

## COMMENT LETTER

June 10, 2011

# ICI Letter Regarding Phase In Schedule for Swaps Rules (pdf)

June 10, 2011 Ms. Elizabeth M. Murphy Secretary Securities and Exchange Commission 100 F Street, N.E. Washington, D.C. 20549 Mr. David A. Stawick Secretary Commodity Futures Trading Commission Three Lafayette Centre 1155 21st Street, N.W. Washington, D.C. 20581 Re: Phase In Schedule for Requirements for Title VII of the Dodd-Frank Act Dear Ms. Murphy and Mr. Stawick: The Investment Company Institute<sup>1</sup> welcomes the opportunity to comment on the process of finalizing and implementing the rulemakings proposed under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). As participants in the derivatives markets, ICI and its members have encouraged reform efforts in these markets. During the hearings that led to the Dodd-Frank Act, ICI specifically supported measures that would improve the transparency in and fair and orderly operation of these markets. The implementation of the Dodd-Frank Act will dramatically change financial regulation in the derivatives markets, establishing a new regulatory framework for the swaps markets and their participants.<sup>2</sup>

<sup>1</sup> The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$13.41 trillion and serve over 90 million shareholders. <sup>2</sup> Throughout this letter, we will use the term “swaps” to refer to both swaps and security-based swaps. Likewise, we will use the term “major swap participants” to refer to both major swap participants and major security-based swap participants. Ms. Elizabeth M. Murphy Mr. David A. Stawick June 10, 2011 Page 2 of 13 To ensure that the final regulatory framework “gets it right,” however, while achieving the goals of the Dodd-Frank Act,<sup>3</sup> it is critical that the Commodity Futures Trading Commission (“CFTC”) and Securities and Exchange Commission (“SEC,” together with the CFTC, the “Commissions”) continue with their commitment to a transparent and open rulemaking process that: (1) solicits public comment in a manner that provides affected parties a meaningful opportunity to comment; (2) harmonizes and coordinates with domestic and international regulators, as appropriate; and (3) phases in the effective and compliance dates of the final rules. In the end, the swaps rules should be appropriately tailored, work in tandem and the associated costs to the swaps markets should be outweighed by the benefits from the new regulatory framework. We recommend the following steps to achieve these goals. First, the Commissions should repropose for a brief period the swaps rules in the order in which they will be implemented to assess the implications of any amendments, particularly in light of concerns regarding the interdependencies of the rules, regulatory certainty and unintended

consequences. Second, implementation of the new regulatory framework must follow a sequential, deliberative and coordinated process to minimize disruption to and negative implications for the swaps markets, participants and customers.<sup>4</sup> ICI recommends, as discussed below, several steps for consideration by the Commissions in developing their implementation timeframes, including: gather additional market data to inform rulemaking; provide sufficient time to build market infrastructures, modify business operations, complete testing, and perform outreach and education of customers; and phase in rule requirements by type of market participants and asset class.<sup>5</sup> Third, the Commissions should publish for comment their proposed timelines to phase in implementation of the new swaps rules.

