

MEMO# 28100

May 7, 2014

ICI Global Submits Comment Letter on European Commission's Consultation Paper on FX Financial Instruments

[28100]

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 17-14
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 32-14
ICI GLOBAL MEMBERS No. 20-14
INTERNATIONAL MEMBERS No. 19-14 RE: ICI GLOBAL SUBMITS COMMENT LETTER ON
EUROPEAN COMMISSION'S CONSULTATION PAPER ON FX FINANCIAL INSTRUMENTS

Today, ICI Global submitted a letter to the European Commission in response to its consultation paper on foreign exchange ("FX") instruments under the Markets in Financial Instruments Directive ("MiFID"). [\[1\]](#) Specifically, the Commission requested views on the boundary between an FX spot and an FX forward. As we previously informed you, the European Securities and Markets Authority ("ESMA") asked that the Commission adopt measures to clarify whether the definition of "derivatives" for purposes of the European Market Infrastructure Regulation ("EMIR") would cover certain FX forwards and physically settled commodity forwards. [\[2\]](#)

The ICI Global letter was submitted on behalf of U.S. funds that are regulated under the Investment Company Act of 1940 ("ICA") and non-U.S. regulated funds publicly offered to investors (collectively, "Regulated Funds"). The comment letter states that international coordination among regulators in implementation of derivatives reform is critical to the derivatives market by helping to alleviate duplicative and potentially conflicting regulation of transactions that are conducted on a cross-border basis (which are the majority of derivatives transactions). The letter encourages the Commission to adopt a definition of an FX spot transaction that is substantively similar to the definition adopted by the Commodity Futures Trading Commission ("CFTC").

Specifically, the letter urges the Commission to adopt an interpretation of spot contracts as: (1) FX transactions that generally have two business days delivery; (2) FX transactions with a longer settlement period concluding with the actual delivery of the relevant currencies that settle according to the customary timeline of the relevant market; [\[3\]](#) and (3) FX transactions that are entered into in connection with investment in a foreign security ("Securities Conversion Transactions"). The letter explains that these transactions typically

have very short settlement cycles, which present lower risks to the counterparties and to the financial markets more generally. Requiring these transactions to comply with the requirements under EMIR and with other derivatives regulations would add operational complexity and unnecessary cost without providing any significant protection to market participants. In addition, inconsistent treatment of Securities Conversion Transactions by global regulators may cause dealers to limit Securities Conversion Transactions to T+2 spot transactions, reducing the ability of Regulated Funds to make foreign investments efficiently.

Jennifer S. Choi
Senior Associate Counsel Securities Regulation

[Attachment](#)

endnotes

[1] Consultation Document, FX Financial Instruments, European Commission, April 10, 2014, available at http://ec.europa.eu/internal_market/consultations/2014/foreign-exchange/docs/consultation-document_en.pdf (“Consultation Document”).

[2] Letter from Steven Maijoor, Chair of European Securities and Markets Authority, to Michael Barnier, Commissioner for Internal Market and Services, European Commission, dated February 14, 2014, available at http://www.esma.europa.eu/system/files/2014-184_letter_to_commissioner_barnier_-_classification_of_financial_instruments.pdf. For a summary of the ESMA letter and the Commission’s response, see ICI Memoranda Nos. 27895 (Feb. 18, 2014), available at http://www.ici.org/my_ici/memorandum/memo27895 and 27980 (Mar. 25, 2014), available at http://www.ici.org/my_ici/memorandum/memo27980.

[3] As noted by the Commission, settlement is frequently conducted cross border and different bank or official holidays may extend settlement periods.