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SEC Finalizes Partial Framework for the Cross-Border Application of its Derivatives Regulations

The SEC Final Rule is the SEC's first major step toward implementing its final regulatory regime under Title VII of the Dodd-Frank Act.

On June 25, 2014, the Securities and Exchange Commission (SEC) approved a final rule (the SEC Final Rule)[1] regarding the cross-border application of its rules under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act).[2] While the SEC's proposed cross-border rule (the SEC Proposed Rule)[3] covered a wide range of issues, including among other things:

- The definition of a "US person"
- Registration requirements for certain market participants, trade repositories, clearing agencies and security-based swap execution facilities
- Entity and transaction-level requirements for registered entities
- Compliance obligations for all other market participants
- Substituted compliance determinations

However, the SEC reserved many of these issues for later rulemakings. As a result, the SEC limits the scope of the SEC Final Rule to the following topics:

- The definition of a US person for purposes of the SEC's regulations under Title VII of the Dodd-Frank Act
- The cross-border application of the security-based swap dealer (SBSD) *de minimis* exception (including aggregation requirements)
- The cross-border application of the major security-based swap participant (MSBSP) thresholds (including attribution requirements)
- The process for submitting substituted compliance requests
- An interpretation of the SEC's antifraud authority under Section 929P(b) of the Dodd-Frank Act

Importantly, the SEC did not address the cross-border application of the dealer definition to transactions between two non-US persons in which one or both are engaging in dealing activity that is "conducted within the United States." While the SEC states in the adopting release that it believes its rules should account for such transactions, it anticipates soliciting additional public comment regarding approaches for applying the dealer definition to such transactions and explicitly reserved the issue for further consideration.[4]

This Client Alert summarizes the SEC Final Rule and identifies certain instances where the SEC diverged from its approach in the SEC Proposed Rule and from the Commodity Futures Trading Commission's (CFTC) guidance regarding the cross-border application of its swaps regulations (the CFTC Guidance).[5]

Overview

Section 772(b) of the Dodd-Frank Act amends section 30 of the Securities Exchange Act of 1934 (Exchange Act)[6] to provide that "[n]o provision of [Title VII]...shall apply to any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States," unless that business is transacted in contravention of the SEC's anti-evasion rules.[7] The SEC Final Rule interprets this statutory provision in the context of the SBSD and MSBSP definitions, which the SEC defined jointly with the CFTC in 2012, and establishes a framework for the SEC to make "substituted compliance" determinations. These latter determinations will allow non-US persons to comply with local regulations in lieu of the SEC's rules under certain circumstances.[8] Notably, and unlike the CFTC Guidance, the SEC provided this interpretation in the form of a formal rulemaking pursuant to the Administrative Procedures Act (APA),[9] and included a comprehensive analysis of the costs and benefits of the SEC Final Rule.[10]

The SEC Final Rule aligns itself in several respects with the CFTC Guidance. For example, the SEC adopted the CFTC's concepts of "guaranteed affiliates" and "conduit affiliates" for purposes of the SBSD and the MSBSP determinations. The SEC Final Rule also utilizes a definition of "principal place of business" similar to that of the CFTC Guidance. Nonetheless, the SEC Final Rule and the CFTC Guidance differ in some respects that may require persons engaging in both the swaps and security-based swaps (SBS) markets to adapt in certain ways.

The SEC Final Rule will become effective 60 days after it is published in the Federal Register but does not, by itself, impose any compliance obligations on market participants. Instead, the SEC plans to publish further rules at a later date that will impose substantive requirements on market participants (*e.g.*, SBSD/MSBSP registration requirements and business conduct standards) in the context of the cross-border regulatory framework the SEC Final Rule established.

