

# Consultation paper on the 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

2 June 2014, London



JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

# Content

- ❑ International and legal framework
- ❑ Mandate
- ❑ Structure of the draft RTS
- ❑ References
- ❑ Annex

# Introduction

- ❑ The scope of these draft RTS Regulation covers banks, investment firms, insurance companies and non-financial counterparties that could be considered systemically important (i.e., above the clearing threshold)
- ❑ For this reason, the Legislators mandated the three ESAs to work together developing a joint product
- ❑ In the broader effort of the derivatives reform, the EMIR and these draft RTS implement in the European Union the international agreed principles (the BCBS-IOSCO framework was issued on September 2013)
- ❑ These draft RTS clarify several aspects and precise the details that the international agreement left open to local implementation

# International and legal framework

The two main references:

- ❑ Regulation (Eu) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR)
- ❑ Margin requirements for non-centrally cleared derivatives – final document, issued by BCBS and IOSCO on September 2013

## Next steps

- ❑ 14 July 2014                      End of consultation
- ❑ Year-end                              ESAs to submit the final draft RTS to the Commission (expected)
- ❑ Immediately after publication                      Application of the provisions related to intragroup exemptions after the publication in the Official Journal of the EU
- ❑ 1 December 2015                      Application of the risk management procedures (including the requirement to collect collateral) in the modalities set by these RTS

# The mandate under Article 11(15) of the EMIR

## Article 11(15)

“In order to ensure consistent application of this Article, the ESAs shall develop common draft regulatory technical standards specifying:

(a) the risk - management procedures, including the **levels and type of collateral and segregation arrangements**, required for compliance with paragraph 3;

~~(b) the level of capital required for compliance with paragraph 4;~~ <sup>(1)</sup>

(c) the **procedures for the counterparties and the relevant competent authorities** to be followed when applying exemptions under paragraphs 6 to 10;

(d) the **applicable criteria** referred to in paragraphs 5 to 10 including in particular what should be considered as **practical or legal impediment to the prompt transfer of own funds** and repayment of liabilities between the counterparties”.

<sup>(1)</sup> As amended by Article 520 of the CRR

# Structure of the draft RTS

Recitals

Chapter 1 Counterparties' risk management procedures

Chapter 2 Margin methods

Chapter 3 Eligibility and treatment of collateral

Chapter 4 Operational procedures

Chapter 5 Procedures concerning intragroup derivative contracts

Annexes

# General requirements

## Chapter 1 - General requirements

Article 1 DEF	Definitions
Article 1 GEN	General counterparties' risk management procedures
Article 2 GEN	Risk management procedures in specific cases
Article 3 GEN	Treatment of derivatives associated to covered bonds programmes for hedging purposes
Article 1 VM	Variation margin
Article 1 EIM	Initial margins



# Article 1 GEN: General counterparties' risk management procedures

- ❑ Requirement to collect collateral for **Variation Margin**
- ❑ Requirement to collect collateral for **Initial Margin**
- ❑ Upfront agreement on a **list of eligible collateral**

## Article 2 GEN: Risk management procedures in specific cases

- ❑ Initial margins may be **not** collected with respect to **physically settled foreign exchange** forwards, swaps and with respect to the exchange of principal of a **currency swap**
- ❑ **Threshold:** where the total initial margin calculated is equal to or lower than **EUR 50 million**, counterparties may agree that **no initial margin** will be exchanged and that they will **hold capital** against their exposure to their counterparties.
- ❑ **Minimum transfer amount:** where the total collateral amount is equal to or lower than EUR 500 000 the counterparties may agree not to exchange collateral.
- ❑ Special treatment for **transactions with non-financial counterparties** other than those referred to in Article 10 and transactions entered into with entities referred to in paragraphs 4 and 5
- ❑ Special treatment for transactions that are **intermediated through a clearing member**

