

**MEMO# 27329**

June 25, 2013

## **Draft ICI and ICI Global Comment Letter on SEC's Proposed Rules on Cross-Border Security-Based Swap Activities; Member Call to Discuss Draft Letter on July 11 at 12:00 P.M. E.T.**

[27329]

June 25, 2013

TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 16-13  
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 50-13  
ICI GLOBAL MEMBERS  
INTERNATIONAL COMMITTEE No. 17-13  
SEC RULES COMMITTEE No. 28-13 RE: DRAFT ICI AND ICI GLOBAL COMMENT LETTER ON SEC'S PROPOSED RULES ON CROSS-BORDER SECURITY-BASED SWAP ACTIVITIES; MEMBER CALL TO DISCUSS DRAFT LETTER ON JULY 11 AT 12:00 P.M. E.T.

Recently, the Securities and Exchange Commission ("SEC") proposed rules and interpretive guidance for parties to cross-border security-based ("SB") swap transactions. [\[1\]](#) The Proposal addresses the application of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") to market intermediaries, participants, and infrastructures for SB swaps and certain transaction-related requirements under Title VII in connection with reporting and dissemination, clearing, and trade execution for SB swaps. Concurrently, the SEC re-opened for comment all of its currently pending rule proposals related to Title VII of the Dodd-Frank Act in light of the Proposal. [\[2\]](#)

We have prepared a draft comment letter on the Proposal, which is attached. A member call to discuss the draft letter is scheduled for Thursday, July 11, 2013 at 12:00 p.m. ET. If you plan to attend the conference call, please respond to Ruth Tadesse at [rtadesse@ici.org](mailto:rtadesse@ici.org) or (202) 326-5836.

The draft letter recognizes the tremendous amount of work undertaken by the SEC on the Proposal but seeks modifications to address certain concerns regarding the regulation of cross-border derivatives activities. Generally, the Proposal would subject SB swap transactions to the requirements of Title VII if they are (1) entered into with a U.S. person or (2) otherwise conducted within the United States. The letter argues that the "principal

place of business” test in the SEC’s proposed definition of U.S. person is not appropriate for funds or collective investment vehicles and suggests an alternative test for these vehicles. In addition, the draft letter recommends a broader exception from Title VII requirements for transactions between two non-U.S. persons that may be considered “conducted in the United States” by virtue of the engagement of a U.S. investment adviser/asset manager by a non-U.S. fund counterparty. Finally, the draft letter provides some comments on the substituted compliance framework proposed by the SEC.

Jennifer S. Choi  
Senior Associate Counsel – Securities Regulation

#### [Attachment](#)

#### **endnotes**

[1] Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, Release No. 34-69490 (May 1, 2013), available at <http://www.sec.gov/rules/proposed/2013/34-69490.pdf> (“Proposal”). For a summary of the Proposal, see ICI Memorandum No. 27238 (May 13, 2013), available at [http://www.ici.org/my\\_ici/memorandum/memo27238](http://www.ici.org/my_ici/memorandum/memo27238).

[2] Reopening of Comment Periods for Certain Rulemaking Releases and Policy Statement Applicable to Security-Based Swaps Proposed Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act, Release No. 34-69491 (May 1, 2013), available at <http://www.sec.gov/rules/proposed/2013/34-69491.pdf>.