

**MEMO# 28565**

December 10, 2014

# Comment Letter on Canadian Systemic Risk Legislation

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TO: ICI GLOBAL MEMBERS No. 56-14

ICI GLOBAL REGULATED FUNDS COMMITTEE No. 11-14

ICI GLOBAL STEERING COMMITTEE No. 15-14

INTERNATIONAL MEMBERS No. 46-14

SEC RULES MEMBERS No. 47-14 RE: COMMENT LETTER ON CANADIAN SYSTEMIC RISK LEGISLATION

As you may be aware, legislation has been proposed in Canada that raises concerns in the ongoing global debate about asset management and financial stability. [\[1\]](#) This legislation is part of an effort to establish a new “cooperative” capital markets regulator at the federal level. Among the authorities granted to the new Capital Markets Regulatory Authority (“Authority”) would be broad systemic risk powers (very similar to those in the Dodd-Frank Wall Street Reform and Consumer Protection Act) allowing for the systemic designation of “capital markets intermediaries,” including investment funds and asset managers, and heightened regulation of systemically important products and activities.

ICI, on behalf of its entire fund membership, has filed a comment letter on the proposed legislation, which reiterates many of the core points that ICI and ICI Global have made over the past few years regarding the regulation of systemic risk, SIFI designations, and why any potential risks to financial stability involving regulated funds and their managers are best addressed with activities-based regulation. A brief summary of the letter is provided below.

## Asset Management and Systemic Risk Regulation

- The letter highlights the reasons why neither individual regulated funds nor their managers pose risks to financial system stability that would warrant their designation as systemically important capital markets intermediaries. [\[2\]](#) It urges that the provincial governments participating in the new Cooperative System (the “governments”) consider excluding regulated funds and their managers from systemic or “SIFI” designation.
- The letter expresses ICI’s view that any potential risks to the capital markets or the broader financial system seen in the asset management sector are best addressed through regulation tailored to the specific activities or practices giving rise to concern on the part of the Authority.

## **Proposed SIFI Designation Powers**

- The letter conveys ICI's strongly held belief that systemic designation authority should be used judiciously, and reserved for circumstances in which the Authority has determined that a specific capital markets intermediary clearly poses significant, demonstrable risks to the financial system that cannot otherwise be adequately addressed through other regulatory measures.
- The letter recommends that there be greater specificity, either in the legislation or through implementing regulations, regarding how a capital markets intermediary would be evaluated for possible SIFI designation.
- The letter suggests that the legislation be amended to include certain due process protections applicable to any capital markets intermediary that is under evaluation for possible systemic designation, and expresses ICI's view about the importance of the Authority providing adequate transparency as to its actions relating to systemic risk identification and regulation.
- The letter recommends that the Authority should have to delineate the regulatory consequences of a SIFI designation through rulemaking before it makes any such designations.

## **Other Aspects of the Proposed Legislation**

- Designation of Benchmarks, Classes of Securities/Derivatives as Systemically Important. The letter recommends that the governments consider removing these authorities—which have no counterpart in the Dodd-Frank Act or, to our knowledge, any other existing law. The letter states that any concerns relating to the use of a benchmark or certain securities or derivatives are best addressed through the capital markets regulatory framework, which addresses matters such as how securities and derivatives are offered, sold, traded, and used by market participants.
- Application to Non-Canadian Entities. The letter recommends that the governments provide greater clarity as to whether the legislation applies to non-Canadian entities.
- Information Collection and Confidentiality. The letter recommends that the governments consider eliminating, or at least paring back, the Authority's ability to disclose nonpublic information. It states that ICI believes it is critically important for the governments to give the highest priority to protecting the confidentiality of the information it receives, including a company's business information.

Rachel H. Graham  
Senior Associate Counsel

Frances M. Stadler  
Senior Counsel - Securities Regulation

### [Attachment](#)

#### **endnotes**

[1] Capital Markets Stability Act – Draft for Consultation (Aug. 2014), available at <http://ccmr-ocrmc.ca/wp-content/uploads/CMSA-English-revised.pdf>.

[2] The letter defines “regulated funds” to include Canadian investment funds subject to National Instrument 81-102, US investment companies registered under the Investment

Company Act of 1940, and funds organized or formed in other jurisdictions and substantively regulated to make them eligible for sale to retail investors (e.g., funds qualified under the UCITS Directive).

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