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SEC Proposes New Rule for Swaps

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The Securities and Exchange Commission (SEC) recently proposed a new rule under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act which would prohibit fraud, manipulation, and deception in connection with the offer, purchase or sale of any security-based swap, in the same way that general anti-fraud provisions apply to all securities, and also reach misconduct in connection with the ongoing payments and deliveries of such swaps. In considering the rule, the SEC recognized that security-based swaps are different from other securities currently subject to anti-fraud regulations by the SEC because swaps are characterized by ongoing payments or deliveries between parties throughout the life of the swap. Thus, fraud may occur not only during the sale, purchase and offering of the swap, but also while the parties are making ongoing payments. The proposed antifraud rule would cover offers, purchases and sales of security-based swaps and also make explicit the liability of persons that engage in misconduct to trigger, avoid, or affect the value of such ongoing payments or deliveries.