

THE REVIEW OF
**SECURITIES & COMMODITIES
REGULATION**

AN ANALYSIS OF CURRENT LAWS AND REGULATIONS
AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

Vol. 50 No. 7 April 12, 2017

THE SEC'S LONG-AWAITED SECURITY-BASED SWAPS RULES MAY BE APPROACHING

The SEC has proposed all of its major Title VII rules regulating the security-based swaps market. The authors discuss the current status of this and related rulemakings, the relief the SEC has granted, and the provisions of the rules. They then turn to the timeline for implementation in view of the new administration, preparation for required registration of security-based swap entities, and business conduct standards for registered entities. At each point, they compare the SEC's approach with that of the CFTC.

By Julian E. Hammar, David B. Lichtstein, and Robert J. Dilworth *

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") generally requires regulation of the swaps market as the Congressional response to the financial crisis of 2008.¹ Title VII splits regulation of the swaps market between the Commodity Futures Trading Commission and the Securities and Exchange Commission. While the CFTC has finalized and requires compliance with most of its rules under Title VII, very few of the SEC's rules currently require compliance, although the SEC has proposed all of its major Title VII rules and has finalized a growing number of them. With that trend toward finalization, required compliance with many of the SEC's rules, long awaited by market participants, may

be approaching. Although the recent change in administration and a new Congress have delayed the finalization trend, compliance may not be significantly slowed or altered.

In this article, we will examine the current status of SEC rulemakings under Title VII and the attendant relief that the SEC has granted, discuss the timing for registration of dealers and participants that will be subject to SEC jurisdiction when many of the SEC's rules will go "live," assess the impact of the change in administration and Congress on that timeline, which could result in dealer registration and compliance with certain other rules in February 2018, and point out some considerations in preparing for registration, including addressing requirements of the business conduct rules.

¹ Title VII of Pub. L. No. 111-203, 124 Stat. 1376 (2010).

* JULIAN E. HAMMAR is of counsel in the Washington, D.C. office of Morrison & Foerster LLP. DAVID B. LICHTSTEIN is an associate in the New York office of the same firm. Their e-mail addresses are jhammar@mofo.com and dlichtstein@mofo.com. ROBERT J. DILWORTH is Managing Director and Associate General Counsel at Bank of America Merrill Lynch in New York. Views and opinions expressed in this article are those of the authors in their personal capacity.

INSIDE THIS ISSUE

- CLE QUESTIONS, Page 91