

**MEMORANDUM**

TO: File No. S7-05-14

FROM: Richard E. Grant  
Office of Commissioner Michael S. Piwowar

DATE: November 16, 2016

SUBJECT: Email from the Institute of International Bankers

On November 16, 2016, Commissioner Piwowar's office received the attached email from Sally Miller of the Institute of International Bankers regarding the Commission's proposed rules on recordkeeping and reporting requirements for security-based swap dealers, major security-based swap participants, and broker-dealers under Title VII of the Dodd-Frank Act.

**From:** Sally Miller [REDACTED]  
**Sent:** Wednesday, November 16, 2016 4:46 PM  
**To:** Konick, Jule  
**Subject:** Potential foreign government securities based swap inquiries

Dear Commissioner Piowar:

I am sure you are quite busy as a result of last week's election but I wanted to give you a head's up on an issue circulating in foreign government circles involving two SEC swap rules, one final and one proposed. We believe this issue may be raised with Chair White and yourself given the swap agenda outlined this week by Chair White and wanted to bring it to your attention. To size the issue for your consideration, we believe this issue could impact 50% or more of current overall security-based swap dealing activity.

You will remember in our September 16<sup>th</sup> meeting I mentioned that IIB and SIFMA had submitted a possible solution to the staff of the Division of Trading and Markets to allow non-resident security based swap dealers (SBSDs) to comply with both home country law and SEC regulations. Specifically, I refer to (1) final SEC Rule 15Fb2-4 which requires a non-resident SBSBD to certify that it can, as a matter of law, and will provide the SEC with prompt access to its books and records and provide the SEC with a legal opinion to that effect and (2) proposed SEC Rules 18a-5(a)(10) and (b)(8), which, as part of an SBSBD's recordkeeping obligations, require the SBSBD to obtain specified questionnaires from its associated persons for the purposes of conducting background checks. As you know, many non-resident SBSBDs are headquartered and/or operate in non-U.S. jurisdictions where blocking, privacy and secrecy laws as well as other legal barriers would prevent them from directly providing the SEC with full access to their books and records located outside of the U.S., especially those books and records that relate to non-U.S. counterparties. In addition, many other jurisdictions do not permit SBSBDs to conduct background checks for the full range of employees falling within the SEC's broad definition of associated persons (which covers, for example, back office personnel who have no interactions with U.S. customers).

The IIB and SIFMA believe that our suggested approach addresses key staff concerns, even going further than what the CFTC requires under its parallel rules. We have been meeting with the staff to discuss our approach and while the staff has been generous with its time, it appears that there is still much work to be done to come to a resolution that is both satisfactory to the SEC and legally possible for non-resident SBSBDs to meet. If the SEC finalizes its remaining SBSBD rules (the recordkeeping rule noted above, capital and margin rules, and waiver processes for disqualified associated persons) before the end of the year, as Chair White has indicated she would like to do, then full SBSBD registration could take effect by next summer. In such a case, there is concern that there will be insufficient time in which to resolve this issue. As a result, non-resident SBSBDs will most likely shrink their security based swap activities to below the applicable de minimis amounts, thereby increasing concentration risk in those few domestic SBSBDs not subject to certification and legal opinion requirements. Domestic SBSBDs will also face problems conducting background checks on associated persons located abroad. We also believe liquidity in these markets will be reduced and U.S. investors will face less competitive pricing.

Signaling before the end of the year that there will be additional time for the staff to resolve these important issues might discourage non-resident SBSBDs from retreating from this market in early 2017.

IIB and SIFMA would welcome the opportunity to discuss this matter further with you. I will have my assistant call Jule Konick in the next week or so to see if we might arrange a brief meeting with you.

Best regards,

Sally

**Sarah A. Miller**  
Chief Executive Officer

**Institute of International Bankers**

299 Park Avenue, 17th Floor  
New York, NY 10171

Direct: [REDACTED]

Fax: [REDACTED]

Main: (212) 421-1611 [REDACTED]

E-mail: [REDACTED]

[www.iib.org](http://www.iib.org)

*"Advancing the Interests of the International  
Banking Community in the United States"*



Please consider the environment before printing this e-mail

**CONFIDENTIALITY NOTICE:** The information contained in this message is intended only for the use of the individual to whom it is addressed and may contain information that is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the message and deleting it from your computer. Thank you. Institute of International Bankers