MEMO# 30385

November 7, 2016

Draft ICI Global Comment Letter in Response to ESMA Discussion Paper on the Trading Obligation for Derivatives; Member Comments Requested by November 14

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TO: Derivatives Markets Advisory Committee
Equity Markets Advisory Committee
ICI Global Trading & Markets Committee
International Committee
Securities Operations Advisory Group RE: Draft ICI Global Comment Letter in Response to ESMA Discussion Paper on the Trading Obligation for Derivatives; Member Comments Requested by November 14

As previously reported, the European Securities and Markets Authority (ESMA) recently published a discussion paper on how to implement the trading obligation for derivatives under the Markets in Financial Instruments Regulation (MiFIR).[1] The Discussion Paper provides market participants with some insights into the process that ESMA intends to use to develop regulatory technical standards specifying which of the classes of derivatives declared to be subject to the clearing obligation also should be subject to the trading obligation.

ICI Global's draft comment letter on the Discussion Paper is attached for your review. If you have any comments on the draft letter, please send them in writing to George Gilbert at george.gilbert@ici.org **by close of business on November 14**.

The draft comment letter urges EU regulators to work closely with international regulators as soon as possible (before the implementation of any trading obligation) to ensure that counterparties to cross-border derivatives transactions can satisfy applicable trading obligations in the European Union and a third country. Absent a regulatory solution cross-border derivatives activity will cease in instruments subject to a trading obligation in more than one jurisdiction because execution can occur in only one location. If the trading obligation prevents cross-border transactions, liquidity would fragment along national boundaries.

The letter also expresses concern about the data on which ESMA proposes to base its trading obligation determinations. Given the significant data quality issues that ESMA itself raises in the Discussion Paper, we urge ESMA (at least until the data quality has improved) to use a high threshold in making the trading obligation determinations to ensure that this obligation is imposed only on the most liquid classes of derivatives to avoid harming liquidity in less liquid classes.

The draft letter also addresses three themes raised in the Discussion Paper. First, it addresses questions concerning the relationship between liquidity assessments for the trading obligation and the transparency regime. Second, it sets out recommendations for the compliance schedule for the trading obligation. Third, it explains the importance of package transactions to regulated funds and suggests steps that ESMA should take to ensure that regulated funds and other market participants can continue to use these valuable strategies.

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George Gilbert
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Attachment

endnotes

[1] *See* ICI Memorandum No. 30313 (20 October 2016), *available at* https://www.iciglobal.org/portal/site/ICI/menuitem.e5ad730a13d808bfaf8db010b52001ca/?vgnextoid=9e6b7caf014c7510VgnVCM100000650210acRCRD&vgnextchannel=36566702fa782310VgnVCM1000005b0210acRCRD&vgnextfmt=default. For the full text of ESMA's proposal, *see* European Securities and Markets Authority, Discussion Paper, The trading obligation for derivatives under MiFIR (20 September 2016), *available at* https://www.esma.europa.eu/sites/default/files/library/2016-1389_dp_trading_obligation_for_derivatives_mifir.pdf (Discussion Paper).