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September 27, 2012

Via Electronic Mail (baselcommittee@bis.org and wgmr@iosco.org)

Wayne Byres
Secretary General
Basel Committee on Banking Supervision
Bank of International Settlements
Centralbahnplatz2
CH-4002 Basel
Switzerland

David Wright
Secretary General
International Organization of Securities Commissions
C/ Oquendo 12
28006 Madrid
Spain

Re: *Consultation Paper on Margin Requirements for Non-Centrally-Cleared Derivatives*

Dear Mr. Byres and Mr. Wright:

The Investment Company Institute ("ICI")[1] and ICI Global[2] appreciate the opportunity to provide comments on the consultation paper issued by the Basel Committee on Banking Supervision ("BCBS") and the International Organization of Securities Commissions ("IOSCO") describing their initial proposal to establish minimum standards for margin requirements for non-centrally-cleared

[1] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds ("ETFs"), and unit investment trusts ("UITs"). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $13.3 trillion and serve over 90 million shareholders.

[2] ICI Global is the global association of regulated funds publicly offered to investors in leading jurisdictions worldwide. ICI Global seeks to advance the common interests and promote public understanding of global investment funds, their managers, and investors. Members of ICI Global manage total assets in excess of U.S. $1 trillion.

derivatives ("Consultation Paper").[3] The BCBS and IOSCO expect to issue a final proposal to establish minimum standards for margin requirements for non-centrally-cleared derivatives after reviewing the comments received.[4]

After the financial crisis in 2008, the G20 countries agreed to provide greater oversight and transparency of the derivatives markets. In addition to the G20 commitments, there have been efforts by international regulators for greater coordination and harmonization of derivatives markets reforms. ICI and ICI Global members, as market participants representing millions of shareholders, generally support the goal of providing greater oversight of the derivatives markets. In this regard, ICI and ICI Global members strongly support international efforts to implement consistent global standards for margin requirements for non-centrally-cleared derivatives. Given that many derivatives businesses are conducted across multiple jurisdictions, ICI and ICI Global also support efforts for real and meaningful coordination among regulators on how these regulations will be applied to market participants that operate cross border.

U.S. funds that are regulated under the Investment Company Act of 1940 and non-U.S. regulated funds publicly offered to investors ("Regulated Funds") use swaps and other derivatives in a variety of ways. They are a particularly useful portfolio management tool in that they offer Regulated Funds considerable flexibility in structuring their investment portfolios. Uses of swaps and other derivatives include, for example, hedging positions, equitizing cash that a fund cannot immediately invest in direct equity holdings, managing the fund's cash positions more generally, adjusting the duration of the fund's portfolio, managing bond positions in general, or managing the fund's portfolio in accordance with the investment objectives stated in its prospectus. To continue employing uncleared derivatives in the best interests of shareholders of Regulated Funds, ICI and ICI Global members have a strong interest in ensuring that the derivatives markets are highly competitive and transparent.

Application of Margin Requirements to Series Companies

The Consultation Paper does not specify how margin requirements would apply to Regulated Funds. Given the unique structure of Regulated Funds and their relationship with advisers, we encourage the BCBS and IOSCO to clarify that margin requirements for uncleared derivatives should

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[3] *Margin Requirements for Non-Centrally-Cleared Derivatives*, Basel Committee on Banking Supervision and Board of the International Organization of Securities Commissions, July 2012, *available at* http://www.iosco.org/library/pubdocs/pdf/IOSCOPD387.pdf.

[4] In response to the Consultation Paper, the Commodity Futures Trading Commission ("CFTC") also re-opened for comment its proposed margin rules for uncleared swaps and may adapt its final rules to conform with the final policy recommendations set forth by the BCBS and IOSCO. *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants,* RIN 3038-AC97, 77 FR 41109 (July 12, 2012), *available at* http://www.gpo.gov/fdsys/pkg/FR-2012-07-12/pdf/2012-16983.pdf. ICI submitted a supplemental comment letter to the CFTC in response to the re-opening of the comment period. *See* Letter from Karrie McMillan, General Counsel, ICI, to David A. Stawick, Secretary, CFTC, dated September 13, 2012.

apply on an individual fund or series level. For example, in the United States, in creating funds, a sponsor may establish each fund as a new, separately organized entity under state law or as a new "series company," which has the ability to create multiple sub-portfolios (*i.e.*, individual mutual funds) or series.[5] Each fund or series is a separate pool of securities with its own assets, liabilities, and shareholders. U.S. federal securities laws safeguard the assets in an individual series from market or other risks that may negatively affect another series, and consequently, protect the shareholders invested therein and the fund complex more broadly. For example, liquidation of one series is isolated to that series. Shareholders must look solely to the assets of their own series for redemption, earnings, liquidation, capital appreciation, and investment results.[6] We understand that similar considerations apply in the case of "umbrella" fund structures established in certain EU jurisdictions (such as Luxembourg).