<sup>3</sup> The Dodd-Frank Act was enacted to reduce risk, increase transparency, and promote market integrity within the financial system. <sup>4</sup> See Letter from American Bankers Ass'n, ABA Securities Ass'n, The Clearing House Ass'n, L.L.C., Financial Services Forum, Financial Services Roundtable, Institute of International Bankers, International Swaps and Derivatives Ass'n, Investment Company Institute, Managed Funds Ass'n and Securities Industry and Financial Markets Ass'n to Elizabeth M. Murphy, Secretary, SEC, and David A. Stawick, Secretary, CFTC, dated December 6, 2010. <sup>5</sup> A joint trade organization letter recommended evaluating these same factors in determining the swaps implementation schedule. We concur that such factors are essential to establishing the implementation timeline. See Letter from Futures Industry Association, Financial Services Forum, International Swaps and Derivatives Ass'n, and Securities Industry and Financial Markets Ass'n to Elizabeth M. Murphy, Secretary, SEC, and David A. Stawick, Secretary, CFTC, dated May 4, 2011 ("Joint Letter"). Ms. Elizabeth M. Murphy Mr. David A. Stawick June 10, 2011 Page 3 of 13 I. Repropose Amended Rules in Stages ICI commends the Commissions for their extraordinary efforts in the very difficult task of implementing the Dodd-Frank Act, including developing a new regulatory framework to address the complexities of the swaps markets while avoiding unintended consequences. We also commend the Commissions on their public outreach through roundtables and meetings with interested parties. ICI and its members have a strong interest in ensuring that the new framework encourages liquidity, fairness, competition and transparency, and therefore have supported reform in these markets.<sup>6</sup> Accordingly, it is only after due consideration that we recommend that the Commissions take measures that protract, even minutely, the adoption and implementation of the final swaps rules. To the extent, however, that the proposed rules may be changed before adoption in response to public comment, we believe that the amendments merit reconsideration by market participants and the public before being finalized.<sup>7</sup> The changes may present important new issues to the amended rule or other interrelated proposals, particularly given the complexity and high interdependency between the rules' provisions. Consequently, we recommend that the Commissions repropose even those rules with seemingly minor changes to solicit public input from market participants. ICI therefore recommends that the Commissions repropose each of the swaps rules in the order in which they will be implemented to provide greater certainty to the developing regulatory framework.<sup>8</sup> To the extent the SEC and CFTC rules on a particular topic are interconnected, we suggest the Commissions repropose these rules jointly, as appropriate (e.g., reporting of swap data). We further recommend that the Commissions provide a minimum 30-day comment period for each of the repropose rules. ICI urges the Commissions not to prioritize speed over quality in finalizing the rules and establishing the compliance deadlines. As noted by several members of Congress, "Regulatory certainty is urgently needed in the markets, but it is just as important that the rulemaking process be

<sup>6</sup> Testimony of Karrie McMillan, General Counsel, ICI, before the Subcommittee on General Farm Commodities and Risk Management Committee on Agriculture, United States House of Representatives, on "Implementing Dodd-Frank: A Review of the CFTC's Rulemaking Process" (April 13,

2011). 7 For example, business operations and infrastructures and investment strategies hinge on the final outcome of the Commissions' margin proposals (which the SEC has yet to propose). Changes to the scope of permissible custodians, the type of eligible collateral, and the type of permitted custody arrangements will greatly affect market participants' activities in the swaps markets and compliance with the swaps rules. 8 To be clear, we are not recommending that the Commissions wait until all rules are finalized and then repropose the entire package of rules at one time. Ms. Elizabeth M. Murphy Mr. David A. Stawick June 10, 2011 Page 4 of 13 thorough so that we end up with the right result."9 By seeking public input on the revised rules in this fashion, the Commissions will ensure the quality and efficacy of the final regulatory framework. The benefits of an iterative process significantly outweigh rushing to finalize the rules. The rules will dramatically affect the swaps markets by requiring new trading, reporting and clearing requirements, registrations, compliance regimes, and documentation requirements. Public comment on potential revisions and their effect, if any, on other rules therefore is critical to inform the final rules and ensure the smoothest possible transition to the new regulatory framework.10 The additional time associated with reproposing the rules to consider amendments is negligible compared with the possibility of adopting unworkable, unduly burdensome final rules that could disrupt our fragile financial markets. Finally, there is ample precedent for following an iterative process for rulemaking, particularly when such rules have a large impact on market structure and market participants.11 We note and appreciate the CFTC's recent extension of the comment periods on the proposed swap rules by 30 days.12 In theory, this extension has provided an opportunity to re-assess the implications of certain rules now that the mosaic of proposed CFTC rules is largely complete. Realistically, however, the extension was provided at a time when market participants also were first presented with a set of newly proposed rules, including proposed margin rules, capital rules, swap definition rules, and customer collateral rules – all of which are extremely complex and have significant import to market participants. Thus, the opportunity to review and comment on the entire framework

