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Permanent exemption from variation margin obligation for FX forwards?

Earlier this week, the European Supervisory Authorities (ESAs) published draft amendments to EMIR-related regulatory technical standards (RTS) that align the treatment of variation margin (VM) for FX forwards with the supervisory guidance applicable in other key jurisdictions. More specifically the draft amendments propose that the requirement to exchange VM for physically settled FX forwards shall only target transactions between institutions (credit institutions and investment firms).

The publication of the draft amendments follows on discussions at European level regarding a permanent exemption for certain counterparties entering into non-centrally cleared OTC derivatives from the obligation to exchange variation margin (VM), with the ESAs (EBA, ESMA and EIOPA) having published a statement in this respect back in November 2017. In this statement the ESAs announced that they would be working on new regulatory technical standards containing a permanent exemption for FX forwards from VM obligations.

At present counterparties using FX forwards benefit from an exemption from the obligation to exchange VM, but this exemption will cease to exist as from 3 January 2018. As a consequence, from that date onwards FX forwards will in principal be subject to the EMIR margin requirements.

The question remains as to how the period between 3 January 2018 and the date of entry into force of the new RTS should be dealt with. In the statement made in November 2017, the ESAs recommend that the competent national authorities should apply their supervisory powers in a proportionate manner until the proposed amendments by the ESAs enter into force.

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