

# Regulatory Regime for Security-Based Swap Execution Facilities



The Securities and Exchange Commission proposed rules that would:

- Create a regime for the registration and regulation of security-based swap execution facilities (SBSEFs);
- Implement the “trade execution requirement” for security-based swaps (SBS) and address various issues relating to the requirement, including its cross-border application;
- Address conflicts of interest at SBSEFs and national securities exchanges that trade SBS; and
- Promote consistency between the proposed rules governing SBSEFs and existing rules under the Securities Exchange Act of 1934 (Exchange Act).

## Why This Matters

To enhance transparency and oversight of the over-the-counter derivatives market, Title VII of the Dodd-Frank Act requires the Commission to implement a regulatory framework for SBS that requires the registration and regulation of SBSEFs and mitigates conflicts of interest on SBSEFs and SBS exchanges. The Commission proposed Regulation SE, which would implement these statutory requirements and represent an important step in the SEC’s efforts to finalize its regulatory regime for the SBS market.

## How This Rule Applies

Regulation SE would set out the process for an entity to register with the Commission as an SBSEF, including by submitting a new Form SBSEF. Proposed Rule 802(w) implement the Exchange Act definition of “security-based swap execution facility” but would not include an entity that is registered with the Commission as a clearing agency and limits its security-based swap matching functions to operation of a trading session that is designed to further the accuracy of end-of-day valuations. Regulation SE also would establish various requirements for registered SBSEFs. Proposed Rules 818 to 831 of Regulation SE, for example, would implement and require SBSEFs to comply with the 14 “Core Principles” set forth in Section 3D(d) of the Exchange Act.

The proposal also includes provisions designed to promote consistency between the proposed rules governing SBSEFs and existing rules under the Exchange Act, including provisions that would:

- Deem a registered SBSEF also to be registered with the Commission as a broker, and exempt that SBSEF from certain broker requirements;
- Allow for Commission review of final actions taken by an SBSEF;

- Sunset an existing exemption from clearing agency registration for an entity performing the functions of an SBSEF but that is not yet registered as such; and
  - Exclude from the definition of “exchange” registered SBSEFs and SBS clearing agencies that perform certain matching and execution functions.
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## What’s Required

For an entity meeting the definition of “security-based swap execution facility”:

- Register with the Commission as an SBSEF on Form SBSEF or register as a national securities exchange; and
- Foreign SBS trading venues may seek an exemption from the definition of “security-based swap execution facility” pursuant to proposed Rule 833(a).

A registered SBSEF must:

- Submit filings with the Commission for new rules, rule amendments, or products;
- Submit information to the Commission that the Commission requests, including demonstrations that the SBSEF is in compliance with one or more Core Principles, notification of a transfer 50 percent or more of the equity interest in the SBSEF, and information about pending legal proceedings;
- Establish, comply with, and enforce its rules, including, among others, rules regarding market access, trading and trade processing, the operation of the SBSEF, the financial integrity of SBS on its facility, the exercise of emergency authority, and conflicts of interest;
- Monitor trading and market activity to prevent manipulation, price distortion, and delivery or settlement disruptions;
- Make public timely information on price, trading volume, and other trading data on SBS transactions, as required by Regulation SBSR, and publish on its website a Daily Market Data Report;
- Maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission, for a period of five years;
- Have adequate financial, operational, and managerial resources to discharge its responsibilities;
- Establish and maintain a program of automated systems and risk analysis to identify and minimize sources of operational risk, through the development of appropriate controls and procedures;
- Establish and maintain emergency procedures, backup facilities, and a disaster recovery plan; and
- Designate a chief compliance officer (CCO) and establish regulatory and reporting obligations for the CCO.

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### **Additional Information:**

The public comment period will remain open for 60 days following publication of the proposing release on the SEC’s website or 30 days following publication of the proposing release in the Federal Register, whichever period is longer.