

MEMO# 24715

November 18, 2010

ICI Comment Letter on SEC and CFTC Proposals to Mitigate Conflicts of Interest at Swap Entities

[24715]

November 18, 2010

TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 62-10
EQUITY MARKETS ADVISORY COMMITTEE No. 47-10
FIXED-INCOME ADVISORY COMMITTEE No. 30-10
SEC RULES MEMBERS No. 124-10
SMALL FUNDS MEMBERS No. 73-10 RE: ICI COMMENT LETTER ON SEC AND CFTC
PROPOSALS TO MITIGATE CONFLICTS OF INTEREST AT SWAP ENTITIES

The Commodity Futures Trading Commission and the Securities and Exchange Commission recently proposed rules that would implement Sections 726 and 765 of the Dodd-Frank Wall Street Reform and Consumer Protection Act to mitigate conflicts of interest by imposing governance, voting, and ownership limitations on entities where swaps [\[1\]](#) are cleared and may be traded (collectively “swap entities”). [\[2\]](#) ICI submitted a comment letter focusing on the proposed structural governance requirements for swap entities’ boards of directors and board committees, and recommended that the Commissions require a swap entity to include investor representatives on its board of directors.

ICI’s letter states that requiring investor representation in the governance structure of swap entities would minimize conflicts of interest by better balancing the advancement of commercial interests with the fulfillment of self-regulatory responsibilities. It explains that investor representation on the board would ensure a governance structure that serves investors, satisfies the goals of the Dodd-Frank Act, and levels the playing field for swap entities by creating a governance structure wherein swap entities operate under similar restraints on the influence of owner and member self-interests. While strongly supporting investor representation on board advisory committees, the letter states that such representation should not be viewed as a substitute for inclusion on swap entity boards.

Heather L. Traeger
Associate Counsel

[Attachment](#)

endnotes

[1] In this memorandum, the term “swap” includes security-based swaps.

[2] See ICI [Memorandum](#) 24640, dated October 21, 2010.

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.