A derivatives transaction, therefore, is fund and series specific because it is the fund or series, not the adviser, that enters into the transaction. Therefore, to account appropriately for the potential counterparty risk associated with a particular derivatives transaction, the margin requirements should apply at the individual fund or series level. We urge the BCBS and IOSCO to confirm that the margin requirements will apply at the fund or series level in recognition of the fact that the regulatory requirements for Regulated Funds generally apply at this level.

Scope of Coverage – Foreign Exchange Swaps and Forwards

The Consultation Paper proposes to apply the margin requirements to all non-centrally-cleared derivatives. There currently is no proposed exemption for foreign exchange ("FX") swaps and forwards, but the BCBS and IOSCO specifically seek comment on whether FX swaps and forwards should be exempted from the global margin requirements.

We believe that the risk profile for the FX swaps and forwards market is markedly different from other derivatives markets and therefore warrants an exemption from margin requirements. First, the FX market is highly transparent and liquid and counterparties exchange the full amount of the relevant currencies on pre-determined terms that are, normally, clear and straightforward and do not change during the lifetime of the contract. Because the payment obligations on FX swaps and forwards are fixed and predetermined, FX swap and forward participants know their own and their counterparties' payment obligations and the full extent of their exposure throughout the life of the contract. Additionally, FX swaps and forwards are predominantly short-term instruments. As a result of having short maturities, FX swap and forward contracts pose significantly less counterparty credit risk than many other types of derivatives.

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[5] Series funds are effectively independent in economic, accounting, and tax terms but share the same governing documents and governing body.

[6] *See* Regulation of Series Investment Companies under the Investment Company Act of 1940, Joseph R. Fleming, Business Lawyer, August 1989.

The primary risk associated with FX swaps and forwards is settlement risk, and the predominant way of settling FX swaps and forwards ensures that the risk is essentially eliminated. Settlement risk is the risk that one party to an FX transaction pays out the currency it sold but does not receive the currency it bought. This risk consists of both liquidity risk (the risk that the purchased currency is not received when due) and credit risk (the risk that the purchased currency is not received when due or at any time thereafter). In this situation, a party's FX settlement exposure equals the full amount of the purchased currency.

Settlement risk is virtually eliminated when an FX transaction is settled using a "payment-versus-payment" ("PVP") settlement system, of which CLS Bank International ("CLS") is the most widely used. One of the key risk mitigants utilized by a PVP settlement system is a simultaneous payment-versus-payment settlement of matched payment instructions. The combination of such simultaneous exchange of settlement payments and other risk management processes typically used by PVP settlement systems represents sufficient protection for FX swap and forward counterparties without the need for mandatory margin requirements. The elimination of settlement risk has been recognized and acknowledged by the BCBS.[7]

Moreover, we are concerned that subjecting these instruments to margin requirements could drain significant liquidity from global markets as a whole (given the volume of FX trading) and could threaten practices in the FX swaps and forwards market that help limit risk and ensure that the market functions effectively. Regulators also have a long history and extensive experience in monitoring the FX swaps and forwards market and its major market participants.

Finally, the U.S. Treasury Department has proposed to exempt these instruments from the regulation as swaps under U.S. law. We believe imposing margin requirements on FX swaps and forwards particularly under these circumstances may result in regulatory arbitrage and market fragmentation. Accordingly, for all of the reasons discussed above, we believe that mandatory margin requirements should not apply to FX swaps and forwards.

Two-Way Margin

The BCBS and IOSCO propose to require financial firms and systemically-important non-financial entities that engage in non-centrally-cleared derivatives to exchange, on a bilateral basis, initial and variation margin in mandatory minimum amounts. We strongly agree with the recommendation

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[7] *See, e.g., Supervisory Guidance for Managing Risks Associated with the Settlement of Foreign Exchange Transactions*, Basel Committee on Banking Supervision, Section 2.11, August 2012, *available at* http://www.bis.org/publ/bcbs229.pdf ("In addition, investment in infrastructures that facilitate PVP settlement across many participants, currencies and products can play a significant role in the elimination of principal risk and other FX settlement-related risks."). *See also, Progress in Reducing Foreign Exchange Settlement Risk*, Bank for International Settlements, Committee on Payment and Settlement Systems, p. 10, May 2008, *available at* http://www.bis.org/publ/cpss83.pdf ("CLS provides a payment-versus-payment (PVP) service that virtually eliminates the principal risk associated with settling FX trades.").

in the Consultation Paper to require counterparties to post margin at the same level and in the same manner.

