

**MEMO# 27170**

April 10, 2013

# **ICI and SIFMA AMG Request Confirmation from CFTC and NFA Regarding Reporting Obligations of Funds' Wholly-Owned Subsidiaries**

[27170]

April 10, 2013

TO: ACCOUNTING/TREASURERS MEMBERS No. 11-13  
CLOSED-END INVESTMENT COMPANY MEMBERS No. 31-13  
COMPLIANCE MEMBERS No. 20-13  
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 28-13  
INVESTMENT ADVISER MEMBERS No. 24-13  
SEC RULES MEMBERS No. 35-13  
SMALL FUNDS MEMBERS No. 25-13 RE: ICI AND SIFMA AMG REQUEST CONFIRMATION FROM CFTC AND NFA REGARDING REPORTING OBLIGATIONS OF FUNDS' WHOLLY-OWNED SUBSIDIARIES

ICI and the Asset Management Group of the Securities Industry and Financial Markets Association ("AMG") submitted letters today to the staff of the Commodity Futures Trading Commission ("CFTC") and the National Futures Association ("NFA") regarding the application of certain of the reporting obligations under CFTC and NFA rules to commodity pool operators ("CPOs"). Specifically, the letters address the reporting obligations of CPOs of registered investment companies ("registered funds") that trade in commodity interests through wholly-owned subsidiaries (known as controlled foreign corporations or "CFCs") that are consolidated with the registered fund for financial reporting purposes. The letters, which are attached to this memorandum, are summarized briefly below.

The letter to the CFTC staff requests that the staff confirm that CPOs of registered funds that consolidate their CFCs for financial reporting purposes may delay reporting under Regulation 4.27 under the Commodity Exchange Act ("CEA") (which requires reporting on Forms CPO-PQR and CTA-PR) for these CFCs until the first applicable reporting period ending after the compliance date of the CFTC's final harmonization rule ("Compliance Date"), when reporting may be provided on a consolidated basis. Although the CFTC has confirmed that CPOs to registered funds that were required to register as a result of the amendments to Regulation 4.5 under the CEA may defer compliance with reporting

obligations under Regulation 4.27 under the CEA for their registered funds until after the Compliance Date, it is unclear whether this deferral would also apply to these registered funds' CFCs. The letter also requests that the staff provide no-action relief that would permit a CPO of a registered fund that trades in commodity interests through a CFC and that files with the NFA an annual report for the CFC under Regulation 4.22 under the CEA, to include in that report the audited financial statements of the registered fund that consolidate the CFC, in lieu of separate financial statements of the CFC. Consistent with the requested timing confirmation, the letter further requests that the staff confirm that the filing of such an annual report would not apply for periods prior to the fiscal year of the registered fund that ends after the Compliance Date. In both cases, the requested confirmation or relief is consistent with how these registered funds prepare their audited financial statements under U.S. GAAP and the Investment Company Act of 1940.

The letter to the NFA requests that NFA confirm that CPOs to registered funds that consolidate the CFC with the registered fund for financial reporting purposes may defer the reporting obligation under Compliance Rule 2-46 for the CFC until the first applicable reporting period ending after the Compliance Date. [\[1\]](#) Although the NFA agreed in discussions with ICI, as memorialized in a letter from ICI dated December 28, 2012, [\[2\]](#) that reporting under Rule 2-46 should be deferred until the Compliance Date for registered fund CPOs that had to register as a result of the CFTC's amendments to Regulation 4.5 under the CEA, the December ICI Letter did not explicitly address whether reporting would also be deferred for any CFCs of such registered funds.

Sarah A. Bessin  
Senior Counsel

#### [Attachment](#)

#### **endnotes**

[\[1\]](#) Compliance Rule 2-46, as recently amended, requires that NFA members that are CPOs or commodity trading advisors and have reporting obligations under Regulation 4.27 must satisfy their quarterly reporting obligations under Rule 2-46 by filing with the NFA, respectively, applicable schedules of CFTC Form CPO-PQR or CFTC Form CTA-PR, along with certain additional information.

[\[2\]](#) Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Mr. Daniel A. Driscoll, Executive Vice President, Chief Operating Officer, and Mr. Thomas W. Sexton, III, Senior Vice President, General Counsel and Secretary, National Futures Association, dated December 28, 2012 ("December ICI Letter").