

**MEMO# 31147**

March 29, 2018

# **ESMA Issues Opinion on the Treatment of Packages Under the Trading Obligation for Derivatives**

[31147]

March 29, 2018 TO: ICI Members

ICI Global Members SUBJECTS: Derivatives

International/Global

Trading and Markets RE: ESMA Issues Opinion on the Treatment of Packages Under the Trading Obligation for Derivatives

The European Securities and Markets Authority (ESMA) recently published an opinion offering guidance on the treatment of package orders and package transactions under the trading obligation for derivatives, which requires certain types of interest rate swaps and credit default swaps to be “concluded” on a regulated market, multilateral trading facility, organized trading facility, or an equivalent third-country trading venue.[\[1\]](#) The Opinion is designed to address concerns that the trading obligation could force market participants to break a package into several pieces and execute these pieces in multiple places, which “may introduce significant complexity into the system and increase operational and execution risks.”[\[2\]](#)

The Opinion suggests a tailored approach that ESMA believes would ensure components of packages would be subject to the trading obligation “only where it is feasible to trade [the components] on a trading venue without creating undue operational or execution risk.” The approach applies to packages that satisfy one of the following conditions:

- All components of the package are subject to the trading obligation;
- At least one component is subject to the trading obligation and all other components are subject to the clearing obligation for derivatives;
- At least one component is an interest rate swap subject to the trading obligation and all other components are government bonds denominated in the same currency.

The Opinion implies that components of packages that do not meet one of these three criteria would be removed from the trading obligation.

George M. Gilbert

**endnotes**

[1] ESMA, Opinion On the treatment of packages under the trading obligation for derivatives (21 March 2018), available at [https://www.esma.europa.eu/sites/default/files/library/esma70-156-322\\_opinion\\_packages\\_and\\_to.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-156-322_opinion_packages_and_to.pdf) (Opinion). The Opinion defines package orders and package transactions (collectively, “packages”) to “include two or more financial instruments, where each component bears meaningful economic or financial risk to all the other components and the execution of each component is simultaneous and contingent upon on the execution of all the other components.” Opinion at 2, citing points (40) and (50) of Article 2(1) of the European Markets in Financial Instruments Regulation.

[2] Opinion at 3. ICI Global advised ESMA of these risks and advocated for a trading obligation that would not reduce the availability of packages. See ICI Global Comment Letter in Response to ESMA Proposal to Require Trading of Certain Derivatives on a Trading Venue, 31 July 2017, available at <https://www.ici.org/pdf/30808a.pdf>. Specifically, we noted that eligible trading venues might lack the operational capacity to support execution of package transactions and that even venues that support the execution of package transactions might not provide adequate liquidity to support the trading obligation.