Two-way margin is an essential component of managing risk for derivatives transactions as well as for reducing systemic risk. The collection of two-way margin helps to protect the individual counterparties to a derivatives transaction. The purpose behind collecting margin is to cover exposures by ensuring that counterparties can meet their financial obligations. The collection of two-way initial margin is the most effective risk reduction tool against residual counterparty credit risk. Two-way exchange of initial margin provides each counterparty protection against the future replacement cost in case of a counterparty default. Initial margin also helps to protect a party to a derivatives transaction from future credit risk posed by its counterparty. Furthermore, requiring two-way margining promotes central clearing by removing an incentive – avoidance of posting initial margin – for counterparties to structure a transaction, where possible, so that it need not be cleared.

The daily collection of variation margin also serves to remove current exposure from the derivatives markets for all participants and prevent exposures from accumulating. Two-way exchange of variation margin will provide protection to market participants against the market value losses that could otherwise build up at entities that engage in the most significant amount of derivatives transactions, which could threaten systemic stability.

We understand that, in certain jurisdictions, the margin posted could be at a risk of loss in the event of a default by the collecting counterparty because of the legal capacity in which initial margin is held and exchanged.[8] We believe that the BCBS and IOSCO should address these concerns and recommend that international regulators provide for appropriate custodial arrangements for the protection of posted collateral. For example, the posting party can be fully protected in the event of the collecting party's bankruptcy by the utilization of tri-party custodial arrangements.[9] Therefore, we urge the BCBS and IOSCO in their final recommendations specifically to address the issue of the manner in which collateral is held and protected against default of the collecting party in connection with the two-way margin requirement.

Use of Thresholds

In proposing a two-way margin requirement, the BCBS and IOSCO stated that it may be desirable to apply different thresholds for initial margin (the amount under which a firm would have the option of not collecting initial margin) to different types of derivatives market participants. As a general matter, we agree that the use of thresholds may alleviate the potential liquidity impact of margin

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[8] In these jurisdictions, market practice is that collateral is provided on a title transfer basis rather than through a security arrangement.

[9] Generally, in the United States, the collateral posted by a Regulated Fund for an uncleared derivatives transaction would be held by a third party custodian. The fund would retain ownership of the collateral and the assets would be listed on its schedule of portfolio investments in the financial statements. The fund's collateral would be protected in the event of a default of the fund's counterparty. This position is substantially the same in Asia as well as in Europe with respect to non-cash collateral.

requirements for uncleared derivatives. We believe, however, that the BCBS and IOSCO must carefully consider the thresholds that would apply to various types of market participants to avoid creating an inappropriately unlevel playing field in this area.

Although the Consultation Paper does not recommend a specific method for applying the thresholds nor specify the thresholds that would apply to the different types of market participants, the examples indicate that certain types of market participants could be subject to higher or lower thresholds. We generally agree that entities that pose more systemic risk to the financial system should be subject to a lower threshold (*e.g.,* should be required to post more margin) to avoid accumulation of exposure.

We, however, disagree with the implication in the Consultation Paper that only "prudentially regulated entities"[10] should benefit from a higher threshold. We strongly recommend that the BCBS and IOSCO make the determination that an entity can apply a threshold on a different basis – ability to leverage or being subject to other type of substantive financial regulation – rather than basing the criteria on prudential regulation. We believe a sound policy rationale for a threshold is to reduce the amount of collateral required for financially sound entities or entities that are subject to stringent regulation. Regulated Funds, as highly regulated, financially sound derivatives counterparties that are subject to stringent securities regulation (for example, limitations on leverage), should be subject to an appropriately high margin threshold.

