

**MEMO# 29240**

August 11, 2015

# **Draft ICI Global Comment Letter in Response to Bank of England's Consultation Paper on Cross-Border Stay of Termination Rights for Certain Financial Contracts; Member Feedback Requested by Tuesday, August 18**

[29240]

August 11, 2015

TO: DERIVATIVES MARKETS ADVISORY COMMITTEE No. 58-15  
ICI GLOBAL REGULATED FUNDS COMMITTEE No. 46-15  
ICI GLOBAL TRADING & MARKETS COMMITTEE No. 38-15  
INTERNATIONAL COMMITTEE No. 43-15  
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 28-15  
SEC RULES COMMITTEE No. 25-15 RE: DRAFT ICI GLOBAL COMMENT LETTER IN RESPONSE TO BANK OF ENGLAND'S CONSULTATION PAPER ON CROSS-BORDER STAY OF TERMINATION RIGHTS FOR CERTAIN FINANCIAL CONTRACTS; MEMBER FEEDBACK REQUESTED BY TUESDAY, AUGUST 18

Recently, the Bank of England ("BOE") issued a consultation paper proposing a new rule requiring the contractual adoption of UK resolution stays in certain financial contracts governed by third-country law (i.e., law of a jurisdiction outside the European Union). [\[1\]](#) Specifically, certain regulated entities will be prohibited from entering into new contracts or amending existing financial contracts (e.g., derivatives contracts and securities lending and repurchase agreements) unless the counterparties (e.g., regulated funds) agree to be subject to restrictions on early termination and close-out as if the financial contracts were governed by the laws of the United Kingdom.

We have drafted a letter in response to the Consultation Paper, which is attached. If you have any comments on the draft letter, please send them to Jennifer Choi at [jennifer.choi@ici.org](mailto:jennifer.choi@ici.org) by Tuesday, August 18.

The draft letter argues that the permanent solution for the orderly resolution of a global systemically important financial institution should be for jurisdictions to adopt legal

frameworks to give effect to foreign resolution measures in their respective jurisdictions. In addition, the draft letter states that a proposed rule to impose the contractual solution as an interim measure should be narrowly tailored to achieve only the intended purpose: for a stay under a special resolution regime, such as the Bank Resolution and Recovery Directive (Directive 2014/59/EU), to apply equally to transactions governed by third-country law as those under domestic law.

The letter discusses a number of concerns and questions to make sure that the proposed rule does not go beyond its intended goal and not result in unintended consequences. The letter makes the following recommendations:

- The BOE and the PRA should provide more specificity regarding how the proposed rule would interact with special resolution regimes in other jurisdictions to ensure greater certainty to market participants, including non-EU regulated funds;
- The BOE and the PRA should clearly identify the consequences of non-compliance for entities subject to the proposed rule but should not penalize their counterparty such as non-EU regulated funds; and
- The BOE and the PRA should consult with the US Internal Revenue Service to ensure that the stay would not result in punitive tax consequences for US regulated funds in the context of their investment in repurchase agreements and reverse repo repurchase agreements.

Jennifer S. Choi  
Associate General Counsel

#### [Attachment](#)

#### **endnotes**

[1] Consultation Paper, CP19/15, Contractual stays in financial contracts governed by third-country laws (May 2015), available at <http://www.bankofengland.co.uk/pr/Pages/publications/cp/2015/cp1915.aspx> (“Consultation Paper”). For a summary of the Consultation Paper, see ICI Memorandum No. 29031 (May 27, 2015), available at <http://www.iciglobal.org/iciglobal/pubs/memos/memo29031>.