

Deloitte regulatory news alert

EMIR Clearing Obligations



ESMA final report on central clearing of Interest Rate Swaps (IRS)

On 1st October 2014, ESMA published its **Final draft technical standards on the Clearing Obligation – Interest Rate OTC Derivatives**.

The Regulatory Technical Standards (“RTS” hereafter) define those types of IRS contracts which will have to be centrally cleared according to Article 5 of EMIR, the types of counterparties covered by the obligation and the dates by which central clearing of IRS will become mandatory for them.

ESMA proposed to create one class of OTC derivative per product type, when product types are defined as follows:

Float-to-float swaps (basis swaps)

Forward Rate Agreement (FRA)

Fixed-to-float interest rate swaps (IRS)

Overnight Index Swaps (OIS)

Class of OTC derivatives subject to the clearing obligation are referred to Class+.

Phase in implementation as per the category of counterparties

ESMA’s technical standards also set out the implementation schedule for market participants for whom central clearing will become mandatory as per four categories:

Category	Foreseen Implementation (*)
Category 1: Clearing members for any of the Class+ of any CCP authorised to clear at least one of the Class+.	6 months after the RTS enter into force (estimated to be August 2015).
Category 2: Financial Counterparties (FCs) and Alternative Investment Funds (AIFs) that are non-financial counterparties above the clearing threshold (NFCs+), which are not included in Category 1, and which belong to a group for which the aggregate month-end average notional amount of non-centrally cleared derivatives for (*) November 2014, December 2014 and January 2015 is above €8bn	12 months after the RTS enter into force (estimated to be February 2016)
Category 3: FCs and other NFC+ AIFs that have a low level of activity in uncleared derivatives and which are not included in Category 1 or 2	18 months after the RTS enter into force (estimated to be August 2016)
Category 4: non-financial counterparties (NFCs)	36 months after the RTS enter into force (estimated to be February 2018).

(*) assuming the RTS enter into force in February 2015

Key Notes :

- Where a contract is entered into between two counterparties included in different categories of counterparties as defined in Article 2 of EMIR, the date from which the clearing obligation takes effect for that contract shall be the latest of the two.
- Intragroup transactions concluded between an EU and a third-country entity can benefit from an exemption from the clearing obligation under some conditions. One condition is that the non-European entity is established in a third-country in respect of which the European Commission has adopted an implementing act (an "equivalent third-country")

Next Coming Technical Standards

Further to the consulting papers - Clearing Obligation under EMIR (no. 2) dated 11 July [2014/ESMA/2014/800](#) and Clearing Obligation under EMIR (no. 3) dated 1st October [2014/ESMA/2014/1185](#), we expect final reports on draft technical standards related to certain credit OTC derivative classes and foreign-exchange non-deliverable forward (FX NDF) OTC derivatives.

How we can help - What do firms need to be doing now?

Mid 2015, we expect the first clearing obligations to start in EU and around the same time, we expect the final rules on the treatment of non-cleared derivatives to be set.

Firms need to make sure that they have updated existing documentation and agreements (ISDA), operational considerations (like the client asset segregation) and infrastructure in place as well as an effective collateral management and optimisation strategy explicitly defined.

We trust this information is of assistance and remain at your disposal for any further questions.

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