## Article 3 GEN: Treatment of derivatives associated to covered bonds programmes for hedging purposes

- ❑ **Covered bond issuers** and **cover pools** are exempt from posting (but not from collecting) **initial** and **variation margins** if all the following conditions are met:
  - a) the derivative is **not terminated** in case of default of the covered bond issuer;
  - b) the derivative counterparty **ranks at least pari-passu** with the covered bond holders
  - c) the derivative is registered in the cover pool of the covered bond programme in accordance with national covered bond legislation and is **used only for hedging purposes**
  - d) the netting set does not include derivatives unrelated to the covered bond programme
  - e) the covered bond programme meets the requirements of Article 129 of Regulation (EU) No 575/2013 (CRR)
  - f) the covered bond programme is subject to a **legal** collateralization requirement of at least **102%**

# Article 3 GEN: Treatment of derivatives associated to covered bonds programmes for hedging purposes

## □ Alternative (discussed in the Annex: Impact Assessment)

1. The cover pool is not exempt from posting collateral to its derivative counterparty
2. Relies on the interposition of a third-party **collateral provider** between the cover pool/covered bond issuer and its derivative counterparty
3. Under this arrangement, the third party, as a collateral provider, acts as a guarantor for the derivative counterparty
4. In return, the third party receives a claim on the assets in the cover pool (ranking pari-passu or below the covered bond owners) and a fee paid by the covered bond issuer/cover pool

# Article 1 VM: Variation margin

- ❑ Counterparties shall collect variation margins at least on a **daily basis** starting from the business day following the execution of the contract
- ❑ The collected variation margins shall be based on the current valuation of each derivative contract calculated in accordance with Article 11(2) of Regulation (EU) No 648/2012 and Articles 16 and 17 of the Commission Delegated Regulation No 149/2013.

## Article 1 EIM: Initial margin

- ❑ Counterparties shall calculate and collect initial margin using either:
  1. the standardized approach (Article 1 SMI) or
  2. an initial margin model (Article 1 MRM)
- ❑ In case they agree on the use of an initial margin model, two counterparties must agree on the **characteristics of the model and on the data used** for the calibration
- ❑ A counterparty shall collect **initial margins within the business day** following the execution of a new derivative contract

## Article 1 EIM: Initial margin (continued)

- The total amount of initial margins collected by a counterparty shall be **recalculated and collected** at least when:
  - a) a **new** contract is executed with that counterparty
  - b) an existing contract with that counterparty **expires**
  - c) an existing contract **triggers a payment**, other than posting or collecting variation margins, or a delivery
  - d) an existing contract is **reclassified** in terms of asset category defined in Article 1 SMI by way of reduced **time to maturity**
  - e) the initial margin model is **recalibrated**
  - f) no initial margin recalculation has been performed in the **last 10 business days**

# Standard Methods and Initial Margin Models

## Chapter 2      Margin methods

Article 1 SMI	Standardised Method
Article 1 MRM	Initial margin models
Article 2 MRM	Confidence interval and risk horizon
Article 3 MRM	Calibration of the model
Article 4 MRM	Primary risk factor and underlying classes
Article 5 MRM	Integrity of the modelling approach



## Article 1 SMI: Standardised Method

- The notional **amounts or underlying values**, as applicable, of the derivative contracts in a netting set shall be multiplied by the percentages in Table 1 of Annex IV:

*Annex IV - Standardised Method for the calculation of initial margin*

<b>Category</b>	<b>Add-on factor</b>
Credit: 0–2 year residual maturity	2%
Credit: 2–5 year residual maturity	5%
Credit 5+ year residual maturity	10%
Commodity	15%
Equity	15%
Foreign exchange	6%
Interest rate: 0-2 year residual maturity	1%
Interest rate: 2-5 year residual maturity	2%
Interest rate: 5+ year residual maturity	4%
Other	15%

# Article 1 SMI: Standardised Method (continued)

## □ Primary risk factor

- a) If a primary risk factor **can be clearly identified**, contracts shall be assigned to the category corresponding to that risk factor
- a) If the condition in point (a) is **not** met contracts shall be assigned to the category with the **highest add-on factor** among the relevant categories

