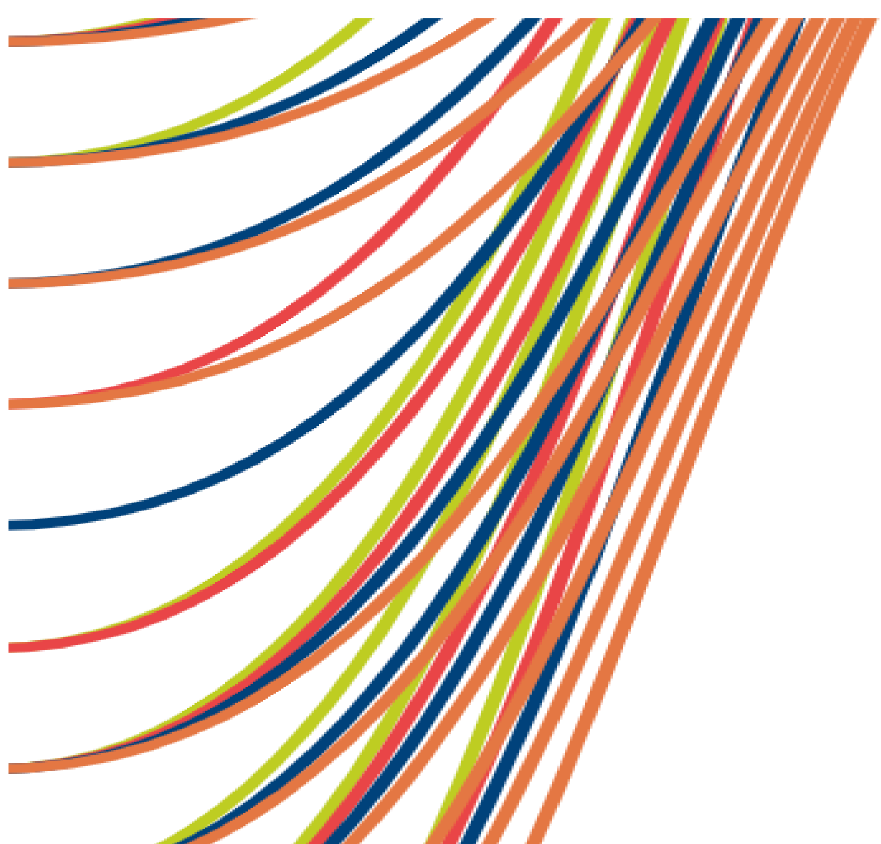
MARKET IMPACT DIAGRAM

Major SEC Regulatory Actions



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Outcomes

Reduced Liquidity

Market liquidity is essential to the smooth functioning of financial markets. It affects – and is affected by – the number and diversity of market participants, market confidence, price volatility, and borrowing costs. In liquid markets, spreads are narrower, transaction and borrowing costs are lower, sales are completed more quickly, and many potential buyers and sellers are willing to purchase or sell an asset, revealing its current market value. Declining liquidity can increase investors' transaction costs, price volatility, and borrowing costs for businesses, governments, and households and reduce market resilience. Regulations can reduce market liquidity by increasing the costs or decreasing the incentives for market participants to invest or intermediate, resulting in less trading activity.

Increased Risk

Risk of loss is inherent in markets. Efficient markets price risk into the expected returns received on different instruments. Investors, lenders, and broker-dealers use a variety of trading strategies and financial transactions to mitigate the various risks they face. Regulations can inadvertently increase the risk exposure of a company, a sector, or the financial system if they intensify existing risks, make it harder and more expensive to use risk-management tools like hedging, or drive trading activity to higher risk products and markets. As risk increases, costs for investors and borrowers rise, liquidity declines, and overall market stability deteriorates.

Increased Borrowing Costs

Borrowing and lending is an indispensable part of well-functioning capital markets. There are costs associated with borrowing money. Whether a business, government (municipal, state, or federal), or household, a borrower pays interest to compensate the investors and lenders involved in financing its debts for the risks and costs they incur. Regulations can increase borrowing costs if they make it harder or more expensive to issue or invest in certain bonds, restrict the use of risk-management strategies on which lenders and investors currently rely, and limit innovation and participation in certain market sectors.