US Person Definition

As with the CFTC Guidance, the key concept in the SEC Final Rule is the definition of a US person. Specifically, the cross-border application of the SBSD and MSBSP registration requirements largely depends on whether either or both of the counterparties to a given transaction qualify as a US person. The SEC Final Rule defines a US person as:

1. A natural person resident in the U.S.;
2. A partnership, corporation, trust, investment vehicle, or other legal person organized, incorporated, or established under the laws of the U.S. or having its principal place of business in the U.S.;
3. An account (whether discretionary or non-discretionary) of a U.S. person; or
4. An estate of a decedent who was a resident of the U.S. at the time of death.[11]

The SEC Final Rule also specifies that a foreign branch or agency of a US person will be treated as part of that US person.[12] For these purposes, a "foreign branch" is any branch of a US bank if: (i) the branch is located outside of the US; (ii) the branch operates for valid business purposes; and (iii) the branch is engaged in the business of banking and is subject to substantive banking regulation in its home jurisdiction.[13]

The SEC Final Rule explicitly excludes from the definition of US person the following multilateral organizations: the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations and their agencies and pension plans, and any other similar international organizations, their agencies and pension plans.

The SEC's definition of a US person differs from that of the CFTC in several important ways. First, the SEC definition is exhaustive, not open-ended like the CFTC definition of a US person.[14] Second, the SEC's definition does not explicitly capture:

- Trusts governed by the laws of the US if a US court is able to exercise primary jurisdiction over the administration of the trust (although trusts are included in prong (2) of the SEC's definition)
- Collective investment vehicles that are majority-owned by US persons
- Entities owned by a US person that bears unlimited liability for the entity

The SEC did not agree with the CFTC that trusts and collective investment vehicles should be treated differently from other types of legal entities under the principal place of business test. Third, the SEC would, however, capture unlimited liability companies through its rules applicable to guaranteed affiliates, discussed below, rather than through the definition of a US person as the CFTC Guidance does.[15] Finally, the SEC Final Rule groups pension funds together with all other corporate entities (and therefore applies the principal place of business test to all pension funds), whereas the CFTC has special rules for pension funds and — under certain circumstances — would not look to their principal place of business.

Accordingly, some entities may qualify as US persons under the CFTC Guidance but not under the SEC Final Rule, and *vice versa*. For example, a non-US-organized collective investment vehicle (*e.g.*, a private equity fund) located and managed overseas that is majority-owned by US persons would likely qualify as a US person under the CFTC Guidance but not under the SEC Final Rule.

The Principal Place of Business Test

The SEC Final Rule generally defines the principal place of business as the "location from which the overall business activities of the entity are primarily directed, controlled, and coordinated."[16] For most corporate entities (other than certain funds and other externally managed entities), the SEC states that the principal place of business would generally correspond to the location of the entity's headquarters.[17] The SEC states that the principal place of business would not necessarily correspond with the location where personnel direct the SBS activity of an entity unless that was also the location of a significant portion of the entity's financial and legal relationships.[18]

Similar to the CFTC Guidance, the SEC Final Rule defines the principal place of business for externally managed investment vehicles as "the office from which the manager of the vehicle primarily directs, controls, and coordinates the investment activities of the vehicle."[19] The SEC states that an externally managed investment vehicle's principal place of business would not necessarily be: (i) the location where a fund is established and selects its investment manager, broker and underwriter/placement agent, absent an ongoing role by the person performing those activities in directing, controlling and coordinating the investment activities of the fund,[20] or (ii) the location where personnel direct the SBS activity unless it was also the location where the vehicle's manager otherwise directs, controls and coordinates the vehicle's general investment activities.[21]

Reliance on Representations

The SEC Final Rule explicitly permits market participants to rely on representations from their counterparties regarding their US person status, unless the market participant knows or has reason to know that the representation is not accurate.[22] However, market participants who already have representations regarding their counterparties' principal place of business under the CFTC Guidance may be required to obtain new representations "given that the CFTC has articulated a facts-and-circumstances approach to the principal place of business determination that is susceptible to significant further development and interpretation."[23] Alternatively, depending on how such facts-and-circumstances are applied, a counterparty may be able to rely on such representations.

SBSD *De Minimis* Thresholds and Aggregation Requirements

The SEC Final Rule requires market participants to include in their *de minimis* calculations — for purposes of the SBSD test — their SBS dealing activity with certain types of counterparties. Specifically, under the SEC Final Rule:

- A US person must include all of its US and non-US-facing SBS dealing activity (including transactions conducted through a foreign branch) in its *de minimis* calculations
- A non-US person that is a conduit affiliate (as defined below) must include all of its US and non-US-facing SBS dealing activity in its *de minimis* calculations (regardless of whether or not such SBS was entered into as part of an offsetting transaction)
- A non-US person that is *not* a conduit affiliate must include in its *de minimis* calculations its SBS dealing activity for transactions entered into with:
    - US persons (other than transactions with a foreign branch of a registered SBSD or a foreign branch of a US bank that is not registered as an SBSD if the transaction occurs prior to 60 days following the effective date of final rules providing for the registration of SBSDs [24]) and
    - Non-US person counterparties if such counterparties have legally enforceable rights of recourse against a US affiliate of the non-US dealer in connection with the SBS.