## □ Netting (NGR)

- Net initial margin =  $0.4 * \text{Gross initial margin} + 0.6 * \text{NGR} * \text{Gross initial margin}$
- A netted notional may be computed before applying the add-ons in Paragraph 1 between contracts that are of **opposite direction** but are **identical** for all the others contractual features with the only possible exemption of notional

## Article 1 MRM: Initial margin models

- ❑ An initial margin model may be:
  - a) developed by **one of the two counterparties** or jointly by the two counterparties;
  - b) provided by a **third party** agent including a model based on a methodology endorsed for its use in the Union.
- ❑ The margin collector **remains responsible** for ensuring that the requirements set out in in this Regulation are met.
- ❑ The counterparties shall:
  - a) notify the relevant competent authorities if they are intending to use an initial margin model
  - b) be prepared to supply **relevant documentation** referred to in Article 6 MRM
- ❑ If initial margin models **cease to comply** with the requirements, counterparties shall notify the relevant competent authorities and shall **compute the required initial margins using the Standardised Method**.

## Article 2 MRM: Confidence interval and risk horizon

- ❑ Variations in the value of the contracts in the netting set are consistent with a **one-tailed 99 percent** confidence interval over a margin period of risk of **at least 10 days**.
- ❑ The margin period of risk of a netting set for the calculation of initial margins shall take into account:
  - a) the period that may elapse from the **last collection** of the margins up to the **declaration of the default** of the counterparty;
  - b) the estimated period needed to replace the contracts in the netting set taking into account the **level of liquidity**, the **size** and **concentration** of the positions in relation to the markets where such positions are traded.

## Article 3 MRM: Calibration of the model

### □ Initial margin models calibration:

- a) the data shall be accurate, appropriate and complete
- b) historical data from a period of at **least three years**
- c) the data cover the **most recent continuous** period from the calibration date and contain at least 25% of data representative of a period of **significant financial stress** ('stressed data')
- d) if the most recent data period **does not** contain at least 25% of stressed data, **the least recent data** must be replaced by data from a period of **significant financial stress**
- e) the data within each of the identified periods shall be **equally weighted**
- f) The parameters may be calibrated according to **shorter periods** than the margin period of risk and **scaled up** to the margin period of risk by an appropriate methodology.
- g) The model shall be **recalibrated** at least **every 6 months**.

## Article 4 MRM: Primary risk factor and underlying classes

- ❑ Initial margin models shall **assign** a derivative contract **to an underlying class** based on its **primary risk factor, defined in terms of sensitivity** of the value of the contract to the market risk drivers.
- ❑ The following underlying classes shall be considered:
  - a) interest rates, currency and gold;
  - b) equity;
  - c) credit;
  - d) commodity and other.
- ❑ Initial margin models may account for **diversification, hedging and risk offsets** across the derivative contracts that are in the **same netting set** and **belong to the same underlying class**
- ❑ For a netting set, initial margin must be calculated:
  - a) first **at underlying class level**
  - b) and then **summing** the initial margin requirements for each underlying class within the netting set

## Article 5 MRM: Integrity of the modelling approach

- ❑ Any initial margin models shall be:
  - a) conceptually and practically sound and
  - b) shall capture all the risk drivers that are material for the netting set
  - c) reflect the nature, scale and complexity of the risks inherent in the underlying contracts
  - d) calibrated in a sufficiently conservative manner such that aspects like parameter uncertainty and data quality are properly captured.
  
