

MEMO# 30595

February 23, 2017

ICI Draft Comment Letter on CFTC Recordkeeping Proposal - Your Comments Requested by March 6

[30595] February 23, 2017 TO: Derivatives Markets Advisory Committee
Registered Fund CPO Advisory Committee RE: ICI Draft Comment Letter on CFTC Recordkeeping Proposal - Your Comments Requested by March 6

As you know, the Commodity Futures Trading Commission (“CFTC” or “Commission”) recently proposed amendments (“Proposal”) to Regulation 1.31 under the Commodity Exchange Act (“CEA”), which governs recordkeeping requirements under the CEA and Commission rules.^[1] The Proposal was prompted in large measure by two industry rulemaking petitions, including a 2014 petition filed by ICI.^[2] ICI has drafted a comment letter to respond to the Proposal. The letter is attached, and is summarized briefly below. **If you have comments on the draft letter, please provide them in writing to Sarah Bessin at sarah.bessin@ici.org no later than Monday, March 6.**

ICI’s draft letter contains two sections. Section I discusses ICI’s general support for the Proposal. It also offers several technical recommendations for further changes to Regulation 1.31, which we believe are consistent with the Commission’s intent to update the requirements for electronic records. Specifically, we recommend that the Commission: (i) ensure that the Proposal’s language is drafted in a technology-neutral manner; (ii) define “metadata” in order to avoid ambiguity in applying the rule’s requirements; (iii) base records retention requirements on the value of the records, rather than the ability to store them; and (iv) expand the training requirement under the rule to include information technology officers and personnel.

Section II responds to the Commission’s question asking whether the Proposal “will resolve all outstanding issues regarding compliance with part 4 of the Commission’s regulations identified [in the rulemaking petitions].”^[3] ICI explains that the Proposal does not address the core issue raised in the ICI Rulemaking Petition—namely, that the Commission, consistent with its 2013 harmonization rulemaking, should permit registered investment advisers that serve as commodity pool operators (“CPOs”) and commodity trading advisors (“CTAs”) to registered investment companies (“registered funds”) to satisfy their recordkeeping obligations under CFTC rules through substituted compliance with the recordkeeping rules under the Investment Company Act of 1940 and the Investment Advisers Act of 1940. We therefore recommend amendments to several of the Commission’s part 4 regulations (Regulations 4.12(c), 4.23, and 4.33) to effectuate a

substituted compliance regime for recordkeeping by registered fund CPOs and CTAs.

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[Attachment](#)

endnotes

[1] *Recordkeeping*, 82 Fed. Reg. 6356 (Jan. 17, 2017), available at <http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2017-01148a.pdf> (“Proposing Release”). For a summary of the Proposal, please see ICI Memorandum No. 30539 (Jan. 25, 2017), available at https://www.ici.org/my_ici/memorandum/memo30539. Comments on the Proposal are due March 20, 2017.

[2] See Petition for Rulemaking to Amend CFTC Regulations 4.12(c)(3), 4.23 and 4.33, by Investment Company Institute, dated March 11, 2014, available at <https://www.ici.org/pdf/27946.pdf> (“ICI Rulemaking Petition”); Petition for Rulemaking to Amend 1.31, 4.7(b) and (c), 4.23 and 4.33, Managed Funds Association, Investment Adviser Association, and Alternative Investment Management Association, dated July 21, 2014.

[3] Proposing Release, *supra* note 1, at 6363.

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