

**MEMO# 25619**

November 7, 2011

## **ICI Files Comment Letter on CFTC Swap Implementation Schedules**

[25619]

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TO: DERIVATIVES MARKETS ADVISORY COMMITTEE No. 45-11  
SEC RULES COMMITTEE No. 97-11 RE: ICI FILES COMMENT LETTER ON CFTC SWAP  
IMPLEMENTATION SCHEDULES

On November 4, 2011, ICI filed a comment letter on the Commodity Futures Trading Commission's (the "Commission") proposed implementation schedules to phase in compliance with many of the Dodd-Frank Act requirements for swap transactions. The Commission proposed one schedule for the clearing and trade execution requirements, and another for the trading documentation and margining requirements (together, "schedules"). [\[\\*\]](#) Our comment letter on the schedules is attached, and is summarized below.

The comment letter explains that ICI strongly supports the Commission's phased in approach to implementation with the new rules and appreciates the Commission's efforts to address issues raised by the Institute in its prior letter to the Commission regarding the process of finalizing and implementing such rules. It expresses ICI's concerns, however, that the proposed schedules for phasing in compliance with the rules significantly underestimate the time needed for the swap market to transition to the new framework and for the transition to take place in an orderly manner that provides market participants with a level playing field and minimizes disruption to the marketplace.

The letter explains that, to ensure a smooth, efficient, and effective transformation of the swaps markets, the Commission should provide a transition period of 18 to 24 months following adoption of final rules. It explains that the time frames discussed in the schedules are inadequate to accommodate all of the changes market participants must undertake to comply with the rule requirements without disadvantaging certain market participants or disrupting the swaps markets. The letter notes, in particular, that the proposed 30-day period for compliance with the trade execution requirements, available in certain circumstances, is inadequate. In many cases, a 30-day period would be too short to provide designated contract markets, swap execution facilities, and market participants with the time necessary to comply with the rule. ICI instead recommends that the Commission

consider a 60-day period to ensure better coordination between trading venues and market participants and minimize disruption to and negative implications for swap market participants and customers as part of the transition to exchange trading.

The letter further explains that rules should not be finalized until such time as the Commission has adequate data to inform its rulemaking and understand the economic effects associated with the unique attributes of a particular swap. Only then can the Commission, for example, make an educated determination to require mandatory clearing and therefore exchange trading (if available) having appropriately weighed related costs and benefits. The letter also recommends that the Commission's rules should be finalized only after harmonizing requirements and principles with those rules being adopted by the Securities and Exchange Commission and foreign regulators, as well as thorough consideration of commenters' concerns.

ICI recommends that the Commission revise the proposed schedules – while retaining the approach of phasing in compliance for market participants – into a single, comprehensive proposed implementation schedule addressing all of its Dodd-Frank Act Title VII rulemaking. The letter explains that a single implementation and compliance plan would eliminate many of the potential gaps, and questions regarding interaction, presented by proposing two partial schedules.

The letter also recommends that the Commission should amend the proposed schedule for mandatory clearing to provide legal certainty that the phase in by type of market participant would apply to each mandatory clearing determination issued. The letter further recommends that the Commission consider providing additional time to market participants to comply with the mandatory clearing and trade execution requirements in those cases where it makes a clearing determination for a group, type, or class of swap instead of a single swap.

In addition, the letter seeks clarification from the Commission regarding the interaction of the proposed time frames with the definition of major swap participant and the interaction of the trading documentation requirements with the mandatory clearing requirements. The letter also requests that the Commission expand the definition of third-party subaccount. The letter explains that, while strongly supportive of the additional time proposed for third-party subaccounts, ICI is concerned that the proposed definition for such accounts may inadvertently exclude from Category 3 many accounts that the Commission intended to be eligible for the 270-day compliance period. ICI therefore recommends that the Commission expand the definition of third-party subaccount to include any managed account regardless of the level of authority granted in the advisory agreement to enter into trading agreements.

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[Attachment](#)

**endnotes**

[\*] See ICI Memorandum No. 25505 (Sept. 20, 2011), available at [http://www.ici.org/my\\_ici/memorandum/memo25505](http://www.ici.org/my_ici/memorandum/memo25505).

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