.BVI

Frankfurt am Main,
22 November 2016

BVI`s response to the ESMA Discussion Paper on the trading obligation for derivatives under MiFIR (ESMA/2016/1389)

BVI[1] takes the opportunity to present its views on the ESMA consultation paper on the trading obligation for derivatives under MiFIR.

Q1: Do you agree that the level of granularity for the purpose of the trading obligation should apply at the same level as the one used for calibrating the transparency regime of non-equity instruments? If not, which level of granularity for the TO would you recommend and why? Would that differ by asset class and type of instrument?

We agree with the assessment presented in para 67 that only benchmark dates with a number of days around those benchmarks dates for the interest rate derivatives should be in the scope of the trading obligation. However, such an approach should be aligned with other jurisdictions (e.g. US) which might apply a greater granularity.

Q2: Do you agree that all derivatives currently subject to or considered for the CO are admitted to trading or traded on at least one trading venue? If not, please explain which classes of derivatives are not available for trading on at least one trading venue.

We agree with the ESMA survey that all derivatives which are subject to the clearing obligation could be traded or are available to trade on RMs and MTFs at present. Furthermore, standardised CDSs can be traded more frequently than the clearing eligible interest rate derivatives.

We consider it as of utmost importance that each derivative asset class should be traded (and not only accepted) by at least two trading venues. In addition, all trading venues, including Organised Trading Facilities (OTFs), should be approved from the first day of the legislation coming into force. This would offer largest possible choice of trading venues and avoid questions of back-loading transactions between venues.

If an EU assessment (e.g. venue and liquidity test) for the determination of the trading obligation for a class of derivatives is not meet, ESMA should clarify that such derivative products can be continue to be traded OTC. Investment fund management companies require legal certainty that such OTC products can be traded without any disruptions enabling them to adhere to the investment guidelines, e.g. hedging market risk within the regulated investment fund (UCITS/AIFM).

Q3: How should ESMA determine the total number of market participants trading in a class of derivatives? Do you consider it appropriate to carry out this assessment with TR data or would you recommend other data sources?

[1] BVI represents the interests of the German investment fund and asset management industry. Its 98 members manage assets of some EUR 2.8 trillion in UCITS, AIFs and discretionary mandates. As such, BVI is committed to promoting a level playing field for all investors. BVI members manage, directly or indirectly, the assets of 50 million private clients in over 21 million households. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

BVI
Bundesverband Investment
und Asset Management e.V.

Contact
Phone +49 69 15 40 90 0
www.bvi.de

BVI Berlin
Unter den Linden 42
10117 Berlin

BVI Brussels
Rue du Trône 14–16
1000 Bruxelles

BVI Frankfurt
Bockenheimer Anlage 15
60322 Frankfurt am Main

Executive Board
Thomas Richter CEO
Rudolf Siebel MD

We agree with the assessment that ESMA should use TR data.

Q4: In your view, what should be the minimum total number of market participants to consider the following classes of derivatives as sufficiently liquid for the purpose of the trading obligation? i) OTC interest rate derivatives denominated in EUR, USD, GBP and JPY; ii) OTC interest rate derivatives denominated in NOK, PLN and SEK; iii) Credit default swaps (CDS) indices? Should you consider that this assessment should be done on a more granular level, please provide your views on the relevant subsets of derivatives specified in 1.-3.

The minimum total number of market participants could be specified according to the market volume of each participant. Applying a numerical automatic threshold is not appropriate. We think that a broad range of active trading market participants is crucial.

Q5: Do you agree with this approach? Do you consider alternative ways to identify the number of trading venues admitting to trading or trading a class of derivatives as more appropriate?

Please see our answer to question 2.

However, we disagree with the proposal. A good measure of liquidity is the number of trading venues (exchanges, MTFs, OTFs) on which a class of derivatives is actively trading (as opposed to the number of venues on which a class of derivatives is admitted to trading). The proposal in the DP may cause a competition among trading venues admitting a class of derivatives to trading and therefore liquidity could be fragmented across different venues. This may lead to market participants, especially from buy-side, struggling to find sufficient liquidity on a specific trading venue which they have access to. This approach was taken in the US and the CFTC is now planning to correct it.

Q14: Do you agree that trades above the post-trade large in scale threshold should not be subject to the TO? If not, what approach would you suggest? Should transactions above the post-trade LIS threshold meet further conditions in order to be exempted from the TO?

We agree that trades above the post-trade large in scale threshold should not be subject to the TO.

Q25: Do you agree that due to the specificities of the FRA-market, FRAs should not be considered for the TO? Do you agree that the majority of FRAs transactions serve post-trade risk reduction purposes rather than actual trades?

Yes, we agree. The FRA-market should not be in the scope for a trading obligation as the majority of FRA transactions serve a post-trade risk reduction purposes.

Q27: Would you consider the two index CDS as sufficiently liquid for being covered by the TO?

We agree that the two index CDS products are sufficient liquid.

Q30: Do you agree with the proposed application dates? If not, please provide an alternative and explain your reasoning.

We strongly disagree. The proposed timeframes do not give market participants, e.g. trading venues sufficient time to develop their offerings and trading frameworks for their market participants (e.g. buy-

side clients). Firstly, trading venues have to develop their offerings before buy-side clients can make a decision to which exchange, MTF or OTF they would like to connect to.

On 14 November 2016, ESMA published a final report on the clearing obligation for financial counterparties with a limited volume of clearing activity (ESMA/2016/1565). In this report, ESMA proposes to postpone the clearing obligation for category (3) for interest rate derivatives and credit defaults swaps until 21. June 2019. Such new proposed clearing deadline is well beyond the envisaged trading obligation deadline beginning for categories (3) on 03 January 2018 (IRS: Currency EUR, GBP, JPY, USD) and 9 February 2018 (IRS: NOK, PLN, SEK; CDS).

We strongly encourage ESMA to propose a well calibrated phase-in approach for the different categories of counterparties for the trading obligation once the clearing obligation comes into effect. ESMA should avoid to use a start date for the trading obligation before the clearing obligation applies.

Q31: Do you consider necessary to provide for an additional phase-in for the TO for operational purposed and to avoid bottlenecks? If yes, please provide a proposal on the appropriate length of such a phase-in for the different categories of counterparties and explain your reasoning.

Yes, we think it is necessary to provide for an additional phase-in approach for the TO analogue to the compliance deadlines for the clearing obligation. As a starting point of discussion, the timeline for clearing obligation for the different financial counterparties could be used.