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February 4, 2013

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers (File No. S7-08-12)*

Dear Ms. Murphy:

The Investment Company Institute (“ICI”)¹ is submitting this letter in response to the proposal by the Securities and Exchange Commission (“SEC” or “Commission”) on capital and margin requirements for security-based swap dealers (“SBSDs”) and major security-based swap participants (“MSBSPs”), segregation requirements for SBSBs, and notification requirements with respect to segregation for SBSBs and MSBSPs to implement Sections 763 and 764 of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).² The Dodd-Frank Act divided authority to prescribe capital and margin requirements among the SEC, the Commodity Futures Trading Commission (“CFTC”), and prudential regulators.³ The SEC’s proposed

¹ The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$14.2 trillion and serve over 90 million shareholders.

² *Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers*, 77 FR 70214 (Nov. 23, 2012) (“Proposal”), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-11-23/pdf/2012-26164.pdf>. The Commission also proposed to increase the minimum net capital requirements for broker-dealers permitted to use the alternative internal model-based method for computing net capital.

³ The prudential regulators have proposed capital and margin requirements for bank swap dealers (“SDs”), bank SBSBs, bank major swap participants (“MSPs”), and bank MSBSPs. See *Margin and Capital Requirements for Covered Swap Entities*, 76 FR 27564 (May 11, 2011). The CFTC also has proposed capital and margin requirements for non-bank SDs and nonbank MSPs. See *Capital Requirements of Swap Dealers and Major Swap Participants*, 76 FR 27802 (May 12, 2011);

requirements (except for segregation requirements) would only apply to SBSDs and MSBSPs that do not have a prudential regulator and are based largely on existing capital, margin, and segregation requirements for broker-dealers.⁴

We understand that the Commission has modeled its proposal on the existing broker-dealer financial responsibility requirements based on its familiarity with these requirements and because some of the rationales or objectives underlying the broker-dealer requirements may have relevance in the context of dealers and major participants that engage in SB swaps. We, however, believe that certain aspects of the proposal focus exclusively on the protection of SBSDs and MSBSPs to the exclusion and potential detriment of their counterparties. Specifically, we are concerned with several elements of the proposal that would disadvantage counterparties of SBSDs when they are engaging in SB swap transactions with SBSDs, which already have significant market power. First, we believe that a requirement that SBSDs only collect margin would not provide adequate protection for counterparties to SBSDs and could potentially increase systemic risk. We urge the CFTC instead to impose a bilateral margin requirement. Second, imposing a capital charge on SBSDs when their counterparties elect an independent custodian to hold their collateral will likely impose significant burdens on those counterparties by increasing their costs. Third, we recommend that the Commission revise the segregation requirements to prohibit SBSDs from using funds in the customer reserve account for one customer that belong to another customer. We discuss these concerns in more detail below.

In addition, the Commission notes in the Proposal that the cross-border implications of proposed capital, margin, and segregation requirements warrant further consideration and that it intends to publish a comprehensive release seeking public comment on the full spectrum of issues related to the application of Title VII to cross-border SB swap transactions and non-U.S. persons that act in capacities regulated under the Dodd-Frank Act. We believe these are critical issues that must be carefully considered and a rational approach must be developed with consultation of global regulators to avoid imposing conflicting regulatory requirements of multiple jurisdictions on transactions that may have a nexus or connection to multiple jurisdictions. Requiring market participants to comply with multiple jurisdictions' requirements, which may conflict, simply would be unworkable. We

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 76 FR 23732 (Apr. 28, 2011). The CFTC also has adopted segregation requirements for cleared swaps and proposed segregation requirements for non-cleared swaps. See *Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions*, 77 FR 6336 (Feb. 7, 2012) ("LSOC Adopting Release"); *Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy*, 75 FR 75432 (Dec. 3, 2010).

⁴ Proposed new Rule 18a-4 under the Securities Exchange Act of 1934 ("Exchange Act"), which would establish segregation requirements with respect to cleared and non-cleared security-based ("SB") swaps, would apply to all types of SBSDs (including those for which there is a prudential regulator).

applaud the Commission for taking a comprehensive approach to these issues and planning to address these cross-border issues through a rulemaking. We look forward to the Commission's proposal.

