

Derivatives - USA

Reporting and dissemination of security-based swap information

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Introduction

On February 11 2015 the Securities and Exchange Commission (SEC) adopted Regulation SBSR, the final rule regarding reporting of security-based swap information to registered swap data repositories and the public dissemination of security-based swap transaction, volume and pricing information by registered swap data repositories. The SEC simultaneously proposed certain amendments to the regulation.

Although the final rule is effective as of May 18 2015, its implementation will depend on finalisation of the proposed amendments and a phased-in compliance schedule, as well as other factors, including the date on which the first swap data repository is registered by the SEC. Regulatory reporting of security-based swaps within a specific asset class will be required within six months of registration of the relevant swap data repository, while public dissemination will be required within three months of the reporting requirements. The rule also requires regulatory reporting, but not public dissemination, of primary and secondary trade information for historical security-based swaps when available.

Transactions

The final rule applies to all securities-based swap transactions involving a US person, except:

- clearing transactions;
- security-based swap transactions executed on a platform that will be submitted to clearing;
- transactions where there is no US person, registered security-based swap dealer or registered major security-based swap participant on either side; and
- transactions where there is no registered security-based swap dealer or registered major security-based swap participant on either side and there is a US person on only one side.

The proposed amendment addresses cleared transactions and transactions executed on platforms subject to clearing. On April 29 2015 the SEC further re-proposed rules applying Regulation SBSR to additional non-US transactions.

Required trade information

The final rule requires reporting of the following primary trade information regarding security-based swaps to registered swap data repositories:

- asset class;
- information regarding the base securities or assets;
- notional amount;
- currency;
- date and time of execution;
- effective date;
- scheduled termination date;
- price;
- terms of fixed and floating rate payments and frequency of payments;
- whether the transaction is cleared through a clearing agency;

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- whether both counterparties are registered major security-based swap participants;
- an indication where the transaction does not accurately reflect the market (if applicable); and
- any additional information relevant for customised transactions.

Further, the final rule requires reporting of all defined lifecycle events.

Reporting entities

For covered transactions, the final rule assigns the duty to report to one side of the transaction. Similar to the Commodity Futures Trading Commission (CFTC) rules for swap data reporting, the final rule establishes a reporting hierarchy dependent on the registration status of the counterparties to the transaction as a registered security-based swap dealer or registered major security-based swap participant.

The hierarchy is as follows:

- Where both parties to the security-based swap are registered security-based swap dealers, the parties will select the reporting party.
- Where only one party to the security-based swap is a registered security-based swap dealer, that party will be the reporting party.
- Where both parties to the security-based swap are registered major security-based swap participants, the parties will select the reporting party.
- Where one party to the security-based swap is a registered major security-based swap participant and the other party is neither a registered security-based swap dealer nor a registered major security-based swap participant, the registered major security-based swap participant will be the reporting party.
- Where neither party to the security-based swap is a registered security-based swap dealer or registered major security-based swap participant, the parties will select the reporting party.
- Where no registered swap data repository will accept the report, the reporting party must report the transaction to the SEC. All security-based swap transaction information must be received by a registered swap data repository within 24 hours of execution, regardless of notional amount.

Dissemination of trade information by registered swap data repositories

Registered swap data repositories are required to establish and maintain written policies and procedures outlining how they will receive and publicly disseminate security-based swap transaction information. Specifically, registered swap data repositories must use unique identification codes or identify the following data points:

- counterparty;
- product;
- transaction;
- broker;
- branch;
- trading desk;
- trader;
- platform; and
- ultimate parent.

As a result, market participants may be required to establish new or updated systems to track information under the new security-based swap rules separate and apart from the codes and identifiers required by the CFTC.

Non-US transactions

Any security-based swap involving a direct counterparty that is a US person, a foreign branch of a US person or a non-US person guaranteed by a US person is subject to reporting requirements regardless of jurisdiction. Further, any security-based swap involving a registered security-based swap dealer or registered major security-based swap participant – whether as a direct counterparty or as a guarantor – or any security-based swap cleared by a registered clearing agency with its principal place of business in the United States must also be reported to a registered swap data repository

In order to prevent potentially conflicting or repetitive reporting requirements, the final rule recognises a 'substituted compliance' framework in which the SEC may issue a substituted compliance determination if corresponding requirements of foreign jurisdictions are comparable to requirements in the final rule and enforced accordingly.

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