Feedback Table: Final Draft Regulatory Technical Standards on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP under Article 11(15) of Regulation (EU) No 648/2012

List of Acronyms

AIFMD	Alternative Investment Fund Managers Directive
BCBS	Basel Committee on Banking Supervision
CCP	Central Counterparty
CP	Consultation Paper
CRD IV/CRR	Captial Requirements Directive/ Captial Requirements Regulation
ECAI	External Credit Assessment Institutions
EEA	European Economic Area
EMIR	European Market Infrastructure Regulation
ESA	European Supervisory Authorities
ESMA	European Securities and Market Authority
ETF	Exchange Traded Funds
G-SIIs	Globally Systemically Important Institutions
HQLA	High Quality Liquid Assets
IM	Initial Margin
IMM	Internal model Method
IORPs	Institutions for Occupational Retirement Provision
IOSCO	International Organization of Securities Commissions (IOSCO)
IRB	Internal ratings-based approach
ISDA	International Swaps and Derivatives Association, Inc.
MTM	Mark-to-market
NDF	Non-Deliverable Forward
NFC	Non Financial Counterparties
OC	Overcollateralisation
O-SIIs	Other Systemically Important Institutions
OTC	Over-the-Counter
QIS	Quantitative Impact Study
RTS	Regulatory Technical Standards
SPV	Special Purpose Vehicle
UCITS	Undertakings for Collective Investments in Transferable Securities
VaR	Value at Risk

VM	Variation Margin
WGMR	Working Group on Margin Requirements

Feedback table – First Consultation Paper

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
1. Definitions				
a) Termination and insolvency				
Summary	Respondents highlighted that the rules should not only contemplate 'default' as the market practice – i.e. the close-out netting mechanism should not only apply for 'events of default', but also for 'termination events' (e.g. under ISDA Master Agreement).	Definitions might be supplemented by a broader definition of 'netting agreement'.	The RTS do not include an explicit definition of 'netting agreement', as none of the current practices should receive any privileged treatment. The EMIR already identifies OTC derivative transactions and counterparties. The EMIR mandate does not leave room for defining which contracts should or should not be eligible.	RTS are modified to capture both types of events: 'default' and 'other contractual termination events'.
b) Definition of 'group'				

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Definition of 'group'	Respondents warned of the significant problems for counterparties in determining whether a counterparty is part of a group or not.	It is suggested that this issue could be mitigated to some degree by using the accounting definition of 'group' rather than a regulatory definition (which is likely to be less transparent to the market).	The definition of 'group' is already set out in the EMIR and the provisions therein refer to that definition. Introducing a different definition in the technical standards is inappropriate, and potentially inconsistent with the Level 1 regulation.	The draft RTS do not contain a different definition of 'group'.
Definition of 'group'	Definition of 'group' for investment funds.	It should be clarified that a determination of the level of the investment fund (cf. Recital 5) shall also apply as far as Article 1 FP refers to a 'group'.	As investment funds frequently fall under the umbrella of a single manager and as the treatment of this particular scenario is explicitly addressed in the BCBS-IOSCO framework, the draft RTS should recognise the specificities of these situations.	The RTS have been amended to specify a dedicated paragraph on the treatment of a group of funds.
c) Definition of 'counterparty'				

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Third-country counterparties	The term 'counterparty' is also used in other RTS, but has a different meaning (covering financial and non-financial counterparties (NFCs), including NFCs that are not subject to the clearing obligation – NFCs-). The definition of 'counterparties' for the purpose of the present draft RTS covers financial counterparties (FCs) within the meaning of the EMIR and NFCs exceeding the clearing threshold (NFC+) – i.e., effectively, only counterparties subject to the clearing obligation, and only those that are established in the EU (thus excluding any third-country counterparty).	In order to achieve a greater degree of consistency between the various RTS, a different term could be used to define the types of counterparties that are to be captured by the margining requirements. Possible alternatives include: 'qualified' or 'covered' counterparties or 'counterparties subject to the clearing obligation'. Introduce a definition for third-country counterparties that are equivalent to FC and NFC+, which would permit the introduction of a provision that more clearly sets out the obligations in relation to such third-country counterparties. Address counterparties that do not qualify as NFCs ('non-undertakings').	The RTS adopt the approach of requiring 'collecting only' (in contrast to mandating an exchange of margins). Financial and NFCs (as per Articles 2 and 10 of the EMIR) are subject to the requirements, and this applies to all their counterparties. As other jurisdictions often do not have a clear classification of 'non-financial' entities, it should remain within the responsibility of the entity domiciled in the EU to check the status of their counterparties. As there should be no doubt regarding the scope of application of the RTS, it is suggested that the definitions should not be over-engineered, as they could generate other	The definition should remain as proposed in the Consultation Paper.

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			inconsistencies.	
Definition of 'counterparty'/ 'third-country NFC-'	Several respondents suggested limiting the scope of application of these RTS to exclude trades with third-country NFCs.	The suggestion is to exempt the whole trade with a third-country NFC: 'The provisions of this Regulation shall not apply to transactions entered into with NFCs other than those referred to in Article 10 of Regulation (EU) No 648/2012'.	This approach would be inconsistent with the BCBS-IOSCO framework, which explicitly includes systemically important NFCs. The ESAs are of the opinion that the two aspects should be captured: a) systemically important NFCs should be subject to the margin requirements (as they show the same risk profile as those NFCs in the EU), and b) this would place some of the European counterparties at a competitive disadvantage.	The amendment in the new version of the draft RTS captures trades with systemically important NFCs (inside and outside the EU), and does not include smaller NFCs outside the EU as it would be domiciled inside the EU.
Third-country entities	Some of the respondents suggested that the definition of counterparties should be clarified to avoid an improper	There should be clarification that the initial margin phase-in should be applied where one or both parties are below the	The RTS adopt the approach of requiring 'collecting only' (in contrast to mandating an exchange of margins). Financial	The definition should remain as proposed in the Consultation Paper. Therefore, the initial margin

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	implementation of the thresholds in the phase-in phases.	relevant threshold, and may be used by EU entities trading with counterparties wherever they are established.	and NFCs (as per Articles 2 and 10 of the EMIR) are subject to the requirements and this applies to all of their counterparties. As other jurisdictions often do not have a clear classification of 'non-financial' entities, it should remain within the responsibility of the entity domiciled in the EU to check the status of their counterparties. As there should be no doubt regarding the scope of application of the RTS, it is suggested that the definitions should not be over-engineered, as they could generate other inconsistencies.	phase-in application includes non-EU NFCs.
2. Voluntary collateralisation				

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Treatment of voluntary collateralisation	There should be a distinction between the margin that is required under the RTS and the additional margin collected at the discretion of a counterparty.	Collateral minimum requirements should not apply to voluntary exchange of collateral. Voluntary exchange of collateral comprises a counterparty: (i) voluntarily choosing to require higher levels of margin for its own risk management purposes, or (ii) requiring a margin from a counterparty type outside of the scope of the RTS. The requirements of the RTS should not apply to this additional pool of margin.	Imposing all the conditions of the RTS on margins posted in excess of the requirements would disincentivise counterparties from collecting such margin, which was never the objective of the draft RTS.	A recital has been included in the RTS, clarifying that collateral requirements would not apply to collateral exchanged in excess of what is required by the regulation.
Treatment of stricter requirements	The parties should be entitled to agree on stricter requirements, including the right to request additional collateral exceeding the amounts calculated in accordance with the rules set by the RTS.	This would be consistent with margin requirements in cleared transactions, which specifically accept that clearing members may require additional collateral.	The RTS set the minimum requirements without prohibiting that any additional risk mitigation techniques between counterparties are used.	A change is not necessary, as counterparties are only required to comply with the standards.

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3. Scope of coverage – Instruments subject to the requirements				
Grandfathering	The final BCBS-IOSCO recommendations clearly stated that their requirements should apply to 'new contracts' entered into from 1 December 2015 in the case of VM, and from the relevant phase-in dates in the case of IM, which stated that the 'technical standards will apply to relevant contracts concluded as of the date that they enter into force'.	To ensure legal certainty, the final draft requirements should clarify that Article 1 GEN paragraph 1 does not introduce a retrospective application of the rules dating back to August 2012.	A purely forward-looking requirement is consistent with the BCBS-IOSCO framework and supported by the European Commission's (the Commission) Frequently Asked Questions document on the EMIR implementation.	This was already in the Consultation Paper. It has been redrafted in the final RTS to make it more explicit.
Scope of instruments in different jurisdictions	A number of respondents pointed out a potential inconsistency in the instruments covered by the rules in various jurisdictions. In summary, the scope of instruments covered by the EMIR is wider than, for instance, in the US. Instruments such as equity options and derivatives on equity indices are neither considered	International consistency is needed to avoid what could be a major disruption of completion for banks submitting to the EMIR, as well as for their clients. Respondents suggested that the ESAs explore a way to phase the collateral requirements to equity and	All the potential inconsistencies among the various jurisdictions have been discussed in the international fora. The ESAs believe that the level of harmonisation is sufficient to allow a smooth implementation of the requirements without creating an unlevel playing field among	Instruments such as equity options and derivatives on equity indices are not subject to special treatment. The introduction of the margin requirements for single stock options and index options, however, was postponed to avoid any

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	swaps nor security-based swaps under the Dodd-Frank Act, and hence are not subject to margin requirements (contrary to the situation in the EU). EU firms will be rejected from the US market if they have to collect initial margin on these instruments while US banks do not.	index options, taking into account this international inconsistency and the fact that no central counterparty (CCP) will provide clearing services for these products in the short term.	market participants. On the special case mentioned, to the best of our knowledge, the scope of products covered in margin rules proposed by the various US federal regulators cover uncleared swaps and security-based swaps, as defined under the Dodd-Frank Act, and do not include certain other types of uncleared derivatives, such as OTC equity options. Those are, at least in part, already subject to margin regulations.	regulatory arbitrage.
a) Novation and portfolio compression				
Definition of new contracts/ compression	Avoid ambiguities at the time of the RTS' entry into force, and with regard to the application of the regulation to only new contracts.	Authorities should confirm that the modification in amount due to the unwinding of an existing position is not to be considered as a new contract, and hence would be exempt from the	The ESAs recognise that requiring margins on the new trades obtained as the result of a portfolio compression might introduce a disincentive to	New contracts, even those resulting from a portfolio compression exercise, should be considered as new trades. Therefore, there is no special treatment in the

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	Respondents stressed the fact that portfolio compression is explicitly supported in other ESAs' technical standards, and suggested recognising the fact that all elements of the trade remain the same – counterparties, type of contract, closing date – with the change residing in the value of the exposure that is, in fact, being reduced.	application of the regulation.	perform such process. Nonetheless, as the respondents recognised, taking into account that a) the volume of the contract should be limited and b) the non-obvious identification of the contracts resulting from the compression as 'legacy' trades, it is suggested to maintain the treatment for those trades as for any other trade.	draft RTS.
b) FX derivatives				
FX – Scope	Managers often enter into 'currency overlay' mandates with clients, whereby the managers enter into FX swaps to manage those risk for the clients.	To the extent that the margin requirements did apply to FX forwards and swaps entered into in connection with currency overlay mandates, this would create significant operational difficulties, as an entity (potentially a third-party collateral manager) would	Regarding the mentioned exemption: BCBS-IOSCO standards explicitly refer to physically settled FX forwards and swaps.	No change

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		need to be appointed by the client to enable the margin to be transferred and received by the client in connection with such transactions.		
FX exemption	To be consistent with BCBS-IOSCO, this exemption should be extended to cash-settled FX derivatives, including non-deliverable forwards (NDFs). There is no reason to distinguish between physically and cash-settled FX forwards and swaps in this respect.	As an alternative, only long-dated (which we believe should be, at a minimum, 3 months) FX forwards and swaps should be subject to the variation margin requirements.	Regarding the mentioned exemption, the BCBS-IOSCO standards explicitly refer to physically settled FX forwards and swaps. With regard to any exemption for short-dated instruments, the BCBS-IOSCO standards do not contain such an exemption. The ESAs are of the opinion that the requirements should be at least in line with the minimum international agreed standards, as far as this would be covered by their mandate.	The draft RTS do not include changes with respect to the draft RTS, and do not include any discrimination between short-dated and long-dated NDFs.
Scope: FX instruments	Some of the respondents suggested the inclusion of FX in the scope of VM. These products	Therefore, respondents suggested that regulators could risk replacing a small, second	BCBS-IOSCO standards include that variation margin should be exchanged for the physically	No change with respect to the Consultation Paper.

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	are most used by non-financial firms in emerging markets, as there is a real need for FX hedging in all markets that use USD for trade and investment but that have a different local currency.	order risk – the credit risk associated with the FX transaction – with a much larger first order risk that clients stop hedging their FX exposures altogether.	settled FX products. Only the way in which they introduced such requirements (via supervisory guidance or regulation) was left to national discretion. The additional cost of the requirements is acknowledged. However, this concern also applies to other classes of derivatives, where margins are nonetheless required.	
FX additional exemption: Commercial purpose	Some respondents suggested distinguishing foreign exchange transactions with 'a commercial purpose'.	The proposal would be that foreign exchange transactions with a commercial purpose and that are physically settled should be granted the possibility to be excluded from the collection of the variation margin, along with the initial margin.	It is not clear what should differentiate an FX derivative and a FX derivative with commercial purpose from the point of view of its counterparty credit risk. The BCBS-IOSCO framework does not include this distinction. Furthermore, its implementation might be difficult, as many counterparties might consider	No change is deemed necessary with respect to the Consultation Paper.

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			all FX derivatives as for 'commercial purpose', resulting in a de facto exemption for the entire class of products.	
FX additional exemption: Short maturity	Some respondents suggested only extending the requirements for FX derivatives to those with a settlement period beyond a certain number of months.	The requirements should be relevant for FX swaps and FX forwards, but only for deals with a settlement period beyond 3 months, because below 3 months, the counterparty risks can be considered low, and the mitigation of the settlement risk has already been addressed by the payment-versus-payment settlement system (CLS).	A bifurcation of the market by time to maturity would only add segmentation in the market, and would not help in addressing any financial stability issue. Furthermore, the BCBS-IOSCO framework does not contain such an exemption. It should be noted that settling via CLS will reduce settlement risk, not the counterparty credit risk.	No change is deemed necessary with respect to what is already proposed in the Consultation Paper.
c) Others				
	Exclusion of trades with non-EU CCPs.	Trades concluded with a CCP established in a third country from the margin requirements,	The treatment of trades with non-EU CCPs is already subject to other regulations and should	No change with respect to the text proposed in the Consultation Paper.

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		at least during the period of time it takes the European Securities and Market Authority (ESMA) to assess if this should be an exempted CCP, fulfils the conditions specified in Article 25 of the EMIR (recognition of third-country CCPs). These trades will be subject to extensive CCP requirements and, therefore, will not pose significant systemic risk.	not be addressed under these draft RTS.	
4. Scope of coverage – Counterparties				
a) UCITS and other investment funds				
UCITS	A number of respondents suggested that investment funds, Undertakings for Collective Investments in Transferable Securities (UCITS) and alternative investment funds should be	The respondents therefore suggested that the ESMA guidelines are a more appropriate regulation, as the proposed draft RTS would be	Article 52, paragraphs 1 and 2 of Directive 2009/65/EC set out (only) specific risk exposure limits that a UCITS is allowed to have towards a counterparty. For example, the risk exposure	No change is deemed necessary in this case.

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	carved out from the requirements to post and collect margins. The reasoning behind this is that investment funds are subject to the cover rule (cf. Article 51, paragraph 3 of Directive 2009/65/EC and CESR consultation 10–108). More generally, funds authorised under the UCITS Directive, as well as under the Alternative Investment Fund Managers Directive (AIFMD), are already subject to strict requirements in the area of risk management.	excessively detailed.	in an OTC derivative transaction shall not exceed specific limits (e.g. 10 % of its assets when the counterparty is a credit institution referred to in Article 50(1)(f)). The EMIR sets out the application of the requirements for defined entities (FCs and NFCs). As UCITS fall within the definition of 'FCs', they are not exempt from the requirements.	
UCITS	Investment funds are subject to the cover rule (cf. Article 51, paragraph 3 of Directive 2009/65/EC).	It should be clarified that a determination of the level of the investment fund (cf. Recital 5) shall also apply as far as Article 2 GEN paragraph 2 refers to a 'group'. According to Article 2 GEN paragraph 3, but also Recital 3, a	The initial margin thresholds (EUR 50 m of initial margin, as well as the EUR 8 bn of the gross notional threshold) should be applied without prejudice for Article 11(4) of Regulation (EU) 648/2012.	The wording is adapted accordingly to clarify the treatment of investment funds.

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		counterparty shall have the choice either to post/collect (initial) margins or hold own capital if the amount of the initial margin is below the threshold of EUR 50 m.		
b) Institutions for Occupational Retirement Provision (IORPS)				
Pension funds	Some respondents noticed that the EMIR establishes a temporary exemption from central clearing for pension scheme arrangements in recognition of the specific features and special role of IORPS.	This should be recognised in the RTS in Article 11(15).	The EMIR sets out the application of the requirements for defined entities (FCs and NFCs), where a temporary exemption for pension scheme arrangements was only included for the central clearing requirements, but not for the OTC derivative contracts not cleared by a CCP.	No change is deemed necessary in this case.
Scope – Change of status	A change of status during the life of the derivative would make it difficult to price. This should take the ESAs' approach for clearing.	If a counterparty's status changes (from NFC- to NFC+) during the life of the derivative, that derivative should not be	The draft RTS include the provision that the aspects concerning the margin agreement should be kept for	The draft RTS were redrafted to be more explicit on this aspect.

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		subject to extra requirements.	the entire life of the contract.	
c) Sovereigns, central banks and multilateral development banks				

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Exemptions for EU and non-EU sovereigns, central and multilateral development banks	Sovereigns, central banks and multilateral development banks do not pose systemic or counterparty risk in the same way that private actors do, and it is not appropriate to impose the same collateral requirements on them.	Respondents suggested an exemption, including EU and non-EU sovereigns, central banks and multilateral development banks.	Article 1.5(a) of the EMIR already includes the list of exempted multinational development banks and international organisations. Article 1.4(c) of the EMIR amendment[1] includes exempted central banks, public bodies charged with (or intervening in) the management of the public debt outside the EU. Members of the European Central Bank (ECB) and other Member States are covered in	The draft RTS do not include a list of exempted central banks and public debt management offices as this is already addressed by the Level 1 text.

[1] Commission Delegated Regulation (EU) No 1002/2013 of 12 July 2013 amending Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to the list of exempted entities.

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			Article 1.4(a) of the EMIR.	
FX additional exemptions with central banks	Some respondents pointed out that foreign exchange transactions with central banks, for their purpose and low risk for the counterparty, differ from other FX instruments and should be treated separately.	Foreign exchange transactions with central banks should be exempted from margin requirements.	As the Level 1 text exempts certain central banks from all margin requirements, the corresponding FX forward and swaps fall under this exemption.	No change is deemed necessary in this case, with respect to what is proposed in the Consultation Paper.
d) EU, European Economic Area (EEA) and third-country NFCs				
EEA NFCs-	Carve-out for EEA NFCs-: currently, Article 2 GEN (4)(b) only allows EU NFCs- to derogate from the exchange of initial and variation margining in line with EMIR Article 11.	Carve-out for EEA NFCs- or at least a clarification confirming that EEA NFCs- can be regarded as EU NFCs- for the purpose of exemption from the EMIR margining requirements.	NFCs- outside of the EU show the same risk profile as the ones in the EU, and should be treated accordingly.	A new Article and a recital explain the treatment of non-EU NFCs.
Scope: 'Non-undertakings' and 'third-country entities'	Some of the respondents required clarification on the treatment of 'non-undertakings' and 'third-country entities', which	ESAs may consider extending such non-application provisions to transactions entered into with: other entities that are not	The draft RTS were drafted with the intention of including all and only the counterparties covered by the EMIR. As those	The text of the RTS on this issue should remain the same as the one proposed in the Consultation Paper.

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	might be counterparties but not in the scope of the EMIR.	in the scope of the EMIR (e.g. neither FCs nor NFCs, as they do not qualify as undertakings or 'non-undertakings'), and entities established in third countries.	counterparties are required to collect margins for all trades (within the scope), the counterparties in the trade that are 'non-undertakings' or domiciled in third countries will have to post margins to the EU counterparties if they want to enter in a OTC derivative contract with them. Except for the cases explicitly foreseen in the EMIR, the requirements of the RTS do not apply to entities outside the EU.	

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Scope: Third-country entities	Many respondents were concerned regarding the treatment of non-EU NFCs not only because requiring EU counterparties to collect from all non-EU NFCs would have been in contrast with the BCBS-IOSCO standards, but also because there is no basis (from a risk perspective) to justify such a distinction, as they are either systemically important or they are not and this is what the margin framework aims to tackle.	The suggestion was that the RTS should therefore be redrafted to state that margin only has to be collected from non-EU entities that would be FCs or NFCs+ if they were established in the EU. Coherently, the thresholds (EUR 50 m threshold, minimum transfer amount (MTA), phase-in thresholds, etc.) should be equally applicable to relevant third-country entities. Furthermore, the identification of non-EU NFCs should be based on a self-recognition basis, as non-EU jurisdictions do not have the same classifications that the EMIR introduces in the EU.	The ESAs recognise that Article 11 of the EMIR should be read (in accordance with Recital 24) in the context of the broader policy objectives of the G20 derivatives reform and the EU legislation (the overall aim for both is to reduce systemic risk and promote central clearing). The ESAs also recognise that, from the point of view of the risk they create, NFCs should be treated in the same way regardless of whether they are domiciled inside or outside the EU.	The draft RTS were amended to align the treatment of NFCs+ inside and outside the EU in accordance with the BCBS-IOSCO recommendations (Key principle 2).
e) UCITS				

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UCITS	UCITS and other investment funds are already regulated by tight regulation.	The ESAs should clarify that, in investment funds managed by one or more asset managers, each segment would be considered as a distinct entity.	Investment funds managed by one or more asset managers can be considered as distinct entities if certain conditions are satisfied. This would be in line with the recommendation in the BCBS-IOSCO framework.	A recital and an Article were added to the draft RTS.
UCITS	UCITS and other investment funds are already regulated by tight regulation.	An alternative would be to clarify in the RTS that UCITS are allowed to use the purchase price gained under a repurchase agreement, at least for entering into the aforementioned replacement transactions. as well as for making cash collateral contributions. As regulation, the RTS would overwrite any conflicting provision in the ESMA Guidelines.	This should be addressed in the context of those guidelines.	The RTS were not amended on this aspect.
f) Microfinance, real estate and other specialised funds				

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Microfinance and real estate funds	A number of specialised funds raised concern with regard to the variation margin requirements on FX products. Two main issues, on top of the additional costs and the operational challenges, were identified. First, FX derivatives are used only for hedging purposes. Certain type of funds (e.g. real estate funds) noticed that they are classified as FCs and captured by the overall requirements, despite their specific business model and despite the fact that their statute may explicitly forbid any other use. Second, for other funds such as microfinance funds, neither are the available assets considered 'eligible collateral' nor does the founding statute allow these funds to hold any other assets. In	The respondents suggested carving out these types of funds from the variation margin requirements on FX, as this is not a viable solution.	Although the ESAs recognise the role of some of these specialised funds, it is not in the mandate to introduce additional exemptions with respect to those already included in the EMIR. It should also be noted that some of these funds do not find a clear identification in the EU regulations and, therefore, it would be difficult to introduce a complete exemption.	A special treatment for these types of firms cannot be included and the draft RTS remain, in the relevant parts, the same as in the Consultation Paper.

