

MEMO# 26027

April 9, 2012

ICI Submits Comment Letter on ICE Clear Credit's Applications to Commingle Swaps and Security-Based Swaps

[26027]

April 9, 2012

TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 17-12
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 12-12
INVESTMENT ADVISER MEMBERS No. 3-12
SEC RULES MEMBERS No. 27-12 RE: ICI SUBMITS COMMENT LETTER ON ICE CLEAR CREDIT'S APPLICATIONS TO COMMINGLE SWAPS AND SECURITY-BASED SWAPS

Today, the ICI submitted a comment letter in support of ICE Clear Credit LLC's requests to the Commodity Futures Trading Commission ("CFTC") and the Securities and Exchange Commission ("SEC") for exemptive relief to commingle customer funds for certain swaps and security-based swaps in a cleared swaps customer account subject to Section 4d(f) of the Commodity Exchange Act and to calculate margin for the account pursuant to ICE Clear Credit's proprietary portfolio margining methodology. A copy of the letter is attached.

In the letter, the ICI agreed that there could be significant benefits to commingling in one account customer funds for swaps and security-based swaps to permit portfolio margining in such an account. Portfolio margining will allow netting of swaps and security-based swaps that are correlated on a risk management and economic basis in calculating margin requirements, which would permit ICI members to reduce the amount allocated to margin. If the CFTC and SEC grant ICE Clear Credit's request for exemptive relief, ICI requested that the agencies clarify and confirm in any approval order or rule that the commingled account would be a cleared swaps customer account for customers trading swaps and that the account would be treated as such in a bankruptcy of a dually-registered broker-dealer and futures commodity merchant ("BD/FCM") rather than as a securities account subject to the Securities Investor Protection Act of 1970. The letter noted that, particularly in the case of bankruptcy, it is critical for the protection of customer assets to have clarity at the outset that these commingled accounts will be treated as cleared swaps customer accounts and therefore as customer property not subject to claims of the creditors of the BDs/FCMs.

In addition, the letter stated that other clearinghouses will likely request similar relief in the future to provide portfolio margining benefits to their market participants. To the extent that the CFTC and SEC grant relief to other clearinghouses, the letter urged the agencies to

tailor any exemption to ICE Clear Credit (and any conditions for providing relief) so that relief could be granted in a consistent manner to other clearing organizations. Different standards may lead to regulatory arbitrage or inefficiencies because market participants may choose to clear at a particular clearinghouse based on regulatory standards rather than market efficiencies.

Jennifer S. Choi
Senior Associate Counsel – Securities Regulation

[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.