

Broker-Dealer Beat

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SEC Adopts Registration Rules for Security-Based Swap Entities

On August 5, 2015, the SEC adopted rules and forms governing the registration process for security-based swap dealers and major security-based swap participants ("SBS Entities"). Although the registration rules will become effective 60 days after publication in the Federal Register, compliance will not be required until final substantive rules governing financial responsibility, business conduct and other requirements applicable to SBS Entities have been implemented.*

SBS Entities will be required to file new Form SBSE with the SEC. For entities already registered in another capacity with the SEC or the CFTC, a streamlined version of the new form will be available. SBS Entities must develop and implement written policies and procedures reasonably designed to prevent violations of the federal securities laws, similar to the requirement for registered broker-dealers and investment advisers. The SEC is requiring that Form SBSE be supported by a senior officer's certification that, after due inquiry, he or she has reasonably determined that the firm has developed and implemented policies and procedures reasonably designed to prevent securities law violations and has documented the process for making such determination. The certification is intended to cause SBS Entities to take appropriate steps to review applicable securities laws and rules and implement reasonably designed policies and procedures to ensure compliance with those requirements in the absence of a self-regulatory organization with authority to help oversee their implementation.

Form SBSE also must be accompanied by a certification by the firm's chief compliance officer that he or she neither knows, nor in the exercise of reasonable care should have known, that any person associated with the firm who is involved in effecting security-based swaps on its behalf is subject to a statutory disqualification (except as otherwise permitted by a rule or order of the SEC).** The chief compliance officer also must review and sign the questionnaire or application for employment of each employee who will be involved in effecting security-based swap transactions.

Foreign SBS Entity applicants must designate an agent for service of process in the United States, certify that the entity can, as a matter of law, and will provide the SEC with prompt access to its books and records and submit to onsite examination, and supply an opinion of counsel supporting its certification.

Firms must begin counting relevant security-based swap positions to determine whether they meet or exceed the thresholds for registration (set out in SEC Rules 3a71 and 3a67) two months prior to the compliance date for the registration rules ("Counting Date"). No transactions entered into prior to the Counting Date need be considered.

* The compliance date for the registration rules will be the later of (i) six months after publication in the Federal Register of a final rule release adopting capital, margin and segregation requirements for SBS Entities, (ii) the compliance date for final rules establishing recordkeeping and reporting requirements for SBS Entities, (iii) the compliance date for final rules establishing business conduct requirements for SBS Entities or (iv) the compliance date for final rules establishing the application process for SBS Entities to allow persons subject to a statutory disqualification to effect security-based swaps on their behalf.

** The definition of associated person extends both to natural persons and entities that control, are controlled by or are under common control with the SBS Entity. The SEC has proposed a rule to govern applications by SBS Entities for permission for persons subject to a statutory disqualification to be involved in effecting security-based swap transactions.

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