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	the case of microfinance funds, for example, the only available assets would be the loans to the borrower in the countries of operation (developing countries).			
5. Documentation (renewal of agreements and legal basis)				
a) Documentation				

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
Documentation: Non-EU NFCs-	Respondents noticed that a renewal of the agreements with counterparties that are anyway out of the scope of these requirements adds costs and complexity, and does not lead to any risk-effective risk reduction.	The draft RTS should exempt them from the requirement to have risk management procedures in place.	Changes have been made to the RTS to reflect that each counterparty must have procedures to reflect how the RTS may be applied in certain circumstances. There is no longer a requirement that an agreement with counterparties of this treatment is required.	All the related articles were redrafted accordingly.
Documentation	Respondents noticed that also requiring a formal agreement 'in writing or equivalent permanent electronic form' with all exempted entities led to added administrative burdens, adding limited value to risk management procedure.	Rather than requiring parties to agree formally that certain collateral exchanges will not be made, it should be sufficient for the party otherwise required to collect margin to determine, including by reliance on representation by its counterparty, that it is not required to collect margin.	Changes have been made to the RTS to reflect that each counterparty must have procedures to reflect how the RTS may be applied in certain circumstances. The ESAs recognise that the details of the contractual agreements should not be specified in these technical standards.	The draft RTS were amended to remove the explicit requirements concerning the form of the agreements.

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Documentation	It is criticised that documentation also needs to be in place when there is no realistic prospect of the initial margin threshold ever being exceeded.	Where a counterparty exceeds the EUR 8 bn initial margin threshold, consideration should be given to allowing trading to continue without establishing documents until such time as the initial margin (if it were calculated by the dealer) reaches the EUR 50 m threshold for initial margin exchange (or, for example, 75% of 50 m). It will prevent liquidity squeezes for counterparties who suddenly cannot trade any more with many of their counterparties. Documentation and agreements shall be made only if the EUR 50 m threshold is reached or nearly reached.	The language in the draft RTS has been amended to avoid the repapering of the agreements when not necessary. The ESAs are of the opinion that repapering should not be required as long as the counterparty is below the EUR 8 bn threshold. As the EUR 8 bn notional is exceeded, only the new contracts are subject to margins. As these might be below the EUR 50 m threshold, the renewal of the agreements should only be done if there is an expectation that initial margin might be required (i.e. it exceeds the EUR 50 m threshold). Whether to amend the agreement or not close to the threshold should be left to the counterparty. These	The draft RTS were amended to have a more flexible approach regarding documentation.

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			counterparties, however, have the obligation to comply with the overarching principle that the contractual agreement should remain the same during the whole life of the contract.	
Documentation	Respondents pointed out that requiring parties to agree formally that certain collateral exchanges will not be made would result in a significant documentation burden.	Respondents suggested that it should be sufficient for the party otherwise required to collect margin to determine, including by reliance on representation by its counterparty, that it is not required to collect margin.	The ESAs recognise that reliance on the self-representation of the counterparties is the most pragmatic approach. Nonetheless, the entities that decide to rely on such representation should not consider themselves exempt (to a reasonable extent), by having their own assessment, with regard to: a) the type of counterparty and b) the fact that the counterparty is above/below one of the thresholds (including those to be calculated at group level).	The draft RTS were amended to have a more flexible approach regarding the documentation.

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Legal opinions of segregation	Respondents observed that the requirements for counterparties to verify (1) at least annually 'the enforceability of netting' for the initial margin calculation, and (2) at inception and at least annually, the 'compliance of initial margin segregation arrangements with the requirements of RTS' by way of satisfactory legal opinions in all jurisdictions would impose significant cost. It is also noticed that external legal experts might not be in the position to offer opinions at this granular level. Furthermore, the scope of the legal opinion should be limited to confirming that the initial margin will not be considered to belong to the proprietary assets of the collecting counterparty in the insolvency of that counterparty.	These kinds of requirements should be modified to require firms to be in a position to provide, on request, a written and reasoned legal basis for enforceability and compliance, and have procedures in place to ensure that the legal validity of these arrangements is kept under review in light of the possible changes in the relevant laws.	It is the opinion of the ESAs that the draft RTS should not be excessively burdensome in terms of the paperwork to be done in parallel with the introduction of the margin requirements, and therefore in parallel with the necessary renewal of many bilateral agreements. However, maintaining a written document on the 'legal basis' for enforceability and compliance to ensure the legal validity of the agreements in the various jurisdictions should be the minimum requirement. An ongoing (more than periodic) monitoring of the legal framework should also be considered a minimum requirement where an independent legal opinion was	The RTS were redrafted to allow a more flexible approach.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
			not available.	
Legal opinions and documentation burden	A high documentation burden should be reduced, and it should be ensured that effective arrangements can be put in place in a timely manner so as to not unduly delay the execution of transactions.	To the extent that the ESAs did require a legal opinion to be obtained, respondents noted that the use of industry-wide legal opinions is already commonplace in the OTC derivatives market (e.g. with respect to netting arrangements).	The ESAs are of the opinion that 'industry-wide' legal opinions are not sufficiently detailed to guarantee proper risk management and that maintaining a (written) well-founded legal basis regarding the functioning of the segregation agreements is a better solution.	The RTS were redrafted to allow a more flexible approach.
b) Operational process for the exchange of collateral				
Operational process for the exchange of collateral	Some of the respondents observed that a periodic verification of the liquidity of eligible collateral is unduly burdensome on smaller institutions that may not have processes in place to make this verification.	The suggestion was to leave the periodic verification of the liquidity of the eligible collateral in the hands of the institution through which smaller banks access markets, but not the small institutions themselves.	It is the opinion of the ESAs that even smaller counterparties should form their opinions on the quality of the collateral collected and its liquidity. As the requirements in the draft RTS are not particularly granular or prescriptive of how	The text of the RTS on this aspect remains the same as the one proposed in the Consultation Paper.

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			such assessment should be done, it is reasonable to assume that these requirements should be based on a proportionality principle, and the analysis required can be simplified for smaller participants (e.g. 'indirect' via the bank).	
Operational process for the exchange of collateral	Respondents noted that the strict eligibility requirements for the eligibility of collateral should allow one to conclude that the substitution of collateral with other eligible collateral poses little risk to the collecting party.	RTS should permit counterparties to agree to allow the substitution of collateral without the other counterparty's consent.	Substitution of collateral should be allowed. The modalities for such substitution should be left to the bilateral agreement.	The final RTS were amended accordingly.
6. The EUR 8 bn notional threshold – Calculation and implementation				
Calculation of the phase-in 8 bn threshold – Non-EU NFCs-	Respondents did not support that the threshold is calculated on the basis of gross notional outstanding. Their concerns: the	Non-cleared OTC intragroup derivative transactions should not be included in the calculation of the EUR 8 bn	The threshold is calculated as follows: a group whose aggregate month-end average notional amount of non-	This was clarified in the final RTS.

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	approach does not reflect the risk of the contracts, and no differentiation is made between the risks of the different types of contracts. This will unfairly disadvantage counterparties that generally trade in liquid and relatively less complex OTC derivatives. initial margin	threshold.	centrally cleared derivatives exceeds EUR 8 bn will be subject to the requirements.	
Threshold	Excessive burden on small firms.	It would be advisable to design the threshold in reverse: the scope should be defined in positive, so as to make it mandatory for counterparties to identify themselves where an average notional amount of non-centrally cleared derivatives is higher than the threshold.	Changes have been made to the RTS to reflect that each counterparty must have procedures to reflect how the RTS may be applied in certain circumstances. There is no longer a requirement that agreement with counterparties of this treatment is required.	Wording was adapted accordingly.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
Threshold	Investment managers may not necessarily have sight of all of their institutional clients' derivative relationships. Obtaining this information may be difficult. This will cause excessive margining and impact the performance of funds, affecting end investors.	Exclude some investment managers.	The Level 1 text sets out the scope of application for the requirements. The treatment of investment funds was already addressed by a recital in the Consultation Paper.	Clarified with a recital and an additional article.
Monitoring of the notional threshold	This can be very difficult to monitor.	The regulation should also specify in what way the status of the covered entity should be publicly disclosed to the market, and how the average notional thresholds can be monitored.	This aspect is not in the scope of these RTS and would have no equivalence in the practices of other jurisdictions.	No change.
Group definition	The EMIR definition of 'group' is not always appropriate when determining whether related entities are a 'group' for the purposes of the thresholds.	'Group' should be defined with reference to the consolidated group determined under the accounting standards applicable to the ultimate parent of the group.	The EMIR already includes a definition of 'group'.	No change.

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EUR 8 bn threshold	This can be punitive for small counterparties.	We propose that the calculation of the EUR 8 bn threshold for obligation in the exchange initial margin only applies to non-centrally cleared OTC derivatives that do not represent hedging positions.	The BCBS-IOSCO standards clearly set out that the EUR 8 bn threshold should be calculated by including all of the group's non-centrally cleared derivatives (a group whose aggregate month-end average notional amount of non-centrally cleared derivatives). No distinction has been made regarding the purpose of the derivative contracts. The ESAs are of the opinion that it is necessary to provide at least as strict requirements as the internationally agreed standards – as far as this would be covered by their mandate.	No change.
Calculation of the phase-in EUR 8 bn threshold – Group definition inter-	It is not specified how the EUR 8 bn threshold appears to define 'group'. Use of accounting standards	'Group' should be defined in accordance with the accounting standards applicable to the parent of the	The definition of a 'group' is already included in the EMIR and should not be redefined in the RTS.	No change.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
affiliate trades	could result in an internationally coherent approach if other jurisdictions adopted the same approach. It would make the assessment by a counterparty of the status of its counterparty with regard to the phase-in provisions more straightforward. This is because the scope of a group under relevant accounting laws is likely to be more transparent than the scope of a group under the EMIR or other regulation that may not be subject to public disclosure and may not apply to market participants who pose the greatest amount of systemic risk. The volume of intragroup transactions is not an accurate indicator.	consolidated group of which the relevant counterparty is a part. Counterparties should be able to self-certify the category they fit into for the purposes of the phase-in of the initial margin exchange. An entity should be able to rely on the representation made by their counterparty, unless they have a clear reason for believing the representation is incorrect. This would be similar to the approach for determining whether an NFC is subject to the clearing obligation under the EMIR. Exempt inter-affiliate trades from calculation of the EUR 8 bn threshold.		

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Capital requirement	Clarity is needed regarding the requirement to hold capital. A counterparty should hold capital against its exposure to counterparties in cases where the EUR 50 m threshold is applied.	Confirmation is required that the RTS are not proposing that any additional capital needs to be held by counterparties subject to the Basel III/CRD IV/CRR capital regime. Basel III/CRD IV/CRR should be applied to counterparties that are not already subject to such existing regulatory capital requirements.	The EMIR requires a counterparty to hold capital against non-collateralised exposures. The draft RTS do not prescribe any capital requirements for such exposures, as the ESAs have no mandate to elaborate on it following the amendment of the EMIR included in the CRR.	No change is deemed necessary to address this comment.
Scope: Counterparty status	Counterparty status determines whether or not a transaction is within the scope of the RTS. The status of a counterparty should be determined at the point the transaction is entered into, and should not change during the life of the transaction, given that it would create significant uncertainty and make it very difficult to price non-cleared OTC	Counterparty status should remain constant during the life of a transaction.	The details of the contractual agreement should remain the same for the entire life of the contract (even when the status of the counterparties change).	The Article in the consultation paper explaining that the detail of the agreement should remain the same for the entire life of the contract has been redrafted to be more explicit on this aspect.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	derivative contracts if it was possible for the margin requirements in the RTS to be switched on and off during the life of the transaction due to changes in the status of one or more counterparties to the trade.			
Application of the notional thresholds on commodity derivatives	Application of the notional thresholds on commodity derivatives refers to Article 2 GEN (3–4). Unlike other forms of derivatives, the notional amount of a commodity-based derivative is fluid over the term of the transaction. This will make monitoring compliance with the EUR 8 bn threshold difficult and may drive a corporate group over the threshold solely because of changes in the price of the commodities.	No proposal.	Monitoring can be more difficult. Nonetheless, the margin requirements apply only to new contracts once the EUR 8 bn threshold is exceeded. Therefore, the impact should be limited and controllable. Similarly, as the margin requirements apply only to new contracts once the EUR 8 bn threshold is exceeded, the group will still have the possibility of deciding whether to enter in new derivatives (given the additional costs) or	No change.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
			not. For NFCs, derivatives used for hedging are not subject to the requirements.	
Calculation of the notional threshold/ intragroup	Calculation of the notional threshold refers to Article 2 GEN (3–4). Intragroup transactions do not pose a net risk to a corporate group and do not transmit risk into a market. They are largely entered into for internal risk allocation and accounting purposes. As such, a corporate group's level of intragroup transactions should not have a bearing on whether the entities in a corporate group are subject to the RTS.	Calculation of the notional threshold refers to Article 2 GEN (3–4). The working group suggests that the ESAs exclude intragroup transactions from the determination of whether a counterparty is subject to the RTS.	The determination of whether a counterparty is subject to the RTS is made in the EMIR itself. Exemptions for intragroup transactions are set out in Article 11(5–10) of the EMIR. Article 2 GEN (3) of the draft consultation paper refers to non-centrally cleared OTC derivatives between counterparties at a group level, as defined in Article 2(16) of Regulation (EU) No 648/2012 (between two groups), and not	No change is deemed necessary in this case.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
			within a group.	
7. The EUR 50 m threshold				
The EUR 50 m threshold	One of the major issues related to the proposed framework concerns the application of the EUR 50 m threshold at the level of the consolidated group (to which the threshold is being extended) and is based on all non-centrally cleared derivatives between two consolidated groups as parties to a transaction.	A potential compromise solution – which would need to be endorsed ex ante by regulators – could be represented by the signing of an overarching Credit Support Annex (CSA) between groups, where these groups agree on whether dynamic or static allocation is allowed by appointing (at group level) the relevant legal entities authorised to deal bilateral OTC derivatives and assign a percentage of the EUR 50 m threshold to each relevant legal entity. A renegotiation of an	The ESAs are of the opinion that the decision of how the threshold of EUR 50 m could be operationally applied at the consolidated group level should be left to the counterparties (e.g. whether there would be a static or dynamic distribution to legal entities within the group). However, every operational way of application must ensure that the requirements (the EUR 50 m threshold at group level) are met at all times.	No change.

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		existing overarching/group-level CSA would be necessary in cases where any new group entity (appointed by the group as being allowed for trading) could be added in the CSA, or any change of counterparty status from NFC- to NFC+ could be accounted for.		
The EUR 50 m threshold	Clarification	The draft RTS should clarify that both counterparties should exceed, on an intragroup basis, the relevant EUR 50 m threshold in order to trigger the obligation to exchange the IM.	The EUR 50 m threshold: Article 2 GEN (3) of the draft consultation paper refers to non-centrally cleared OTC derivatives between counterparties at group level, as defined in Article 2(16) of Regulation (EU) No 648/2012 (between two groups), and not within a group.	No change.
The EUR 50 m threshold	The major issue related to the new regulation is the application of the threshold of EUR 50 m at the level of the consolidated	The threshold of EUR 50 m should apply per legal entity even in relation to banking groups.	The international agreements require the application at the consolidated group level, with the intention of preventing the	No change, as the Consultation Paper was already in line with the international standards.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	group based on all non-centrally cleared derivatives between the two consolidated groups.		proliferation of affiliates and other legal entities within larger entities for the sole purpose of circumventing the margin requirements.	
The EUR 50 m threshold	The amount of capital held against counterparties is already dictated by legislation.	Delete the requirement in Article 3 GEN (3) to hold capital.	Given that Article 11(4) of the EMIR is no longer in the mandate, it is questionable whether the RTS should elaborate on capital in general.	No change.
The EUR 50 m threshold	The understanding of Article 2 GEN, paragraph 3 of the RTS, is that the EUR 50 m threshold is available to FCs only and not to NFCs+. This is not considered appropriate, as there is no economic justification for a differentiated approach between FCs and NFCs+. The BCBS-IOSCO framework does not make such a distinction in its	The EUR 50 m threshold should also apply to NFCs+, so that both EU FCs and EU NFCs+ can agree with each other and with non-EU equivalent entities to utilise the EUR 50 m threshold. Include non-EU entities in the scope of the EUR 50 m threshold.	Changes have been made to the RTS to reflect that each counterparty must have procedures to reflect how the RTS may be applied in certain circumstances. There is no longer a requirement that agreements with counterparties of this treatment are required.	The RTS were amended accordingly.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	application of the 50 m threshold. FCs should not be required to collect more margin from NFCs- (as mentioned elsewhere).			
Computation of the EUR 8 bn threshold	Keep consistency within the regulation's framework for margin application.	The phase-in calculation of the average notional threshold of non-centrally cleared OTC derivatives should exclude transactions that are subject to the intragroup exemption for margin.	All the non-centrally cleared OTC derivatives should be considered in the calculation of the EUR 8 bn threshold.	No change is necessary on this particular aspect.
Thresholds	Application of the EUR 50 m threshold for NFCs+. Two NFCs+ are not permitted to use an unsecured credit threshold when trading with each other.	Application of the EUR 50 m threshold for NFCs+ is referred to in Article 2 GEN (3). The working group requests that the ESAs clarify that unsecured credit thresholds are available for transactions between two NFCs+.	The initial margin thresholds (EUR 50 m in collateral or EUR 8 bn in notional) should be applicable between all the counterparties. This should be applied without prejudice for Article 11(4) of Regulation (EU) 648/2012.	The corresponding articles were redrafted to clarify the implementation of the initial margin thresholds.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
Scope	The provisions of Article 2 GEN (4)(b and c) are not clear. These could lead to misinterpretation and would not be consistent with the scope of Article 11(3).	The wording of Article 2 GEN (4)(b and c) – 'agree not to exchange initial and variation margin' – may lead to the interpretation that counterparties may only agree that either a) that both initial margin and variation margin has to be exchanged or b) that no margin at all has to be exchanged.	Counterparties that are exempt under the EMIR (where they relate to transactions entered into with NFCs other than those referred to in Article 10 of Regulation (EU) No 648/2012) may agree to not exchange initial and/or variation margin.	Changes have been made to the RTS to reflect that each counterparty must have procedures to reflect how the RTS may be applied in certain circumstances. There is no longer a requirement that an agreement between counterparties of this treatment is required.
8. MTA				
MTA	The MTA is EUR 500 000 for variation margin plus IM. This amount includes the net variation of initial margin and variation margin exchanged between two counterparties. Typically, initial margin and variation margin are monitored separately.	MTA should refer to 'change in collateral' instead of 'total' amount of collateral (as in the BCBS-IOSCO framework). Clarification is needed on whether the MTA refers to a transaction between counterparties and not on a total collateral amount.	Clarification: Only the total amount of variation margin and initial margin that has not yet been collected would need to be collected.	A recital was added to explain the fact that the MTA applies only to the transfer of margin and not to the full amount. The wording of the corresponding Article was also clarified.

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MTA	VM and initial margin will be calculated separately and potentially with different frequencies, and will be subject to different reconciliation and netting requirements. In addition, if an English law title transfer variation margin and security interest initial margin approaches were to be adopted, it would be necessary to have separate documentation for those arrangements. It will therefore be very challenging from an operational perspective to calculate the MTA as the aggregate across variation margin and IM, and the requirement to do so could introduce additional operational risk.	Proposal 1: Suggestion that there should be a precise split of the MTA between variation margin and IM. Proposal 2: Introduction of two separate total MTAs, one for variation margins and another for initial margins. Introduction of an additional operational de minimis threshold for any subsequent margin call, to be agreed between the counterparties (but not exceeding an amount of EUR 50 000). Proposal 2.b: Having a separate EUR 500 000 MTA for variation margin and initial margin (doubling the size of the MTA to EUR 1 m). Proposal 3: Two MTAs are proposed, and the proposed EUR 500 000 MTA threshold is	The ESAs are of the opinion to not introduce a split of the MTA between variation margin and IM. The BCBS-IOSCO principles provide for a general MTA, where no split is foreseen. Even if initial margin and variation margin are currently separately monitored, the ESAs believe that OTC derivative counterparties should be able to aggregate the two required margin amounts (VM + IM) in order to monitor if the sum of variation margin and initial margin (that would be required to be transferred) is greater than EUR 500 000. Additionally, the MTA is already extended to counterparties and is not at a group level. Therefore, a	A recital was added to explain the fact that the MTA applies only to the transfer of margin and not to the full amount. The wording of the corresponding Article was also clarified.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
		only applied to VM, rather than the total collateral exchanged.	number of MTAs could be used within a group, each representing EUR 500 000 of not exchanged collateral. With regards to proposal 1, the ESAs are of the opinion to not provide higher MTA in sum (e.g. EUR 500 000 for variation margin and EUR 500 000 or 5 m for IM). The BCBS-IOSCO principles provide for an MTA of EUR 500 000 for all margin transfers. It was not intended to provide EUR 500 000 for each type of margin. With regard to proposal 2, the ESAs are of the opinion that a MTA of EUR 500 000 for not exchanged variation margin and initial margin is appropriate, taking into account the intention of an MTA, which is to reduce operational burden by not	

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			requiring the counterparties to transfer relatively low amounts. With regard to proposal 3, the ESAs' proposal does not preclude counterparties from allocating the MTA to variation margin only or to initial margin only. As long as the aggregated amount is respected, the bilateral agreement between counterparties can be phrased in a way that the counterparties believe is optimal.	

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MTA	Consideration should be given to providing a separate MTA for IM.	Given that initial margin needs to exceed EUR 50 m before it is collected, an MTA of EUR 2.5 m would be proportionate unless the proposal on the collection frequency for initial margin is amended. If initial margin were to be computed less frequently than currently proposed (e.g. weekly instead of within 1 business day), then a smaller MTA would be reasonable.	This option would not be in line with the BCBS-IOSCO framework. The presence of two thresholds (EUR 50 m to address the liquidity impact and EUR 500 000 to address operational issues) should be sufficient to void imposing requirements that are excessively burdensome for the counterparties.	The draft RTS were already aligned with the BCBS-IOSCO framework.
9. Special cases				
a) Treatment of derivatives associated with covered bonds				
Covered bonds	Derivatives associated to securitisation vehicle should be exempted;	Respondents believed that the rules on covered bonds should be extended to securitisations, which we have contributed to.	The EMIR includes a recital addressing covered bonds only. Securitisation vehicles are not	An exemption for securitisation cannot be included in the final RTS.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
		In addition, we believe that the third party solution being offered is effectively the role that is currently played by the swap counterparties themselves.	covered by that recital.	
Two-way relief	According to Article 1 SEG and Article 1 REU, collected initial margin must be segregated and must not be rehypothecated, repledged or otherwise reused. In many covered bonds' jurisdictions, initial margin received legally must be registered as part of the cover pool assets. Hence, it is no longer 'segregated' from the rest of the cover pool assets in the case of default of the issuer and may – as part of the cover pool – be perceived as being 'reused' . In addition, requirements on a swap consultation paper in a covered bond swap are higher and stricter	The relief from posting variation margin and initial margin for covered bond derivatives should be two-way – i.e. it should also apply to the covered bonds derivative CP (and if this is not possible, a relief from the segregation requirement).	There is no reason for which a covered bond issuer or covered pool should not be able to collect cash variation margin and return it when no longer due. The issues on the segregation of initial margin are acknowledged.	The final RTS were amended to allow the collection of variation margin in cash and its return when no longer due. IM is not required for derivatives associated with covered bonds under strict conditions.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	than in normal derivative transactions as – under the current market practises – there are contractual requirements in terms of collateral triggers, volatility buffers and replacement triggers. The covered bond swaps will typically involve risk mitigation measures (driven by rating agency criteria) designed to protect the asset pool owner from the credit risk of the swap counterparty. These measures will typically require the counterparty to take certain remedial action in the event of its rating being downgraded beyond a specified level, and the action may include providing collateral for its obligations under the swap, arranging for its obligations to be transferred to an entity with ratings as required by the relevant rating agency, procuring another entity with the requisite			

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	ratings to become co-obligor or guarantor in respect of its obligations under the swap, or taking such other action (as confirmed by the relevant rating agency) as will result in the rating of the covered bonds then outstanding being maintained at, or restored to, the level it was at immediately prior to the ratings downgrade. While Recital 24 to the EMIR refers to the alternative protection given to swap counterparties in the context of covered bond swaps and does not refer to the protections typically provided to covered bond issuers and cover pools via the operation of rating agency criteria, we do not consider that this should be interpreted as meaning that a two-way relief may not be provided by the authorities. Although the rating agency requirements do not require			

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	collateral posting on 'day one', in certain respects, such requirements are more likely (by their nature) to achieve meaningful protection for the asset pool owner. For example, in certain circumstances, the downgraded counterparty may be required to find a replacement for itself, which is helpful to the asset pool owner, particularly given its special purpose nature.			
Continuation of the derivatives after default	The purpose of this restriction should be to avoid cases where the derivative is terminated as a result of the issuer's insolvency, not to prevent the counterparty from terminating upon other limited non-insolvency-related defaults. A wider reference to other types of defaults (such as non-performance-related events) would essentially rule out most covered bond swaps. The	Paragraph 1(a) should be limited to insolvency-related defaults only. It is proposed to add the words 'insolvency-related' before 'default'. The condition should be removed. If the condition is retained, it should apply only where the covered bond issuer is the holder of the cover pool (opposite to a special purpose vehicle (SPV) is the holder of	The intention is to avoid cases where the derivative is terminated as a result of a resolution or insolvency-related default by the covered bond issuer. The terminology 'insolvency-related' is too vague and not an appropriate RTS.	The text of the RTS was amended, but this recommendation could not be taken on board.