Unlike the CFTC Guidance, a non-US person that is not a guaranteed affiliate or a conduit affiliate does not need to include in its *de minimis* calculations SBS dealing activity with guaranteed affiliates.[25] Additionally, a non-US person that is not a conduit affiliate is not required to count toward its *de minimis* threshold SBS entered into anonymously on an execution facility or national securities exchange that are cleared through a clearing agency,[26] regardless of whether the execution or clearing facility is required to be registered with the SEC.[27] The SEC states in the adopting release that a transaction would not be considered anonymous for these purposes if a person were to submit the transaction to an execution facility after accepting a request for quotation from a known counterparty or a known group of potential counterparties, even if the process of submitting the transaction itself did not involve a named counterparty.[28]

Affiliate Aggregation

If a market participant engages in dealing activity that must be included in its *de minimis* calculations under the rules described above, then it must also aggregate its dealing activity with the dealing activity of certain of its affiliates for purposes of the *de minimis* calculation. Specifically, such a market participant must include in its *de minimis* calculations the SBS dealing activity of its affiliates controlling, controlled by or under common control with such market participant, if such affiliates are any of the following:

- US persons (including transactions conducted through a foreign branch)
- Guaranteed affiliates
- Conduit affiliates of such market participant

- Non-US affiliates when they are trading with a US person (other than a foreign branch of a registered SBSD or, if the transaction occurs prior to 60 days following the effective date of final rules providing for the registration of SBSDs, a foreign branch of any US bank).[29]

Like the CFTC, the SEC will not require market participants to aggregate the swap dealing positions of their affiliates that are registered SBSDs (or those that have exceeded the *de minimis* threshold but are in the process of submitting their SBSD application).[30] Additionally, in a change from the SEC Proposed Rule, the SEC will not condition this exclusion on the affiliates being "operationally independent" from each other.[31]

Guaranteed Affiliates and Conduit Affiliates

Under the SEC Final Rule, a non-US person engaging in dealing activity is a "guaranteed affiliate" if it engages in dealing activity for which its counterparty has rights of recourse against a US person that is controlling, controlled by, or under common control with the non-US person.[32] The SEC will interpret the term "right of recourse" as a conditional or unconditional legally enforceable right, in whole or in part, to receive payments from, or otherwise collect from, the US affiliate in connection with the non-US person's SBS obligations.[33]

The SEC's adopting release sets forth several examples of the types of arrangements that would qualify as a right of recourse that could cause an entity to be classified as a guaranteed affiliate. For example, a counterparty would have a right of recourse for purposes of the SEC Final Rule if the counterparty had a legally enforceable right under a guarantee agreement to collect against a US person in connection with a non-US person's SBS obligations, even when such rights are conditioned upon the non-US person's insolvency or failure to meet its obligations. A person or entity would also have a right of recourse if its counterparty was an unlimited liability company with a US parent, and the governing law provided that the person or entity had an enforceable right to payment and/or collection from the US person in connection with the non-US person's SBS obligations.

The SEC asserts that its standard is more "targeted" than the CFTC's approach, because, for example, the CFTC would include within its definition of a guaranteed affiliate any non-US person who receives, for example, a keepwell or liquidity put from a US affiliate. Such an arrangement would increase the ability of the entity to meet its financial obligations, but would not provide the counterparty with any direct recourse against the US person. Under the SEC Final Rule, on the other hand, a non-US person would only be a guaranteed affiliate if its counterparty has recourse to the non-US person's affiliate through such a guarantee.[34] Thus, a non-US affiliate of a US person supported by a keepwell or other explicit financial support arrangements from that US person will be a guaranteed affiliate for purposes of the CFTC Guidance but not under the SEC Final Rule.

