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Changes to the EMIR margining requirements

On 4 May, 2020, the European Supervisory Authorities (the "**ESAs**") published a revised version of the draft regulatory technical standards amending the Delegated Regulation[1] on risk mitigation techniques for non-centrally cleared OTC derivatives (bilateral margining) under EMIR[2] (the "**RTS**").

The former version of the revised RTS had been published on the website of the ESAs on 5 December 2019[3]. However, in response to the Covid-19 outbreak, the ESAs have updated the RTS to take into account the related decision from the Basel Committee on Banking Supervision ("**BCBS**") and the International Organisation of Securities Commissions ("**IOSCO**") to defer by one year the implementation of the remaining phases of the initial margin requirement[4].

The revised RTS confirms:

- Covered counterparties, including Irish funds, with an aggregate average notional amount ("**AANA**") of non-centrally cleared derivatives above €50 billion (each a "**Phase 5 counterparty**") will become subject to the requirement to exchange initial margin from 1 September 2021, whilst counterparties with an AANA of non-centrally cleared derivatives above €8 billion (each a "**Phase 6 counterparty**") will become subject to the requirement from 1 September 2022. The AANA calculation window for each of Phases 5 and 6 is also deferred by one year.

- The derogation from the requirement to exchange variation margin for single equity and index options is deferred until 4 January 2021.

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- The derogation from the requirement to exchange initial margin for intragroup transactions within groups with third-country entities is deferred until 20 December 2020.

- The exemption from the mandatory exchange of variation margin in respect of physically-settled FX forwards and swaps between institutions and end-users where at least one of the counterparties is not a credit institution or a MiFID investment firm (or any third country equivalent).Therefore, the variation margin requirement does not apply to funds.

This revised version of the RTS has now been submitted by the ESAs to the European Commission for endorsement in the form of a Commission Delegated Regulation. Once endorsed, the RTS are subject to non-objection by the European Parliament and the Council.

If you have any queries about the information contained in this article, please contact the Financial Regulation Team or your usual Dillon Eustace contact.

Dillon Eustace
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[1] Commission Delegated Regulation (EU) No 2016/2251 of 4 October 2016.
[2]European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories.
[3] Final Report: EMIR RTS on various amendments to the bilateral margin requirements in view of the international framework (ESAs 2019 20).
[4] Link to the BCBS and IOSCO statement from 3 April 2020: https://www.iosco.org/news/pdf/IOSCONEWS560.pdf

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