

MEMO# 31470

November 8, 2018

Draft Comment Letter to SEC on Proposals Regarding Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants - Your Comments Requested by November 13

[31470]

November 8, 2018 TO: Derivatives Markets Advisory Committee

ICI Global Regulated Funds Committee

ICI Global Trading & Markets Committee RE: Draft Comment Letter to SEC on Proposals Regarding Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants - Your Comments Requested by November 13

As you know, the Securities and Exchange Commission recently reopened the comment period and requested 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] The Reopened Proposing Release relates to three different proposals the SEC issued in 2012, 2013, and 2014, respectively (together, “SB Swaps Proposals”). Comments on the Reopened Proposing Release are due to the SEC on November 19th.

ICI has drafted a comment letter on the Reopened Proposing Release. Our draft letter is attached and is summarized briefly below. **If you have comments on the draft letter, please provide them in writing by Tuesday, November 13th, to Sarah Bessin at sarah.bessin@ici.org.**

In our draft comment letter, we express concern that the Reopened Proposing Release does not address substantially comments that ICI and others submitted on the SB Swaps Proposals. The Reopened Proposing Release also is inconsistent in all material aspects with both the 2013 international framework governing margin requirements for uncleared derivatives, including SB swaps (“International Framework”),^[2] and the final rules on margin for uncleared swaps that have already been adopted and implemented by the Commodity Futures Trading Commission and the US prudential regulators (together, “Swap

Margin Rules”).

We urge the SEC to re-propose new SB Swaps Proposals that are consistent with the Swap Margin Rules and the International Framework. We explain that the re-proposed rules should also fully address the comments the SEC received on these proposals in the past. We believe that there is substantial risk, if the SEC were to adopt the SB Swaps Proposals as published, that the SB Swaps Proposals would have adverse consequences for the US SB swaps market and incentivize counterparties to transact only with intermediaries that are not subject to the SB swaps rules.

At the least, we believe it is critical that the SEC include the following revisions in the re-proposal and any final rules, consistent with the Swap Margin Rules and the International Framework:

- Require bilateral exchange of collateral by SBSDs and MSBSPs and their counterparties in connection with SB swaps;
- Require only those counterparties that have “material swaps exposure” to post initial margin;
- Permit SBSDs to set a standard threshold for exchange of initial margin and raise the minimum transfer amount cap consistent with the Swap Margin Rules;
- Do not impose capital charges on SBSDs and MSBSPs when their counterparties elect to have their collateral held at a third-party bank custodian;
- If the SEC includes an exception to capital charges, revise the proposed exception to make it workable;
- Expand permitted collateral to allow funds to post shares of registered investment companies and ETFs issued by an affiliate of the fund; and
- Do not adopt rules on portfolio margining without first issuing a proposal that provides significantly more detail and analysis regarding the legal implications of these arrangements.

We believe the SEC should include the following revisions with respect to cross-border application of SEC SB swaps rules:

- Tailor the definition of “US person” for non-US regulated funds for purposes of the SEC’s SB swap rules; and
- Develop a uniform substituted compliance framework in coordination with other US and global regulators.

Finally, we urge the SEC to provide an adequate compliance period for SBSDs and MSBSPs and their counterparties to implement any final SEC SB swap rules, following a re-proposal.

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[Attachment](#)

endnotes

[1] See <https://www.sec.gov/rules/proposed/2018/34-84409.pdf> (“Reopened Proposing Release”). For a summary of the Reopened Proposing Release, *please see* ICI Memorandum No. 3144 (Oct. 17, 2018), *available at* https://www.ici.org/my_ici/memorandum/memo31443.

[2] See Basel Committee on Banking Supervision, Board of the International Organization of Securities Commissions: *Margin Requirements for Non-Centrally Cleared Derivatives* (Sept. 2013).

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