

**MEMO# 30428**

November 29, 2016

## **European Commission Issues Report on Review of EU's Derivatives Regulation**

[30428]

November 29, 2016

TO: Derivatives Markets Advisory Committee

ICI Global Trading & Markets Committee RE: European Commission Issues Report on Review of EU's Derivatives Regulation

On November 23, 2016, the European Commission issued its report on the implementation of the European Market Infrastructure Regulation ("EMIR").<sup>[1]</sup> Under Article 85(1) of EMIR, the European Commission is required to submit a report on EMIR, including any proposal for changes, to the European Parliament and the Council. The Commission conducted a public consultation to gather information for the report in 2015 to which ICI Global responded.<sup>[2]</sup> The report discusses areas in which the Commission believes action is necessary to achieve the objectives of EMIR in a more proportionate, efficient, and effective manner. In 2017, the Commission will propose a legislative review of EMIR and assess the relevant technical standards under EMIR.

In the report, the Commission generally concludes that fundamental changes are not necessary to the core requirements of EMIR (*i.e.*, clearing, margin requirements, reporting, operational risk mitigation requirements, and requirements for trade repositories and central counterparties ("CCPs")). The Commission believes, however, that there are a number of areas in which EMIR requirements could be adjusted to simplify and increase the efficiency of the requirements and to reduce disproportionate costs and burdens.

The Commission will consider the following areas identified in the report to propose amendments:

- Introducing a mechanism to suspend the clearing obligation in case of dramatic changes in market conditions;<sup>[3]</sup>
- Facilitating the predictability of margin requirements by requiring CCPs to share better information and by requiring authorities to endorse initial margin models;
- Streamlining reporting requirements in certain areas, enhancing the functioning of trade repositories, and exploring alternative methods for providing access to third country authorities of trade repository data;
- Reviewing the extent to which transactions entered into before the clearing obligation enters into force and intragroup transactions should be subject to EMIR clearing requirements;
- Adjusting the scope of core requirements under EMIR to address challenges faced by

non-financial counterparties (“NFCs”);<sup>[4]</sup>

- Addressing obstacles to client clearing for small financial counterparties (“FCs”); and
- Assessing whether the current exemption for pension scheme arrangements from the clearing obligation under EMIR should be extended or made permanent.

In its response to the Commission’s request for feedback on EMIR implementation, ICI Global, among other things, urged the Commission to adopt a single-sided reporting regime under which the counterparty with the greater capacity to report a transaction (e.g., a dealer rather than a regulated fund) would be required to report the transaction. In the report, the Commission does not specify how it would consider streamlining trade reporting. We will keep you informed of further developments.

Jennifer S. Choi  
Associate General Counsel

#### endnotes

<sup>[1]</sup> Report from the Commission to the European Parliament and the Council under Article 85(1) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (Nov. 23, 2016), *available at* <http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/COM-2016-857-F1-EN-MAIN.PDF>.

<sup>[2]</sup> See ICI Memorandum No. 28999 (May 21, 2015), *available at* <https://www.iciglobal.org/iciglobal/pubs/memos/memo28999>. For ICI Global’s response to the Commission’s request for feedback, see ICI Memorandum No. 29260 (Aug. 13, 2015), *available at* <https://www.iciglobal.org/iciglobal/pubs/memos/memo29246>.

<sup>[3]</sup> The Commission has proposed the suspension mechanism as part of the proposal on CCP recovery and resolution. See Proposal for a Regulation of the European Parliament and of the Council on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, and (EU) 2015/2365, *available at* <http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/COM-2016-856-F1-EN-MAIN.PDF>.

<sup>[4]</sup> The Commission does not appear to be contemplating a complete exemption from EMIR for transactions by NFCs.