



FOCUS

EMIR

Updated in October 2020

### REGULATORY EVOLUTION

- 1 **Risk mitigation techniques required for non cleared contracts (operational risk):** different tools have to be put in place such as timely confirmation, portfolio reconciliation, management of disputes ...
- 2 **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)
- 3 **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)
- 4 **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 billions Euros will be exempted from IM exchanges.

### FOCAL POINTS

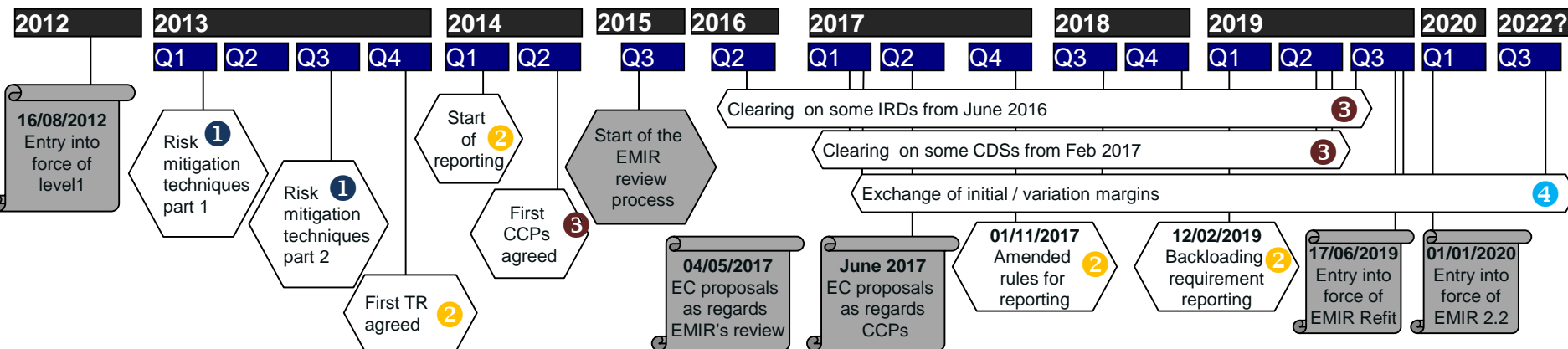
One of the main impacts of these requirements is related to the shortening of the delay to process these operational tasks now mandatory

The reporting has to be made by each party of 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

\*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).



Updated on the 1<sup>st</sup> of October 2020

- Cleared contracts
- Central Counterparties (CCPs)
- Non cleared contracts
- Reporting

### STATEMENT

Cleared	Clearing members	FC above the threshold	FC below the threshold	NFC+
IRS wave1	21/06/2016	21/12/2016	21/06/2019	21/12/2018
CDS	09/02/2017	09/08/2017	21/06/2019	09/05/2019
IRS wave 2	09/02/2017	09/07/2017	21/06/2019	09/07/2019

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	01/09/2020	01/09/2021	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

**Non cleared contracts**  
Due to the Covid-19 a new international timeline has been proposed by the Basel Committee and IOSCO: phase 5 and phase 6 are postponed by one year (01/09/2021 and 01/09/2022). The amendment proposed by the ESAs to the European Commission has been modified accordingly and submitted to the EC in May 2020.

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

### FOR YOUR CONSIDERATION

- ❑ **Non cleared contracts:** ESAs have published their draft amended text of the RTS:
  - Alignment to the new recommendations of the Basel Committee / IOSCO as regards the implementation phase for initial margins (post-covid 19 new calendar)
  - Physically settled FX forwards and Swaps: variation margins not required where one of the counterparties is not an institution
  - Equities options and index options: the exemption is extended until the 3<sup>rd</sup> of January 2021
  - Intragroup contracts involving a third country entity: bilateral margin requirement is deferred until December 2020 where no equivalence decision has been adopted
- ❑ **EMIR and EMIR Refit :** EMIR Refit has entered into force on the 17<sup>th</sup> of June; thus some of the current EMIR requirements will no more apply
- ❑ **EMIR 2.2 (on the supervision of EU and non-EU CCPs):** has entered into force on the 1<sup>st</sup> of January 2020 with requirements for non-EU CCPs to apply mainly in 2021

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To know more please refer to:  
FicheEMIR-ToKnowMore

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