

MEMO# 25827

January 25, 2012

ICI and ICI Global Joint Response to MiFID Questionnaire

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TO: EQUITY MARKETS ADVISORY COMMITTEE No. 1-12
INTERNATIONAL MEMBERS No. 1-12
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 3-12
FIXED-INCOME ADVISORY COMMITTEE No. 3-12 RE: ICI AND ICI GLOBAL JOINT RESPONSE TO MIFID QUESTIONNAIRE

ICI and ICI Global have jointly filed a submission in response to a questionnaire issued by Markus Ferber, the rapporteur responsible for the European Parliament's Economic and Monetary Affairs Committee's review of the Markets in Financial Instruments Directive ("MiFID"). The questionnaire raises a number of significant issues to both ICI and ICI Global members and examines all aspects of the European Commission's proposed changes to MiFID, including its scope, organization of markets and trading, investor protection and transparency. Most significantly, as discussed further below, the questionnaire raises issues relating to third country access to EU markets, algorithmic trading and high frequency trading, pre- and post-trade transparency, and a new regulatory categorization for certain trading facilities. The questionnaire also raises issues relating to, among other things, position limits, mandatory trading of derivatives on exchanges, best execution requirements, and powers for regulators regarding product intervention.

A copy of our submission is attached. The submission strongly supports the issuance of the questionnaire and reiterates many of the comments made in prior ICI letters on other proposals and consultations related to market structure reform including several focusing on the reform of the structure of the European financial markets.

Third Country Access to EU Markets: The submission states that some degree of regulation of third country access to EU markets is appropriate. Nevertheless, the submission notes that the current MiFID proposal raises significant questions. Most significantly, the proposal raises issues for funds and asset managers and their ability to access third country manager expertise, whether within a global asset management firm or outside their firm due to, among other things, the treatment of "professional clients" and questions surrounding the recognition of third country rules and regulations.

Algorithmic Trading: The questionnaire contains several questions regarding the specific

requirements in MiFID related to algorithmic trading and the associated risks involved with such trading. The submission strongly supports the goal of increasing regulation in the area of algorithmic trading, particularly through the provisions in MiFID requiring an investment firm to have in place effective systems and risk controls and by increasing information provided to regulators about algorithms. The submission also supports MiFID's requirements on systems resilience, contingency arrangements and business continuity arrangements to address the risks involved with electronic trading overall. The submission notes that the "flash crash" in the United States highlighted the need for such requirements.

The submission opposes a provision in the MiFID proposal that states that an algorithmic trading strategy must "be in continuous operation during the trading hours of the trading venue to which it sends orders or through the systems of which it executes transactions." The submission notes that while it appears the intention of this requirement is to address issues surrounding algorithms utilized by, for example, high frequency traders, the broad scope of the language of the provision may sweep in algorithms utilized by funds to execute orders. The submission therefore recommends that the language of the provision be amended to make clear that it does not capture the types of algorithms utilized by funds to execute trades.

Pre- and Post-Trade Transparency: The questionnaire contains several questions regarding the requirements surrounding pre- and post-trade transparency of market information. The submission states that while ICI and ICI Global strongly support increasing pre-trade transparency, there are limits to the benefits of such an action, particularly if increased transparency results in negative consequences for the manner in which funds and other investors execute transactions. The submission therefore notes that it is important that the waivers to pre-trade transparency contained in MiFID remain available for the types of orders executed by funds and that these waivers remain flexible so as not to create difficulties for investors when executing orders.

Regarding pre-trade transparency in the non-equity markets, the submission states that, in general, the same benefits that pre-trade transparency brings in the equity markets can be realized in the non-equity markets. The submission notes, however, that it is equally important that waivers to pre-trade transparency are available for the types of orders executed by funds in the non-equity markets and that any new pre-trade transparency requirements in the non-equity markets be tailored as much as possible to the particular characteristics of the instruments traded in these markets.

Finally, the submission strongly supports the reduction of delays in the publication of post-trade market data. The submission states that more effective transparency can show which trading venues or firms are providing the best prices and also may be useful to enable investors to monitor whether they are receiving best execution. The submission notes that adequate exceptions to post-trade transparency, however, must remain for certain large orders executed by funds.

Organized Trading Facility: The questionnaire raises several issues regarding the proposed new category of trading facility, the Organized Trading Facility ("OTF"). The submission states that ICI and ICI Global appreciate the desire to create a level playing field for all trading venues as well as the need to capture future trading models under the current regulatory framework. The submission expresses concern, however, about the continuing uncertainty of the use of, and difficulties complying with parameters surrounding, the OTF category and the resulting potential negative impact on the availability of trading venues

for investors if firms are forced to change their business models in light of the requirements of an OTF.

Ari Burstein
Senior Counsel - Securities Regulation

[Attachment](#)

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