Increased Investing Costs

Buying and selling investments carries costs for investors that reduce the returns investors receive. Such costs help cover the expenses and risks that financial intermediaries like broker-dealers incur in facilitating a trade and provide compensation for their services. Regulations could increase investors' costs when they impose new costly requirements and restrictions for trading, curtail access to lower-cost investments, increase the costs of risk management, or reduce the incentives to engage in trading activity. One or a combination of these effects can result in lower returns for investors and in diminished market liquidity.

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Regulatory Actions

Beneficial Ownership Reporting

Proposal Overview: Section 13(d) of the Securities Exchange Act of 1934 requires investors that are beneficial owners of more than 5 percent of a voting class of a public company's stock to disclose such positions by filing a Schedule 13D or Schedule 13G report. Beneficial owners have or share voting power and investment power with respect to a security. This proposal would accelerate filing deadlines for beneficial ownership reports, deem holders of certain cash-settled derivative securities to be beneficial owners of the reference equity securities, and expand the circumstances under which two or more persons have formed a "group" that would be subject to beneficial ownership reporting obligations. (Full proposal)

Reduced Liquidity

Expanding the "group" concept under the Exchange Act without clear definitions creates the risk that a dealer could inadvertently form a "group" with a customer, and thus be subject to Section 16 regulation, merely by transacting on a security derivative (cash-settled or not) without any agreement or intention to become a group. This risk could curtail dealing activities by chilling communications between dealers and customers, which would harm liquidity and capital formation in the broader securities markets.

Increased Investing Costs

More frequent public disclosure with shorter deadlines would likely reduce liquidity and raise costs for investors as such disclosure would create the opportunity for market participants to front-run trades and reverse engineer trading strategies. Liquidity providers could hesitate to quote and/or raise pricing to offset such effects. Value-add investor expertise could be compromised as it is shared with the market.

Climate-related Disclosures

Proposal Overview: This proposal would require public companies to disclose in their registration statements and periodic reports, such as Form 10-K, extensive climate-related information, including a company's direct greenhouse gas (GHG) emissions (Scope 1) and indirect GHG emissions from purchased electricity and other forms of energy (Scope 2); emissions from upstream and downstream activities in a company's value chain (Scope 3) if material or if the company has set a GHG emissions target or goal that includes Scope 3 emissions; and a description of any climate-related risks that have had or are likely to have a material impact on a company's business and consolidated financial statements over the short-, medium-, or long-term. (Full proposal)

Increased Risk

Requiring public companies to publicly disclose substantial climate related information regardless of a company's industry or the financial materiality of the disclosed information could, in the SEC's estimates, nearly triple the costs of filing the forms required of public companies. This could reduce the incentive for companies to go public, confuse and mislead investors about the importance of climate-related risk relative to other risks, and expose companies to new and highly uncertain litigation risk.

Reduced Liquidity | Increased Risk | Increased Borrowing Costs | Increased Investing Costs

Cybersecurity Disclosures

Proposal Overview: This proposal would create new requirements for registered investment advisers (advisers) and investment companies (funds) to report cybersecurity incidents and to adopt and implement written policies and procedures designed to address cybersecurity risks. (Full proposal)

Increased Risk

Requiring registered investment advisers to disclose cybersecurity events to the SEC and to disclose cybersecurity information in publicly available investment adviser disclosures would likely be costly for advisers. The benefit to investors is not certain to outweigh these costs, and these requirements may open advisers to additional cyber risk by possibly providing bad actors with a roadmap for how to infiltrate or disrupt the firm or the industry more broadly.

Cybersecurity Risk Management

Proposal Overview: The proposal would create several new requirements for public companies (registrants) to disclose information about cybersecurity incidents and risks, including information regarding the company's cybersecurity governance, policies, and procedures. (Full proposal)

Increased Risk

Requiring public companies to disclose detailed information regarding cybersecurity events and risks in public filings at least annually may force companies to publicly disclose information that could expose them and other companies as high-value targets to increased cyber risk by possibly providing bad actors with a roadmap for how to infiltrate or disrupt the company or an industry more broadly. Such a disruption could result in significant financial loss. Companies would also have increased costs in meeting the disclosure requirements including engaging independent experts, recruiting board members, and drafting disclosures.

Regulatory Actions

Definition of Dealer and Government Securities Dealer

Proposal Overview: This proposal establishes new activities, including activities that are not indicative of market making, and trading volumes that would subject to SEC regulation as a registered "dealer" or "government securities dealer" market participants that engage in such activities and exceed such volume thresholds. (Full proposal)

Reduced Liquidity

An overly broad and ambiguous definition of Dealer and Government Securities Dealer could trigger dealer registration requirements for activity that is not indicative of market making and thereby disincentivize market participants from trading or investing. For example, not exempting the trading activity of bank holding companies and their subsidiaries, as well as money managers, from the proposed dealer registration requirements could compel these entities to register as dealers with the SEC. This would contravene existing statutory and regulatory requirements for certain entities and may lead to diminished market liquidity.

