

Press Release

SEC Adopts New Rules and Amendments under Title VII of Dodd-Frank

FOR IMMEDIATE RELEASE

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Washington D.C., Sept. 19, 2019 — The Securities and Exchange Commission today announced that it took a significant step toward establishing the regulatory regime for security-based swap dealers by adopting a package of rules and rule amendments under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). These actions establish recordkeeping and reporting requirements for security-based swap dealers and major security-based swap participants and amend the recordkeeping and reporting requirements for broker-dealers. Under these rules, these companies will be required to create and retain fundamental business records to document and track their operations, facilitating the Commission's ability to monitor compliance and reducing risk to the market.

"I once again would like to thank Commissioner Peirce for her excellent leadership of our efforts to stand up the Dodd-Frank Title VII regulatory regime. These rules will help the Commission ensure compliance with rules designed to promote financial responsibility and investor protection," said SEC Chairman Jay Clayton. "Also, I want to thank our colleagues at the SEC, including in the Division of Trading and Markets and the Division of Economic Risk and Analysis, as well as CFTC Chairman Tarbert, Commissioner Quintenz and their colleagues, for their efforts and commitments to inter-agency cooperation."

"With these rules that we finalized, the Commission has taken another important step toward the registration and regulation of security-based swap dealers and major security-based swap participants and the full implementation of the regulatory framework mandated by Congress in Title VII of the Dodd-Frank Act. These rules reflect the hard work of our staff in Trading and Markets and DERA and are the product of ongoing close cooperation with our colleagues at the CFTC, including Chairman Tarbert and Commissioner Quintenz," said SEC Commissioner Hester Peirce. "I am particularly pleased to see the alternative compliance mechanisms built into the final rule."

These rules address seven key areas:

- They establish record making requirements for security-based swap dealers (SBSDs) and major security-based swap participants (MSBSPs) and amend the existing record making requirements for broker-dealers to account for their security-based swap activities.
- They establish record preservation requirements for SBSDs and MSBSPs and amend the existing record preservation requirements for broker-dealers to address records relating to their security-based swap activities.
- They establish periodic reporting and annual audit requirements for SBSDs and MSBSPs and amend the existing reporting requirements for broker-dealers to account for their security-based swap activities.
- They establish early warning notification requirements for SBSDs and MSBSPs.
- They establish security count requirements for SBSDs that are not registered as broker-dealers and do not have a prudential regulator (stand-alone SBSDs).
- They amend the Commission's existing cross-border rule to provide a means to request substituted compliance with respect to the recordkeeping and reporting requirements for SBSDs and MSBSPs.
- They amend a rule that permits certain SBSDs that are registered as swap dealers and predominantly engage in a swaps business to comply with CFTC requirements in lieu of Commission

requirements. The amendment adds the recordkeeping and reporting requirements being adopted today to this alternative compliance mechanism.

The accompanying fact sheet describes the rules in more detail.

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FACT SHEET

Final Rules and Amendments

Sept. 19, 2019

The Commission adopted a package of new rules and rule amendments to establish recordkeeping and reporting requirements under Title VII of the Dodd-Frank Act.

RECORDKEEPING AND REPORTING RULES FOR SBSDs, MSBSPs, AND BROKER-DEALERS

The Scope of the Rules

- Except as discussed below, SBSDs and MSBSPs that also are registered as broker-dealers will be subject to the existing recordkeeping and reporting rules applicable to broker-dealers: Rule 17a-3 (record making); Rule 17a-4 (record preservation); Rule 17a-5 (periodic reporting and annual audit); Rule 17a-11 (early warning notification); and Rule 17a-13 (security count). Rules 17a-3, 17a-4, 17a-5, and 17a-11 are being amended to account for security-based swap activities of broker-dealer SBSDs and MSBSPs and of broker-dealers that engage in security-based swap activities but not at a level that requires them to register as an SBSD or MSBSP.
- SBSDs and MSBSPs that are not also registered as broker-dealers will be subject to Rule 18a-5 (record making); Rule 18a-6 (record preservation); Rule 18a-7 (periodic reporting and annual audit); and Rule 18a-8 (early warning notification). Stand-alone SBSDs will also be subject to Rule 18a-9 (security count).
- SBSDs that are also registered as OTC derivatives dealers (a special purpose broker-dealer) will be subject to Rule 17a-3 (record making); Rule 17a-4 (record preservation); Rule 18a-7 (periodic reporting and annual audit); and Rule 18a-8 (early warning notification). These firms are subject to Rules 18a-7 and 18a-8 because they will be subject to the capital rule for stand-alone SBSDs (Rule 18a-1) rather than the capital rule for broker-dealers (Rule 15c3-1).

Record Making Requirements

- Rule 17a-3 requires a broker-dealer to make and keep current certain financial and accounting records, including blotters itemizing a daily record of all purchases and sales of securities; ledgers reflecting all assets and liabilities, income and expense, and capital accounts; a securities record; and a memorandum of each brokerage order and proprietary securities transaction. This rule has been amended to require broker-dealers (including broker-dealer SBSDs and MSBSPs) to make and keep current records relating to their security-based swap activities.
- New Rule 18a-5 will require non-broker-dealer SBSDs and MSBSPs to make and keep current financial and accounting records and records relating to their security-based swap activities. Rule 18a-5 is more narrowly tailored than Rule 17a-3, particularly with respect to the requirements for bank SBSDs and MSBSPs.

