

MEMO# 30783

July 18, 2017

ICI Global Submits Comment Letter in Response to European Commission's Proposal to Amend Its Derivatives Rules

[30783]

July 18, 2017 TO: Derivatives Markets Advisory Committee
Equity Markets Advisory Committee
ICI Global Trading & Markets Committee
Securities Operations Advisory Committee RE: ICI Global Submits Comment Letter in Response to European Commission's Proposal to Amend Its Derivatives Rules

ICI Global has submitted the attached comment letter in response to the European Commission's (Commission) proposal to amend certain aspects of the European Market Infrastructure Regulation (EMIR).[\[1\]](#) The letter addresses proposed amendments to EMIR's clearing and reporting obligations as well as certain cross-border matters. The main arguments in the letter are summarized below.

- **Clearing Obligation.** The letter supports the Commission's proposal to rescind EMIR's frontloading requirement because frontloading is operationally burdensome and could have a destabilizing effect on derivatives markets. We also urge the Commission to adopt a mechanism that would allow a single regulatory authority (possibly ESMA) to suspend quickly the clearing obligation if warranted by market conditions. The letter also applauds the Commission for increasing protections for certain customer funds in the event of a clearing member's or clearing house's insolvency. In addition, the letter urges the Commission to adopt a threshold that would exclude very small financial counterparties from the clearing mandate.
- **Reporting Obligation.** The letter expresses disappointment that the Commission is considering only modest changes to EMIR's dual-sided reporting requirement and recommends that the Commission replace this mandate with a single-sided reporting regime. We do, however, support the proposal to remove reporting requirements for derivatives transactions that terminated or expired prior to the start of EMIR reporting in February 2014 and the proposal to require clearing houses to report exchange-traded derivatives.
- **Cross-Border Matters.** The letter makes two recommendations on cross-border issues. First, it urges the Commission to amend the proposed definition of financial counterparty to ensure that EMIR does not extend to counterparties and transactions

that have no or only inconsequential connection to the European Union. To ensure that EMIR applies only to AIFs that have a sufficient nexus to the European Union, the letter suggests that the Commission define as “financial counterparties” only those AIFs that “are established in the EU or managed by an AIFM authorised or registered in accordance with” the AIFMD.^[2] Alternatively, the Commission could specify that the definition of “financial counterparty” includes only those AIFs that meet the definition of “EU AIF” in AIFMD. Second, the letter recommends the Commission use the EMIR review process to provide equal treatment to third-country and EU funds for purposes of the risk mitigation techniques for uncleared derivatives.

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[Attachment](#)

endnotes

^[1] Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivatives contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories, dated May 4, 2017, available at http://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-208_en. See ICI Memorandum No. 30696 (May 10, 2017), available at <https://www.iciglobal.org/iciglobal/pubs/memos/memo30696>.

^[2] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:174:0001:0073:EN:PDF>.