

**MEMO# 30649**

March 20, 2017

# ICI Files Comment Letter on CFTC Recordkeeping Proposal

[30649]

March 20, 2017 TO: ICI Members  
Investment Company Directors  
ICI Global Members  
Derivatives Markets Advisory Committee  
Registered Fund CPO Advisory Committee SUBJECTS: Derivatives  
Investment Advisers  
Recordkeeping  
Technology & Business Continuity  
Trading and Markets RE: ICI Files Comment Letter on CFTC Recordkeeping Proposal

ICI has filed a comment letter with the Commodity Futures Trading Commission (“CFTC” or “Commission”) on its recent proposal (“Proposal”) to amend Regulation 1.31 under the Commodity Exchange Act (“CEA”).[\[1\]](#) The Proposal was prompted in large measure by two industry rulemaking petitions, including a 2014 petition filed by ICI.[\[2\]](#)

ICI’s comment letter, which is attached below, explains that ICI and its members support the CFTC’s efforts to modernize the manner in which records, particularly electronic records, must be maintained under the CEA and Commission regulations. It asserts that the Commission’s Proposal must go further, however, to permit investment advisers that are registered with the Securities and Exchange Commission (“SEC”) and advise SEC-registered investment companies (“funds”), to satisfy their CFTC recordkeeping obligations through substituted compliance, by complying with the comprehensive SEC recordkeeping obligations to which they already are subject.

ICI’s letter contains two sections. Section I responds to the Commission’s question asking whether the Proposal “will resolve all outstanding issues regarding compliance with part 4 of the Commission’s regulations identified [in the rulemaking petitions].”[\[3\]](#) We explain that the Proposal does not address the core issue raised in the ICI Rulemaking Petition — namely, that the Commission, consistent with its 2013 harmonization rulemaking, should permit SEC-registered investment advisers that (i) are registered with the CFTC as commodity pool operators (“CPOs”) and/or commodity trading advisors (“CTAs”), and serve as such to registered funds and/or their controlled foreign corporations (“CFCs”) (“registered fund CPOs and CTAs”), or (ii) rely on the exclusion from the definition of CPO in Regulation 4.5 and/or the exemption from registration as a CTA in Regulation 4.14(a)(8) or

another available exemption (“excluded and exempt CPOs and CTAs”), to satisfy their recordkeeping obligations under CFTC rules through substituted compliance with the recordkeeping rules under the Investment Company Act of 1940 (“Investment Company Act”) and the Investment Advisers Act of 1940 (“Advisers Act”).<sup>[4]</sup> We also assert that any third parties that hold “required records” on behalf of registered fund CPOs and CTAs and/or excluded and exempt CPOs and CTAs should be entitled to substituted compliance with respect to their recordkeeping for these entities, because they are keeping records for persons that themselves should be able to rely on substituted compliance.

The letter explains that our recommendation that the CFTC amend its recordkeeping rules to permit substituted compliance by registered fund CPOs and CTAs, excluded and exempt CPOs and CTAs, and their third-party recordkeepers, is fully consistent with the regulatory objectives articulated recently in the Trump Administration’s two executive orders aimed at alleviating unnecessary costs and burdens of government regulations,<sup>[5]</sup> as well as the agenda for the CFTC recently presented by acting Chairman Giancarlo.<sup>[6]</sup> In particular, permitting registered fund advisers, which already are subject to comprehensive regulation by the SEC, to satisfy their recordkeeping obligations under the CEA through substituted compliance, will further Acting Chairman Giancarlo’s goals of: (i) reducing regulatory burdens (project KISS) – applying CFTC rules in ways that are simpler, less burdensome, and less of a drag on the American economy; and (ii) resetting the CFTC’s focus on its core mission – including working cooperatively with parallel market regulators, such as the SEC, to achieve that result. Importantly, substituted compliance will achieve these goals with no loss of investor protection.

Section II of the letter expresses our support for the comment letter submitted on the Proposal by ICI’s fellow trade associations, the Managed Funds Association, the Investment Adviser Association, and the Alternative Investment Management Association.<sup>[7]</sup>

Sarah A. Bessin  
Associate General Counsel

Rachel H. Graham  
Associate General Counsel

## [Attachment](#)

### **endnotes**

<sup>[1]</sup> For a summary of the Proposal, see ICI Memorandum No. 30539 (Jan. 25, 2017), available at [https://www.ici.org/my\\_ici/memorandum/memo30539](https://www.ici.org/my_ici/memorandum/memo30539).

<sup>[2]</sup> See Petition for Rulemaking to Amend CFTC Regulations 4.12(c)(3), 4.23 and 4.33, by Investment Company Institute, dated March 11, 2014, available at <https://www.ici.org/pdf/27946.pdf> (“ICI Rulemaking Petition”); Petition for Rulemaking to Amend 1.31, 4.7(b) and (c), 4.23 and 4.33, Managed Funds Association, Investment Adviser Association, and Alternative Investment Management Association, dated July 21, 2014.

<sup>[3]</sup> Recordkeeping, 82 Fed. Reg. 6356, 6363 (Jan. 17, 2017), available at <http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2017-01148a.pdf>.

[4] These excluded or exempt advisers are also covered by Regulation 1.31, to the extent they maintain “required records” as such term is defined in the Proposal.

[5] See Exec. Order, Reducing Regulation and Controlling Regulatory Costs (Jan. 30, 2017), *available at* <https://www.whitehouse.gov/the-press-office/2017/01/30/presidential-executive-order-reducing-regulation-and-controlling>; see also Exec. Order, Enforcing the Regulatory Reform Agenda (Feb. 24, 2017), *available at* <https://www.whitehouse.gov/the-press-office/2017/02/24/presidential-executive-order-enforcing-regulatory-reform-agenda>.

[6] Acting Chairman J. Christopher Giancarlo, CFTC: A New Direction Forward, Remarks before the 42nd Annual International Futures Industry Conference, Boca Raton, Florida (March 15, 2017), *available at* <http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-20>.

[7] Letter to Christopher Kirkpatrick, Secretary, Commodity Futures Trading Commission, from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association; Karen Barr, President and Chief Executive Officer, Investment Adviser Association; and Jiří Król, Deputy CEO, Global Head of Government Affairs, Alternative Investment Management Association, dated March 20, 2017.