The SEC Final Rule defines a "conduit affiliate" as a non-US person that: (i) is directly or indirectly majority-owned by one or more US persons; and (ii) in the regular course of business enters into SBS with one or more other non-US persons, or with foreign branches of US SBSDs, for the purpose of hedging or mitigating risks faced by, or otherwise taking positions on behalf of, one or more US persons (other than US persons that are registered as SBSDs or MSBSPs) who are controlling, controlled by, or under common control with the person, and enters into offsetting SBS or other arrangements with such US persons to transfer risks and benefits of those SBS.[35]

MSBSP Calculations and Attribution Requirements

The SEC Final Rule requires market participants to consider the following transactions for purposes of calculating their status as an MSBSP:

- A US person must count all of its US and non-US-facing SBS (including transactions conducted through a foreign branch)
- A non-US person that is a conduit affiliate must count all of its US and non-US-facing SBS
- A non-US person that is *not* a conduit affiliate must count all of its SBS entered into with:
    - US persons (other than transactions with a foreign branch of a registered SBSD or a foreign branch of a US bank that is not registered as an SBSD if the transaction occurs prior to 60 days following the effective date of final rules providing for the registration of SBSDs[36]) and
    - Non-US person counterparties if such counterparties have legally enforceable rights of recourse against a US person (including a non-affiliated US person) in connection with the SBS[37]

The SEC Final Rule also requires market participants to attribute the SBS positions of their affiliates and other entities they guarantee to itself for purposes of the MSBSP thresholds under the following circumstances:

- A US person must attribute to itself any SBS positions of a non-US person if the US person provides rights of recourse with respect to that non-US person's SBS obligations
- A non-US person must attribute to itself:
    - Any SBS positions of a US person if it provides rights of recourse with respect to that US person's SBS obligations and
    - Any SBS positions of another non-US person entered into with a US person counterparty if the first non-US person (*i.e.*, the one making the calculation) provides rights of recourse with respect the other non-US person's swap obligations, unless the US person counterparty is a foreign branch of a registered SBSD or, if the transaction occurs prior to 60 days following the effective date of final rules providing for the registration of SBSDs, a foreign branch of any US bank.[38]

The SEC Final Rule contains several exceptions from these attribution requirements, however, when the person whose obligations are guaranteed is: (i) subject to capital requirements by the SEC or CFTC; (ii) subject to Basel Committee on Banking Supervision capital standards; or (iii) regulated as a bank in the US.[39]

Substituted Compliance

The SEC Final Rule establishes a framework for substituted compliance determinations by setting forth the process to submit requests for such determinations. Under the SEC Final Rule, one or more market participants or a non-US regulator may submit requests for substituted compliance determinations.[40] Applications for substituted compliance determinations must include information regarding the methods that non-US financial regulatory authorities use to enforce compliance with applicable rules. The SEC will provide public notice of requests and solicit public comment in respect of submitted applications for substituted compliance.

The SEC modified its approach to substituted compliance determinations in several respects from that in the SEC Proposed Rule. For example, the SEC Proposed Rule would have only permitted market participants (and not regulators) to submit substituted compliance requests. Additionally, the requirement in the SEC Final Rule for substituted compliance determinations to include information regarding the methods that non-US financial regulatory authorities use to enforce compliance with applicable rules was not included in the SEC Proposed Rule.

Antifraud Authority

In 2010, the US Supreme Court held in *Morrison v. National Australia Bank* that the SEC's antifraud authority under section 10(b) of the Exchange Act extends only to transactions in securities listed on US exchanges and transactions that otherwise occur in the US.[41] In response to this ruling, which limited the traditional view of the SEC's extraterritorial authority, Congress adopted Section 929P(b) of the Dodd-Frank Act, which states that the SEC's antifraud enforcement authority extends to: (i) conduct within the US that constitutes significant steps in furtherance of a fraudulent act and (ii) conduct occurring outside the US that "has a foreseeable substantial effect within the United States."[42]

