



**FOCUS**

# EMIR

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Updated in January 2023

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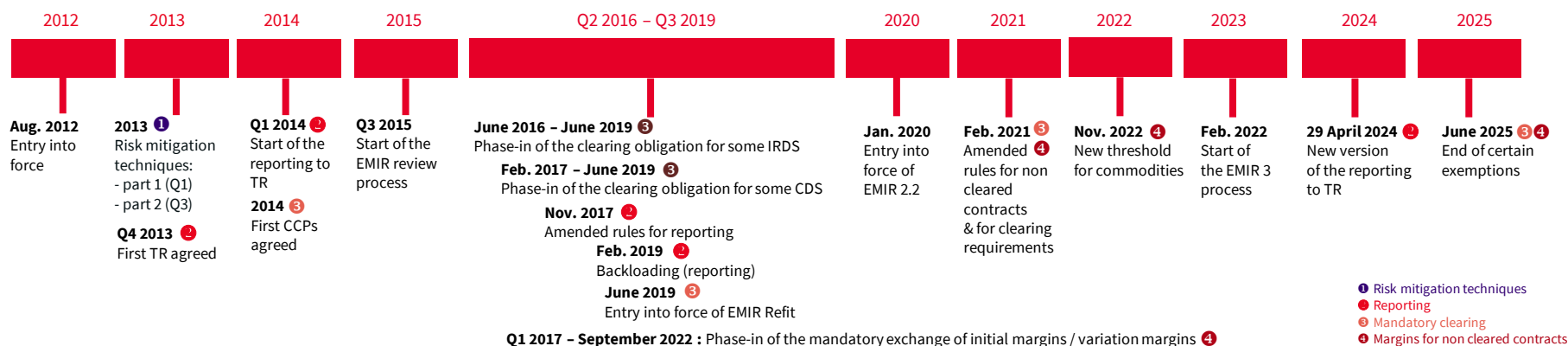
## REGULATORY EVOLUTION

- **Risk mitigation techniques required for non cleared contracts (operational risk):** different tools to be put in place such as timely confirmation, portfolio reconciliation, management of disputes ... ①
- **Mandatory reporting:** applies to all parties to derivatives contracts (listed or OTC); contracts to be bilaterally declared to a Trade Repository. The reporting could technically be outsourced (the party remains responsible) ②
- **Mandatory clearing:** applies to non listed derivatives that are admitted by at least one CCP and are considered as sufficiently standardised by ESMA (as of today some IRD and CDS) ③
- **Bilateral exchange of initial and variation margins (IM and VM) for non cleared contracts:** IM are required for counterparties that are above a certain threshold whereas VM are always to be exchanged; there is a phase in implementation for IM (following international recommendations) and a two step for VM. At the end only contracts where both parties are entities with an AANA\* (on a group level, except for funds) below a threshold of 8 billion Euros will be exempted from IM exchanges ④

\*AANA – aggregate average notional amount. This is calculated across its group and recorded on the last business day of the months March, April, and May of the relevant year (including all uncleared OTC derivatives of the group and all intra-group noncentrally cleared OTC derivative contracts of the group, taken into account only once).

## FOCAL POINTS

- One of the main impacts of these requirements is related to the shortening of the delay to process these operational tasks now mandatory
- The reporting has to be made by each party to the contract whereas in the US it is a one side model. Moreover, it includes also listed derivatives leading such contracts to be reported twice (due to EMIR and due to MIFIR)
- Parties to the contracts are divided in 4 categories (clearing members, large Financial Counterparties, small Financial Counterparties, Non-Financial Counterparties above the threshold - also called NFC+). Funds are considered as FC. Some counterparties may face difficulties when building a clearing set-up
- It was expected for the 01/09/2016 (international recommendations) and finally started in the EU in February 2017. Some critical points : Inconsistencies with the US regulation (FX forwards, equity options, ..), segregation requirements for IM, timeline for the provision of variation margins, intragroup transactions, counterparties in specific third countries



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## STATEMENT

CLEARED	Clearing members	FC+	FC below the threshold	NFC+	Non cleared contracts		
IRS wave1	21/06/2016	21/12/2016	21/06/2019	17/10/2019	Due to the Covid-19 a new international timeline has been proposed by the Basel Committee and IOSCO: phase 5 and phase 6 have been postponed by one year (01/09/2021 and 01/09/2022).		
CDS	09/02/2017	09/08/2017	21/06/2019	17/10/2019	The amended delegated regulation has been published in the EU OJ on the 17 <sup>th</sup> of February 2021		
IRS wave 2	09/02/2017	09/07/2017	21/06/2019	17/10/2019			
NON CLEARED	2 parties above 3000 billions €	2 parties above 2250 billions €	2 parties above 1500 billions €	2 parties above 750 billions €	2 parties above 50 billions €	2 parties above 8 billions €	At least 1 party below 8 billions €
Initial Margin (IM)	06/02/2017	01/09/2017	01/09/2018	01/09/2019	01/09/2021	01/09/2022	No IM
Variation Margin (VM)	06/02/2017	01/03/2017	01/03/2017	01/03/2017	01/03/2017	01/03/2017	01/03/2017
VM (FX forwards) <sup>(*)</sup>	03/01/2018	03/01/2018	03/01/2018	03/01/2018	03/01/2018	03/01/2018	03/01/2018

<sup>(\*)</sup> mandatory only for contracts between institutions (see below)

## FOR YOUR CONSIDERATION

- Non cleared contracts:
  - Physically settled FX forwards and Swaps: variation margins not required where one of the counterparties is not an institution (neither an investment firm nor a credit institution)
  - Equities options and index options: the exemption is now extended until the 4th of January 2024
  - A 3 more years extension for certain intra-group transactions adopted by the Commission (new date: the 30<sup>th</sup> of June 2025)
  - Threshold for commodities now equal to 4 billions
- Cleared contracts:
  - A 3 more years extension for certain intra-group transactions adopted by the Commission (new date: the 30<sup>th</sup> of June 2025)
  - Pension Scheme Arrangements exemption runs until 19/06/2023
  - Collateral accepted by CCPs: the EC has eased the criteria for “highly liquid collateral”
- Trade Repository: the new version of the regulatory reporting will start on the 29<sup>th</sup> of April 2024

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 If you want to know more, refer to  
Fiche To Know More

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