

# BANK GUARANTEE PHASE OUT DESCRIPTION

Date: 2015-05-15

Ver 1.0



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# 1 Executive summary

## What

The three year exemption from EMIR that allows non-financial clearing members to use non-fully backed bank guarantees as collateral towards central counterparties (CCP) to cover for margin requirements related to power and gas expires on March 15, 2016.

Therefore clearing members using non-fully backed bank guarantees will need to:

1. Replace non-fully backed bank guarantees with other types of eligible collateral; OR
2. Transfer to a new clearing model

## When

Nasdaq Clearing has set a deadline that all non-fully backed bank guarantees shall be phased out by the end of February 2016. In order to meet the deadline all affected members are required to inform Nasdaq Clearing by **June 17, 2015** which alternative that is being considered. **September 15, 2015** is the final deadline to inform Nasdaq about the decided alternative and one month later, **October 15, 2015** all required documentation shall have been submitted to Nasdaq Clearing.

The tight deadlines are set in order to allow all participants using non-fully backed bank guarantees an organized transition to any of the two alternatives prior to the removal of the non-fully backed bank guarantees.

Clearing members who wish to replace the collateral or make changes to the clearing model prior to the stated deadlines are of course welcome to do so. Please contact Nasdaq Clearing for further information.

In the table below, you will find the deadlines for the different alternatives.

Deadline	1. Replace non-fully backed bank guarantees with other types of eligible collateral	2. Transfer to a new clearing model
<b>17 June 2015</b>	<b>Deadline</b> to inform Nasdaq Clearing of the intention to either: 1) replace the non-fully backed bank guarantee with other types of eligible collateral; OR 2) transfer to a new clearing model. The name of the considered clearing member as well as the considered client model shall be included in the notification.	
<b>1 Sep 2015</b>	From this date, no <u>new</u> non-fully backed bank guarantees will be accepted as collateral (adjusting the amount on an existing bank guarantee will be allowed).	
<b>15 Sep 2015</b>	<b>Deadline</b> to inform Nasdaq Clearing about the <b>final decision</b> to either: 1) replace the non-fully backed bank guarantee with other types of eligible collateral; OR 2) transfer to a new clearing model. The name of the new clearing member as well as the considered client model must be included in the notification.  Nasdaq Clearing will provide the member with the required documentation based on the chosen alternative.	

Deadline	1. Replace non-fully backed bank guarantees with other types of eligible collateral	2. Transfer to a new clearing model
<b>30 Sep 2015</b>		General Clearing Members (GCM) or clearing members that considers offering services to clients transferring from other clearing models must be approved by Nasdaq Clearing and live in production by this date.
<b>15 Oct 2015</b>	<p>Clearing members replacing their non-fully backed bank guarantee needs to gradually reduce the guarantee amount. Not later than Jan 18, 2016 the guarantee amount shall be reduced to 75% of the margin requirement. The remaining 25% must be covered with other types of eligible collateral.</p> <p>Nasdaq Clearing will communicate a preliminary amount (based on Jan-Sep average margin requirement) for which the non-fully backed bank guarantee is eligible as collateral after Jan 18, 2016.</p>	Clients, Clearing Members and GCM must have signed and submitted all relevant legal agreements and forms to Nasdaq Clearing.
<b>27 Nov 2015</b>		Clearing members and the associated stakeholders will receive detailed information from Nasdaq Clearing when the positions and obligations will be transferred to the new clearing model.
<b>Jan 8, 2016</b>	<p>Not later than Jan 18, 2016 the guarantee amount shall be reduced to 75% of the margin requirement. The remaining 25% must be covered with other types of eligible collateral.</p> <p>Nasdaq Clearing will communicate the <b>final amount</b> (based on 2015 average margin requirement) for which the non-fully backed bank guarantee is eligible as collateral after Jan 18, 2016.</p>	
<b>18 Jan 2016</b>	Not later than Jan 18 the guarantee amount shall be reduced to 75% of the margin requirement. The remaining 25% must be covered with other types of eligible collateral.	
<b>Jan – Feb</b>		Clearing members can expect to receive a time slot when Nasdaq Clearing will transfer the positions and the obligations to the new clearing member/ overtaking member. Detailed information on when positions and obligations will be transferred is presented end of November 2015.
<b>29 Feb 2016</b>	Non-fully backed bank guarantees will be removed as eligible collateral from the collateral list of Nasdaq Clearing's Rules and Regulations.	
<b>15 Mar 2016</b>	Regulatory deadline when the non-fully backed bank guarantees expire as eligible collateral	

