

MEMO# 27965

March 20, 2014

ICI Draft Letter on NFA Capital and Customer Protection Proposal; Member Comments Requested by March 27

[27965]

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TO: ACCOUNTING/TREASURERS COMMITTEE No. 7-14
CLOSED-END INVESTMENT COMPANY COMMITTEE No. 9-14
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 16-14 RE: ICI DRAFT LETTER ON NFA CAPITAL AND CUSTOMER PROTECTION PROPOSAL; MEMBER COMMENTS REQUESTED BY MARCH 27

On January 23, the National Futures Association (“NFA”) issued a notice to members (“NTM”) requesting comment on capital requirements for commodity pool operators (“CPOs”) and commodity trading advisors (“CTAs”) and other customer protection measures. * Comments on the NTM are due by April 15, 2014. ICI has prepared a draft comment letter on the NTM, which is attached, and is summarized briefly below. If you have comments on the draft letter, please provide them to Sarah Bessin at sarah.bessin@ici.org by Thursday, March 27.

The draft letter explains that the comprehensive regulation to which CPOs and CTAs of registered investment companies (“registered funds”) are subject under the Investment Company Act of 1940 (“Investment Company Act”) and the Investment Advisers Act of 1940 (“Investment Advisers Act”) makes it unnecessary to impose a capital requirement on such CPOs and CTAs. It explains that, for similar reasons, the customer protection measures NFA proposes are unnecessary for registered fund CPOs and CTAs. The letter details the many requirements to which registered funds and their advisers are subject under the Investment Company Act and the Investment Advisers Act that make these additional requirements unnecessary. With respect to the customer protection measures that NFA has proposed, the draft letter also asserts that NFA has not raised any concerns about registered fund CPOs with respect to these issues, and that the costs of such additional requirements would be indirectly borne by fund shareholders.

The draft letter also addresses NFA’s question of whether it should continue to permit inactive CPOs and CTAs to be NFA members. The letter asserts that NFA should permit inactive firms to remain NFA members. The letter requests that, if NFA nonetheless adopts

a requirement regarding the withdrawal of a firm's NFA membership if the firm is inactive, NFA should provide an opportunity for a member to justify its inactivity, and provide a grace period of at least one year before the firm is withdrawn.

Sarah A. Bessin
Senior Counsel

[Attachment](#)

endnotes

*NFA Notice to Members I-14-03 (Jan. 23, 2014), available at <http://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4377>. See ICI Memorandum No. 27861 (Jan. 24, 2014), available at http://www.ici.org/my_ici/memorandum/memo27861.

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