

MEMO# 26362

August 2, 2012

ICI Draft Comment Letter on SEC's Statement on Sequencing of Compliance Dates for Final Rules for Security-Based Swaps; Member Comments Requested by August 8

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TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 25-12
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 40-12
SEC RULES COMMITTEE No. 48-12 RE: ICI DRAFT COMMENT LETTER ON SEC'S STATEMENT ON SEQUENCING OF COMPLIANCE DATES FOR FINAL RULES FOR SECURITY-BASED SWAPS; MEMBER COMMENTS REQUESTED BY AUGUST 8

The Securities and Exchange Commission ("SEC") published a statement of general policy on the anticipated sequencing of the compliance dates of final rules to be adopted for security-based ("SB") swaps under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). [\[1\]](#) The Statement explains the general order in which SB swap market participants might prepare for compliance with the final rules and discusses the sequencing of the rules in relation to one another. The Statement does not provide specific compliance dates for the final rules nor does it provide a conclusive sequencing of compliance dates.

Comments on the Statement are due to the SEC no later than August 13, 2012. The Institute has prepared a draft comment letter, which is attached and briefly summarized below. If you have comments on the draft letter, please provide them to Jennifer Choi at jennifer.choi@ici.org by Wednesday, August 8.

In the draft letter, ICI generally supports the SEC's proposed sequencing of final rules applicable to SB swaps. The letter notes that, over the last two years, there have been a myriad of new rules and rule proposals with respect to swaps and SB swaps from the Commodity Futures Trading Commission ("CFTC") and the SEC. Given the introduction and implementation of a new regulatory framework for swaps, the letter requests that the SEC continue to be mindful of the burdens imposed on those that must comply with the panoply of new requirements and provide entities sufficient time to come into compliance. ICI urges

the Commission to adopt an implementation schedule that will accommodate operational, technological, data and other challenges facing market participants. The letter recommends that the SEC provide specific timeframes for compliance based on the type of asset class and market participants entering into a swap transaction.

Specifically, the letter suggests that the Commission should start with the most liquid, standardized and cleared asset classes to provide for a smoother transition to the new regulatory framework and help inform the process for other asset classes. The letter also states that there are meaningful differences among market participants with respect to resources, readiness and expertise. For entities that do not engage in the level of swap activity that would trigger registration as an SB swap dealer or SB major swap participant, the SEC should provide more time to come into compliance. The letter argues that affording adequate time to put systems in place and to revise policies and procedures to ensure compliance regarding margin, documentation, clearing, and trading requirements in a thoughtful manner would ultimately produce better results rather than imposing a short compliance deadline. ICI recommends that the SEC provide a period of 18 to 24 months following adoption of final rules for funds to come into compliance.

In response to specific questions raised in the Statement with respect to block trade thresholds, the draft ICI letter discusses the importance for funds and their shareholders of establishing the appropriate criteria for determining minimum block sizes. The draft letter strongly supports the approach being considered by the SEC to establish an initial period during which information regarding SB swaps would be reported on a delayed basis. The letter also supports the SEC re-opening for comment certain issues related to block trades – such as the required time delays –in connection with the future SEC proposal regarding how to define block thresholds. The letter also agrees with the SEC that it should defer its proposed rulemaking regarding block thresholds until the SEC begins to receive SB swap data from swap data repositories. The letter recommends that the SEC analyze the data to develop the methodologies for setting appropriate minimum block sizes for each swap category and the appropriate time delays for block trades.

Jennifer S. Choi
Senior Associate Counsel – Securities Regulation

[Attachment](#)

endnotes

[\[1\]](#) Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act, Release No. 34-67177, 77 FR 35625 (June 14, 2012) available at <http://www.gpo.gov/fdsys/pkg/FR-2012-06-14/pdf/2012-14576.pdf> (“Statement”). The SEC also describes the timing of the expiration of the exemptions previously granted by the SEC from certain provisions of the Securities Exchange Act of 1934, the Securities Act of 1933, and the Trust Indenture Act of 1939.

abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.