## Power Future in parallel with Deferred Settlement Futures

When considering alternative clearing models the clearing members shall take into consideration that Nasdaq Commodities will list Power Futures with daily cash settlement from September 2015. The Power Futures will be listed in parallel with the Deferred Settlement Futures.

## Who should read this document

The intended audience for this document are all the stakeholders that are affected by the phase out of the non-fully backed bank guarantees:

- Client Representatives
- Clearing Clients
- Clearing Members
- General Clearing Members
- Bank Guarantee issuer

The document includes important information for readers in functions including Strategy, Management, Legal, Compliance, Risk, IT and Operations.

## What does my organization need to do?

Clearing member that are using non-fully backed bank guarantees, must decide and inform Nasdaq Clearing which clearing model that will be used going forward when the non-fully backed bank guarantees are removed as eligible collateral. **September 15, 2015** is the final deadline to inform Nasdaq Clearing of the decided clearing model where a **preliminary answer is requested by June 17, 2015**.

For participants considering becoming a General Clearing Member or a Clearing Member with the objective to on-board clients leaving their current clearing model, the membership process must be completed by **September 30, 2015**.

## Contact details

For further information regarding the bank guarantee phase out process please visit Nasdaq Clearing's Web <http://www.nasdaqomx.com/europeanclearing/collateral-management/bank-guarantee-phase-out> that will be the main communication channel going forward.

You can also contact your dedicated Nasdaq Commodities Account Manager or send an email to [salescommodities@nasdaq.com](mailto:salescommodities@nasdaq.com).

## 2 Document data

### 2.1 Legal Disclaimer

The content of this document is subject to change without notice. Nasdaq Clearing makes no representations or warranties with respect to the information and disclaims all liability for any use you make of the contents of this document. Nasdaq Clearing assumes no responsibility for any errors or omissions.

### 2.2 Version history

<b>Ver</b>	<b>Date</b>	<b>Note</b>
1.0	May 15, 2015	Version 1.0

### 2.3 Glossary and Definitions

CCP	Central counterparty (Nasdaq Clearing)
CSD	Central Securities Depository
ESMA	European Securities Market Authorization
EMIR	European Market Infrastructure Regulations
GCM	General Clearing Member
ICA	Individual Client Segregated Account
ICSD	International Central Securities Depository
NCM	Non Clearing Member
SSI	Standing Settlement Instruction

## 3 Introduction

At the Pittsburgh summit in September 2009, the leaders of the G20 made a strong commitment to prevent systemic risks in the financial markets by regulatory reform the market for OTC derivatives. As a consequence the Dodd-Frank Act was introduced in the United States in July 2010. The corresponding European regulations also known as EMIR (European Market Infrastructure Regulations) was introduced in August 2012.

EMIR required ESMA (European Securities and Market Authority) to draft Regulatory and Implementing Technical Standards to further detail and implement the provisions of EMIR. The Regulatory Technical Standards entered in to force in March 15, 2013.

