



News Release

Katrina Keller 646.637.9281 (TBMA)
Scott Marra 212.901.6013 (ISDA)
James Spellman 202.216.2000 (SIA)
www.bondmarkets.com
www.isda.org
www.sia.com

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ISDA

Industry Associations Find Proposed Regulatory Guidance on Complex Structured Finance Activities Overly Broad



New York, Washington – The Bond Market Association, the International Swaps and Derivatives Association and the Securities Industry Association have submitted a joint comment letter on guidance relating to complex structured finance transactions proposed by a group of U.S. regulatory agencies in May, 2004. The associations endorsed the risk management objectives of the guidance, but expressed concern that it is overly broad and would result in burdensome and costly procedures for a wide range of structured transactions. As proposed, the guidance goes well beyond international supervisory standards and, particularly in the case of offshore transactions, creates obligations that would be difficult if not impossible for financial firms to meet. The associations suggest that the guidance would be more effective if it followed a principles-based approach, and request assurance from regulators that the guidance is not intended as a precursor to further regulation or to add to existing legal requirements for structured transactions.

“The proposed guidance could impose significant burdens on market participants and discourage innovation,” said Micah S. Green, president of The Bond Market Association. “Unless the scope is clarified or narrowed, it will result in a system that leaves financial institutions bogged down in process and unable to focus on transactions that most warrant increased scrutiny.”

Structured financial transactions include products such as derivatives used to minimize market and credit risk, asset-backed securities and specialized conduits.

The associations find the scope of the guidance overly broad, as it could be interpreted to apply to any structured transaction containing one or more of a range of characteristics common in routine transactions, and argue that the costs of undertaking such reviews would outweigh the benefits by inhibiting creative risk management solutions and creating a competitive disadvantage for firms.

“The current proposals could disrupt sound risk management practices by introducing overly onerous controls,” said Robert Pickel, chief executive officer and executive director of the International Swaps and Derivatives Association. “Firms are already dealing appropriately with any potential issues arising from complex transactions in ways that are consistent with global disclosure requirements and with their own internal systems.”

One particular concern is the statement in the proposed guidance that financial institutions, instead of a company’s management, are responsible for ensuring that a company’s accounting, disclosure and tax treatment of a transaction are correct and ensuring that the transaction is appropriate for the company. The proposed guidance also includes onerous documentation responsibilities, such as retaining documents on transactions that aren’t pursued.

“The proposed guidance should be clarified to indicate that it reflects existing legal standards and supervisory rules, and does not intend to constitute new legal duties,” said Marc Lackritz, president of the Securities Industry Association. “We also urge the U.S. regulators to enter into a dialogue with their foreign counterparts so as to minimize any competitive inequalities for U.S. financial firms transacting with non-U.S. customers. A failure to do so will not only stifle innovation in the financial markets, but significantly impair the ability of U.S. financial institutions to compete on a level playing field with their foreign competitors.”

The proposed guidance was issued jointly by the Office of the Comptroller of the Currency, Treasury, Office of Thrift Supervision, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and, the Securities and Exchange Commission.

The Bond Market Association, with offices in New York, Washington, D.C. and London, represents securities firms and banks that underwrite, trade and sell debt securities and other financial products globally.

ISDA is the global trade association representing leading participants in the privately negotiated derivatives industry. Members include most of the world's major institutions that deal in privately negotiated derivatives, as well as many of the businesses, governmental entities and other end users that rely on over-the-counter derivatives to manage efficiently the financial market risks inherent in their core economic activities.

The Securities Industry Association brings together the shared interests of nearly 600 securities firms to accomplish common goals. Member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance.