

EMEA DC Meeting Statement 25 July 2022

regarding settlement of credit derivative transactions in relation to The Russian Federation

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1. On 9 June 2022, the EMEA DC announced that it was deferring making a decision on holding an Auction and the date of any Auction. Such deferral was as a result of the publication by OFAC of updated FAQs on 6 June 2022 in respect of new investment prohibitions relating to entities in the Russian Federation (further to Executive Order (**E.O.**) 14066, E.O. 14068, and E.O. 14071). Such FAQ stated *“the respective E.O.s prohibit U.S. persons from purchasing both new and existing debt and equity securities issued by an entity in the Russian Federation.”*
2. The DC Rules provide that an Auction will be held where there are 300 or more Relevant Transactions and five or more of the Dealers on the DC are party to such Relevant Transactions. This test was introduced due to the importance of uniform settlement for the safe and efficient functioning of the market as a whole when there are a significant number of Transactions referencing the Reference Entity. The EMEA DC also notes that a significant portion of credit derivatives that reference the Russian Federation are cleared and uniform settlement is also important to clearing. However, an Auction can only be held in compliance with applicable law and regulation.
3. Auctions give rise to “Representative Auction-Settled Transactions” on the terms set out in the Auction Settlement Terms. This involves the sale and purchase of one or more of the Deliverable Obligations and such Transactions are entered into on a principal-to-principal basis. For example, a Customer may submit a Physical Settlement Request to sell Bonds to a Dealer. That Dealer submits a corresponding request into the Auction and is matched with a Dealer willing to acquire such Bonds. In turn, the Dealer receiving Bonds as a result of the Auction may have its own Customer to whom it sells such Bonds. It is important that each of the participants in the chain is both able to buy and sell the Bonds in order for the Auction to be held. A significant portion of the anticipated Participating Bidders in an Auction to settle CDS referencing the Russian Federation would be subject to the E.O.s referenced in the OFAC FAQs. Furthermore, customers who are US Persons would also be subject to the same.
4. Accordingly, the EMEA DC deferred making a decision on holding an Auction and continued to meet to prepare for holding an Auction on the assumption that either a licence would be issued by OFAC or the sanctions would otherwise be amended such that an Auction can be held. OFAC has now issued General License No. 46 on 22 July 2022 (**OFAC License 46**) authorising, among other things, the *“purchase or receipt of debt obligations of the Russian Federation...for the period beginning two business days prior to the announced date of the auction and ending eight business days after the conclusion of the auction”* and the related FAQ 1072.¹
5. Accordingly, the EMEA DC will continue to prepare for holding an Auction and will publish further information in due course.
6. In relation to the potential Deliverable Obligations for any such Auction, the DC notes that the USD 4.75% Bonds due 2026 (RU000A0JWHB2 / RU000A0JWHA4), the USD 4.25% Bonds due 2027 (RU000A0JXTT7 / RU000A0JXTS9) and the USD 5.25% Bonds due 2047 (RU000A0JXU22 / RU000A0JXU14) (together such Bonds, the **RU ISIN Bonds**) were

¹ <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20220722>

issued into the National Settlement Depository of Russia (the **NSD**). Such RU ISIN Bonds may also be cleared within Euroclear if such RU ISIN Bonds had previously been credited to Euroclear's account within the NSD and accepted by Euroclear for clearing within Euroclear. The EMEA DC anticipates that only RU ISIN Bonds that are already cleared within Euroclear will be included on any Preliminary List as the RU ISIN Bonds cleared solely within the NSD may not constitute Deliverable Obligations as a result of restrictions on transfer.

7. The EMEA DC is also considering whether to include on the Preliminary List any Bonds cleared in Clearstream (other than the USD step-up rate Bonds due 2030 with ISIN XS0114288789 (the **2030 Regulation S Bonds**)). This is due to settlement restrictions that apply in respect of such Bonds held within Clearstream (see: <https://www.clearstream.com/clearstream-en/products-and-services/settlement/a22074-3101256>) and the impact such restrictions could have on orderly settlement of Representative Auction-Settled Transactions. The EMEA DC understands that (i) settlement within Clearstream is currently blocked in respect of the Bonds with US ISINs and RU ISINs; and (ii) other than the 2030 Regulation S Bonds, the Bonds with XS ISINs are transferable solely within Clearstream and cannot be transferred to holders within other clearing systems. The EMEA DC understands that such settlement restrictions do not presently apply to the 2030 Regulation S Bonds, but if such Bonds also become subject to such restrictions, then the same considerations will apply to the 2030 Regulation S Bonds. The EMEA DC has not made any decision in relation to the Bonds cleared within Clearstream. The EMEA DC notes that any approach that is adopted would have to be considered in light of any changes that are made to the restrictions, including in response to OFAC License 46.
8. If Eligible Market Participants are of the view that the Bonds listed by Clearstream as being capable of transfer solely within Clearstream (the **Clearstream-only Bonds**)² should be included on the Final List of Deliverable Obligations, then it is likely that the EMEA DC would need to adopt a novel solution not currently contemplated by market standard Auction Settlement Terms in order that Representative Auction-Settled Transactions may be settled in an orderly manner (for example, requiring all Participating Bidders and Customers to have access to accounts at each of Euroclear, Clearstream and DTC). Eligible Market Participants may submit feedback on whether or not to include the Clearstream-only Bonds to the DC Secretary.
9. The EMEA DC notes that the list of Deliverable Obligations may need to be further updated or revised in light of the prevailing sanctions at the time such list is finalised (or prior to any Auction Date).

² Based on the Clearstream announcement, this appears to be Bonds with ISINs beginning "XS" (i.e. the Regulation S Bonds) other than the 2030 Regulation S Bonds.