- ❑ The model shall be subject to a **back testing** programme and shall:
  - a) Include **policies and procedures** shall outline the methodologies used for undertaking back testing, including statistical tests of performance, and
  - b) the procedures shall clearly identify what **actions** a firm has to take if the back testing results exhibit deficiencies in the risk estimation of the model
  
- ❑ The RTS includes detailed requirements concerning several aspects of the modelling approach

## Article 6 MRM: Qualitative requirements

- ❑ Any initial margin model shall be subject to an **internal governance process** including:
  - a) an initial (and periodic) validation by independent parties
  - b) an audit process to assess of the data and assumptions used
- ❑ Verification (at least annually) that the netting agreements considered for the initial margin calculation **are legally enforceable**
- ❑ Documentation of the model (including **assumptions, limitations** and **circumstances** under which the assumptions should no longer be considered valid)
- ❑ Documentation showing all **changes** to the initial margin model and the **tests performed**



# Requirements on eligibility of collateral

## Chapter 3 - Eligibility and treatment of collateral

Article 1 LEC	Eligible collateral for initial and variation margin
Article 2 LEC	Collateral Management
Article 3 LEC	Credit Quality Assessment
Article 4 LEC	Credit Risk Assessment by the collateral taker using the Internal Rating Based Approach
Article 5 LEC	Eligibility Criteria for UCITS
Article 6 LEC	Eligibility criteria to avoid wrong way risk
Article 7 LEC	Concentration limits for initial and variation margins
Article 1 HC	Calculation of the adjusted value of collateral
Article 2 HC	Own estimates of the adjusted value of collateral

## Requirements on eligibility of collateral

- The RTS propose a list of eligible collateral, eligibility criteria, requirements for credit assessments and requirements regarding the calculation and application of haircuts:
  - Assets for margining purposes should be sufficiently liquid, not be exposed to **excessive credit, market and FX risk** and hold their value in a time of financial stress
  - To the extent that the value of the collateral is exposed to market and FX risk, **risk-sensitive haircuts** should be applied
  - The value of the collateral should not exhibit a **significant positive correlation** with the creditworthiness of the counterparty (wrong-way risk)
  - The accepted collateral should also be reasonably **diversified**
  - Wrong-way risk and concentration risk are also addressed by **specific provisions**

# Article 1 LEC: Eligible collateral for initial and variation margin

## Concentration limits

	IRB local ccy	ext. rating local ccy	IRB Non-local ccy	ext. rating Non-local ccy	WWR*	Issuer at 50% (EU Sovereign)	Issuer at 10% (Others wrt Sovereign)	Issuer at 40% (Institutions)
a. Cash in the form of money credited to an account in any currency, or similar claims for the repayment of money, such as money market deposits;	n.a.	n.a.	n.a.	n.a.	n.a.	N	N	n.a.
b. Gold in the form of allocated pure gold bullion of recognised good delivery;	n.a.	n.a.	n.a.	n.a.	n.a.	N	Y	n.a.
c. Debt securities issued by Member States' central governments, and central banks denominated [and funded] in the domestic currency of that central government and central bank;	N	N	CQS 4	CQS 4	N	Y	n.a.	n.a.
d. Debt securities issued by Member States' regional governments or local authorities according to Art. 115 (2) of Regulation (EU) No. 575/2013;	N	N	CQS 4	CQS 4	N	Y	n.a.	n.a.
e. Debt securities issued by Member States' public sector entities according to Art. 116 (4) of Regulation (EU) No. 575/2013;	N	N	CQS 4	CQS 4	N	Y	n.a.	n.a.
f. Debt securities issued by Member States' regional governments or local authorities not meeting the requirements of Art. 115 (2) of Regulation (EU) No. 575/2013;	CQS 3	CQS 2	CQS 3	CQS 2	Y	N	Y	n.a.
g. Debt securities issued by Member States' public sector entities not meeting the requirements of Art. 116 (4) of Regulation (EU) No. 575/2013	CQS 3	CQS 2	CQS 3	CQS 2	Y	N	Y	n.a.
h. Debt securities issued by multilateral development banks listed in Art. 117 (2) of Regulation (EU) No. 575/2013;	N	N	N	N	N	N	N	N
i. Debt securities issued by the International Organisations listed in Art. 118 of Regulation (EU) No. 575/2013;	N	N	N	N	N	N	N	N

