Reporting, clearing and risk mitigation rules for derivatives under European law in 2013 – the impact on buy side entities

A few provisions of the Regulation on Derivative Transactions, Central Counterparties and Trade Repositories, known as the European Market Infrastructure Regulation 648/2012 ("**EMIR**") are now in effect throughout the European Economic Area ("**EEA**"). Like Dodd-Frank, EMIR seeks to fulfill the G20 commitment that all standardized over-the-counter ("**OTC**") derivatives ("**Contracts**") should be cleared through a central counterparty ("**CCP**") and details of Contracts reported to registered trade repository ("**TR**"). As EMIR's final shape comes into focus, we have set out below some of the typical questions, particularly those asked by funds and fund managers ("**Buy-Side Entities**"), which we continue to encounter in the run-up to full implementation of EMIR.

EMIR contains three basic obligations, which are discussed in more detail in the Q&A below:

- Reporting Obligation – all counterparties with OTC and exchange traded Contracts will have to report details of those Contracts and any new Contracts, which they enter into, modify or terminate, to a TR in the EEA. The Contracts include credit, equity, interest rate, foreign exchange, commodity and other swaps and derivatives. The report will have to include details of the counterparties to the Contract and details of the Contract itself and will need to be made no later than one working day after its conclusion, modification or termination.

  Contracts entered into by a non-EEA Buy-Side Entity will potentially be subject to the Reporting Obligation. However, the responsibility for discharging that obligation may be delegated to a third party with the result that the non-EEA Buy-Side Entity will not, in practice, have to discharge that responsibility itself.

  If ESMA has registered or recognized a TR by April 1, 2013, a counterparty will need to report a Contract to that TR from **July 1, 2013**. If not, the report will need to be made to the relevant TR 90 days after registration or recognition of that TR with a longstop date of **July 1, 2015**, after which, if no TR is registered, reports are to be made to ESMA.

- Clearing Obligation – the counterparties to those types of OTC Contract, which the European Securities and Commodities Authority ("**ESMA**") designate as being subject to the Clearing Obligation under EMIR, will have to clear the Contracts through an authorized CCP. The Clearing Obligation will apply to the same types of OTC Contract to which the Reporting Obligation applies, subject to the designation by ESMA that a Contract of that type is to be cleared.

  Contracts entered into by a non-EEA Buy-Side Entity will potentially be subject to the Clearing Obligation. The first Clearing Obligation is due in **Q1/Q2 2014**.

  In order to manage their credit exposures, CCPs will be required to take: (a) variation margin calculated on a daily basis to ensure that its current exposures are fully collateralized; and (b) initial margin calculated at the outset to cover losses resulting from at least 99% of exposures movement over an appropriate time horizon. EMIR will require a CCP to keep records and accounts to enable it to distinguish the assets and positions of one CM from the assets and positions of another CM and from those of the CCP. EMIR will also require a CCP to have in place default procedures to ensure that positions can be closed-out or transferred.

- Risk Management Requirements for Uncleared OTC Contracts – for any OTC Contracts which are not cleared through a CCP, counterparties will be required to comply with operational risk management requirements. These include the requirements to provide: timely confirmation of the terms of the relevant Contract; portfolio reconciliation with robust, resilient and auditable formalized processes covering key trade terms and identifying the valuation attributed to each Contract; dispute resolution with processes to identify disputes between parties regarding the valuation of Contracts and exchange of collateral; daily mark-to-market valuations unless market conditions prevent this, in which case they may adopt a reliable and prudent mark-to- model approach; and portfolio compression with procedures to regularly and, at least twice a year, analyze the possibility of compressing any portfolio of 500 or more Contracts in order to reduce counterparty credit risk. The counterparties to any uncleared OTC Contracts will also be a required to exchange collateral.

  Although the risk management requirements for uncleared OTC Contracts will not apply directly to non-EEA entities, they may an impact on them. For example, the requirement to exchange collateral will, in practice, apply not only to an EEA counterparty to a trade with a non-EEA entity but also to that non-EEA entity.

  The timely confirmation and daily mark-to-market requirements came into force on **March 15, 2013**. The other requirements are due to come into force on **September 15, 2013**, with the exception of the collateral requirements which are not expected until **2014**.

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If you have any additional questions about EMIR or related laws or regulations, please contact **Andrew Henderson** at andrew.henderson@ropesgray.com.

