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March 21, 2022

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

**Re: Notice of Proposed Rulemaking on the Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps; Prohibition Against Undue Influence over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions (File No. S7-32-10)**

Dear Ms. Countryman:

The Institute of International Bankers (“IIB”), the International Swaps and Derivatives Association (“ISDA”), and the Securities Industry and Financial Markets Association (“SIFMA”) (together, the “Associations”)<sup>1</sup> appreciate the opportunity to provide comments to the Securities and Exchange Commission (the “Commission” or “SEC”) on the proposed additional protections for chief compliance officers (“CCOs”), set forth in proposed Rule 15Fh-4(c) under the Securities Exchange Act of 1934 (the “Exchange Act”), as reflected in the above-captioned proposed rulemaking (the “Proposed Rule”).<sup>2</sup>

Proposed Rule 15Fh-4(c) would prohibit any officer, director, supervised person or employee of security-based swap (“SBS”) dealer or major SBS participant (each, an “SBS Entity”) from taking any action, directly or indirectly, to “coerce, manipulate, mislead, or fraudulently influence” an SBS Entity’s CCO.<sup>3</sup> We support the Commission’s objective of fostering compliance with the securities laws and supporting the integrity of the SBS markets by protecting the independence of an SBS Entity’s CCO.

However, the scope of Proposed Rule 15Fh-4(c) is unclear and could lead to confusion and uncertainty in the market as to which activities are prohibited. Not only are the actions that are prohibited by the text of the rule vague and undefined—for example, it is not clear what it means to “coerce” a CCO—the Commission’s description

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<sup>1</sup> Descriptions of the Associations are included in the attached Appendix.

<sup>2</sup> SEC Release No. 34-93784 (December 15, 2021), 87 Fed. Reg. 6652 (February 4, 2022).

<sup>3</sup> Proposed Rule 240.15Fh-4(c).

of prohibited conduct could result in an even broader interpretation of the Proposed Rule. For example, throughout the Proposed Rule release, the Commission references the scope of culpable conduct to also include actions that “*otherwise interfere with*”<sup>4</sup> a CCO and, in other contexts, references its objective of “foster[ing] compliance without *undue influence*.”<sup>5</sup> Furthermore, the Proposed Rule does not provide any materiality or intent standards, which could allow for immaterial or inadvertent actions or statements to result in liability.

As a result of these ambiguities, the Proposed Rule would likely have the undesired effect of chilling communication between the CCO and the employees, supervised persons, directors and officers of the SBS Entity in an effort to avoid violations of the Proposed Rule. For example, it is common for business-line supervisors, operations staff, and others to engage in robust dialogue with a CCO, and frequently internal or external legal counsel, about how to interpret or apply regulatory requirements. The Proposed Rule could foster questions about when good faith disagreements that take place in these discussions involve “interference” with or “undue influence” over a CCO. In the same vein, questions might arise regarding when legitimate discussions about budget or resources raise issues under the Proposed Rule.

In order to avoid this unintended consequence, we recommend that the Commission revise the Proposed Rule to identify more clearly the type of conduct that will result in a violation of Proposed Rule 15Fh-4(c). Specifically, we recommend that the Proposed Rule make it unlawful for any officer, director, supervised person, or employee of an SBS Entity, or any person acting under such person’s direction, to, directly or indirectly, (i) knowingly make any untrue statement of a material fact to the CCO or (ii) knowingly omit to state a material fact necessary in order to make the statements made to the CCO, in the light of the circumstances under which they were made, not misleading.

We believe that this approach would effectively advance the Commission’s goal of preventing interference with an SBS Entity’s CCO, while also providing additional clarity for market participants. Indeed, we note that the examples of fraudulent conduct cited as problematic in the Proposed Rule would be covered under our proposed language.<sup>6</sup> Furthermore, our proposed language has the additional benefit of being familiar to SBS Entities and their directors, officers and employees, as it is modeled closely on language used in other, similar rules.<sup>7</sup> Ultimately, we believe this

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<sup>4</sup> Proposed Rule at p. 6664 (emphasis added).

<sup>5</sup> *Id.* at p. 6665 (emphasis added).

<sup>6</sup> Specifically, examples where (1) officers, directors or employees hide transactions, submit false valuations or manipulate or fraudulently influence the CCO; or (2) employees mislead the CCO by submitting false documentation to the CCO in order to avoid disclosure requirements (*See* Proposed Rule at p. 6665) would both be captured under the proposed amendments.

<sup>7</sup> *See, e.g.*, 17 C.F.R. § 10b-5(b) (“It shall be unlawful for any person, directly or indirectly . . . [t]o make any untrue statement of a material fact or to omit to state a material fact necessary in order

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revision will result in a clearer and more workable rule for the market, while also advancing the Commission's aims.

We also respectfully submit that the existing independence requirements of Rule 15Fk-1 are sufficient to address the risks of other undue influence on a CCO.<sup>8</sup> Specifically, because the CCO is required to report directly to the board of directors or senior officer of the SBS Entity, and the CCO's compensation and removal requires approval of a majority of the SBS Entity's board of directors, attempts by others to influence the CCO inappropriately should be unavailing.

We appreciate the opportunity to provide comments in response to the Proposed Rule and the Commission's consideration of our views. If you have any questions or would like additional information, please contact the undersigned.

Very truly yours,



Stephanie Webster  
General Counsel  
Institute of International Bankers



Chris Young  
Head of U.S. Public Policy  
International Swaps and Derivatives Association



Kyle Brandon  
Managing Director, Head of Derivatives Policy  
Securities Industry and Financial Markets Association

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to make the statements made, in the light of the circumstances under which they were made, not misleading . . .").

<sup>8</sup> 17 C.F.R. § 250.15Fk-1.

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cc: The Hon. Gary Gensler, SEC Chairman  
The Hon. Hester M. Peirce, SEC Commissioner  
The Hon. Allison Herren Lee, SEC Commissioner  
The Hon. Caroline A. Crenshaw, SEC Commissioner

Director Haoxiang Zhu, SEC Division of Trading and Markets  
David Shillman, Associate Director, SEC Division of Trading and Markets

## APPENDIX

The **Institute of International Bankers** is the only national association devoted exclusively to representing and advancing the interests of the international banking community in the United States. Its membership is comprised of internationally headquartered banking and financial institutions from over 35 countries around the world doing business in the United States. The IIB's mission is to help resolve the many special legislative, regulatory, tax, and compliance issues confronting internationally headquartered institutions that engage in banking, securities and other financial activities in the United States. Through its advocacy efforts the IIB seeks results that are consistent with the U.S. policy of national treatment and appropriately limit the extraterritorial application of U.S. laws to the global operations of its member institutions.

Since 1985, the **International Swaps and Derivatives Association** has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 960 member institutions from 78 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: <https://www.isda.org/>. Follow us on Twitter, LinkedIn, Facebook and YouTube.

The **Securities Industry and Financial Markets Association** is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.