

MEMO# 30626

March 8, 2017

Draft ICI Comment Letter on Proposed CFTC Capital Rules for Swap Dealers and Major Swap Participants; Member Feedback Requested by March 13

[30626] March 8, 2017 TO: Derivatives Markets Advisory Committee RE: Draft ICI Comment Letter on Proposed CFTC Capital Rules for Swap Dealers and Major Swap Participants; Member Feedback Requested by March 13

As previously reported, the Commodity Futures Trading Commission (CFTC) has proposed capital requirements for swap dealers (SDs) and major swap participants (MSPs) that are not subject to capital rules of a prudential regulator.^[1] 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.

ICI has prepared the attached draft comment letter in response to the proposed rule. If you have comments on the draft letter please send them to George Gilbert at george.gilbert@ici.org by **Monday, March 13, 2017**.

The draft 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 and major security-based swap participants.^[2] Specifically, SDs that elect to follow 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 draft 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 the SEC Capital Proposal.

Our draft letter first provides legal background on the SEC Capital Proposal and explains that we also objected to the capital charge in the context of that proposal. Our letter also explains that the proposed capital charge 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 explains the various benefits of using independent custodians and notes that SDs would have prompt access to collateral held at an independent custodian in the event of a counterparty default.

Jennifer S. Choi
Associate General Counsel

George M. Gilbert
Counsel

[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 (November 23, 2012) (SEC Capital Proposal), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-11-23/pdf/2012-26164.pdf>.

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