

**MEMO# 28722**

February 6, 2015

# **EU Regulator Issues Feedback Statement on Potential Clearing Obligation for Non-Deliverable Forward Contracts**

[28722]

February 6, 2015

TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 2-15  
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 8-15  
ICI GLOBAL MEMBERS No. 6-15  
INTERNATIONAL MEMBERS No. 6-15  
INVESTMENT ADVISER MEMBERS No. 4-15 RE: EU REGULATOR ISSUES FEEDBACK STATEMENT ON POTENTIAL CLEARING OBLIGATION FOR NON-DELIVERABLE FORWARD CONTRACTS

On February 4, the European Securities and Markets Authority (“ESMA”) issued a statement [\[1\]](#) summarizing the feedback it received on a consultation (“Consultation”) it issued last year regarding a potential clearing obligation for foreign exchange non-deliverable forwards (“NDFs”). [\[2\]](#) The Feedback Statement summarizes the responses ESMA received to each of the ten questions it posed in the Consultation. It concludes that, based on the responses, ESMA will not propose a clearing obligation for NDFs at this time, although it may do so at a later time to take into account further market developments. In not proposing a clearing obligation for NDFs, ESMA states that it “believes that more time is needed to address appropriately the main concerns raised in the responses.” It states that it is difficult to assess how much time will be needed to address those issues.

Some of the comments ESMA highlights include those relating to the timing of a potential clearing obligation for NDFs, concerns raised by commenters regarding the few central counterparties (“CCPs”) in EU or third-countries that currently clear NDFs, as well as concerns regarding the capacity of CCPs to handle potential disruption events linked to NDFs. ESMA also highlights comments regarding the importance of international consistency in the implementation schedule for any NDF clearing obligation, and notes that ESMA considers “that the criteria for the determination of the clearing obligation should be further assessed considering the global nature of the FX market.”

Sarah A. Bessin  
Associate General Counsel

**endnotes**

[1] European Securities and Markets Authority, Feedback Statement, Consultation on the Clearing Obligation for Non-Deliverable Forwards (Feb. 4, 2015), available at [http://www.esma.europa.eu/system/files/2015-esma-234\\_-\\_feedback\\_statement\\_on\\_the\\_clearing\\_obligation\\_of\\_non\\_deliverable\\_forward.pdf](http://www.esma.europa.eu/system/files/2015-esma-234_-_feedback_statement_on_the_clearing_obligation_of_non_deliverable_forward.pdf) (“Feedback Statement”).

[2] For a summary of the Consultation, please see ICI Memorandum No. 28439 (Oct. 8, 2014), available at [http://www.ici.org/my\\_ici/memorandum/memo28439](http://www.ici.org/my_ici/memorandum/memo28439).

---

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.