

**MEMO# 24951**

February 8, 2011

# ICI Letter on CFTC Proposal for Real-Time Reporting of Swap Transaction Data

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 20-11  
DERIVATIVES MARKETS ADVISORY COMMITTEE  
ETF ADVISORY COMMITTEE No. 15-11  
EQUITY MARKETS ADVISORY COMMITTEE No. 13-11  
FIXED-INCOME ADVISORY COMMITTEE No. 19-11  
SEC RULES COMMITTEE No. 15-11 RE: ICI LETTER ON CFTC PROPOSAL FOR REAL-TIME REPORTING OF SWAP TRANSACTION DATA

As we previously informed you, the Commodity Futures Trading Commission (“Commission”) issued a proposal regarding real-time reporting and dissemination of swap information pursuant to Section 727 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). [\[1\]](#) The Institute submitted a comment letter on the proposal recommending that the Commission (1) define a block trade by evaluating the market for a particular swap category to determine what might be an illiquid size and (2) change the reporting time frame to the later of 24 hours after trade execution or the opening of trading the following day. It also recommended a number of modifications to the proposed reporting obligations to reflect market practices and the status of technological developments in the swaps market.

ICI’s letter is attached and summarized below.

## I. Block Trades

The letter explains the importance of block trades to funds and, more broadly, to the swaps market. It notes that, among other things, swaps are not as liquid or traded as frequently as futures. Consequently, without block trading in the swaps markets, market participants will not execute larger size transactions, further impeding the development of more liquidity in these markets.

## **A. Thresholds for Qualifying as a Block Trade**

The letter states that, under the proposed thresholds, many transactions that should be treated as block trades would not qualify as such. It recommends that the Commission identify the appropriate thresholds for block trades in the swaps market by accounting for the liquidity in each unique category of swaps. It explains that the thresholds should be calculated regularly (e.g., quarterly) to ensure that they are appropriately tracking liquidity in the swap categories. The letter also recommends that the Commission set the thresholds low initially to collect data to enable it to evaluate the thresholds and the appropriate delays for data dissemination.

## **B. Delayed Reporting**

The letter states that the proposed 15-minute delay for reporting block trades is not an adequate time frame to allow the market to absorb the impact of a block trade and could result in higher costs for block trades which, ultimately, would be felt by fund shareholders. It recommends instead that reporting for block trades be delayed until the later of 24 hours following execution of the trade and the opening of the next following trading day. It explains, however, that the appropriate time for dissemination of block trade data is best determined by evaluating the type of swap and the factors considered in establishing a “block trade,” but notes that the Commission does not yet have the information to make such determinations. The letter suggests that, once the Commission gains a better understanding of the appropriate thresholds for a “block trade” and the time it takes the market to absorb a block trade in the various categories of swaps, the Institute’s 24-hour recommendation could be revisited.

# **II. Reporting Obligations**

## **A. Reporting Time**

The letter supports the Commission’s proposed interpretation of the phrase “as soon as technologically practicable” to mean as soon as possible, taking into consideration the prevalence, implementation, and use of technology by comparable market participants. It notes that the proposed interpretation appropriately recognizes the variances and limitations of existing communications and data infrastructure and also provides flexibility to market participants for unintended or uncontrollable delays as the swaps marketplace adapts to the Dodd-Frank Act rulemaking. For these reasons, the letter states that the Commission should not establish maximum time frames in which reporting parties must report to a registered SDR.

## **B. Reporting Party**

The letter recommends that, generally, swap dealers be obligated to report off-facility swap data because they are the only market participants that currently have the infrastructure and standardization to report the requisite data. Funds, in comparison, would need to expend significant time and resources to build out their systems to accommodate the proposed data collection and reporting requirements. The letter also recommends that the Commission permit the parties to an off-facility swap transaction to determine who will assume the reporting obligation. In addition, in response to the Commission’s request for comment regarding reporting of off-facility swap transactions involving non-U.S. parties, the letter recommends that swap dealers have the reporting obligation regardless of whether or not they are a U.S. person and regardless of whether they are registered in the United States, assuming there are jurisdictional ties to the United States warranting reporting of the swap (e.g., trading with a U.S. counterparty).

### **C. Dissemination of Data to Real-Time Disseminator**

The letter supports the proposed prohibition against a swap market or any reporting party to a swap disclosing the swap transaction data before the real-time disseminator has publicly disseminated such data. It explains that, absent such a prohibition, the potential would exist for a market participant to disseminate swap data in its possession before it is available to the public, potentially creating unfair advantages for the recipients of such data.

### **D. Unique Identifiers**

The letter supports the concept of a unique product identifier for individual swap products but raises a concern regarding the larger issue of consistent taxonomies in the financial market for participants and financial instruments. It notes that the Commission also has issued proposed recordkeeping and reporting rules that would require the assignment of unique identifiers to certain pieces of information in a swap transaction, including the swap, the counterparties, and the underlying products referenced in a swap. [2] The letter explains that multiple unique identifiers could be assigned by different regulators to the same financial entity, unnecessarily creating compliance burdens, operational difficulties, and opportunities for confusion. It therefore recommends that regulators coordinate their efforts to establish unique identifiers.

## **III. Consistency with SEC Reporting Requirements**

The letter concludes by addressing the issue of consistency between the Commission's and the Securities and Exchange Commission's proposals requiring real-time reporting of swap and security-based swap transaction data. It states that the principles guiding the regulatory approaches and the underlying rules should be the same with respect to real-time reporting. In addition, it recommends that the agencies coordinate their proposals with respect to reporting parties, reporting time frames, data to be reported, the approach to establishing block trade thresholds, and the time frames and data requirements for reporting block trades, noting that coordination would help to minimize excessive and unnecessary regulatory burdens caused by the different regulatory requirements.

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### **[Attachment](#)**

#### **endnotes**

[1] See ICI Memorandum 24818, dated December 28, 2010. See also, Commodity Futures Trading Commission Release, Real-Time Reporting of Swap Transaction Data, 75 FR 76139 (December 10, 2010), available at <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2010-29994a.pdf>.

[2] See Commodity Futures Trading Commission Release, Swap Data Recordkeeping and Reporting Requirements, 75 FR 76574 (December 8, 2010), available at <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2010-30476a.pdf>

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