

Title: Interesting discussion going on September 21st with the SEC about swaps - ■ IF NOTHING READ THE 2ND PARAGRAPH

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1:30 p.m. - 2:05 p.m.

Panel Discussion Regarding Proposed Rule 10B-1 Position Reporting of Large Security-Based Swap Positions / Asset-Based Swaps

Leading up to the financial crisis of 2008, both the derivatives and swaps markets grew tremendously, in some cases many times greater than the underlying assets they were referencing. In response, the SEC is moving to enact a series of changes under Title VII of Dodd-Frank that would bring greater transparency and investor protection to the swaps markets. Unlike large equity positions which must be reported to the Commission quarterly or when positions exceed 5% of the outstanding shares, no such requirements exist for swaps positions, though they give the holder similar economic exposure.

Participants in the corporate credit markets in recent years also saw the disturbing emergence of manipulative and deceptive conduct around swaps. Namely the rise of "net-short debt activism" where an investor holds long positions in corporate debt but also larger short positions via swaps. Such "net-short debt activism" has led to creditors aggressively pushing for a determination of a default against the will of other creditors or in more egregious instances, the issuer agreeing in exchange for receiving additional credit, agreeing to intentionally default, often referred to as "manufactured defaults".

This panel will discuss the Commission's proposals to modernize the reporting and regulation of the swaps markets via its newly proposed Rule 10B-1, requiring any person who owns a security-based swap position that exceeds certain thresholds to file information of their holdings and which will become publicly available over the SEC's EDGAR filing system as well as new Rule 9j-1 that would prohibit fraudulent, deceptive, or manipulative conduct associated with security-based swaps.

Moderated by:

Gina-Gail Fletcher, Professor of Law, Duke University School of Law

Panelists:

- **Elisabeth de Fontenay**, Professor of Law, Duke Law School
- **Henry T. C. Hu**, Allan Shivers Chair in the Law of Banking and Finance, University of Texas at Austin School of Law
- **Richard Zabel**, Equity Partner, General Counsel, Chief Legal Officer, and Head of Research, Elliott Investment Management