

Joint Trades on SEC Proposed Amendments and Guidance to Cross-Border Rule

SUMMARY

SIFMA and The Institute of International Bankers sent comments to the SEC on the Proposed Rule Amendments and Guidance Addressing Cross-Border Application of Certain Security-Based Swap Requirements specifically those relating to: (1) 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 of the non-U.S. person or its agent; (2) certifications and legal opinions from non-resident SBS dealers relating to Commission access to books and records and conduct of onsite inspections and examinations; and (3) background checks for associated persons of SBSs.

We continue to recommend that the Commission harmonize its rules with the parallel Title VII rules adopted by the Commodity Futures Trading Commission by eliminating several aspects of these requirements, as described in greater detail below. Consistency would benefit the entire marketplace and promote fair, orderly, and efficient markets.

EXCERPT

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Proposed Rule Amendments and Guidance Addressing Cross-Border Application of Certain Security-Based Swap Requirements (File No. S7-0719)

Dear Secretary Countryman:

The Institute of International Bankers (“IIB”)¹ and the Securities Industry and Financial Markets Association (“SIFMA”)² (together, the “Associations”) welcome the opportunity to comment on the above-captioned proposal (the “Proposal”)³ regarding the cross-border application of certain security-based swap (“SBS”) requirements adopted by the Securities and Exchange Commission (the “Commission” or “SEC”), specifically those relating to: (1) 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 of the non-U.S. person or its agent (“ANE transactions”); (2) certifications and legal opinions from non-resident (“non-U.S.”) SBS dealers (“SBSDs”) relating to Commission access to books and records and conduct of onsite inspections and examinations; and (3) background checks for associated persons (“APs”) of SBSDs.

We appreciate and support the Commission’s efforts to address the significant challenges that these SBS requirements would pose to efficient operation of the global SBS markets and effective implementation of Title VII of the Dodd-Frank Act. Even as modified by the Proposal, however, these requirements seem likely to result in significant and undue operational burdens, risk management and execution challenges, and unwarranted competitive distortions in the global SBS markets, for dealers as well as their investor and corporate counterparties. To address these issues, we continue to recommend that the Commission harmonize its rules with the parallel Title VII rules adopted by the Commodity Futures Trading Commission (“CFTC”) by eliminating several aspects of these requirements, as described in greater detail below. Consistency would benefit the entire marketplace and promote fair, orderly, and efficient markets.

If the Commission does not harmonize its rules in this manner, then it should adopt additional modifications and clarifications to the Proposal in order to mitigate appropriately the burdens and challenges associated with the cross-border application of its SBS requirements. We also discuss these additional modifications and clarifications in greater detail below.