

**MEMO# 29341**

September 15, 2015

# **ICI Global Comment Letter in Response to CFTC Proposal on the Application of Margin Requirements for Uncleared Swaps in Cross-Border Transactions**

[29341]

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TO: DERIVATIVES MARKETS ADVISORY COMMITTEE No. 68-15  
ICI GLOBAL REGULATED FUNDS COMMITTEE No. 57-15  
ICI GLOBAL TRADING & MARKETS COMMITTEE No. 45-15  
INTERNATIONAL COMMITTEE No. 50-15  
REGISTERED FUND CPO ADVISORY COMMITTEE  
SECURITIES OPERATIONS ADVISORY COMMITTEE RE: ICI GLOBAL COMMENT LETTER IN RESPONSE TO CFTC PROPOSAL ON THE APPLICATION OF MARGIN REQUIREMENTS FOR UNCLEARED SWAPS IN CROSS-BORDER TRANSACTIONS

ICI Global submitted a comment letter in response to a proposed rule (the “Proposal”) by the Commodity Futures Trading Commission (“CFTC”) regarding how the CFTC’s margin requirements for uncleared swaps, when adopted, would apply to cross-border transactions. [\[1\]](#) Under the Proposal, the CFTC margin requirements would apply to all uncleared swaps of CFTC-registered swap dealers and major swap participants that are not regulated by a prudential regulator (covered swap entities or “CSEs”), and to certain non-U.S. CSEs. The Proposal also includes a definition of “U.S. person” to assist in determining those persons subject to the margin requirements, and provides eligible CSEs with substituted compliance (i.e., the entity would be permitted to comply with the margin requirements of a foreign jurisdiction if the CFTC determines that those requirements are comparable to the CFTC’s margin requirements). A copy of the comment letter is attached.

The letter expresses ICI Global’s concerns that certain aspects of the Proposal, and in particular the fact that substituted compliance would not be available in all circumstances (even for a transaction that complies with the requirements of a regulatory regime that the CFTC has determined is comparable with the CFTC’s requirements), could significantly undermine international efforts that have been made to harmonize margin requirements. In addition, the letter makes the following recommendations:

- The CFTC should revise the Proposal to include an exception from the definition of

“U.S. person” for a pool, fund or other collective investment vehicle if it is publicly offered only to non-U.S. persons and not offered to U.S. persons.

- The CFTC should permit substituted compliance without qualification if the CFTC finds a foreign jurisdiction’s margin requirements to be comparable to the CFTC margin requirements.
- The CFTC should adopt a method for comparability determinations that considers the margin requirements of a jurisdiction in their entirety, rather than making separate determinations for each element of the margin requirements.
- The CFTC properly excludes from the margin requirements transactions between certain non-U.S. CSEs and a non-U.S. person (such as a non-U.S. regulated fund) in which neither party has a significant nexus with the United States. The CFTC should expand the exclusion to cover transactions between a non-U.S. person and a U.S. branch of a non-U.S. CSE or a foreign consolidated subsidiary of a non-U.S. CSE whose obligations are not guaranteed by a U.S. person.
- The CFTC, the U.S. prudential regulators, the Securities and Exchange Commission, and non-U.S. regulators should continue to work together to develop consistent margin requirements (and a consistent cross-border approach to their margin requirements) before adopting the final rules.

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Assistant General Counsel

#### [Attachment](#)

#### **endnotes**

[1] See Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 80 Fed. Reg. 41376 (July 14, 2015), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-07-14/pdf/2015-16718.pdf>. For a summary of the Proposal, see also ICI Memorandum No. 29175 (July 13, 2015), available at <https://www.iciglobal.org/iciglobal/pubs/memos/memo29175>.