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Mairead McGuinness
Commissioner in charge of Financial Stability,
Financial Services and Capital Markets Union
European Commission

Irene Tinagli
Chair of the Committee on Economic and Monetary
Affairs
European Parliament

Elisabeth Svantesson
President of the Economic
and Financial Affairs Council
Council of the European Union

Ref: EMIR bilateral margining framework and equity options

Dear Mrs McGuinness, Tinagli, and Svantesson,

Under the European Market Infrastructure Regulation (EMIR), the European Supervisory Authorities (ESA) have the mandate to develop draft regulatory technical standards (RTS) on the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty ('Bilateral Margin RTS'). The Bilateral Margin RTS have been initially developed and then subsequently amended by the ESAs taking into account the international framework agreed by the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO). The RTS was delivered in March 2016 and implemented the international reforms agreed upon in this area.

The Bilateral Margin RTS include a deferred date of application for non-centrally cleared OTC derivatives which are single-stock equity options or index options ('equity options'). This deferred date of application was initially introduced and subsequently extended via amendments to the RTS in order to take into account that other jurisdictions have permanently or temporarily exempted these products from bilateral margin requirements. This exemption, together with an exemption for intragroup derivative contracts, has been repeatedly extended, most recently at the request of the Commission. The exemption is now set to expire on 4 January 2024.

As we near the end of the latest exemption extension and the situation in other jurisdictions is now stabilised, the ESAs would like to seek clarity from the Commission and the co-legislators on what the permanent treatment of equity options should be with respect to bilateral margining. The topic has, over the years, been discussed repeatedly by the ESAs, and different views exist on the desirability of an exemption. On the one hand, it can be argued that there are no prudential grounds for an exemption, neither in the EU nor in the internationally agreed framework. On the other hand, the equity option exemption would be consistent with the approaches taken in other jurisdictions and preserve the competitiveness of EU counterparties in this area.

Both views have merit, and the ESAs would like to highlight the issue to the Commission and the co-legislators, as the ESAs consider that the ongoing EMIR review should clarify this issue. Hence, the ESAs would welcome clarifications from the Commission and the co-legislators as part of this EMIR review on what should be the applicable regime for equity options from 4 January 2024 onwards. In the meantime, the ESAs stand ready to provide further technical input and support to the EU Institutions and will await guidance from the Commission and the co-legislators on this issue.

Should you have any questions about this letter, please do not hesitate to contact us.

Yours sincerely,

[signed]

Verena Ross
ESMA Chair

[signed]

Petra Hielkema
EIOPA Chair

[signed]

José Manuel Campa
EBA Chair

cc.: Danuta Hübner, MEP, Rapporteur on the EMIR Review, European Parliament

Thérèse Blanchet, Secretary-General of the Council of the European Union

John Berrigan, Director-General, DG Financial Stability, Financial Services and Capital Markets Union, European Commission

Claudia Lindemann, Head of the Secretariat of the Committee on Economic and Monetary Affairs, European Parliament