Increased Borrowing Costs

Establishing an overly broad definition of "dealer" and "government securities dealer" would require registration by money managers and other end investors that are engaged in market activity on behalf of their portfolios or corporate treasury functions but not in a dealer capacity. Requiring these entities to register could lead investors to pull back from fixed income markets, including the US Treasury market, reducing liquidity and issuers' liquidity premium (including that of the Treasury, which could raise the cost of debt issuance).

Increased Investing Costs

Requiring certain proprietary/principal trading firms that trade equity and listed options to register as dealers could force them to exit the market. This would diminish overall market liquidity, driving up the costs of investing for retail and institutional investors.

Definition of Exchange

Proposal Overview: Rule 3b-16 of the Securities Exchange Act of 1934 requires any entity or system that meets its definition of "exchange" either to register with the SEC as an exchange or to operate as an alternative trading system (ATS) and register with the SEC as a broker-dealer subject to Regulation ATS. This proposal would significantly expand the definition of "exchange" under Rule 3b-16 to include "communication protocol systems," a term the proposal does not define. (Full proposal)

Reduced Liquidity

Failing to exempt from the definition of "exchange" sell- and buy-side trading systems, which do not perform marketplace functions, risks limiting the use of such systems and eliminating the investor benefits they provide, thereby harming liquidity. Additionally, aggregating volume from affiliated Alternative Trading Systems (ATS) would cause certain regulatory thresholds to be reached more quickly and may lead market centres to turn off symbols, which would result in fewer available trading venues thereby reducing liquidity.

Increased Risk

The lack of specificity around which systems may meet the threshold for SEC registration creates ambiguity for firms regarding the systems they operate or participate in. This could lead to additional compliance risk that imposes additional cost on firms to manage and can result in costly enforcement investigations and actions. The vagueness of the proposed language compounds this increased compliance risk and risks different SEC interpretations in the future.

Increased Borrowing Costs

Creating an overly broad definition of exchange would increase costs and regulatory/compliance burdens that could limit innovation and participation in the securities markets. This could lead investors to pull back from fixed income markets, including the US Treasury market, reducing liquidity and issuers' liquidity premium (including that of the Treasury, which would raise the cost of debt issuance).

Increased Investing Costs

The proposal's ambiguity regarding which systems are in and which are out of scope would likely undermine dealers' ability to innovate ways to automate and provide greater efficiency and liquidity to customers while reducing costs. This negative impact on the cost of investing would be mitigated by maintaining and clarifying the current exemptions under the Exchange Act, including for single dealer platforms, which provide liquidity to customers more efficiently than exchanges and reduce costs for investors. The proposal significantly underestimates the number of systems that could be captured in its definition.

Regulatory Actions

ESG Disclosures

Proposal Overview: This proposal would make changes to existing rules and disclosure forms applicable to funds (registered investment companies and business development companies) and advisers (registered investment advisers and exempt reporting advisers), including requiring the disclosure of additional information about a fund's or adviser's strategies regarding environmental, social, and governance (ESG) factors and requiring certain environmentally focused funds to disclose greenhouse gas emissions associated with their portfolio investments. (Full proposal)

Increased Investing Costs

Requiring investment advisers and investment companies to publicly disclose ESG information would likely be costly and may highlight information that may be irrelevant or immaterial to the firm's or fund's overall risk exposure, particularly if the firm or fund is not focused solely on ESG targets. Related expenses to comply with these requirements may increase costs for investors.

Insider Trading Plans

Proposal Overview: Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 prohibit insider trading, i.e., the buying or selling of a security based on material non-public information (MNPI) about that security or its issuer. Rule 10b5-1 provides for an affirmative defense for company employees with respect to insider trades executed pursuant to a 10b5-1 plan that specifies the sales' price, amount, and dates and is adopted before the employees became aware of MNPI. This proposal would add new requirements to the insider trading liability protection and add new public disclosure obligations for public companies and their employees regarding such trading plans. (Full proposal)

Reduced Liquidity

Rule 10b5-1 plans allow company employees to sell company stock without violating insider trading laws by creating an advance plan specifying the sales' price, amount, and dates, as determined by a formula or metrics. Requiring a 120-day cooling off period (four times longer than prevailing practice) between plan adoption and trade placement would impair Rule 10b5-1 plans' ability to meet employees' liquidity needs, including for tax payments, college tuition, estate planning, or charitable donations.

