

MEMO# 28659

January 13, 2015

ICI Files Comment Letter on CFTC Proposal to Amend Recordkeeping Requirements for DCM and SEF Members

[28659]

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TO: DERIVATIVES MARKETS ADVISORY COMMITTEE No. 3-15
REGISTERED FUND CPO ADVISORY COMMITTEE RE: ICI FILES COMMENT LETTER ON CFTC
PROPOSAL TO AMEND RECORDKEEPING REQUIREMENTS FOR DCM AND SEF MEMBERS

ICI has filed a comment letter on proposed amendments by the Commodity Futures Trading Commission ("CFTC") to Regulation 1.35(a) under the Commodity Exchange Act. Regulation 1.35 addresses recordkeeping requirements applicable to certain market participants, including a member of a designated contract market ("DCM") or a swap execution facility ("SEF"), with respect to transactions relating to their business of dealing in commodity interests.* The comment letter is attached, and is summarized briefly below.

ICI's comment letter supports the provisions of the Proposed Amendments that would expand and make permanent the temporary no-action relief that the CFTC staff has granted to commodity trading advisors ("CTAs") that are members of a DCM or SEF to exclude them from the requirement to record all oral communications with customers that lead to the execution of a transaction in a commodity interest. We recommend, however, that the Proposed Amendments further exclude operators of registered investment companies ("registered funds") that are registered CTAs and/or commodity pool operators ("CPOs") that are DCM or SEF members from the requirements of Regulation 1.35 pertaining to written records.

The recommendation in the letter is based on the fact that registered fund CTAs and CPOs enter orders solely on a discretionary basis, making it unnecessary to subject them to the requirements of Regulation 1.35. In addition, registered fund CTAs and CPOs, and the funds they manage, are subject to comprehensive recordkeeping requirements under Securities and Exchange Commission ("SEC") regulations. The letter explains that these SEC recordkeeping requirements are generally analogous to, and serve the same purpose as, those that would apply to registered fund CPOs and CTAs under Regulation 1.35. The letter states that, as a condition to relief from the written records requirement of Regulation

1.35, the CFTC could require that registered fund CPOs and CTAs provide the CFTC with the same access to their SEC-required records as is required under SEC regulations. Such an approach would satisfy any regulatory need the CFTC may have for records from registered fund CPOs and CTAs, while avoiding subjecting these entities to overlapping and costly recordkeeping requirements, which costs would ultimately be borne by fund shareholders.

Sarah A. Bessin
Senior Counsel

[Attachment](#)

endnotes

[*]For a summary of the CFTC’s proposed amendments to Regulation 1.35(a) (“Proposed Amendments”), please see ICI Memorandum No. 28525 (Nov. 13, 2014), available at http://www.ici.org/my_ici/memorandum/memo28525.

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