

**MEMO# 30410**

November 21, 2016

# **ICI Global Files Comment Letter in Response to ESMA Discussion Paper on the Trading Obligation for Derivatives**

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TO: ICI Members

ICI Global Members SUBJECTS: Derivatives

International/Global

Trading and Markets RE: ICI Global Files Comment Letter in Response to ESMA Discussion Paper on the Trading Obligation for Derivatives

ICI Global has filed the attached comment letter in response to a discussion paper published by the European Securities and Markets Authority (ESMA) on the implementation of 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.

The 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 or regional 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 letter notes that as data quality improves over time, ESMA can further refine its liquidity assessments to extend the trading obligation to

additional classes of derivatives.

The 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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#### [Attachment](#)

#### **endnotes**

[1] For a summary of this discussion paper, see ICI Memorandum No. 30313 (October 14, 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 (September 20, 2016), *available at* [https://www.esma.europa.eu/sites/default/files/library/2016-1389\\_dp\\_trading\\_obligation\\_for\\_derivatives\\_mifir.pdf](https://www.esma.europa.eu/sites/default/files/library/2016-1389_dp_trading_obligation_for_derivatives_mifir.pdf) (Discussion Paper).

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