Increased Borrowing Costs

Requiring new quarterly disclosures regarding the adoption, termination, and material terms of any contract, instruction, or written plan for the purchase/sale of an issuer's equity securities by directors and officers would likely impose significant additional regulatory burdens on issuers. It would also create opportunities for arbitrage that could adversely affect a stock's trading market and thereby raise the issuer's cost of borrowing, potentially negatively impacting the issuer's investors, employees, customers, and/or growth prospects.

Increased Investing Costs

Rule 10b5-1 plans allow company employees to sell company stock without violating insider trading laws by establishing advance plans specifying certain sale details. Requiring that plans be "operated" in good faith without clearly defining what behavior is prohibited by this new requirement would likely increase employees' transaction costs and reduce their use of Rule 10b5-1 plans. Also, the shift of company employee trades to open window periods could cause opportunistic trading that undermines investor confidence.

Investment Company Names

Proposal Overview: Rule 35d-1 under the Investment Company Act of 1940, also called the fund Names Rule, establishes which registered investment companies and business development companies (collectively funds) must adopt policy to invest 80 percent of its assets in investments suggested by the fund's name. This proposal would expand the scope of the Names Rule to apply to funds whose names include terms suggesting a focus in investments that have, or whose issuers have, "particular characteristics" – e.g., fund names with terms such as "growth" or "value" and terms indicating that a fund's investment decisions incorporate one or more environmental, social, or governance (ESG) factors. (Full proposal)

Increased Investing Costs

Expanding the scope of the Names Rule to require investment funds to allocate at least 80 percent of their assets in investments suggested by subjective terms in the fund names that describe their investment strategy – terms such as "value", "growth", "income", and "global" – will likely constrain investors' flexibility, especially during periods of sustained market underperformance and bouts of day-to-day market volatility. Such restrictions, as well as complex compliance requirements and highly prescriptive monitoring, could lead to increased costs for investors.

Money Market Fund Rules

Proposal Overview: This proposal would make several changes to the rules governing money market funds, a type of mutual fund that invests in high quality, short-term debt securities, in some cases investing primarily in government securities, tax-exempt municipal securities, or corporate debt securities. Many investors rely on money market funds to manage their cash and other short-term funding needs. (Full proposal)

Reduced Liquidity

Significantly decreasing the size of prime and tax-exempt money market fund (MMF) sectors, which are already highly regulated, would likely have a negative impact on the investors, businesses, financial institutions, hospitals, universities, and governments that rely on MMFs to manage their liquidity and financing needs. Requiring public reporting of liquidity concerns in stress tests could have compounding effects during adverse market conditions by exacerbating liquidity crunches and putting further stress on the financial system.

Increased Risk

Shrinking or eliminating the prime and tax-exempt MMF sector could drive money to less-regulated types of cash pools, markets outside US regulatory oversight, or products with increased investment risk. Additionally, limiting investor choice for cash management vehicles would result in increased concentration risk, or the risk that too much of the market is concentrated in just a few funds, resulting in greater market disruption in the event of distress at any such fund(s).

Increased Borrowing Costs

Requiring financial intermediaries to make costly changes to their communications and transaction-processing systems may cause them to stop offering to their customers MMFs in the retail sectors, which could decrease the size of this sector to the detriment of the broader short-term funding markets. MMFs provide an important source of short-term financing for state, municipal, and tribal governments, as well as to corporations. Decreasing the size of prime and municipal MMF offerings could negatively impact these entities, as well as bank and non-bank issuers, by increasing the cost and decreasing the efficiency of financing.

Increased Investing Costs

Requiring institutional money market funds to calculate a “swing factor” when meeting redemptions in order to pass on redemption related costs to the redeeming shareholders is likely to result in redeeming shareholders bearing costs greater than those actually incurred, which would raise costs on investors. Also, the proposal’s operational complexities may result in market players exiting the money market fund sector, resulting in higher costs for investors.

