PRESS RELEASE

ESAs publish final draft technical standards amending margin requirements for non-centrally cleared OTC derivatives

The European Supervisory Authorities (EBA, EIOPA, ESMA - ESAs) published today their jointly developed draft Regulatory Technical Standards (RTS) amending the framework of the European Market Infrastructure Regulation (EMIR) with regard to physically settled foreign exchange (FX) forwards. These amendments aim at aligning the treatment of variation margin for physically-settled FX forwards with the supervisory guidance applicable in other key jurisdictions.

The draft RTS amend the risk mitigation techniques related to the exchange of collateral to cover exposures arising from non-centrally cleared over-the-counter (OTC) derivatives with respect to physically settled FX forwards.

The current framework is based on the ESAs' RTS published on 8 March 2016[1], adopted by the Commission as a Delegated Regulation on 4 October 2016[2], which entered into force on 4 January 2017. The Delegated Regulation would require, from 3 January 2018 onwards, the mandatory exchange of variation margin for physically-settled FX forwards for all the counterparties within the scope of EMIR.

However, the ESAs have been made aware of the challenges certain end-user counterparties are facing to exchange variation margin for physically settled FX forwards. In particular, the adoption of the international standards (i.e. the framework developed by the Basel Committee on Banking Supervision (BCBS) and the International Organisation of Securities Commissions (IOSCO)) in other jurisdictions through supervisory guidance has led to a more limited scope of application than the one proposed by the ESAs.

In the light of this, the ESAs have undertaken a review of the RTS and amended them to align the treatment of variation margin for physically-settled FX forwards with the supervisory guidance applicable in other key jurisdictions.

Specifically, the amendment of the RTS and their subsequent implementation would reiterate the commitment to apply the international standards with a more comparable scope to that of other key jurisdictions. In particular, this would imply that the requirement to exchange variation margin for physically

[1] https://www.eba.europa.eu/-/esas-publish-final-draft-technical-standards-on-margin-requirements-for-non-centrally-cleared-otc-derivatives

[2] http://ec.europa.eu/finance/financial-markets/derivatives/index_en.htm

settled FX forwards should target only transactions between institutions (credit institutions and investment firms).

Legal Basis

The draft RTS have been developed according to Article 11(15) of Regulation (EU) No 648/2012 (EMIR), which establishes provisions aimed at increasing the safety and transparency of the over-the-counter (OTC) derivatives markets in the EU.

In developing the draft RTS, the ESAs have taken into consideration the need for international consistency. Therefore, while taking into account the specific features of the European financial market, the ESAs have used the framework established by BCBS and IOSCO, as well as the BCBS' supervisory guidance for managing risks associated with the settlement of FX transactions.