[ESMA consults on draft standards for trading obligation for derivatives under MiFIR]

MiFIR’s trading obligation will move over-the-counter (OTC) trading in liquid derivatives onto organised venues thus increasing market transparency and integrity alike. MiFIR, which implements parts of the MiFID II framework, outlines the process for determining which derivatives should be traded on-venue.

ESMA invites stakeholders to provide feedback on ESMA’s approach, which was revised following an earlier consultation in 2016. Key elements of today’s published consultation include:

- liquidity analysis for interest rate derivatives and Index CDS based on a dataset covering the second half of 2016, incl. the proposal on which derivatives should be made subject to the trading obligation;
- the proposal on how to phase-in the trading obligation for derivatives
- ESMA’s approach concerning the instrument register to be maintained by ESMA for the trading obligation; and
- a high-level cost-benefit-analysis.

The consultation is open for comments until 31 July 2017. ESMA will use the feedback received to finalise its draft RTS on the trading obligation. The submission of supportive data would be particularly appreciated. ESMA will send the final draft standards to the European Commission for endorsement.

Background

The trading obligation for derivatives under MiFIR is closely linked to the clearing obligation under the European Market Infrastructure Regulation (EMIR). Once a class of derivatives needs to be centrally cleared under EMIR, ESMA must determine whether these derivatives (or a subset of them) should be traded on-venue, meaning on a regulated market (RM), multilateral trading facility (MTF), organised trading facility (OTF) or an equivalent third-country trading venue.

MiFIR foresees two tests to determine the trading obligation: *The venue test (*a class of derivatives must be admitted to trading or traded on at least one admissible trading venue) and t*he liquidity test* (whether a derivative is ‘sufficiently liquid’ and there is sufficient third-party buying and selling interest).