# Article 1 LEC: Eligible collateral for initial and variation margin

	IRB local ccy	ext. rating local ccy	IRB Non-local ccy	ext. rating Non-local ccy	WWR*	Concentration limits		
						Issuer at 50% (EU Sovereign)	Issuer at 10% (Others wrt Sovereign)	Issuer at 40% (Institutions)
j. Debt Securities issued by non-Member States' governments and central banks.	CQS 3	CQS 2	CQS 3	CQS 2	N	Y	n.a.	n.a.
k. Debt Securities issued by non-Member States' regional governments or local authorities that meet the requirements of the first subparagraph of Art. 115 (2) of Regulation (EU) No. 575/2013 and non-Member States' public sector entities that meet the requirements of Art. 116 (4) of Regulation (EU) No. 575/2013;	CQS 3	CQS 2	CQS 3	CQS 2	Y	Y	n.a.	n.a.
l. Debt securities issued by non-Member States' regional governments, local authorities not meeting the requirements of the first subparagraph of Art. 115 (2) of Regulation (EU) No. 575/2013 or non-Member States' public sector entities not meeting the requirements of the first subparagraph of Art. 116 (4) of Regulation (EU) No. 575/2013;	CQS 3	CQS 2	CQS 3	CQS 2	Y	N	Y	n.a.
m. Debt securities issued by credit institutions and investment firms including bonds referred to in Article 52(4) of Directive 2009/65/EC ;	CQS 3	CQS 2	CQS 3	CQS 2	Y	N	N	Y
n. Corporate bonds;	CQS 3	CQS 2	CQS 3	CQS 2	Y	N	Y	n.a.
o. The most senior tranche of a securitization that is not re-securitisation;	N	CQS 2	N	CQS 2	Y	N	Y	Y
p. Convertible bonds provided that they can be converted only into equities which are included in a main index in accordance with Article 197 (8) (a) eligible as collateral in accordance with this Article;	CQS 3	CQS 2	CQS 3	CQS 2	Y	N	Y	Y
q. Equities included in a main index in accordance with Article 197(8)(a) of Regulation (EU) 575/2013;	N	N	N	N	Y	N	Y	Y
r. Shares or units in UCITS, provided that the criteria in Article [6 LEC] are met.	N	N	N	N	Y	N	Y	N

## Article 2 LEC: Collateral Management

- Risk management procedures include the following **operational and technical capabilities**:
  - a) Daily re-evaluation of collateral;
  - b) Legal arrangements and a collateral holding structure
  - c) Where the collateral is maintained with the collateral provider, have alternative custody accounts
  - d) Access to an active outright sale or repurchase agreement market
  - e) Cash accounts in all the acceptable currencies
  - f) Ability to return the unused collateral
  - g) Arrangements to ensure that the accepted collateral is freely transferable

## Article 3 LEC and 4 LEC: Credit Quality Assessment

- The collateral taker shall assess the **credit quality** of assets using one of the following methodologies:
  - a) an **approved** internal model (IRB)
  - b) the approved internal model **of its counterparty**
  - c) a **credit assessment** issued by a recognised ECAI or export credit agency

## Article 5 LEC: Eligibility Criteria for UCITS

- ❑ Same criteria as in the CRR

## Article 6 LEC: Eligibility criteria to avoid wrong way risk

- ❑ See tables on eligible collateral

## Article 7 LEC: Concentration limits for initial and variation margins

- ❑ See tables on eligible collateral

## Article 1 HC: Calculation of the adjusted value of collateral (Haircuts)

- Same as the volatility adjustments in the CRR

## Article 2 HC: Own estimates of the adjusted value of collateral

- The estimation of haircuts shall meet all the following qualitative criteria:
  - a) Use the volatility estimates in the day-to-day risk management process including in relation to its internal exposure limits;
  - b) Scale up its haircuts in accordance with the square root of time formula
  - c) A counterparty shall have in place established procedures for monitoring and ensuring compliance with a documented set of policies
  - d) An independent review
  - e) A review of the overall system shall take place at least once a year



# Operational requirements and treatment of collected collateral

## Chapter 4 - Operational procedures

Article 1 OPE	Operational process for the exchange of collateral
Article 1 SEG	Segregation of initial margins
Article 1 REU	Treatment of collected initial margins