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	rationale for the inclusion of this condition is unclear, given that it serves to protect the covered bond holders rather than the covered bond swap counterparties. While footnote 7 suggests that the reference to 'default' in the condition is intended to capture insolvency events only, this is not clear based on the current drafting. The condition does not reflect UK covered bond structures, where the cover pool is held by a separate entity and it is this entity (rather than the issuer) that enters into the swaps on the cover pool side. Under such structures, the same concerns with respect to the continuation of the swap do not arise. The condition could be read to restrict covered bond swaps that terminate upon the insolvency of the covered bond counterparty,	the cover pool). Drafting suggestion: 'If the covered bond issuer is the holder of the cover pool, then the derivative is not terminated in the case of an insolvency or analogous event of default in respect of the covered bond issuer.'		

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	where the covered bond counterparty is also the covered bond issuer; this could be relevant under the UK covered bonds structure.			
Requirement on the derivative counterparty ranking	Certain covered bond regimes (including the UK framework) are principle-based and do not specify the ranking of creditors, including swap counterparties, in all circumstances. It is common in UK covered bond swaps for certain termination payments – arising as a result of an event of default – to be subordinated to certain other payments. So-called back-to-back swaps are put in place with the originator of the specialised issuer in order to neutralise the mismatch created at the issuer level due to the activation of the front swap. These back-to-back-swaps rank	Contractual arrangements must also be taken into account, and it should be made clear that the proposed condition relates to the relative ranking in a 'post-acceleration scenario' (ctr. a pre-acceleration scenario). Certain termination payments should be carved out of the condition. The scope of the contemplated carve-out regime in terms of the benefit of covered bond derivatives should be broadened to take into account back-to-back swaps. (NOTE: It is not entirely clear what is meant by 'to allow these back-	The intention behind condition (1)(b) is to secure the covered bond derivative counterparty a claim on the covered bonds pool ranking at least pari-passu with the covered bond holders. The special cases mentioned in the responses do not provide such protection.	No change.

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	subordinate to the front swaps and the covered bond holders.	to-back-swaps to be cleared centrally and fulfil the other conditions of the AArticle 3 GEN, the same exemption as for the front swaps should apply')		
Registration in the cover pool	Under the UK covered bond structures, segregation of the cover pool is achieved through the cover pool being held by a separate entity that enters into the swaps. As a result, there is no need in the UK context for the swap to be identified as forming part of the cover pool via a formal registration process. The recent EBA covered bonds report acknowledges this distinction.	The condition should be adjusted in circumstances where the cover pool is held by a separate entity, such that formal registration of the derivative in the cover pool is not required. Drafting suggestion: 'The derivative is registered in the cover pool of the covered bond programme in accordance with national covered bond legislation or is entered into by a cover pool entity which is separate from the covered bond issuer.'	Condition (1)(c) references national covered bond law. The ESAs acknowledges that in some covered bond jurisdictions, a formal registration process is not required.	Changed to 'registered or recorded'.

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Hedging	It should be clarified that the proposed requirement that the derivative is used only for hedging purposes should be interpreted in accordance with Article 10(3) of the EMIR.	This point on hedging purposes should be addressed by a separate condition that would read as follows: 'the derivative is used only for hedging purposes, which shall be interpreted in a manner consistent with the principles to be applied under AArticle 10(3) of the EMIR'.	The hedging definition in Article 10(3) of the EMIR applies to NFCs (hedging their commercial activities).	No change to the final RTS.
Legal overcollateralisa-tion	It is not clear whether the reference to 'legal' here is intended to capture both statutory requirements applicable under national covered bond laws and contractual provisions that operate to establish an overcollateralisation requirement. In our view, both types of requirements are legal in nature and should be acceptable for the purposes of exemption, as neither would equate to 'voluntary	The requirement for a 'legal overcollateralisation (OC)' should include either a minimum regulatory OC or a minimum contractual OC. Considering the timing implications, there is need for a grandfathering period. The ESAs should set the same minimum requirements under the liquidity coverage ratio (LCR) regime. The clarification should be as	As mentioned in the consultation (footnote 9, page 60), voluntary overcollateralisation is not taken into account due to the lack of restrictions for the issuer to suddenly reduce it.	For clarification, it is changed from 'legal' to 'regulatory'.

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	overcollateralisation', which could be unilaterally reduced as described in footnote 9 on page 60 of the Consultation Paper. We further note that we have assumed that this condition is focused on the total principal amounts outstanding with respect to the cover pool assets, as compared to the total principal amounts outstanding in relation to the issued covered bonds (rather than an interest coverage requirement). The fact that not all jurisdictions are not aligned to a legal OC of at least two percentpercent does not necessarily translate into differences in cover pool quality.	follows: 'The covered bond programme is subject to a legal collateralisation requirement (arising through operation of statutory and/or contractual provisions) of at least 102%'.		
Securitisation	The reasoning for having an exemption of the requirements for swap counterparties in covered bonds is equally valid for swap counterparties in	The ESAs could explore the opportunities to extend the scope of this regulation to securitisation swap	The EMIR includes a recital on covered bonds, giving explicit guidance on the treatment of this type of securities. There is no similar recommendation	No change in the RTS considering a preferential treatment for securitisation.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	securitisations.	counterparties.	about securitisation.	
b) IORPS and investment funds				
Group determination – Institutional protection schemes (IPSs)	-	IPSs shall not be considered as 'group', at least in cases where an IPS does not fulfil the conditions of making use of intragroup exemptions.	The definition of 'group' (and therefore the procedures covering intragroup exemptions) should be intended in accordance with the definition included in the EMIR.	This exemption cannot be included in the final RTS.
VM	VM exchange is something new for the property sector. Most of the derivative activity conducted is for hedging purposes. variation margin would eliminate the possibility of hedging.	One possible solution is to insert a threshold for variation margin for non-systemically important institutions. This is already general practice for many funds that have threshold CSAs.	The BCBS-IOSCO standards do not contain such an exemption. The ESAs are of the opinion to provide at least as strict requirements as the internationally agreed standards – as far as this would be covered by their mandate.	No change.
VM	Funds themselves are therefore considered to be 'FCs' under Article 2(1)(8) of the EMIR due to	One possible solution is to insert a threshold for variation margin for non-systemically	The BCBS-IOSCO standards do not contain such an exemption. The ESAs are of the opinion to	No change.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	a cross reference to the AIFMD in this article.	important institutions. This is already general practice for many funds that have threshold CSAs.	provide at least as strict requirements as the internationally agreed standards – as far as this would be covered by their mandate.	
Risk management procedures	IORPS are already subject to stringent risk management standards.	The reason/way in which they use derivative instruments, and the spirit of the EMIR Level I text with regard to the treatment of pension scheme arrangements together represent sufficient reason to justify including a specific reference in Article 2 GEN for IORPS and their asset managers, granting them the possibility of not exchanging IM.	The EMIR sets out the application of the requirements for defined entities (FCs and NFCs).	No change.
10. Netting agreements and treatment of collateral				
a) Netting agreements				

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
IM netting	The possibility of netting initial margin amounts is referred to in Article 1 GEN(3)(a). It is unclear why the netting of initial margin amounts between each other is prohibited.	The possibility of netting initial margin amounts is referred to in Article 1 GEN(3)(a). We propose the deletion of this limitation, and recommend allowing margin amounts netting not only at the transaction level, but also at the portfolio level.	The term 'netting' in this context refers to the obligation to collect margin by an entity from a counterparty and cannot be offset against any obligation of the counterparty to collect margin.	The wording was changed to 'offset' to avoid misinterpretation. The requirement of a two-way exchange is an explicit condition of the BCBS-IOSCO framework.
Legally enforceable netting sets not available – IM	There is a missing requirement for when legally enforceable netting opinions are not available. This is the case in some jurisdictions, particularly in many emerging market regions. For jurisdictions where participants cannot obtain satisfactory netting opinions, participants typically do not employ collateral as a risk mitigant. There would be little value in holding collateral, as it would need to be returned to the administrator in the event of	Insisting on the collection of collateral from counterparties in these jurisdictions may diminish the ability of EU counterparties to impose more effective mitigations, such as using limits to contain exposures, repricing trades, selling options and using short-dated trades. On the contrary, it may increase pressure on EU counterparties to post reciprocal VM, which increases the risk they face.	A more flexible approach was suggested in the final RTS, including the possibility to 'collect only' and the condition that having no exchange of collateral when collecting is not possible..	The RTS were amended accordingly.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	insolvency.			
Legally enforceable netting sets not available – VM	The final draft RTS should clarify the applicable requirement where legally enforceable netting opinions are not available.	The same threshold approach as proposed by the respondent for the phasing-in of variation margin requirements could be applied. If the initial margin phase-in criteria were also used for VM, it would be unlikely that participants from non-netting jurisdictions would be captured, as exposures (and hence notional volume) are carefully limited. If a EUR 50 m threshold was used, then	A more flexible approach was suggested in the final RTS, including the possibility to 'collect only' and the possibility to have no exchange of collateral when collecting collateral is not possible at all.	The RTS were amended accordingly.

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		currently employed mitigants would likely keep the mark-to-market (MTM) lower than this value and limit the risks from relying on potentially unenforceable collateral.		
Legal assessment of enforceability of collateral and netting agreements	To require counterparties to have processes in place to verify, at least annually, the legal enforceability of netting agreements would overstretch capacities of non-financial companies. In a cross-border context, this analysis would be too burdensome due to the huge differences in the respective insolvency laws, resulting (in practice) in significant costs from external legal opinions.	This requirement should be abandoned.	The legal enforceability of netting agreements should be addressed anyway. The covered entities, if they do not want (or it is too expensive) to obtain an independent legal opinion, should at least develop their own analysis on the functioning of the netting agreements.	The text was amended to avoid excessively burdensome requirements.
Internal ratings-based approach (IRB approach)	It is not clear how some of the model requirements can be met if one counterparty agrees to use the other counterparty's initial	-	Counterparties can agree on the use of the standardised method. If they decide differently, the agreements	The requirement that each of the counterparties using an initial margin model is responsible for the

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	margin model or a third-party developed model. The counterparty has limited ability to assess the model in the required manner. Moreover, it would not be able to implement any adjustments by itself.		have to include the exchange of all the information needed for both counterparties and respective competent authorities to be comfortable with the particular initial margin model.	compliance of the model to the RTS should remain.
IM	IM should be transferable despite being subject to standard liens such as clearing system liens.	The requirement that there be no regulatory, legal or third-party constraints should be removed. In typical transfers of collateral, there are standard liens (such as the liens of a clearing system) pursuant to which that collateral is delivered.	The requirement that there be no regulatory, legal or third-party constraints should be kept. Claims, such as those specified, should be considered legit and not preclude the eligibility of the collateral.	An Article is added to explain the application of those provisions.
Legal agreement	The process can be slow and lengthy.	Article 1 GEN should be supplemented by the following new paragraph 3a: '3a. By way of derogation Article Article […]FCs may instead agree in writing or equivalent permanent electronic form	Changes have been made to the RTS to reflect that each counterparty must have procedures to reflect how the RTS may be applied in certain circumstances.	There is no longer a requirement that an agreement with counterparties of this treatment is required.

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		with its financial or NFCs that all OTC derivatives between them shall be subject to a qualified master agreement.'		
Scope and exemptions	The RTS should include a formal/written opt-out by way of contractual agreement in order to allow counterparties to benefit from exemptions.	It would be more efficient for the draft RTS to recognise the direct applicability of the exemptions foreseen therein, and clarify that whenever counterparties are not willing to make use of such exemptions, they will document any such arrangements in writing.	Changes have been made to the RTS to reflect that each counterparty must have procedures to reflect how the RTS may be applied in certain circumstances.	There is no longer a requirement that an agreement with counterparties of this treatment is required.
b) Segregation				
Cash initial margin segregation	N/A	Cash initial margin held in an account at the collecting party should not be deemed as appropriately segregated.	Cash initial margin can only be collected by a third-party custodian or holder.	The final RTS were amended accordingly.

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Segregation of IM	Segregation of cash initial margin will meet the segregation requirements if such cash is segregated from the proprietary assets of the collecting party.	The RTS clarify that segregation from proprietary assets means segregation from the proprietary assets of the collecting party, so that in the case the collecting party becomes bankrupt, the cash initial margin is appropriately separated from its assets.	Cash initial margin should be limited for systemically important counterparties.	The final RTS were amended accordingly.
Segregation of IM	Clarification.	Presumably, this requires segregation in the books and records of the third-party holder or custodian, rather than the establishment of individual accounts on behalf of each counterparty, which would be costly and administratively burdensome.	The RTS do not address the segregation requirements to this level of granularity, and multiple solutions may be compatible with the provisions therein.	The final RTS were amended with respect to the Consultation Paper.
Segregation of IM	The segregation of the initial margin received is not easily applicable and unjustifiably costly for the regulated entities.	Provided the regulated entity has set up a dedicated and strict monitoring of the reuse practices, the reuse of received securities should be at least	IM should not be reused or rehypothecated. More flexibility should be allowed only where initial margin is collected in cash. Indirectly	No change.

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		permitted to allow the regulated entity to gather liquidity by posting collateral with the central banks and/or to comply with CCP initial margin requirements.	cleared derivatives that are considered centrally cleared derivatives under the EMIR are not subject to these RTS. The segregation of initial margin is a requirement under the BCBS-IOSCO framework.	
Segregation of initial margins	There is no structure in existence that can guarantee the immediate availability of initial margin in all jurisdictions. The EU will be at a competitive disadvantage if other jurisdictions do not require segregation in margin rules, and this may lead to cross-border inconsistency as intended by BCBS-IOSCO.	The requirement for collateral to be immediately available to the collecting counterparty should be amended in the final draft RTS to require that the initial margin is available in a timely manner (as per Article 194(4) CRR) or to allow 'prompt access to IM'. Legal opinion requirements should be amended in line with the CRR. Alternatively, reliance on the most recent legal opinion and an expansion of the time frame should be allowed. Where no legal	Indeed, immediate access may not be possible; therefore, a more flexible language should be used.	Counterparties should be able to access collateral in a 'timely manner', in order to allow time to custodians and counterparties to complete the due verifications.

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		opinion is available, allow parties to follow market practice. Permit the use of industry-wide legal opinion or in-house opinions. Clarify the definitions of 'segregation', 'legally effective', 'sufficiently protected' and 'immediately available'. The obligation to segregate should be subject to national rules. Clarify that segregation from proprietary assets means segregation from the proprietary assets of the collecting party.		
IM segregation	Segregation of initial margin and delivery of collateral in case of default has to take into account internal processes of third-party	Therefore, the 'immediate' delivery of collateral should be revised by the regulator.	This is correct and should be redrafted as 'timely manner' to allow time for the appropriation of the collateral.	The RTS were amended accordingly.

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	custodians.			
Segregation	In the case of investment funds, the requirement laid down in Article 1, paragraph 2 could cause operational problems. If one asset management company manages 1 000 investment funds and uses 20 counterparties, the mentioned provision would lead to the consequence that 20 000 accounts are to be opened.	The ESAs should evaluate whether the annual operation costs related to initial margins (accounts, transfers, trustee agreements, and legal opinions) are higher than the volume of risk they shall mitigate.	It is acknowledged that this reform will anyway increase costs in the OTC derivative market; however, prudential concern should prevail on the short-term costs of an operational nature.	No change.
Segregation (use of cash)	Since Articles 197 and 198 of Regulation (EU) No 575/2013 specifically refer to 'cash on deposit with, or cash assimilated instruments held by, the lending institution'.	There should be clarification that the account to which eligible collateral is credited is not limited to those provided by the counterparties, and could be an account with a third-party custodian.	Cash initial margin should always go to a third-party custodian, as the collecting party cannot segregate cash initial margin from other cash.	Clarified in the final RTS.
Not harmonised bankruptcy	Mandatory posting of initial margin will increase credit risk for	It is necessary to enhance the harmonisation of bankruptcy	This is outside the scope of these RTS.	No change required for the final RTS.

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legislation	those required to post collateral, unless all jurisdictions have laws and regulations to ensure the effective supervision and enforcement of segregation requirements and a timely recovery of collateral by non-defaulting parties. Segregation without hypothecation will be very expensive and with no practical benefit if local bankruptcy laws do not provide effective protection.	legislation at a global level.		
c) Reuse and rehypothecation				
Rehypothecation ban	Respondents believe that other jurisdictions may allow rehypothecation in a way that will work, and, therefore, we suggest that an outright ban in the EU is not appropriate.	Re-hypothecation should be allowed.	The ESAs are of the opinion that even the permission of a limited rehypothecation would create new risk due to the claims of the third party over the margins. Additionally, legal and operational complications	No change.

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			could delay the return of the collateral in the event of a default of the initial collateral taker or the third party, or make it even impossible. Allowing a rehypothecation of the initial margin even in limited circumstances could undermine the protection of the posting party in the event that the collecting party enters bankruptcy.	
Rehypothecation	Rehypothecation should be permitted.	Regulation should focus on a strict monitoring of the reuse into the entity's liquidity framework.	The rehypothecation, repledge or reuse of the collateral collected as initial margins would create new risks due to the claims of the third party over the margins. Legal and operational complications could delay the return of the collateral in the event of a default of the initial collateral taker or the third party, or make it even impossible.	No change.

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			Therefore, in order to preserve the efficiency of the framework and ensure a proper mitigation of the counterparty risks, the rehypothecation, repledge or reuse of the initial margins should not be permitted.	
Reuse of collateral	Inconsistency between the proposed ban of the reuse of initial margin and the requirements of ESMA's Guidelines on Exchange Traded Funds (ETFs) and other UCITS issues.	Existing UCITS rules providing for limited reinvestment of received cash collateral fully address the goals of the RTS.	This should be addressed in the context of the UCITS-specific regulations and guidelines.	No change is necessary for the final draft RTS.
Reuse of collateral	The ban on re-use of initial margin would increase costs initial margin (funding and liquidity costs).	Respondents suggest that ESMA consents to the reuse of the received collateral exclusively with the ECB (under specific and strict conditions and monitoring), so as to allow an entity to gather liquidity and for funding activity.	It is important for the functioning of the initial margin concept that initial margin is held in a way that: initial margin is immediately available to the collecting party in the event of the counterparty's default; and the posting party is protected in the event that	No change is necessary for the final draft RTS.

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			the collecting party enters bankruptcy. To use received initial margin as collateral for other transactions would be contradictory to the concept of the IM. It would create new risks due to the claims of the third party (in this case, the ECB) over the margins. This could delay the return of the collateral in the event of a default by the initial collateral taker or make it even impossible. Therefore, in order to preserve the efficiency of the framework and ensure a proper mitigation of the counterparty risks, the rehypothecation, repledge or reuse of the initial margins should not be permitted.	

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Reuse of collateral	As drafted, Article 1 REU appropriately focuses on possible reuse by the 'collecting counterparty', placing custody banks in tri-party arrangements out of scope.	The final rule should clarify that the deposit of cash in a demand deposit account with a custody bank, as part of a tri-party custody arrangement, satisfies the segregation requirements and does not give rise to prohibited reuse by the custody bank in the ordinary course of its business for purposes of the RTS.	The deposit of collected cash initial margin with a custody bank must meet all the requirements of the draft RTS – e.g. segregation and no reuse. However, the ESAs acknowledge that custodians should be allowed to secure initial margin posted as cash by reinvesting it in eligible securities, as long as this is done to protect the collateral poster. The holding of these eligible securities must meet all the requirements of the RTS (such as segregation and the ban of reuse).	The draft RTS include a provision allowing custodians to secure initial margin posted as cash by reinvesting it in eligible securities, as long as this is done to protect the collateral poster.
Reuse of collateral	It may be difficult to fulfil all the requirements.	If a regulator wants to limit the reuse of initial margin received, it could allow a percentage of the received collateral to be reused in bilateral transactions, CCP postings or at least allow	The ESAs are of the opinion that even the permission of a limited rehypothecation would create new risk due to the claims of the third party over the margins. Allowing a	No change.

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		the reuse to central banks in order to permit banks to gather liquidity in case of need.	rehypothecation of initial margin even in limited circumstances could undermine the protection of the posting party in the event that the collecting party enters bankruptcy.	
Reuse	The limited use of rehypothecation as proposed in the final BCBS-IOSCO standards did not seem workable in practice. One-time rehypothecation would be overly complex to operationalise and control, especially across global markets and time zones. It would be too expensive for the limited benefits it would provide. More generally: The inability to reuse collateral will have an impact on the price of services provided to clients.	As there remains a risk that other jurisdictions do not restrict rehypothecation in the same way, this should be closely monitored by the Working Group on Margin Requirements (WGMR) and by the European regulators in order to avoid creating an unlevel playing field. This may require a policy intervention in the future, so we would urge regulators to monitor the market developments closely.	Collateral that is reused or rehypothecated should be allowed only under strict conditions. There is no evidence that the conditions listed in the BCBS-IOSCO framework have any application within the EU and therefore they should not be included in the final RTS.	The RTS were not changed in this respect, except for the treatment of cash IM.

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	The choice of asset treatment should be left to clients, with additional disclosure of risks and closer regulatory scrutiny if warranted. A ban on rehypothecation, combined with a higher demand for high-quality liquid assets, will also have an effect on liquidity more generally.			
Reuse	The respondents share the concerns of the ESAs that the BCBS-IOSCO framework for reuse/rehypothecation of collateral: leads to multiple legal and technical difficulties; and is likely to be of limited value and potentially unworkable in the form proposed. However, mandatory full initial margin segregation will create a situation where significant amounts of high-quality collateral	Consider it appropriate that the RTS do not preclude the potential for reuse or rehypothecation of collateral. Encourage the ESAs to work with industry with the aim of developing an approach that does not undermine the effectiveness of the protection of posted collateral while also providing some flexibility to reuse assets and put them to productive use, which we	The ESAs are of the opinion that even the permission of a limited rehypothecation would create new risk due to the claims of the third party over the margins. Allowing a rehypothecation of initial margin even in limited circumstances could undermine the protection of the posting party in the event that the collecting party enters bankruptcy.	No change.

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	are tied up and are not available for other uses. These requirements, coupled with the proposed Basel III/CRD IV/CRR liquidity requirements, will result in very significant liquidity demands being placed on banks.	believe will be beneficial to economic growth.		
Segregation of IM	The 'immediate availability' of initial margin is not practically feasible; under the EU Bank Recovery and Resolution Directive, the resolution authorities will have the power to temporarily suspend contractual termination rights. If such bankruptcy stays are not accounted for in the RTS, the impact would be to effectively prohibit any counterparty from entering into any non-cleared OTC transactions with an EU bank. In addition, initial margin held by	Proposals: Should be replaced with a requirement for prompt access to IM. initial margin to be available to the collecting entity in 'a timely manner'.	The immediate availability may not be feasible and the margin period of risk has been set out to include the time necessary to appropriate the collateral.	The final RTS were amended accordingly.

