

MEMO# 30653

March 29, 2017

ICI Submits Comment Letter on Proposed CFTC Capital Rules for Swap Dealers and Major Swap Participants

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March 29, 2017 TO: Derivatives Markets Advisory Committee RE: ICI Submits Comment Letter on Proposed CFTC Capital Rules for Swap Dealers and Major Swap Participants

ICI has submitted a comment letter in response to the Commodity Futures Trading Commission's (CFTC) proposed capital requirements for swap dealers (SDs) and major swap participants that are not subject to the capital rules of a prudential regulator. The proposal would allow SDs to comply with one of several capital requirements that generally draw on existing CFTC, prudential regulator, or Securities and Exchange Commission (SEC) capital rules.[\[1\]](#)

The comment letter focuses on one undesirable consequence of the CFTC's proposal to allow SDs to elect to comply with the SEC's proposed capital requirements for security-based swap dealers (SBSDs).[\[2\]](#) Specifically, SDs that elect to comply with this approach would be required to take a capital charge when a counterparty exercises its right under section 4s(l) of the Commodity Exchange Act to post margin to a third-party custodian. Our letter argues this capital charge will increase costs for funds without providing any corresponding benefit, and we urge the CFTC not to adopt this aspect of its proposal.

The letter describes the various benefits of collateral segregation and explains that any CFTC rule imposing a capital charge for using an independent custodian would increase the costs of segregating collateral and undermine protections that Congress and the CFTC sought to provide funds and other counterparties of SDs. The letter notes that the proposed capital charge would not advance the CFTC's objective of improving the safety and soundness of SDs because CFTC rules and tri-party custodial relationships give an SD prompt access to collateral held at an independent custodian in the event of a counterparty default.

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[Attachment](#)

endnotes

[1] See ICI Memorandum No. 30543 (January 26, 2017), *available at* https://www.ici.org/my_ici/memorandum/memo30543; *Capital Requirements of Swap Dealers and Major Swap Participants*, 81 FR 91252 (December 16, 2016), *available at* <http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2016-29368a.pdf> (Proposal).

[2] See *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), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2012-11-23/pdf/2012-26164.pdf>.