

MEMO# 30295

October 6, 2016

Draft ICI Global Comment Letter in Response to FSB and CPMI-IOSCO Consultations on Clearinghouse Resolution and Recovery; Member Comments Requested By October 12

[30295]

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TO: DERIVATIVES MARKETS ADVISORY COMMITTEE No. 52-16
ICI GLOBAL TRADING & MARKETS COMMITTEE No. 48-16
INTERNATIONAL COMMITTEE No. 53-16
SECURITIES OPERATIONS ADVISORY COMMITTEE RE: DRAFT ICI GLOBAL COMMENT LETTER IN RESPONSE TO FSB AND CPMI-IOSCO CONSULTATIONS ON CLEARINGHOUSE RESOLUTION AND RECOVERY; MEMBER COMMENTS REQUESTED BY OCTOBER 12

As previously reported, the Financial Stability Board (“FSB”), the Committee on Payments and Market Infrastructures (“CPMI”), and the International Organization of Securities Commissions (“IOSCO”) have recently published reports on the resiliency and recovery and the resolution planning of central counterparties (“CCPs”).^[1] Specifically, the FSB issued a discussion note on the essential aspects of CCP resolution planning and CPMI-IOSCO issued a consultative report providing further guidance on resilience and recovery of CCPs.^[2]

The Discussion Note seeks comments on the core aspects of the design of effective resolution strategies including the timing of entry into resolution, the tools to return a CCP to a matched book, and the allocation of losses in resolution. The Consultation Report seeks comment on guidance for CCPs on certain aspects of the international standards for risk management for financial market infrastructures, including CCPs, which was published by CPMI and IOSCO in 2012.^[3] The Consultation Report also provides additional guidance to facilitate a CCP’s development of its recovery plan.

ICI Global’s draft comment letter on these consultations is attached for your review. The draft letter is addressed to the FSB, but its content is responsive to both consultations. We will be filing a cover note attaching the letter to the FSB in response to the Consultation Report. If you have any comments on the draft letter, please send them in writing to George Gilbert at george.gilbert@ici.org **by close of business on October 12.**

Our draft letter urges the FSB and CCP resolution authorities to promote recovery and resolution strategies that protect the assets of customers of clearing members, including funds. The letter urges regulators to reject CCP recovery or resolution strategies that would permit the appropriation of customer assets through margin haircuts or contract tear-ups. Haircutting the margin or tearing-up the contracts of non-defaulting customers of clearing members would impose unfairly the costs of CCP resolution on entities that did not contribute to the CCP's failure and do not have the ability to manage the risks of the CCP. Using customer assets to resolve a CCP also would create inappropriate incentives for owners and clearing members of CCPs. Rather than using customer funds to resolve a failed CCP, we recommend that other resources be available to a CCP for this purpose.

We also suggest that the FSB encourage CCPs and the authorities responsible for their resolution to provide publicly guidance on the time at which a recovery effort will turn to resolution of a failed CCP. We believe that providing market participants with transparency into the timing and process for resolving a CCP will result in fairer treatment for all stakeholders and reduce uncertainty during a stressful time.

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[Attachment](#)

endnotes

[1] See ICI Memorandum No. 30157 (August 22, 2016), *available at* <https://www.iciglobal.org/iciglobal/pubs/memos/ci.memo30157.global>.

[2] See FSB, *Essential Aspects of CCP Resolution Planning, Discussion Note*, August 16, 2016, *available at* <http://www.fsb.org/wp-content/uploads/Essential-Aspects-of-CCP-Resolution-Planning.pdf> ("Discussion Note"); CPMI and IOSCO, *Resilience and recovery of central counterparties (CCPs): Further guidance on the PFMI, consultative report*, August 2016, *available at* <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD539.pdf> ("Consultation Report").

[3] See CPMI and IOSCO, *Principles for financial market infrastructures*, April 2012, *available at* <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377-PFMI.pdf> (international framework for the resiliency and recovery of CCPs).