INVESTMENT COMPANY INSTITUTE

MEMO# 31630

February 26, 2019

Revised ICI Draft Letter on CFTC Proposal Regarding Swap Execution Facilities and the Trade Execution Requirement - Your Comments Requested by March 6

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February 26, 2019 TO: Derivatives Markets Advisory Committee RE: Revised ICI Draft Letter on CFTC Proposal Regarding Swap Execution Facilities and the Trade Execution Requirement - Your Comments Requested by March 6

Last November, the Commodity Futures Trading Commission (CFTC or "Commission") proposed amendments to its rules governing swap execution facilities (SEFs) and the trade execution requirement for swaps.[1] The CFTC recently extended the comment deadline on the proposal and comments are now due to the CFTC on March 15, 2019.

ICI has prepared the attached revised draft letter to the CFTC in response to the proposal. Please provide your written comments on the draft letter by Wednesday, March 6th, to sarah.bessin@ici.org and george.gilbert@ici.org. This draft incorporates comments on the prior draft, which we circulated in late January. We anticipate filing the letter early in the week of March 11th. The main points in the revised draft letter are substantively the same as the points that we made in the earlier draft.

The revised letter supports the main goals of the proposal, namely increasing swap market transparency, reducing complexity, and promoting the trading of more swaps on SEFs. We assert, however, that the CFTC's proposed drastic overhaul of SEF trading practices will not accomplish these goals and risks making markets more opaque, fragmented, brittle, and complex.

The letter supports the CFTC's proposed definition of "market participant," which we believe would improve market certainty. The CFTC's proposed definition would include asset managers as "market participants," while excluding the asset manager's clients.

The letter urges the CFTC not to proceed with proposed revisions to its rules on impartial access to SEFs. We explain that the CFTC's proposed changes to the impartial access requirements would harm buy-side market participants by reducing their access to markets, impairing liquidity, and diminishing competition. We assert that the CFTC's proposal to grant SEFs more discretion when considering what fees to charge market participants is likely to result in disproportionately higher costs for buy-side market participants.

The letter recommends that the CFTC rethink its vast expansion of the trade execution requirement. We explain that significantly expanding the trade execution requirement, as the Commission proposes, would increase costs and diminish competition, liquidity, and innovation. Rather than using its regulatory authority to force swap trading onto SEFs, we urge the CFTC to create appropriate incentives for industry participants to increase their use of SEFs and to impose the trade execution requirement only on a swap if sufficient liquidity exists on SEFs that list the swap to satisfy trading demand for the product. We further recommend that the CFTC not adopt the proposed ban on pre-execution communications for block trades to maintain liquidity in this critical portion of the market. We close by explaining that continuation of the post-trade name give-up practice for intended to be cleared swaps would exacerbate the liquidity issues that would result from the proposal.

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Attachment

endnotes

[1] For a summary of the proposal, *please see* ICI Memorandum No. 31498 (Nov. 27, 2018), *available at* https://www.ici.org/my_ici/memorandum/memo31498.