I. Proposed Margin Requirement

The Proposal would require SBSBs to collect collateral from their counterparties to non-cleared SB swaps to cover both current exposure and potential future exposure to the counterparty subject to certain exceptions. Proposed Rule 18a-3(c)(2) would require an MSBSP to collect collateral from counterparties to which the MSBSP has current exposure and deliver collateral to counterparties that have current exposure to the MSBSP subject to certain exceptions. MSBSPs would be required to collect and deliver collateral for current exposure but the proposed rule would not require bilateral exchange of collateral to cover potential future exposure.

Two-Way Margining

To better protect counterparties and the swaps markets more generally, we strongly urge the Commission to require SBSBs to post initial and variation margin⁵ to their non-SBSP counterparties at the same level and in the same manner as required for the counterparty. This fundamental requirement is consistent with the proposed global standard as proposed by the Basel Committee on Banking Supervision ("BCBS") and the International Organization of Securities Commissions ("IOSCO") under which entities that engage in non-centrally-cleared derivatives would be required to exchange, on a bilateral basis, initial and variation margin in mandatory minimum amounts.⁶ The international regulators note that there is "broad consensus within the BCBS and IOSCO that *all* covered entities engaging in non-centrally-cleared derivatives must exchange initial and variation margin (emphasis added)."⁷

As acknowledged by the Commission in the Proposal, ICI has taken the position that the financial crisis has clearly demonstrated that the premise of one-way margin is flawed.⁸ We believe that two-way margin requirements aid safety and soundness by helping a swap dealer and its counterparty

⁵ Instead of using the terms "initial" margin and "variation" margin, the Commission's proposal discusses the "equity" and "margin" amounts to refer to current exposure and potential future exposure, respectively.

⁶ *Margin Requirements for Non-Centrally-Cleared Derivatives*, Basel Committee on Banking Supervision and Board of the International Organization of Securities Commissions, July 2012, available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD387.pdf> ("Consultation Paper"). See *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*, RIN 3038-AC97, 77 FR 41109 (July 12, 2012), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-07-12/pdf/2012-16983.pdf>.

⁷ *Consultation Paper*, *supra* note 6, at 14.

⁸ See *Proposal*, *supra* note 2 at 70268. See Letter from Karrie McMillan, General Counsel, ICI, to David Stawick, Secretary, CFTC (July 11, 2011).

offset their exposures and prevent them from building up exposures they cannot fulfill. As discussed below, we continue to believe that a two-way margining requirement is critical to the protection of counterparties (such as registered funds) and to reduce a build-up of systemic risk at institutions that engage in a significant amount of swap transactions.

Initial Margin

Two-way margin is an essential component of managing risk for swaps transactions as well as for reducing systemic risk. The collection of two-way margin helps to protect the individual counterparties to a swap transaction. The purpose behind collecting margin is to cover exposures by ensuring that counterparties can meet their financial obligations. The collection of two-way initial margin is the most effective risk reduction tool against residual counterparty credit risk. Two-way exchange of initial margin provides each counterparty protection against the future replacement cost in case of a counterparty default. Initial margin also helps to protect a party to a swap transaction from future credit risk posed by its counterparty. Furthermore, requiring an SBSB to post initial margin to a non-SBSB counterparty promotes central clearing by removing an incentive – avoidance of posting initial margin – for an SBSB to structure a transaction, where possible, so that it need not be cleared.

Variation Margin

The daily collection of variation margin also serves to remove current exposure from the swaps markets for all participants and to prevent exposures from accumulating. Two-way exchange of variation margin will provide protection to market participants against the market value losses that could otherwise build up at SBSBs (entities that engage in the most significant amount of swap transactions), which could threaten systemic stability.

For all of these reasons, ICI believes the objectives of the global regulators to reduce systemic risk and promote central clearing by imposing a two-way margin requirement are in line with the Dodd-Frank Act, which requires that margin requirements offset the greater risk to the SBSB or MSBSP and financial system arising from the use of swaps that are not cleared. We recommend that the SEC include these important protections in its final rule.

