

MEMO# 29282

August 26, 2015

ICI Global Submits Comment Letter in Response to Bank of England's Consultation Paper on Cross-Border Stay of Termination Rights for Certain Financial Contracts

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TO: DERIVATIVES MARKETS ADVISORY COMMITTEE No. 63-15
ICI GLOBAL REGULATED FUNDS COMMITTEE No. 52-15
ICI GLOBAL TRADING & MARKETS COMMITTEE No. 41-15
INTERNATIONAL MEMBERS No. 30-15 RE: ICI GLOBAL SUBMITS COMMENT LETTER IN RESPONSE TO BANK OF ENGLAND'S CONSULTATION PAPER ON CROSS-BORDER STAY OF TERMINATION RIGHTS FOR CERTAIN FINANCIAL CONTRACTS

ICI Global submitted a comment letter in response to a consultation paper issued by the Bank of England ("BOE") and the Prudential Regulation Authority ("PRA") proposing a new rule requiring the contractual adoption of resolution stays in certain financial contracts governed by third-country law (i.e., law of a jurisdiction outside the European Union). [\[1\]](#) Under the proposed rule, certain regulated entities will be prohibited from entering into new contracts or amending existing financial contracts (e.g., derivatives contracts and securities lending and repurchase agreements) unless the counterparties (e.g., non-EU regulated funds) agree to be subject to restrictions on early termination and close-out as if the financial contracts were governed by the laws of the United Kingdom. A copy of the comment letter is attached.

The letter argues that the permanent solution for the orderly resolution of a global systemically important financial institution should be for jurisdictions to adopt legal frameworks to give effect to foreign resolution measures in their respective jurisdictions. In addition, the letter states that a proposed rule to impose the contractual solution as an interim measure should be narrowly tailored to achieve only the intended purpose: for a stay under a special resolution regime, such as the Bank Resolution and Recovery Directive (Directive 2014/59/EU), to apply equally to transactions governed by third-country law as those under domestic law.

The letter discusses a number of concerns and questions to make sure that the proposed rule does not go beyond its intended goal and not result in unintended consequences. The letter makes the following recommendations:

- The BOE and the PRA should provide more specificity regarding how the Proposed Rule would interact with special resolution regimes in other jurisdictions and the types of financial contracts subject to the Proposed Rule to ensure greater certainty to market participants, including non-EU regulated funds;
- The BOE and the PRA should clarify the provision regarding non-performance to include expressly the obligation of the entities under resolution to return any excess margin and to post additional margin to their counterparties if the transaction becomes out-of-the money to the insolvent entity;
- The BOE and the PRA should confirm that non-compliance with the Proposed Rule would not affect the enforceability of the contract and that there would not be any penalties imposed on counterparties, such as non-EU regulated funds, of entities subject to the Proposed Rule; and
- The BOE and the PRA should provide regulated funds and their managers a 12-month, rather than the 6-month, period of time to comply with the new rule.

Jennifer S. Choi
Associate General Counsel

[Attachment](#)

endnotes

[1] Consultation Paper, CP19/15, Contractual stays in financial contracts governed by third-country laws (May 2015), available at <http://www.bankofengland.co.uk/pr/Pages/publications/cp/2015/cp1915.aspx> ("Consultation Paper"). For a summary of the Consultation Paper, see ICI Memorandum No. 29031 (May 27, 2015), available at <http://www.iciglobal.org/iciglobal/pubs/memos/memo29031>.

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