

## PRESS RELEASE

### ESMA consults on proposed central clearing delay for small financial counterparties

The European Securities and Markets Authority (ESMA) has published today a consultation paper proposing to change the phase-in period for central clearing of OTC derivatives applicable to financial counterparties with a limited volume of derivatives activity under the European Market Infrastructure Regulation (EMIR). ESMA proposes to amend EMIR's Delegated Regulations on the clearing obligation to prolong, by two years, the phase-in for financial counterparties with a limited volume of derivatives activity - those ones classified in Category 3 under EMIR Delegated Regulations.

Extending the phase-in period for these financial counterparties will help these firms mitigate the difficulties they are encountering in connecting to central clearing counterparties (CCPs). Direct membership at a CCP requires firms to meet certain minimum criteria and it is usually not feasible for financial counterparties with a limited volume of activity to access CCPs directly by becoming a clearing member. In particular, these reasons include costs (e.g. infrastructure needs, adequate resources or minimum capital requirements), and risks (e.g. mutualisation of default fund resources).

For these counterparties, it is therefore necessary to become the client of a clearing member, or to establish indirect clearing arrangements. ESMA's consultation is seeking stakeholders' feedback in order to better identify and quantify the difficulties that these counterparties may be facing in their preparation for the central clearing obligation. This assessment will also help ESMA in determining whether or not further action is needed to address this problem.

ESMA found that there is quite an important number of counterparties with a limited volume of derivatives activity and that their overall contribution to the OTC derivative markets in terms of volume remains limited. This may enable a delay of the clearing obligation for these counterparties while not compromising the EMIR objective of reducing systemic risk. In developing the technical standard ESMA will also consult the European Systemic Risk Board (ESRB) and, where necessary, the competent authorities of third-countries when developing technical standards on the clearing obligation.

The consultation closes on 5 September 2016 and ESMA will consider all received with a view to publishing a final report by the end of 2016.

### Background

Under EMIR, the clearing obligation is established via Delegated Regulations based on RTS developed by ESMA. On the basis of the criteria defined in EMIR, ESMA has already submitted to the European Commission three draft RTS covering OTC interest rate derivatives and OTC



credit derivatives. Two of them have already entered into force, while the third one has been adopted by the Commission and is currently under review by the European Parliament and Council (link to [Public Register](#)).

EMIR's Delegated Regulations' implementing measures provide for four categories of counterparties, each of which face different clearing start dates. Category 3 counterparties are the smallest financial counterparties and alternative investment funds that are non-financial counterparties, i.e, those that are not part of a group above the €8 billion threshold defined in



## Notes for editors

1. [2016/1125 Consultation Paper on clearing obligation for small financials](#)
2. ESMA's mission is to enhance investor protection and promote stable and orderly financial markets.

It achieves these objectives through four activities:

- i. assessing risks to investors, markets and financial stability;
  - ii. completing a single rulebook for EU financial markets;
  - iii. promoting supervisory convergence; and
  - iv. directly supervising specific financial entities.
3. ESMA achieves its mission within the European System of Financial Supervision (ESFS) through active cooperation with the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), the European Systemic Risk Board, and with national authorities with competencies in securities markets (NCAs).

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