MEMO# 25276

June 14, 2011

ICI Letter Regarding Phase In Schedule for Swaps Rules

[25276]

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 46-11
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 20-11
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 20-11
ETF ADVISORY COMMITTEE No. 38-11
EQUITY MARKETS ADVISORY COMMITTEE No. 34-11
SEC RULES MEMBERS No. 70-11
SMALL FUNDS MEMBERS No. 42-11 RE: ICI LETTER REGARDING PHASE IN SCHEDULE FOR SWAPS RULES

ICI recently submitted a comment letter to the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC," together with the SEC, the "Commissions") regarding the process for finalizing and implementing the rulemakings proposed under Title VII [1] of the Dodd-Frank Act. [2] The letter explains that the process must ensure that the new rules are appropriately tailored, work in tandem and the associated costs to the swaps markets are outweighed by the benefits from the new regulatory framework. To fulfill these objectives, ICI's letter recommends that the Commissions continue to: (1) solicit public comment in a manner that provides affected parties a meaningful opportunity to comment; (2) harmonize and coordinate with domestic and international regulators, as appropriate; and (3) phase in the effective and compliance dates of the final rules. ICI's letter is briefly summarized below.

Repropose Amended Rules in Stages

ICI's letter recommends that the Commissions repropose for a brief period the swaps rules in the order in which they will be implemented to seek public comment and assess the implications of any amendments, particularly in light of concerns regarding regulatory certainty and unintended consequences. The letter explains that changes may present important new issues to the amended rule or other interrelated proposals, particularly given the complexity and high interdependency between the rules' provisions. [3] Consequently, it recommends that the Commissions repropose even those rules with seemingly minor changes to solicit public input from market participants.

To the extent the Commissions' rules on a particular topic are interconnected, the letter recommends that the Commissions repropose the rules jointly, as appropriate. ICI's letter further recommends that the Commissions provide a minimum 30-day comment period for each of the proposed rules.

The letter urges the Commissions not to prioritize speed over quality in finalizing the rules and establishing the compliance deadlines. It explains that the additional time associated with reproposing the rules to consider amendments is negligible compared with the possibility of adopting unworkable, unduly burdensome final rules that could disrupt our fragile financial markets. By seeking public input on the revised rules in the recommended fashion and by carefully phasing in the effective dates of the rules to allow the markets and market participants to come into compliance, the letter states that the Commissions will ensure the quality and efficacy of the final regulatory framework.

Harmonization and Coordination

ICI's letter recommends that the Commissions harmonize their regulatory approach to the extent possible across domestic and international regulators to address the global nature of the derivatives markets. Where harmonization is not possible, coordination should be undertaken. The letter states that these efforts further affect the rulemaking process and commenters' ability to understand and anticipate the implications of rulemaking in the United States. It explains that the failure by the Commissions to ensure harmonization and coordination may result in arbitrage between jurisdictions as well as unnecessary costs and operational and compliance issues.

Phase In

ICI's letter states that the implementation of the new regulatory framework must follow a sequential, deliberative and coordinated process to minimize unforeseen and unintended consequences for market participants, customers and the derivatives markets, including disruptions to the markets and risk mitigation strategies. Specifically, the letter recommends that the implementation timeframes include adequate time for the Commissions to: gather additional market data to inform rulemaking; [4] provide sufficient time for market participants to build market infrastructures, modify business operations, complete testing, and perform outreach and education of customers; and phase in rule requirements by type of market participants and asset class. The letter also recommends that the Commissions publish for public comment their proposed schedules for implementation of the proposed rules.

The letter explains that market participants are struggling with the implications of the proposed rules on their activities in these markets, and are hampered in developing compliance strategies by the need to wait for action from other market participants. It urges the Commissions not to underestimate the time burden associated with each of the identified stages of implementation because each stage entails multiple time consuming steps. The letter concludes that phasing in the rules will provide market participants with essential time to identify the cumulative impact of the rule changes, build upon the actions of other market participants, and manage the collective costs of the rule changes.

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Attachment

endnotes

[1] Title VII is the section of the Dodd-Frank Act that establishes a comprehensive framework for regulating over-the-counter derivatives.

[2] Letter from Karrie McMillan, General Counsel, ICI, to Elizabeth M. Murphy, Secretary, SEC, and David A. Stawick, Secretary, CFTC, dated June 10, 2011.

[3] The letter notes the CFTC's recent extension of the comment periods on the proposed swap rules by 30 days. It explains, however, that the extension was provided at a time when market participants also were first presented with a set of newly proposed rules, including proposed margin rules, capital rules, swap definition rules, and customer collateral rules – all of which are extremely complex and have significant import to market participants. Thus, the opportunity to review and comment on the entire framework of published rules has been limited.

[4] ICI's letter recommends that the Commissions begin implementing the new swaps framework by finalizing and implementing rules requiring reporting of swap transaction data to the regulators only. It states that information gathered through this process will assist the Commissions in better understanding the structure and operation of the swaps markets and in adopting appropriately tailored and effective rules.
