

MEMO# 24952

February 8, 2011

ICI Files Comment Letter On CFTC Proposed Whistleblower Rules

[24952]

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TO: COMPLIANCE MEMBERS No. 13-11
INTERNAL AUDIT ADVISORY COMMITTEE No. 3-11
RISK MANAGEMENT ADVISORY COMMITTEE No. 1-11
RISK MANAGEMENT COMMITTEE No. 1-11
SEC RULES MEMBERS No. 31-11
SMALL FUNDS MEMBERS No. 19-11 RE: ICI FILES COMMENT LETTER ON CFTC PROPOSED WHISTLEBLOWER RULES

You may recall that in November 2010, the Securities and Exchange Commission (“SEC”) published for comment rules to implement Section 922 of the Dodd-Frank Act (“DFA”). [\[1\]](#) Section 922 requires the Commission to implement a process to provide a monetary reward to “whistleblowers” (i.e., a person or persons “who provide information relating to a violation of the securities laws to the Commission”) who meet certain specified conditions. The Institute filed a comment letter expressing concerns with various provisions of the proposed rules. [\[2\]](#) In addition to requiring the SEC to implement a whistleblower program, Section 748 of the DFA requires the Commodity Futures Trading Commission (“CFTC”) to adopt rules implementing a similar program to reward persons who provide the CFTC information about potential violations of the Commodity Exchange Act. In December 2010, the CFTC published its proposed rules for comment. [\[3\]](#) The CFTC’s proposed rules were substantively the same as the SEC’s proposed rules.

Last week, the Institute filed a comment letter with the CFTC expressing the same concerns with the CFTC’s rules as we had expressed on the SEC’s proposal. In particular, among other issues, our letter focused on the rules’: adverse impact on internal compliance programs; attempt to impose new reporting obligations on CFTC registrants; and, deficiencies in the criteria for rewarding whistleblowers. Our letter recommends that, in addition to addressing these concerns, the CFTC and the SEC work together to ensure uniformity in the rules governing their whistleblower programs to avoid dual registrants being able to “forum shop” and file a complaint with the agency that is perceived to have the “better” whistleblower program. A copy of the Institute’s letter is attached.

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Senior Associate Counsel

[Attachment](#)

endnotes

[1] See Institute Memorandum No. [24687](#) (November 4, 2010), which summarized the Commission's release, Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934, SEC Release No. 34-63237 (November 3, 2010). The Release is available at:
<http://www.sec.gov/rules/proposed/2010/34-63237.pdf>.

[2] See Institute Memorandum No. [24804](#) (December 20, 2010), which summarized the attached copy of the Institute's comment letter.

[3] See Implementing the Whistleblower Provisions of Section 23 of the Commodity Exchange Act, CFTC RIN No. 3038-AD04 (November 10, 2010), 75 Fed. Reg. 75728 (December 6, 2010).

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