# Article 1 OPE: Operational process for the exchange of collateral

- ❑ The risk management procedures shall include:
  - a) A detailed **documentation** of policy and procedures with regards to the exchange of collateral
  - b) Documented, consistent and robust **processes for escalation with counterparties**, authorisation and recording of any exceptions to the existing policy and procedures
  - c) Reporting of **material exceptions** to senior management
  - d) Agreement of terms with all counterparties in respect of the operational process for the exchange of collateral, including:
    - i. the **levels and type** of collateral required
    - ii. the **segregation** arrangements
    - iii. the transactions
    - iv. the procedures for notification, confirmation and adjustment of **margin calls**
    - v. the procedures for **settlement** of margin calls
    - vi. the methods, timings and responsibilities for **calculating** margin and **valuing** collateral

## Article 1 OPE: Operational process for the exchange of collateral (cont'd)

- The terms shall be documented by way of written agreement between the counterparties before the relevant transactions are executed:
  - a) Procedures for the storing of agreements and for the prompt recording and application of the terms and arrangements
  - b) Procedures and controls ensuring the timely notification and settlement of margin calls
  - c) Procedures and controls for measuring and mitigating risks arising from the
  - d) List of assets accepted as collateral
  - e) Robust processes for setting collateral levels
  - f) Procedures to periodically verify the liquidity of the eligible collateral

## Article 1 SEG: Segregation of initial margins

- ❑ Initial margin shall be **segregated** from proprietary assets on the books and records **of a third party holder or custodian**, or via **other legally effective** arrangements made by the collecting counterparty
- ❑ The collecting counterparty shall always provide the posting counterparty with the option to segregate its collateral from the assets of other posting counterparties (**'individual segregation'**)
- ❑ Where initial margin is collected in **cash**, **it shall be segregated individually**, unless the collecting counterparty can prove to its counterparty and to the competent authority that legally effective arrangements are in place to segregate it from proprietary assets.
- ❑ The segregation arrangements shall meet **both** of the following conditions:
  - a) initial margins are **immediately available** to the collecting entity where the posting counterparty defaults
  - b) the **posting entity is sufficiently protected** where the collecting entity enters bankruptcy or other insolvency proceedings
- ❑ At the **inception** of the transaction and on a regular basis thereafter, and **at least annually**, the counterparties shall obtain satisfactory **legal opinion(s)** in all relevant jurisdictions on whether the segregation arrangement meets the requirements

# Article 1 REU: Treatment of collected initial margins

- The collecting counterparty shall **not re-hypothecate, re-pledge nor otherwise re-use** the collateral collected as **initial margin**.

# Procedures concerning intragroup derivative contracts

## Chapter 5 - Procedures concerning intragroup derivative contracts

Article 1 IGT	Procedure for the counterparties and the competent authorities
Article 2 IGT	Intragroup risk management procedures
Article 3 IGT	Practical or legal impediment

## Article 1 IGT: Procedure for the counterparties and the competent authorities

- ❑ Information to be delivered to the Competent Authority
- ❑ Communication to the applicants where a competent authority takes a positive decision
- ❑ Communication to the applicants where a competent authority takes a negative decision
- ❑ If one of the competent authorities notified under Article 11(7) does not agree upon fulfilment of the conditions it shall notify the other competent authority

## Article 2 IGT: Intragroup risk management procedures

- ❑ Risk management procedures shall ensure the regular monitoring of the intragroup exposures and the timely settlement of the obligations resulting from the intragroup OTC derivative transactions

## Article 3 IGT: Practical or legal impediment

- A **legal impediment** to the prompt transfer of own funds or repayment of liabilities between the counterparties is deemed to exist where:
  - under the **laws** applicable to the counterparties, or
  - under the **contractual relationship** between the counterparties, or between a counterparty and a third party,
  - there are **any current or anticipated restrictions including** any of the following:
    - a) Currency and exchange controls
    - b) Regulatory restrictions
    - c) Restrictions stemming from insolvency, resolution or similar regimes
    - d) Current or potential limitation on the ability of a counterparty to promptly transfer own funds or repay liabilities when due between the counterparties.
  
