

June 18, 2014

The Honorable John Boehner
Speaker
United States House of Representatives
H-232, US Capitol
Washington, D.C. 20515

The Honorable Nancy Pelosi
Minority Leader
United States House of Representatives
H-204, US Capitol
Washington, D.C. 20515

Re: Garrett Amendment to H.R. 4413, the Customer Protection and End User Relief Act

Dear Speaker Boehner and Leader Pelosi:

I am writing on behalf of the Investment Company Institute¹ to express support for Representative Garrett's amendment to H.R. 4413, the Customer Protection and End User Relief Act, and for the underlying bill itself. ICI members—mutual funds and other registered investment companies (registered funds)—are the investment vehicles of choice for millions of Americans seeking to buy a home, pay for college, or plan for financial security in retirement. To help shareholders achieve their investment objectives, registered funds sometimes use financial derivatives (*e.g.*, an S&P 500 swap) to gain exposure to the market on a more cost-efficient basis.

From 1985 until 2012, Commodity Futures Trading Commission (CFTC) regulations excluded “otherwise regulated entities”—registered funds, insurance company separate accounts, bank trust and custodial accounts, and retirement plans subject to ERISA fiduciary rules—from commodity pool operator (CPO) regulation because they were already regulated by another agency. As part of a 2012 rulemaking not mandated—or even contemplated—by the Dodd-Frank Act, the CFTC significantly broadened the reach of its oversight as it relates to registered funds only.

¹ 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 \$16.8 trillion and serve more than 90 million shareholders.

As a result of the CFTC's 2012 rulemaking, more than 70 fund companies managing over 5,000 mutual funds have had to register with the CFTC as CPOs. This duplicative regulation by the CFTC has resulted in increased costs for registered funds and the Americans who invest in them. Registered funds are comprehensively regulated by the SEC and are among the most highly regulated financial products in the United States. Additional regulation by the CFTC is unnecessary, particularly for those funds that do not resemble or compete with traditional commodity pools.

The Garrett Amendment would, consistent with the CFTC's stated intent in its 2012 rulemaking, continue to provide the CFTC with concurrent jurisdiction over advisers of those registered funds that resemble or compete with traditional commodity pools, such as a registered fund that offers a managed futures strategy or seeks exposure to the physical commodities markets. At the same time, it would restore to exclusive SEC jurisdiction advisers to those funds that invest in only financial derivatives (*e.g.*, an S&P 500 swap).

The Garrett Amendment would reduce the unnecessary regulation and costs created by the CFTC's rulemaking without undermining investor protection. All registered funds and their advisers would remain comprehensively regulated by the SEC, including regulations that govern the funds' derivatives holdings.² In addition, key CFTC rules would continue to govern registered funds whenever they trade in commodity interests. Importantly, the Garrett Amendment would not in any way alter the CFTC's existing authority over all commodity interests, but would only end duplicative and unnecessary regulation of registered funds except those that invest in traditional commodities (*e.g.*, natural resource and agricultural commodities).

Thank you for your consideration of our views.

With very best regards.

Sincerely,

A handwritten signature in black ink that reads "Paul Schott Stevens". The signature is written in a cursive, flowing style with a prominent initial "P".

Paul Schott Stevens
President and CEO
Investment Company Institute

² The CFTC itself has acknowledged the adequacy of SEC regulation for registered funds by allowing registered fund CPOs to satisfy CFTC rules by complying with SEC rules.