

**MEMO# 27213**

May 1, 2013

# **ICI and ICI Global Submit Recommendations to Congress on CFTC Reauthorization**

[27213]

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 36-13  
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 33-13  
ICI GLOBAL MEMBERS  
SMALL FUNDS MEMBERS No. 30-13  
SEC RULES MEMBERS No. 40-13 RE: ICI AND ICI GLOBAL SUBMIT RECOMMENDATIONS TO  
CONGRESS ON CFTC REAUTHORIZATION

ICI and ICI Global have filed submissions with the U.S. Senate Agriculture Committee (Committee), which has oversight responsibility for the Commodity Futures Trading Commission (CFTC). The submissions respond to the Committee's request for information in connection with its periodic reauthorization of funding for the agency. [\\*](#) The first submission outlines ICI's views on (1) issues relating to CFTC rulemaking to implement provisions in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and (2) the amendments to CFTC Rule 4.5 in a rulemaking that was not mandated (or even contemplated) by the Dodd-Frank Act. The second submission addresses the regulatory treatment of non-deliverable forwards (NDFs) and recommends that NDFs be accorded the same treatment as foreign exchange forwards and swaps. Both submissions are attached and briefly described below.

## **Submission on Title VII Rulemaking and Rule 4.5**

ICI's statement to the Committee on Title VII rulemaking and the amendments to CFTC Rule 4.5 begins by explaining that mutual funds and other registered investment companies may use futures, options and swaps in a variety of ways to help shareholders achieve their investment objectives. For this reason, ICI members have a keen interest in ensuring effective and appropriate oversight of those markets by the CFTC.

The statement addresses several issues with respect to the CFTC's rulemaking to implement the provisions in Title VII. In particular, it discusses ICI's concerns regarding swap trading on swap execution facilities, protection of customer assets held by futures commission merchants, block trades, and cross-border regulation of the derivatives

markets.

With regard to Rule 4.5, the statement focuses on the CFTC's failure to demonstrate the need for commodity pool operator registration by advisers to registered investment companies, and the CFTC's inadequate cost-benefit analysis of the Rule 4.5 amendments.

In conclusion, the statement notes that these issues have important implications for registered investment companies and their shareholders, and also impact the functioning of the derivatives markets and the effectiveness of the CFTC's regulatory program. It asks the Committee to consider these issues as part of its work on the CFTC's reauthorization and in its general oversight of the agency.

## **Submission on NDFs**

ICI and ICI Global, along with the American Bankers Association and the ABA Securities Association (together, "trade associations"), submitted a letter to the Committee that raises concerns regarding the regulatory treatment of NDFs. Specifically, the letter states that NDFs were not included in the exemption for foreign exchange forwards granted by the Secretary of the Treasury under the Dodd-Frank Act, and explains the adverse consequences that will result if NDFs remain subject to differential treatment under the Commodity Exchange Act. The letter encloses the petition the trade associations recently submitted to the CFTC requesting exemptive relief for NDFs to be treated in the same manner as foreign exchange forwards and swaps. The letter states, however, that it is uncertain whether the CFTC will consider the petition, and recommends that this issue be addressed through a legislative clarification of the definition of foreign exchange forward.

Sarah A. Bessin  
Senior Counsel

Rachel H. Graham  
Senior Associate Counsel

[Attachment](#)

### **endnotes**

\*See "Dear Stakeholder" Letter dated March 5, 2013, available at <http://www.ag.senate.gov/newsroom/press/release/stabenow-cochran-cftc-reauthorization-letter>.