

February 22, 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 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

*Re: Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant," and "Eligible Contract Participant" (File No. S7-39-10 and RIN 3038-AD06)*

Dear Ms. Murphy and Mr. Stawick:

The Investment Company Institute<sup>1</sup> and the Asset Management Group ("AMG") of the Securities Industry and Financial Markets Association,<sup>2</sup> (collectively, "the trade associations" or "we") welcome the opportunity to comment on the definitions of key terms in the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") related to the regulation of swaps.<sup>3</sup> Our

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<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 \$12.68 trillion and serve more than 90 million shareholders.

<sup>2</sup> The AMG's members represent U.S. asset management firms whose combined assets under management exceed \$20 trillion. The clients of AMG member firms include, among others, registered investment companies, state and local government pension funds, universities, ERISA funds, 401(k) and similar types of retirement funds, and private funds such as hedge funds and private equity funds.

<sup>3</sup> See SEC Release No. 63452, 75 FR 80174 (December 21, 2010) ("Release"), available at <http://www.sec.gov/rules/proposed/2010/34-63452fr.pdf>. Throughout this letter, we will use the term "swaps" to refer to

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members are participants in the swaps markets and support efforts to improve the fair and orderly operation of these markets and minimize systemic risk. ICI and AMG are each submitting separate letters today that address all of our respective comments and concerns on the proposed rules set forth in the Release, but we would like to jointly comment on an area that is a very important concern for the members of both of our organizations, the potential regulation of registered investment companies<sup>4</sup> as “major swap participants” (“MSPs”). We recommend that the Securities and Exchange Commission and the Commodity Futures Trading Commission exclude funds from the definition of MSP as regulating funds as MSPs would not further the important goals of the Dodd-Frank Act.<sup>5</sup>

Funds are subject to a comprehensive regulatory framework under the federal securities laws that sets them apart from other types of financial entities and ensures that their swap activities do not threaten the U.S. financial system.<sup>6</sup> Current regulation of funds addresses their margin, capital, leverage, risk disclosure, recordkeeping, registration, and business conduct. The risk associated with funds’ swap activity is mitigated by their use of collateral and asset segregation, and regulatory limits on their ability to use leverage. Application of the requirements in the Dodd-Frank Act designed to create regulatory oversight of leverage, volatility, and collateral related to swap trading to funds would therefore unnecessarily subject them to duplicative or potentially inconsistent regulatory requirements at significant additional costs to fund investors with no corresponding systemic benefits.

Current regulation of funds provides the necessary and prudent level of oversight of these swap market participants. Existing requirements protect both the fund and the fund’s counterparty from risks associated with swap transactions.<sup>7</sup> Compliance with these requirements makes funds that enter into swap transactions arguably the most regulated end users in the U.S. over-the-counter market today. Therefore, applying the MSP provisions of the Act to funds would not serve the purposes of the Dodd-Frank Act.

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both swaps and security-based swaps. Likewise, we will use the term “major swap participant” or “MSP” to refer to both major swap participants and major security-based swap participants.

<sup>4</sup> For purposes of this letter, we refer to U.S. registered investment companies as “funds.”

<sup>5</sup> We also strongly agree with the view expressed by the Commissions in the Release that advisers to funds should never be deemed to be MSPs as a result of the swap positions maintained by the funds that they advise. Among other reasons, looking to advisers with respect to positions maintained by funds that they manage would be inconsistent with the proposed rules’ goal of capturing entities whose swap positions create systemic risk.

<sup>6</sup> For a detailed discussion of the federal securities laws applicable to funds, *see* (i) Letters from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, and David A. Stawick, Secretary, Commodity Futures Trading Commission, dated September 20, 2010 and February 22, 2011; and (ii) Letters from Timothy W. Cameron, Esq., Managing Director, Asset Management Group, Securities Industry and Financial Markets Association, to David A. Stawick, Secretary, Commodity Futures Trading Commission, and Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated September 20, 2010 and February 22, 2011.

<sup>7</sup> *See, e.g.*, Section 18 (asset coverage requirements and restrictions on leverage and senior securities) and Section 17 (custody requirements for collateral) of the Investment Company Act of 1940 and the rules promulgated thereunder.

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The undersigned trade associations would be pleased to further assist the Commissions in any way possible as the discussions on the definition of MSP go forward.

Sincerely,

/s/ Karrie McMillan

Karrie McMillan  
General Counsel  
Investment Company Institute

/s/ Timothy W. Cameron

Timothy W. Cameron, Esq.  
Managing Director  
Asset Management Group,  
Securities Industry and Financial Markets Association

cc: The Honorable Mary L. Schapiro  
The Honorable Kathleen L. Casey  
The Honorable Elisse B. Walter  
The Honorable Luis A. Aguilar  
The Honorable Troy A. Paredes

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