9 See Letter from the New Democrat Coalition to Gary Gensler, Chairman, CFTC, Mary Schapiro, Chairman, SEC, Ben Bernanke, Chairman, Federal Reserve Board and Timothy Geithner, Secretary, Department of the Treasury, dated April 25, 2011. 10 Chairman Gensler has noted that the CFTC will begin considering final rules "only after staff can analyze, summarize and consider comments, after the Commissioners are able to discuss the comments and provide feedback to staff, and after the Commission consults with fellow regulators on the rules." See Testimony before the U.S. House Committee on Agriculture, Washington, D.C., CFTC Chairman Gary Gensler, March 31, 2011. This review is incomplete if public comments do not address the rules substantially as they are drafted for final consideration. 11 See, e.g., Regulation NMS, 70 FR 37496 (June 29, 2005) (adopting Regulation NMS after holding public hearings, seeking supplemental comments and reproposing the entire Regulation NMS for public comment), Confidential Information and Commission Records and Information, 73 FR 44939 (August 1, 2008) (reproposing CFTC proposal based on receiving three comments, two of which raised concerns), and Certain Broker-Dealers Deemed Not To Be Investment Advisers, 70 FR 20423 (April 19, 2005) (adopting reproposal regarding broker-dealer exemption from registration under the Investment Advisers Act of 1940). Banking regulators also sought comment on multiple iterations of the Basel II capital rules. See <http://www.bis.org/publ/bcbsca.htm>. 12 Reopening and Extension of Comment Periods for Rulemakings Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act, 76 FR 25274 (May 4, 2011). Ms. Elizabeth M. Murphy Mr. David A. Stawick June 10, 2011 Page 5 of 13 of published rules has been limited. Moreover, the 30-day extension is irrelevant to the very real concern regarding reviewing modifications to the proposed rules prior to their adoption. II. Harmonization and Coordination The Commissions

should harmonize their regulatory approach to the extent possible across domestic and international regulators to address the global nature of the derivatives markets. Where harmonization is not possible, coordination should be undertaken. These efforts further affect the rulemaking process and commenters' ability to understand and anticipate the implications of rulemaking in the United States. Internationally, regulators should ensure that the outreach to and discussions with foreign regulators translate into the final rulemaking. The interconnected nature of the derivatives markets presents opportunities for certain market participants to take advantage of regulatory gaps or seek to transact in "lighter" regulatory regimes to the disadvantage of other market participants and the greater imposition of risk on the financial system as a whole. Without question, liquidity will move to where it is easiest to trade. Harmonization and coordination should counter that flight by facilitating information flow, helping target and eliminate systemic problems before they occur, preventing regulatory arbitrage, and limiting unintended consequences that could increase systemic risk. The need for harmonization and coordination to facilitate compliance with the swaps rules also must be resolved both at and between the domestic regulators. The CFTC, for example, employed 30 separate rulemaking teams in an effort to meet the statutory mandate for timely rulemaking. Some of the rules proposed by these teams do not dovetail with each other.<sup>13</sup> Market participants are also caught between the rules of the various financial regulators depending upon their swap activity (e.g., the CFTC and banking regulators' margin rules or the SEC's and CFTC's reporting rules or swap execution facility rules). Significant differences in the proposed requirements of each regulator, despite the interconnected way in which swaps are traded, will result in many compliance obstacles. To the extent these differences remain in the final rules, we urge the Commissions and banking regulators to coordinate the timing of implementing their rules to help minimize costs and operational issues surrounding compliance with the different regulatory requirements that may apply to a single swap transaction.

