

MEMO# 32684

August 17, 2020

ICI Global Draft Comment Letter on ESMA's Consultation Providing Guidelines for Regulating Alternative Investment Fund Leverage; Member Comments Requested by Monday, 24 August

[32684]

August 17, 2020 TO: ICI Global Members

Derivatives Markets Advisory Committee SUBJECTS: Derivatives

Financial Stability

International/Global RE: ICI Global Draft Comment Letter on ESMA's Consultation Providing Guidelines for Regulating Alternative Investment Fund Leverage; Member Comments Requested by Monday, 24 August

As previously reported, the European Securities and Markets Authority issued a consultation paper setting forth guidelines for national competent authorities ("NCAs") to regulate the use of leverage within the alternative investment fund ("AIF") sector.^[1] The consultation proposes: (a) guidelines on a two-step approach for NCAs to assess leverage-related systemic risk; and (b) guidelines for NCAs to impose leverage limits. ICI Global's draft comment letter responding to the consultation is attached for your review.

Please provide any written comments to Ken Fang at kenneth.fang@ici.org or Rachel Graham at rgraham@ici.org by close of business on Monday, 24 August. Comments on the consultation are due to ESMA by 1 September.

On the leverage assessment guidelines, ICI Global's draft letter notes that NCAs must focus on funds that are more likely to pose potential risk, while appropriately excluding from further evaluation most funds that do not. It suggests that the ESMA guidelines closely follow the International Organization of Securities Commissions' ("IOSCO") approach in its Recommendations for a Framework Assessing Leverage in Investments Funds.^[2] The IOSCO framework was designed to achieve a substantially similar goal, and IOSCO spent considerable effort on determining how to measure investment fund leverage for financial stability purposes. Therefore, it is not necessary for ESMA to take a more expansive

approach. The draft letter recommends targeted changes to the assessment process to help NCAs more meaningfully monitor leverage for financial stability purposes.

On the leverage limit guidelines, the draft letter recognizes that the Alternative Investment Fund Managers Directive already provides NCAs the broad authority to impose leverage and “other” limits on funds that they identify as posing systemic risk. It strongly cautions, however, that NCAs prudently exercise this broad authority to avoid market disruption and harm to investors. In this regard, the letter suggests that NCAs consider consulting on possible limitations that they may impose to receive appropriate feedback before implementing them and to consult with funds subject to such limitations before they are imposed.

Rachel H. Graham
Associate General Counsel

Kenneth Fang
Assistant General Counsel>

[Attachment](#)

endnotes

[1] See ICI Memorandum No. 32434 (4 May 2020), *available at* https://www.ici.org/my_ici/memorandum/memo32434.

[2] See IOSCO, Recommendations for a Framework Assessing Leverage in Investments Funds (Dec. 2019), *available at* <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD645.pdf>.