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	a third-party custodian will typically not be immediately available, as the custodian will have to take steps to ensure the legitimacy of the collecting party's claim for the IM.			
Phase-in variation margin	The exchange of variation margin is by no means universal practice, and it would, for some counterparties, require a significant shift in current practice. This could be particularly acute in emerging market jurisdictions.	The phase-in of variation margin is suggested. Requirements should not be effective until at least 2 years from the date on which final rules are adopted in all of the US, Europe and Japan.	The implementation schedules for initial margin and variation margin have been revised by BCBS-IOSCO by taking into account the operational and legal complexities of implementing the final framework. The ESAs are of the opinion that the draft RTS should be amended accordingly to be in line with the international standards.	The requirement to collect and post initial margin is delayed by 9 months. The requirement to exchange variation margin is also delayed by 9 months, and will be subject to a 6-month phase-in period.
Phase-in variation margin	'Big bang' start to the variation margin collection requirements from 1 December 2015 would be	Two approaches to address the concerns around the start of the variation margin requirements are proposed.	The implementation schedule for variation margin has been revised by BCBS-IOSCO by taking into account the	The requirement to exchange variation margin will also be delayed by 9 months, and will be subject

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	very challenging. The (re)negotiation of CSAs with a large number of counterparties: It would be extremely difficult to negotiate all the CSAs required during the short period between the finalisation of the RTS and the compliance date. There is a risk that many smaller counterparties will not be able to access hedging services or they will choose not to hedge due to the fact that the legal and operational cost of daily variation margin outweighs the risks of not hedging, or they simply do not have the operational capability to post and receive collateral.	Phase in variation margin collection requirements (with zero thresholds) in tandem with the initial margin collection requirements schedule under the EUR 8 bn initial margin phase-in threshold. This would ensure that systemically important counterparties would exchange daily variation margin with a zero threshold from 1 December 2015 with the remaining counterparties exchanging variation margin by December 2019. Allow counterparties to choose to apply the EUR 50 m threshold against the sum of variation margin and IM, where the collection of initial margin is not required (as a result of the initial margin phase-in	operational and legal complexities of implementing the final framework. The ESAs are of the opinion that the draft RTS should be amended accordingly to be in line with the international standards. The second proposal would not be in line with the overarching principle that all the FCs have to post variation margin. That proposal would de facto introduce another threshold for an exemption that is not foreseen in the BCBS-IOSCO framework. Where the issue of repapering can be solved with both proposals, the first proposal looks much simpler to implement and for the supervisor to monitor.	to a 6-month phase-in period. This would be in line with the amendments to the BCBS-IOSCO framework.

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		thresholds). Once the collection of initial margin is required, the EUR 50 m threshold could only be applicable to initial margin so that the variation margin threshold would become zero. Under this approach, non-systemically important counterparties would be able to trade without a CSA in place, unless they exceeded a MTM exposure of EUR 50 m (whereupon a CSA would need to be in place). This would reduce the documentation burden and the difficulty of renegotiating CSAs in order to eliminate (generally small) thresholds. The proportion of MTM exposure (approximately 2%) that would be left uncovered as a result of this approach would not be systemically significant. The		

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		amount of collateral posted by systemically important counterparties would be the same as what they would post if the threshold were only applied to IM.		
Margining frequency	Too costly and difficult to implement.	Costs can also be reduced by the application of higher thresholds, and the risks associated with this could be lowered by increasing the margining frequency (e.g. 5 business days).	VM should be exchanged daily. The ESAs recognise the practical impediments some counterparties may face and propose a more flexible approach.	VM requirements are adjusted to address potential issues related to different time zones, settlement portfolio reconciliation and dispute resolution.
Margining frequency	Frequency of collecting variation margin (within 1 business day) is difficult, as the margin will be delivered in line with standard settlement dates. Where counterparties are located outside the EU in different time zones, the difficulty in meeting the requirement would be compounded.	The draft RTS should require collateral to be called rather than collected. The frequency should depend on the systemic importance of the counterparty: the frequency of the calls should be weekly where the counterparties are not systemically important. Daily variation margin calls	The RTS cannot be silent on how frequently the variation margin has to be collected (and not only called). The RTS should recognise those situations where the variation margin cannot be collected on a T+1 basis (including time-zone differences, portfolio reconciliation and possible	The section of the draft RTS on the transfer of variation margin has been redrafted to also capture those specific situations. The final RTS were amended in line with the BCBS-IOSCO framework.

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		should only be required for participants that will be captured under the current initial margin phase-in timetable.	disputes). The phase in of variation margin should be aligned to the BCBS-IOSCO framework.	
NFC frequency	It is very important that the standards adequately reflect common practice of NFCs. (Although not obliged to clear/exchange collateral, some NFCs- voluntarily collateralise at least parts of their derivative exposure for risk management purposes. It is very likely that future market practice on bilateral collateralisation will strongly refer to the standards adopted by the ESAs.) An extension of the time period to 1 week would also be in line with the BCBS/IOSCO proposal (paragraphs 2.1, p.9), which provides that parties 'must	The ESAs should address the following aspects in an appropriate manner: Article 1 variation margin paragraph 1: The time span to meet their initial/variation margin obligations 1 day (!) after the execution of the contract should be expanded to at least 1 week after receiving the respective margin call or entering into the contract. Article 1 variation margin paragraph 1: A weekly reconciliation and exchange of variation margins would better take into account that	The ESAs recognise that the BCBS-IOSCO framework does not prescribe a daily exchange of variation margin (although it is suggested). VM for NFCs below the threshold is not required. NFCs above the threshold are systemically important and should have the capabilities to handle variation margin outflows. Margins related to derivatives for hedging purposes are not required for NFCs either. Voluntary collateralisation is out of the scope of the RTS and	The section of the draft RTS on the transfer of variation margin has been redrafted. However, no special treatment is allowed for the NFC and the derivatives in the scope of this RTS.

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	exchange […] the full amount of variation margin […] on a regular basis (e.g. daily)'. Of course, collateral should be exchanged regularly; the daily frequency mentioned by BCBS/IOSCO is only an example, not an obligation.	corporate own resources in its risk management.	none of the requirements – in particular, those concerning the frequency of the variation margin transfers – apply.	
Margining frequency	Daily exchange is onerous for certain smaller firms and is only useful if the positions can be meaningfully revalued on a daily basis (it is not realistic in markets that are lacking robust observable price data).	RTS should provide flexibility to reflect concerns.	These are two different issues. Smaller counterparties can rely on external support – if they do not want to develop the technology internally – to obtain daily quotes. The ESAs recognise the additional costs of this requirement. In accordance with the draft RTS, derivatives with illiquid underlying may be valued mark-to-model.	The section of the draft RTS on the transfer of variation margin has been redrafted. However, no special treatment is allowed for the NFC and the derivatives in the scope of this RTS.
Margining frequency	There is some uncertainty regarding the interpretation that 'collect variation margin' means a	Clarification is required that the requirement means call at least daily but settlement is	The RTS cannot be silent on how frequently the variation margin has to be collected (and	The section of the draft RTS on the transfer of variation margin has been redrafted.

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	requirement to call for variation margin at least daily and for settlement within the standard settlement time (for the relevant eligible collateral being collected).	within the standard settlement time.	not only called). The RTS should recognise the situations where the variation margin cannot be collected on a T+1 basis (including time-zone differences, portfolio reconciliation and possible disputes).	
Valuing exposures and VM	The requirement to calculate variation margin in accordance with the EMIR's MTM model is too prescriptive.	The variation margin should be based on the appropriate measure of current credit exposure as agreed between parties.	Valuation should be performed on a MTM basis. If, and only if, that is not possible, a mark-to-model valuation should be carried out. Very illiquid underlying might produce zero variation margin on a daily basis with both approaches. It is not clear what a 'measure of current credit exposure as agreed between parties' would be in practice.	The section of the draft RTS on the transfer of variation margin has been redrafted. However, this recommendation was not included.
Segregation of VM	-	Clarify that variation margin is not subject to segregation requirements and	VM posted in cash is not subject to any segregation	It is already clear that the segregation requirements

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		rehypothecation restrictions.	variation margin initial margin	apply to initial margin only.
11. Initial margin				
a) Timing and settlement				
Operational costs	Settlement time is too frequent.	The collection of initial margin and variation margin should be subject to the standard settlement cycle; it cannot be daily if, for example, securities settle at T+2.	The ESAs recognise that the practice is converging to a settlement cycle of T+2 and that this should be acknowledged in the requirements related to the IM.	The draft RTS were amended requiring that initial margin must be called for on a regular basis, with the actual delivery initial margin subject to the standard settlement cycle.
Timing frequency	IM collection on a T+1 basis would create disruptions and rise in disputes.	Change this to a T+4 basis.	The standard settlement cycle is moving towards T+2 in the EU. The time to collect initial margin should be coherent with the common practice, taking into account the time required for transactions outside the EU.	The RTS were adapted to set the time for the collection of initial margin in a way that is compatible with the current practice.

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b) Margin methods – Initial margin models (transition to standardised approach)				
Transitional arrangements	No transitional arrangements are provided in the RTS where the initial margin model ceases to comply with the requirements. The standardised method would result in a significant increase in the calculated margin and could result in cliff effects and potential market disruption. This transitional solution would give model users the opportunity to discuss any challenges that have arisen regarding their models with their regulators and make the necessary changes before the use of the standardised method is required.	Transitional arrangements should be available in the first instance, before the use of the standardised method is required. The arrangements could include adding a multiplier (e.g. 1.2 times the internal model result) for a short period of time.	Counterparties have to comply with the RTS at all times. A transitional arrangement would imply that one of the two counterparties is undercollateralised.	The RTS do not include any transitional arrangements from where one initial margin model ceases to comply with the requirements.

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Transitional arrangements	Article 1 MRM (4) would require counterparties to switch to the standardised method in cases where the initial margin model no longer complies with the requirements. This may conflict with the obligations under the CRR with respect to the IRB. Such a forced change from an internal model to the standardised method may also be very challenging for the other counterparty, as it has a direct impact on the other counterparty and may invalidate the original economic basis for the transaction.	Introduce at least a grace period allowing counterparties to adjust to the change or agree on another model. In addition, counterparties would need to be informed of such change.	Counterparties have to comply with the RTS at all times. This includes the initial margin model requirements. A transitional arrangement would imply that one of the two counterparties is undercollateralised.	The RTS do not include any transitional arrangements from where one initial margin model ceases to comply with the requirements.
Model approval	The key challenge in view of agreeing on a model is that, in many cases, both parties will have regulatory approved models for the purposes of the CRR, which	N/A	Initial margin models can be different from the models for capital requirements and, although the draft RTS do not introduce an explicit approval	No change to be made to the final RTS.

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	can differ to a considerable degree. In this circumstance, the counterparties will not be able to adopt the model of the other party (at least not without changing their exiting model, and subject to approval by the relevant regulatory authority).		process, they are subject to the ongoing supervisory review.	
c) Initial margin models – Model requirements				
Requirements in general	Requirements set out in Article 1 to 6 MRM are too rigid and detailed.	In order to grant the parties the necessary flexibility, it should be considered that the requirements are replaced by more general minimum criteria.	The ESAs recognise the need for flexibility in developing initial margin models. However, the requirements that all the models have to meet have to be spelt out in order to guarantee a harmonised treatment across all the Member States and all the industry sectors.	The draft RTS were redrafted to allow more flexibility in the development of initial margin models.
Notification	Model approval – Notification of the model: The capacity and	It should be clarified that the notification of models to the	As no approval process is foreseen in the Level 1	No change.

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	competence of the national competent authorities (NCAs) to respond to, or not reject, notifications of initial margin models will be critical for firms. However, the draft RTS are unclear as to what the competent authority is approving. If NCA approval or acquiescence is required, this may lead to an unlevel playing field within the EU.	NCA is for information only.	regulation, the RTS should not specify the details of such process.	
Model approval	It is not clear whether an internal model requires regulatory approval before it can be used to calculate initial margin under the RTS. If prior regulatory approval would be required, ESMA and the EU competent authorities are likely to face a significant volume of initial margin model applications for approval within a very short	Preference: There should be no formal model approval process but rather those firms should be able to, on request, demonstrate to their competent authority that their model is robust and satisfies the minimum confidence interval and risk horizon standards in the RTS. IM model approvals need to be	As no approval process is foreseen in the Level 1 regulation, the RTS should not specify the details of such process.	No change.

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	time period. This would cause a model approval bottleneck, and firms would potentially not receive model approval decisions until the initial margin exchange rules are in force. This could force the whole market to use the standardised method for an interim period. As the standardised method is very conservative, the overall liquidity impact of large market counterparties having to use the standardised method would be significant.	prioritised by ESMA and the NCAs. There needs to be a high degree of cooperation and coordination between the relevant parties. Interim process: As many dealers already have regulatory approval for counterparty risk models, such firms should be allowed to continue to use their existing models and collateral processes before approval decisions are taken (requirement: they have to demonstrate to the relevant supervisors that the amount of initial margin they collect meets the minimum confidence interval and risk horizon required by the RTS).		
Disputes	It is unclear how the ESAs intend choices to be made when the results of the models used by a	In the case where the results of the models used by a firm and their counterparty disagree,	The two counterparties are required to agree in advance on the characteristics of the	The RTS include some clarification concerning dispute resolution.

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	firm and their counterparty disagree.	the ESAs could specify, for example, that the model approach could be agreed between the parties, that the receiving party model always prevails (or the posting party), or that there could be an agreed tolerance between these and the higher or lower should be pledged.	models used and on the modalities to exchange collateral. These should also include the dispute resolution process. As disputes can arise from a large number of different reasons, it is not appropriate to address each case in the RTS.	
Dispute resolution	Given that the proposal would allow the counterparties to an OTC derivative contract to use two different prudentially approved models for the calculation of initial margin (or allow one counterparty to use the standardised schedule and the other a modelled approach), the approach may significantly increase the number of collateral disputes. In the case of a dispute, it is unclear how resolution could be achieved, as both firms are	It is important that the ESAs and NCAs support the work of industry in addressing these issues.	The ESAs believe that the intensive interaction between them, other supervisors and industry stakeholders has been extremely productive and fully support all the initiatives that aim to minimise disputes between counterparties.	No change.

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	likely to argue that their calculation methodology is appropriate, particularly if it has been approved by their supervisor.			
IM model	Distinction between sell-side and buy-side firms: The majority of buy-side firms will not be able to develop complex initial margin models. While the RTS provide for one counterparty to a trade to rely on the model of its counterparty, there are significant validation and governance challenges that would need to be overcome before a counterparty could get comfortable with relying on its counterparty's model. In addition, the use of a third-party model would require a significant level of expertise to assess the accuracy of the initial	It should be possible for relatively simplistic spreadsheet-based models to be used to calculate IM, provided it can be demonstrated that such a model meets the minimum confidence interval and risk horizon.	The compliance of the models used is the responsibility of the single counterparty and it has to be justified to the competent authorities. Whether or not a simplified approach (e.g. running on a spreadsheet) can be used depends on the compliance of the model (behind the calculation tool) with the requirements on the RTS.	No change.

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	margin calculation and compliance with the requirements of the RTS. There should be a pragmatic and more risk sensitive alternative for buy-side firms to the use of the standardised initial margin schedule firms, which, in our view, is very conservative.			
IM calculation	The requirements for counterparties to verify (a) (at least annually) the enforceability of netting for the initial margin calculation pursuant to Article 6(2) MRM; and (b) at inception and at least annually with respect to the compliance of initial margin segregation arrangements with the requirements of Article 1(3 and 4) SEG by way of satisfactory legal opinions in all jurisdictions (pursuant to Article 1(5) SEG) will impose significant	These kinds of requirements should be modified to require firms to be in a position to provide, on request, a written and 'reasoned legal basis' for enforceability and compliance.	The RTS should at least require having procedures in place to ensure the legal validity of these arrangements and that those are continuously kept under review.	The new draft RTS include a more general approach.

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	cost.			
IM model	Costly and difficult to compute.	It would be useful to consider the option of complementing the CSA to the ISDA Master Agreement with the indication of a third party accountable as a calculation agent. Support the use of internal models already validated for regulatory purposes, with the following specifications: Clear definition by the regulator of the metrics (e.g. potential future exposure with a defined confidence interval). In particular, we suggest the use of the internal model framework for counterparty risk, as it is designed to model netting agreement at	The ESAs believe that the RTS are granular enough to allow a harmonised implementation in the EU and, therefore, no additional specifications should be included at this stage. Neither of the two proposals are in contrast with the requirements in the draft RTS (although they might differ in the details).	Maintain the level of granularity as in the Consultation Paper.

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		counterparty level; and Use of the internal models when at least one counterparty has an internal validated model (agreement on the calculation agent).		
IM model	Clarification	We suggest specifying whether a regulated entity can choose between a model defined per single asset class, or a model applying the same approach to all asset classes or to different risk factors.	As an entity can have multiple counterparties and therefore multiple models in use, there is no reason to require applying a single model over the entire portfolio.	No change.
Level of model prescription	Model requirements in the RTS are too prescriptive. The use of internal models for calculating initial margin for regulatory purposes is new, and both industry and the regulators face a steep learning curve in this area.	Make them simpler and include more complicated risk factors in a second phase. The focus should be for the ESAs and the NCAs to work closely with industry to understand and grow comfortable with the models being proposed. We would	The model requirements were reviewed to allow, at the same time, the maximum flexibility in the development of the model and the harmonised application of the rules in the EU.	No change.

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		then not be opposed to changes being made to the RTS at a later date to address specific issues identified in the initial round of model development and approvals and when best practice is better understood.		
Margin period of risk	The use of the CRR's definition of 'margin period of risk' is not appropriate. The BCBS-IOSCO Quantitative impact study (QIS) was based on a 10-day time horizon, whereas the CRR's definition requires a 20-day time horizon if there are more than 5 000 trades or at least 1 illiquid trade in the portfolio. 10 days is longer than required to close out any significant risks on the largest counterparties.	A 10-day time horizon should therefore be mandated.	The ESAs recognise the need to introduce requirements for initial margin models that depend on market conditions and not on the characteristic of the two counterparties, as this would preclude any standardisation. However, the fact that some markets may be less liquid or have a smaller number of participants should be captured in the margin period of risk.	The draft RTS allow developing initial margin models using the margin period of risk based on assumptions different from those under the CRR. The estimated margin period of risk might be longer than 10 business days, as it has to reflect the characteristic of the underlying market.

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Confidence interval	Margins should not be calibrated to cover all potential losses without any consideration of the probability of such losses occurring, as the counterparty credit risk mitigation benefits of such an approach would be far outweighed by the costs in terms of liquidity. initial margin is inefficient as it assumes that both parties to a contract must be fully protected against each other's simultaneous defaults, which fails to give credit for the portfolio effects of counterparty credit risk. IM is a risk mitigation technique used by CCPs that is less relevant for non-cleared trades. CCPs require initial margin because they typically lack the necessary level of capital to absorb potential losses without recourse to the default fund. Basel III/CRD IV/CRR capital requirements result in a	A less conservative calibration than 99% over a 10-day horizon should be used to reflect the contribution of risk mitigants available to prudentially regulated entities and that are not available to CCPs.	The ESAs are of the opinion that setting a confidence level lower than 99% or a margin period of risk shorter than 10 business days would be inconsistent with the BCBS-IOSCO framework. The interaction between capital and margins is already addressed in the EMIR in Article 11(4).	The draft RTS maintain the 99% confidence level over a 10-day horizon.

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	significant increase in the amount of regulatory capital that prudentially regulated entities are required to hold. (Credit valuation adjustment (CVA) capital charges and funding valuation adjustments (FVAs) are significant, and are very sensitive to counterparty quality and risk mitigants; therefore, they materially address the risk of rating migration up to default.)			
Period of significant financial stress	Initial margin models calibration: It is unclear what is meant by a period of significant 'financial stress'. The financial stresses that one may experience in practice are rarely the ones anticipated.	Further clarification and/or guidance is required, as it is very subjective and possibly arbitrary to determine what 'financial stress' is. Specific wording should be included, stating that both the models and methodology, including calibration data and stress data, should be regularly validated by an independent	The wording was chosen to be in line with the CRR on Internal model Method (IMM) models, where the term 'significant financial stress' is used. All the non-standardised methodologies have the risk to produce incompatible results. An independent evaluation was already required in the version of the draft proposed with the	No change.

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		third party.	Consultation Paper. An independent evaluation, either of a third party or internally, would not guarantee the same results from two different models.	
Period of significant financial stress	The requirement that 25 % of the data has to be representative of a period of financial stress might be too rigid a requirement (it may result in misrepresentative data), and is different from corresponding requirements under the CRR (which do not contain similar rigid or specific obligations regarding stressed data).	Suggest reducing this minimum.	The ESAS consider the proposal as an appropriate trade-off between the need to have flexibility in developing the initial margin models and the risk of a 'rush to the bottom' in cases where competitive models were present. An equally weighted period of stress should avoid that the 'stress data' are watered down during the calibration.	The draft RTS maintain the requirement to consider at least 25% of the data as representative of a period of financial stress.
Calibration frequency	The frequency of recalibration (every 6 months) is too high, as it may unnecessarily increase systemic risk. A short recalibration period will	Annual recalibrations shall be organised by the WGMR in order to assess the appropriate time period for calibration. An impact assessment and QIS	A certain level of procyclicality is inherent to the margin framework. The use stress periods in the calibration should mitigate this effect.	The draft RTS were redrafted.

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	potentially increase the procyclicality of the model, as observations from recent periods of market volatility will drive initial margin requirements. The initial and future recalibrations should be carefully controlled in order to mitigate this risk. This approach would be operationally challenging to implement.	could be undertaken to inform any decisions around recalibrations. Where significant changes in the requirements are proposed, a phase-in period should be provided to smooth the necessary adjustment. A period of 1 year would appear to be more appropriate. Additionally, the minimum frequency of the backtesting and recalibration requirements should be aligned, and it is therefore proposed that the backtesting requirement in 'Article 5 MRM – Integrity of the modelling approach, paragraph 1. (i)' should take place at least every 12 months.	On the first proposal, the market may converge to one or more than one initial margin model. It is not clear why the international standard setters should be involved in the monitoring and implementation of each specific model. The ESAs recognise that an annual recalibration may be appropriate. However, the recalibration of the model (or part of it) may be required when market changes occurs. The proposal is very open on the frequency and modalities of the backtest. Therefore, the proposed draft should address this concern.	
IM data for initial margin models	The current drafting around the requirements for data used in initial margin models in paragraph	To aid operational certainty, it should be clarified that this is a requirement – for the initial	This should be corrected in the final draft RTS.	The final draft RTS were amended to avoid misinterpretations regarding

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	2 includes the terminology 'shall cover'.	margin that is being collected – to be sufficient to cover the newer historical data, and no model parameter adjustments are necessary where the initial margin is still sufficient.		the requirements concerning model calibration.
Historical data	Historical data (at least 3 years) phrasing can lead to issues. If one party chooses to use 20 years and another 4 years, dramatic differences would be observed.	N/A	Counterparties have to agree on the characteristics of the initial margin models (if the standardised approach is not used), including the assumptions in its calibration. In accordance with the BCBS-IOSCO framework, a maximum of 5 years of data (including the stress period) should be mandated.	The RTS include a time horizon of the maximum of 5 years for the calibration of initial margin models.
d) Primary risk factor and underlying classes				
Asset classes/risk factors	Respondents disagree that initial margin models shall assign a derivative contract to an	It should be sufficient to perform the assignment by primary risk factor based on	The draft RTS are in line with the requirements of the BCBS-IOSCO on the process of	No change.

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	underlying class based on its primary risk factor, defined in terms of the sensitivity of the value of the contract to the market risk drivers.	qualitative substantiation without having to compute sensitivities for each derivative contract.	mapping derivatives to asset classes and risk factors.	
Use of risk factors	Categorising derivative contracts according to risk factors would create positive risk management incentives, as the risk reducing impact of hedges should be better accounted for. There is concern that some derivative contracts may not fit neatly into one of the underlying asset classes set out in Article 4 MRM (2). It may result in disputes between counterparties as to the correct asset class for any given contract and may lead to inconsistent approaches across the market.	Flexibility should be provided to allow counterparties to categorise derivative contracts according to risk factors rather than asset classes.	On the mapping, the ESAs recognise that the approach is not necessarily the most conservative in all situations. However, the draft RTS are in line with the requirements of the BCBS-IOSCO on the process of mapping derivatives onto asset classes and risk factors. It is not clear how mapping onto risk factors, instead of onto asset classes, should reduce the number of disputes. The proper way to reduce the number of this kind of disputes is to develop a taxonomy of the product that identifies the relevant risk factors.	No change.

