

MEMO# 30869

September 13, 2017

ICI Draft Comment Letter on CFTC "Project KISS" - Comments Requested by September 20

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September 13, 2017 TO: Derivatives Markets Advisory Committee
Registered Fund CPO Advisory Committee RE: ICI Draft Comment Letter on CFTC "Project KISS" - Comments Requested by September 20

In May, the Commodity Futures Trading Commission (CFTC) issued a notice soliciting public suggestions regarding how the CFTC's existing rules, regulations, or practices could be applied in a simpler, less burdensome, and less costly manner ("Project KISS").^[1] The notice explains that, while the CFTC was not bound by the President's recent executive order on regulatory reform, the CFTC nevertheless is commencing an agency-wide review of its rules, regulations and practices.

ICI has drafted the attached comment letter to respond to the CFTC's notice. Please provide your written comments to Sarah Bessin at sarah.bessin@ici.org by Wednesday, September 20, 2017.

Our draft comment letter makes recommendations regarding each of the categories in which the CFTC has solicited feedback (registration, reporting, clearing, and executing). We explain that our recommendations are consistent with the agenda Chairman Giancarlo recently articulated for the CFTC, particularly his goals of:

- Reducing regulatory burden;
- Returning the CFTC to "regular order," and
- Resetting the CFTC's focus on its core mission, including leveraging its cooperation with parallel federal market regulators like the Securities and Exchange Commission.

Our draft letter recognizes that some of our recommendations may, or would, require the CFTC to engage in rulemaking. We discuss those issues in the letter, however, because we believe they are critical issues for the CFTC's further consideration.

We recommend in our draft letter that:

- **The CFTC should amend Regulation 4.5 to eliminate unnecessary regulatory overlap for registered funds.** The CFTC should amend Regulation 4.5 to exclude

registered funds and their advisers from being treated as CPOs, just as they were immediately prior to the 2012 amendments to the rule.

- **Until the CFTC amends Regulation 4.5, it should take a substituted compliance approach to regulating registered fund CPOs and CTAs.** We suggest that the CFTC and its staff take a pragmatic, outcomes-based substituted compliance approach to addressing regulatory overlap for registered fund CPOs and CTAs in areas that were not addressed by harmonization, and take such an approach as new issues arise in the future. We provide, as examples, Form CPO-PQR, liquidation statements, and recordkeeping.
- **The CFTC should adopt its proposal to codify no-action relief for CPOs and CTAs acting on behalf of non-US persons.** We urge the CFTC promptly to adopt its 2016 rulemaking proposal that would, among other things, amend Regulation 3.10(c)(3) to eliminate both the clearing requirement and references to designated contract markets and swap execution facilities.
- **The CFTC should amend its definition of “US Person” to exclude certain non-US funds.** For purposes of the cross-border application of the CFTC’s swaps provision, the CFTC should exclude from its definitions of “US person” non-US regulated funds that are authorized to be publicly offered to non-US persons but are not offered publicly to US persons.
- **The CFTC should retain the strong asset protections for cleared swaps provided by the “LSOC” model.** As the CFTC considers any recommendations for reform it may receive in the clearing area, we urge it to retain the LSOC model for the protection of customer collateral.
- **The CFTC should strengthen the process for making a swap “available to trade” (MAT).** The CFTC should engage in a rulemaking that would address the risks and weaknesses inherent in the current MAT process.

Sarah A. Bessin
Associate General Counsel

[Attachment](#)

endnotes

[1] See *Project KISS*, 82 Fed. Reg. 21494 (May 9, 2017), available at <http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2017-09318a.pdf>

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