Use of Thresholds

In a departure from the proposal of the prudential regulators and the CFTC, the Commission does not propose to permit the application of thresholds for initial margin (the amount under which an entity would have the option of not collecting initial margin) to different types of derivatives market participants. Although we disagree with the specific proposals put forth by the prudential regulators and the CFTC regarding the types of entities that should benefit from the use of thresholds, we believe that the use of thresholds in appropriate circumstances may alleviate the potential liquidity impact of margin requirements for uncleared swaps.

We strongly recommend that the Commission permit an entity that satisfies certain criteria – limitations on the ability to leverage or being subject to other types of substantive financial regulation – to use an initial margin threshold. As the SEC is well aware, funds that are registered under the Investment Company Act of 1940 (“ICA”) are highly regulated entities subject to explicit securities regulations and limitations.

The ICA imposes stringent regulation on funds that is not imposed on other financial entities or products under the federal securities laws. This oversight prevents excessive speculation and contributes to the stability of funds. In particular, funds have strict leverage restrictions and limitations on exposure to certain counterparties – *i.e.*, securities-related businesses. In addition to regulating their disclosures to investors and their daily operations, the federal securities laws subject funds and their advisers to antifraud standards and provide the SEC with inspection authority over funds and their investment advisers, principal underwriters, distributing broker-dealers and transfer agents. The Financial Industry Regulatory Authority, Inc. also has oversight authority with regard to funds’ principal underwriters and distributing broker-dealers. Each of these measures contributes to the low-risk nature of funds as swap counterparties.

We believe a sound policy rationale for a threshold is to reduce the amount of collateral required for financially sound entities or entities that are subject to stringent regulation. Funds, as highly regulated, financially sound derivatives counterparties that are subject to such strict securities regulation should be subject to an appropriately high margin threshold.

II. Election of Independent Custodian

Uncleared Swaps

The SEC proposes to require an SBSB to take capital charges in certain circumstances with respect to collateral of its SB swap customers and SB swap counterparties. For non-cleared SB swaps, the proposed amendments to Rule 15c3-1 and proposed Rule 18a-1 would apply, among others, a capital charge to an SBSB that does not hold the margin collateral because the counterparty is requiring the margin collateral to be segregated pursuant to Section 3E(f) of the Exchange Act. According to the SEC, collateral held in this manner would not meet collateral requirements in proposed Rule 18a-3 because it would not be in the physical possession or control of the SBSB nor would it be capable of being liquidated promptly by the SBSB without the intervention of another party. As a result, the SEC is proposing to require that an SBSB take a capital charge equal to the margin amount less any positive equity in the account of the counterparty.

Section 3E(f) of the Exchange Act specifically provides that a counterparty of an SBSB or MSBSP in an uncleared swaps transaction may require any collateral posted as initial margin to be carried by an independent third-party custodian and be designated as a segregated account for and on behalf of the counterparty. This provision, which was added by the Dodd-Frank Act, allows a

counterparty to request an additional level of protection for the collateral it has posted. As noted by the Commission, the “objective of individual segregation is for the funds and other property of the counterparty to be carried in a manner that will keep these assets separate from the bankruptcy estate of the SBSB or MSBSP if it fails financially and becomes subject to a liquidation proceeding. Having these assets carried in a bankruptcy-remote manner protects the counterparty from the costs of retrieving assets through a bankruptcy proceeding”⁹

In addition to keeping collateral bankruptcy-remote, tri-party arrangements provide for the custodian to assume certain responsibilities with respect to safeguarding the interests of both counterparties, including maintaining custody of the collateral, and being involved in effecting the transfer of funds and securities between the two parties. This arrangement helps to avoid market disruptions in the case of a default by a counterparty or other event necessitating access to the collateral. The protections provided to the counterparties from this structure are important to managing the risk created by exposure to a particular counterparty. These tri-party arrangements also can help prevent fraud and misappropriation of collateral. Similarly, this structure serves to reduce the risk to the financial system associated with the particular counterparty. Finally, for registered funds, collateral may be precluded from being held by an SBSB or MSBSP that is not a bank. Under the ICA, registered funds are required to custody their assets in accordance with Section 17 of the ICA. Nearly all registered funds use a U.S. bank custodian for domestic securities although the ICA permits other limited custodial arrangements.¹⁰ Although Rule 17f-1 permits registered funds to use a broker-dealer custodian, the rule imposes strict conditions that are difficult to satisfy.