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Netting	Respondents disagree with only allowing netting within asset classes when a master agreement exists across all these asset classes.	Netting across asset classes should be allowed.	The draft RTS are in line with the requirements of the BCBS-IOSCO on the procedure of mapping derivatives onto asset classes and risk factors. The ESAs share the concern that some relationships might be prone to instability and may be more likely to break down in a period of financial stress.	The ESAs maintain the same approach in the draft RTS as in the Consultation Paper.
IM calculation and trades in the netting set	As Article 4(4) MRM is interpreted that diversification, hedging and so on can also be applied to centrally cleared (exchange traded and OTC traded) as well as non-cleared OTC transactions, it is not clear whether non-derivative transactions can also be considered when determining initial margin requirements.	Non-derivative transactions should also be considered in determining initial margin requirements in cases where the offsetting reflects the position which could be achieved on a default of the party providing margin by virtue of legally enforceable risk mitigation arrangements (such as close-out netting and enforcement of security).	The level of initial margin should be calculated without including centrally cleared derivatives, other derivatives not in the netting set, or securities collected as collateral. Only where the netting set includes OTC derivatives that are recognised as non-centrally cleared OTC derivatives in another jurisdiction should two counterparties be able to	The RTS were adapted accordingly.

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			include those for the calculation of IM.	
Joint modelling of derivatives and collateral	Counterparties have exposure to same risk factors in multiple markets. Therefore, initial margin models would be most effective if non-derivative assets were included.	Parties should be permitted (but not required) to include non-derivative assets in the model.	The level of initial margin should be calculated without including centrally cleared derivatives, other derivatives not in the netting set, or securities collected as collateral.	The ESAs maintain the same approach in the draft RTS as in the Consultation Paper.
Granularity of the requirements	The requirements are overly prescriptive and could hinder the development of effective models in the tight time frame before the compliance date. Requiring models to capture all potential main non-linear dependences would require an excessively complex model, as it would potentially need to include at least second-order sensitivities for all pairs of risk factors. Market participants should have	Alternative proposal 1: Deletion of the requirements (a) to (i) of Article 5 MRM. Instead of these requirements, we recommend that the final draft RTS set general minimum standards. Risk drivers that are material in a systemic sense should be included, but not those for an individual 'micro' netting set. Alternative proposal 2: If the ESA do not opt for a less prescriptive approach, the	Proposal 1 is inconsistent with other comments that require clarifications on the application of the rules. The initial margin models will be subject to the supervisory review and, in particular, to the compliance with the regulation stated in these draft RTS. For proposal 2, it is not exactly clear what the proposal is in this case. Non-linear dependencies and	The wording of the RTS was amended to specify the model requirements for the granularity that is necessary for these RTS. Additional details are left to the model assessment of the competent authorities.

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	the flexibility to adjust their models to minimise procyclicality.	following observations on the current draft requirements: Paragraph 1(a) states that the model shall incorporate interest rate risk factors corresponding to the individual foreign currencies in which the derivatives are denominated. Clarification would be helpful on whether this could mean inclusion of FX conversion risk. Paragraph 1(h) on non-linear dependencies should be clarified to state that the requirement refers to the tail dependence assumption upon which some Value at Risk (VaR) models rely. This is because systemic risk derives from major and linear risk factor sensitivities (such as USD interest rates or general credit spreads widening) rather than non-linear ones (such as USD	changes in implied volatilities may be relevant for many types of derivatives and, in principle, there is no reason to neglect them. The ESAs recognise the importance of having initial margin that can be shared between counterparties. Therefore, as long as the overall requirements are prudent enough and subject to appropriate backtests, certain aspects can be captured in the model with a simplified approach. The language in the draft RTS was modified, as the ESAs recognise that processes that are too mechanistic may lead to undesired results. Frequency of calibration and time interval to substitute or top-up the collateral are	

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		interest rate gamma or credit spread vega). Thus, one of the two main objectives of the final BCBS-IOSCO recommendations is covered solely by including linear risk factors, while the second objective is not advanced by the inclusion of non-linear risk factors. In addition, for non-linear risk factor sensitivities, a common convention or interpretation that is used in the market is often not available. Therefore, apart from the largest market participants, the development of such models will be overly burdensome. IM levels should not be explicitly linked to market levels or volatility, nor should scenarios be automatically updated with time. These should be recalibrated	already prescribed in the RTS.	

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		annually, subject to governance requirements.		
Integrity of the modelling approach	Respondents do not support the requirement that initial margin models shall capture main non-linear dependencies, as this would significantly increase the complexity of initial margin models and would likely also increase the potential for initial margin disputes.	Support the approach to initial margin modelling set out in the ISDA Standard initial margin model for non-cleared derivatives, White Paper 1, and believe initial margin models should satisfy the nine criteria set out by ISDA: (i) non-procyclical; (ii) ease of replication; (iii) transparency; (iv) quickness of calculation; (v) extensible; (vi) predictability; (vii) reasonable cost; (viii) governance; and (ix) margin appropriateness.	The ESAs support all the targets listed in the proposal. That language, however, is inappropriate for a technical standard, as it puts no limit on how the various aspects should be implemented.	The new draft RTS specify that the main non-linear dependences, as well as correlation and basis risks, should be captured in the design of the model. If they are not captured explicitly, the model should be conservative enough to result in margin requirements that are at least as high as a more granular approach would require.
12. Collateral eligibility				

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a) Cash collateral for IM				
Use of cash as IM	It would be disproportionate to require market participants to audit a potential default risk, if the default risk related to the deposits of the cash collateral contribution is not considered by the ESAs.	The ESAs intend to allow cash to be eligible for making initial margin contributions. Cash amounts are deposited with banks (third parties).	Cash initial margin is allowed. The treatment of cash initial margin by third-party holders or custodians should be further specified.	The treatment of cash initial margin has been clarified in the final RTS, including the segregation requirements and the possibility to reuse cash IM.
b) Eligibility criteria for units in UCITS as collateral				
Post capital or hold assets	As investment funds are subject to the cover rule, they are only allowed to enter into derivatives that can be fulfilled with the assets of the investment fund. In order to avoid any misinterpretation, the ESAs should clarify in Recital 3 that, in case of investment funds, complying with the cover rule is equivalent to holding own capital.	Complying with the cover rule (Article 51, paragraph 3 of Directive 2009/65/EC) should be recognised as equivalent to holding own capital. According to Recital 3, a counterparty shall have the choice to either post/collect (initial) margins or hold own capital if the amount of the initial margin is below the threshold.	The proposed draft RTS do not distinguish between entities holding regulatory capital and others for which the sectoral regulation does not envisage own funds requirements. The treatment EUR 50 m threshold should be compatible with the treatment of the EUR 8 bn permanent threshold.	The draft RTS were adjusted to allow counterparties not subject to prudential regulation to use the EUR 50 m threshold.

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UCITS	The extension of banking regulation regarding collateral management to all types of counterparties would unnecessarily burden asset managers, while the existing UCITS diversification regulation would sufficiently protect investors' assets.	The existing UCITS regulation for the use of collateral (implementing, at a national level, the ESMA guidelines for issues related to ETFs and other UCITS) offers sufficient guarantees for safe and efficient management of collateral, and should be extended to the rules on collateral under EMIR without unduly constraining the use of assets and the discretion of the asset managers.	This should be addressed in the context of the ESMA guidelines.	No change is required to these RTS.
Alternative investment funds (AIFs) and UCITS	UCITS-type AIFs are not eligible collateral. Reasoning: As Directive 2011/61/EU has introduced AIFs as a newly regulated category of investment funds that comprises all funds but UCITS, a lot of AIFs are comparable to UCITS, which explains why they are often	'UCITS-type' AIFs should also be considered eligible as collateral.	It is not clear how 'UCITS-type' AIFs should be defined and a definition is missing in the EU regulations.	No change.

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	referred to as 'UCITS-type' AIFs. Examples in this respect are Austrian and German 'Spezialfonds', which can be held by only one investor. However, such AIFs will not be eligible as collateral, although they stick, in principle, to the same rules and requirements as UCITS.			
UCITS	Respondents are concerned that the eligibility criteria for UCITS (which states it must be assessed by a counterparty) may require access to information that is not publicly available and may be very difficult or impossible to source.	All units or shares in UCITS should be considered eligible collateral under the RTS.	The approach proposed in the draft RTS is the same as in the CRR, and it is also considered suitable for margin requirements.	The ESAs maintain the same approach proposed in the Consultation Paper.
c) Credit quality assessment				

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
External ratings	There is different treatment of external and internal credit assessments. As investors should not overly rely on credit rating agencies' (CRAs) analysis and should develop internal credit assessment capacities, it does not seem fair to introduce a difference of one notch of credit quality step (CQS) when determining the eligible collateral depending on whether it is based on an internal rating or an external one provided by a CRA. This causes a particular concern on our part, as we will rely on models developed by banks and, as such, that take into consideration their internal credit estimates.	In order to challenge these models, we want to be able to take ratings published by the CRAs as reference, especially because the CRAs produce extensive research on the credit performance of rated issues over a long period of time. In general, the entire field of the investment grade (as defined by CRAs) issues should be considered eligible.	External and internal ratings should be treated in a similar way.	The RTS were amended accordingly.
IRB – Information	The sharing of information and the monitoring of the internal	We expect, as the most likely scenario, the emergence of	The ESAs are of the opinion that the information disclosed	The ESAs maintain the same approach in the draft RTS as

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sharing	rating model is seen to be difficult. This would mean – at least to a certain extent – requiring/granting the counterparty access to internal evaluation and methodology. Proprietary information will mean that IRB approaches are very difficult to use in practice, giving rise to many disputes. Concern: If IORPS and their asset managers would have sufficient information on the IRB model and would, therefore, be able to use the IRB model of their counterparty banking institutions, both counterparties would be in equal conditions. Otherwise, they will not be able to use one or two of the three options provided in Article 3(1) LEC.	third-party models that can be adopted and agreed upon by both counterparties. Therefore, we expect most participants to fall back to the External Credit Assessment Institutions (ECAI).	on the IRB is sufficient and that a more granular exchange of information should be subject to agreement between the two counterparties.	in the Consultation Paper.
IRB	Some of the banks that are using IRB models also use external	Referencing external ratings would allow parties to benefit	The ESAs are of the opinion that the RTS should not	No change.

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	rating and provide NCAs with full disclosure.	from fewer disputes, relative to the much larger number of collateral computations that are looming on the horizon.	mechanistically rely on external ratings and that alternatives should be available to market participants.	
IRB – Disputes	The use of IRB and diversification requirements might give rise to disputes.	Support the development of an industry-wide standardised approach for the valuation of margin that can be used by the parties to transactions. This will create greater certainty between the parties to transactions. There will be additional impacts on internal processes, mainly on concentration limits monitoring and the application of IRB on the rating side; we would also expect that more disputes need to be managed.	The ESAs may take into consideration this option in future, as this approach became available.	No change.

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IRB	The adoption of counterparty IRB models may likely lead parties to have IRB models that significantly differ from each other.	IRB rating models are subject to supervisory assessment for approval, and the regulatory authorisation requires comprehensive information to be provided in order for the transparency and reliability principles to be satisfied. This may ensure appropriate transparency and demonstrate adequate understanding to supervisory authorities while also ensuring access to disclosure and reliability.	The ESAs are of the opinion that the information disclosed on the IRB is sufficient and that a more granular exchange of information should be subject to agreement between the two counterparties.	The ESAs maintain the same approach proposed in the Consultation Paper.
Ratings	There is no reason to exclude the assessment of the credit quality of government bonds issued by Member States' governments, central banks, regional governments and public sector entities denominated in domestic currency.	It is suggested to align the two requirements.	EU Member States' governments and central banks, as well as well-identified regional governments and public sector entities, are treated as in the CRR.	The ESAs maintain the same approach proposed in the Consultation Paper.

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Ratings	On cliff effects: The RTS define high-quality assets eligible for collateral as those having a CQS of 1 or 2. The RTS therefore exclude all assets having a CQS of 3 to 6. The potential cliff effect linked to a downgrade of an asset is therefore not linked to the credit rating itself, but rather to the requirements of the EMIR regulation. In more general terms, cliff effects can occur at all levels of the rating scale, as market participants may define their own requirements. While the timing of a rating action is rarely acceptable by all (some claiming that the action should not have occurred while others saw the requirement existing for a period of time), CRAs take their rating decisions independently, without taking into account potential	On cliff effects: An alternative route would consist in taking into account all 6 CQS and increasing the collateral requirement depending on the CQS. Such a differentiated approach is being used under the CRR, where the capital requirements increase with the CQS (in addition, the CRR differentiates according to the market segment of the issuer).	The potential cliff effects are mitigated by a number of mitigants. The counterparties can rely on alternatives to ECAIs' ratings, such as the IRB of an authorised credit institution. A grace period and the concentration limits are also effective mitigants of the cliff effect following a downgrade.	The ESAs maintain the same approach proposed in the Consultation Paper.

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	repercussions. This ability to act independently and when required is fundamental to a CRA. [It should be noted that the cliffs defined under the RTS are not valid in all other market segments. The potential sell-off risk, therefore, does not concern all market participants in the same way. This differentiated approach by market segment contributes, therefore, to more financial stability.]			
Ratings	Grace period: The idea of introducing a grace period following a downgrade below the EMIR established cliffs is interesting, as it allows for a reflection time for the market participant. The time frame (grace period following a downgrade) of 2 months may be too short, as potential formal requirements for	The proposal is that the grace period should be extended to a 6-month period. Additionally, after this analysis period, the market participant (especially for the long-term investor holding to maturity) should be able to keep the collateral. These 'formerly' high-quality assets could be	The ESAs are of the opinion that the 'documentation and approval time' cannot justify 6 months of non-properly collateralised exposures. Maintaining low-quality or illiquid collateral would be hard to justify from a prudential point of view.	The ESAs maintain the same approach proposed in the Consultation Paper.

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	the replacement of the collateral may require documentation and approval time.	limited to, for example, 10% of all collaterals held between the counterparties.		
IRB	Typically, if the IRB is used for non-rated securities, it can make the sale of the collateral in a stress period more difficult in the absence of an external rating. Small/medium size asset managers will not be able to have approved IRB models nor will they be able to monitor their counterparties IRB models. IRB approach could lead to wrong-way risk.	The IRB approach should not be encouraged. The acceptable CQS should be positioned at the same level, level 3 for usual bonds, in both cases (external ratings and IRB).	CQS should be positioned at the same level. The RTS require the monitoring and assessment of the liquidity of the collateral. It is correct that only certain types of counterparties will be able to have the approval of their internal rating models. The use of the IRB is, however, subject to the agreement between the two parties. Wrong-way risk is defined in the RTS (in line with the CRR) and collateral showing wrong-way risk is excluded.	The RTS have been reviewed to address these concerns.

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IRB – Information sharing	Some concerns regarding the requirements to share information with third parties (counterparties): The use of internal rating models in determining collateral eligibility may have an unintended market impact of releasing non-public information into the market. An approved IRB approach models of banks will be based on a combination of public and non-public information, and the use of these models to indicate collateral eligibility may result in the collateral taker releasing non-public information to the counterparty, particularly where a request for collateral substitution is required due to a change in CQS. Further, use of internal rating models may lead to disputes if there is disagreement on the collateral quality	The final draft requirements should clarify how much information is expected to be shared with the counterparty to allow them to fulfil their obligations under the rules. As some rating models are proprietary, only the underlying principles could be disclosed.	[The regulation does not prescribe to publicly disclose more than what is already required as Pillar III under the CRR.] What information should be shared to the counterparty should be agreed in advance. The RTS do not require sharing any non-public information. Substitution of collateral can occur for a number of other reasons than the security/issuer losing its rating. Typically, the reasons for which the collateral is substituted are not shared to the counterparty. Although the ESAs do not expect this to be a widespread practice, the draft RTS allow the use of a counterparty's IRB model, subject to a bilateral agreement on the information,	The draft RTS do not contain more disclosure requirements than those proposed in the Consultation Paper.

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	(particularly if the external CQS differs from the internal CQS). The text of the Consultation Paper notes that an institution's rating model can also be used by the transacting counterparty. Typically, an institution is not permitted to share rating information with public-side functions; therefore, we have some concerns regarding the requirements to share information with third parties.		to be disclosed to the non-IRB counterparty. If the parties are concerned about disputes, they can rely on the alternative approaches.	
IRB	It is considered that the use of the IRB approach adopted by individual firms in determining haircut may be a cause of intractable dispute between counterparties.	To establish a framework that avoids a dispute, it is requested to specify a standard that is uniformly applied by each firm.	The ESAs are of the opinion that the proposed draft RTS strike a good balance between the possibility of relying on a supervisory model (i.e. the standardised method) and the need for market participants to be able to have their own assessment of the collateral quality.	The IRB approach is maintained as an alternative to the ECAIs' ratings.

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External ratings	The proposal to use the IRB approach to assess credit quality is in line with this proposal, but will face numerous organisational questions (which IRB should be used, and what happens when the so calculated credit quality deteriorates and crosses the cliff?).	(External) ratings should be used in parallel with the IRB process.	As the CRA III Regulation requires users of ratings to carry out their own risk assessment and not to rely mechanistically and solely on credit ratings, the proposed draft RTS introduce the possibility and the incentives to alternatives to external ratings. Nonetheless, external ratings are not subject to any ban and can be still used for assessing the credit quality of the collateral collected. The use of many different IRB models should reduce cliff effects, certainly not increase them. Other mitigants are introduced to further alleviate the risk of cliff effects.	The ESAs maintain the same approach proposed in the Consultation Paper.
Equities as eligible collateral	Respondents caution against allowing equities as eligible collateral: Equities are too volatile	Equities should not be eligible.	The set of equity eligible as collateral is relatively small. Proper haircuts and	The criteria for the identification of equities as eligible collateral are the

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	and subject to jump risk, which therefore makes them unsuitable as collateral. Collecting entities would not be assured that their value would be sufficient to meet obligations, particularly during a period of financial stress.		diversification requirements should capture the risks highlighted by the respondents.	same as in the Consultation Paper.
Eligibility of equity	The proposed rules limiting the equities eligible as collateral to equities included in a 'main index' and the proposed concentration limits will limit the ability of strategic equity investors to enter into this type of transaction. (See section on special cases of this annex for a list of examples.)	A carve-out should be introduced so that the new rules do not apply to 'derivative transactions where the assets posted as collateral are of the same type and amount as the assets underlying such derivative transactions'.	The underlying of a non-centrally cleared OTC derivative can be very illiquid. As such, it would be of little use as collateral, as it might be difficult to liquidate it with minimal market impact, to reuse it as collateral, or to repo it. Point 2) restates what is required in the RTS. In order not to leave open the interpretation of what the phrase 'sufficient in case of default of the posting counterparty to cover in full	No change in this direction is included in the final RTS.

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			the exposure of the receiving counterparty' means, the RTS detail, among others, the criteria for the minimum quality of the collateral.	
List of eligible collateral	As currently drafted, the RTS state that 'the following asset classes shall be eligible as collateral'.	In the final draft RTS, it should be made clear that counterparties are free to adopt a more conservative approach to the eligibility of collateral should they wish to do so.	The draft RTS specify only minimum requirements. Parties may agree on more stringent requirements.	Clarified in a recital of the draft RTS.
Unfunded credit protection	The RTS list of collateral is not consistent with the eligible collateral for central clearing, because it does not include bank guarantees. This is not in line with the collateral eligible for the clearing process under Article 41, paragraph 1 of the EMIR. Bank guarantees, in fact, work as a substitute for the natural shortage of collateral.	Bank guarantees should be eligible collateral.	The ESAs are of the opinion that bank guarantees and other forms of unfunded credit protection should not be considered as eligible collateral for the purpose of these RTS. The reasoning behind this is that the margin framework was also introduced to limit the interdependencies between FCs. Where bank guarantees	The proposal does not allow the use of unfunded credit protection as a substitute for financial collateral.

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			might work well, under certain conditions, for centrally cleared derivatives, they would not meet the above-mentioned target in the case of uncleared trades.	
d) Concentration limits				
Concentration	With regard to small banks, especially small cooperative banks whose portfolio is almost exclusively made up of domestic sovereign securities (also due to constraints by law or statute), these would be unduly penalised in cases where concentration limits are introduced on that category of asset.	We strongly suggest the ESAs achieve an alignment with the CRR liquidity rules and, therefore, concentration limits should not be applied to securities issued or guaranteed by EEA sovereigns and EEA central banks in (their own respective) domestic currencies. Alternatively, we believe that a proportionality threshold should be introduced and based on the amount of the collateral to be collected from an individual	Concentration limits should be amended and relaxed to the extent that this addresses the prudential concerns.	Concentration limits were adapted – in particular, for the treatment of government bonds.

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		counterparty and issued by a single issuer with respect to the total size of the market. As an alternative to the proposal described above, concentration limits can be 'modelled' to 'naturally' exempt the best issuances in terms of rating classes, concentration of issuance, collateral types, and counterparty type.		
Concentration	The imposition of concentration limits on government bonds will cause important operational disruptions to IORPS and their asset managers.	Exemption	Concentration limits should be amended and relaxed to the extent that this addresses the prudential concerns.	Concentration limits were adapted – in particular, for the treatment of government bonds.
Concentration	Concentration limits are too penal.	Concentration limits on all the other types of securities should not apply below a threshold of EUR 100 m in collateral.	Concentration limits should be amended and relaxed to the extent that this addresses the prudential concerns.	A threshold of EUR 10 m was added to the RTS to address this issue.
Concentration	Concentration rules should not be subject to haircuts. Alternately,	Concentration rules should not be subject to haircuts.	Concentration limits apply to the market value of the	No change is necessary to the final RTS.

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	they should be included in the more advanced calculation of the VM.	Alternately, they should be included in the more advanced calculation of the VM.	collected collateral after the application of the haircuts.	
Concentration	Concentration rules for variation margin will result in extensive renegotiation of existing clients' CSAs.	Same as above.	Concentration limits should apply to initial margin only, and this should release the counterparties from an intensive repapering of the agreements.	The RTS were clarified accordingly.
Concentration	Not removing concentration limits on government bonds will force IORPS to engage in asset transformation transactions, which will entail additional costs for IORPS and their asset managers.	Therefore, call for the removal of these concentration limits, or at least grant an exemption for IORPS in this regard on the basis of its special features, namely the composition of its investment portfolio.	The concentration limits were relaxed in the final draft RTS. There is no reason for which IORPS that are large enough to collect EUR 1 bn in initial margin should not be able to diversify the collected collateral.	The RTS were clarified, but no IORPS carve-out has been included.
Concentration limits	It may also make it difficult for market participants to manage their balance sheets, as concentration limits may impose additional restrictions to those	Concentration limits in the exchange of collateral should not apply to the following eligible asset classes: those that belong to the categories	The concentration limits were relaxed in the final draft RTS, but no asset class should be exempted. Different treatments would be	The RTS were amended on this aspect, but no asset class is exempted.

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	already imposed by their industry regulation.	(c), (d), (e) of the list included in Article 1 LEC, point 1, if they are issued in the domestic currency of the issuer; and those other eligible asset classes that are deemed step 1 in the credit quality assessment or that are included in Level 1 in the high quality liquid assets (HQLAs) of the CRR LCR.	appropriate.	
Concentration limits	Negative effects following the implementation of collateral concentration limits by all financial counterparties could be mitigated either by amending ESMAs Guidelines (Articles 42 and 43(j)) or considering a provision in the RTS that all financial counterparties (or at least UCITS) shall be allowed to use the purchase price gained under a repurchase agreement for making initial or variation margin	UCITS should remain able to use derivatives for hedging permitted investments.	Similar constraints may be faced by other FCs and they may all be using derivatives for 'hedging purposes'.	No change is necessary to the final RTS.

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	contributions.			
Concentration limits	Imposing diversification on relatively low amount – i.e. margin just above the EUR 50 m threshold – would require complex and unnecessary splitting of the collateral into excessively small subsets of assets.	We strongly support the exemption of government and central bank bonds from the concentration limits, as well as the introduction of a threshold for the margin below which the concentration margin should not apply.	The concentration limits were relaxed in the final draft RTS and a EUR 10 m threshold was included to address this issue.	The RTS were amended accordingly.
Exemption from concentration limits	The proposed rules limiting the equities eligible as collateral to equities included in a 'main index' and the proposed concentration limits will limit the ability of strategic equity investors to enter into this type of transaction. For more detailed reasoning, see Article 1 LEC.	A carve-out should be introduced so that the new rules do not apply to 'derivative transactions where (i) the assets posted as collateral are of the same type and amount as the assets underlying such derivative transactions; and (ii) pursuant to the risk management procedures required for compliance with Article 11(3) of the EMIR, such collateral collected by one counterparty,	The proposed amendment is too vague. The BCBS-IOSCO framework requires collateral to be diversified and the methodology should be clearly laid down in the RTS.	Concentration limits were amended but keeping the approach of the Consultation Paper.

