INVESTMENT COMPANY INSTITUTE

MEMO# 31558

January 15, 2019

Agreement Reached on Amendments to BRRD Moratorium Powers

[31558]

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TO: Derivatives Markets Advisory Committee
ICI Global Regulated Funds Committee
ICI Global Trading & Markets Committee RE: Agreement Reached on Amendments to BRRD Moratorium Powers

This memorandum provides an update on the final agreement reached by the European Union on proposed amendments regarding moratorium powers under the European Bank Recovery and Resolution Directive (BRRD).

As background, in November 2016, the European Commission proposed amendments to BRRD that would add two additional moratorium powers to BRRD, a pre-resolution stay and an in-resolution stay.[1] Each of these new moratorium powers could be applied for up to five working days, in addition to the existing two working day stay power under BRRD, resulting in a stay of up to 12 working days or more. ICI Global, in coordination with SIFMA AMG, has consistently expressed the view that moratoria under BRRD should be no longer than two business days total, consistent with principles of the FSB's Key Attributes of Effective Resolution Regimes of Financial Institutions ("FSB Key Attributes").[2]

Toward the end of last year, EU authorities reached a binding political agreement on the EU banking package, including moratorium powers under BRRD. The position on BRRD moratorium powers reflects a compromise between the European Parliament and Council of Ministers under which the maximum total stay may be no longer than two business days and will be subject to strict conditions on its imposition. This position is generally consistent with the two-day maximum length of the existing stay under BRRD and the FSB Key Attributes, although the amendments would permit a stay to be imposed either when a bank is determined to be "failing or likely to fail" and/or is in resolution, as long as the total length of stay does not exceed two business days.

We expect the legal texts for the banking package to be finalized in the coming weeks. Following finalization, the Council is expected to endorse the text officially. A plenary vote of the European Parliament is scheduled for April, following which the European Council is expected to adopt the legislation officially. The texts will then be published in the EU Official Journal and will enter into force.

Please let me know if you have any questions.

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Associate General Counsel

endnotes

[1] *See* Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/59/EU on loss-absorbing and recapitalisation capacity of credit institutions and investment firms and amending Directive 98/26/EC, Directive 2002/47/EC, Directive 2012/30/EU, Directive 2011/35/EU, Directive 2005/56/EC, Directive 2004/25/EC and Directive 2007/36/EC (November 23, 2016) (COM/2016/0852 final), *available at* https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0852&from=EN.

[2] *See, e.g.,* Letters from ICI Global and SIFMA AMG dated June 29, 2017, *available at* https://www.ici.org/pdf/30761a.pdf, Jan. 23, 2018, *available at* https://www.ici.org/pdf/31084a.pdf, and Sept. 10, 2018, *available at* https://www.ici.org/pdf/31378a.pdf. The FSB Key Attributes provide that any stay should be "strictly limited in time (for example, for a period not exceeding 2 business days) . . ." FSB, *Key Attributes of Effective Resolution Regimes for Financial Institutions* (October 15, 2014), *available at* http://www.fsb.org/what-we-do/policy-development/effective-resolution-regimes-and-policies/key-attributes-of-effective-resolution-regimes-for-financial-institutions/#4set-off.