

MEMO# 33726

August 13, 2021

SEC Staff Grants No-Action Relief from Initial Margin Compliance Date for Transactions with Phase 6 Counterparties

[33726]

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TO: ICI Members

Derivatives Markets Advisory Committee SUBJECTS: Derivatives

Trading and Markets RE: SEC Staff Grants No-Action Relief from Initial Margin Compliance Date for Transactions with Phase 6 Counterparties

On August 5, 2021, in response to a request from ISDA and SIFMA,[\[1\]](#) the SEC's Division of Trading and Markets ("Division") granted no-action relief to nonbank security-based swap dealers (SBSDs) from the compliance date under Rule 18a-3(c)(1)(ii)(B) under the Securities Exchange Act of 1934 ("Exchange Act") to collect initial margin from counterparties with respect to security-based swaps (SBSs). The letter provides that the Division will not recommend enforcement action if a nonbank SBSD does not collect initial margin from certain counterparties in connection with an uncleared SBS entered into prior to September 1, 2022, consistent with the current compliance date for Phase 6 entities under the non-cleared swap margin rules of the Commodity Futures Trading Commission (CFTC) and the US prudential regulators. In the absence of this relief, nonbank SBSDs and their counterparties that are below the Phase 5 threshold would become subject to initial margin requirements under Rule 18a-3 on October 6, 2021, ten months before they would become subject to initial margin requirements under the CFTC's and prudential regulators' non-cleared swap margin rules.

The relief will apply to SBS transactions of a nonbank SBSD with any counterparty that, collectively with its affiliates, has a daily average aggregated notional amount of \$50 billion or less in uncleared swaps, uncleared SBSs, foreign exchange swaps, and FX forwards in March, April, and May of 2021. The relief is subject to certain representations, including that the nonbank SBSD will make a record of the counterparties with respect to which it relies on the relief, and preserve the record for a period of not less than three years, the first two in an easily accessible place.

The Division notes that other Commission requirements will apply to a nonbank SBSD

relying on this relief, including the requirement to (i) exchange variation margin with its counterparties, as required by Rule 18a-3; (ii) consider the amount of initial margin not collected in computing its net capital under Rule 15c3-1 or Rule 18a-1 under the Exchange Act, as applicable; and (iii) comply with the risk management provisions applicable to nonbank SBSs under the Exchange Act.

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endnotes

[1] The no-action letter is *available at* <https://www.sec.gov/files/sifma-isda-18a-3-08052021.pdf>.

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