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		without further recourse to any other assets of the counterparty, is sufficient in the case of default of the posting counterparty to cover (in full) the exposure of the receiving counterparty, pursuant to the relevant netting agreement even in stressed market conditions'.		
Proportionality	The principle of proportionality should be applied in the case of smaller banks, as they access markets through another institution.	The ESAs should take into account the following EBA recommendation in its report titled On appropriate uniform definitions of extremely high-quality liquid assets (December 2013), where it stated '[…] based on the proportionality principle, smaller banks which access markets through another institution, will, in most cases, not have to be active in several advanced	Proportionality should be addressed in more detail in the final RTS. In particular, a smaller amount of initial margin should not be required to be diversified, government bonds should be diversified only by large market participants, and less stringent requirements should apply to the other classes.	The final RTS were amended accordingly.

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		money and capital markets'.		
Concentration limits – Equities	N/A	Equity derivatives collateralised by underlying equities should be exempted from specific percentage concentration limits.	This should be addressed in the RTS as a special case.	The final RTS exempt from diversifying collateral that is the same as the derivative underlying.
Concentration limits for initial and variation margins	The practice of UK pension funds is to post mainly UK Government gilts. To use other bonds would increase counterparty risk, correlation risk and increase investment management cost and expense. To use cash would require investment in cash, causing a material drag on the pension scheme. To comply with the proposed limits, pension plans and insurers would potentially need to obtain cash or other securities if they wished to hedge their risks through OTC derivatives.	Replace the specific percentage concentration limit on government bonds with a general supervisory obligation not to be too concentrated. Sovereign bond concentration limits should be removed on securities that are highly liquid in times of stress. Include a EUR 100 m threshold under which diversification limits should not apply. Remove shares in the main indices from the 40% limit. For securities issued or guaranteed by EEA sovereigns and EEA central banks in the domestic	Concentration limits should apply to initial margin only. Government bonds should be subject to diversification only when the amount of collateral is very material (e.g. above EUR 1 bn) and only for collateral above that level. These simplifications address cliff effects. Concentration limits should apply to all the counterparties in the scope of the margin requirements.	The final RTS were amended accordingly.

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	Otherwise, they may not be able to adequately hedge. It is not workable to ask for a split collateral over different issuers on smaller amounts than 100 m, but also because, in terms of systemic risk, a de minimis principle is totally appropriate. Shares are highly liquid and remain one of the few actively traded instruments in periods of stress. Small banks have portfolios that are, to a great part, made up of domestic sovereign securities; such regulation would overly penalise small institutions. Securities should be considered the same way as in the CRR. An additional layer of regulation for UCITS beyond the ESMA Guidelines (published December 2012) on ETF and other issues	currency, concentration limits should not be applied. All funds that comply with the ESMA Guidelines (published in December 2012) on ETF and other issues relating to UCITS should be exempted from any other type of collateral management rules and, specifically, any diversification rule. Certain funds have specific investment scopes and therefore do not have eligible assets to post as collateral. Compute the diversification ratio as a percentage not of the collateral itself, but as a proportion of the net asset value for funds. If it is necessary to maintain one single standard as a proportion of the notional amount of the underlying derivative, remove concentration limits where the composition of collateral		

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	relating to UCITS is disproportionate in giving benefits to investors. The draft requirements are problematic with regard to sovereign debt, as, in many jurisdictions, it is the main form of collateral used. Concentration limits assume that FCs and NFCs above the clearing thresholds accepting collateral will always be able to identify whether issuers are part of the same 'group' within the meaning of the EMIR. Sovereign bonds are highly liquid and of a high quality. Pensions/insurance companies are fully invested in securities that meet their objectives and post this as collateral. If these entities have to post collateral other than these securities, this will have to	correlates to exposure. Remove concentration limits on highly traded government bonds (e.g. G7 or G20). Remove obligation on pension funds and the insurance for post collateral.		

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	be obtained in the market. Pensions/insurance companies are already extensively regulated; therefore, no need to impose collateral requirements. Certain funds have specific investment scopes and therefore do not have eligible assets to post as collateral.			
[Concentration limits] Transactions with underlying as collateral	In the following transactions – collar financings, equity swaps, equity forwards and some call option strategies – the investor (normally, a corporate or holding vehicle) is required to provide to the counterparty (normally a bank or other financial institution) its equity holding as collateral for the relevant derivative transaction (collateral represents single stock). Strategic long-term investors in European companies listed on European regulated	These transactions do not give rise to any form of systemic risk. Along with the benefits to the investors and the indirect benefits for the underlying EU-listed companies, these transactions should be allowed within the margin framework of the RTS.	It is hard to see how, if the transactions are small enough not to generate any financial stability concern, a corporate or holding vehicle (assuming they are not already exempted in other ways) should not be able to provide alternative collateral to cover the initial margin requirements for those transactions.	The proposal was amended but the concentration limits concerning classes other than government debt securities are the same.

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	markets hedge their market risk and raise finance against their equity holdings through these types of equity derivative transactions. In particular, the equity stake owned by the investor may no longer be 'eligible collateral'.			
Concentration limits	With regard to small banks, especially small cooperative banks whose portfolios are almost exclusively made up of domestic sovereign securities (also due to constraints by law or statute), these would be unduly penalised where concentration limits are introduced on that category of asset. Similar comments were received about pension funds and other funds with the same kind of constraints.	Respondents suggest the ESAs should achieve an alignment with the CRR liquidity rules and, therefore, concentration limits should not be applied to securities issued or guaranteed by EEA sovereigns and EEA central banks in (their own respective) domestic currencies. Alternatively, we believe that a proportionality threshold should be introduced and based on the amount of collateral to be collected from	It is important not to forget that the diversification requirements are included in the BCBS-IOSCO framework (Principle 4 and Requirement 4). The ESAs share the concern that smaller counterparties may face impediments on posting diversified collateral in cases where, at the same time, they do not constitute a risk to financial stability. Concentration limits also mitigate potential cliff effects	Concentration limits are maintained in the new the draft RTS. Requirements on sovereign bonds, however, are applied only to major participants. These should have the capabilities to diversify collateral anyway and, at the same time, are those that may pose financial stability concerns.

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		an individual counterparty and issued by a single issuer with respect to the total size of the market. As an alternative to the proposal described above, concentration limits can be 'modelled' to 'naturally' exempt the best issuances in terms of rating classes, concentration of issuance, collateral types, and counterparty type.	that may arise if the market participants excessively rely on external ratings. The ESAs consider that relying on a single quantitative threshold would result in an approach that is too simplistic, and might fail to capture participants that are otherwise considered of systemic importance. It is not clear how the third proposal could be translated in the technical standards.	
Concentration limits	The RTS are stricter than international standards. Proposed asset classes (considered eligible collateral) and the restrictions placed on them (e.g. concentration limits) could result in different approaches to collateral eligibility in different jurisdictions, and result in an	The EMIR rules should not be more restrictive than the global framework. Any specific concerns with the appropriateness of collateral should be addressed by supervisors on a case-by-case basis.	The BCBS-IOSCO framework recommends introducing diversification requirements. Since the EMIR and these RTS aim to reach maximum harmonisation, a 'cases by case' would not be appropriate.	Concentration limits are redrafted as explained above.

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	unlevel global playing field.			
e) Collateral management and segregation				
Collateral management	A requirement to an outright sale or repurchase agreement market is not within the control of the collateral receiver. Respondents do not believe that any counterparty would be able to demonstrate that it satisfies this condition.	Replace the requirement in paragraph 1(d) with a more general requirement to have procedures in place that enable liquidation of collateral, or delete it.	The collateral taker should have the capabilities to access the market for that particular security and be able to liquidate the collateral without delay.	The draft RTS were amended accordingly.
Collateral management	Returning unused collateral proceeds to the liquidator is not possible with current market documentation.	Allow netting of unused collateral proceeds.	The draft RTS do not impose any constraint to collateral posted in excess to the regulatory requirements.	This is captured via a general statement on collateralisation posted in excess of the requirements.
Segregation	Stringent requirements for segregation on initial margin in Article 1 SEG are sufficient to ensure adequate protection.	Remove the requirement for alternative custody accounts for all asset types if collateral is maintained with the collateral provider. There should be no requirement for cash accounts	Segregated initial margin may be maintained with the collateral provider. Cash accounts, however, should not be maintained with the provider because segregation of cash is more	The draft RTS were amended accordingly. The fact that accounts do not have to be separated by asset classes was also clarified.

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		to be deposited with a party other than the collateral provider. Prohibition on regulatory or legal constraints or third party claims should be removed.	difficult than for securities.	
f) Wrong-way risk				
Wrong-way risk	The Consultation Paper does not provide specific criteria on what securities constitute collateral that give rise to wrong-way risk. Does it include Japanese Government bonds (JGBs) posed by a Japanese financial institution and USTs posed by US financial institutions?	Further clarification should be given, setting out criteria to identify cases constituting a wrong-way risk.	It is not possible to list all the cases in the RTS and the criteria should be clear enough for proper identification of wrong-way risk.	No change is necessary to the final RTS.
Wrong-way risk	Identifying non-specific wrong-way risk is not easy in an automated manner.	Discretion is therefore required by institutions to determine what collateral is acceptable and/or presents significant risk.	The criteria in the RTS are quite flexible. Within those criteria, counterparties may agree on the collateral to be exchanged.	No change is necessary to the final RTS.

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Wrong-way risk	It is unclear what is meant by 'otherwise subject to significant wrong-way risk'.	N/A	It is appropriate that counterparties also apply their own judgement when accepting collateral, and should therefore avoid relying on mechanistic rules in identifying sources of wrong-way risk.	No change is necessary to the final RTS.
Wrong-way risk	Securities guaranteed by a third-party guarantor/ring fence.	It would be sufficient to have only a requirement that the securities are not subject to any significant wrong-way risk (Article 1 LEC (c)) – e.g. securities issued by the posting counterparty may not be subject to any wrong-way risk if the securities are guaranteed by a third-party guarantor. In addition, securities issued by entities that are part of the same group may be ring fenced and, therefore, would not pose any significant wrong-way risk.	The high-quality and liquid collateral available is sufficient to not rely on securities whose value may be related to the credit quality of the counterparty.	No change is necessary to the final RTS.

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Eligibility	Eligible collateral, as well as appropriate haircuts for the collateral used, should be determined by the parties involved, rather than by the regulation.	N/A	Eligible collateral and haircuts may be determined by the parties involved. The RTS set out only the minimum standards.	No change is necessary to the final RTS.
'Close link' definition	The current 'close links' definition would be difficult to implement. It will be very difficult, and in some cases not possible, for a counterparty to make this determination, as information regarding which entities have a stake in a counterparty may not be publicly available and will likely be very difficult to source. In addition, a holding may not necessarily be highly correlated to the credit risk of the issuer in question.	Proposals: The requirement should be limited to wholly or majority owned consolidated subsidiaries. The close links conditions should be deleted.	The difficulties in identifying close links are acknowledged; therefore, only for the purposes of these RTS, this requirement should be dropped.	The provision limiting eligible collateral to the one without 'close link' with the posting counterparty is removed.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
'Close link' definition	'Close links' can mean 20% common ownership, and are used in concentration limits and wrong-way risk. This is too low a threshold. In terms of 'group', concentration limits and wrong-way risk requirements assume that FCs or NFCs+ collecting will always be able to identify if issuers are party of the 'group', which might not be the case.	Wrong-way risk should only apply for sovereign debt in cases where sovereign is the counterparty, given that sovereigns have stake in various market participants. 'Close links' test: The collateral collector should have the discretion to decide what collateral is acceptable.	The difficulties in identifying are acknowledged; therefore, only for the purposes of these RTS, this requirement should be dropped.	The provision limiting eligible collateral to collateral without a close link with respect to the posting counterparty is removed.
13. Haircuts				
a) Standard haircuts				
Settlement currency	Settlement currency is referred to in Article 1 HC Annex II. It is unclear whether the settlement currency refers to a currency used for margin calculation on a portfolio-by-portfolio basis or to	Further specify cases that will be deemed settlement currency – e.g. cases such as USD/JPY currency swap with JPY cash collateral. It would be helpful if the	The currency mismatch haircut should be amended in the following directions: a) cash variation margin should not be subject to these haircuts; b) non-cash variation margin	The final RTS were amended accordingly.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	the settlement currency of each transaction included in the portfolio.	definition of 'currency mismatch' (on page 50 in the Consultation Paper) were clarified. (It could, for example, mean the currency in which non-collateral payments are made with respect to a transaction, but this would not be meaningful for cross currency swaps or other transactions with payments in multiple currencies. Alternatively, it could mean any currency in which settlements may be made for the transaction, but this would then include the collateral payments themselves. Or it could have other meanings, including the base currency, but this may seldom be used for payments except for termination determinations.)	denominated in a currency different from the ones in the CSA, master agreement or derivatives should be subject to the currency-mismatch; c) cash and non-cash collateral for initial margin should be subject to a currency mismatch haircut only when denominated in a currency different from the termination currency.	

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
Standard schedule	The standard schedule proposed would be overly penal in a number of cases – e.g. Danish Flex bonds are given a minimum of a 12% haircut for issues with maturity longer than 5 years, which could be harmful to both the issuers of, and investors in, these bonds.	N/A	The standard haircuts should be defined in line with the ones in the Basel II accord because these are already widely used for financial collateral.	No change is necessary to the final RTS.
FX haircut of 8%	In terms of a haircut of 8% to the market value of the assets where the collateral currency is different from the settlement currency: Incentivise counterparties to post collateral in multiple different currencies corresponding to the currency risk on the underlying assets in order to mitigate the punitive impact of the haircut. Create significant cross currency settlement risk. Increase the number of different	The currency mismatch haircut should be deleted from the RTS. If this is not acceptable to the ESAs, we consider it important that there is a dialogue with industry to consider how these practical issues can be addressed.	The ESAs recognise the disadvantages of introducing a 8% FX haircut on variation margin posted in cash. Since, in order to address the concern of some of the respondents, variation margin can also be collateralised (and not transferred in cash), the FX haircut applies to collateral posted in currency that is different from one of the contractual transfer currencies.	Standardised haircuts are amended accordingly.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	cash flows that will result from this change in market practice; increase settlement and operational risk within the market. Some OTC derivatives involve more than one currency (e.g. currency swaps) and it would be very unclear how to apply the haircut in such a case. Application of the haircut is very difficult for netting sets containing OTC derivatives denominated in more than two currencies. If the margin was siloed into different currency pools as a result of the FX haircut, upon counterparty default, it would still be necessary to close out the contract in a single currency. Therefore, currency risk would not be eliminated while a new		The FX haircut should be maintained for collateral posted as IM.	

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	layer of operational risk would have been introduced.			
Add-on factor	Annex IV: The proposed add-on factor for the initial margin calculation regarding foreign exchange and commodities appears to be rather high. Many large corporates have only low netting potentials, as they most likely are 'long currency' (sale of products in foreign countries). The netting effects, and thus the liquidity impact on initial margin requirements, would be unjustifiable high. The same holds true for commodity derivatives, with an even higher add-on factor (15%). Commodity derivatives are most likely used to hedge price risk from the purchase of materials, leaving corporates with low to even no netting potential. This at	N/A	The standard haircuts should be defined in line with the ones in the Basel II accord because these are already widely used for financial collateral.	No change is necessary to the final RTS.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	least holds true for manufacturing companies.			
b) Haircut models				
Calculation of haircuts	Respondents supported the use of internal models for determining collateral haircuts. However, these haircut estimates should not be run separately from the initial margin model (calculation of IM) itself. Not taking into account any correlations between the unsecured exposure, collateral and/or the exchange rates is likely to lead to more disputes than if they were otherwise taken into account. initial margin	Allow the joint modelling of collateral and derivatives. initial margin	It is more prudent where the two calculations are performed separately. Furthermore, the use of own estimates of the haircuts is not very common practice.	No change is necessary to the final RTS.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
Haircuts	The EU NCAs are presently taking quite differing views on what constitutes sufficiency for modelling data. This can lead to quite different haircuts between counterparties. The collateral has to be credit quality assessed each day, but it is unclear which internal model would be used in this assessment. The ESAs could clarify the precedence for such validation. Should a margin giver's model determine that it is overcollateralising, this could result in an additional capital requirement, inferring that systemic risk is actually being created. The approach to collateral haircutting is over-engineered and, depending on the meaning of 'settlement currency', would	The ESAs should introduce a prudent systematic requirement that capital regulation haircut collateral should not be required to be posted in excess of the Exposure at default (EaD). Less prescription from the ESAs would be useful.	It is the opinion of the ESAs that the approach already in use in other regulations (i.e. the CRR) is appropriate for the purpose of these draft RTS. As for IM, differences in haircut calculations may lead to different expectations on the level of collateral to be called, and this would increase the number of disputes. It is also the opinion of the ESAs, however, that internal or third-party models should be used to determine the appropriate level of collateral and that counterparties should arrange, in advance, how they choose to resolve disputes. A standardised approach is proposed in the draft RTS.	The ESAs maintain the same approach proposed in the Consultation Paper.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	create risk (as determined by regulatory measures) in the system.			
14. Transitional and final provisions				
a) Phase-in of initial margin				
Phase-in of IM	Implementation of margin requirements should be delayed. Compliance with the margin requirements will entail significant time and investment.	In light of the above, we request that the requirements do not become effective until at least 2 years from the date on which final rules are adopted.	The phase-in of initial margin is scheduled under the BCBS-IOSCO framework.	No change is necessary to the final RTS.
b) Phase-in variation margin				
Phase in variation margin	While it is true that many parties currently post VM, this practice is not universal.	Some kind of phase-in of the variation margin requirement is appropriate.	The BCBS-IOSCO standards set out that the requirement to exchange variation margin will become effective on	No change is necessary to the final RTS.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
			1 December 2015; a phase-in was scheduled only for the exchange of IM.	
15. Procedures concerning intragroup derivative contracts				
a) Procedure for counterparties and competent authorities				
Requirement for third-country equivalence	Delays to the timetable for the Commission to take decisions on the equivalence of certain third countries: Respondents are concerned that the absence of a positive equivalence decision for a given third country from the date of application of the RTS (12/2015) would result in intragroup trades involving an entity from that third country being subject to full exchange of initial margin and VM. This is not appropriate because such transactions: do not pose	Should a decision not be reached for any given jurisdiction by 1 December 2015: Intragroup transaction involving a counterparty from the third-country jurisdiction in question should still be able to benefit from the intragroup exemption (conditional on the group demonstrating to its NCA that it is in full compliance with all of the other non-equivalence related intragroup exemption criteria in the EMIR).	Intragroup transactions should not be subject to initial margin for the period of time necessary to produce the equivalence determinations with respect to the other major jurisdictions.	The RTS were amended accordingly, allowing competent authorities exemptions for intragroup transactions even when the equivalence determination is not yet available. Such possibility is limited in time in order to not contrast with the EMIR itself.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	systemic risks and do not increase interconnectedness between third parties; and allow institutions to manage and reduce risks and to increase the scope of netting with individual counterparties by allowing counterparties to transact with a single group entity across a broad range of underlying asset classes. Flexibility would be undermined when imposing initial margin requirements on intragroup transactions. The amount of collateral tied-up would reduce firms' abilities to manage risk on a centralised basis and would increase, rather than decrease, the level of risk within the financial system. Losses incurred by one group should be completely offset by gains to the other group so that group exposure is flat.			

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
The ESMA technical advice provided to the European Commission on the equivalence of several third countries	The EMIR includes the concept of partial or conditional equivalence, which requires the application of the higher requirements between the two regimes in cases where standards differ. It is not clear how such conditional equivalence determinations would be treated for the purposes of the intragroup exemption, but it is important that it is clarified.	It should be possible to benefit from an intragroup exemption where only conditional equivalence has been granted – again, subject to complying with the other intragroup exemption criteria in the EMIR.	This process is mostly outside the scope of these RTS.	No change is necessary to the final RTS.
Procedure for the counterparties and the competent authorities	Respondents are uncertain of what level of robustness 'risk management procedures' must have. The time frame for implementation is too short, particularly given the uncertainty of whether the exemption will be given by NCAs. Intragroup transactions do not pose the same systemic risk.	Application for exemption should not be required if an intragroup transaction meets certain conditions. Be more specific to confirm methods for calculating margin and valuing collateral. In case supervisory authorities object regarding the exemption of notification for intragroups, NFCs should be granted an additional 4 months (i.e. after	The issue concerns the banking groups within the scope of the initial margin requirements in the first phase, i.e. 1 September 2016. The ESAs acknowledge that priority should be given to initial margin posted to external counterparties and more time should be granted before requiring posting a collecting collateral for	The final RTS were amended, requiring initial margin for intragroup transactions to be exchanged from 1 March 2017.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	There is uncertainty around equivalence assessments of non-EU regimes. Notice of change in circumstances cannot be given 'immediately', but only once a counterparty is aware.	the objection) to implement the respective processes. Exempt intragroup transactions from initial margin requirements. Include a transitional period for intragroup transactions involving a non-EU entity. Change the notification requirements (to NCAs on the change of status) to 'immediately upon becoming aware'.	intragroup transactions. As most of those groups already exchange variation margin for all the intragroup OTC derivative contracts, such deferred application should apply to initial margin only. Moreover, this delayed application should not exceed 6 months.	
Intragroup transactions	Carve-out for all intragroup transactions is referred to in Article 2 GEN. All intragroup transactions should be exempted from the margin requirements. The reasons for such exemption are similar to those for the exclusion of intragroup transactions from clearing	Carve-out for all intragroup transactions (Article 2 GEN): The Commission's delegated regulation sets out a general exemption for intragroup transactions – namely, the exclusion of the exchange of initial margin.	Exemptions for intragroup transactions are set out in Article 11(5 to 10) of the EMIR.	No change is deemed necessary in this case.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	obligations.			
b) Practical or legal impediments				
Legal opinions	Legal impediments	Legal impediment: We suggest that a legal impediment should only be found if there is a material, affirmative legal prohibition on payment between the parties.	The criteria specifying legal impediment have been detailed in the final RTS.	The final RTS were amended.
Legal opinions	Practical impediments	It is critical that practical impediments are current impediments rather than possible future impediments, as all transfers are hypothetically subject to possible future impediments.	This is correct. Different from legal impediments, practical impediments can always be 'foreseen', but they should lead to an obligation to exchange margins intragroup only when they occur.	The final RTS were amended accordingly.
List of potential legal impediments	The list of potential legal impediments is too wide and would undermine the ability of any counterparty to be granted an intragroup exemption (e.g. the inclusion of restrictions stemming	Regulatory restrictions stemming from EU legislation should not be considered a legal impediment. Otherwise, EU institutions could be faced	Regulatory restrictions stemming from EU legislation should be considered as any other legal impediment.	No change is deemed necessary in this case.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	from insolvency, resolution or similar regimes is highly problematic, as all counterparties can potentially become insolvent and insolvency proceedings may result in restrictions in payments).	with conflicting EU laws.		
16. Potential conflicting regulations				
UCITS	UCITS and other investment funds are already regulated by tight regulation.	Guidelines conflict with regulation prohibiting UCITS to use the purchase price under a repurchase agreement for making cash collateral contributions and undertaking replacement transactions in the manner stated in Recital 9 and Article 2 LEC, paragraph (d) of the drafted RTS.	The EMIR sets out the application of the requirements for defined entities (FCs and NFCs).	No change.
Leverage ratio Treatment of initial margin under Basel III and CRD IV	Leverage ratio impact: Cash initial margin that is collected by banks and required to be segregated with no possibility of	Cash initial margin should be exempted from the leverage ratio calculation, as, otherwise, the mandatory collection and	This is out of the scope of these RTS and should be considered in a separate workstream.	No change is deemed necessary to the RTS in this case.