Record Preservation Requirements

- Rule 17a-4 prescribes the period of time the records required to be made and kept current under Rule 17a-3 must be preserved and the manner in which the records must be preserved. It also identifies additional types of records that must be preserved if the record is made or received by the broker-dealer (e.g., written communications and agreements relating to the broker-dealer's business). This rule has been amended to prescribe the time periods that the new security-based swap records required under Rule 17a-3 must be retained by broker-dealers (including broker-dealer SBSDs and MSBSPs) and to subject these records to the other preservation requirements in the rule (e.g., requirements relating to storing records electronically and promptly producing records to the Commission).

- New Rule 18a-6 prescribes the period of time the records required to be made and kept current under new Rule 18a-5 must be preserved by non-broker-dealer SBSBs and MSBSBs and the manner in which the records must be preserved. New Rule 18a-6 also identifies additional types of records that must be preserved (e.g., written communications and agreements relating to the firm's business) if the record is made or received by the non-broker-dealer SBSB or MSBSB.

Periodic Reporting and Annual Audit Requirements

- Rule 17a-5 has two main components: (1) a requirement that broker-dealers periodically (monthly or quarterly) file an unaudited FOCUS Report containing information about their financial and operational condition, including a balance sheet, income statement, and capital and segregation computations; and (2) a requirement that broker-dealers annually file financial statements and certain reports audited by a Public Company Accounting Oversight Board (PCAOB)-registered accountant in accordance with PCAOB standards (annual audited reports). The FOCUS Report Part II has been amended to, among other things, elicit information about the capital and segregation computations of nonbank SBSBs and MSBSBs and to elicit information about security-based swap and swap transactions and positions of broker-dealers and nonbank SBSBs and MSBSBs. Rule 17a-5 will require broker-dealers (including broker-dealer SBSBs and MSBSBs) to file the amended FOCUS Report Part II. Rule 17a-5 will require broker-dealer SBSBs and MSBSBs to file the annual audited reports (just as the rule currently requires broker-dealers to file these reports).
- New Rule 18a-7 will require non-broker-dealer SBSBs and MSBSBs to file the amended FOCUS Report Part II or, in the case of bank SBSBs and MSBSBs, the new FOCUS Report Part IIC. The FOCUS Report Part IIC is more limited than the amended FOCUS Report Part II and will require bank SBSBs and MSBSBs to report certain information about their financial condition (largely drawn from the information they file with the prudential regulators) and information about their security-based swap activities. New Rule 18a-7 will require stand-alone SBSBs and MSBSBs to file annual audited reports. Bank SBSBs and MSBSBs will not be required to file annual audited reports.

Early Warning Notification

- Rule 17a-11 specifies circumstances under which a broker-dealer must notify the Commission and other regulators about adverse changes in the firm's financial or operational condition. For example, the rule requires a broker-dealer to provide notice when, among other things, its net capital falls below 120% of the minimum required amount or below the minimum required amount, when the firm fails to make and keep current the books and records required by Commission rules, or when a broker-dealer discovers or is notified by its accountant of a "material weakness" as defined in Rule 17a-5. Rule 17a-11 has been amended to require notice if the broker-dealer (including a broker-dealer SBSB or MSBSB) fails to make a required deposit into the security-based swap customer reserve account (i.e., fails to comply with this security-based swap segregation requirement).
- New Rule 18a-8 establishes notification requirements for non-broker-dealer SBSBs and MSBs when, for example, their capital levels fall below required amounts, they fail to make required books and records, or they fail to make required deposits into their security-based swap customer reserve accounts.

Security Counts

Rule 17a-13 requires a broker-dealer on a quarterly basis to examine and count the securities it physically holds, account for the securities that are subject to its control or direction but are not in its physical possession, verify the locations of securities under certain circumstances, and compare the results of the count and verification with its records. Broker-dealer SBSBs and MSBSBs will be subject to this rule. New Rule 18a-9 will require stand-alone SBSBs to perform a quarterly securities count.

Alternative Compliance Mechanism

Rule 18a-10 provides that an SBSB that is not a registered broker-dealer and is registered as a swap dealer and predominantly engages in a swaps business may elect to comply with the capital, margin and segregation requirements of the Commodity Exchange Act and the CFTC's rules instead of complying with the capital, margin, and segregation rules of the Commission if certain conditions are met. This rule has been amended to

provide that the SBSB also may elect to comply with the recordkeeping and reporting requirements of the Commodity Exchange Act and the CFTC's rules instead of complying with the recordkeeping and reporting rules of the Commission.

Cross-Border Application

The Commission's cross-border rule has been amended to permit foreign SBSBs and MSBSPs to avail themselves of substituted compliance to satisfy the recordkeeping and reporting requirements.

What's Next?

The rules will become effective 60 days after publication in the Federal Register. The compliance date for the rule amendments and new rules is 18 months after the effective date of any final rules addressing the cross-border application of certain security-based swap requirements.

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Related Materials

- [SEC Final Rule](#)