OneChicago

Via electronic submission

February 19, 2013

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchanges Commission
100 F. St. NE.
Washington, D.C. 20549

RE: File Number S7-08-12
Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers

Dear Ms. Murphy:

OneChicago, LLC ("OCX") appreciates the opportunity to comment on the Securities and Exchange Commission's ("SEC") proposed rules for Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers. Notice of the proposed rule was published in the Federal Register on November 23, 2012. The proposed rule is focused on nonbank Security Based Swap Dealers ("SBSD") and nonbank Major Security Based Swap Participants ("MSBSP").

OneChicago is registered as a designated contract market with the Commodity Futures Trading Commission ("CFTC") and as a national securities exchange for the sole purpose of trading security futures with the SEC. The SEC and the CFTC jointly regulate security futures trading.

Security futures products are a delta one[1] substitute for the underlying equity. Security futures are equity finance products that provide the ability to maintain and/or obtain long or short equity delta exposure at a lower overall finance cost, which is oftentimes the largest cost borne by investors. The OneChicago OCX.NoDivRisk® Exchange for Derivative Related Position ("EDRP" or "EFP") trade is an exchange traded, central counterparty cleared, economic equivalent to OTC equity swaps including OTC equity repos and OTC Securities Lending transactions; the very transactions that the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") has mandated to migrate to exchange traded, central counterparty cleared transactions.

[1] Delta One products are a class of financial derivative that have no optionality and, as such, have a delta of one (or very close to one); that is, a 1% move in the underlying results in a nearly 1% move in the derivative.

Security Futures Margins

OneChicago margin levels are set jointly by the SEC and the CFTC pursuant to authority delegated to them by the Board of Govenors of the Federal Reserve System. In 2002, the SEC and the CFTC issued joint rules governing security futures margins for customers which required 20% minimum initital margins, absent some strategy based offsets. The customer 20% minimum margin levels have been in place since that time. Non-customer, generally Exempted Persons[2], good faith margins can be established at levels agreed upon between the carrying firm and the non-customer provided that the carrying firm takes a Net Capital charge for any difference between the equity in the account and the haircuts outlined in SEC Rule 15c3-1.

Broker-Dealers (a/k/a creditor or security futures intermediary) can also offer customer portfolio margining ("CPM") for security futures customers. The CPM level is currently set at 15% regardless of any other positions held by the customer. In other words, it is not risk based margining; it is a static percentage of notional value. Hence, CPM for security futures may over-margin some positions and under-margin others.

Critically, all entities holding security futures positions are subject to initial and variation margins. Further, all entities participating in security futures are held to the discipline of daily marked to market pay/collect cycles; a/k/a variation margin. The discipline of marked to market cannot be overstated. On a daily basis, end users, commercial or otherwise, affirm their financial wherewithal to maintain the position by fully funding any losses[3].

Proposed Margins for Non-Cleared Security Based Swaps

We are pleased to see that the SEC has based its proposal on the existing capital, margin and segregation rules for broker-dealers. The SEC must recognize that SBSs compete with exchange traded derivatives, including security futures products listed by OneChicago. It is critically important that the SEC maintain a level playing field for like financial instruments. As noted above, currently all security futures customers are subject to a minimum of 20% initial margin for naked positions, Exempted Persons are generally subjected to a 15% initial margin treatment for non-ETF naked positions.

We are concerned with the Commission's proposed treatment of nonbank SBSD for non-cleared SBSs. Specifically, it is inappropriate to provide for no margin collection for commercial end users or for another SBSD. Both those entities carry market risk and certainly can default on their obligations to the SBSD who may then be faced with liquidity challenges. The lack of margin from these market participants can be a source of systemic risk that can ripple through the financial market ecosystem.

Further, under alternative A, the proposal allows a SBSD to not collect margin from another SBSD and not take a Capital Charge for the exposure. As we have seen over the last several years, firms participating in the financial markets can and do fail. As such, it is inappropriate to

[2] Exempted Persons are defined in SEC Rule 401(a)9.
[3] They are also credited with any gains.

allow for a SBSD to carry non-cleared SBS exposure against another SBSD without any requirement to collect margin or to take a capital charge to recognize the risk in the SBS and in the counterparty

While it is reasonable to assume that simple equity swaps will be cleared and thus subject to margin requirements; there is no such requirement and there has been no such determination as to what swaps will be required to be cleared. The Commission acknowledges that they have not yet made any mandatory clearing determinations under the authority of section 3C(a)(1) of the Exchange Act and cannot estimate at this time how much of the SBS markets may ultimately be subject to such determination. Therefore, it is possible, albeit unlikely, that SBS commercial end users and SBSDs will not be required to post margin while commercial users of security futures are required to post margin—clearly an unequal situation. SBSD and MSBSP should be required to collect margin for all counterparties. Absent requiring all participants to post cross initial and variation margin, the SEC is creating an incentive for SBSDs and MSBSP to try to structure SBS deals to avoid central clearing where they will be required to post initial and variation margins.

The proposal also does not provide for a minimum margin amount, in fact, it goes the other way and provides for a floor under which margin need not be collected. Our security futures are subject to a minimum margin charge of 25% times the multiplier for each security-future, generally $25 per contact for a standard product. The proposed minimum of $100,000 is the equivalent to allowing a security futures participant to carry 4,000 futures offset against 400,000 shares of stock without posting any margin. Again, a level playing field for like products should be promoted. Accordingly, there should be a minimum margin charge.

While there is some merit in the Commission's view that the Net Capital charge taken by the nonbank SBSD will address the potential deliterious systemic risk that would result from a large commerical end user defaulting on payments to the SBSDs, the proposal is allowing the nonbank SBSD to subsidize that risk. In the current cleared equity derivative environment, that choice is only allowed for Exempted Persons who are under their own regulatory requirements.

Conclusion

OneChicago thanks the SEC for the opportunity to comment on this subject. We would be happy to discuss any related issues with SEC staff. If you have any questions, please do not hesitate to contact me at (312) 424-8512 or via email at tmccabe@onechicago.com

Sincerely,

Thomas G McCabe

Thomas G McCabe
Chief Operating Officer

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