Given the important protections that an independent custodian can provide, we are concerned that the SEC’s proposal to impose capital charges on SBSBs with respect to the collateral when a counterparty elects an independent custodian could increase costs and disadvantage such counterparties electing these protections. Because SBSBs would be required to take a capital charge for collateral held by an independent custodian, the SBSBs would likely pass along those costs of holding extra capital on to their counterparties. We do not believe that a regulatory framework should penalize a counterparty for exercising the right to obtain greater protection that has been explicitly provided in the Dodd-Frank Act. Although we recognize that a counterparty requesting an independent custodian may incur some costs in setting up a tri-party arrangement, we are concerned that a capital charge on SBSBs would impose an additional onus on SBSBs that would ultimately be passed onto counterparties that choose to make an election for an independent custodian. We request that the Commission eliminate the

⁹ See *Proposal*, *supra* note 2, at 70275.

¹⁰ In addition to Section 17, the ICA contains six separate custody rules for the different types of possible custody arrangements: Rule 17f-1 (broker-dealer custody); Rule 17f-2 (self custody); Rule 17f-4 (securities depositories); Rule 17f-5 (foreign banks); Rule 17f-6 (futures commission merchants); and Rule 17f-7 (foreign securities depositories). Foreign securities are required to be held in the custody of a foreign bank or securities depository.

capital charge requirement for SBSBs in situations in which the counterparty elects an independent custodian.¹¹

Moreover, we believe that the SEC's concern that the SBSBs may not be able to liquidate promptly collateral held by an independent custodian could be adequately addressed by requiring that the custodial arrangements contain certain provisions that are currently included in the tri-party arrangements for swaps and SB swaps to ensure prompt access to the collateral. These arrangements provide an appropriate model and would provide SBSBs access to the collateral in a timely manner in the event of a counterparty default. For example, we understand that the terms in the tri-party arrangements permit the pledgee of the collateral to issue an "entitlement order," in the event of a default of the pledgor or certain other enumerated termination events. The entitlement order would give the pledgee the right to exercise exclusive control over the posted collateral by providing the custodian with a notice. Upon receipt of the notice, the custodian will follow the "entitlement order" instructions without further consent by the pledgor. We understand that entitlement orders are carried out promptly by the custodians, and the SBSBs can have immediate access to the collateral. We believe requiring these types of terms in a custodial arrangement would give SBSBs ready and immediate access to the collateral and imposition of capital charges on SBSBs would not be necessary.¹²

Cleared Swaps

In addition, we request that the Commission permit a counterparty to request collateral for a cleared SB swap to be held by a third-party custodian. For similar reasons as a counterparty would request an additional level of protection for the collateral for uncleared SB swaps, a counterparty should be permitted to request this protection for collateral posted for cleared SB swaps. In addition, we understand that in the event of the default of the broker-dealer or SBSB, any collateral posted by the customers would likely be outside the broker-dealer's or SBSB's estate for bankruptcy purposes.

¹¹ The CFTC has not proposed to impose a capital charge on an SD or MSP when its customer elects an independent custodian. *Capital Requirements of Swap Dealers and Major Swap Participants*, 76 FR 27802, 27812 (May 12, 2011), available at <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-10881a.pdf> ("Commission has proposed to amend § 1.17(c)(2)(ii)(G) to provide that receivables from third-party custodians that arise from initial and/or variation margin deposits associated with bilateral swap transactions pursuant to proposed § 23.158 will be included in the FCM's current assets").

¹² To ensure that the SD or MSP receives the initial margin promptly and that the initial margin is returned to the counterparty when it is entitled to such return, the CFTC has proposed to require that the custody arrangement provide that turnover of control shall be made promptly upon presentation of a statement in writing that one party is entitled to such turnover pursuant to an agreement between the parties. *Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy*, 75 FR 75432 (Dec. 3, 2010), available at <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2010-29831a.pdf>.

