

MEMO# 31329

August 15, 2018

ICI Global and SIFMA AMG Draft Follow-up Letter on Proposed Expansion of BRRD Moratorium Powers - Your Comments Requested by August 20

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August 15, 2018 TO: Derivatives Markets Advisory Committee

ICI Global Regulated Funds Committee RE: ICI Global and SIFMA AMG Draft Follow-up Letter on Proposed Expansion of BRRD Moratorium Powers - Your Comments Requested by August 20

ICI Global and the Asset Management Group of the Securities Industry and Financial Markets Association (SIFMA AMG) (together, "Associations") have drafted a joint follow-up letter to EU policymakers regarding proposed amendments to the moratorium powers under the Bank Recovery and Resolution Directive (BRRD). We plan to submit this letter shortly to EU policymakers as they seek to reach final agreement on this issue in trilogue. **Please provide your comments on the attached draft letter in writing by Monday, August 20th, to sarah.bessin@ici.org.**

The draft letter, which follows up on the Associations' two prior letters to EU policymakers,^[1] urges the EU to limit moratorium powers under BRRD to no more than two business days total. The letter explains that the Associations and their members support the recent position of the EU Council that would provide for a maximum moratorium of two working days (combining the new moratorium power that may be imposed if a bank is determined to be "failing or likely to fail" (FOLTF) and the existing in-resolution stay under BRRD). The letter expresses concern, however, that the EU Parliament's position would make it more difficult to resolve an EU bank, as acknowledged by EU resolution authorities, and would have negative unintended consequences for the EU financial markets. While the Parliament's position, like the Council's position, would provide for a maximum moratorium of two working days if a bank is determined to be FOLTF, it would permit the resolution authority to impose an additional two working day moratorium (the existing in-resolution stay under BRRD) after ten working days have elapsed following the end of the first moratorium. The letter urges the EU to instead adopt the Council's position on moratorium powers.

The draft letter includes many of the arguments the Associations have made in our prior

letters. It adds the additional argument that the EU Parliament's proposed addition of a ten-day break between exercise of moratorium powers would create significant market uncertainty and make it more difficult to resolve an EU bank. We therefore urge the EU to not expand moratorium powers beyond two business days total consistent with the maximum period noted in the FSB's Key Attributes of Effective Resolution Regimes of Financial Institutions. We also strongly recommend against permitting imposition of a second moratorium only ten days following the imposition of the FOLTF moratorium. Rather than facilitating a resolution, providing authority to impose a second moratorium following a ten-day period is likely to increase market uncertainty, making it more difficult to resolve a failing bank. Investors will expect that their ability to transact with, custody with, and invest in an EU bank in resolution may again be impaired even after the FOLTF stay has been lifted. This concern is likely to decrease investor confidence, resulting in less liquidity for, and investment in, the bank at the very time it is most needed. Such a result is contrary to the regulatory objectives of BRRD.

Sarah A. Bessin
Associate General Counsel

[Attachment](#)

endnotes

[1] The Associations' January letter is available at: <https://www.iciglobal.org/pdf/31084a.pdf>. That letter offers data regarding the size of the relevant markets in Europe that may be impacted if pension funds, regulated investment funds, private funds and other investors on whose behalf asset managers act as fiduciaries determine not to enter into transactions with, custody with, or invest in EU banks as a result of an expansion of the proposed moratorium powers. Our June 2017 letter, which provides additional analysis, is available at: <https://www.ici.org/pdf/30761a.pdf>.