

MEMO# 31084

February 12, 2018

ICI Global and SIFMA AMG Jointly Submit Letter to EU Policymakers on BRRD Proposed Moratorium Powers

[31084]

February 12, 2018 TO: ICI Members

Investment Company Directors

ICI Global Members

Derivatives Markets Advisory Committee

ICI Global Regulated Funds Committee

Money Market Funds Advisory Committee SUBJECTS: Derivatives

International/Global

Investment Advisers

MiFID, EMIR, AIFMD, UCITS V

Money Market Funds

Trading and Markets RE: ICI Global and SIFMA AMG Jointly Submit Letter to EU Policymakers on BRRD Proposed Moratorium Powers

ICI Global and SIFMA AMG (“Associations”) recently jointly submitted the attached letter to EU policymakers reiterating the Associations’ opposition to the European Commission’s proposal to expand moratorium powers under the Bank Recovery and Resolution Directive (BRRD). The letter provides data regarding the size of the relevant markets in Europe that may be impacted if pension funds, regulated investment funds, private funds and other investors on whose behalf asset managers act as fiduciaries determine not to enter into transactions with, custody with, or invest in EU banks as a result of an expansion of the moratorium powers.

The letter follows the Associations’ June letter to European policymakers,[\[1\]](#) and is part of the Associations’ ongoing advocacy efforts regarding the proposed moratorium powers under the BRRD. The letter highlights the following key risks of expanding the moratorium powers:

- **Regulated investment funds, such as UCITS and US mutual funds, may not transact with or invest in EU banks due to the significant compliance and regulatory risks raised by expanded moratorium powers.** The letter discusses the potential implications of an extended stay for regulated funds that are subject to liquidity requirements, US and EU money market funds that must satisfy regulatory

requirements limiting the maximum maturity of their investments, and US investment funds that are subject to SEC rules and positions regarding securities lending transactions and reverse repurchase agreements.

- **Applying expanded moratorium powers to EU custody banks would be inconsistent with existing regulatory requirements applicable to regulated funds.** The proposed expanded moratorium powers would apply to EU banks that serve as custodians, including those that serve as the EU sub-custodians of global custodians. The letter explains that applying expanded moratorium powers to an EU custody bank would be inconsistent with EU and US regulatory requirements applicable to regulated funds. It also could prevent regulated funds from being able to satisfy their regulatory obligations to provide liquidity to investors.
- **Expanded moratorium powers would create significant uncertainty, and attendant risk, for pension funds, regulated investment funds, private funds and other investors served by asset managers that enter into collateralized, netted trading agreements with EU bank counterparties.** The letter explains that contractual uncertainty and increased counterparty risks due to extended moratorium tools would be unique to EU banks given that other major jurisdictions have enacted narrow moratorium powers, consistent with the FSB's Key Attributes of Effective Resolution Regimes of Financial Institutions.

The letter therefore urges EU policymakers to maintain the existing moratorium powers under BRRD that are aligned with other major jurisdictions, and not expand the moratorium powers, as the European Commission has proposed to do.

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Associate General Counsel

[Attachment](#)

endnotes

[1] See ICI Memorandum No. 30761 (June 30, 2017), *available at* https://www.ici.org/my_ici/memorandum/memo30761.