

MEMO# 26598

October 23, 2012

ICI and ICI Global Letter on IOSCO Market Surveillance Consultation

[26598]

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TO: EQUITY MARKETS ADVISORY COMMITTEE No. 29-12

INTERNATIONAL MEMBERS No. 44-12

SEC RULES MEMBERS No. 95-12

ICI GLOBAL MEMBERS RE: ICI AND ICI GLOBAL LETTER ON IOSCO MARKET SURVEILLANCE CONSULTATION

The International Organization of Securities Commissions (“IOSCO”) recently issued a consultation examining the challenges posed by technological developments to effective market surveillance (“Consultation”). ICI and ICI Global jointly filed a comment letter on the Consultation. The most significant aspects of the comment letter are summarized below.

In general, the letter supports the goals of the Consultation – to improve surveillance capabilities on a cross-market and cross-asset basis and to make more useful to regulators the data collected for surveillance purposes. In considering the recommendations in the Consultation, however, the letter urges regulators to take a measured approach and to carefully balance the potential costs with the benefits any new or amended regulations would provide to investors.

Regulatory Capabilities

The letter agrees with the Consultation’s proposed recommendation that regulators have the organizational and technical capabilities to monitor effectively the trading venues they supervise, including the ability to identify market abuse and trading that may impact the fairness and orderliness of trading venues. To that end, the letter states that ensuring that regulators have adequate resources to survey for and detect market abuse is critical to an overall market surveillance regime. The letter notes, however, that resources alone will be ineffective if regulators do not have a strong understanding of how the markets currently operate. The letter therefore recommends that regulators focus on ensuring that their staff understands the methods by which trading occurs on their markets and the various types of market participants involved in trading.

The letter also states that a robust transaction reporting regime is necessary to enable

regulators to monitor the activities of market participants, to ensure compliance with regulations, and to monitor for market abuses. The letter therefore supports an examination by regulators of audit trail regimes similar to the recently enacted consolidated audit trail in the United States. Finally, the letter recommends that regulators devote increased resources towards the ability to analyze and reconstruct order books.

Review of Surveillance Capabilities

The letter recommends that regulators review their surveillance capabilities as a regular part of any surveillance regime. The letter notes that ICI and ICI Global have supported the establishment of robust pre- and post-trade risk controls to prevent systems from generating and sending orders to the securities markets that may be erroneous or not compliant with applicable regulatory requirements. The letter also recommends that regulators examine other market structure issues that may raise regulatory concerns such as the increasing number of order cancellations in the markets and the increasing number and complexity of order types that exchanges and other trading venues create for market participants.

Access to Data

The letter agrees with the Consultation that the ability to access the data necessary to oversee a market is integral to an effective surveillance system. The letter therefore supports the Consultation's proposed recommendation that within a jurisdiction, the relevant regulators should individually or collectively have the capability to access data in a way that enables them to conduct effective surveillance. The letter also agrees that a "Central Reporting Point," such as the one that would be facilitated by a consolidated audit trail, could assist regulators in their ability to detect the use of manipulative or deceptive practices as well as perform market reconstructions in a timely manner. The letter notes, however, that as regulators consider the development of any audit trail system, they also should consider costs as one of the factors in determining the type and scope of such a system.

Customer Identification

The letter states that regulators should have the capability to associate a customer and market participant with each order and transaction. Along these lines, the letter notes that ICI has supported the development of a global legal entity identifier for the markets to aid regulators and market participants in measuring and monitoring systemic risk. The letter emphasizes, however, that the confidentiality of any customer identification must be ensured and any customer identification system must contain appropriate confidential safeguards to protect surveillance data that is reported.

Data Protection

The letter states that data protection is one of the most significant aspects of any market surveillance system. The letter therefore agrees with the Consultation's proposed recommendation that regulators establish and maintain appropriate confidential safeguards to protect surveillance data that is reported to them. The letter also states that any regulations should ensure that data provided to regulators for the performance of their surveillance functions is used only for regulatory purposes and cannot be viewed or

amended by unauthorized parties.

Cross-Border Surveillance Capabilities

The letter agrees with the Consultation that regulators should work collectively and take appropriate steps to strengthen their cross-border surveillance capabilities. As jurisdictions around the world are addressing the market surveillance issues discussed in the Consultation, the letter states that it is desirable to achieve a broad consistency of approach to issues surrounding market surveillance across different jurisdictions given the links between the financial markets.

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[Attachment](#)

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