Reduced Liquidity | Increased Risk | Increased Borrowing Costs | Increased Investing Costs

Private Debt Market Disclosures

Overview: Rule 144A allows privately held companies to issue debt securities without making their financial information public, subject to certain conditions including that they make their financial information available to eligible investors, which are restricted to qualified institutional buyers. Rule 15c2-11 requires broker-dealers to collect, review, and confirm the public availability of certain financial information about a securities issuer in order to publish quotations for that issuer's securities. In December 2021, the SEC published a staff no-action letter indicating that, starting in 2023, it would begin to enforce Rule 15c2-11 in the debt markets for the first time in its 50-year history, which would require privately held companies that issue debt under Rule 144A to make public broad financial disclosures if they want dealers to be able to freely offer to buy and sell their securities. (No-action letter)

Reduced Liquidity

SEC staff determined without public input that Rule 15c2-11 should apply to the debt markets. In 2023 they will require Rule 144A debt issuers to publish broad financial disclosures in order to have their securities quoted in the secondary markets, even though Rule 144A doesn't require that. If issuers do not, dealers would be limited in quoting their Rule 144A bonds. This would reduce 144A secondary market liquidity, which could increase bond issuers' borrowing costs and devalue their existing debt.

Increased Borrowing Costs

The reduction in 144A secondary market liquidity resulting from the application of Rule 15c2-11 could increase a private issuer's cost of borrowing and will likely devalue their existing debt.

Increased Investing Costs

Applying Rule 15c2-11 to the debt markets for the first time in its 50-year history could limit dealers' ability to quote Rule 144A bonds. This would likely increase investors' costs of transacting in Rule 144A securities.

Regulatory Actions

Private Fund Advisers Regulation

Proposal Overview: This proposal would create several new requirements for SEC-registered investment advisers (RIAs) to private funds (i.e., funds that rely on the exceptions from the definition of "investment company" provided in the Investment Company Act of 1940), including requiring private fund RIAs to provide investors with quarterly statements detailing information about private fund performance, fees, and expenses. Also, it would make significant changes to the relative rights and liabilities between all private fund investment advisers and private fund investors by prohibiting common private fund practices and reshaping common side-letter practices. (Full proposal)

Increased Borrowing Costs

The proposed rule could harm our capital markets by limiting the ability – and increasing the associated costs – of privately held companies to raise capital through private funds. This would negatively impact those companies' investors, employers, customers, and prospects for growth and job creation, compounding the effects of inflation, rising interest rates, and global uncertainty.

Increased Investing Costs

Fundamentally changing how private fund advisers contract with investors would increase investors' costs and reduce their returns. Former SEC Chief Economist Mark Flannery found that the "negative effects" of the prohibitions, operational requirements, and associated costs "may fall disproportionately on funds operated by minority and women managers, many of whom operate smaller funds with a more limited fundraising process." The lack of a grandfathering provision will require most, if not all, current deals to be renegotiated, with the related costs accruing to advisers and investors.

Private Fund Advisers Reporting

Proposal Overview: Form PF is the reporting form for investment advisers to private funds (i.e., funds that rely on the exceptions from the definition of "investment company" provided in the Investment Company Act of 1940) to provide the SEC and the Financial Stability Oversight Council information about the operations and strategies of private funds. This proposal would make several changes to Form PF, including establishing new current reporting requirements for large hedge fund advisers and advisers to private equity funds, decreasing the threshold for inclusion as a "large private equity adviser", and requiring large private equity advisers to report new information about their activities and the investments of the funds they manage. (Full proposal)

Increased Risk

Significantly increasing reporting requirements with a one business day timeline could become a needless distraction and divert private fund adviser resources away from navigating whatever market event has occurred. Further, such reporting requirements may lead to the perception that the SEC is willing to provide regulatory intervention to prevent or mitigate investment losses to private fund advisors, creating moral hazard.

Increased Borrowing Costs

Requiring large hedge fund advisers and advisers to private equity funds to significantly increase their reporting requirements for certain funds would increase operational and financial costs on the affected advisers and funds while providing the SEC with information of uncertain utility. These compliance costs could ultimately increase investment costs for investors.

Securities Law Anti-Manipulation Rules

Proposal Overview: Regulation M aims to limit distribution-related activities that may have a manipulative effect on the offered security's market by creating prohibitions for certain distribution participants. Rules 101 and 102 contain exceptions from these prohibitions for certain securities that are rated investment grade by at least one nationally recognized statistical rating organization and are therefore less likely to be subject to manipulation. This proposal replaces some of these exceptions with two alternative standards that intend to assess creditworthiness of a security. (Full proposal)

Increased Borrowing Costs

Establishing a new and complicated exception to the anti-manipulation provisions of the securities laws could raise costs on companies to use certain bond offerings to borrow money to fund their activities.

