

MEMO# 30727

June 2, 2017

ESMA Opinion on Concept of "Traded on a Trading Venue" for OTC Derivatives

[30727]

June 2, 2017 TO: ICI Members

ICI Global Members SUBJECTS: Derivatives

MiFID, EMIR, AIFMD, UCITS V

Trading and Markets RE: ESMA Opinion on Concept of "Traded on a Trading Venue" for OTC Derivatives

The European Securities and Markets Authority (ESMA) recently released an opinion clarifying the concept of "traded on a trading venue" for over-the-counter (OTC) derivatives for purposes of the Markets in Financial Instruments Directive II (MiFID II) and Regulation (MiFIR).[\[1\]](#)

MiFIR's pre- and post-trade transparency, transaction reporting, and trading obligation requirements are triggered by whether an instrument is "traded on a trading venue," but neither MiFIR nor MiFID II defines the concept. ESMA believes that the meaning of "traded on a trading venue" is particularly unclear for OTC derivatives because these instruments do not have an issuer (at least not in the same sense as stocks or bonds), may contain bespoke terms, and often arise through bilateral negotiations. ESMA believes that establishing an EU-wide definition of "traded on a trading venue" will lead to the common application of relevant MiFIR and MiFID II provisions, uniform procedures, and consistent supervisory practices and approaches to financial regulation throughout the European Union.

MiFIR requires reference data – details that define a specific product being traded – to be submitted to regulators for each financial instrument admitted on a trading venue or traded by a systematic internaliser. The Opinion takes the view that OTC derivatives that have the same reference data elements (except those that identify venues and issuers) as derivatives traded on a trading venue should be considered "traded on a trading venue" for purposes of MiFIR's transparency and transaction reporting requirements.[\[2\]](#) Although the Opinion is not clear, it appears from context that "trading venue" means a regulated market, a multilateral trading facility or an organised trading facility, consistent with Article 2(1)(16) of MiFIR.

ESMA plans to monitor the application of the concept of "traded on a trading venue" to ensure that the concept stays current as markets change and that the Opinion does not

create incentives to move trading to the OTC space.^[3]

Jennifer S. Choi
Associate General Counsel

George M. Gilbert
Counsel

endnotes

^[1] See Opinion of the European Securities and Markets Authority on “OTC Derivatives Traded on a Trading Venue,” at 1 (May 22, 2017), *available at* https://www.esma.europa.eu/sites/default/files/library/esma70-156-117_mifir_opinion_on_to_tv.pdf (Opinion).

^[2] See *id.* at 3.

^[3] See *id.*

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