<sup>13</sup> Although commenters have identified these inconsistencies, it is unclear to market participants and the public how the CFTC will rectify these problems. Consequently, it also is unclear whether the proposed solutions may create new issues when plugged into the evolving regulatory mosaic. This uncertainty again argues for reproposal of any amendments to the proposed rules before adoption. Ms. Elizabeth M. Murphy Mr. David A. Stawick June 10, 2011 Page 6 of 13 III. Phase In ICI commends the Commissions on their efforts to study the implementation process for swaps rulemaking, including hosting the recent implementation roundtable, before finalizing the swaps rules and their effective and compliance dates.<sup>14</sup> Our members are highly supportive of the Commissions' consideration of a phased approach to implementing the final rules. Sequencing will be critical to the successful roll-out of the rules and to minimizing unforeseen and unintended consequences for market participants, customers and the swaps markets, including disruptions to the markets and risk mitigation strategies.<sup>15</sup> Sequencing is also a practical necessity. Market participants are struggling with the implications of the proposed rules on their activities in these markets, and are hampered in developing compliance strategies by the need to wait for action from other market participants. Phasing in the rules will provide market participants with essential time to identify the cumulative impact of the rule changes, build upon the actions of other market participants, and manage the cumulative costs of the rule changes. The CFTC's staff document entitled "CFTC Staff Concepts and Questions Regarding Phased Implementation of Effective Dates for Final Dodd-Frank Rules," provides a solid starting point for assessing an appropriate and realistic framework for implementation.<sup>16</sup> We agree with comments provided by the Futures Industry Association, Financial Services Forum, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association, that to better accommodate operational, technological, data and other challenges facing market

participants upon full implementation of the rulemaking mosaic, the Commissions should also consider the following guidelines, as discussed below, when developing their implementation timeline: • Gather additional market data to inform rulemaking; • Provide sufficient time to build market infrastructure and modify business operations; • Provide sufficient time for testing; • Provide sufficient time for outreach and education of customers; and

14 See CFTC and SEC Staffs to Host Public Roundtable Discussion on Dodd-Frank Implementation, SEC Press Release 2011-90 (April 12, 2011), available at <http://www.sec.gov/news/press/2011/2011-90.htm>. 15 We agree with the CFTC's assessment that rules that could be implemented sooner should be so as to lower risk by providing regulatory certainty. To that end, we believe that certain effective dates could run concurrently but that most must run consecutively. For example, registration of swap dealers and major swap participants could begin at the same time as the rules related to clearinghouse infrastructures. 16 See "CFTC Staff Concepts and Questions Regarding Phased Implementation of Effective Dates for Final Dodd-Frank Rules," available at

<http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/staffconcepts050211.pdf>. Ms. Elizabeth M. Murphy Mr. David A. Stawick June 10, 2011 Page 7 of 13 • Phase in

requirements by type of market participants and asset class. 17 In addition, as discussed at the roundtable, publication of, and public comment on, a final schedule for implementation would be extremely useful to the swaps market. As explained by Commissioner O'Malia, it would enable the market to adapt to the new regulatory framework on an iterative basis and would enable market participants to formulate an implementation strategy to make the necessary investments, hiring decisions, infrastructure build-outs and organizational changes required to comply with the rules. 18 A. Gather Additional Market Data to Inform Rulemaking Independent of the need to phase in effective dates and compliance dates for the swaps rules, certain proposals require the collection, "scrubbing" and evaluation by the Commissions of additional data before final adoption. Indeed, part of the genesis of Title VII of the Dodd-Frank Act was the lack of transparency in the swaps markets. Sufficient data is currently unavailable to assess the proper scope and application of particular rules, such as those related to position limits and block trades. Similarly, sufficient data is unavailable to implement particular rules without potentially adversely affecting certain segments of and participants in the swaps markets. 19 Further, it is important for the Commissions to have the information necessary to understand the economic effects of the proposed rules. 20 Until such time, it is premature to finalize rules that are dependent on understanding the unique attributes of a particular swap. 21

17 See Joint Letter, *supra* note 5. 18 See Remarks, Not all End-Users are Created Equal, Reval Annual Client Conference, CFTC Commissioner Scott D. O'Malia, May 11, 2011. 19 As we have previously noted, premature disclosure of transaction data about a block trade to the market can negatively affect the market and fund shareholders by significantly skewing pricing if the market does not have sufficient time to digest the block order. In addition, opportunistic market participants may piece together information about a fund's holdings or trading strategy, leading to front running of a fund's trades which also adversely impacts the price of the swap and the underlying security to the detriment of fund shareholders. We have therefore suggested that, in light of the many unanswered questions regarding the appropriate thresholds and reporting delays for block trades, the Commissions should phase in their reporting rules to minimize market disruption and harm to investors. See Letter from Karrie McMillan, General Counsel, ICI, to David A. Stawick, Secretary, CFTC, dated February 7, 2011. 20 Letter from the Senate Committee on Banking, Housing, and Urban Affairs to Inspectors General, dated May 4, 2011. 21 Granular data is necessary because the risks, trading and liquidity of a particular swap differ for each individual swap category within an asset class based on type, term and underlying security. Ms. Elizabeth

