs in the areas of registration, business conduct standards, trade acknowledgement and verification of SB swap transactions, capital, margin and segregation requirements, and reporting and recordkeeping requirements. The SEC expects the sequencing of compliance dates for the substantive requirements for SBSDs and MSBSPs to depend on whether certain requirements (e.g., business conduct standards and segregation requirements applicable to customer collateral) would require longer implementation periods.

## **SB SEF Registration and Regulation and Mandatory Trade Execution**

The SEC anticipates that the rules implementing the regulation and registration of SB SEFs would be sequenced later in the process than other rules implementing SB swap provisions. The specific compliance dates for the core principles applicable to SB SEFs and registration and other rules related to SB SEFs will be addressed in the adopting release for those rules.

Finally, the SEC expects there would be no mandatory exchange or SB SEF trading of SB swap transactions until the SEC has determined that SB swaps are required to be cleared and the clearing requirement has become operative. Moreover, the SEC anticipates that there would be no mandatory exchange or SB SEF trading of swaps before the standards for determining when an SB swap has been “made available to trade” have been finalized, an SB swap has been determined to be “made available to trade” pursuant to such standards, and such “made available to trade” determination has become effective.

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#### **endnotes**

[1] Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act, Release No. 34-67177, 77 FR 35625 (June 14, 2012) available at <http://www.gpo.gov/fdsys/pkg/FR-2012-06-14/pdf/2012-14576.pdf> (“Statement”). The SEC also describes the timing of the expiration of the exemptions previously granted by the SEC from certain provisions of the Securities Exchange Act of 1934, the Securities Act of 1933, and the Trust Indenture Act of 1939.

[2] See Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA, 76 FR 58186 (Sept. 20, 2011) and Swap Transaction and Implementation Schedule: Documentation and Margining Requirements under Section 4(s) of the CEA, 76 FR 58176 (Sept. 20, 2011), available at <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-24124a.pdf> and <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-24128a.pdf>; ICI [Memorandum](#) No. 25505 (Sept. 20, 2011) (summary of the proposed implementation schedules).

[3] The SEC has categorized into these five groups twelve rule proposals it has issued (prohibition of fraud and manipulation; trade reporting and real-time public dissemination of trade information; SDR registration process and obligations of SDRs; process for mandatory clearing of SB swaps; end-user exception to mandatory clearing; confirmation of SB swap transactions; registration and regulation of SB SEFs; clearing agency standards; product definitions; standards of conduct for SBSDs and MSBSPs; registration process for SBSDs and MSBSPs; mitigation of conflicts of interest at SB swap clearing agencies, SB SEFs, and exchanges) and one adopting release relating to SB swaps (SBSD and MSBSP definitions) under the Dodd-Frank Act along with the proposals the SEC has yet to publish with respect to capital, margin, and segregation requirements and reporting and recordkeeping requirements for SBSDs and MSBSPs and the Cross-Border Rules.

[4] The SEC notes, however, that this order may change because certain amendments are necessary for a registered clearing agency designated by the Financial Stability Oversight Council (“FSOC”) under Title VIII of the Dodd-Frank Act as systemically important to comply with the requirement that it provide 60 days advance notice to the SEC of changes to its rules, procedures, or operations that could materially affect the nature or level of its risks.

[\[5\]](#) See id. Upon the compliance date of the mandatory clearing submission process rules for SB swap submissions, the SEC would begin reviewing SB swaps submitted by clearing agencies to determine whether such SB swaps would be required to be cleared. The SEC proposes that one way in which the SEC could assist in facilitating clear and timely communication to market participants as to which SB swaps will be required to be cleared is to require the mandatory clearing of SB swaps only some specified amount of time after publishing its determination.

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