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	rehypothecation would have the impact of grossing up the balance sheet for the purpose of calculating the Basel III/CRD IV leverage ratio. Risk-weighted asset impact: If collateral is held tri-party, it is not possible to recognise the pledged assets versus trade exposures. For banks subject to Basel III/CRD IV, this will result in a significant impact on risk-weighted assets, which is not reflective of the true risk.	segregation of initial margin (when the collateral provided is cash) would artificially restrict the maximum size of a bank's balance sheet and consequently restrict its ability to fund the real economy. The requirements of CRD IV and the EMIR should be coordinated to ensure appropriate recognition of collateral in risk-weighted asset calculations. Consider it crucial that the interaction between the Basel III/CRD IV/CRR framework and the RTS is reviewed, and steps taken to ensure the application of the RTS do not increase a firm's capital requirements. (Given that regulatory capital is held as a risk mitigant and the purpose of the RTS is to reduce		

Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
		counterparty credit risk, the overall impact should not be to increase capital held against risk.)		

Specific questions of the first Consultation Paper

Question in the Consultation Paper	Question	Responses and the ESAs' analysis	Modifications to the draft RTS
Question 1	What costs will the proposed collateral requirements create for small or medium-sized entities, particularly types of counterparties and particular jurisdictions? Is it possible to quantify these costs? How could the costs be reduced without compromising the objective of sound risk management and keeping the proposal aligned with international standards?	Respondents seem to agree on the fact that the costs of complying with the RTS are only in part proportional to the value of the derivatives used, and hence disproportionally affect smaller entities. The implementation of the new regulatory framework will lead to several additional costs for small and medium-sized entities, as the EUR 8 bn notional threshold is most likely to force them to bear the legal costs, due to the renegotiation of existing CSAs. Major and smaller entities will have to go through the repapering of agreements, update documentations and obtain legal opinions. Operational costs, such as the number of accounts to be opened, will also add to the overall costs. Counterparties with particular legal or statute constraints may have difficulties in providing high-quality liquid collateral and might need to fund the collateral separately from their primary business. From this point of view, concentration limits may make this process more difficult, as many counterparties only have local government bonds to post. The amendments to the final RTS try to remove many of these costs to the extent reasonable and while maintaining a prudentially sound approach. With such amendments: a) the repapering of the bilateral agreements should have been reduced to the minimum necessary,	The final RTS were amended accordingly.

Question in the Consultation Paper	Question	Responses and the ESAs' analysis	Modifications to the draft RTS
		b) legal assessment can be produced internally, c) variation margin can be posted in securities and not necessarily in cash, and d) smaller counterparties should not need to diversify collateral. Other aspects, such as the number of new accounts to be opened, are unavoidable in the new framework.	
Question 2	Are there particular aspects – for instance, of an operational nature – that are not addressed in an appropriate manner? If yes, please provide the rationale for the concerns, as well as the potential solutions.	On top of the aspects alighted upon with respect to Question 1, respondents highlighted a number of operational issues. Most of these are listed in the feedback. Among those, a few of the most important may be identified as the timing for the exchange of collateral, different rules in cross-border trades and haircuts to the cash variation margin. Custodians also highlighted the issues concerning the treatment of cash IM. Most of these issues have been addressed in the final RTS to the extent possible. However, where the suggestions from industry stakeholders were deemed not prudent enough, additional safeguards were put in place, such as in the case of cash IM. The timing for the collateral exchange remains virtually the same as in the two consultation documents, as discussed in the cost-benefit analysis.	The final RTS were amended to reach a balance between prudential concerns and operational and practical constraints. This includes a revision of the provision in accordance with the proportionality principle.
Question 3	Does the proposal adequately address the risks and concerns of counterparties with regard	Respondents asked to have a full exemption for derivatives associated with covered bonds. They also suggested not adding additional complexity, considering the 'market-based' solution. The ESAs do not see, in Recital 24 of the EMIR, a request to exempt	The draft RTS were amended accordingly. In particular, the 'market-based' solution is not a

Question in the Consultation Paper	Question	Responses and the ESAs' analysis	Modifications to the draft RTS
	to derivatives in cover pools, or should the requirements be further tightened? Are the requirements, such as the use of the CRR instead of a UCITS definition of 'covered bonds', necessary ones to adequately address the risks? Is the market-based solution outlined in the cost-benefit analysis section – e.g. where a third party would post the collateral on behalf of the covered bond issuer/cover pool – an adequate and feasible alternative for covered bonds that do not meet the conditions mentioned in the proposed technical standards?	certain or all of the derivatives associated with covered bonds. Therefore, this request cannot be granted. The legal constraints a covered bond issuer or cover pool may face in collecting or posting collateral, however, have to be taken into account by laying down specific requirements. The segregation of the initial margin, in particular, would be in contrast with several national regulations. The same may be true for posting variation margin, unless the covered bond issuer or cover pool is just returning variation margin previously collect in cash. Therefore, the final RTS should prescribe what is practically feasible. Among others, counterparties are protected by collateral in the cover pool only as long as the derivatives rank pari-passu with the investors. That is the reason why some level of overcollateralisation should be required as a substitute for margins. The final requirements seem flexible enough to be implementable in most jurisdictions, and are compatible with the recommendations of Recital 24 of the EMIR.	requirement, although it is always a possibility.
Question 4	With respect to the use of a counterparty IRB model, are the counterparties confident that they will be able to	Some respondents would have preferred additional information from the counterparty maintaining and posting collateral based on the IRB approach. Other respondents claimed that this possibility may be of limited use, as both counterparties would more likely	The draft RTS were amended accordingly.

Question in the Consultation Paper	Question	Responses and the ESAs' analysis	Modifications to the draft RTS
	access sufficient information to ensure appropriate transparency and to allow them to demonstrate an adequate understanding to their supervisory authority?	prefer relying on third parties' credit assessment – i.e. ECAIs' ratings. Nonetheless, the ESAs are of the opinion that, in order to comply with the provisions of the CRA 3 Regulation, an alternative to ECAIs' ratings should be provided in the regulation to avoid sole or mechanistic reliance on those assessments. Therefore, the two approaches (based on IRB ratings or on ECAIs' ratings) should be maintained. The minimum levels (expressed as referring to a CQS) should also be aligned to avoid unbalancing the requirements in favour of one model.	
Question 5	How would the introduction of concentration limits impact the management of collateral (please provide, if possible, quantitative information)? Are there arguments for exempting specific securities from concentration limits and how could negative effects be mitigated? What are the pros and cons of exempting securities issued by the governments or central banks of the same	Respondents to the ESA consultation echoed the responses to the BCBS-IOSCO consultation on the margin framework. Industry stakeholders claim that concentration limits would generate a lot of procedural issues and potentially increase the number of disputes. Smaller counterparties highlighted that the proportionality principle should apply because diversifying high-quality collateral is more difficult for smaller portfolios and in relation to certain business models. As the diversification of collateral is one of the requirements of the BCBS-IOSCO framework, the concentration limits should be part of the RTS. In order to ensure a proportionate treatment, the diversification requirements should not apply to a small amount of collateral that would not raise a financial stability concern. They should also be applied differently to different asset classes. Where the securities are the same as the underlying derivative, it	The concentration limits apply only to initial margin. Furthermore, a minimum of EUR 10 m is introduced to avoid applying these limits to a small amount of IM. The overall limit for most of the securities is also raised from 10% to 15%.

Question in the Consultation Paper	Question	Responses and the ESAs' analysis	Modifications to the draft RTS
	jurisdiction? Should proportionality requirements be introduced? If yes, how should these be calibrated to prevent liquidation issues under stressed market conditions?	should be possible to avoid the diversification requirements, assuming that the collateral offers the same characteristics of quality and liquidity as the other eligible collateral. Respondents also noticed the inconsistency of concentration limits with the possibility of reusing the variation margin. More generally, including variation margin in the concentration limits may be problematic for those counterparties that decide to post variation margin in securities instead of cash. Typically, these are the counterparties that do not have access to central bank liquidity facilities.	
Question 6	How will market participants be able to ensure the fulfilment of all the conditions for the reuse of initial margins, as required in the BCBS-IOSCO framework? Can the respondents identify which companies in the EU would require reuse or rehypothecation of the collateral as an essential component of their business models?	The ESAs have not received comments identifying particular counterparties or business models where the reuse or rehypothecation of collateral is necessary. Most of the respondents who supported allowing reuse or rehypothecation justified their opinion with the need for international consistency. It was suggested, however, that cash posted as initial margin and held by a third-party holder or custodian should be treated as a special case. This is because, first, they would be separated from the posting and collecting parties and, second, because the current practice on cash collateral includes that custodians consider cash as fully fungible. Not being able to segregate it, custodians reinvest that cash in accordance with current regulations. Among others, a side effect would be that the leverage ratio would	The reuse and rehypothecation of initial margin is not allowed. Custodians can reinvest cash initial margin in accordance with relevant regulations.

Question in the Consultation Paper	Question	Responses and the ESAs' analysis	Modifications to the draft RTS
		be directly affected, resulting in the unwillingness of the custodian to accept cash initial margin at all.	

Feedback table – Second Consultation Paper

Comments and responses on topics already addressed in the feedback table to the first Consultation Paper are not repeated here.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
1. Variation margin				
a) Timing				
VM collection	Remove the requirement for variation margin to be collected within 3 business days from the calculation date.	Respondents have chosen to break down the collateral collection into two steps. Step 1: Margin call. Step 2: Securities settlement cycle. The margin call date is set to a maximum of T+2 (where T is the trade date). All variation margin has to be settled within the securities settlement cycle after the call date.	The timing for collecting initial margin and variation margin should be aligned to international practices and take into account prudential aspects.	The proposal was amended to take into consideration different time zones. Apart from that, collateral for variation margin and initial margin should be exchanged at T+1. Less sophisticated counterparties may opt for exchanging variation margin for a longer time horizon, but then collateral has to be posted for covering the additional day between the margin call and the collection.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
Time zones related problems	For cross time-zone financial institutions, the earliest feasible date for a firm to respond to, and agree on, a margin call with all its global counterparties (situated in disparate time zones such as Australia and the UK, or New Zealand and the US) is 2 days after the trade date.	Set the margin call date to a maximum of 2 business days after the trade date (T+2).	The timing for margin exchange should consider time-zone differences.	The proposal was amended to take into consideration different time zones. Apart from that, collateral for variation margin and initial margin should be exchanged at T+1.
Time required for collection	Institutions posting securities as collateral are subject to the securities settlement cycles (which can vary for different collateral and for the same collateral in different geographies).	Securities settlement cycles need to be taken into account because the RTS specify a list of eligible collateral, with a range of settlement periods (same day for cash, and T+2 for some bonds).	A free-of-payment title transfer of pledging does not require the settlement of the securities and can be done quickly. Pre-funding securities or posting cash in view of its substitutions are also valid alternatives.	The proposal was amended to take into consideration different time zones. Apart from that, collateral for variation margin and initial margin should be exchanged at T+1. Some flexibility has been introduced for less sophisticated counterparties with regard to the exchange of variation margin as long as additional collateral is posted.
b) Settling VM				

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
Cash in VM	Respondents require clarification of the expression 'settling exposures in cash' in Article 1 variation margin (2)(a) and Recital 11. Payment of the variation margin is not 'settlement' of a claim, but a 'due payment'. All variation margin is held in a client account in the form it was received, ready to be returned in the same form when necessary.	This should be consistent with the current practice of collecting cash for VM.	This language was introduced for explanatory purposes only.	This phrase was removed in the final report.
MTA	The EUR 0.5 m threshold is too small. For pension funds and other entities that are just hedging their FX risks, notional FX exposures of EUR 100 m are quite usual, and EUR 0.5 m is just a 0.5% move in the FX rate. Keeping the threshold at 0.5 m will only increase the regulatory burden on these	Increase the MTA from EUR 500 000 to EUR 5 m or change it to a certain % of the notional exposure to a particular counterparty.	The MTA was set in line with the BCBS-IOSCO framework. Splitting the MTA into two should be allowed, but the overall amount should not be duplicated.	The RTS were redrafted without changes in the overall policy.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	institutions.			
c) Timelines for mandatory variation margin implementation				
Overlap with the clearing obligation	The requirement to exchange collateral from March 2017 would put NFCs in a situation where they are forced to meet mandatory margining requirements, even though those transactions are exempt from the clearing obligation. Recital 24 of the EMIR seems to indicate that the margining obligation should commence only after an entity is within the scope for clearing.	The phase-in period for variation margin for NFCs should be aligned with either: (1) the phase-in dates for the clearing obligation, or (2) the phase-in dates for initial margin as per Article 1 FP (3).	The phase-in for the margin requirements is set in line with the BCBS-IOSCO framework.	As long as there is no danger of regulatory arbitrage, the phase-in should be set in line with the BCBS-IOSCO framework.
VM phase-in	VM should be phased in in a manner similar to IM. The March 2017 'big bang' implementation of mandatory variation margin will impose too much of a regulatory	Apply the EUR 8 bn threshold of Article 7 GEN (1) for variation margin and IM.	The phase-in for the margin requirements should be set in line with the BCBS-IOSCO framework.	The phase-in for the margin requirements is in line with the BCBS-IOSCO framework.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	burden on smaller institutions.			
VM phase-in	Mandatory variation margin from 2017 will require huge amounts of legal documentation and repapering work for dealers and derivative end users (many of whom are small counterparties trading only occasionally). Onboarding all clients in agreement with new CSAs will be very difficult by the March 2017 timeline.	Adopt a phase-in schedule for VM.	The phase-in for the margin requirements should be set in line with the BCBS-IOSCO framework.	The phase-in for the margin requirements is in line with the BCBS-IOSCO framework.
2. Initial margin				
a) Timing				

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
IM collection and the time required to collect the collateral posted as IM	Remove the requirement for initial margin to be collected within 1 business day after the trade date (Article 1 EIM (3)). This requirement also does not account for the securities settlement cycle, which will be very important for IM (most of which is likely to be posted in securities).	Respondents have chosen to break down the collateral collection into two steps. Step 1: Margin call. Step 2: Securities settlement cycle. The margin call date is set to a maximum of T+2 (where T is the trade date). All initial margin has to be settled within the securities settlement cycle after the call date.	A section in the cost-benefit analysis is dedicated to the timings for the exchange of margins.	The final RTS maintain the original requirements, which state that margins should be exchanged at 'T+1'. More flexibility is only allowed for cross-border trades in different time zones. More flexibility is also available for variation margin when additional collateral is posted in advance.
Time required for a initial margin call	Institutions calculate margin (IM or VM) after matching their portfolio with a CP. This requires time.	Set the margin call date to a maximum of 2 business days after the trade date (T+2). Margin should be called 3 business days after the trade date (T+3).	Portfolio reconciliation is already common practice. Sensitivities reconciliation may require setting up new systems, but this is already subject to a multi-year phase-in.	The final RTS were amended to clarify the process, but the overall timing remains the same. More flexibility was added for cross-border trades in different time zones.
IM calculation	In the RTS, the frequency of	RTS should clarify that	IM calculation should be	No change.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	initial margin calculation is related to certain events. Since these occur during a business day, the requirement may be interpreted as requiring an intraday calculation of margins.	initial margin calculations should happen only once per business day, even if all events listed in Article 1 EIM (3) occur together, or repeatedly on the same day.	performed as prescribed in the final RTS, where it is not required that it should be calculated more frequently than daily.	
b) Cash IM				
Reinvesting the cash for segregation purposes	There was widespread support for the use of cash in IM, but the reinvestment requirements need to be clarified. Quite often, if the dealers cannot find securities, custodians will find it difficult as well. This is likely to be an extremely operationally difficult arrangement because: (1) it not established market practice, (2) it will lead to investment, liquidity, and other risks, and (3) it will need	The process of how the collateral poster and the custodian coordinate this arrangement should be specified. For instance, the custodian should consult the collateral poster on the choice of investment.	Cash initial margin should be allowed. However, it does generate additional credit risk for the posting party and should therefore be limited at least for Globally systemically important institutions (G-SIIs) and other systemically important institutions (O-SIIs).	The final RTS were amended to allow the use of cash initial margin while limiting systemic risk by introducing certain diversification requirements.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	to comply with all the collateral concentration, eligibility, and haircut criteria in the RTS. All these difficulties may render the use of cash in initial margin impossible.			
Reinvesting the cash for segregation purposes	The RTS are not clear on how cash collected as initial margin by a custodian is reinvested.	Clarification is suggested to make it clear that the custodian is able to reinvest any cash collateral only at the direction of the collateral posting counterparty.	Third-party holders and custodians should be able to reinvest cash in accordance with current practices.	Reinvestment of cash by third-party holders and custodians is allowed.
c) IM thresholds				
The Article 7 GEN (1) threshold based on notional amount	The calculation of the month-end average notional amount is not clear.	Clarify that the month-end average notional amount is the average of the notional amounts as of the last business days of the months of June, July, and	It should be month-end aggregated notional amount, as specified in the BCBS-IOSCO framework.	This was clarified in the final RTS.

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		August of the preceding year.		
Interaction between initial margin thresholds in Article 7 GEN (1) and Article 1 FP (4)	If an institution is above the threshold given in Article 1 FP (4), then it is subject to initial margin requirements for trades starting the September of that year. However, as of September, the institution is also able to compute the threshold in Article 7 GEN (1), and may find itself below the threshold. In this case, the institution will only be applying initial margin for trades done between September and December of that year, since under Article 7 GEN (1) it will be exempt again from January onwards.	Clarify the interaction between the two thresholds. Preferably, have only one threshold to avoid confusion.	The two methodologies should be aligned.	This was corrected in the final RTS.
The EUR 50 m threshold and its application for	In case institutions have to calculate initial margin requirements for intragroup	The RTS should clarify how the initial margin threshold (based on initial	In order to avoid excessive burden, a similar threshold should	Counterparties may not exchange initial margin up to EUR 10 m for intragroup transactions.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
intragroup transactions	transactions, it is not clear how the EUR 50 m threshold will work between intragroup entities.	margin amount of EUR 50 m) works for intragroup transactions.	also apply to intragroup transactions. Since this threshold would apply at an entity level, however, it should be smaller than EUR 50 m.	
3. Issues related to the initial margin model				
a) Products to be considered in margin calculations				
Cross-product margin offset	Only OTC derivative contracts that are not centrally cleared are included in the initial margin model. Additionally, the current RTS do not consider all possible products in the calculation of the margin. For example, under the current RTS, an equity and total return swap on the equity will give rise to margin requirements, but if both were included in the initial margin	The RTS should be amended to allow cross-product offsets to be included in the initial margin calculation. This should consider: (1) offsets between OTC and cleared derivatives, and (2) offsets between different products, within a netting set.	Only non-centrally cleared OTC derivatives should be used for the calculation of variation margin and initial margin for regulatory purposes. Where two jurisdictions have different definitions of derivatives or different product scopes for the	The RTS were amended to make this explicit.

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	model, there would not be any margin requirement.		margin rules, the margin calculation can include both definitions. However, products different from non-centrally cleared OTC derivatives should not be considered when performing that calculation.	
b) Risk factors in the model				
Risk-factor modelling and diversification	In keeping with the BCBS-IOSCO standards, the RTS do not allow for diversification benefit at the asset class level. However, by only allowing initial margin calculations to be split by asset class, risk-factors common to asset classes, such the FX risk from a credit derivative and the FX risk from	It is proposed that Article 4 MRM (3) is amended as follows: 'The total initial margin requirements for a netting set shall be the sum of the initial margin requirements calculated separately either (a) for the risk factors assigned to each underlying asset	The RTS should not prescribe the model requirements to this level of detail. Since several approaches that are compliant with the RTS are possible, the appropriateness of the model should be assessed by competent	The RTS do not include any further specifications in this regard.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	an equity derivative, cannot be netted. The RTS should consider allowing initial margin calculations to be split by risk-type as well.	class, or (b) for the OTC derivatives assigned to each underlying asset class within the netting set'.	authorities.	
Collateral FX risk should be modelled in the initial margin model	The RTS currently recognises the FX risk from the collateral and exposure, but a FX haircut is not the best way to implement this because: (1) it is unilateral (i.e. the collateral poster gets no benefit from any FX moves), and (2) it creates extra credit risk for the collateral poster.	FX risk from collateral should be modelled within the initial margin model because, in a default or a stress situation, the FX risk from the collateral collected and the OTC derivatives can be relied upon to offset each other.	The FX haircut has been reviewed in line with the prevailing international practices. Including FX risk in the initial margin requirements remains an option for counterparties. This solution is not required in the final RTS because it cannot be applied to counterparties that are not subject to IM.	The final RTS were amended to clarify the calculation of the FX haircut.
Interest rate risk factors	The RTS are not clear on what is meant by foreign currencies in Article 5 MRM (3)(b).	It is proposed that Article 5 MRM (3)(b) is amended as follows: '(b) The model shall incorporate interest	Indeed, the language was misleading. It was corrected and	It was clarified in the final RTS.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
		rate risk factors corresponding to the individual currencies in which the OTC derivative contracts are denominated'.	simplified.	
c) Model governance				
Requirement to post collateral within 30 days of the initial margin model recalibration	The requirement to post additional initial margin following a recalibration of the model within 30 business days is extremely onerous, and will have procyclical effects. Model recalibrations are likely in stressed scenarios. In these scenarios, with all derivative counterparties looking for collateral, obtaining collateral will be challenging. The process of requiring more initial margin should be subject	We propose the following text: 'Counterparties shall establish procedures for adjusting margin requirements […] resulting from the recalibration of the model over a period that ranges between 1 and 90 business days (or longer in times of financial stress, subject to regulatory review)'.	The process of recalibration will already take some time, and it is not clear for what the 90 days are needed.	The process was clarified in the final draft RTS.

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	to a globally coordinated regulatory decision/judgement.			
Recalibration triggers	The current RTS language in Article 5 MRM (6) imposes too much specificity on both the triggers ('…shall clearly identify…') and the action to be taken based on backtesting results ('…trigger a recalibration…'). The procedures need to be flexible to cover a wide range (including unforeseen) of results for backtesting results, and also allow for a wider range of remediation actions as opposed to just recalibration.	We propose the following text for Article 5 MRM (6): 'Counterparties' procedures shall describe which results of the backtesting shall result in the remediation of the model'.	The final RTS should consider other scenarios, including model change, recalibration or other remediation actions.	This was corrected in the final draft RTS.
Agreement of models between derivative counterparties	The RTS requires counterparties to agree on the initial margin model being used between themselves.	Models should be disclosed to counterparties prior to trading.	Counterparties should be allowed to choose among a variety of models: own developed	No change with respect to the Consultation Paper.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
			models, third-party models or the models developed by the counterparties.	
Margin period of risk scaling	There is a lack of consistency in the regulatory requirements from initial margin models. The ESAs' RTS allow models to be calibrated for a period shorter than the margin period of risk and then scaled up. The US rules require the models to be calibrated for the margin period of risk.	We propose greater global coordination in determining the technical standards and requirements for initial margin models.	The final RTS do not have this level of granularity in setting the initial margin model requirements. This is an aspect that should be discussed with the competent authorities during the model assessment.	No change with respect to the Consultation Paper.
d) Standardised method fall-back				
Use of the standardised method for some transactions within a netting	The RTS are not clear if it is possible for trades using the standardised method to be part of the same netting set as that used for the initial margin model.	The RTS should clarify that parties that use an initial margin model for OTC derivatives may use the standardised method for specific OTC derivatives	The standardised approach is the one that should be used when the initial margin model fails to comply with the regulation.	No change with respect to the Consultation Paper.

