

MEMO# 25783

January 10, 2012

ICI Draft Letter on CFTC Proposal for Making a Swap "Available to Trade" - Comments Requested by January 24

[25783]

January 10, 2012

TO: SEC RULES COMMITTEE No. 2-12

DERIVATIVES MARKETS ADVISORY COMMITTEE No. 1-12

CLOSED-END INVESTMENT COMPANY COMMITTEE No. 3-12 RE: ICI DRAFT LETTER ON CFTC PROPOSAL FOR MAKING A SWAP "AVAILABLE TO TRADE" - COMMENTS REQUESTED BY JANUARY 24

The Commodity Futures Trading Commission ("Commission") recently proposed rules regarding the process for a designated contract market ("DCM") or swap execution facility ("SEF") to make a swap "available to trade" for purposes of the Commodity Exchange Act ("Proposed Rules"). Comments on the Proposed Rules are due to the Commission no later than February 13, 2012.

Our draft comment letter on the Proposed Rules is attached. The letter expresses concern that the Proposed Rules fail to provide the Commission with a significant enough role in the process for making a swap available to trade so as to protect against the conflicts of interest faced by DCMs and SEFs. It therefore recommends that the Commission revise the factors a DCM or SEF may consider as part of a "make available to trade" ("MAT") determination so that they are more objective, and consideration of each factor is mandatory. The letter also suggests that the Commission incorporate into the Proposed Rules a process for determining that a swap is no longer available to trade in order to ensure sufficient liquidity in swaps that have been made available to trade, and provide certainty to the swaps markets. In addition, the comment letter expresses concern that the proposed definition of "economically equivalent swap" gives too much discretion to a DCM or SEF without providing objective standards, and would create uncertainty regarding which swaps are subject to a MAT determination.

The comment letter states that it is important for all market participants to have an adequate amount of time following a final MAT determination to prepare their systems and procedures before that determination is made effective. It explains that, while ICI is not

opposed to the Commission's approach to addressing these concerns through implementation schedules, it is essential that such an approach reflects the sequencing issues that ICI addressed in its comments on the Commission's proposed implementation schedules. Finally, the letter recommends that the Commission provide for an effective means to notify DCMs, SEFs, and market participants in both the cleared and over-the-counter markets when a MAT determination has been made, including a determination that a swap is economically equivalent to a swap that has been made available to trade.

Please provide all comments on the draft letter to me (sarah.bessin@ici.org), preferably in writing, by Tuesday, January 24. Please also note that the Commission plans to hold a roundtable on the Proposed Rules during the comment period. We have heard the roundtable may be on January 30. If our comments change significantly based on the roundtable, we will recirculate another draft of the letter.

Sarah A. Bessin
Senior Counsel

[Attachment](#)

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.