

**MEMO# 29514**

November 23, 2015

# EU Regulators Issue Final Report on the Clearing Obligation for Interest Rate Derivatives in Additional Currencies

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 30-15  
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 84-15  
ICI GLOBAL MEMBERS No. 25-15  
INTERNATIONAL MEMBERS No. 42-15  
INVESTMENT ADVISER MEMBERS No. 27-15 RE: EU REGULATORS ISSUE FINAL REPORT ON THE CLEARING OBLIGATION FOR INTEREST RATE DERIVATIVES IN ADDITIONAL CURRENCIES

On November 10, 2015, the European Securities and Markets Authority (“ESMA”) issued its final report on draft regulatory technical standards (“RTS”) for mandatory clearing of certain classes of interest rate swaps (“IRS”) and forward rate agreements (“FRA”) denominated in Norwegian krone (“NOK”), Polish zloty (“PLN”), and Swedish krona (“SEK”). [\[1\]](#) The clearing obligation proposed by the Final Report shares many similarities with an earlier final report on draft RTS to subject IRS denominated in four major currencies to the clearing obligation (“Major Currency RTS”). [\[2\]](#) The Final Report will be submitted to the European Commission for endorsement. The European Commission must decide whether to endorse the draft RTS within three months.

## Classes to be Subject to the Clearing Obligation

The following tables provide the classes of IRS and FRA that would be subject to the clearing obligation. [\[3\]](#)

Table 1: Fixed-to-float interest rate swaps classes

id

Type

Reference Index

Settlement Currency

Maturity

Settlement Currency Type

Optionality

Notional Type

C.1.1

Fixed-to-Float

NIBOR

NOK

28D-10Y

Single currency

No

Constant or Variable

C.1.2

Fixed-to-Float

WIBOR

PLN

28D-10Y

Single currency

No

Constant or Variable

C.1.3

Fixed-to-Float

STIBOR

SEK

28D-15Y

Single currency

No

Constant or Variable

Table 2: FRA classes

id

Type

Reference Index

Settlement Currency

Maturity

Settlement Currency Type

Optionality

Notional Type

C.2.1

FRA

NIBOR

NOK

3D-2Y

Single currency

No

Constant or Variable

C.2.2

FRA

WIBOR

PLN

3D-2Y

Single currency

No

Constant or Variable

C.2.3

FRA

STIBOR

SEK

3D-3Y

Single currency

No

Constant or Variable

## **Phase-in Period**

The Final Report calls for compliance with the clearing obligation to take effect following a phased implementation schedule that depends on the type of counterparty. ESMA proposes four categories of counterparties for these purposes: (1) clearing members; [\[4\]](#) (2) financial counterparties and non-financial counterparty alternative investment funds that are not included in category 1 and belong to a group whose average aggregate month-end outstanding gross notional amount of non-centrally cleared derivatives exceeds EUR 8 billion; [\[5\]](#) (3) financial counterparties and non-financial counterparty alternative investment that are not included in category 1 or category 2; and (4) non-financial counterparties that are not included in category 1, category 2, or category 3.

The date of application of the clearing obligation would be as follows: (1) six months after entry into force [\[6\]](#) of the RTS for category 1; (2) 12 months after the entry into force of the RTS for category 2; (3) 18 months after the entry into force of the RTS for category 3; and (4) three years after the entry into force of the RTS for category 4. Where a contract is concluded between two counterparties in different categories, the contract would be subject to clearing only if the compliance date has arrived 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. For the period between the notification to ESMA and the publication of the RTS in the Official Journal, ESMA would set the minimum remaining maturity level so that no contract will be subject to frontloading. [\[7\]](#) For contracts entered into between the publication in the Official Journal of the RTS and the date on which the clearing obligation takes effect, ESMA would require frontloading in the following circumstances:

- For financial counterparties in category 1, a contract that (1) has a remaining maturity of at least six months and (2) is executed on or after the date that is two months after the date the RTS enters into force.
- For financial counterparties in category 2, a contract that (1) has a remaining maturity of at least six months and (2) is executed on the latter of the date that is two months after the date that the RTS enters into force or the date that is five months after the date that the Major Currency RTS enters into force.
- For other counterparties, no contract will be subject to frontloading.

**endnotes**

[1] European Securities and Markets Authority, Final Report, Draft technical standards on the Clearing Obligation – Interest Rate OTC derivatives in additional currencies (Nov. 10, 2015), available at [https://www.esma.europa.eu/system/files/esma-2015-1629\\_-\\_final\\_report\\_clearing\\_obligation\\_irs\\_other\\_currencies.pdf](https://www.esma.europa.eu/system/files/esma-2015-1629_-_final_report_clearing_obligation_irs_other_currencies.pdf) (“Final Report”). The Consultation Paper for the draft RTS proposed to extend the clearing obligation to IRS denominated in three additional currencies, the Czech koruna, Danish krone, and Hungarian forint. See ICI Memorandum 29064 (Jun. 5, 2015), available at <https://www.iciglobal.org/iciglobal/pubs/memos/memo29064>. ESMA is not proposing to apply the clearing obligation to those IRS at this time.

[2] See ICI Memorandum No. 28439 (Oct. 8, 2014), available at [https://www.ici.org/my\\_ici/memorandum/memo28439](https://www.ici.org/my_ici/memorandum/memo28439).

[3] Final Report, *supra* note 1, at 43.

[4] Category 1 (clearing members) would include counterparties that, on the date of entry into force of the RTS, are clearing members for at least one of the classes of IRS or FRA subject to the clearing obligation – under these RTS or the Major Currency RTS – of at least one of the central counterparties (“CCPs”) authorized or recognized before that date to clear at least one of those classes.

[5] A counterparty would calculate its average aggregate month-end outstanding gross notional amount one time to determine its categorization for this RTS and the Major Currency RTS. The calculation would include all of the group’s non-centrally cleared derivatives, including foreign exchange forwards, swaps and currency swaps for the earlier of the three months preceding the entry into force of this RTS or the three months preceding the entry into force of the Major Currency RTS.

[6] The RTS would enter into force on the twentieth day following its date of publication in the Official Journal of the European Union (“Official Journal”).

[7] This approach to frontloading is consistent with the approach under the Major Currency RTS, as modified by an opinion issued by ESMA earlier this year. See ESMA, Opinion, Draft RTS on the Clearing Obligation on Interest Rate Swaps (January 29, 2015), available at [http://www.esma.europa.eu/system/files/2015-223\\_opinion\\_on\\_draft\\_rts\\_on\\_the\\_clearing\\_obligation.pdf](http://www.esma.europa.eu/system/files/2015-223_opinion_on_draft_rts_on_the_clearing_obligation.pdf).