

MEMO# 23525

June 11, 2009

Draft ICI Comment Letter on CFTC's Concept Release on Whether to Eliminate the Bona Fide Hedge Exemption for Swap Dealers

[23525]

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TO: SEC RULES COMMITTEE No. 32-09
EQUITY MARKETS ADVISORY COMMITTEE No. 23-09
ETF ADVISORY COMMITTEE No. 11-09 RE: DRAFT ICI COMMENT LETTER ON CFTC'S
CONCEPT RELEASE ON WHETHER TO ELIMINATE THE BONA FIDE HEDGE EXEMPTION FOR
SWAP DEALERS

The Commodity Futures Trading Commission ("CFTC" or "Commission") in March published a concept release in the form of an advanced notice of proposed rulemaking seeking comment on whether to eliminate the bona fide hedge exemption for swap dealers and replace it with a limited risk management exemption ("Concept Release"). [\[1\]](#) The new limited risk management exemption would be conditioned upon, among other things, (1) an obligation to report to the CFTC and applicable self-regulatory organizations when certain noncommercial swap clients reach a specified position level and/or (2) a certification that none of a swap dealer's noncommercial swap clients exceed specified position limits in related exchange-regulated commodities. The CFTC has requested general views and comments regarding the appropriate treatment of swap dealers with respect to existing bona fide hedge exemptions, as well as responses to a number of specific questions regarding the advisability of eliminating the exemption for swap dealers and the scope and terms of a potential new limited risk management exemption. The Release was issued in response to a prior recommendation contained in a September 2008 CFTC Staff Report . [\[2\]](#)

The ICI has prepared the attached draft letter commenting on the Concept Release. The ICI supports CFTC's efforts to examine and address concerns related to the OTC activities of swap dealers. However, given the lack of empirical evidence to support the elimination of the exemption and the potential unintended consequences of such an action, such as the detrimental impact on funds and operational and practical issues with the implementation of a limited risk management exemption, we strongly urge the CFTC to retain the bona fide hedge exemption for swap dealers.

Comments on the Concept Release are due on Tuesday, June 16th. If you have comments to the ICI's draft comment letter, please contact either Eva Mykolenko (emykolenko@ici.org or 202-326-5837) or Ari Burstein (aburstein@ici.org or 202-371-5408) by COB Monday, June 15th.

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[Attachment](#)

endnotes

[1] See *Concept Release on Whether To Eliminate the Bona Fide Hedge Exemption for Certain Swap Dealers and Create a New Limited Risk Management Exemption From Speculative Position Limits*, 74 Fed. Reg. 12282 (March 24, 2009), available at <http://www.cftc.gov/stellent/groups/public/@lrfederalregister/documents/file/e9-6187a.pdf>.

See also Memorandum to SEC Rules Committee No. 19-09, Equity Markets Advisory Committee No. 18-09, ETF Advisory Committee No. 10-09, dated April 24, 2009 [23416].

[2] See *Staff Report on Commodity Swap Dealers and Index Traders with Commission Recommendations*, available at <http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/cftcstaffreportonswapdealers09.pdf> ("Staff Report"). The Staff Report contains several preliminary Commission recommendations, which are based on a summer 2008 special call for information from swap dealers and index traders regarding their over-the-counter market activities.

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