

MEMO# 31443

October 17, 2018

ICI Member Call October 22 on Reopening of SEC Comment Period on Proposals Regarding Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers

[31443]

October 17, 2018 TO: Derivatives Markets Advisory Committee

ICI Global Regulated Funds Committee

ICI Global Trading & Markets Committee RE: ICI Member Call October 22 on Reopening of SEC Comment Period on Proposals Regarding Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers

Last week, the Securities and Exchange Commission voted (4-1) to reopen the comment period and request additional comment on proposed rules and amendments for capital, margin, and segregation requirements for security-based swap dealers (SBSDs) and major security-based swap participants (MSBSPs) and capital requirements for broker-dealers.[\[1\]](#) These rules were originally proposed in 2012.[\[2\]](#) The SEC also reopened the comment period and requested additional comment on proposed amendments it issued in 2013 regarding the cross-border treatment of security-based swap (SBS) activities,[\[3\]](#) and on an additional capital requirement the SEC proposed in 2014 for nonbank SBSDs.[\[4\]](#)

Comments on the Release are due 30 days after publication in the Federal Register. Key questions raised in the Release are noted below.

ICI will hold a member call on Monday, October 22nd, from 12-1 pm ET, to discuss the Release and potential ICI comments. If you would like to participate in the call, the dial-in information is:

Dial-in numbers:

Toll-free: 1-888-701-8647

International: 1-773-779-3649

Passcode: 52638

If you plan to participate in the call, please RSVP to Jennifer Odom at jodom@ici.org.

The SEC explains that its 2012 proposal would: (1) establish capital and margin requirements for SBSDs and MSBSPs that do not have a prudential regulator (“nonbank SBSDs” and “nonbank MSBSPs,” respectively); (2) establish segregation requirements for SBSDs; (3) establish notification requirements for SBSDs and MSBSPs relating to segregation; and (4) raise minimum net capital requirements and establish liquidity requirements for broker-dealers that are permitted to use internal models when computing net capital. The SEC’s 2013 proposal addressed the cross-border treatment of SBS capital, margin, and segregation requirements.

The Release reopens the comment process and seeks comment on all aspects of the Proposals. The SEC requests specific comment on certain aspects of the Proposals, including, among other questions, whether:

- The SEC’s rules should impose a capital charge on a nonbank SBSD if it collects an amount of margin from a counterparty to a cleared SBS that is less than the deduction that would apply to the SBS if it was a proprietary position of the SBSD;
- A nonbank SBSD should be required to take a 100% capital charge when it does not collect variation or initial margin for non-cleared SBSs in reliance on an exception from collecting margin;
- A nonbank SBSD should be subject to a capital charge when a counterparty requires initial margin to be segregated pursuant to Section 3E(f) of the Securities Exchange Act of 1934 (“1934 Act”);
- The margin rules should permit nonbank SBSDs to apply to use models other than proprietary capital models to compute initial margin, such as standard industry models;
- A nonbank SBSD would have to collect margin from another SBSD;[\[5\]](#)
- Minimum thresholds should apply to the obligation to collect initial margin;
- The rules should permit the portfolio margining of security-based swaps, swaps, and related positions;
- Aspects of the omnibus segregation alternative the SEC included in the 2012 proposal should be clarified;
- The SEC should clarify the cross-border application of its proposed segregation requirements;
- The SEC’s proposals in the Release would have an impact on substituted compliance determinations that may be issued regarding the capital and margin requirements applicable to foreign nonbank SBSDs that are not also registered as broker-dealers; and
- The compliance date for any final rules should be later than the current six-month trigger date.[\[6\]](#)

To assess the economic implications of its Proposals, the SEC requests additional comment and supporting data on the current risk management practices that support the trading activity in SBSs. It also requests comment and data on how the baseline of its economic analyses has changed since the publication of the Proposals.

Sarah A. Bessin
Associate General Counsel

endnotes

[1] See <https://www.sec.gov/rules/proposed/2018/34-84409.pdf> (“Release”).

[2] For a summary of the SEC’s 2012 proposal, *please see* ICI Memorandum No. 26617 (Oct. 25, 2012), *available at* https://www.ici.org/my_ici/memorandum/memo26617. The SEC extended the comment period for the proposal once in 2012, and then reopened the comment period in 2013. ICI submitted three comment letters to the SEC on the 2012 proposal. In our third letter we requested that the SEC repropose the rules. See Letters to Ms. Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, from Karrie McMillan, General Counsel, Investment Company Institute, dated Feb. 4, 2013 (*available at* <https://www.ici.org/pdf/26967.pdf>) and Dec. 5, 2013 (*available at* <https://www.ici.org/pdf/27742.pdf>); Letter to the Honorable Mary Jo White, Chair, Securities and Exchange Commission, from Paul Schott Stevens, President and CEO, Investment Company Institute, dated May 11, 2015, *available at* <https://www.ici.org/pdf/28969.pdf>.

[3] For a summary of the SEC’s 2013 proposal, *please see* ICI Memorandum No. 27238 (May 13, 2013), *available at* https://www.ici.org/my_ici/memorandum/memo27250. ICI and ICI Global submitted a comment letter on the SEC’s 2013 proposal. See Letter to Ms. Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, from Karrie McMillan, General Counsel, Investment Company Institute, and Dan Waters, Managing Director, ICI Global, dated Aug. 21, 2013, *available at* <https://www.ici.org/pdf/27482.pdf>.

[4] See *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers*, 79 Fed.Reg. 25194 (May 2, 2014). In this memorandum, we refer to the SEC’s 2012, 2013, and 2014 proposals collectively as the “Proposals.” As indicated above, ICI’s prior advocacy on the Proposals has focused on the margin and segregation requirements for SBSDs and the importance of developing consistent global regulatory requirements for the swap and SBS markets.

[5] Notably, the SEC’s 2012 proposal on margin for SBSDs contemplated a unilateral margining framework under which the SBSD would be required to collect margin from its counterparty but would have no requirement to post margin. The SEC does *not* request comment in the Release on whether the SEC’s rules should impose a bilateral margining requirement (*i.e.*, requiring SBSDs and MSBSPs to post margin to, as well as collect margin from, their counterparties). ICI has repeatedly urged the SEC to require bilateral exchange of collateral by SBSDs and MSBSPs. See *supra* note 2. Bilateral margining is consistent with the global standard adopted by the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO), as well as the final margin rules adopted in 2015 by the CFTC and the prudential regulators. For a summary of the CFTC’s and prudential regulators’ final margin rules, *please see* ICI Memoranda Nos. 29587 (Dec. 22, 2015) and 29484 (Nov. 12, 2015), *available at* https://www.ici.org/my_ici/memorandum/memo29587 and https://www.ici.org/my_ici/memorandum/memo29484.

[6] Specifically, the SEC has stated that the compliance date for the SBSD and MSBSP registration requirements will be the later of: six months after the date of publication in the Federal Register of final rules establishing capital, margin, and segregation requirements for SBSDs and MSBSPs; the compliance date of final rules establishing recordkeeping and

reporting requirements for SBSDs and MSBSPs; the compliance date of final rules establishing business conduct requirements under Sections 15F(h) and 15F(k) of the 1934 Act; or the compliance date for final rules establishing a process for a registered SBSD or MSBSP to make an application to the SEC to allow an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on the SBSD or MSBSP's behalf. See *Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 80 Fed.Reg. 48963 (Aug. 14, 2015).

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