- A **practical impediment** to the prompt transfer of own funds or repayment of liabilities between the counterparties is deemed to exist where:
  - Sufficient assets of the counterparties **are or may not be freely available** to the counterparty in the **necessary form** in order to satisfy such transfers or repayments when due
  - There are **obstacles** stemming from **operational, financial or commercial systems, processes or practices**



## Article 1 FP: Final provisions

- ❑ This Regulation applies from 1 December 2015
- ❑ The Articles concerning intragroup exceptions apply from the entry into force of this Regulation
- ❑ Phase-in:
  - a) From **1 December 2015** to 30 November 2016, when at least one of the counterparties belongs to a **group** whose aggregate month-end **average notional amount** of non-centrally cleared derivatives for June, July and August of 2015 is below EUR 3.0 trillion.
  - b) From 1 December 2016 to 30 November 2017, when [...] is below EUR 2.25 trillion.
  - c) From 1 December 2017 to 30 November 2018, when [...] is below EUR 1.5 trillion.
  - d) From 1 December 2018 to 30 November 2019, when [...] is below EUR 0.75 trillion.
  - e) From 1 December 2019, when [...] is below EUR 8 billion.
- ❑ The risk management procedures shall apply throughout the life of the contract
- ❑ The risk management procedures (including the requirement to collect margins) are required (only) when two counterparties enter into **new contracts**

# Content of the annexes

## Annexes

Annex I	Mapping of PD to Credit quality steps
Annex II	Standard haircuts to the market value of collateral
Annex III	Own estimates of the haircuts to the market value of collateral
Annex IV	Standardised Method for the calculation of initial margin

## References

- Regulation (Eu) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR) [[link](#)]
- Consultation Paper: 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 [[link](#)]
- Joint Discussion Paper on Draft Regulatory Technical Standards on risk mitigation techniques for OTC derivatives not cleared by a CCP under the EMIR (JC/DP/2012/1) issued by EBA, EIOPA and ESMA on 6 March 2012 [[link](#)]
- Margin requirements for non-centrally cleared derivatives – final document, issued by BCBS and IOSCO on September 2013 [[link](#)]
- Supervisory guidance for managing risks associated with the settlement of foreign exchange transactions, issued by BCBS on February 2013 [[link](#)]

# Annex



JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

Public hearing on Risk management procedures for non-centrally cleared OTC derivatives

## Article 11(3) of the EMIR

### Article 11(3)

“**Financial counterparties** shall have risk-management procedures that require **the timely, accurate and appropriately segregated exchange of collateral** with respect to OTC derivative contracts that are entered into on or after 16 August 2012”

“**Non-financial counterparties** referred to in Article 10 shall have risk-management procedures that require the **timely, accurate and appropriately segregated exchange of collateral** with respect to OTC derivative contracts that are entered into on or after the clearing threshold is exceeded”

# Article 11 paragraphs 6 to 10 of the EMIR (summary)

## Article 11

“An **intragroup** transaction between...

6. counterparties which are established in different Member States shall be exempt totally or partially ...
7. non-financial counterparties which are established in different Member States shall be exempt ...
8. counterparty which is established in the Union and a counterparty which is established in a third-country jurisdiction shall be exempt totally or partially ...
9. non-financial counterparty which is established in the Union and a counterparty which is established in a third-country jurisdiction shall be exempt ...
10. non-financial counterparty and a financial counterparty which are established in different Member States shall be exempt totally or partially ...

... provided that the following conditions are fulfilled:

- a) the risk-management procedures of the counterparties **are adequately sound, robust and consistent** with the level of complexity of the derivative transaction;
- b) there is **no current or foreseen practical or legal impediment** to the prompt transfer of **own funds** or repayment of liabilities between the counterparties”.