

MEMO# 28540

November 25, 2014

ICI Global Submits Comment Letter to FSB on Cross-Border Recognition of Resolution Action - Stay on Early Termination Rights

[28540]

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TO: DERIVATIVES MARKETS ADVISORY COMMITTEE No. 82-14
ICI GLOBAL MEMBERS No. 54-14
ICI GLOBAL TRADING & MARKETS COMMITTEE No. 2-14
INTERNATIONAL MEMBERS No. 43-14 RE: ICI GLOBAL SUBMITS COMMENT LETTER TO FSB ON CROSS-BORDER RECOGNITION OF RESOLUTION ACTION - STAY ON EARLY TERMINATION RIGHTS

ICI Global submitted a comment letter in response to the Financial Stability Board (“FSB”) consultation document proposing a package of policy measures and guidance consisting of: (1) a set of elements that jurisdictions should consider including in their statutory cross-border recognition frameworks and (2) contractual approaches to cross-border recognition that focus on two particular cases where achieving cross-border recognition is considered to be a critical prerequisite for orderly resolution, including a stay on early termination rights in derivatives contracts.*

In the letter, we agree with the FSB that the permanent solution for the orderly resolution of a SIFI with global operations is for FSB members to adopt statutory or regulatory frameworks to give effect to foreign resolution measures in their respective jurisdictions. Because the adoption of comprehensive statutory or regulatory regimes by all FSB members may take quite some time, ICI Global understands the need to address some uncertainties regarding (or to affirm) the application of a foreign resolution regime (“Resolution Regime”) across borders through contractual means to which all counterparties would be required to adhere. The letter, however, states that the reliance on contractual solutions for the recognition of Resolution Regimes and related actions should be only an interim measure and sunset after a specified period of time and should be relied on only to enforce “critical prerequisite” provisions of the Resolution Regime.

With respect to the enforcement of stays on early termination rights in financial contracts, such as those governing OTC derivatives, ICI Global argues in the letter that it is essential

to establish a transparent and predictable process to allow market participants to understand their rights and minimize the time period during which they are delayed from employing their negotiated creditor rights. Therefore, ICI Global recommends that legislative/regulatory and interim contractual measures should be narrowly tailored to enforce the essential provisions of the Resolution Regimes but not seek to change the domestic framework. Moreover, the letter states that ICI Global would have significant concerns if the contractual approaches to cross-border recognition create stays on termination rights that are not provided for in a Resolution Regime or insolvency statute.

Jennifer S. Choi
Senior Associate Counsel – Securities Regulation

[Attachment](#)

endnotes

[*] Cross-border Recognition of Resolution Action, September 29, 2014, available at http://www.financialstabilityboard.org/publications/c_140929.pdf (“Consultative Document”). For a summary of the Consultative Document, see ICI [Memorandum](#) No. 28418 (Oct. 1, 2014), available at http://www.ici.org/my_ici/memorandum/memo28418

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