EMIR Q&A

General Questions

Have all the EMIR measures been finalized?

The European Commission ("**Commission**") finalized EMIR on July 4, 2012. However, six of the regulatory technical standards regulations ("**RTSRs**") which supplement EMIR, were only recently finalized and more are to come.

Does EMIR deal with any other requirements?

Yes, it includes CCP and TR registration requirements – a CCP located in the EEA that wishes to provide clearing services will need to be authorized by the EEA Member State regulator in the Member State in which the CCP is located ("**Home State**") and an entity that wishes to act as a TR under EMIR will need to be registered with or recognized by ESMA.

What are the Penalties for breach of the requirements described above?

EMIR leaves the determination of penalties to the individual EEA Member State regulators.

What are about the enforceability of Contracts entered into in breach of the requirements described below?

EMIR makes it clear that the infringement of any of the requirements described above shall not affect the validity of any Contract or the possibility for the parties to enforce the provisions of any Contract. EMIR also states that an infringement of any of the requirements described above shall not give rise to any right of compensation from a party to the Contract.

How similar is EMIR to Dodd Frank?

As mentioned above, both EMIR and Dodd Frank are designed to give effect to the G20 commitments that all standardized OTC Contracts should be cleared through CCPs. The Clearing Obligation and Reporting Obligation should, therefore, be familiar to those operating under Dodd Frank. The requirement to post margin for uncleared OTC Contracts is also another significant common feature. However, EMIR is narrower in its scope than Dodd Frank. Whereas Dodd Frank applies to anyone who trades in an eligible OTC Contract (with a narrow exemption for non-financial entities undertaking certain hedging transactions), EMIR only applies to transactions between financial counterparties, non-financial counterparties (whose positions, excluding certain hedges, exceed a specified clearing threshold) and certain non-EEA entities. Moreover, whereas Dodd Frank extends registration, conduct, margin and other risk requirements to "major swap participants", the European regime limits registration (under the Markets in Financial Instruments Directive ("**MiFID**")) and margin requirements (under EMIR) to financial counterparties. However, EMIR extends certain of the Risk Management Requirements for Uncleared OTC Contracts to non-financial counterparties. Other measures similar to those under Dodd Frank, such as the requirement for OTC Contracts to be traded on an "organized trading facility", will be implemented using regulatory measures other than EMIR.

Which regulatory reforms in addition to EMIR will be relevant to Contracts?

The Commission has proposed changes to the MiFID regime under the so-called "**MiFID II**" reform package. The proposed reforms include a clearing obligation for exchange-traded Contracts, the requirement for those OTC Contracts that are subject to the Clearing Obligation to be traded on an "organized trading facility", the reporting of Contracts (to the extent that they are not already reported under EMIR) by investment firms, and position limits for commodity Contracts. The current indications are that the MiFID II proposals will be implemented in 2015.

Where can I find the links to the latest primary materials?

The text of EMIR can be found at:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0001:0059:EN:PDF
The text of the RTSRs finalized so far can be found at:
http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2013:052:SOM:EN:HTML
The text of the Commission Frequently Asked Questions can be found at:
http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/emir-faqs_en.pdf
The text of the BCBS-IOSCO Second Consultation on Margin Requirements for Uncleared Trades can be found at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD403.pdf

The Reporting Obligation

Who will be subject to the Reporting Obligation?

EMIR requires "counterparties and CCPs" to ensure that the details of any derivative contract, which they have concluded, and of any modification or termination of the contract are reported to a registered or recognized TR. Both counterparties are responsible for making a report to a TR. However, a counterparty may delegate the duty to make reports to someone else, including the other counterparty, the CCP or other third party, including a non-EEA entity. The counterparty, which makes the delegation, is still legally responsible for the Reporting Obligation.[1]

Will non-EEA Buy-Side Entities be subject to the Reporting Obligation?

Whereas EMIR deals expressly with the territorial application of the Clearing Obligation, it provides no definition of a "counterparty" which would restrict or expand the concept to exclude or include a non-EEA entity. At the time of writing, the International Swaps and Derivatives Association ("**ISDA**") is seeking clarification that the term "counterparty" only refers to a "financial counterparty" or "non-financial counterparty" as defined in EMIR and does not extend to third country entities.