Securities Lending Public Disclosure

Proposal Overview: Securities lending involves an owner of securities (shares or bonds) lending them to a borrower who provides the lender with collateral (shares, bonds, or cash), pays the lender a borrowing fee, and is contractually obligated to return the securities at the end of the loan period or on demand. This proposal would create a new rule, Rule 10c-1, requiring securities lenders to report identifying data and material negotiated terms of securities lending transactions, as well as other securities lending market information, to a registered national securities association (RNSA), and the subsequent public dissemination by the RNSA of select securities lending transaction terms and market information. (Full proposal)

Reduced Liquidity

Requiring public disclosure of information on securities lending transactions that is too granular and published within 15 minutes could reveal short selling, hedging, and other proprietary trading strategies that use securities lending, and thereby cause some market participants to exit the market. Diminished securities lending activity would reduce the market liquidity benefits that short selling and other activities provide, including more efficient price discovery and the facilitation of hedging and other risk mitigation activities.

Increased Risk

Requiring near real-time public dissemination of securities loan transaction data could expose proprietary trading strategies, thereby limiting market participants' ability to execute risk management strategies that support market stability and could reduce participation in securities lending transactions that market participants use to hedge exposures.

Regulatory Actions

Security-Based Swap Anti-Fraud Rules

Proposal Overview: A swap is a type of derivative financial contract in which two counterparties agree to exchange one payment obligation for another as a result of changes in the reference instrument, such as a change in a stock price, interest rate, or commodity price. Common reference instruments for security-based swaps (SBS), as defined under the Securities Exchange Act of 1934, are a narrow-based security index or a single security or loan. Proposed Rule 9j-1 would expand the range of activities in connection to SBS transactions that could result in liability to fraud, attempted fraud, or manipulation. (Full proposal)

Reduced Liquidity

Implementing overly broad and vague standards to determine liability for fraud and manipulation will cause market participants to avoid entering into security-based swap (SBS) transactions or the securities and lending transactions referenced by such SBS transactions. Diminished liquidity in SBS markets will likely reduce liquidity in the capital markets.

Increased Risk

Vague liability standards could lead some market participants to avoid SBS transactions, which are critical risk-management tool that dealers, commercial lenders, and investors rely on to hedge exposures.

Increased Borrowing Costs

Implementing overly broad or vague conduct standards would create legal uncertainty and potentially increase hedging costs, which would either reduce lending capacity or increase borrowing costs.

Increased Investing Costs

Asset managers could curtail or potentially end their use of SBS to avoid liability in hindsight for legitimate commercial conduct that appeared reasonable or is otherwise currently protected under other rules. As it is unclear whether protection will continue to be afforded by the use of information barriers from material non-public information or established safe harbors from insider trading liability, asset managers could curtail even beneficial hedging activity. Long-standing use of independent business units would be sacrificed.

Security-Based Swap Execution

Proposal Overview: A swap is a type of derivative financial contract in which two counterparties agree to exchange one payment obligation for another as a result of changes in the reference instrument, such as a change in a stock price or commodity price. Common reference instruments for security-based swaps (SBS), as defined under the Securities Exchange Act of 1934, are a narrow-based security index or a single security or loan. This proposal would create new rules governing the registration and regulation of SBS swap execution facilities and SBS trade execution. (Full proposal)

Reduced Liquidity

Applying regulatory approaches designed for CFTC-regulated swaps to SEC-regulated security-based swaps (SBS), without adjusting for the differences between the two markets, could have negative unintended consequences for SBS. In particular, adopting RFQ-to-3, the swap market required trading protocol, could notify the market of a position and impair the ability to hedge. The $5 million block trade threshold appears without basis and may widen spreads and reduce liquidity.

Increased Investing Costs

Prematurely requiring over-the-counter SBS to be traded on execution facilities could, given the limited liquidity of SBS, severely curtail asset managers' access to such products and thereby reduce usage for investing and hedging. The absence of conservative liquidity standards for mandatory exchange trading could limit investing and hedging activities and increase their costs.

