

MEMO# 30405

November 17, 2016

ESMA Publishes Final Report on Postponement of Phase-In Period for Central Clearing for Certain Counterparties

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TO: Derivatives Markets Advisory Committee

ICI Global Regulated Funds Committee

ICI Global Trading & Markets Committee RE: ESMA Publishes Final Report on Postponement of Phase-in Period for Central Clearing for Certain Counterparties

On November 14, 2016, the European Securities and Markets Authority (“ESMA”) issued a final report that would delay the implementation of the clearing obligation of certain over-the-counter (“OTC”) derivatives under the European Market Infrastructure Regulation (“EMIR”) for a category of counterparties.[\[1\]](#) ESMA is proposing this delay because of the difficulties that small financial counterparties are facing in establishing necessary clearing arrangements and the limited impact that these counterparties pose on systemic risk. The European Commission now has three months to determine whether to endorse ESMA’s proposal.

As previously reported, the EU authorities adopted three Delegated Regulations (“RTS”) that mandate central clearing of three classes of derivatives: (1) OTC interest rate derivatives denominated in EUR, GBP, JPY, and USD; (2) OTC index credit default swaps; and (3) OTC interest rate derivatives denominated in NOK, PLN, and SEK.[\[2\]](#) The RTS include an implementation schedule for the clearing obligations based on the categories of the counterparties.[\[3\]](#) The Final Report would amend these RTS to delay the obligation to clear the covered classes of derivatives for Category 3 firms until June 21, 2019.

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endnotes

[1] ESMA, Final Report On the clearing obligation for financial counterparties with a limited volume of activity (Nov. 14, 2016), *available at* https://www.esma.europa.eu/sites/default/files/library/2016-1565_final_report_on_clearing_obligation.pdf ("Final Report").

[2] Commission Delegated Regulation (EU) 2015/2205 of 6 August 2015 supplementing Regulation (EU) No. 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation, OJ L 314, 1.12.2015; Commission Delegated Regulation (EU) 2016/592 of 1 March 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation, OJ L 103, 19.4.2016; Commission Delegated Regulation (EU) 2016/1178 of 10 June 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation, OJ L 195, 20.7.2016, p. 3 and Corrigendum in OJ L 196, 21.7.2016. See also ICI Memoranda Nos. 29522 and 29845, *available at* <https://www.iciglobal.org/iciglobal/pubs/memos/memo29522>, <https://www.iciglobal.org/iciglobal/pubs/memos/memo29845>.

[3] The implementation schedule in the Commission Delegated Regulations consider four categories of counterparties: (1) Category 1 – counterparties that, on May 9, 2016, are clearing members for at least one of the classes of CDS subject to the clearing obligation of at least one of the central counterparties authorized or recognized before that date to clear at least one of those classes; (2) Category 2 – financial counterparties and non-financial counterparty alternative investment funds that are not included in Category 1 and belong to a group with average aggregate month-end outstanding gross notional amount of non-centrally cleared derivatives for January, February, and March 2016 exceeding EUR 8 billion; (3) Category 3 – financial counterparties and non-financial counterparty alternative investment that are not included in Category 1 or Category 2; and (4) Category 4 – non-financial counterparties that are not included in Category 1, Category 2, or Category 3.

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