

MEMO# 30808

July 31, 2017

ICI Global Files Comment Letter in Response to ESMA Proposal to Require Trading of Certain Derivatives on a Trading Venue

[30808]

July 31, 2017 TO: ICI Members

ICI Global Members SUBJECTS: Derivatives RE: ICI Global Files Comment Letter in Response to ESMA Proposal to Require Trading of Certain Derivatives on a Trading Venue

ICI Global filed the attached comment letter in response to a consultation paper on how to implement the trading obligation for derivatives under the Markets in Financial Instruments Regulation (MiFIR) issued by the European Securities and Markets Authority (ESMA).[\[1\]](#) Once a class of derivatives becomes subject to the clearing obligation under the European Market Infrastructure Regulation (EMIR), ESMA determines whether that class (or a subset of the class) should be subject to the trading obligation. If ESMA determines the trading obligation should apply to the class, those derivatives must be “concluded” a regulated market, multilateral trading facility, organized trading facility, or a third country trading venue deemed to be equivalent by the European Commission.

Our letter recommends that ESMA take several steps to reduce the potential for the introduction of the trading obligation to disrupt derivatives markets. Specifically, the letter:

- Explains the importance of ensuring that any trading obligation accounts for the cross-border nature of derivatives markets and urges ESMA and other EU authorities to work closely with international regulators as soon as possible (before the implementation of the trading obligation) to ensure that counterparties to cross-border derivatives transactions can satisfy applicable trading obligations in the European Union and a third country.
- Advocates for the implementation of an emergency mechanism to suspend the trading obligation. ESMA has preliminarily determined that it lacks authority under MiFIR to devise this mechanism, so the letter urges ESMA to request that the European Commission create the mechanism directly or grant ESMA the power to do so.
- Expresses concern that ESMA has not proposed any exception from the trading obligation for derivatives transactions concluded as part of a package transaction. The

letter suggests that no component of a package should be subject to the trading obligation unless the package itself trades on a venue with adequate liquidity to support the trading obligation. ESMA has preliminarily determined that it lacks authority under MiFIR to issue this type of exemption, so the letter urges ESMA to request that the European Commission create a workable trading obligation for package transactions directly or grant ESMA exemptive authority to do so.

- Describes certain shortcomings of the test that ESMA proposes to use to assess the liquidity of classes of derivatives for purposes of applying the trading obligation and offers refinements that would improve the reliability of this test.
- Urges ESMA to ensure that adequate protections exist to protect the confidentiality of trades above the large-in-scale threshold.
- Requests that ESMA provide an adequate period of time in their final regulatory technical standards for market participants to implement the trading obligation.

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[Attachment](#)

endnotes

[1] See ICI Memorandum No. 30753 (June 23, 2017), *available at* <https://www.iciglobal.org/iciglobal/pubs/memos/memo30753>. For the full text of ESMA's proposal, see European Securities and Markets Authority, Consultation Paper, The trading obligation for derivatives under MiFIR (19 June 2017), *available at* https://www.esma.europa.eu/sites/default/files/library/esma70-156-71_cp_trading_obligation.pdf.