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set	The BCBS-IOSCO framework states that a 'firm need not restrict itself to a model-based approach or to a schedule-based approach…'.	within the same netting set if the model does not appropriately calculate the initial margin for those derivatives.	There is no reason that the counterparty should be allowed to use an initial margin model that does not identify an appropriate level of margins.	
4. Cross-border transactions				
a) Two-way margin exchange				
Insolvency laws	Untested insolvency laws in non-netting jurisdictions are a tail risk for banks. In the absence of clean netting opinions, banks will be forced to not consider the impact of collateral when reducing their exposures for counterparty credit risk and CVA purposes. This is the situation currently, but under the current framework, banks do not have	Reconsider the mandatory post obligation to non-netting jurisdictions – i.e. jurisdictions where it is not possible to guarantee the effectiveness of segregation agreements.	Non-netting jurisdictions and jurisdictions where posted collateral may not be properly protected should be treated as special cases. EU counterparties should always at least collect collateral from counterparties in those jurisdictions. Where	The final RTS include a special treatment for 'non-netting jurisdictions'.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	the obligation to post. Relying on third-party or custodian arrangements is not likely to work, as local counterparties are likely to want settlement in local assets (which often have to be held on-shore and which therefore maintain the risk).		even collecting collateral is not possible, trades can only be exempted from margins if their amount is strictly limited.	
b) Independent legal review				
Legal enforceability of netting arrangements	Article 2 OPD (2): Third-party legal opinions to establish the legal enforceability of netting arrangements will be costly and cumbersome.	Clarify if an internal legal review would cover the requirement of an independent legal review.	Legal assessments can be internal or external, but they have to be independent in the same spirit as other independent reviews in the banking regulation.	No change with respect to the Consultation Paper.
Legal enforceability of netting arrangements	Firms are already required to regularly assess their netting ability in a jurisdiction for capital purposes. Article 296 of the CRR requires firms to have	Clarify the requirements under Article 2 OPD (2). The RTS should specify that: (a) netting opinions are only required when an	These final RTS apply to a broader set of counterparties than banks. Whether or not legal assessment on the	No change with respect to the Consultation Paper.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	written and reasoned legal opinions on the enforceability and validity of contractual netting agreements. This is a duplication of CRR provisions for the same policy goals.	exposure is considered to be net of collateral, or (b) that firms can rely on existing legal opinions and reviews conducted for capital purposes.	enforceability of collateral or netting agreements produced for compliance with other regulations are valid for the purpose of this regulation is a supervisory issue, and should be discussed with the competent authority.	
Use of third-country custodians when netting enforceability and segregation standards of the RTS are not met	The RTS require EU counterparties to identify alternate legal arrangements to post collateral to jurisdictions where netting enforceability and segregation arrangements are found, by the independent legal review, to not meet the standards of the RTS. If these alternate arrangements cannot be found, then presumably EU counterparties will need to	The RTS should remove this requirement that will effectively mean that EU counterparties cannot trade in these jurisdictions if they do not have a 'clean' legal opinion. We propose that the text adopts a similar stance as the CRR, which does not effectively prohibit trading in non-netting	The proposed approach is only one of the possible solutions. Alternative solutions should be included in the final RTS.	The final RTS include alternative approaches to the treatment of exposures to counterparties in non-netting jurisdictions.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	stop trading in those jurisdictions. This will put EU institutions at a significant competitive disadvantage in most emerging markets.	jurisdictions, but makes it clear that netting agreements with entities in these jurisdictions will not be considered risk-reducing.		
a) EMIR equivalence determinations and substituted compliance				
Equivalence determinations and substituted compliance	It is necessary to avoid duplication and possible conflicts in the requirements. For instance, a US entity trading with an EU entity is required to collect under US rules, but the posting of the EU entity is subject to the EU rules. Without any substitute compliance, the EU entity is effectively subject to both US and EU regulations.	The Commission should implement standards for regime equivalence (under Article 13) so that EU entities are not subject to duplicate, or additional, requirements. Specifically, EU entities should only be mandated to post to jurisdictions that are not already required to collect under rules deemed equivalent to EMIR.	Equivalence determinations and substituted compliance are out of the mandate of these RTS.	No change with respect to the Consultation Paper.
Equivalence	The obligation to post	The ESAs should make a	The ESAs do not have	No change with respect to the

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
determinations and substituted compliance	collateral to all counterparties, even those outside the EU, potentially subjects EU counterparties to duplicate requirements. EU counterparties will be subject to the collect requirements of the non-EU jurisdiction, in addition to EU post requirements.	temporary equivalency determination, valid for 2 years, for other jurisdictions that adopt margin requirements based on the BCBS-IOSCO framework. This determination should be made as soon as other jurisdictions issue final rules.	powers to make any (temporary or not) equivalence determination.	Consultation Paper.
5. Other				
a) Application of margin requirements at an investment-fund level				
Threshold language in draft margining RTS to match the language in the draft clearing RTS	The clearing threshold specifies a EUR 8 bn threshold to determine if a consultation paper is subject to the clearing obligation. This threshold is applicable at the level of the individual fund. The intention of the margining RTS seems	The same language should be used in both the clearing and the margining RTS.	The approach should be in line with the BCBS-IOSCO principles. This issue seems to be the same within and outside the EU.	The wording in the RTS was aligned to the one in the BCBS-IOSCO framework.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	similar, but there is inconsistency in the language.			
b) MTA				
Periodic reset of MTA for non-EUR entities subject to the draft RTS's requirements	Many non-EUR entities will be required to calculate the MTA (i.e. the local currency equivalent of EUR 500 000) in their local currencies every day, as the EUR-local currency rate fluctuates. This creates additional operational burden.	The MTA (i.e. the local currency equivalent of EUR 500 000) should be reset on a periodic basis (monthly or quarterly).	Counterparties should assess the compliance to the regulation on a continuous basis. Therefore, a periodic 'reset' should not be part of the final RTS.	No change with respect to the Consultation Paper.
c) Sharing of margin calculation information				
Sharing of margin calculation information with 'knowledgeable third party'	The respondents were supportive of the requirement that the initial margin calculation has to be provided, upon request, to the counterparty. They were, however, not in favour of the 'knowledgeable third party'	Eliminate the need for the information to be provided to a 'knowledgeable third party'. It is enough if these are provided to the said counterparty.	There is no requirement to provide information apart from to the counterparty and to the competent authority.	No change with respect to the Consultation Paper.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	provision.			
d) Trade documentation				
Exemptions should be hardwired in the documentation	Counterparties will need to renegotiate their agreements (CSAs, etc.) if they breach thresholds (such as the EUR 8 bn threshold for outstanding OTC derivatives), or are no longer NFCs-, and so on.	Agreements should include the exemptions applicable to a particular counterparty, till the agreement is renegotiated.	The requirements concerning the legal agreements have been reviewed in order to avoid unnecessary repapering costs.	The wording in the RTS was adapted accordingly.
6. Collateral concentration limits				
a) Scope of application				

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
The EUR 1 bn threshold calculated for a single counterparty (and not group)	It is not entirely clear that the EUR 1 bn threshold in Article 7 LEC (2) refers to collateral collected from a single counterparty or from the group to which the counterparty belongs.	Clarify that the EUR 1 bn threshold applies to the threshold collected from a single counterparty.	The framework for concentration limits has been slightly redesigned. In particular, concentration limits should apply only to initial margin and not to variation margin and IM. The EUR 1 bn threshold applies at a counterparty level and not at a netting set or group level.	Articles on concentration limits have been adapted accordingly.
Exemption from collateral concentration limits for equity collateral for related derivatives	The draft RTS do not consider the cases where the underlying of the derivative is used as collateral for the derivative. Specifically, in the case of equity derivatives, a buyer of call options on equity can mitigate risks if it collects the underlying equity as the	It is proposed that paragraph 5 is added to Article 7 LEC that reads: 'If equity derivatives are secured by the equities underlying the derivatives, then those equities are not subject to: (a) the concentration limits in this		A specific paragraph was added to the section on concentration limits.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	collateral from the option seller. (See 'Impact of long term investors' in section (c) below.)	Article 7 LEC, and (b) the eligibility requirement in Article 1 LEC 1(q) that equity must be included in main index'.		
The de minimis threshold of collateral before the 10% concentration limit is applied	The 10% concentration limit may result in required transfers of small amounts of collateral.	In order to avoid a requirement for non-material transfers, and to avoid an increase in operational burdens, a de minimis threshold amount of collateral must be posted before collateral concentration limits can apply.-	The concentration limits should be proportionate to the amount of collateral transferred. Therefore, the RTS should include a threshold exempting from the concentration limits small amounts of collateral. In case the same shares are posted as collateral and are underlying of the derivative equity, concentration limits should not be applied. However, all the other	EUR 10 m was included as a threshold to be exempt from diversification requirements. The overall concentration limit was also increased to avoid excessive burden on smaller portfolios.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
			requirements for the eligibility of collateral should be met.	
Compliance with concentration limits for entities with small margin requirements	Entities with small margin requirements will have to bear excessive operational burdens when meeting the collateral concentration limits. The liquidity concerns that concentration limits are designed to mitigate are not applicable for instances where the total margin amount is small.	Limiting concentration limits to only those counterparties within the scope of the initial margin correctly imposes limits on systemically important institutions and uses an existing threshold (IM scope), thus reducing regulatory burden.	Concentration limits apply only to IM. Furthermore, they apply above EUR 1 bn for government bonds, which will most likely be the class of securities most used for this purpose.	The final RTS include some flexibility on the concentration limits for smaller amounts of collateral.
List of G-SIIs and O-SIIs	N/A	The ESAs should publish a list of G-SIIs and O-SIIs so that parties can readily make a determination regarding the applicability of concentration limits.	The EBA already maintains a list of systemically important banks on its website.	No change with respect to the Consultation Paper.
7. Eligible collateral				

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
a) Aligning eligible collateral to that allowed for cleared transactions				
EMIR Article 46 provision for NFCs	The EMIR Article 46 allows NFCs to provide bank guarantees as collateral for cleared derivative transactions under certain conditions.	Bring the eligible collateral for margining with regard to NFCs in line with EMIR Article 46.	These RTS apply to all counterparties in the same manner. This is to avoid any regulatory arbitrage.	No change with respect to the Consultation Paper.
b) Wrong-way risk				
'Close links' test for concentration risks	The concept of 'close links' (which can mean as little as 20% common ownership) is used in both the concentration limits and the wrong-way risk section of the draft RTS. It is extremely difficult for parties to know who has 20% stakes in the issuers of the relevant collateral. In addition, a 20% stake will not necessarily be an indication of a relationship that justifies including the owner in	It is proposed that Article 7 LEC (1)(a) is amended.	The close links test is deemed too strict for the purposes of these RTS.	The close links test for the eligibility of collateral was removed.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	a concentration limit or wrong-way risk test. We propose deleting the close links test.			
c) Ability of the collateral taker to liquidate collateral in a timely manner				
Market access and ability to liquidate collateral	It will not always be possible to know, ex ante, whether a party has the ability to liquidate the collateral in a timely manner. Similarly, market access varies, and it is difficult for the collateral taker to know, ex ante, if it will have market access in the future in a time of stress. In times of significant financial stress, many forms of collateral may become difficult to liquidate. Market access depends on many factors, such as the presence of willing buyers, general economic environment, and so on. In	In order to account for the fact that it is difficult for a counterparty to know, for certain, ex ante, that it will be able to liquidate the collateral in a timely manner, the first sentence of Article 1 LEC should be deleted.	No counterparty should collect collateral that it is not able to liquidate within the time frame foreseen for the initial margin (i.e. 10 days). When setting the levels of collateral to be collected, the ESAs assumed that the collecting counterparty has in place all the operational procedures to manage the collateral in case its counterparty defaults. It would not be prudent to start obtaining access	No change with respect to the Consultation Paper.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	addition, it may not be possible for one party to know whether the other party is able to liquidate certain types of collateral, which may make it difficult for the parties to agree on acceptable collateral.		to some markets only after that event.	
8. FX haircuts				
a) Termination currency				

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
Definition of 'termination currency'	It is not clear what the term 'termination currency' in the draft RTS means.	The RTS should clearly define that the term 'termination currency' refers to the termination currency as per a master agreement such as the ISDA Master Agreement.	The specification concerning the FX haircut for collateral denominated in a currency different from the one of the derivative should be more detailed and aligned to prevailing international practices.	The requirements on the FX haircut were clarified, including a better description of what is meant by 'termination currency'.
Definition of 'termination currency'	N/A	The RTS should provide for the situation in which each party specifies a different termination currency.	This is correct.	This was added to the final draft RTS.
b) Excluding cash from the scope of the 8% haircut				
No FX haircut for cash in VM	Cash amounts posted in variation margin should be excluded from the scope of the 8% FX haircut. In addition, the RTS should provide for a situation in which	Cash amounts posted in initial margin variation margin should be excluded from the scope of the 8% FX haircut.	Discussion with industry stakeholders and other regulators clarified that there is an FX risk when collateral is posted in a different currency other	The FX haircut on cash variation margin was removed. The FX haircut is maintained on non-cash variation margin and cash and non-cash IM.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	each party specifies a different transfer currency.		than the one of the underlying. As there are disadvantages in including a FX haircut for cash variation margin (most notably, an increase in the credit risk of the posting party), it is the opinion of the ESAs that this haircut may be set to 0. However, this should not mean that the risk is neglected and other risk mitigants should be in place to cover this risk. At this stage, the BCBS-IOSCO framework does not identify such alternative approaches and, therefore, the final draft RTS remain silent on this.	

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
9. Intragroup transactions				
a) Obtaining the intragroup exemption				
Intragroup exemptions under EMIR Article 11(5)	Obtaining the intragroup exemption under Article 11(5) (entities in the same EU Member States) is likely to create considerable complexity and administrative burden, and does not serve any market stability function.	NFCs should obtain an automatic intragroup exemption for initial margin and variation margin without there being any notification process for the exemptions under Article 11(5).	This would require a change of the Level 1 text.	No change with respect to the Consultation Paper.
Intragroup transactions under Article 11(7) and Article (10) of the EMIR	Obtaining intragroup exemption under Article 11(7) and Article 11(10), where transactions are done against a central risk management function, requires permissions from two competent authorities. This creates an administrative burden.	For NFCs where one side in an intragroup transaction performs the central risk management (treasury) function, there should be a single-sided notification process only.	Most of the conditions for the exemption of intragroup transactions are already included in the EMIR. Therefore, this exemption in the RTS is not possible.	No change with respect to the Consultation Paper.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
Transitional exemption from all margin requirements for cross-border intragroup transactions	There have been no equivalence determinations by the Commission under Article 13(2) of the EMIR so far. As a result, intragroup transactions done with group entities outside the EU will not benefit from the intragroup exemption contemplated under Article 11(5 to 10) when the RTS enter into force. Given the significant amount of derivative transactions between EU and non-EU FCs and NFCs, this exemption is critical to fostering a healthy growth and investment environment for Europe. Additionally, requiring such intragroup transactions to be margined is unjustified from a counterparty credit perspective, and also	The ESAs should provide a general exemption for intragroup transactions from initial margin requirements, or a transitional exemption for cross-border intragroup transactions from all margin requirements.	Most of the conditions for the exemption of intragroup transactions are already included in the EMIR. Therefore, a blanket exemption in the RTS is not possible. While the conditions set out in the RTS should be met, in any case, to obtain the exemption, it is recognised that the equivalence determination may take some time before it is complete. In order to avoid a disproportionate burden of the margin requirements, the competent authorities should be able to grant exemptions in the time period required to	A specific paragraph was added to the section that included the transitional provisions.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	introduces additional operational and systemic risk.		complete the process of equivalence determination referred to in Article 13(2) of the EMIR.	
10. Scope of the rules				
a) Product scope				
VM requirements for FX derivatives	Respondents support the initial margin exemption for FX derivatives in Article 5 GEN. But the variation margin requirement is at odds with the scope of the regulations in the US and other jurisdictions, and puts European institutions at a competitive disadvantage.	Exempt FX swaps, forwards, and the principal amount of cross currency swaps from the variation margin requirements.	Other major jurisdictions have already implemented or will soon implement the margin requirements on FX forwards and swaps.	No change with respect to the Consultation Paper.
Margin requirements for equity options	All equity options are covered under the margin rules in Europe, but the coverage is more selective in the US,	There is a need for greater regulatory coordination to ensure harmonisation in the coverage. We propose	Single stock options and equity index options may not be subject to margin requirements	A specific paragraph was added to the section that included the transitional provisions.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	effectively putting the European institutions at a disadvantage.	1 December 2020 as the start date for covering equity options.	(partially or completely) in other major jurisdictions. As long as this is not clarified, it is deemed necessary to postpone the application of the requirements for those types of derivatives to avoid regulatory arbitrage.	
The initial margin and variation margin requirements for portfolios consisting of bought (sold) options only	The RTS seem to suggest that there is no counterparty credit risk for the option seller in truncations where the premium is paid in advance. However, this is correct only so long as the variation margin and initial margin posted by the option seller, if any, is adequately segregated. Additionally, the requirements of the RTS should only hold when the entire portfolio between two counterparties	It is proposed to amend the last sentence in Recital 6 of the RTS to: 'Therefore, if both the portfolio solely consists of bought option positions with upfront premia, and the variation margin is segregated, then the option seller may choose to not collect additional initial or variation margin, whereas the option buyer should collect both initial	A netting set made of only sold options may be treated separately from other netting sets. However, if the variation margin posted by the 'option-seller' is not segregated, it generates credit risk for the posting party. Therefore, only where no credit risk arises for the option-seller as well, may the 'option-buyer' be	The final RTS were amended accordingly.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	consists of these bought (sold) options with the premium paid (received) upfront.	and variation margin'.	exempt from margins.	
b) Counterparty scope				
Knowing whether an institution is within the scope for IM	Derivative counterparties will not know whether a particular counterparty is in/out of the scope for the initial margin phase-in dates (Article 1 FP) and the initial margin thresholds (Article 7 GEN) because they do not know the other counterparty's OTC derivative notional.	The RTS should specify the process of how OTC derivative notional amounts for all derivative trading entities should be communicated to all other derivative counterparties.	This is not really in the scope of these RTS. In any case, given the number of counterparties within the scope, two counterparties should clarify these aspects bilaterally.	No change is deemed necessary in response to this comment.
c) Exemption for trades required by regulation				
Impact of bank structural reforms	Bank structural reform regulations, such as the UK Banking Reform Act or the EU Bank Structural Reform regulation, may require	The margin requirements should not apply to legacy OTC derivatives that are transferred to an EU entity if such a transfer is	All the new trades are within the scope of the margin requirements. Industry stakeholders addressed a number of	No change is deemed necessary.

Title/Topic	Summary of responses received	Summary of the respondents' proposals	The ESAs' analysis	Amendments to the proposals
	transfers of legacy uncleared OTC derivatives between different EU entities. These transactions (which are carried out as a group tries to comply with other EU regulations) may impact the initial margin phase-in thresholds, and so on.	required to comply with bank regulations.	cases where they think it would be more appropriate to not consider these trades as 'new', but only as updates to legacy trades. It is deemed more prudent, however, that all the new trades are subject to margins to avoid opening any possibility of arbitrage.	

Specific questions of the second Consultation Paper

Question in the second Consultation Paper	Question	Responses and the ESAs' analysis	Changes to the draft RTS
Question 1	Respondents are invited to comment on the proposal in this section concerning the treatment of NFCs domiciled outside the EU.	Industry stakeholders supported the treatment introduced in the second Consultation Paper for NFCs domiciled in third countries. The approach, based on the assumption that third-country NFCs may have a risk profile not too dissimilar from the ones domiciled in the EU, would also ensure a level playing field for EU counterparties with respect to competitors domiciled in other jurisdictions.	None.
Question 2	Respondents are invited to comment on the proposal in this section concerning the timing of calculation, call and delivery of initial and variation margins.	Industry stakeholders suggested a longer time for posting and collecting non-cash collateral – in particular, for initial margin purposes. The cost-benefit analysis in this report includes an overview of pros and cons of the requirements in the final RTS. In addition, taking into account the approach taken in other jurisdictions, the provisions of the final RTS that require calculating the collateral (at the latest) at T+1 and collecting collateral on the same day of calculation seem to be the optimal ones. Trades across different time zones are addressed with a specific provisions that, in practice, allow more time for portfolio reconciliation in cases where trading occurs with counterparties domiciled in different time zones and, in particular, in Asia.	The RTS were clarified, although the overall approach remains the same as in the Consultation Paper.
Question 3	Respondents are invited to provide comments on whether the draft RTS might produce unintended consequences	The requirements on initial margin models are set in line with similar requirements in the BCBS-IOSCO framework and the CRR. Where necessary, more flexibility is introduced to allow less sophisticated counterparties to use	The requirements in the final RTS are similar to

Question in the second Consultation Paper	Question	Responses and the ESAs' analysis	Changes to the draft RTS
	concerning the design or the implementation of initial margin models.	third-party models or models maintained by their counterparties. The BCBS-IOSCO framework requires that models do not recognise risk-offset and diversification across certain predefined asset classes, but only within those asset classes. The ESAs acknowledge that this result can be reached in different ways and, therefore, it is not necessary to specify in the RTS which approach to follow. This aspect is left to the model assessment the authorities perform when reviewing the implementation of this framework.	the ones in the Consultation Paper. The wording was adapted to be closer to the wording in the BCBS-IOSCO framework.
Question 4	Respondents are invited to comment on whether the requirements of this section concerning the concentration limits address the concerns expressed for the previous proposal.	Industry stakeholders did not support the introduction of the diversification requirements, claiming that smaller or less sophisticated counterparties may face operational constraints in meeting those requirements. Therefore, the introduction of more proportional treatments was suggested. Industry stakeholders also noticed that it is not really common practice to diversify certain classes of collateral, such as government bonds. An additional point of concern was the introduction of cliff effects, especially where counterparties decide to post both variation margin and initial margin in securities and they exceed the EUR 1 bn threshold specified in the RTS. Taking into account all these considerations, the ESAs suggest applying the concentration limits to IM. These alone should address most of the concerns. A threshold of EUR 10 m is also included to avoid making counterparties diversify small amounts of collateral. Moreover, the concentration limits were relaxed for certain asset classes from 10% to 15%. In order to fix a missing cross reference in the second Consultation	The final RTS were amended accordingly.

Question in the second Consultation Paper	Question	Responses and the ESAs' analysis	Changes to the draft RTS
		Paper – i.e. bonds issued by credit institutions (including covered bonds) – it was clarified that this class of instruments is also subject to those limits. The only limit that is more stringent than the one in the Consultation Paper is the one on cash IM. The introduction of those limits was necessary because the final RTS allow custodians to reinvest cash IM, therefore generating credit risk for the posting party.	
Question 5	Respondents to this consultation are invited to highlight their concerns on the requirements on trading relationship documentation.	Industry stakeholders noticed that the introduction of some of the requirements on trading documentation would have had unintended consequences, including a prohibitive repapering of all the agreements (even those not in the scope of the margin requirements). It is the opinion of the ESAs that the proposal in the final RTS is in line with the international standards – in particular, with the IOSCO guideline on risk management techniques for OTC derivatives. This approach, more flexible than the original one, should address those concerns.	The final RTS were amended accordingly to simplify the documentation requirements.
Question 6	Respondents are invited to comment on the requirements of this section concerning the legal basis for the compliance.	The ESA acknowledge that obtaining a legal opinion for each agreement on the enforceability of the netting agreements and the protection of collateral is the not the best way forward, and would result in unnecessary costs. Nonetheless, counterparties should have their own assessment on these two aspects and should make sure that such an assessment is produced, internally or externally, in a way that guarantees its independence.	The final RTS were amended accordingly.
Question 7	Does this approach address the	Industry stakeholders required that cash initial margin is not segregated, as this	The final RTS

Question in the second Consultation Paper	Question	Responses and the ESAs' analysis	Changes to the draft RTS
	concerns on the use of cash for initial margins?	would result in a de facto ban of cash for initial margin purposes. Custodians, in particular, noticed that the suggested treatment of cash collateral would not be compatible with current practices and it would have been difficult, although not impossible, to apply. The ESAs therefore suggest a more flexible approach that would allow the use of cash for initial margin purposes. This approach is less prudent, but seems to be in line with what other jurisdictions have consulted on. In order to reduce the systemic risk that may arise from the treatment of cash IM, however, additional safeguards are required. These include that systemically important banks limit the amount of cash initial margin to be posted to a counterparty if held by a single custodian.	were amended accordingly. In particular, the articles regarding the reuse of initial margin and the concentration limits have been amended.
Question 8	Respondents are invited to comment on the requirements of this section concerning treatment of FX mismatch between collateral and OTC derivatives.	The annex on the currency mismatch haircut has been adapted in response to the inputs received during consultation. In practice, it is suggested that a cash variation margin is not subject to any currency mismatch haircut; non-cash variation margin may be subject to this haircut if it is denominated in a currency different from the one of the CSA, the master agreement or the derivatives' denomination. Cash and non-cash initial margin are subject to the currency mismatch haircut in cases where they are different from the termination currency.	The final RTS were amended accordingly.