M. Murphy Mr. David A. Stawick June 10, 2011 Page 8 of 13 ICI recommends that the Commissions begin implementing the new swaps framework by finalizing and implementing rules requiring reporting of swap transaction data to the regulators. Initially, reporting should be limited to non-public, regulatory reporting to gather data to inform other rules (e.g., position limit and block trading rules) without significantly disrupting the swaps market and market participants' trading strategies by impacting liquidity. In addition, reporting must apply to all swaps and should not be limited solely to standardized swaps to provide a full picture to regulators for purposes of the other proposals. The information gathered through this process will assist the Commissions in better understanding the structure and operations of the swaps markets and in adopting appropriately tailored and effective rules.<sup>22</sup> B. Provide Sufficient Time to Build Market Infrastructure and Modify Business Operations Title VII of the Dodd-Frank Act requires the development of a complex, comprehensive new swap market infrastructure and significant changes to business operations. The implementation process must follow a logical sequencing which builds upon each category of finalized rules.<sup>23</sup> The amount of time necessary before implementing each category of rules will depend on the final form of the rules, including the magnitude, complexity and variance from current practices. The Commissions should not underestimate the time burden associated with crafting and implementing a significantly different infrastructure for the swaps markets – from the existing swaps infrastructure or the other derivatives markets – or discount the time necessary to reconsider and modify business practices in response to the impact these changes will have on the derivatives markets as a whole. Each set of rules will affect numerous market participants. Within each market participant's business, multiple departments will be affected, such as compliance, legal, technology, front-office, trading desk, and human resources. At each of these departments, numerous steps will have to be undertaken to assess, develop, test and implement policies and procedures to comply with the regulatory framework. To minimize market disruptions and control for unnecessary costs, the Commissions must ensure that sufficient time is provided to account for the different requirements and obligations of the aforementioned entities for proceeding in a systematic manner with each component part of the new swaps rules. In addition, the Commissions should meet regularly with

22 Only after such analysis can the Commissions truly gauge the potential risks of public dissemination of certain of the swap transaction data. The Commissions should therefore refrain from requiring public dissemination of swap transaction data until determining when and what data is appropriate to disseminate to the public. 23 For example, clearing rules must precede trading rules; swap execution facilities and swap data repository rules must precede reporting rules; and registration of swap dealers and major swap participants must precede the imposition of the capital and margin rules. Importantly, clearing rules also must be completed before imposing margin rules so that market participants can assess the costs of each side of the equation to determine whether or not to clear a swap. Ms. Elizabeth M. Murphy Mr. David A. Stawick June 10, 2011 Page 9 of 13 market participants to ensure that they have been able to complete implementation of each phase of the new regulatory framework before moving to the next phase. As an example of the considerable timing needs of market participants seeking to comply with the new swaps rules, several trade organizations recently described many of the infrastructure and business obstacles facing market participants in implementing the clearing rules: ...for example, Swap clearinghouses will need to develop rules that meet the Commissions' requirements and obtain requisite approval of those rules.<sup>24</sup> Potential clearing members will need to understand the new rules put into place by each Swap clearinghouse, determine which Swap clearinghouses to join as clearing members, negotiate appropriate documentation, set up technological connections and develop clearing offerings for their clients. Non-members, including many buy-side firms, will need

