

MEMO# 24888

January 19, 2011

ICI Letter Regarding SEC Proposal for Real-Time Reporting of Swap Transaction Data

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 7-11
ETF ADVISORY COMMITTEE No. 6-11
EQUITY MARKETS ADVISORY COMMITTEE No. 6-11
FIXED-INCOME ADVISORY COMMITTEE No. 7-11
SEC RULES MEMBERS No. 12-11
SMALL FUNDS MEMBERS No. 7-11 RE: ICI LETTER REGARDING SEC PROPOSAL FOR REAL-TIME REPORTING OF SWAP TRANSACTION DATA

As we previously informed you, the Securities and Exchange Commission has proposed Regulation SBSR relating to the reporting and public dissemination of real-time security-based swap [\[1\]](#) transaction data, pursuant to Sections 763 and 766 of Title VII of the Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). [\[2\]](#) Generally, the proposal would require, upon execution, reporting of transaction, volume, and pricing terms of a swap to a registered swap data repository ("SDR"). The SDR then would be required to make the swap data publicly available in real time. The proposal would include specific reporting provisions for block trades and would establish reporting obligations and impose additional obligations on swap dealers and major swap participants ("MSPs"), including the establishment of relevant policies and procedures, correction of erroneous information, and provision of additional information. ICI's comment letter on the proposal is attached and summarized below.

I. Block Trades

The letter agrees with the Commission's assessment regarding the need to delay real-time reporting regarding the size of a block trade but raises concerns that Regulation SBSR does not adequately protect all block trade information. The letter recommends that reporting of all block trade information be delayed, not just the notional amount, because fund shareholders, as well as the market, may be negatively affected by premature disclosure of

transaction data about a swap block trade. With respect to the thresholds for identifying a block trade, the letter opposes the use of uniform thresholds, and recommends that the Commission assess the current liquidity for a particular swap type, term, and underlying security. The letter explains that this approach would enable the Commission to evaluate the market for a particular swap and determine what might be an illiquid size for purposes of defining a block trade in that swap.

The letter takes issue with the proposed time frames for reporting block trades, stating that they are inadequate and could result in higher costs for block trades which, ultimately, would be felt by fund shareholders. It recommends that the Commission delay dissemination of block trade information for 24 hours after execution and eliminate the provision requiring dissemination upon re-opening of a SDR. [\[3\]](#) The letter also recommends that the Commission include within the category of block trades equity total return swaps or a swap that is otherwise designed to offer risks and returns proportional to a position in the equity security or securities on which the swap is based. It states that, as with other swaps executed in large quantities, it is necessary to offset the market risks associated with disclosing these swap transactions in real time.

II. Reporting Obligations

The letter raises several issues with respect to the proposed reporting obligations. Regulation SBSR would require reporting to an SDR as soon as technologically practicable but in no event later than 15 minutes after the time of execution of the swap. The letter recommends that the Commission eliminate the 15-minute reporting requirement in order to provide flexibility for unintended or uncontrollable delays as the swaps marketplace adapts to the Dodd-Frank Act rulemaking. In conjunction with this recommendation, the letter recommends that the Commission eliminate the 15-minute prong from the proposed provision for dissemination of swap transaction data by other market participants. It notes that such a modification would ensure that swap transaction data is not made available to the public prior to release by an SDR.

With respect to the party obligated to report swap transaction data to an SDR, the letter explains that dealers are the only market participants that currently have the infrastructure and standardization to report the requisite data. It therefore recommends that, generally, swap dealers and swap execution facilities be obligated to report swap data 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. It also recommends that the Commission permit the parties to a swap transaction to determine who will assume the reporting obligation.

The letter comments on the proposed assignment of a “unique identification code” or “UIC” for each counterparty to a swap and, as applicable, the broker ID, desk ID, and trader ID of the reporting party. It raises the concern that multiple UICs could be assigned by different regulators to the same financial entity, unnecessarily creating compliance burdens, operational difficulties, and opportunities for confusion. Thus, it recommends that regulators coordinate their efforts to establish UICs.

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Attachment

endnotes

[1] In this memorandum, the term “swap” will be used to mean “security-based swap.”

[2] See Securities Exchange Act Release No. 63346, 75 FR 75208 (November 19, 2010), available at <http://www.sec.gov/rules/proposed/2010/34-63346fr.pdf>.

[3] The letter suggests that the 24-hour time frame could be reevaluated 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.

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