

**MEMO# 29228**

August 5, 2015

# **Draft Comment Letter to CFTC on Roundtable Regarding Process for Making a Swap Available to Trade - Your Comments Requested by August 11**

[29228]

August 5, 2015

TO:

DERIVATIVES MARKETS ADVISORY COMMITTEE No. 57-15

RE:

DRAFT COMMENT LETTER TO CFTC ON ROUNDTABLE REGARDING PROCESS FOR MAKING A SWAP AVAILABLE TO TRADE – YOUR COMMENTS REQUESTED BY AUGUST 11

On July 15, 2015, the Division of Market Oversight of the Commodity Futures Trading Commission (“CFTC” or “Commission”) held a public roundtable on the process for making a swap available to trade, or subject to mandatory trading (the “made available to trade” or “MAT” process). The MAT process refers to the CFTC rules pursuant to which a swap becomes subject to mandatory trading on a swap execution facility (“SEF”) or designated contract market (“DCM”). As a follow-up to the roundtable, ICI has drafted the attached comment letter, which is intended to supplement our previous comment letter regarding the MAT process [\[\\*\]](#) and to elaborate on our recommendations to address the risks and problems inherent in the current process.

Comments are due to the CFTC by August 17. Please provide any written comments you may have on our draft comment letter to Sarah Bessin at [sarah.bessin@ici.org](mailto:sarah.bessin@ici.org) by Tuesday, August 11. We will also discuss the draft comment letter on the monthly call of the Derivatives Markets Advisory Committee on Tuesday, August 11 (but please provide your comments in writing as well).

The draft comment letter asserts that the current MAT process, under which a SEF or DCM is able to cause a swap to become subject to mandatory trading with only limited CFTC review of the determination and little regard to the actual liquidity of the market for the

swap, is fundamentally flawed. It states ICI's view that MAT determinations, which are binding on the entire market and can significantly limit market participants' trading and risk management strategies, should be subject to an objective process that includes principle-based standards and requires affirmative and substantive approval by the Commission. The letter urges the CFTC to implement the following reforms of the MAT process:

- Provide the CFTC with more authority over, and a more significant role in, the MAT approval process;
- Establish more objective and comprehensive standards for proposed MAT determinations, and the CFTC's evaluation and approval of such determinations;
- Establish a more robust process and standards for determining that a swap should no longer be considered MAT;
- Require a mandatory 60-day public comment period for all proposed MAT determinations;
- Establish a compliance period of at least 90 days for implementing MAT determinations; and
- Require package transactions to be subject to individualized MAT determinations.

Sarah A. Bessin  
Associate General Counsel

#### [Attachment](#)

#### **endnotes**

[\*]\* Letter to Mr. David A. Stawick, Secretary, CFTC, from Karrie McMillan, General Counsel, ICI, dated February 13, 2012, available at <https://www.ici.org/pdf/25910.pdf>.