

MEMO# 28423

October 2, 2014

Draft ICI Global Comment Letter in Response to ESMA's Discussion Paper on Calculation of Counterparty Risk by UCITS for OTC Financial Derivatives Transactions Subject to Clearing Obligations; Member Feedback Requested by Friday, October 10

[28423]

October 2, 2014

TO: DERIVATIVES MARKETS ADVISORY COMMITTEE No. 66-14
ICI GLOBAL MEMBERS No. 39-14
INTERNATIONAL COMMITTEE No. 33-14 RE: DRAFT ICI GLOBAL COMMENT LETTER IN RESPONSE TO ESMA'S DISCUSSION PAPER ON CALCULATION OF COUNTERPARTY RISK BY UCITS FOR OTC FINANCIAL DERIVATIVES TRANSACTIONS SUBJECT TO CLEARING OBLIGATIONS; MEMBER FEEDBACK REQUESTED BY FRIDAY, OCTOBER 10

We have prepared a draft comment letter to the European Securities and Markets Authority ("ESMA") in response to the discussion paper on the calculation of counterparty risk by UCITS for OTC financial derivatives transactions subject to clearing obligations. [\[1\]](#) After the consultation, ESMA will determine its final views on how to proceed, including whether to make a recommendation to the European Commission on a modification of the UCITS Directive.

If you have comments on the draft letter, please provide them to Jennifer Choi at jennifer.choi@ici.org by Friday, October 10.

In the draft letter (a copy of which is attached), we request that ESMA conduct a thorough analysis of the non-recognized third country CCPs to determine whether (and how) counterparty risk limits should be applied. The letter questions whether the application of counterparty risk limits is appropriate in an agency clearing environment in which there is no back-to-back transaction structure with the clearing member acting as principal in a transaction with its client and a further back-to-back transaction with the CCP. The letter

also disagrees with ESMA that third country CCPs that have not been recognized are subject to standards that are not equivalent to those applicable to EU CCPs or third country CCPs recognized under EMIR. The letter also objects to ESMA's conclusory approach of applying the full counterparty risk limits to clearing members of third country CCPs without a comprehensive analysis of their clearing models and a thoughtful consideration of the asset segregation protections provided to client collateral. Finally, the letter argues that ESMA's proposed approach would not encourage clearing because the same risk limits would apply in relation to uncleared OTC derivatives and OTC derivatives cleared using an omnibus or LSOC segregation model.

The letter also urges ESMA to conduct a more complete study before making any recommendation to apply the counterparty risk limits to investments in exchange-traded derivatives.

Jennifer S. Choi
Senior Associate Counsel Securities Regulation

[Attachment](#)

endnotes

[1] European Securities Markets Authority, Discussion Paper, Calculation of Counterparty Risk by UCITS for OTC Financial Derivative Transactions Subject to Clearing Obligations (July 22, 2014), available at <http://www.esma.europa.eu/system/files/2014-esma-876.pdf> ("Discussion Paper"). For a summary of the Discussion Paper, see ICI Memorandum No. 28312 (Aug. 14, 2014), available at <http://www.ici.org/iciglobal/pubs/memos/memo28312>.