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SEC Begins to Finalize Cross-Border Security-Based Swaps Rules

On June 25, 2014, the Securities and Exchange Commission (SEC) adopted the first of a series of rules and guidance that will establish how security-based (SB) swap requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 will apply to cross-border transactions. Primarily, these initial rules and guidance:

- address when a cross-border SB swap must be counted towards the requirement to register as a SB swap dealer or a SB major swap participant;
- adopt a procedure for market participants and foreign regulators to submit “substituted compliance” requests; and
- establish the scope of the SEC’s cross-border antifraud enforcement authority.

The SEC indicated that these initial rules and guidance will produce outcomes similar to related cross-border guidance previously issued by the Commodity Futures Trading Commission regarding whether an entity is a U.S. person and whether a particular SB swap is counted towards the SB swap dealer or SB major swap participant registration threshold. These rules and guidance will become effective 60 days after publication in the *Federal Register*, although the rules addressing the SB swap dealer and SB major swap participant definitions and the procedures for submitting substituted compliance requests will not impose requirements on market participants until related substantive rulemakings have been completed.

We will publish a more detailed review and analysis shortly after the rules and guidance have been published in the *Federal Register*.