

MEMO# 29845

April 20, 2016

Clearing Deadline Set for Credit Default Swaps in the EU

[29845]

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TO: DERIVATIVES MARKETS ADVISORY COMMITTEE No. 15-16
ICI GLOBAL TRADING & MARKETS COMMITTEE No. 15-16
INTERNATIONAL MEMBERS No. 6-16
INVESTMENT ADVISER MEMBERS No. 5-16 RE: CLEARING DEADLINE SET FOR CREDIT
DEFAULT SWAPS IN THE EU

The Official Journal of the European Union recently published regulatory technical standards (“RTS”) for mandatory clearing of certain classes of credit default swaps (“CDS”). [\[1\]](#) The classes of CDS subject to the clearing mandate are included in the appendix to this memorandum. Compliance with the RTS will phase in over three years.

Compliance Dates

The RTS provide for compliance with the clearing obligation to take effect following a phased implementation schedule that depends on the type of counterparty. The schedule considers four categories of counterparties:

- 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 (“CCPs”) authorized or recognized before that date to clear at least one of those classes.
- 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; [\[2\]](#)
- Category 3 – financial counterparties and non-financial counterparty alternative investment that are not included in Category 1 or Category 2; and
- Category 4 – non-financial counterparties that are not included in Category 1, Category 2, or Category 3.

The clearing obligation will take effect on the following dates:

- February 9, 2017, for Category 1 entities;
- August 9, 2017, for Category 2 entities;

- February 9, 2018, Category 3 entities; and
- May 9, 2019, for Category 4 entities.

Where a contract is concluded between two counterparties in different categories, the contract is subject to clearing only if the clearing obligation has taken effect for both counterparties.

Frontloading

EMIR imposes an obligation to clear OTC derivatives contracts (relating to a class of OTC derivatives that has been declared subject to the clearing obligation) that are entered into after the notification to ESMA of the authorization of a CCP by the national competent authorities and before the date of application of the clearing obligation. The RTS imposes a frontloading requirement (i.e., a requirement to clear retroactively CDS that were entered into during the period of time between the notification of CCP authorization to ESMA and the start date of the clearing obligation) as follows:

- For financial counterparties in Categories 1 and 2, frontloading applies to a CDS described in the RTS that: (1) has a remaining maturity of at least 6 months and (2) is executed on or after October 9, 2016
- For other counterparties, no contract will be subject to frontloading.

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Appendix: Classes of CDS Subject to the Clearing Obligation

| id | Type | Sub-type | Geographical | Zone | Reference | Index | Settlement | Currency | Series | Tenor |
|-------|-------|----------|--------------|-------|-----------|--------|------------|-----------|--------|---------------|
| B.1.1 | Index | CDS | Untranch | Index | Europe | iTraxx | Europe | Main | EUR | 17 onwards 5Y |
| B.1.2 | Index | CDS | Untranch | Index | Europe | iTraxx | Europe | Crossover | EUR | 17 onwards 5Y |

endnotes

[1] 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, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0592&rid=3>. These RTS were developed by the European Securities and Markets Authority (“ESMA”).

[2] This calculation would include all of the group’s non-centrally cleared derivatives, including foreign exchange forwards, swaps and currency swaps.