

**MEMO# 28856**

March 24, 2015

## **ICI Submits Statement to Congress on CFTC Reauthorization**

[28856]

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TO: REGISTERED FUND CPO ADVISORY COMMITTEE  
CLOSED-END INVESTMENT COMPANY MEMBERS No. 9-15  
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 20-15  
SMALL FUNDS MEMBERS No. 12-15  
SEC RULES MEMBERS No. 19-15 RE: ICI SUBMITS STATEMENT TO CONGRESS ON CFTC REAUTHORIZATION

ICI filed today a statement for the record (“Statement”) with the U.S. House of Representatives, Subcommittee on Commodity Exchanges, Energy and Credit, Committee on Agriculture (“Committee”), in connection with a hearing to consider end-user views on reauthorization of the Commodity Futures Trading Commission (“CFTC”). The Statement, which is attached and is summarized briefly below, focuses on ICI’s concerns regarding the CFTC’s amendments to CFTC Rule 4.5 and ICI’s support of an amendment (the “Garrett amendment”) to a CFTC reauthorization bill in the last Congress that would have exempted many registered fund advisers from having to register with the CFTC as commodity pool operators (“CPOs”). [\[1\]](#)

The Statement questions the CFTC’s decision to modify Rule 4.5 as part of a 2012 rulemaking that was not mandated (or even contemplated) by the Dodd-Frank Wall Street Reform and Consumer Protection Act. It emphasizes the significant implications the Rule 4.5 amendments have had for many asset management firms, and that most of the costs imposed by this additional regulation will be indirectly borne by registered investment company (“registered fund”) shareholders. The Statement explains that mutual funds and other types of registered funds are extensively regulated, and asserts that the CFTC failed to demonstrate the need for registration as CPOs by registered fund advisers.

The Statement further asserts that the CFTC’s cost-benefit analysis of the Rule 4.5 amendments was inadequate, and notes that the agency has been subject to widespread criticism based on its cost-benefit analysis. The Statement explains that these concerns resulted in inclusion of a provision in the CFTC reauthorization bill in the last Congress that subjected the CFTC to the same cost-benefit requirements that apply to the entire executive branch under a Presidential order.

The Statement explains that the Garrett amendment addressed the concerns raised by the overly broad scope of the amendments to Rule 4.5 in a manner that is consistent with the CFTC's stated intent in adopting the Rule 4.5 amendments. The Garrett amendment exempted registered fund advisers from having to register with the CFTC as CPOs if their funds invest in commodity interests limited to "financial commodities," e.g., S&P 500 swaps and other securities-like derivatives, and do not invest in traditional commodities, such as natural resource and agricultural commodities. The Statement requests that the Committee include the language of the Garrett amendment in the CFTC reauthorization bill.

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Associate General Counsel

[Attachment](#)

**endnotes**

[1] See ICI [Memorandum](#) No. 28228 (June 24, 2014), available at [http://www.ici.org/my\\_ici/memorandum/memo28228](http://www.ici.org/my_ici/memorandum/memo28228).

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