

## EMIR MANDATORY CLEARING - IRS TIMELINE NOW LIVE

On 1 December 2015 the European Commission published the clearing obligation regulatory technical standard (RTS) for USD, EUR, JPY and GBP interest rate swaps in the Official Journal (see [G4 Rates Clearing Obligation RTS in the Official Journal](#)). The RTS entered into force on the 21 December 2015. It confirms the phase-in period for clearing to start, restates the classes of derivative to be cleared and sets out the frontloading requirements.

### WHEN WILL CLEARING BECOME MANDATORY?

In respect of the classes of interest rate swap set out below, the clearing obligation will take effect on:

- ◆ **21 June 2016** for Category 1 counterparties  
These are FCs and NFC+s who are clearing members of a recognised or authorised CCP listed on ESMA's Public Register, authorised to clear the relevant classes of interest rate swaps.
- ◆ **21 December 2016** for Category 2 counterparties  
These are FCs and Alternative Investment Funds (AIFs) under the Alternative Investment Fund Managers Directive (AIFMD) that are NFC+, that do not fall within Category 1, but whose aggregate month-end average notional value of all uncleared derivatives for January to March 2016 exceeds €8bn.
- ◆ **21 June 2017** for Category 3 counterparties  
These are FCs and AIFs that are NFC+ but are not in categories 1 or 2 above.
- ◆ **21 December 2018** for Category 4 counterparties  
These are NFC+s which do not fall into categories 1, 2 or 3 above.
- ◆ **21 December 2018** for certain Category 1, 2 or 3 counterparties where the transaction is intra-group, with a non-EU entity  
If however a cross-border equivalence agreement has been entered into with the relevant third party, then a different start date may be specified in such agreement.

Where an IRS is entered into between entities in different categories, the later start date will apply. Note also, that as the clearing obligation covers trades between an FC and an entity established in a third country that would be subject to the clearing obligation if it were established in the EU, the above timings should be considered to apply to third country entities clearing in Europe with FCs, with each non-EU entity deeming itself in one of the four categories above.

### WHICH INTEREST RATE SWAPS ARE COVERED?

Annex 1 of the RTS requires the clearing of the following interest rate swap categories, provided that the swaps do not have any embedded optionality (i.e. vanilla swaps only):

#### Basis interest rate swaps (BIRS) with the following parameters:

Reference Index	Maturity	Settlement Currencies
Euribor or Libor  (depending on Settlement Currency)	28 days to 50 years	Either: EUR, GBP, USD or JPY

#### Fixed-to-Float interest rate swaps (FFIRS) with the following parameters:

Reference Index	Maturity	Settlement Currencies
Euribor or Libor  (depending on Settlement Currency)	28 days to 50 years	Either: EUR, GBP, USD or JPY

#### Forward Rate Agreements (FRAs) with the following parameters:

Reference Index	Maturity	Settlement Currencies
Euribor or Libor  (depending on Settlement Currency)	3 days to 3 years	Either: EUR, GBP or USD

#### Overnight Index Swaps (OIS) with the following parameters:

Reference Index	Maturity	Settlement Currencies
EONIA, FedFunds or SONIA  (depending on Settlement Currency)	7 days to 3 years	Either: EUR, GBP or USD

### FRONTLOADING – WHAT IS IT?

Frontloading is the clearing of earlier trades – those entered into (or novated) within a set period prior to mandatory clearing commencing. This means that if you are caught by the requirement, when clearing commences for you you will have to clear certain trades already entered into, as well as trades entered into from that point.

#### WHO WILL IT APPLY TO?

FCs in Category 1 and 2 only.

#### WHAT TRADES WILL IT APPLY TO?

##### For Category 1 FCs

- ◆ BIRS and FFIRS entered into or novated before 21 February 2016 with a minimum remaining maturity as at the clearing start date of 50 years.
- ◆ FRAs and OIS entered into or novated before 21 February 2016 with a minimum remaining maturity as at the clearing start date of three years.
- ◆ BIRS, FFIRS, FRAs and OIS entered into or novated on or after 21 February 2016 with a minimum remaining maturity as at the clearing start date of six months.

##### For Category 2 FCs

- ◆ BIRS and FFIRS entered into or novated before 21 May 2016 with a minimum remaining maturity as at the clearing start date of 50 years.
- ◆ FRAs and OIS entered into or novated before 21 May 2016 with a minimum remaining maturity as at the clearing start date of three years.
- ◆ BIRS, FFIRS, FRAs and OIS entered into or novated on or after 21 May 2016 with a minimum remaining maturity as at the clearing start date of six months.

#### FINALLY, A RECAP OF THE TYPES OF COUNTERPARTY CATEGORIES

- ◆ **FCs** means financial counterparties, such as MiFID firms (e.g. EU broker-dealers), banks, pension funds, UCITS funds, alternative investment funds whose manager is authorised under AIFMD.
- ◆ **NFCs** means non-financial counterparties and further sub-divides into NFC+ and NFC- entities established within the EU who are not FCs, such as non-UCITS funds managed by a manager which is not yet authorised under AIFMD. NFC+ are NFCs whose clearing thresholds are within or exceed the prescribed limits set by the European Commission Delegated Regulation No 149/2013. NFC- are NFCs whose clearing thresholds fall below the clearing threshold.

For more detail on general obligations under EMIR, please see our earlier notes [here](#).

#### CONTACT DETAILS

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