

SEC Reopens Comment Period for Security-Based Swap Capital, Margin and Segregation Rules

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On October 11, 2018, the SEC [reopened](#) the comment period and requested additional comments for previously proposed rules relating to capital, margin, and segregation requirements for security-based swap dealers (“**SBSDs**”), major security-based swap participants (“**MSBSPs**,” and together with SBSDs, “**SBS Entities**”) and, in some cases, broker-dealers. The rules, most of which were initially proposed six years ago, would establish:

- capital and margin requirements for non-bank SBS Entities (the federal banking regulators adopted capital and margin requirements for bank SBS Entities in November 2015);
- segregation requirements for SBSDs;
- notification requirements for SBS Entities relating to segregation;
- higher minimum net capital requirements and impose liquidity requirements for broker-dealers permitted to use internal models when computing net capital; and
- the cross-border treatment of security-based swap capital, margin and segregation requirements.

Comments on these proposed rules must be submitted within 30 days after the SEC release is published in the Federal Register, which has not yet occurred.

What this means for the timing of the implementation of the security-based swap regulatory regime.

Adoption of these rules is an important predicate to the implementation of other security-based swap rules. Specifically, the date on which SBSDs will be required to register with the SEC (“**SBSD Registration Date**”) and comply with various security-based swap requirements, including business conduct standards and trade acknowledgment and verification requirements, will not occur until at least six months after the date of publication in the Federal Register of the final capital, margin and segregation rules. The SBSD Registration Date is also contingent upon the occurrence of the compliance date for (i) final rules establishing recordkeeping and financial reporting requirements for SBS Entities and (ii) final rules establishing a process for SBS Entities to apply to the SEC to permit a statutorily disqualified associated person to effect or be involved in effecting security-based swaps on the entity’s behalf. The SEC has not yet finalized either of these rules, although we suspect it will do so before or shortly after the final security-based swap capital, margin and segregation requirements are adopted.

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If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Annette L. Nazareth

+1 202 962 7075

annette.nazareth@davispolk.com

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