

## Deloitte regulatory news alert

### EMIR clearing obligations to start in June 2016

8 December 2015

The clearing obligation in the EU will enter into force following the publication of a Regulation (EU) 2015/2205 (the "Regulation") supplementing the European Markets Infrastructure Regulation ("EMIR")

#### Background and scope

ESMA has determined the classes of interest rates OTC derivatives that should be subject to the clearing obligation as set out in EMIR (648/2012 Article 4 & 5).

The clearing obligation covers the following class of OTC interest rate derivatives denominated in the following currencies:

- Fixed-to-float interest rate swaps (also known as plain vanilla) for EUR, GBP, JPY, USD
- Float-to-float swaps (also known as basis swaps) for EUR, GBP, JPY, USD
- Forward rate agreements for EUR, GBP, JPY, USD
- Overnight index swaps for EUR, GBP, USD

The clearing obligation will be phased in based on the categorisation of both counterparties in the derivative trade.

The clearing obligation will take effect as from June 21st, 2016 and depending on the remaining maturity of the derivative contracts on that date, backloading will be required.

The phase-in is planned as per the below time-table:

Category of counterparty	1	2	3	4
1	21 June 2016	21 December 2016	21 June 2017	21 December 2018
2	21 December 2016	21 December 2016	21 June 2017	21 December 2018
3	21 June 2017	21 June 2017	21 June 2017	21 December 2018
4	21 December 2018	21 December 2018	21 December 2018	21 December 2018

Counterparties are classified as per the below table:

<b>Category 1</b>	Counterparties which are currently clearing members clearing one of the above four derivatives on the 21st December 2015
<b>Category 2</b>	FCs, NFC+s and Alternative Investment Funds (AIFs), whose average outstanding gross notional of non-centrally cleared derivatives for January, February and March 2016 is above EUR 8 billion.
<b>Category 3</b>	FCs or AIFs that are NFC+s not in category 1 or 2
<b>Category 4</b>	NFC+s not in categories 1, 2 or 3

It is to be noted that certain alternative investment funds not captured by the definition of financial counterparties under Regulation 648/2012 (EMIR) for purpose of the technical standards will be considered as financial counterparties when dealing in OTC derivatives above the clearing threshold.

The deadlines for counterparties in the second and third categories aim to take into account the timing required to get access to CCP (as client of a clearing member or indirect client of clearing member) which may vary from 12 to 18 months depending of the level of preparation.

## Next steps

It has already been announced that the next clearing obligations will cover index credit default swaps as well as interest rate swaps denominated in NOK, PLN and SEK. The European Securities and Market Authority (ESMA) has submitted draft regulatory technical standards to the Commission regarding these classes of OTC derivative instruments in October and November 2015 respectively.

In addition, as per the joint consultation paper of EU regulators from June 10th, 2015, as from 01 September 2016, the phase in of mandatory collateral exchange and margin requirements for non-centrally cleared derivatives is expected to start.

Both implementation measures will over time increase collateral requirements, organizational and operational burden as well as system requirements for counterparties and their service providers.

For further information, please contact us.

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

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