

MEMO# 33714

August 3, 2021

Chair Gensler Speech on SEC's Derivatives Agenda

[33714]

August 3, 2021

TO: ICI Members

Accounting/Treasurers Committee

Derivatives Markets Advisory Committee

Operations Committee

Securities Operations Advisory Committee SUBJECTS: Derivatives

Operations

Trading and Markets RE: Chair Gensler Speech on SEC's Derivatives Agenda

On July 21, 2021, SEC Chair Gary Gensler made a speech at the American Bar Association Derivatives and Futures Law Committee Virtual Mid-Year Program.[\[1\]](#) Gensler's speech highlighted the Securities and Exchange Commission's agenda regarding security-based swaps (SBSs). Highlights of the speech are summarized below.

Chair Gensler's remarks focused primarily on the need for the SEC to complete its mandated Dodd-Frank Act rulemakings regarding SBSs. Gensler noted that SBSs include credit default swaps, which played a leading role in the financial crisis, and total return swaps, the source of exposure in the March collapse of the family office Archegos Capital Management.

Gensler discussed several key SEC accomplishments related to the standing up of the SBS regulatory regime. First, he mentioned the upcoming November 1 deadline for SEC registration of SBS dealers and major SBS participants, noting that the SEC expects 45-50 entities to register with the agency as SBS dealers. Second, he discussed the SEC's engagement with foreign authorities and SBS dealers with respect to substituted compliance determinations. The SEC has finalized a substituted compliance determination order for Germany, issued a notice of a substituted compliance determination for the UK and, most recently, issued a substituted compliance determination order for France.[\[2\]](#) Third, Gensler discussed the SEC's SBS reporting rules, which will require SBS transaction data to be reported to a swap data repository beginning on November 8, with public dissemination by swap data repositories beginning on February 14, 2022.

Chair Gensler also discussed several potential SEC rulemakings with respect to SBSs, including:

- Mandated disclosure of positions in SBSs and related securities pursuant to the Commission's authority under Section 10B of the Securities Exchange Act of 1934 ("Exchange Act"). Gensler noted that this could be an important reform, in light of the concerns raised by the recent Archegos situation.^[3]
- Completion of the SEC's 2011 rules for the registration and regulation of security-based swap execution facilities (SB SEFs). Gensler has asked the SEC staff to recommend how to harmonize the agency's SB SEF rules with the CFTC's existing rules for SEFs. He envisions accomplishing this through another notice and comment rulemaking.
- Proposed anti-fraud and anti-manipulation rules in connection with SBSs under Section 9(j) of the Exchange Act, as mandated by the Dodd-Frank Act.^[4]

Gensler concluded by discussing the intersection of SBSs and financial technology, emphasizing that platforms for crypto-assets and other financial technology must adhere to the securities laws, regardless of whether they are in the decentralized or centralized finance space. He noted that, if these products involve SBSs, the SEC's trade reporting and other rules will apply to them, as will the SEC's security registration and offering rules.

Sarah A. Bessin
Associate General Counsel

Daniel Hughes
Legal Intern

endnotes

^[1] Chair Gensler's remarks are *available at* <https://www.sec.gov/news/speech/gensler-remarks-aba-derivatives-futures-law-committee-virtual-mid-year-program-072121>.

^[2] See <https://www.sec.gov/news/press-release/2021-138>.

^[3] Gensler believes that "additional public disclosure of the fund's positions, as well as public dissemination of individual transactions in total return swaps, may have helped."

^[4] See <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=3235-AK77>.