It seems clear that the Reporting Obligation will apply to Contracts entered into between:

- any EEA "financial counterparty" defined to include any investment firm, credit institution, insurance undertaking, a UCITs fund (or its manager), or pension scheme regulated under the relevant European Directive or an alternative investment fund managed by a manager regulated

[1] A counterparty will be expected to agree the contents of any report with the entity that makes the report on its behalf and EMIR imposes a duty on counterparties and CCPs to ensure that the details of their Contracts are posted without duplication.

under the Alternative Investment Fund Managers Directive ("**AIFMD**") (any of these type of entities are referred to in this report as an "**FC**"); and

- any EEA entity which is not an FC (referred to as a "**Non-FC**").[2]

On this basis, funds and, in the case of UCITS funds, fund managers established in an EEA Member State will be subject to the Reporting Obligation. Any fund established in a non-EEA jurisdiction, such as the Cayman or Channel Islands, (a "**Non-EEA Fund**") which is managed by a manager in an EEA Member State which is authorized under the AIFMD (an "AIFM") will also be subject to the Reporting Obligation. As responsibility for discharging the Reporting Obligation may be delegated to a third party, an AIFM managed Non-EEA Fund could delegate its responsibility to the AIFM, counterparty or, in the case of a cleared Contract, CCP.

In the absence of further clarification, the view is that the Reporting Obligation should at least apply to any entity to which the Clearing Obligation applies. The Clearing Obligation will apply to Contracts entered into between:

- an FC or Non-FC and an entity established in a third country that would be subject to the Reporting Obligation in EMIR, were it established in the EEA. This means, in essence, that any non-EEA entity that carries on the types of activities carried on by an FC;[3] and

- two entities established in one or more third countries that would be subject to EMIR if they were established in the EEA provided that the Contract has a "direct, substantial and foreseeable effect within the EEA" or where imposing an obligation under EMIR is necessary or appropriate to prevent the evasion of any provision of EMIR the Commission has yet to finalize the RTSR setting out what is meant by a "direct, substantial and foreseeable effect within the EEA".

On this basis, the Reporting Obligation should apply to Non-EEA Funds, irrespective of whether they are managed by an AIFM or a non-EEA fund manager. As is the case with a Non-EEA fund managed by an AIFM, responsibility for discharging the Reporting Obligation may be delegated to a third party. This means that the Non-EEA Fund could delegate its responsibility to the Non-EEA fund manager, counterparty or, in the case of a cleared Contract, CCP.

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[2] The application of the Clearing Obligation to a Non-FC will depend on the Contracts entered into by that Non-FC exceeding a specified clearing threshold. For the following types of Contracts the thresholds are as follows: credit – EUR 1 billion in gross notional value; equity – EUR 1 billion in gross notional value; Interest rate – EUR 3 billion in gross notional value; foreign exchange – EUR 3 billion in gross notional value; and, commodity and other – EUR 3 billion in gross notional value. In calculating whether the positions in Contracts which an NFC has entered into exceeds one of the prescribed thresholds, EMIR permits an NFC to exclude from the calculation any Contracts which are "objectively measurable as reducing risks relating to the commercial activity or treasury financing activity" of the NFC or NFCs within the same group, i.e. hedging transactions. The Reporting Obligation is not subject to the Clearing threshold.

[3] Note that any non-EEA mutual fund would be captured under the definition of an alternative investment fund under the AIFMD, notwithstanding that it does not invest in alternative investments. Therefore, the manager of a non-EEA mutual fund would be potentially captured under the FC definition despite the fact that the non-EEA mutual fund.

What Types of Contracts will be subject to the Reporting Obligation?

Those Contracts identified in MiFID are subject to EMIR. This includes credit, equity, interest rate, foreign exchange, commodity and other swaps and derivatives. To be subject to the Reporting Obligation, the Contracts must have been (a) entered into before August 16, 2012 and be outstanding on that date or (b) entered into on or after August 16, 2012. (As set out below, the time for the reporting of Contracts entered before or after August 16, 2012 will be different.)

Will the Reporting Obligation be limited to OTC Contracts?

No - whereas the Clearing Obligation is limited to OTC Contracts, the Reporting Obligation will also apply to exchange-traded Contracts.

What will have to be reported to a TR?

