

SBS Fraud & Manipulation; CCO Independence; Position Reporting



The Securities and Exchange Commission (SEC) re-proposed new Exchange Act rule 9j-1 to prevent fraud, manipulation and deception in connection with security-based swap transactions.

In addition, the SEC is proposed new Exchange Act rule 15Fh-4(c) to prohibit undue influence over the Chief Compliance Officer (CCO) of a security-based swap dealer or a major security-based swap participant (each, an SBS Entity).

Finally, the SEC is proposed new Exchange Act rule 10B-1 to require any person with a security-based swap position that exceeds a certain threshold to promptly file with the SEC a schedule disclosing certain information related to its position.

Why This Matters

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) was enacted in part to improve accountability and transparency in the financial system. Consistent with that goal, as the SEC takes action to finalize its Dodd-Frank regime for security-based swaps, these proposed rules would address misconduct in the security-based swap market, promote compliance with the Federal securities laws by SBS Entities and increase transparency in the security-based swap market.

How This Rule Applies

If finalized, new Rule 9j-1 would prohibit fraudulent, deceptive, or manipulative conduct in connection with all transactions in security-based swaps, including misconduct in connection with the exercise of any right or performance of any obligation under a security-based swap.

Proposed new Rule 15Fh-4(c) would prohibit personnel of an SBS Entity from taking any action to coerce, mislead or otherwise interfere with the SBS Entity's CCO.

Proposed new Rule 10B-1 would require any person, or group of persons, who owns a security-based swap position that exceeds the threshold amount set by the rule to promptly file with the SEC a statement containing the information required by Schedule 10B on the SEC's EDGAR filing system. The filings will be publicly available.

What's Required

Proposed Rule 9j-1 would:

- Prohibit a range of misconduct and attempted misconduct in connection with security-based swaps, including misconduct in connection with the exercise of any right or performance of any obligation under a security-based swap;
- Prohibit manipulation or attempted manipulation of the price or valuation of any security-based swap, or any payment or delivery related thereto;
- Provide limited safe harbors for certain specified conduct; and
- Provide that a person cannot escape liability for trading based on possession of material non-public information about a security by purchasing or selling a security-based swap based on that security and cannot escape liability under the proposed rule by purchasing or selling the underlying security (as opposed to purchasing or selling a security-based swap that is based on that security).

Proposed Rule 15Fh-4(c) would prohibit any officer, director, supervised person or employee of an SBS Entity, or any person acting under such person's direction, to take any action to coerce, manipulate, mislead, or fraudulently influence the SBS Entity's CCO in the performance of their duties under the Federal securities laws.

Proposed Rule 10B-1 would:

- Require any person, or group of persons, with a security-based swap position that exceeds a specified reporting threshold to promptly file a Schedule 10B disclosing certain information related to its position;
- Provide that any Schedule 10B be filed promptly but in no event later than the end of the first business day following the day of execution of the security-based swap transaction that results in the security-based swap position exceeding threshold;
- Require reporting persons to file amendments promptly in the event of any material change to a previously filed Schedule 10B.

Schedule 10B would require persons to disclose certain information including: the identity of the reporting person and the security-based swap position, as well as the underlying loans or securities and any related loans and securities.

Additional Information:

Visit [sec.gov](https://www.sec.gov) to find more information about the adopted amendments and the full text of the proposed rules. The proposed rules will be published on [SEC.gov](https://www.sec.gov) and in the Federal Register.