to understand the rules put into place by each Swap clearinghouse, determine which Swap clearinghouses they are comfortable with, evaluate which Swap clearinghouses clear certain products, choose clearing members to clear through, negotiate documentation with clearing members, and create any necessary technological connections with clearing members. Legal documentation, treatment of collateral, margin requirements, account setup, and fee negotiations, for example, between the Swap clearinghouses and their clearing members will take significant time.<sup>25</sup> Within clearing, each of these identified steps involves further undertakings necessitating additional time for compliance. For instance, clearing documentation alone involves drafting, negotiating, finalizing and ratifying numerous agreements and contracts between various parties. Moreover, the creation of a standardized document does not resolve the timing issue. The draft Futures Industry Association (“FIA”) document for cleared derivatives, for example, is missing many of the fundamental protections that buy-side participants seek on behalf of their customers. Accordingly, just as with the ISDA, the FIA document will provide a starting point, not an end point, for negotiation. In addition, the underlying futures agreement is non-standardized. It too will need to be modified, which will require an addendum and an execution agreement with each party. Account set up is another process that entails multiple time consuming steps. Even with standardized documents, it may take days to open an account. Some of the steps in revising or establishing an account include executing or providing account forms for “know your client,” margin, credit limits, wiring instructions, and anti-money laundering documentation. In the context of asset

24 In addition, the swaps that will be centrally cleared must be identified and subject to public comment and clearinghouses must finalize their operating models. 25 See Joint Letter, *supra* note 5. Ms. Elizabeth M. Murphy Mr. David A. Stawick June 10, 2011 Page 10 of 13 managers, the account set up process has to be multiplied over hundreds of subaccounts. Processing all of these subaccounts will take time even for the largest and most technologically advanced asset managers. Ultimately, existing and new systems will be challenged from the start. Although some of the proposed infrastructure already exists for certain asset classes and market participants, these systems will have to be adapted to conform to the final rules. For most asset classes and market participants, including ICI members, the systems will have to be newly developed. In addition, the small number of clearinghouses and dealers offering clearing services will be burdened with accommodating the needs of all end users. This is particularly true in light of the need, as discussed below, for all end users to have equal access to the developing infrastructure. Inevitably, bottlenecks will occur if the Commissions fail to provide sufficient time for end users to process their accounts, link up or adjust, and test systems. The resulting disruption of trading will be harmful to their customers and the swaps markets. C. Provide Sufficient Time for Testing The Commissions should ensure that adequate time is provided for systems testing for each category of rules in the new regulatory infrastructure. Regardless of which asset class clears first, market participants will have to complete the development of their underlying systems. Operationally, the infrastructure must be in place on day one for whatever comes down the pipe. Consequently, market participants will need to finish end-to-end production and testing of front-, middle- and back-office systems for all systems related to clearing, trading and reporting information under the new swaps rules. All of these new systems will need to provide connections and allow for forms of interfacing – between customers, dealers, swap execution facilities, exchanges, clearing organizations, and so on. Each of these connections will need to be tested. To assist with the development and testing of these systems, the Commissions should prohibit any discriminatory treatment of market participants (e.g., in the case of clearinghouse rules, non-direct clearing members) and ensure cooperation between market participants in developing and testing systems to