Regulatory Actions

Security-Based Swap Large Position Reporting

Proposal Overview: A swap is a type of derivative financial contract in which two counterparties agree to exchange one payment obligation for another as a result of changes in the reference instrument, such as a change in a stock price or commodity price. Common reference instruments for security-based swaps (SBS), as defined under the Securities Exchange Act of 1934, are a narrow-based security index or a single security or loan. Proposed Rule 10B-1 would require any person with a security-based swap position that exceeds a certain threshold to file with the SEC within one day a schedule disclosing extensive information related to its security-based swap position. The SEC would make all such filings available to the public. (Full proposal)

Reduced Liquidity

Requiring one-day public disclosure of large security-based swaps (SBS) positions could reduce, perhaps substantially, the lenders, dealers, and investors willing to hold large positions, which they rely on to hedge risk. Given that SBS markets, particularly credit derivative markets, are relatively small with few participants, even modestly curtailing SBS participation would likely reduce the liquidity and viability of SBS markets, inhibit capital formation, and thereby increase systemic risk in the broader capital markets.

Increased Risk

A reduction in the lenders, dealers, and investors willing to hold large SBS positions, which they rely on to hedge commercial risks, such as the risk of default by a customer or supplier, or the equity or market risk associated with employee compensation plans, would reduce liquidity and/or increase the cost of SBS-based hedging, which would undermine this important risk management tool.

Increased Borrowing Costs

The front-running and decreased SBS liquidity that is likely to result from requiring public disclosure of large SBS positions before most SBS-based hedging strategies can be completed would increase the cost of hedging for commercial lenders that rely on SBS to hedge their exposure below internal enterprise risk guidelines in order to extend credit to more clients. This increase in hedging costs would likely be passed on to issuers in the form of higher borrowing costs and to consumers.

Increased Investing Costs

Requiring one-day public disclosure of large SBS positions would increase opportunities for front-running and copycatting strategies, including through the reverse engineering of proprietary trading strategies, which would disincentivize valuable research and investment in the SBS markets and the related securities markets. All of these negative consequences could reduce investment returns and increase costs for investors.

Share Repurchase Disclosure

Proposal Overview: This proposal would make changes to the disclosure rules for repurchases of an issuer's equity securities, also known as "buybacks," that are registered under Section 12 of the Securities Exchange Act of 1934. These changes would increase the frequency of reporting and the amount of information required and create new restrictions on issuers' share repurchases made pursuant to Rule 10b5-1 trading plans. (Full proposal)

Increased Investing Costs

Applying a cooling off period to issuer buyback plans relying on the Rule 10b5-1 safe harbor, limiting the ability of issuers to rely on the safe harbor, and requiring daily public reporting of issuer repurchase activity could limit the ability – and significantly increase the associated costs – of companies to return cash to shareholders through stock buybacks rather than dividends. This could reduce returns and increase costs for investors.

Short Selling Reporting

Proposal Overview: The SEC has long recognized that short selling provides important benefits, including supplying market liquidity, contributing to the pricing efficiency of the equities markets, supporting prudent risk management, and incentive to uncover fraudulent corporate behavior. This proposal would create new rules and amend existing rules that regulate, restrict, and require disclosure of short sales, short positions, and related activity impacting short positions, including a new requirement for daily tracking and reporting of trade activity contributing to reported short positions. (Full proposal)

Reduced Liquidity

Establishing new requirements governing short selling, such as daily tracking of short position changes and marking short sales as "buy to cover" transactions, could lead to a reduction in short trading activities that provide liquidity, expose issuer accounting fraud, and support market stability by facilitating risk mitigation hedging strategies.

Increased Risk

New short selling requirements could increase the costs of short selling for institutional investment managers that use short selling for risk management and hedging purposes. Increased costs would likely reduce short sale activity and the many risk-management benefits that short selling provides, thus undermining the overall safety of the financial system.

Increased Borrowing Costs

New short selling requirements could increase the costs of borrowing securities for the purpose of effecting short sales. This would likely raise the cost of borrowing and reduce the market liquidity and other benefits that short selling provides.

Increased Investing Costs

New short selling requirements could increase costs for money managers seeking to engage in short trading strategies that provide hedging and other cost reducing benefits, which could ultimately raise costs on their investors.