We urge the BCBS and IOSCO not to limit use of thresholds to transactions between entities that are prudentially regulated and subject to minimum regulatory capital requirements or to permit the application of a higher threshold only when both counterparties are "prudentially-regulated." Regulated Funds that are not prudentially regulated entities could be disadvantaged because that method discourages prudentially regulated entities from transacting with non-prudentially regulated entities by potentially subjecting the prudentially regulated entities to higher margin requirements (*i.e.,* higher costs) in such instances. In Example 3, a transaction between prudentially regulated entities would benefit from a higher threshold but a transaction between a prudentially regulated entity and a non-prudentially regulated entity would be subject to a lower threshold. We believe application of thresholds in this manner could have the practical effect of encouraging entities to transact to reduce the amount of margin required, but may in fact concentrate and exacerbate systemic risk.

We also question this method of applying the threshold given the rationale discussed in the Consultation Paper for allowing the use of thresholds. If certain market participants (*e.g.,* prudentially-regulated entities) are considered "better equipped to manage the risks of non-centrally-cleared

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[10] The Consultation Paper does not define "prudentially regulated" entities and refers to "firms that are prudentially regulated and are subject to minimal regulatory capital requirements or direct supervision" as potentially falling within the category of derivatives market participants that should be allowed to apply a threshold. Regulated Funds are subject to direct supervision, and in some jurisdictions, funds that are regulated and publicly offered, and their advisers, may be required to maintain some level of capital either expressed through qualitative or quantitative requirements. As discussed in this section, we believe the BCBS and IOSCO should not limit the use of thresholds to entities that are considered prudentially regulated or are subject to capital requirements.

derivatives and/or to absorb the losses associated with any realised counterparty defaults,"[11] there is no reason why the ability of those entities to apply a threshold should change depending on the type of counterparty. In other words, a market participant's management of risk and ability to absorb losses should not vary with the type of counterparty with which it enters into a derivatives transaction. Moreover, we strongly disagree with the implication in the Consultation Paper that only prudentially-regulated entities have the ability to manage risks effectively.[12]

Calculation of Margin

According to the Consultation Paper, for initial margin, the potential future exposure of a non-centrally-cleared derivative should reflect an extreme but plausible estimate of an increase in the value of the instrument that is consistent with a one-tailed 99 percent confidence interval over a 10-day horizon based on historical data that incorporates a period of significant financial stress. The BCBS and IOSCO would permit the required amount of initial margin to be calculated by reference either to a quantitative portfolio margin model (subject to certain conditions) or a standardized margin schedule (included in the Consultation Paper as Appendix A).

For variation margin, the BCBS and IOSCO state that the full net current exposure of the non-centrally-cleared derivative must be used. According to the Consultation Paper, the BCBS and IOSCO would require calculation and collection subject to a single, legally enforceable netting agreement with sufficient frequency (*e.g.,* daily). They also would require minimum transfer amounts to be set sufficiently low to ensure that current exposure does not build up before variation margin is exchanged between counterparties.

We support the recommendation by the BCBS and IOSCO to permit the required amount of initial margin to be calculated by reference either to a quantitative portfolio margin model (subject to certain conditions) or a standardized margin schedule based on a percentage of notional exposure by asset class. Providing the counterparties with the option between a quantitative portfolio margin model or a standardized table or schedule would promote greater uniformity and transparency for market participants and could be administered operationally without much difficulty. We recommend that use of any quantitative portfolio model be predicated on appropriate criteria, including a requirement that the model's methodology be disclosed with sufficient specificity to permit the counterparty and the regulator to calculate the initial margin requirement independently. Moreover, the counterparties should be required to document the rationale for the choice between a model or schedule for calculating initial margin and the reasons for any changes in the method selected.

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[11] *See Consultation Paper*, *supra* note 3 at 10.

[12] A Regulated Fund through its adviser has policies and procedures and internal controls to monitor the risks in implementing particular investment techniques or strategies (including the risks of engaging in derivatives transactions) and to ensure compliance with relevant investment guidelines and regulatory requirements.

We are concerned that the 10-day liquidation period requirement is too long for initial margin requirements. As proposed, an initial margin model for uncleared derivatives would need to set initial margin at a level to cover 99 percent of price changes by product and portfolio over at least a 10-day liquidation horizon. ICI and ICI Global believe that initial margin should be set at a level that reflects a close-out, offset or other risk mitigation that occurs more or less simultaneously with the default. In light of the relatively high 99 percent confidence interval, we recommend that a 5-day liquidation period is appropriate for uncleared derivatives transactions. Furthermore, we note that the 5-day liquidation period is market practice under International Swaps and Derivatives Association Master Agreements. By requiring that initial margin be calculated using a liquidation period that exceeds the actual timeframe for liquidation, the proposed requirements would add unnecessary cost to non-centrally-cleared derivatives.

