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## THE SEC'S PROPOSED RULE FOR REPORTING LARGE SECURITY-BASED SWAP POSITIONS

*In this article, the authors discuss the SEC's proposed Rule 10B-1 in detail, which requires the reporting of large security-based swap positions above certain prescribed thresholds. They begin by comparing the proposed rule to other recently enacted and proposed regulations, observing that the proposal enters a crowded regulatory environment. Next, the article examines the SEC's rulemaking authority and explores events that have directly contributed to enacting this proposed regulation. Finally, the authors provide an in-depth summary of proposed Rule 10B-1 and identify potential conflicts with existing regulations and unintended consequences of the proposed Rule.*

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On December 15, 2021, the Securities and Exchange Commission (the "SEC") published a set of proposed rules (the "Proposing Release")<sup>1</sup> which included new Rule 10B-1 (the "Proposed Rule"). The Proposed Rule would, among other things, require public reporting of large security-based swap positions above certain prescribed thresholds.

Although not directly mentioned in the Proposing Release, the Proposed Rule is widely perceived as a direct response to the collapse of Archegos Capital Management, L.P. ("Archegos"). Archegos obtained exposure to the economics of more than 10% of multiple

companies' shares by taking highly leveraged positions in total return swaps with several broker-dealers. It was then forced to liquidate its positions, roiling the market.<sup>2</sup> The SEC believes that reporting and public dissemination of security-based swap positions would prevent or reduce the odds of a similar situation occurring again.<sup>3</sup> The Proposed Rule would drastically change the market for security-based swaps by making information about all positions that exceed certain thresholds public and requiring that the identity of the reporting party be publicly disseminated.

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<sup>1</sup> *The Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps; Prohibition Against Undue Influence Over Chief Compliance Officers; Position Reporting of Large-Security-Based Swap Positions* Ex. Act Rel. No. 34-93784 (February 4, 2022) 87 FR 6652, available at <https://www.govinfo.gov/content/pkg/FR-2022-02-04/pdf/2021-27531.pdf>.

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<sup>2</sup> Lucian A. Bebchuk, James Barr Ames Professor of Law, Economics and Finance Director, Corporate Governance Program at Harvard University, Letter to the SEC, *Release No. 34-93784; File No. S7-32-10* (March 20, 2022) ("Bebchuk Comment Letter"), at 5, available at <https://www.sec.gov/comments/s7-32-10/s73210-20120578-272763.pdf>.

<sup>3</sup> Proposing Release at 6656.

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