

MEMO# 27711

November 21, 2013

Draft ICI Supplemental Comment Letter on SEC's Proposed Rules on Capital, Margin and Segregation; Member Comments Requested by Wednesday, December 4

[27711]

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TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 30-13
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 82-13
SEC RULES COMMITTEE No. 44-13 RE: DRAFT ICI SUPPLEMENTAL COMMENT LETTER ON
SEC'S PROPOSED RULES ON CAPITAL, MARGIN AND SEGREGATION; MEMBER COMMENTS
REQUESTED BY WEDNESDAY, DECEMBER 4

ICI is planning to submit a supplemental comment letter to the Securities and Exchange Commission ("Commission" or "SEC") on its proposed capital, margin, and segregation requirements for security-based swap dealers ("SBSDs") and major security-based swap participants ("MSBSPs") after meeting with the SEC staff this fall. [\[1\]](#) A copy of the draft letter is attached. ICI previously submitted a comment letter on February 4, 2013 ("February Letter"). [\[2\]](#)

After briefly reiterating the significant points from the February Letter, the draft letter focuses on the SEC's proposed capital charge on an SBSB when its counterparty elects an independent custodian to hold collateral (which was specifically discussed at our meeting with SEC staff). The letter argues that the imposition of such a capital charge on an SBSB would result in adverse consequences and that such a result is unnecessary to satisfy the SEC's regulatory objectives for the reasons discussed in the letter.

The letter provides detailed information regarding the arrangements currently in place for holding collateral of registered funds that may be helpful to the SEC. Specifically, the letter describes: (1) how the current tri-party agreements should satisfy the requirements under Proposed Rules 18a-3 and 18a-4; (2) the significant protections provided by the tri-party arrangements; (3) the current use of these arrangements and industry efforts to expand their use with the implementation of the Dodd-Frank requirements; and (4) recommendations regarding the required terms for agreements that would address any

residual concerns that the SEC staff may have regarding appropriate control by SBSDs.

If you have comments on the draft letter, please provide them to Jennifer Choi at jennifer.choi@ici.org by Wednesday, December 4.

Jennifer S. Choi
Senior Associate Counsel Securities Regulation

[Attachment](#)

endnotes

[1] Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers, 77 FR 70214 (Nov. 23, 2012) (“Proposal”), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-11-23/pdf/2012-26164.pdf> implementing regulations under Title VII of The Dodd Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”), Pub. L. 111-203, 124 Stat. 1376 (2010).

[2] Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated February 4, 2013, available at <http://www.ici.org/pdf/26967.pdf>.

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