Despite Congress' clarification, the SEC explained that at least one court has recently stated that the SEC's antifraud authority is unclear.[43] As a result, the SEC adopted a new rule — in the SEC Final Rule — setting forth its interpretation of such authority. Under this rule, the SEC states that its antifraud authority extends to the conduct described above (added by Section 929P(b) of the Dodd-Frank Act) even if: (i) the violation relates to a securities transaction occurring outside the US that involves only non-US investors; or (ii) the violation is committed by a non-US adviser and involves only non-US investors.[44]

Conclusion

The SEC Final Rule is only the SEC's first step toward establishing a cross-border regulatory regime under Title VII of the Dodd-Frank Act. We expect the SEC to next address the substantive regulations that will apply to market participants, including the comprehensive regulation of SBSDs and MSBSPs, as well as requirements related to clearing, trade execution and reporting, which are expected to be promulgated in the near future.

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Endnotes

1 Application of "Security-Based Swap Dealer" and "Major Security-Based Swap Participant" Definitions to Cross-Border Security-Based Swap Activities, Release No. 34-72472, File No. S7-02-13, *available at* http://www.sec.gov/rules/final/2014/34-72472.pdf.

2 Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

3 Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants; Proposed Rule, 78 Fed. Reg. 30968 (May 23, 2013).

4 *See*, *e.g.*, SEC Final Rule at 9 n.27 ("As noted above, these final rules and guidance do not address the application of the "transaction conducted within the United States" concept to the dealer definition. We instead anticipate soliciting additional public comment regarding the issue."). The CFTC issued an advisory, separate from its formal guidance regarding the cross-border application of its derivatives regulations, that would have a similar effect as the SEC's "conducted within the United States" test by requiring non-US swap dealers to comply with transaction-level requirements if they regularly use personnel or agents located in the US to arrange, negotiate, or execute swap with non-US persons. *See* CFTC Letter No. 13-69 (Nov. 14, 2013). The CFTC has provided time-limited no-action relief from this requirement, however. *See* CFTC No-Action Letters No. 14-74 (June 4, 2014); 14-01 (Jan. 3, 2014); 13-71 (Nov. 26, 2013).

5 Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 Fed. Reg. 45292 (July 26, 2013).

6 15 U.S.C. §§ 78a *et seq*.

7 *See* Dodd-Frank Act § 772(b) (adding Section 30(c) of the Exchange Act, 15 U.S.C. § 78dd(c)). The Dodd-Frank Act added a similar but different provision regarding the cross-border applicability of the CFTC's swaps regulations. *See* Dodd-Frank Act § 722(d) (adding Section 2(i) of the CEA, 7 U.S.C. § 2(i)) ("The provisions of this chapter relating to swaps that were enacted by the [Dodd-Frank Act], shall not apply to activities outside the United States unless those activities—(1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or (2) contravene such rules or regulations as the [CFTC] may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of this chapter that was enacted by the [Dodd-Frank Act].").

8 *See* Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant", 77 Fed. Reg. 30596 (May 23, 2012).

9 5 U.S.C. § 603(a).

[10] A group of industry associations challenged the CFTC in court on grounds that, among other things, the CFTC circumvented the APA by characterizing a regulation as "guidance," and failed to conduct a cost-benefit analysis for such regulation. *See Sec. Indus. and Fin. Mkts. Assoc. v. CFTC*, *complaint docketed*, No. 13-CV-1916 (ESH) (D.D.C. Dec. 27, 2013). The court has not yet ruled on this case yet.

[11] *See* SEC Final Rule at 326 (to be codified at 17 C.F.R. § 240.3a71-3(a)(4)). The SEC states that this definition is intended to identify those persons for whom it is reasonable to infer that a significant portion of their financial and legal relationships are likely to exist within the US and for whom it is therefore reasonable to conclude that risks arising from their SBS activities could manifest themselves within the US, regardless of location of their counterparties. *See id.* at 35.

[12] *See* SEC Final Rule at 98.

[13] *See* SEC Final Rule at 325 (to be codified at 17 C.F.R. § 240.3a71-3(a)(2)).

[14] *See* CFTC Guidance, 78 Fed. Reg. at 45316 ("the [CFTC] will interpret the term "U.S. person" generally to include, *but not be limited to*. . . .") (emphasis added). The CFTC stated that it intended to adopt an open-ended definition of a US person because it "expects that there may be circumstances that are not fully addressed by those prongs [of the U.S. person definition], or other situations where the interpretation discussed above does not appropriately resolve whether a person should be included in the interpretation of the term "U.S. person.").