Regulatory Actions

Special Purpose Acquisition Companies (SPACs)

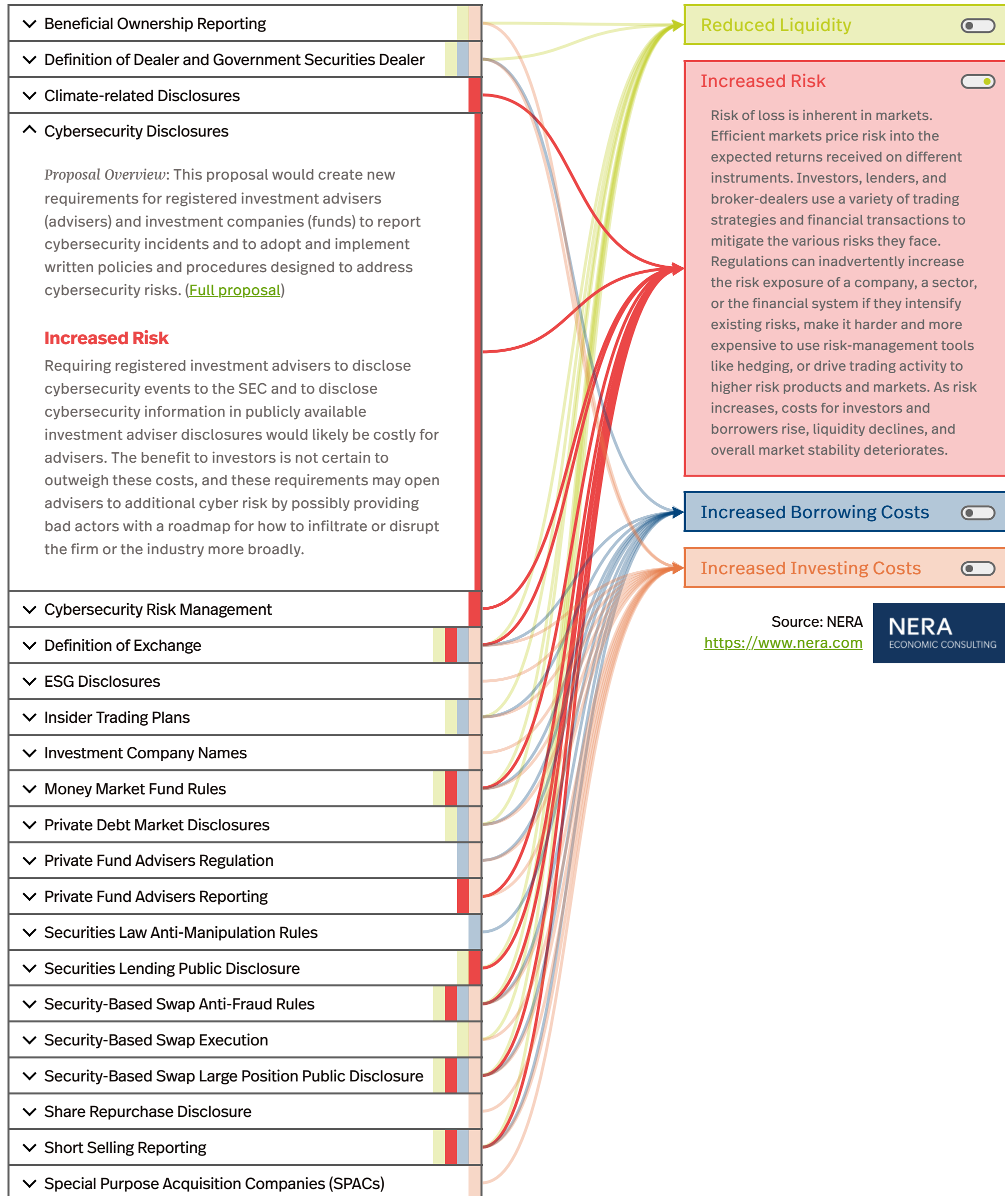
Proposal Overview: A special purpose acquisition company (SPAC) is a shell company that executes an initial public offering (IPO) without its own business operations and that exists to identify a target operating company and complete a business combination (commonly known as a de-SPAC transaction) within a limited time period, at which point the target company effectively becomes a publicly traded company. This proposal would create new rules and amend existing rules and forms that impact required disclosures and the potential liability of entities involved in de-SPAC transactions. (Full proposal)

Increased Investing Costs

Significantly increasing the requirements governing SPAC transactions and expanding the concept of “underwriter” contrary to existing statute, including retroactively such that underwriters for SPAC IPOs could be deemed underwriters for de-SPAC merger transactions, could diminish or eliminate the ability of private companies to use SPACs as an alternative means of going public. This would likely force private companies to rely on other, more expensive sources of capital, increasing costs for their investors.

Reduced Liquidity | Increased Risk | Increased Borrowing Costs | Increased Investing Costs

Expand the Subject



Expand the Issue

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