EMIR Article 46(1) of Regulation (EU) No 648/2012 requires that bank guarantees, used as collateral for CCP clearing of power and gas derivatives, are fully backed by collateral that meets the following conditions:

- it is not subject to wrong way risk based on a correlation with the credit standing of the guarantor or the non- financial clearing member, unless that wrong way risk has been adequately mitigated by haircutting of the collateral;
- the CCP has prompt access to it and it is bankruptcy remote in case of the simultaneous default of the clearing member and the guarantor

All CCPs were given a three year exemption in regards to EMIR Article 46 (1) allowing non-financial participants to continue to use non-fully backed bank guarantee as Collateral in respect to positions that are:

- a) Derivatives relating to electricity or natural gas produced, traded or delivered in the Union;
- b) Derivatives relating to the transportation of electricity or natural gas in the Union

The three year exemption period expires in March 15, 2016.

### 3.1 Consequence

Clearing members using non-fully backed bank guarantees as collateral to cover margin requirements related to power and gas will need to post other types of eligible collateral or find alternative clearing models to continue trading and clearing after February 29, 2016. In chapter 5 the different alternatives are further described.

## 3.2 How does this affect my organization?

### 3.2.1. Clearing Clients

#### Remain in the current clearing model:

The condition for remaining in the current clearing model is that non-fully backed bank guarantees are replaced with other types of eligible collateral. The Clearing Client model requires a Client Representative with whom the decision needs to be coordinated.

#### Transfer to another clearing model

Clearing Clients have the possibility to transfer to another clearing model. Through its clearing members Nasdaq Clearing offers various client models. Clearing Clients will need to understand the trading and allocation arrangements in the new clearing model. Also, documentation to transfer positions from the Clearing Client account to the new clearing model may be required.

### 3.2.2. Client Representative/Clearing Member

#### Remain in the current clearing model:

The condition for remaining in the current clearing model is that the non-fully backed bank guarantees are replaced with other types of eligible collateral. It is important that the Client Representative and its Clearing Clients coordinate the decisions.

#### Transfer to another clearing model

Client Representatives and Clearing Members have the possibility to transfer to other clearing models e.g. becoming an NCM and clear through a GCM in which case the GCM would be responsible for the default fund contribution, the collateral deposits and the clearing administration towards Nasdaq Clearing. The NCM will trade through its NCM membership and allocation to potential clients will be done based on arrangements with the GCM. Please contact the considered GCM in regards to what arrangements and instruments they support. Any Broker Appointments to be used in a new clearing model must be renewed and signed by the GCM. Also, documentation to transfer positions from the Client Representative's/Clearing Member's account to the new clearing model and to terminate the Client Representative's/Clearing Member's clearing membership agreement may be required.

### 3.2.3. Bank Guarantee issuer

From September 1, 2015 no new non-fully backed bank guarantees will be accepted as collateral (adjusting the amount on an existing bank guarantee will be allowed).

For clearing members choosing the option to maintain in their current clearing model, a reduction of the bank guarantees will commence January 18, 2016. Based on the average margin requirements during 2015, only 75% can be covered with non-fully backed bank guarantees. Any bank guarantee amounts exceeding this amount will have a collateral value of zero.



## 4 Basic Client models

Nasdaq Clearing offers a wide range of client models. Further information regarding the basic client models are presented below:

### 4.1 Non Clearing Member (NCM)

The NCM has an exchange membership agreement with NASDAQ OMX Stockholm AB or NASDAQ OMX Oslo ASA and clears via a GCM. The NCM trades may be cleared on a GCM omnibus or ICA account depending on the GCM service.

### 4.2 Omnibus Account

The omnibus account is an integrated trading and clearing account for the aggregated positions of several clients. Members can choose to set up several omnibus accounts for administrative purposes. The Clearing Member/GCM is fully liable for all contract obligations. Omnibus clients do not have a legal relationship with Nasdaq Clearing. Positions and collateral are segregated between house and client but not client-by-client. No automated position netting is performed for this account. If netting is required, the member is responsible for initiating netting within the account. Cross margining and offsets are calculated within each account. The Clearing Member/GCM contributes to the default fund. If the Clearing Member/GCM defaults, positions can be ported to a backup member without the involvement of the bankruptcy administrator, provided that all clients in the omnibus account have appointed the same back-up member.

