

MEMO# 24780

December 10, 2010

Joint Industry Associations Letter Advocating for Measured Approach to Swap Rulemakings

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TO: SEC RULES MEMBERS No. 135-10
CLOSED-END INVESTMENT COMPANY MEMBERS No. 70-10
SMALL FUNDS COMMITTEE No. 30-10
EQUITY MARKETS ADVISORY COMMITTEE No. 52-10
FIXED-INCOME ADVISORY COMMITTEE No. 35-10
ETF ADVISORY COMMITTEE No. 55-10 RE: JOINT INDUSTRY ASSOCIATIONS LETTER
ADVOCATING FOR MEASURED APPROACH TO SWAP RULEMAKINGS

The Institute joined a group of trade associations in sending a letter to the Securities and Exchange Commission and the Commodity Futures Trading Commission (collectively “Commissions”) recommending that the Commissions pursue a more deliberative and orderly process for rulemaking pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“DFA”). [\[1\]](#) The Joint Letter also recommended that the Commissions phase-in the application of new regulatory requirements over a reasonable period of time, determined through discussions with market participants that are directly affected by those requirements. The Joint Letter is attached and briefly summarized below.

The Joint Letter acknowledged the short deadlines by which the Commissions must adopt numerous rules under Title VII and that many of the rules concern activities and products that are complex and new to regulatory oversight. It explained, however, that the order in which rules are being published for comment does not provide all affected parties a reasonable opportunity to comment because they do not know whether they should comment on particular rules or what the substance and extent of their comments should be. [\[2\]](#) The Joint Letter also stated that the absence of full participation in the comment process may undermine regulatory certainty, with the effect of unnecessarily interfering with the functioning of markets and the usefulness of important financial tools. To ensure all affected parties have an opportunity to comment, the Joint Letter recommended that the

Commissions extend the comment deadlines for rules that utilize terms that were not defined when the rules were published so that those comment deadlines are at least no earlier than the deadlines applicable to the rules defining the terms.

Specifically, the Joint Letter noted that the rules have provided for provisional registration of entities prior to adoption of final rules defining the various categories of registrants and establishing their respective obligations. The Joint Letter identified a more logical sequence as (1) adopting definitions for the different regulated entities, (2) adopting requirements for such entities, and (3) requiring registration of such entities.

With respect to the implementation process for new rules, the Joint Letter raised concerns that market participants will be asked to do too much in too short a time and will be unable to meet their compliance burdens. The Joint Letter also explained that mandating the implementation of reporting requirements in the same short period as implementation of clearing and execution requirements increases the likelihood that market participants will be unable to comply with the proposed regulatory framework. It stated that, as a consequence, market participants will be forced to exit the swaps market leaving segments of the market with diminished or possibly no liquidity.

In addition, the Joint Letter stated that implementing a complex new regulatory structure without adequate time to adapt, prepare, and test systems could lead to an ineffective or poorly designed infrastructure, which also would impair liquidity, and lead to higher costs, increased risk, and other adverse consequences. It further explained that implementing clearing and execution requirements without thoroughly analyzing the ability of particular asset classes to absorb the changes carries a number of risks, including significant disruption of the markets for certain asset classes.

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[Attachment](#)

endnotes

[1] See Letter from American Bankers Association, ABA Securities Association, The Clearing House Association L.L.C., Financial Services Forum, Financial Services Roundtable, Institute of International Bankers, Investment Company Institute, International Swaps and Derivatives Association, Managed Funds Association, and Securities Industry and Financial Markets Association to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, and David A. Stawick, Secretary, Commodity Futures Trading Commission, dated December 6, 2010.

[2] As an example, the Joint Letter cited the Commissions issuing rules related to the duties and obligations of major swap participants before the definition of “major swap participant” had been proposed.

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