

MEMO# 26972

February 6, 2013

Draft ICI and ICI Global Letter to IOSCO on Financial Benchmarks; Comments Requested by Friday, February 8

[26972]

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TO: ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 9-13
ETF ADVISORY COMMITTEE No. 9-13
ICI GLOBAL EXCHANGE TRADED FUNDS COMMITTEE No. 2-13
ICI GLOBAL MEMBERS
INTERNATIONAL COMMITTEE No. 5-13
SEC RULES COMMITTEE No. 9-13 RE: DRAFT ICI AND ICI GLOBAL LETTER TO IOSCO ON
FINANCIAL BENCHMARKS; COMMENTS REQUESTED BY FRIDAY, FEBRUARY 8

As you know, the International Organization of Securities Commissions (“IOSCO”) recently released a “Consultation Report on Financial Benchmarks,” available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD399.pdf>. [1]

A draft letter from ICI and ICI Global in response to the consultation is attached for your review. IOSCO provided the public only thirty days to comment on the consultation, setting a deadline of Monday, February 11. Accordingly, we are asking ICI and ICI Global members for comments on our draft letter no later than this Friday, February 8. Given the tight deadlines for comment, we do not intend to hold a member call to discuss the draft.

The primary recommendation in the draft letter is that IOSCO narrow its scope. The consultation clearly has roots in recent events that have eroded confidence in the credibility of LIBOR and similar survey-based benchmarks, but it is far broader as it defines “benchmark” to include rates, indices and figures that are used for a wide variety of references, such as for determining amounts due under financial contracts, valuing a financial instrument, or measuring the performance of a financial instrument. Exhibit 1 of the Consultation makes it clear that IOSCO contemplates recommendations that would apply not only to benchmarks such as LIBOR, but also to exchange-traded products that track indices, such as ETFs.

The letter strongly urges IOSCO to resist treating the entire, diverse universe of benchmarks and commercial indices together, and rather to identify in each instance whether potential issues exist in that context and, if so, whether a regulatory approach is

necessary. With respect to commercial indices, the letter argues that IOSCO may find that non-regulatory checks and balances already exist that mitigate their concerns.

Consistent with this principal recommendation, the letter then focuses on the consultation as it could be interpreted to relate to commercial indices used to measure the performance of a security, and specifically, a security issued by a regulated “index” or “tracker” fund. It responds from that perspective to certain of the consultation’s questions on benchmark methodology, transparency, and governance. The letter ends with a recommendation on ways for IOSCO to draw distinctions among benchmarks.

Please provide any comments on the draft to me (rcg@ici.org), Mara Shreck (mshreck@ici.org), or Giles Swan (giles.swan@ici.com) by Friday, February 8.

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Securities Regulation - Investment Companies

[Attachment](#)

endnotes

[1]See [Memorandum](#) No. 26893, dated January 16, 2013.

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