



News Release

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ISDA



Industry Associations Commend Regulators for Revised Regulatory Guidance on Complex Structured Finance Activities

New York, Washington – The Bond Market Association, the International Swaps and Derivatives Association and the Securities Industry Association have submitted a comment letter on the revised guidance relating to complex structured finance transactions that was proposed by a group of U.S. regulatory agencies. The Associations commended the regulators for taking a significant step forward in producing a clear and flexible set of principles that will enable financial institutions to design internal controls for structured transactions that pose heightened levels of legal and reputational risk. The guidelines ensure such transactions are reviewed and approved in a manner consistent with sound risk management principles, the Associations concluded.

The Associations requested that the Agencies reconsider one requirement mandating that financial institutions document the reasons for their approval or disapproval of an elevated risk structured transaction. They agreed with the requirement to document the fact of approval and any conditions to that approval. However, they argued that the requirement to memorialize a firm's analysis would cause firms to go to significant lengths to evidence the scope and quality of their consideration of all the potential risks. Such an effort, the letter argues, would generate a demand for documentation that bears no relation to what management believes, in the exercise of good judgment, is appropriate under the circumstances.

Finally, the Associations commented on a letter recently filed with the regulators by a group of academics, who argued that the guidance did not require financial institutions to review high risk transactions. The Associations pointed out that the Guidance unequivocally states that institutions should subject high-risk transactions to enhanced scrutiny. The Associations also noted that the Guidance constitutes supervisory advice on appropriate risk management policies; it does not insulate financial institutions from the need to manage their activities in light of applicable legal standards.

Marjorie Gross, Senior Vice President and Regulatory Counsel of the Bond Market Association said, “The revised guidance recognizes the complex nature of some structured finance transactions and effectively balances the need for rigorous risk management processes with the industry’s desire for a flexible, principle-based regulatory approach.”

“The regulators have made great strides in providing guidance to financial institutions in their review of transactions which may contain elevated levels of legal or reputational risk,” said Greg Zerzan, Counsel and Global Head of Public Policy with ISDA. “With the clarifications sought by the Associations the Interagency Guidance is sure to be useful to firms as they seek to provide their clients with new and innovative financial products.”

“This revised guidance is in line with the approach taken to address these concerns by supervisors in other sophisticated marketplaces, such as the U.K., and places U.S. financial firms on a level playing field with their counterparts in foreign jurisdictions. It is a significant step forward,” said Ira Hammerman, General Counsel of SIA.

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

ISDA, which represents participants in the privately negotiated derivatives industry, is the largest global financial trade association, by number of member firms. ISDA was chartered in 1985, and today has over 700 member institutions from 50 countries on six continents. These 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 more than 600 securities firms. SIA members (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.