[15] *See* CFTC Guidance, 78 Fed. Reg. at 45317.

[16] *See* SEC Final Rule at 102.

[17] *See id.*

[18] *See id.* at 104-05.

[19] *Compare id.* at 326 (to be codified at 17 C.F.R. § 240.3a71-3(a)(4)(ii)) *with* CFTC Guidance, 78 Fed. Reg. at 45310 ("the analysis should focus on the persons who are the equivalent for the collective investment vehicle to the 'high level officers' of an operating company because they direct, control and coordinate key functions of the vehicle.").

[20] *See* SEC Final Rule at 108 n.275. Similarly, the CFTC stated that the principal place of business for a collective investment vehicle would be the location of senior personnel responsible for either (1) the formation and promotion of the collective investment vehicle or (2) the implementation of the vehicle's investment strategy, depending on the facts and circumstances that are relevant to determining the center of direction, control and coordination of the vehicle. *See* CFTC Guidance, 78 Fed. Reg. at 45310.

[21] The SEC noted that a contrary interpretation could permit an externally managed investment vehicle to be excluded from the definition of a US person merely by shifting its responsibilities for SBS activities to a non-US person. *See id.* at 108-09.

[22] *See* SEC Final Rule at 327 (to be codified at 17 C.F.R. § 240.3a71-3(a)(4)(iv)).

[23] *See* SEC Final Rule at 102 n. 259.

[24] *See* SEC Final Rule at 327-28 (to be codified at 17 C.F.R. § 240.3a71-3(b)(1)). In order for this exception to effective, persons located within the US cannot be involved in arranging, negotiating or executing the transaction.

[25] *See* SEC Final Rule at 149.

[26] *See* SEC Final Rule at 329 (to be codified at 17 C.F.R. § 240.3a71-5(a).

[27] *See* SEC Final Rule at 160 n.414.

[28] *See* SEC Final Rule at 160.

[29] *See* SEC Final Rule at 328-29 (to be codified at 17 C.F.R. § 240.3a71-3(b)(2)..

[30] *See* SEC Final Rule at 155-56.

[31] *See* SEC Final Rule at 153.

[32] *See* SEC Final Rule at 328 (to be codified at 17 C.F.R. § 240.3a71-3(b)(1)(iii)(B)). Under the Proposed Rule, a non-US person would need to count toward its *de minimis* threshold any SBS dealing activity (i) with US persons or (ii) that is otherwise conducted within the US. *See* Proposed Rule, 78 Fed. Reg. at 30986. In a change of course, and because the SEC determined to reserve consideration of how to apply the dealer definition to transactions that are "conducted within the United States," the SEC adopted the CFTC's concepts of "guaranteed affiliates" and "conduit affiliates."

[33] *See* SEC Final Rule at 128.

[34] *See* SEC Final Rule at 138 & n.353.

[35] *See* SEC Final Rule at 324 (to be codified at 17 C.F.R. § 240.3a71-3(a)(1)(i)).

[36] *See* SEC Final Rule at 322 (to be codified at 17 C.F.R. § 240.3a67-10(b)(3)(i)(B)). In order for this exception to be effective, persons located within the US cannot be involved in arranging, negotiating or executing the transaction.

[37] *See* SEC Final Rule at 321-22 (to be codified at 17 C.F.R. § 240.3a67-10(b)); SEC Final Rule at 227 n.580.

[38] *See* SEC Final Rule at 322-23 (to be codified at 17 C.F.R. § 240.3a67-10(c)).

[39] *See* SEC Final Rule at 323 (to be codified at 17 C.F.R. § 240.3a67-10(c)(2)).

[40] *See* SEC Final Rule at 279.

[41] *See Morrison v. Australia Nat. Bank*, 561 U.S. 247 (2010).

[42] *See* Section 27 of the Exchange Act, 15 U.S.C. § 78aa(b).

[43] *See SEC v. A Chicago Convention Center, LLC*, 961 F. Supp. 2d 905 (N.D. Ill. 2013).

[44] *See* SEC Final Rule at 331 (to be codified at 17 C.F.R. § 250.1).