

**MEMO# 25526**

September 30, 2011

# ICI Letter on Customer Clearing Documentation for Swaps

[25526]

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TO: DERIVATIVES MARKETS ADVISORY COMMITTEE No. 39-11  
SEC RULES COMMITTEE No. 82-11 RE: ICI LETTER ON CUSTOMER CLEARING  
DOCUMENTATION FOR SWAPS

The Commodity Futures Trading Commission has proposed rules regarding documentation for customer clearing arrangements and the timing of acceptance or rejection for clearing by derivatives clearing organizations (“DCOs”) and clearing members. [\[1\]](#) The proposed rules are a product of the CFTC’s concern regarding the FIA-ISDA Cleared Derivatives Execution Agreement (“template”) [\[2\]](#) to be used by swap market participants in negotiating execution related agreements with counterparties to swaps that are intended to be cleared. The proposed rules would attempt to limit any potential conflicts with the concept in the Dodd-Frank Act of open access to clearing and execution of customer transactions that might arise through use of the template. ICI’s letter supporting the proposed rules is attached and summarized below.

## Customer Clearing Documentation

The CFTC’s proposed rules relating to futures commission merchants (“FCMs”), swap dealers (“SDs”), major swap participants (“MSPs”) and DCOs would prohibit arrangements (i.e., contracts) between these parties that would:

- Disclose to an FCM, SD or MSP the identity of a customer’s original executing counterparty;
- Limit the number of counterparties with whom a customer may enter into a trade;
- Restrict the size of the position a customer may take with any individual counterparty, apart from an overall limit for all positions held by the customer at the FCM;
- Impair a customer’s access to execution of a trade on terms that have a reasonable relationship to the best terms available; or
- Prevent compliance with specified time frames for acceptance of trades into clearing.

ICI’s letter supports the proposed rules and states that, as part of the migration to centralized clearing and exchange trading, the CFTC’s rules should ensure that all swap market participants that meet appropriate criteria have open access to all available

counterparties, clearing houses, and trading venues. It explains that the proposed rules should provide a uniform starting point for clearing documentation between customers and FCMs, SDs and MSPs, and preserve flexibility when trading swaps. The letter notes that without the proposed rules, customers using the template could be subject to agreements that could, for example, increase customer and systemic risk by delaying, limiting, or blocking access to clearing; increase costs and reduce market efficiency by limiting the number of counterparties available for trading and imposing additional administrative and documentary burdens; or restrict access to clearing by limiting the potential clearing members with which a customer could interact.

ICI's letter explains that the parties to a swap transaction would begin their execution agreement negotiations with the template. The parties then would negotiate the specific terms of the agreement. The letter states that the baseline protections provided in the template by the proposed rules would be particularly important in the case of smaller customers, whose influence in negotiations would be limited. Yet all market participants – regardless of size – would benefit from the minimum level of protections provided by the proposed rules because they would ensure continued broad participation in the swaps markets during the period of transition to the new clearing and trading framework.

## **Time Frames for Acceptance into Clearing**

The CFTC's proposed rules would require prompt, efficient and accurate processing of trades as a means to minimize risk stemming from the time lapse between trade execution and acceptance into clearing. Specifically, FCMs, SDs or MSPs that are clearing members would be required to accept or reject each trade submitted for clearing as quickly as would be technologically practicable if fully automated systems were used. Similarly, DCOs would be required to accept all swaps the DCO is eligible to clear as quickly as would be technologically practicable if fully automated systems were used, and certain conditions were met. ICI's letter supports the proposed rules to shorten the time frame for acceptance or rejection of trades by DCOs and clearing members because they should increase certainty regarding, and result in faster matching for, swaps trades, which should reduce risk associated with prolonged exposures to the market.

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### [Attachment](#)

#### **endnotes**

[1] See Customer Clearing Documentation and Timing of Acceptance for Clearing, 76 FR 45730 (August 1, 2011) ("Release"), available at <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-19365a.pdf>.

[2] FIA is the Futures Industry Association and ISDA is the International Swap and Derivatives Association. The Agreement is available at [www.futuresindustry.org](http://www.futuresindustry.org). See press release, "FIA and ISDA Publish Documentation for Cleared Swaps" (June 16, 2011).

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