ICI and ICI Global also support daily valuation of margin. Daily valuation of margin will help ensure that accurate exposures are being covered. Without daily valuation of margin, counterparties will not be able to calibrate the amount of margin to the value of the derivatives positions.

Forms of Margin

The BCBS and IOSCO propose a broad set of assets that would be eligible as collateral. The Consultation Paper provides that the assets collected as collateral should be highly liquid and should be able to hold their value in a time of financial stress to ensure that they can be liquidated in a reasonable amount of time to generate proceeds that could sufficiently protect the collecting entities from losses in the event of a counterparty default. The Consultation Paper includes a non-exhaustive list of eligible collateral as examples: cash; high quality government and central bank securities; high quality corporate bonds; high quality covered bonds; equities included in major stock indices; and gold. Moreover, the BCBS and IOSCO would permit eligible collateral to be denominated in any currency in which payment obligations under the non-centrally-cleared derivative may be made or in highly-liquid foreign currencies subject to appropriate haircuts to reflect the inherent foreign currency risks. The BCBS and IOSCO would permit either internal or third-party quantitative model-based haircuts or schedule-based haircuts (which are included as Appendix B to the Consultation Paper).

We support the recommendation of the BCBS and IOSCO to permit a broad list of eligible collateral to allow counterparties to a derivatives transaction the flexibility to agree upon the appropriate collateral that may be posted for a particular transaction.[13] We agree with the BCBS and IOSCO that a broad set of eligible collateral would have the advantage of minimizing the potential liquidity impact of the margin requirements.[14] We also suggest that the BCBS and IOSCO consider

[13] We note that the proposal would permit a broader range of collateral than the CFTC's proposal, which would limit the categories of eligible collateral to cash, U.S. Treasuries and, for initial margin only, certain government securities.

[14] This approach is similar to that taken by the staff of the U.S. Securities and Exchange Commission with respect to the types of assets that may be used by a fund to "cover" its obligations under certain transactions that may be deemed to create

whether eligible collateral should exclude those assets that may be highly correlated with the derivatives for which the assets are being posted.

For Regulated Funds, restricting collateral to a narrow range of permitted assets may force these funds to hold lower-yielding securities at an increased cost to fund shareholders and/or to hold assets that do not correspond to the fund's investment objectives. Moreover, forcing funds to post a limited range of assets for collateral could result in making it difficult for funds to be compared to an appropriate benchmark. For example, an equity fund generally would not hold government securities other than for collateral purposes and holding such securities may result in the performance of such funds lagging behind their relevant benchmarks. Moreover, a restrictive collateral requirement may cause a Regulated Fund, for collateral purposes, to hold more cash than necessary. Regulated Funds and their counterparties should be permitted to negotiate the types of assets that each counterparty can post as collateral within the set of eligible collateral.

Treatment of Provided Margin

The BCBS and IOSCO propose that initial margin should be exchanged on a gross basis. According to the Consultation Paper, initial margin collected should be held in such a way to ensure that (1) the margin collected is immediately available to the collecting party in the event of the counterparty's default and (2) the collected margin must be subject to arrangements that fully protect the posting party in the event that the collecting party enters bankruptcy to the extent possible under applicable law. The BCBS and IOSCO propose not to permit collateral collected as initial margin to be re-hypothecated or re-used.

ICI and ICI Global support requiring exchange of margin on a gross basis (rather than on a net basis) to more effectively offset the risk of loss in the event of a counterparty default. We also strongly support a requirement that collateral for uncleared derivatives transactions, in particular initial margin, be held by third-party custodians (*i.e.,* tri-party arrangements) unless the posting party requests otherwise. In tri-party arrangements, the third party assumes certain responsibilities with respect to safeguarding the interests of both counterparties, including maintaining custody of the collateral, and is involved in effecting the transfer of funds and securities between the two parties. This arrangement helps to avoid market disruptions in the case of a default by a counterparty or other event necessitating access to the collateral. The protections provided to the counterparties from this structure are important to managing the risk created by exposure to a particular counterparty. Similarly, this structure serves to reduce the risk to the financial system associated with the particular counterparty.

In addition, we urge the BCBS and IOSCO to provide derivatives counterparties the opportunity to select a custodian that is not affiliated with a derivatives counterparty. In the case of Regulated Funds, this flexibility allows a fund to determine which custodian best satisfies its needs to

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leverage. *See Merrill Lynch Asset Management*, SEC No-Action Letter (pub. avail. July 2, 1996), *available at* http://www.sec.gov/divisions/investment/imseniorsecurities/merrilllynch070196.pdf

safeguard collateral posted as margin. We also believe the counterparties should determine whether it would be appropriate to hold the required margin posted by both counterparties at the same third-party custodian.