### 4.3 Individual Client Segregated Account (ICA)

The individual client segregated account is an integrated trading and clearing account for one individual client where positions and collateral are fully segregated in order to offer portability arrangements. Typically, NCMs and larger institutions use this clearing account. There is no direct legal relationship between the client and Nasdaq Clearing. The Clearing Member/GCM is fully liable for all contract obligations. The Clearing Member/GCM is required to open a specific custody account with Nasdaq Clearing in relation to each ICA client. The account is in the name of the member. The member is responsible for posting collateral to this account. Positions and collaterals are segregated client-by-client. Cross margining and offsets are calculated within an individual account but not with other clearing accounts. The Clearing Member/GCM contributes to the default fund. If the Clearing Member/GCM defaults, positions and collateral can be ported to a backup member without the involvement of the bankruptcy administrator.

## 5 Clearing alternatives

Clearing members affected by the phase out of the non-fully backed bank guarantees will need to decide and inform Nasdaq Clearing about the clearing model going forward. The alternatives available are:

1. Replace non-fully backed bank guarantee with other types of eligible collateral; OR
2. Transfer to a new clearing model

### Power Futures

Members are urged to consider the listing of Power futures from September 2015 in parallel with the Deferred Settlement Futures. The profit and loss for Power futures are adjusted on a daily basis and the margin requirement which has to be covered with eligible collateral will be lower than for Deferred Settlement futures where profit and loss is accumulated until delivery.

This chapter lays out further information regarding the different alternatives including the required actions and deadlines.

### 5.1 Replace bank guarantees with other types of eligible collateral

Clearing members that prefer to remain in the current clearing model with the use of other types of eligible collateral are required to inform Nasdaq Clearing of that intention no later than **June 17, 2015**. A final decision is required no later than **September 15, 2015**. For the list of eligible collateral, please see Appendix 1 – Collateral List.

#### Phase out process:

The phase-out of non-fully backed bank guarantees will be done in two steps:

- **Step 1:** By **Jan 18, 2016** 75% of the margin requirement can be covered with non-fully backed bank guarantee. The other required 25% needs to be covered with other types of eligible collateral. The amount corresponding to 75% of the margin requirement will be a fixed amount based on the average margin requirement during 2015. Nasdaq Clearing will communicate a preliminary amount by October 15, 2015 based on the first nine months average. The final amount is presented not later than January 8, 2016 based on the average margin requirement during 2015. Any bank guarantee amounts exceeding this amount will have a collateral value of zero after Jan 18, 2016.
- **Step 2:** By **Feb 29, 2016** the non-fully backed bank guarantees will no longer be eligible as collateral and the value of such guarantees will be set to zero. All non-fully backed bank guarantees must be replaced with other types of eligible collateral. If no other eligible collateral is posted to cover for outstanding margin requirement, default procedures according to Nasdaq Clearing Rules and Regulations might be initiated.

### Posting of eligible Collateral in the form of securities

Clearing members posting securities as collateral to Nasdaq Clearing can choose to use:

- Euroclear Sweden for eligible securities registered with Euroclear Sweden
- VP Securities in Denmark for eligible securities registered with VP Securities
- Verdipapirsentralen VPS in Norway for eligible securities registered with VPS
- Euroclear Bank for eligible securities registered with Euroclear Bank
- Clearstream Banking for eligible securities registered with Clearstream Banking

Securities posted to Nasdaq Clearing as collateral are settled through free-of-payment (FoP) settlement instructions through any of the above stated Central Securities Depository (CSD)/ International Central Securities Depository (ICSD). Clearing members are requested to provide Standing Settlement Instructions (SSI) to Nasdaq Clearing.

Clearing members that are not direct participants in required CSDs or ICSDs must use a settlement agent in order to be able to post securities as collateral to Nasdaq Clearing.

