

March 21, 2011

SEC Releases Proposed Rules Preserving “Status Quo” for  
Beneficial Ownership Reporting of Security-Based Swaps

The Securities and Exchange Commission has released a proposal ([Securities Act Release No. 64087](#)) to readopt without change portions of the beneficial ownership reporting rules under Sections 13 and 16 of the Securities Exchange Act of 1934 as they relate to transactions in security-based swaps. This action, intended to prevent the Dodd-Frank Act from unintentionally excluding such transactions from the scope of the existing rules, is both timely and necessary, and we encourage the SEC to enact such rules prior to the July 16, 2011 statutory effective date of this portion of the Dodd-Frank Act.

However, [as we have previously stated](#) in a rulemaking petition filed with the SEC, we believe that the beneficial ownership reporting rules are badly broken in a number of respects, and require a more complete modernization to effectively serve their fundamental purpose of informing the markets, issuers and investors of potential shifts in corporate control. The SEC acknowledges in the proposing release that it is “possible for an investor to use a security-based swap to accumulate an influential or control position in a public company,” and notes that the SEC staff is concurrently developing additional proposals to modernize the rules. We applaud this, and continue to urge the SEC to comprehensively reform and modernize the reporting rules in addition to simply addressing the narrow concern that is the focus of the release.

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