comply with the developing infrastructure. D. Provide Sufficient Time for Outreach and Education of Customers Although market participants are intimately involved in the dramatic overhaul of the swaps markets, customers will need to be educated on the many changes to the regulatory requirements and business practices that the new framework will require. Customers' understanding of the new marketplace will have to be developed in conjunction with the evolving rules. Accordingly, in developing their timelines, the Commissions should factor in time for customer education after each significant phase of regulatory finalization. For example, after rules are adopted, systems are developed, and associated forms of documentation are finalized, asset managers will need to apprise their customers of the many changes regarding the way in which their swaps transactions may be conducted Ms. Elizabeth M. Murphy Mr. David A. Stawick June 10, 2011 Page 11 of 13 including new or different requirements, obligations, costs and protections.<sup>26</sup> The need to educate customers regarding such changes is not trivial because their business forms the foundation of many segments of the swaps markets and is a critical component to those segments' continued success. For this same reason, customers will need not only to understand the new systems but also to have confidence in those systems. E. Phase In Requirements by Type of Market Participants and Asset Class ICI supports the concept of phasing in the rule requirements by type of asset class and market participant. As recognized during the roundtable, some asset classes have substantial levels of standardization, liquidity and existing market infrastructure. These asset classes include certain commodity and interest rate swaps, which may already be subject to interdealer clearing and electronic execution. Other asset classes are on the opposite end of the spectrum – bespoke bilateral transactions – while still others fall somewhere along the continuum. Starting with the most liquid, standardized and cleared asset classes should provide for a smoother transition to the new regulatory framework and help inform the process for other asset classes. The transition similarly would be facilitated by providing a period of time between a product being approved for clearing and its clearing being mandated.<sup>27</sup> This would allow the swaps markets to digest the changes but also to identify or correct for unintended consequences. The Commissions also should consider whether there are certain asset classes that typically trade as a unit and therefore should be phased in together. As with asset classes, there are meaningful differences between market participants with respect to resources, readiness and swaps market experience. For example, swap dealers in certain credit products already have been using central clearing and undoubtedly have greater resources and experience for adapting to the new regulatory framework than many end users. Requiring them to comply with the rules and develop experience for each asset class at an earlier date than end users is appropriate and, again, would help inform the process for other market participants. Phasing within a class of market participants also is warranted based on structural differences. Each category of financial end user, for example, faces different compliance burdens. As discussed above, those financial end users managing subaccounts must negotiate and modify a series of documents and open accounts under the new rules – processes that will take significant time to complete.

26 Our members have represented that some changes to their businesses necessary to reflect the new swaps rules will require board approval. This may involve additional time because many boards meet only periodically. 27 We believe volume targets could allow market participants to adjust to mandatory deadlines in response to unexpected implementation problems. Ms. Elizabeth M. Murphy Mr. David A. Stawick June 10, 2011 Page 12 of 13 Importantly, all market participants should be permitted, but not required, to comply with the rules concurrent with deadlines for dealers or major swap participants.<sup>28</sup> Equal access is necessary to allow all market participants an equivalent opportunity to participate in the development of the clearing, execution and reporting infrastructure and systems. Smaller entities, for example,



may have unique issues that need to be accounted for before systems are hardwired.<sup>29</sup> Many swap market participants are small entities; it is important to ensure that these entities and their liquidity are not squeezed out of the swaps markets. Further, the phase in should allow market participants to transition in an economically and commercially sensible manner. Being able to clear liquid swaps may present advantages for their customers (e.g., lower counterparty risk). Some market participants, including funds, have an obligation to treat their customers the same, which may require them to clear as soon as possible. Finally, there is the competitive landscape to consider, and no market participant should be disadvantaged if it is able and interested in complying with the rules before it is required to comply with them. To address all of these concerns, ICI recommends a voluntary period for compliance before the rules are mandated for each category of market participant. \* \* \* \* \*

If you have any questions on our comment letter, please feel free to contact me directly at (202) 326-5815, Heather Traeger at (202) 326-5920, or Ari Burstein at (202) 371-5408.

Sincerely, /s/ Karrie McMillan Karrie McMillan General Counsel cc: The Honorable Mary L. Schapiro The Honorable Kathleen L. Casey The Honorable Elisse B. Walter The Honorable Luis A. Aguilar

28 ICI endorses the CFTC's suggestion that any effective dates that are set for clearinghouses and trading platforms must provide for client clearing and access at the same time for all participants who wish to use the platform. Likewise, customer clearing systems should be built concurrent with dealer systems. 29 Without regulatory guidance, dealers may be less willing to expend time and resources to assist smaller market participants with testing and "on-boarding" until they have completed such processes with larger market participants. Ms. Elizabeth M. Murphy Mr. David A. Stawick June 10, 2011 Page 13 of 13 The Honorable Troy A. Paredes Securities and Exchange Commission Honorable Gary Gensler, Chairman Honorable Michael Dunn, Commissioner Honorable Jill E. Sommers, Commissioner Honorable Bart Chilton, Commissioner Honorable Scott D. O' Malia, Commissioner Commodity Futures Trading Commission