### Cash optimization

For clearing members considering using cash as collateral, please familiarize yourself with the recently introduced Cash optimization facility. More information can be found on Nasdaq Web.

### Deadlines

Deadline	Replace non-fully backed bank guarantee with other types of eligible collateral
<b>Jun 17 2015</b>	<p>Inform Nasdaq Clearing that you intend to continue clearing under your current membership and replace your non-fully backed bank guarantee with other types of eligible collateral.</p> <p>Please contact your dedicated Nasdaq Commodities Account Manager or send an email to <a href="mailto:salescommodities@nasdaq.com">salescommodities@nasdaq.com</a></p>
<b>Sep 1, 2015</b>	<p>From this date, no <u>new</u> non-fully backed bank guarantees will be accepted (adjusting the amount on an existing bank guarantee will be allowed).</p>
<b>Sep 15 2015</b>	<p><b>Deadline</b> to inform Nasdaq Clearing that you will continue clearing under your current membership and that you will replace your non-fully backed bank guarantee with other types of eligible collateral. Ensure that all necessary operational procedures to pledge other collateral are in place well in time before the non-fully backed bank guarantee expires.</p> <p>Please contact your dedicated Nasdaq Commodities Account Manager or send an email to <a href="mailto:salescommodities@nasdaq.com">salescommodities@nasdaq.com</a></p>
<b>Oct 15 2015</b>	<p>Clearing members replacing their non-fully backed bank guarantee needs to gradually reduce the guarantee amount. Not later than Jan 18, 2016 the guarantee amount shall be reduced to 75% of the margin requirement. The remaining 25% must be covered with other types of eligible collateral.</p> <p>Latest Oct 15, 2015 Nasdaq Clearing will communicate a preliminary amount (based on Jan-Sep average margin requirement) for which the non-fully backed bank guarantee is eligible as collateral after Jan 18, 2016.</p>

Deadline	Replace non-fully backed bank guarantee with other types of eligible collateral
<b>Jan 8, 2016</b>	<p>Not later than Jan 18, 2016 the guarantee amount shall be reduced to 75% of the margin requirement. The remaining 25% must be covered with other types of eligible collateral.</p> <p>Latest Jan 8, 2016 Nasdaq Clearing will communicate the final amount (based on 2015 average margin requirement) for which the non-fully backed bank guarantee is eligible as collateral after Jan 18, 2016.</p>
<b>Jan 18 2016</b>	<p>Not later than Jan 18, 2016 the guarantee amount shall be reduced to 75% of the margin requirement. The remaining 25% must be covered with other types of eligible collateral.</p>
<b>Feb 29 2016</b>	<p>Non-fully backed bank guarantees will be removed as eligible collateral from the collateral list of Nasdaq Clearing's Rules and Regulations.</p>

## 5.2 Transfer to a new clearing model

Clearing members that prefer to transfer to a new clearing model are required to inform Nasdaq Clearing of that intention no later than **June 17, 2015**. A final decision is required no later than **September 15, 2015** and one month later, **October 15, 2015**, all required documentation must have been submitted to Nasdaq Clearing.

Nasdaq Clearing requires the clearing member to submit information regarding the selected clearing model. For a list of available Clearing Members and General Clearing Members, please see Appendix 2 – List of GCM and Clearing Members.

It is important that the clearing member take all necessary actions required to understand the procedures for transferring to the new clearing model. Required preparations may include testing, verification of reports, give up procedures etc. Please contact the clearing member you are transferring to for coordination of any testing activities with Nasdaq Clearing.

Applicable documentation/agreements required for the transfer and the set-up of the different clearing models can be found on Nasdaq Clearings web. In addition, Nasdaq Clearing will distribute individually prepared documentation after the clearing member has informed Nasdaq Clearing about its final decision. Please contact your Nasdaq Commodities Account Manager to receive the correct information and documentation.

