

**MEMO# 30762**

July 3, 2017

# **Draft ICI Global Comment Letter in Response to European Commission Proposal to Amend Its Derivatives Rules; Member Comment Requested by Wednesday, July 12**

[30762]

July 3, 2017 TO: Derivatives Markets Advisory Committee  
Equity Markets Advisory Committee  
ICI Global Trading & Markets Committee  
Securities Operations Advisory Committee RE: Draft ICI Global Comment Letter in Response to European Commission Proposal to Amend Its Derivatives Rules; Member Comment Requested by Wednesday, July 12

The European Commission (Commission) has proposed a variety of amendments to the European Market Infrastructure Regulation (EMIR) that it believes could eliminate disproportionate costs and burdens and simplify the regulation.[\[1\]](#)

ICI Global has prepared the attached draft comment letter in response to the Proposal. If you have comments on the draft, please send them to George Gilbert at [george.gilbert@ici.org](mailto:george.gilbert@ici.org) by Wednesday, July 12.

The draft letter addresses the proposed amendments to EMIR's clearing and reporting obligations as well as certain cross-border matters. This draft includes some questions for members in brackets and bold font. The main arguments in the letter are summarized below.

- **Clearing Obligation.** The draft 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 ESMA to quickly suspend 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.
- **Reporting Obligation.** The draft 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 draft 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. Second, the draft 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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George M. Gilbert  
Counsel

## [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](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>.