

MEMO# 30066

July 20, 2016

EU Regulators Consult on a Delay of the Clearing Obligation for Certain Counterparties; Member Call Scheduled for July 28 at 10:00 a.m. (ET)

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TO: DERIVATIVES MARKETS ADVISORY COMMITTEE No. 35-16
ICI GLOBAL TRADING & MARKETS COMMITTEE No. 31-16
INTERNATIONAL COMMITTEE No. 36-16
SECURITIES OPERATIONS ADVISORY COMMITTEE RE: EU REGULATORS CONSULT ON A
DELAY OF THE CLEARING OBLIGATION FOR CERTAIN COUNTERPARTIES; MEMBER CALL
SCHEDULED FOR JULY 28 AT 10:00 A.M. (ET)

The European Securities and Markets Authority (“ESMA”) recently proposed to extend the compliance dates for the clearing obligation of certain over-the-counter (“OTC”) derivatives under the European Market Infrastructure Regulation (“EMIR”) for financial counterparties with a limited volume of activity. [1] ESMA is proposing to delay the implementation of the clearing obligation for these entities because of the difficulties that these counterparties are facing in establishing necessary clearing arrangements and the limited impact in terms of systemic risk that these counterparties pose.

Comments on the Consultation Paper are due by September 5. A member call to discuss the Consultation Paper will be on July 28 at 10:00 a.m. (ET). Please contact Hellenia Walker at helenia.walker@ici.org to receive dial-in information for the call.

As previously reported, the regulations imposing the clearing obligation include a phased implementation schedule that depends on the type of counterparty. [2] In the Consultation Paper, ESMA proposes to delay by two years the implementation dates for Category 3, which begin on June 21, 2017 for interest rate derivatives in the G4 currencies, February 9, 2018 for European index CDS, and 18 months after entry into force of the regulation for interest rate derivatives in NOK, PLN, and SEK. [3]

ESMA seeks input to help determine whether it to proceed in delaying the compliance dates and poses seven specific questions related to the proposed delay. The questions are as follows:

Question 1: To which category of counterparties does your organisation belong: (1) in the context of the 1st Commission Delegated Regulation on the clearing obligation, and (2) in the context of the 2nd Commission Delegated Regulation on the clearing obligation?

Question 2: If you offer clearing services, please provide evidence on the constraints that would prevent you from offering clearing services to a wider range of clients.

Question 3: Have you already established clearing arrangements (1) for interest rate swaps? (2) for credit default swaps? If not, please explain why (including the difficulties that you may be facing in establishing such arrangements) and provide an estimation of the time needed to finalise the arrangements.

Question 4: Please provide information and data you may have that could complement this analysis on the level of experience and preparedness of financial counterparties with CCP clearing.

Question 5: Do you agree with the proposal to keep the definitions of the categories of counterparties as they currently are and to postpone the date of application of the clearing obligation for Category 3? If not, which alternative would achieve a better outcome?

Question 6: Do you agree with the proposal to modify the phase-in period applicable to Category 3, by adding two years to the current compliance deadlines?

Question 7: Do you agree with the proposal to modify the three Commission Delegated Regulations on the clearing obligation at the same time?

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endnotes

[1] European Securities Markets Authority, Consultation Paper on the clearing obligation for financial counterparties with a limited volume of activity, (July 13, 2016), available at https://www.esma.europa.eu/sites/default/files/library/2016-1125_cp_on_clearing_obligation_for_financial_counterparties.pdf ("Consultation Paper").

[2] Currently, two Commission Delegated Regulations on the clearing obligation have entered into force – one on interest rate swaps in the G4 currencies and one on certain European index credit default swaps ("CDS"). See ICI Memoranda Nos. 29522 and 29845, available at <https://www.iciglobal.org/iciglobal/pubs/memos/memo29522> and <https://www.iciglobal.org/iciglobal/pubs/memos/memo29845>. In addition, the European Commission has endorsed ESMA's third draft regulations covering interest rate swaps denominated in Norwegian krone ("NOK"), Polish zloty ("PLN"), and Swedish krona ("SEK"),

but the objection period by the European Parliament and the Council has not passed and the Delegated Regulation has not been published in the Official Journal.

[3] The implementation schedule in the Commission Delegated Regulations considers four categories of counterparties: (1) Category 1 – counterparties that, as of a date specified in the relevant Delegated Regulation, are clearing members for at least one of the classes of OTC derivatives 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; (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.