

MEMO# 29284

August 26, 2015

ICI Global Draft Comment Letter on CFTC Proposal on the Application of Margin Requirements for Uncleared Swaps on Cross-Border Transactions; Member Call to Discuss Draft on September 2 and Member Feedback Requested by September 3

[29284]

August 26, 2015

TO:

DERIVATIVES MARKETS ADVISORY COMMITTEE No. 64-15
ICI GLOBAL TRADING & MARKETS COMMITTEE No. 42-15
REGISTERED FUND CPO ADVISORY COMMITTEE
SECURITIES OPERATIONS ADVISORY COMMITTEE

RE:

ICI GLOBAL DRAFT COMMENT LETTER ON CFTC PROPOSAL ON THE APPLICATION OF MARGIN REQUIREMENTS FOR UNCLEARED SWAPS ON CROSS-BORDER TRANSACTIONS; MEMBER CALL TO DISCUSS DRAFT ON SEPTEMBER 2 AND MEMBER FEEDBACK REQUESTED BY SEPTEMBER 3

As previously reported, the Commodity Futures Trading Commission (“CFTC”) recently proposed a new rule (“Proposal”) regarding how the CFTC’s margin requirements for uncleared swaps, when adopted, would apply to cross-border transactions. [\[1\]](#) The Proposal would apply the margin requirements 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 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).

ICI Global's draft comment letter is attached. A member call to discuss the draft letter is scheduled for 12:00 noon ET on Wednesday, September 2. If you plan to attend the conference call, please respond to Helenia Walker at helenia.walker@ici.org or at (202) 326-5823 to obtain the dial-in information. Please provide any comments on the draft letter to Jennifer Choi at jennifer.choi@ici.org and/or Ken Fang at kenneth.fang@ici.org by close of business on Thursday, September 3.

The draft letter sets forth the following comments and responses:

- The Commission 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 Commission should permit substituted compliance without qualification if the Commission finds a foreign jurisdiction's margin requirements to be comparable to the CFTC margin requirements.
- The Commission should adopt a method for comparability determinations that considers the margin rules of a jurisdiction in their entirety, rather than making separate determinations for each element of the margin rules.
- The Commission 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 Commission and the U.S. prudential regulators should continue to work together to develop a consistent cross-border approach to their margin rules before adopting the final rules.

Jennifer S. Choi
Associate General Counsel/p>

Kenneth C. Fang
Assistant General Counsel

[Attachment](#)

endnotes

[1] See ICI Memorandum No. 29175 (July 13, 2015), available at <https://www.iciglobal.org/iciglobal/pubs/memos/memo29175>. See also 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> ("Proposing Release").