

**MEMO# 30954**

November 17, 2017

## **EU Trading Obligation for Certain Derivatives**

[30954]

November 17, 2017 TO: ICI Members

ICI Global Members

Derivatives Markets Advisory Committee

Equity Markets Advisory Committee

ICI Global Trading & Markets Committee

Securities Operations Advisory Committee SUBJECTS: Derivatives

International/Global RE: EU Trading Obligation for Certain Derivatives

On November 17, 2017, the European Commission adopted a regulation identifying certain interest rate swaps (IRS) and index credit default swaps (CDS) that will be subject to the trading obligation under the Markets in Financial Instruments Regulation (MiFIR).[\[1\]](#) Derivatives that are subject to the trading obligation may only be traded on a regulated market, multilateral trading facility, organized trading facility,[\[2\]](#) or third-country trading venue deemed to be equivalent by the Commission. ESMA had submitted the final regulatory technical standards to the Commission for endorsement in September.[\[3\]](#) The Parliament and Council now have one month (extendable by one month) to raise any objection to the Regulation. We understand that early notifications of their intention not to object are expected.

The Regulation sets forth the derivatives subject to the trading obligation and the dates from which the trading obligation takes effect. An appendix (attached) to this memorandum sets forth Annex 1 of the Regulation, which includes the derivatives subject to the trading obligation in a tabular format.

Under the Regulation, the trading obligation will take effect on the later of: (1) January 3, 2018 (the date that MiFIR and MiFID II take effect) or (2) the date from which the clearing obligation for derivatives take effect, as described in the table below.

### **Application Date for the Trading Obligation**

OTC derivatives class

Category of counterparty[\[4\]](#)

Category 1

Category 2

Category 3

Category 4

Interest Rate Derivatives (EUR, GBP, USD)

Jan. 3, 2018

Jan. 3, 2018

Jun. 21, 2019

Dec. 21, 2018

Credit Derivatives

Jan. 3, 2018

Jan. 3, 2018

Jun. 21, 2019

May 9, 2019

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[Attachment](#)

#### **endnotes**

[1] Commission Delegated Regulation supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the trading obligation for certain derivatives (17 November 2017), *available at* <http://ec.europa.eu/transparency/regdoc/rep/3/2017/EN/C-2017-7684-F1-EN-MAIN-PART-1.PDF> (Regulation).

[2] An organized trading facility is a type of trading venue created by Markets in Financial Instruments Directive II (MiFID II).

[3] See ICI Memorandum No. 30903 (Oct. 10, 2017), *available at* <https://www.iciglobal.org/iciglobal/pubs/memos/memo30903>.

[4] ESMA distinguished four categories of counterparties for the purpose of clearing obligation:

- Category 1: Clearing members, for at least one of the classes of OTC derivatives

subject to the clearing obligation, of at least one of the CCPs authorized or recognized before the date to clear at least one of those classes. Counterparties are included in category 1 on a per asset class approach.

- Category 2: Financial counterparties and alternative investment funds (AIFs) that are not clearing members and belong to a group having at least €8 billion of average aggregate month-end notional exposure, as calculated for purposes of the clearing requirement for derivatives.
- Category 3: Financial counterparties and AIFs that are not included in Category 1 or Category 2.
- Category 4: Non-financial counterparties.

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