

MEMO# 26175

May 22, 2012

ICI Seeks Extension of Rule 4.5 Registration Date for Funds Using Swaps, Requests Other Implementation Guidance

[26175]

May 22, 2012

TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 25-12
COMPLIANCE MEMBERS No. 7-12
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 19-12
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 13-12
ETF ADVISORY COMMITTEE No. 11-12
INVESTMENT ADVISER MEMBERS No. 10-12
SEC RULES MEMBERS No. 40-12
SMALL FUNDS MEMBERS No. 14-12 RE: ICI SEEKS EXTENSION OF RULE 4.5 REGISTRATION
DATE FOR FUNDS USING SWAPS, REQUESTS OTHER IMPLEMENTATION GUIDANCE

As a result of recent amendments to Rule 4.5 under the Commodity Exchange Act (CEA), investment advisers to certain registered investment companies (funds) will be required to register with the Commodity Futures Trading Commission (CFTC) as commodity pool operators (CPOs). [\[1\]](#) ICI has filed a letter with the CFTC seeking an extension of the compliance date for CPO registration in the case of funds using swaps, as well as requesting urgently needed guidance on certain implementation issues. The letter is attached and briefly summarized below.

Extension of Compliance Date for Funds Using Swaps

According to the Adopting Release, the CFTC concluded that “11 months is an adequate amount of time to enable compliance by existing [funds]” with the registration requirements under amended Rule 4.5 and, on this basis, determined that the registration compliance date would be “the later of either December 31, 2012 or within 60 days following the adoption of final rules defining the term “swap” and establishing margin requirements for such instruments.” [\[2\]](#) The letter explains, however, that the compliance

period for funds using swaps would fall short of the 11-month period that the CFTC believes is “adequate”—and could be as little as 60 days, depending on when the CFTC adopts the final swap and margin rules referenced above. It therefore requests that the CFTC extend the compliance date for CPO registration in the case of registered funds using swaps until 11 months after the CFTC’s approval of the final swap and margin rules. [\[3\]](#)

Guidance on Implementation Issues

Several trade associations, including ICI, have identified numerous issues relating to implementation of amended Rule 4.5 (as well as amended Rule 4.13(a)(3) under the CEA) where further guidance is needed. These issues were addressed in two “Frequently Asked Questions” documents that were submitted to the CFTC staff on April 5, 2012. [\[4\]](#) The answers to those questions have not yet been published.

The letter expresses concern that further delay in resolving these open issues could impede firms’ ability to satisfy their obligations under the amended rules. It asks that the CFTC respond as soon as possible to the most time sensitive of these questions, which seek clarification with regard to: the compliance date for amended Rule 4.5, including with respect to registered funds launched after the April 24, 2012 effective date; application of amended Rules 4.5 and 4.13 to funds-of-funds; conforming changes to Rule 4.13(a)(3) resulting from the Commission’s rescission of Rule 4.13(a)(4) under the CEA; and how to calculate compliance with the net notional test under amended Rules 4.5 and 4.13. [\[5\]](#)

Rachel H. Graham
Senior Associate Counsel

[Attachment](#)

endnotes

[\[1\]](#) Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations, 77 Fed. Reg. 11252 (February 24, 2012), (Adopting Release), correction notice published at 77 Fed. Reg. 17328 (Mar. 26, 2012). In this rulemaking, the CFTC also adopted amendments to Rule 4.13(a)(3) under the CEA, which exempts from CPO registration the operators of certain private funds.

[\[2\]](#) Id. at 11260.

[\[3\]](#) This extension is roughly equivalent in length to those requested by other trade associations. See Letter from Managed Funds Association, Investment Adviser Association and Alternative Investment Management Association, dated April 30, 2012 (requesting extension of compliance date for amended Rule 4.13(a)(3) until ten months from the publication of final rules on the definition of swaps and establishing margin requirements for swaps); Letter from Asset Management Group, Securities Industry and Financial Markets Association, dated May 3, 2012 (“SIFMA AMG Letter”) (requesting extension of compliance date for amended Rules 4.5 and 4.13(a)(3) until a minimum of ten months from the effective date of the last rulemaking further defining the term “swap” and establishing margin requirements for such instruments).

[\[4\]](#) List of Amended Regulation 4.5 and 4.13 Issues to Submit to the Commodity Futures

Trading Commission by the Investment Company Institute on Behalf of Its Members as FAQs (April 5, 2012); Frequently Asked Questions for the Managed Funds Association, Investment Adviser Association and the Asset Management Group of the Securities Industry and Financial Markets Association (April 5, 2012).

[\[5\]](#) The SIFMA AMG Letter similarly requests that the CFTC respond as soon as possible to many of the same questions.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.