Cross-Border Transactions

The BCBS and IOSCO propose that the margin requirements in a jurisdiction should be applied to legal entities established in that local jurisdiction, which would include locally established subsidiaries of foreign entities. The Consultation Paper provides five illustrative examples to demonstrate the proposed requirement. For example, in a derivatives transaction between a U.S. bank and a German bank, the Consultation Paper states that the U.S. bank would be subject to margin rules of the relevant U.S. regulator and the German bank would be subject to the margin rules of the relevant German regulator.

The BCBS and IOSCO also propose that home-country supervisors should permit a counterparty to comply with the margin requirements of a host-country margin regime as long as the home-country supervisor considers the host-country margin regime to be consistent with the proposed margin requirements in the Consultation Paper.

The derivatives markets and market participants operate in a global marketplace. Although we appreciate the international comity that is reflected in the approached proposed by the BCBS and IOSCO, in a bilateral exchange of margin, we are uncertain how each counterparty can comply with different margin requirements imposed by their respective regulators. For example, how can the counterparties comply if one jurisdiction required two-way margin but the other jurisdiction required only one-way margin? What would happen if thresholds were permitted by one regulator but not another? How would the counterparties comply with the forms of margin requirements in situations where the regulators differ on the set of eligible assets for collateral?

To mitigate systemic and counterparty risk, the proposed margin requirements place important, but burdensome, obligations on market participants. These obligations will influence market participants' decisions on whether and how to trade in the derivatives markets, affecting the liquidity and stability of these markets. Inconsistencies and significant differences among the regulators' requirements may result in several unintended consequences including fragmentation of markets and regulatory arbitrage.

Recently, the CFTC proposed its approach to the cross-border applications of its regulations on swap transactions that may impose duplicative or conflicting requirements on both U.S. and non-U.S. market participants.[15] Given the practical difficulties in complying with two sets of margin

[15] The CFTC proposed its approach to the cross-border application of the swaps provisions of the Commodity Exchange Act ("CEA") that were enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. In a letter, we expressed concern that the extraterritorial approach proposed by the CFTC extends the swaps provisions of the CEA beyond what was intended under Title VII and could disadvantage Regulated Funds that engage in derivatives

requirements that may be duplicative or conflicting, it is critical that global regulators have consistent and harmonized regulation with respect to margin.[16] We strongly encourage international regulators to take advantage of existing fora, such as IOSCO, to make further progress on agreement on the cross-border application of derivatives regulations.

When finalized, the proposals set out in the Consultation Paper will need to be implemented by national governments and could result in potentially very lengthy and politically sensitive review and amendment of national insolvency laws. Accordingly, it is important that the timelines for the implementation of these proposals are not too aggressive and leave enough time for coordination of efforts by national regulators to implement these proposals around the world on a consistent basis.

Where harmonization is not possible, global regulators should permit counterparties to agree in advance to comply with the requirements of a particular country as long as the jurisdiction regulates derivatives consistent with the G20 agreement. Without these accommodations, there may be reluctance to engage in cross-border derivatives transactions, thereby impeding the ability of Regulated Funds to hedge their exposures effectively and efficiently.

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If you have any questions on our comment letter, please feel free to contact the undersigned or Giles Swan at 011-44-203-009-3103, Sarah Bessin at 202-326-5835 or Jennifer Choi at 202-326-5876.

Sincerely,

/s/ Karrie McMillan

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transactions around the world. *See* Letter from Karrie McMillan, General Counsel, ICI, and Dan Waters, Managing Director, ICI Global, to David A. Stawick, Secretary, CFTC, dated August 23, 2012.

[16] We also recommend that the BCBS and IOSCO encourage international regulators to align the margin rules for uncleared derivatives with the effective dates for margin rules for cleared derivatives to avoid regulatory arbitrage.

cc: Michael Gibson
Board of Governors of the Federal Reserve System

Alexa Lam
Hong Kong Securities and Futures Commission

The Honorable Gary Gensler
The Honorable Jill E. Sommers
The Honorable Bart Chilton
The Honorable Scott D. O' Malia
The Honorable Mark Wetjen

The Honorable Mary L. Schapiro
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes
The Honorable Daniel M. Gallagher