

Title: Am I Interpreting This Correctly??? SS in Comments | NEW SEC PROPOSAL DOCUMENT
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prescribe regarding any position or positions in any security-based swap or uncleared security-based swap and any security or loan or group or narrow-based security index of securities or loans and any other instrument relating to such security or loan or group or narrow-based security index of securities or loans . . .^[14]

On November 3, 2010, the Commission proposed for comment new Rule 9j-1, which would have prohibited the same categories of misconduct as Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 17(a) of the Securities Act of 1933, in the context of security-based swaps, but would also have explicitly addressed misconduct that is in connection with the "exercise of any right or performance of any obligation under" a security-based swap.^[15] In other words, the 2010 proposed rule would have applied to offers, purchases, and sales of security-based swaps in the same way that the general antifraud provisions apply to all securities, but also would have explicitly applied to the cash flows, payments, deliveries, and other ongoing obligations and rights that are specific to security-based swaps.^[16]

The Commission has not yet finalized rules mandated by Section 9(j), nor has it proposed any reporting requirements pursuant to Section 10B(d) of the Exchange Act. The regulatory landscape for security-based swaps has changed since the Commission first proposed Rule 9j-1 in 2010. At the time, efforts to reform the global OTC derivatives markets, which had been set in motion in response to the 2008 financial crisis, had only begun, such that these markets were not yet subject to a comprehensive regulatory framework.^[17] Since that time, however, regulators overseeing the world's primary OTC derivatives markets have made significant progress implementing reforms for OTC derivatives.^[18] In addition to the progress made by the Commission in finalizing its Title VII rulemakings related to security-based swaps, the CFTC has largely completed its Title VII rulemakings related to swaps, including by adopting antifraud and anti-manipulation rules under the Commodity Exchange Act ("CEA") to implement the Dodd-Frank Act's amendments to Section 6(c) of the CEA.^[19] In light of the above, the Commission believes that now is an opportune time to move forward with the antifraud and manipulation rules required by Section 9(j) as well the rules contemplated by Section 10B(d). In addition, in recognition of the fact that CCOs of SBS Entities play an important role in preventing fraud and manipulation by SBS Entities and their personnel, in that they are tasked with designing and maintaining effective compliance systems, the Commission also is proposing an additional measure under Section 15F(h) of the Exchange Act to protect CCOs in the furtherance of those duties.^[20]

B. Observations in the Credit Default Swap Market

In addition to the regulatory developments, there have been market developments. A number of press reports and academic articles since 2010 ^[21] have discussed manufactured credit events or other opportunistic strategies in the credit default swap ("CDS") market.^[22] Manufactured or other opportunistic CDS strategies can take a number of different forms but generally involve CDS buyers or sellers taking steps, with or without the participation of a company

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