

MEMO# 29100

June 17, 2015

Draft ICI Global Comment Letter to SEC on Cross-Border Security-Based Swap Activities; Member Feedback Requested by Friday, June 26

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TO: DERIVATIVES MARKETS ADVISORY COMMITTEE No. 47-15
ICI GLOBAL TRADING & MARKETS COMMITTEE No. 29-15 RE: DRAFT ICI GLOBAL COMMENT LETTER TO SEC ON CROSS-BORDER SECURITY-BASED SWAP ACTIVITIES; MEMBER FEEDBACK REQUESTED BY FRIDAY, JUNE 26

Attached for your review is a draft ICI Global letter on the proposed rule amendments and the re-proposed rule by the Securities and Exchange Commission ("Commission" or "SEC") to address the application of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") to cross-border security-based swap activities. [\[1\]](#) If you have comments on the draft letter, please provide them to Jennifer Choi at jennifer.choi@ici.org by Friday, June 26.

The draft letter generally supports the Proposal's modified approach to focus on dealing activity, rather than the activities of a non-U.S. person not engaged in dealing activity (e.g., a non-U.S. regulated fund), in determining whether certain of the SEC's security-based swap rules would apply to transactions between such a non-U.S. person and a non-U.S. dealer.

The draft letter includes the following specific comments.

- The letter supports the Commission's proposal not to require a non-U.S. person engaging in dealing activity to consider the location of its non-U.S. counterparty or that counterparty's agent for purposes of the de minimis exemption from registration as a security-based swap dealer ("SBSD"). The Commission's modified approach would no longer incentivize non-U.S. dealers to avoid engaging in swaps transactions with a non-U.S. regulated fund with a U.S. manager to stay under the de minimis threshold.
- The letter supports the Commission's decision to eliminate the activities of a non-U.S. person that is not engaged in dealing activity as a trigger for the application of the

external business conduct requirements. Imposition of these requirements on a non-U.S. regulated fund solely because of its retention of a U.S. asset manager would be inconsistent with the expectations of investors in the non-U.S. regulated fund and is unnecessary to protect U.S. markets or U.S. investors.

- The letter supports the Commission's proposal not to subject transactions between two non-U.S. persons to the clearing and trade execution requirements on the basis of dealing activity in the United States, including transactions that are arranged, negotiated, or executed by personnel located in a U.S. branch or office. Non-U.S. persons (including non-U.S. regulated funds that are managed by U.S. asset managers and investors in such funds) would not expect to be provided such protections.
- The letter requests that the Commission modify the reporting hierarchy so that a non-U.S. person engaging in dealing activity in the U.S. (but not registered as an SBSF) would be the reporting side if it conducts a transaction with a U.S. person that is not engaging in dealing activity (such as a U.S. regulated fund). The entity engaged in dealing activity would have a greater capacity to fulfill that responsibility than a U.S. regulated fund.
- The letter urges the Commission to re-propose the margin rules for uncleared security-based swaps to be in line with both U.S. and international regulators so that non-U.S. SBSFs may be able to use substituted compliance to comply with the margin requirements for their transactions with their non-U.S. counterparties.

Jennifer S. Choi
Associate General Counsel

[Attachment](#)

endnotes

[1] Application of Certain Title VII Requirements to Security-Based Swap Transactions Connected with a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent, 80 FR 27443 (May 13, 2015), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-05-13/pdf/2015-10382.pdf> ("Proposal"). For a summary of the Proposal, see ICI Memorandum No. 28961 (May 7, 2015), available at <http://www.iciglobal.org/iciglobal/pubs/memos/memo28961>.