When comparing alternative clearing models, clearing members are advised to familiarize themselves with the margin concentration and position limit policy applied by Nasdaq Clearing. The limits aim to provide Nasdaq Clearing with additional default coverage in relation to significantly large and concentrated exposures.

## Deadlines:

Deadline	Transfer to a new clearing model
<b>17 June 2015</b>	<p>Inform Nasdaq Clearing of the intention to transfer to a new clearing model. The name of the considered clearing member as well as the considered client model shall be included in the notification.</p> <p>Please contact your dedicated Nasdaq Commodities Account Manager or send an email to <a href="mailto:salescommodities@nasdaq.com">salescommodities@nasdaq.com</a></p>
<b>1 Sep 2015</b>	<p>From this date, no <u>new</u> non-fully backed bank guarantees will be accepted as collateral (adjusting the amount on an existing bank guarantee will be allowed).</p>
<b>15 Sep 2015</b>	<p><b>Deadline</b> to inform Nasdaq Clearing about the decided clearing model. The name of the chosen clearing member as well as the chosen client model must be included in the notification.</p> <p>Nasdaq Clearing will provide the member with the required documentation based on the chosen alternative.</p> <p>Please contact your dedicated Nasdaq Commodities Account Manager or send an email to <a href="mailto:salescommodities@nasdaq.com">salescommodities@nasdaq.com</a></p>
<b>30 Sep 2015</b>	<p>General Clearing Members (GCM) and Clearing Members that considers offering services to clients transferring from other clearing models must be approved by Nasdaq Clearing and live in production by this date.</p>
<b>15 Oct 2015</b>	<p>Clients, Clearing Members and GCMs must have signed and submitted relevant legal documentation to Nasdaq Clearing.</p>
<b>27 Nov 2015</b>	<p>Clearing members and the associated stakeholders will receive detailed information from Nasdaq Clearing when the positions and obligations will be transferred to the new clearing model.</p>
<b>Jan - Feb</b>	<p>Clearing members can expect to receive a time slot when Nasdaq Clearing will transfer the positions and the obligations to the new clearing member/overtaking member. Detailed information on when positions and obligations will be transferred is presented end of November 2015.</p>
<b>29 Feb 2016</b>	<p>Non-fully backed bank guarantees will be removed as eligible collateral from the collateral list of Nasdaq Clearing's Rules and Regulations.</p>
<b>15 Mar 2016</b>	<p>Regulatory deadline when the non-fully backed bank guarantees expire as collateral</p>

# 6 Contact

## **Commodities Sales**

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## **Clearing Operations**

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## **Credit Risk Management**

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Phone: +46 8 405 6778

## 7 Q&A

Questions and answers will be updated continuously during the phase out process. See Nasdaq Clearing Web for the latest information.

1. Can I transfer my positions and obligations to another clearing model prior to the specified deadlines?

**Answer:** Yes, you can transfer to another clearing model before the specified deadlines assuming you have all your arrangements in place. Please contact Nasdaq Clearing for further information.

2. What happens to the deadlines and processes specified in the document if the regulators decided to maintain the non-fully backed bank guarantees beyond March 2015?

**Answer:** The deadlines and procedures are subject to change based on new information from the regulators. If and when new information is received from the regulators, Nasdaq Clearing will communicate any changes to the phase out plan.

# Appendix 1 – Collateral List

The current list of eligible Collateral can be found on the following address:

<http://www.nasdaqomx.com/commodities/Marketaccess/legalframework>

Clearing Rules, Appendix 10 “Collateral List”.

Note that the list currently includes non-fully backed bank guarantees.



## Appendix 2 – List of GCM and Clearing Members

The current list of available General Clearing Members and Clearing Members can be found on the following address: <http://www.nasdaqomx.com/commodities/Marketaccess/memberlist>

GCM Contact List:

<http://www.nasdaqomx.com/commodities/Marketaccess/membershipcategories/gcmcontactlist>