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ESA

PUBLIC STATEMENT

ESAs propose to adapt the EMIR implementation timelines for intragroup transactions, equity options and novations to EU counterparties

The European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA), the European Supervisory Authorities (ESAs), have today published a final report with draft regulatory technical standards (RTS) proposing to amend the Commission Delegated Regulation on the risk mitigation techniques for OTC derivatives not cleared by a CCP (bilateral margin requirements) under the European Market Infrastructure Regulation (EMIR).

ESMA has also published a final report with new draft RTS proposing to amend the three Commission Delegated Regulations[1] on the clearing obligation under EMIR.

Intragroup transactions

The amendments included in these draft RTS propose to extend the temporary exemption for 18 months for intragroup transactions.

The bilateral margin Delegated Regulation and the clearing obligation Delegated Regulations originally introduced temporary exemptions for intragroup transactions with third-country group entities to facilitate centralised risk management-procedures for groups, while the relevant equivalence decisions are being assessed.

Equity options

The amendments included in the draft RTS on bilateral margin propose to extend the temporary exemption for single-stock equity options or index options (equity options) for three years.

The bilateral margin Delegated Regulation originally introduced a temporary exemption for equity options so as to facilitate international regulatory convergence with regard to risk-management procedures.

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[1] Commission Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178

The new draft RTS for intragroup transactions and equity options are proposing to extend the abovementioned temporary exemptions to avoid undue costs and an unlevel playing field situation for EU counterparties.

Novations from UK counterparties to EU counterparties

In the context of the withdrawal of the UK from the EU, the ESAs and other EU authorities and institutions have highlighted the importance for market participants to be prepared for the end of the transition period. These draft RTS reintroduce a regulatory solution to support these preparations.

The draft RTS allow UK counterparties to be replaced with EU counterparties without triggering the bilateral margin and clearing obligation requirements under certain conditions. This limited exemption would ensure a level playing field between EU counterparties and the preservation of the regulatory and economic conditions under which the contracts were originally entered into. Counterparties should start negotiating as soon as possible the novation of their transactions which are in the scope of these amending regulations, given the twelve month timeframe to benefit from this measure.

Next steps

The ESAs have developed the draft RTS on bilateral margining under Article 11(15) of EMIR, while ESMA has developed the draft RTS on the clearing obligation under Article 5(2) of EMIR.

The ESAs have now submitted this new version of the draft RTS on bilateral margin to the Commission for endorsement in the form of a Commission Delegated Regulation, i.e. a legally binding instrument applicable in all Member States of the European Union. It replaces the version submitted and published on 4 May 2020. ESMA has also submitted to the Commission at the same time the draft RTS on the clearing obligation, also for endorsement in the form of a Commission Delegated Regulation. Following their endorsement, they are then subject to non-objection by the European Parliament and the Council.