

MEMO# 30889

September 28, 2017

ICI Files Comment Letter with CFTC on "Project KISS"

[30889]

September 28, 2017 TO: ICI Members

Investment Company Directors

ICI Global Members

Derivatives Markets Advisory Committee

Registered Fund CPO Advisory Committee SUBJECTS: Alternative Investments

Compliance

Derivatives

International/Global

Investment Advisers

Recordkeeping

Trading and Markets RE: ICI Files Comment Letter with CFTC on "Project KISS"

ICI has filed a comment letter in response to the CFTC's "Project KISS" initiative, which seeks to apply the CFTC's existing rules, regulations, and practices in a simpler, less burdensome, and less costly manner.[\[1\]](#) ICI's comment letter is attached, and is summarized briefly below.

Our comment letter makes recommendations regarding each of the categories in which the CFTC has solicited feedback (registration, reporting, clearing, and executing). We explain that our recommendations are consistent with the agenda Chairman Giancarlo recently articulated for the CFTC, particularly his goals of:

- Reducing regulatory burden;
- Returning the CFTC to "regular order," and
- Resetting the CFTC's focus on its core mission, including leveraging its cooperation with parallel federal market regulators such as the Securities and Exchange Commission.

Our letter recognizes that some of our recommendations may, or would, require the CFTC to engage in rulemaking. We discuss those issues in the letter, however, because we believe they are critical issues for the CFTC's further consideration.

The letter recommends that:

- **The CFTC should amend Regulation 4.5 to eliminate unnecessary regulatory**

overlap for registered funds and their advisers. The CFTC should amend the rule to exclude registered funds advisers from being treated as CPOs, just as they were immediately prior to the rule's 2012 amendments.

- **Until the CFTC amends Regulation 4.5, it should take a substituted compliance approach to regulating registered fund CPOs and CTAs.** We suggest that the CFTC and its staff take a pragmatic, outcomes-based substituted compliance approach to addressing regulatory overlap for registered fund CPOs and CTAs in areas that were not adequately addressed by harmonization, and take such an approach as new issues arise in the future. We provide, as examples, Forms CPO-PQR and CTA-PR, liquidation statements, and recordkeeping.
- **The CFTC should adopt its rulemaking proposal that would provide relief to CPOs and CTAs acting on behalf of non-US persons.** We urge the CFTC promptly to adopt its 2016 rulemaking proposal that would, among other things, amend Regulation 3.10(c)(3) to eliminate unnecessary conditions, consistent with prior staff no-action relief.
- **The CFTC should amend its definition of "US person" to exclude certain non-US funds.** For purposes of the cross-border application of the CFTC's swaps provision, the CFTC should exclude from its definitions of "US person" non-US regulated funds that are authorized to be publicly offered to non-US persons but are not offered publicly to US persons.
- **The CFTC should retain the strong asset protections for cleared swaps provided by the "LSOC" model.** As the CFTC considers any recommendations for reform it may receive in the clearing area, we urge it to retain the "legal segregation with operational commingling," or LSOC, model for the protection of customer collateral and extend these protections to other cleared derivatives.
- **The CFTC should strengthen the process for making a swap "available to trade."** The CFTC should engage in a rulemaking that would address the risks and weaknesses inherent in the current "made available to trade," or MAT, process. We recommend that this process ensure that only those swaps that are liquid enough to support mandatory execution on a swap execution facility or designated contract market become MAT.

The letter explains that we also share Chairman Giancarlo's interest in reforming the CFTC's swap trading rules to foster a vibrant and liquid swaps market, and are preparing a separate letter which will contain a set of recommendations designed to improve swaps trading.

Sarah A. Bessin
Associate General Counsel

[Attachment](#)

endnotes

[1] See *Project KISS*, 82 Fed.Reg. 21494 (May 9, 2017), available at <http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2017-09318a.pdf>.

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