Customers with collateral held at third-party custodians should not need to wait for a pro rata distribution of the broker-dealer's or SBSB's bankruptcy estate or share in a shortfall, if any. Moreover, as noted above, the option for electing a third-party custodian is important for registered funds because of custodial requirements under the ICA. As a result of the requirements of Section 17(f) of the ICA, a registered fund, as a practical matter, may be unable to maintain its collateral with an SBSB that is not a bank.

We also believe that if custodial arrangements for cleared SB swaps were structured in the same/similar manner as we have proposed above for uncleared SB swaps, broker-dealers and SBSBs should have sufficient access to funds in a timely manner. It would therefore be unnecessary to impose capital charges on broker-dealers and SBSBs when their customers elect an independent custodian to hold collateral posted for cleared SB swaps.¹³

III. Collateral and Excess Collateral

Excess Securities Collateral

SBSBs would be required to perform two calculations as of the close of each business day with respect to each account carried by the firm for a counterparty.¹⁴ The first calculation would be the amount of "equity" in the account, which would mean the total current fair market value of securities positions in an account of a counterparty plus any credit balance and less any debit balance in the account after applying any qualifying netting agreement with respect to gross derivatives payables and receivables. The negative equity in an account would be equal to the SBSB's current exposure to the counterparty. There would be negative equity in an account if the value of the positions in the account was less than the amount of any payables owed by the counterparty. The second calculation would be to determine a "margin" amount for the account to address potential future exposure.

By noon of the next business day following the calculations, the SBSB would be required to collect cash, securities, and/or money market instruments from the counterparty in an amount at least equal to the negative equity (current exposure) in the account plus the margin amount (potential future

¹³ Similarly, the SEC proposes to impose a capital charge on an SBSB for cleared swaps if it collects margin collateral from a counterparty in an amount that is less than an amount determined by using the standardized haircuts under the proposed rules. Because the standardized deductions can be higher than the deductions imposed by a clearing agency, the SBSB will likely increase costs to the counterparty (fund) either in the form of increased collateral required (more than what is required under the clearing agency rules) or an increase in price.

¹⁴ An SBSB would be required to increase the frequency of the calculations during periods of extreme volatility and for accounts with concentrated positions.

exposure).¹⁵ The proposed rule would require the SBSB to take prompt steps to liquidate securities and money market instruments in the account to the extent necessary to eliminate an account equity deficiency.

The Proposal is currently silent with respect to situations in which there is positive equity in the account (in addition to the margin amount). We seek confirmation that customers of SBSBs are permitted to withdraw the positive equity in their accounts. Customers may prefer not to have more of their funds accumulate at the SBSB than necessary to meet the required requirements.

Eligible Collateral

Under the Proposal, an SBSB may only collect cash, securities, and/or money market instruments, and other types of assets are not eligible as collateral. The Proposal also would impose a haircut on collateral equal to the amounts of the deductions required under Rule 15c3-1 and proposed Rule 18a-1 in setting the collateral value for purposes of the minimum collateral requirement. We support the SEC's approach in providing a broader range of assets that would be eligible as collateral than the analogous CFTC provision, which would only permit cash and government securities.

IV. SB Swap Customer Reserve Account

The SEC proposes an alternative omnibus or "commingled" segregation approach for uncleared SB swaps under which an SBSB would be required to segregate securities and funds relating to uncleared SB swaps. Unless a counterparty either elects individual segregation or waives segregation, the counterparty would be an SB swap customer and entitled to share ratably with other SB swap customers in the fund of customer property held by the SBSB if it is liquidated.¹⁶ We support this general approach, which would provide that a counterparty of an SBSB to an uncleared swap would be treated as a "customer" and would be afforded certain additional protections.

Under the proposed omnibus segregation requirements, an SBSB also would be required to maintain a special account for the exclusive benefit of SB swap customers (separate from any other bank account of the SBSB). Such an account would be required to meet certain conditions to ensure that

¹⁵ We are concerned that a noon deadline may be operationally difficult and suggest an end-of-the day deadline tied to a cut-off time for margin call. For example, we believe SBSBs should collect by the end of the day following the margin calls made before 10 a.m. (*i.e.*, margin calls made before 10 a.m. on Monday should be collected by end of Tuesday). We suggest this time frame for one year after the compliance date of these rules to ensure that transfers can be effected operationally.

