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SEC ADOPTS RECORDKEEPING AND REPORTING RULES FOR SECURITY-BASED SWAPS

The final rules rely heavily on the existing recordkeeping and reporting framework for broker-dealers, but with adjustments depending on the type of firm. The author discusses these provisions and then the rules as applied to various activities: record making; record preservation; periodic reporting and annual audit; early warning notification; and security counts. He closes with the provisions for alternative compliance with CFTC rules and substituted compliance for foreign dealers.

By Julian E. Hammar *

On September 19, 2019, the Securities and Exchange Commission issued final security-based swap recordkeeping and reporting rules for security-based swap dealers (“SBSDs”), major security-based swap participants (“MSBSPs”) and broker-dealers.¹ The rules represent a significant step toward completion of the SEC’s regulatory regime for security-based swaps as provided for in Title VII of the Dodd-Frank Act.² These

rules, and another set of rules addressing cross-border issues recently finalized by the SEC,³ are the last remaining rules necessary to trigger the registration and compliance requirements under the SEC’s rules for

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of a security or issuers of securities in a narrow-based security index. Swaps subject to CFTC regulation generally include swaps on interest rates, foreign currencies, commodities, and broad-based security indices. While it is estimated that the CFTC regulates approximately 90 percent of the overall swaps market in notional terms, the security-based swap market, which includes single-name credit default swaps, is an important market segment from a regulatory perspective, as credit default swaps, then largely unregulated, were a catalyst of the 2008 financial crisis. See Financial Crisis Inquiry Commission, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States (2011).

³ See *Rule Amendments and Guidance Addressing Cross-Border Application of Certain Security-Based Swap Requirements*, Exchange Act Rel. No. 34-87780 (Dec. 18, 2019).

¹ *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers*, Exchange Act Release No. 87,005 (Sept. 19, 2019), available at <https://www.sec.gov/rules/final/2019/34-87005.pdf> (hereinafter, the “Adopting Release”).

² Pub. L. No. 111-203, 124 Stat. 1376 (2010). Under Title VII of the Dodd-Frank Act, responsibility for oversight of the derivatives market is divided between the SEC and the Commodity Futures Trading Commission (“CFTC”). The SEC has jurisdiction over “security-based swaps,” while the CFTC has jurisdiction over “swaps.” Security-based swaps overseen by the SEC include swaps on a single security or loan, a narrow-based security index, and certain events related to a single issuer

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