

**MEMO# 24704**

November 11, 2010

## **Draft ICI Letter on SEC and CFTC Proposals to Mitigate Conflicts of Interest at Swap Entities; Comments Due November 16**

[24704]

November 11, 2010

TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 25-10  
EQUITY MARKETS ADVISORY COMMITTEE No. 43-10  
FIXED-INCOME ADVISORY COMMITTEE No. 28-10  
SEC RULES COMMITTEE No. 53-10  
SMALL FUNDS COMMITTEE No. 22-10 RE: DRAFT ICI LETTER ON SEC AND CFTC PROPOSALS  
TO MITIGATE CONFLICTS OF INTEREST AT SWAP ENTITIES; COMMENTS DUE NOVEMBER 16

The Commodity Futures Trading Commission and the Securities and Exchange Commission have 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”). [\[2\]](#) In developing the rules, both of the Commissions identified perceived conflicts of interest and the need to address such conflicts by balancing the policy objective of promoting competition in the swap industry with the objective of minimizing systemic risk.

The ICI has prepared a draft comment letter, which is attached and summarized below.

Please provide your comments to Heather Traeger by 12:00 p.m. on November 16, 2010 at 202.326-5920 or [htraeger@ici.org](mailto:htraeger@ici.org).

# Summary of Draft Letter

ICI's draft letter focuses on the proposed structural governance requirements for swap entities' boards of directors and board committees, and recommends that the Commissions require swap entities to include investor representatives on their boards of directors. The 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 draft 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.

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