¹⁶ If a counterparty of an SBSB waives segregation, the counterparty agrees that cash, securities, and money market instruments delivered to the SBSB can be used by the SBSB for proprietary purposes and forgoes the protections of segregation. *See Proposal, supra* note 2, at 70288.

cash and qualified securities deposited are isolated from the proprietary assets of the SBSB and identified as property of the SB swap customers (“reserve account”).¹⁷

Under the proposal, an SBSB would be prohibited from using credits in the reserve account except for specified purposes, including using credits for debits of customers. The Proposal, however, does not require segregation of the amount owed to each customer, and the amount of funds in the account that an SBSB may use to finance other customers' debits under the reserve formula is not limited to the amount held for that particular customer. In effect, SBSBs would be permitted to use one customer's cash (credit item) to finance another customer's debit. We, therefore, are concerned that in the event of an SBSB's bankruptcy and shortfall of funds, there may not be sufficient funds available for other customers and non-defaulting customers would be subject to fellow customer risk. We strongly urge the Commission to revise the segregation requirements to prohibit the use of one customer's funds to margin or secure another customer's positions.¹⁸

Because the reserve account reflects what is owed to the SBSB's customers (including the collateral posted), the Commission would prohibit SBSBs from using these funds for their own proprietary use. For the same reason, the Commission should prohibit SBSBs from using more than the amount owed to a particular customer to finance that customer's debits. In a rapidly declining market, an SBSB may not have the time to obtain more collateral from a customer with losses, which could deplete the reserve account to the detriment of other non-defaulting customers. In such a situation, the amount of collateral held by the SBSB for the defaulting customer may not adequately secure the debits of a defaulting customer and the non-defaulting members would have to share in the shortfall.¹⁹

¹⁷ The reserve account would be defined as an account at a bank that is not the SBSB or an affiliate of the SBSB and that meets certain other conditions specified in proposed Rule 18a-4(a)(7)(i) – (iii). The SEC would require the SBSB to maintain cash and/or qualified securities in amounts computed in accordance with the formula in Exhibit A to proposed Rule 18a-4. The proposed formula would require SBSBs to add up various credit items and debit items and to maintain in the customer reserve account any amount by which the total credits exceed the total debits after applying certain deductions specified in the proposed rule.

¹⁸ For cleared swaps, the omnibus segregation requirements of Rule 15c3-3 would require broker-dealers to maintain a reserve of funds or qualified securities in an account at a bank that is at least equal in value to the net cash owed to customers. For reasons similar to those discussed above for SBSBs, we believe broker-dealers also should be prohibited from using more than the amount owed to a particular customer to finance that customer's debits. The CFTC recently proposed amendments to their rules to enhance protections to customers and customer funds held at futures commission merchants (“FCMs”). One of the proposed amendments would prohibit an FCM from using one customer's funds to margin or secure another customer's positions and from using a customer's funds to extend credit to any other person. *Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations*, 77 FR 67866 (Nov. 14, 2012), available at <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-26435a.pdf>.

¹⁹ In the cleared swaps context, the CFTC adopted the “legally segregated, operationally commingled model” for segregation, which is intended to mitigate fellow-customer risk. See *LSOC Adopting Release*, *supra* note 3.

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We understand that some large institutional customers currently contract with their SBSBs to prohibit the SBSBs from using their funds for the benefit of other customers. We believe that this protection should not depend on whether a counterparty has the economic power to negotiate such protection but should be extended to all counterparties/customers of SBSBs.

* * *

We appreciate the opportunity to comment on the Proposal. ICI recommends that the Proposal be modified to ensure the protection of counterparties to SBSBs and to prevent the build-up of systemic risk at SBSBs. We also believe that the SEC's capital requirements should not be crafted to penalize counterparties that elect a protection that has been specifically provided under the Dodd-Frank Act. If you have any questions on our comment letter, please feel free to contact me at (202) 326-5815, Sarah Bessin at (202) 326-5835, or Jennifer Choi at (202) 326-5876.

Sincerely,

/s/

Karrie McMillan
General Counsel

cc:

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The Honorable Luis A. Aguilar
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