

Corporate & Financial Weekly Digest

Posted at 12:59 PM on October 15, 2010 by [Ross Pazzol](#)

SEC Adopts Interim Final Security-Based Swap Reporting Rule

Section 766 of the Dodd-Frank Wall Street Reform and Consumer Protection Act generally requires security-based swaps that were entered into prior to July 21 and which were still outstanding as of that date (“pre-enactment unexpired security-based swaps”) to be reported. Pursuant to that requirement, the Securities and Exchange Commission adopted an interim final rule (the Rule) in an effort to implement these reporting requirements pending the adoption of final rules relating to the reporting of security-based swaps and associated recordkeeping requirements. In addition, the Rule includes an interpretive note (the Note) which imposes current recordkeeping obligations on the parties to pre-enactment unexpired security-based swaps.

Reporting Obligations

New Rule 13Aa-2T under the Securities Exchange Act of 1934 requires that a counterparty to a pre-enactment unexpired security-based swap transaction submit certain information to a registered security-based swap data repository or to the SEC by the earlier of: (x) the compliance date that will be established by SEC rules, or (y) within 60 days after a security-based swap data repository is registered with the SEC and becomes operational. The information required to be reported includes: (1) a copy of the transaction confirmation in electronic form, if available, or in written form if there is no electronic copy; and (2) if available, the time the transaction was executed. The Rule also requires the parties to pre-enactment unexpired security-based swap transactions to provide the SEC with any information relating to these transactions that the SEC may request.

Reporting Party

New Rule 13Aa-2T also provides that if only one of the parties to the security-based swap is a security-based swap dealer or major security-based swap participant, that party must report the security-based swap. If one party is a security-based swap dealer and the other party is a major security-based swap participant, the security-based swap dealer must report the swap. If neither party is a security-based swap dealer or major security-based swap participant, then the parties must select which one of them is responsible for reporting the security-based swap.

Record Retention

The Note to the Rule requires the parties to a pre-enactment unexpired security-based swap to retain all information and documents that currently exist relating to the terms of these transactions. This information includes, but is not limited to: (1) any information necessary to identify and value the transaction; (2) the date and time of execution of the transaction; (3) information relevant to the price of the transaction; (4) whether the transaction was accepted for clearing by a “clearing agency” or “derivatives clearing organization,” and if so, the identity of such clearing organization; (5) any modification(s) to the terms of the transaction; and (6) the final confirmation of the transaction.

The Note does not require the parties to create new records or modify their existing records with respect to pre-enactment unexpired security-based swaps. The SEC also made it clear that such information may be reported in the format in which it is kept.

Click [here](#) to read the SEC release.

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