A counterparty will have to report the details of any Contract they have concluded, modified or terminated and the report will have to include the following:

- details of the counterparties to the Contract, such as name, domicile, corporate sector; and

- details of the Contract, such as the Contract type, nature of the underlying, notional value, price, settlement date, confirmation details, whether the clearing obligation applies and details of collateral posted, with additional details specified for interest rates, foreign exchange, commodities, and options.

Counterparties will not be expected to send copies of each Contract to a TR.

When will the report need to be made to the TR?

The details of any Contracts entered into after the effective date for the Reporting Obligation (the "Reporting Date") will need to be reported no later than one working day after the conclusion, modification or termination of that Contract.

Contracts, which are outstanding on the Reporting Date, will need to be reported to the TR within 90 days of the Reporting Date and Contracts that were outstanding on or after August 16, 2012 but are no longer outstanding on the Reporting Date will need to be reported within three years to a TR.

What will happen to the information which is reported to a TR?

EMIR requires a TR to publish regularly and in an easily accessible way the aggregate positions by class of Contracts reported to it. A TR will also have to make the information reported to it available to ESMA, other EU regulatory authorities, Member State regulators and any third country regulator with whom ESMA has entered into a cooperation agreement.

When is the Reporting Obligation due to come into effect?

The Reporting Date will depend on whether ESMA has registered or recognized a TR for the particular type of Contract in respect of which the Reporting Obligation applies for credit derivatives and interest rate Contracts:

- if ESMA has registered or recognized a TR by April 1, 2013, a counterparty will need to report a Contract to that TR from July 1, 2013; or

- if no TR has been registered or recognized by April 1, 2013, a counterparty will need to report a Contract to the relevant TR 90 days after registration or recognition of that TR; or

- if no TR has been registered or recognized for a particular type of Contract by July 1, 2015, counterparties will need to report that Contract to ESMA from July 1, 2015.

For all other Contracts, the registration or recognition date will be October 1, 2013 with the Reporting Date identified in (a) set at January 1, 2014 and identified in (b) set at 90 days after registration or recognition. The longstop date identified in (c) will be the same as that for credit derivatives and interest rate Contracts: July 1, 2015.

The Clearing Obligation

Will OTC Contracts entered into by non-EEA Buy-Side Entities be subject to the Clearing Obligation?

Yes, as mentioned above the Clearing Obligation will apply to OTC Contracts entered into between:

- a FC or Non-FC and an entity established in a third country that would be subject to the Clearing Obligation in EMIR were it established in the EEA which means, in essence, that any non-EEA entity, which carries on the types of activities carried on by a FC;[4] and

- two entities established in one or more third countries that would be subject to EMIR if they were established in the EEA provided that the OTC Contract has a "direct, substantial and foreseeable effect within the EEA" or where imposing an obligation under EMIR is necessary or appropriate to prevent the evasion of any provision of EMIR. The Commission has yet to finalize the RTSR setting out what is meant by a "direct, substantial and foreseeable effect within the EEA".

When is the Clearing Obligation due to come into effect?

The Clearing Obligation can only come into effect after (a) the CCP, who would become counterparties to OTC Contracts to which the Clearing Obligation attaches, are authorized in its Home State - or recognized in case of a CCP from a third country - to offer clearing services under EMIR and (b) ESMA determines which OTC Contracts should be subject to the Clearing Obligation (the "ESMA Determination"). ESMA has indicated that it will be in a position to start its assessment of OTC Contracts within Q1 2013. This

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[44] As mentioned above, any non-EEA mutual fund would be captured under the definition of an alternative investment fund under the AIFMD.

means that CCP authorizations should take place during Q3/Q4 2013 with the first Clearing Obligation due in Q1/Q2 2014.

Which Contracts are subject to the Clearing Obligation?

The same Contracts identified in MiFID, and referred to above in the context of the Reporting Obligation will be subject to the Clearing Obligation except that the Clearing Obligation will not apply to exchange-traded Contracts. (MiFID II will impose a clearing obligation on exchange-traded OTC Contracts.) The applicability of the Clearing Obligation to the OTC Contracts identified in MiFID will depend on the ESMA Determination referred to above.

How will the ESMA Determination operate?

EMIR provides for two types of ESMA Determination:

- a "bottom-up" approach undertaken at the initiative of the relevant CCP following which ESMA will have six months to determine whether the classes of OTC Contracts that the CCP is able to clear should be subject to the Clearing Obligation and, if so, specify the date of entry into force of such obligation, including any phase-in.

- a "top down" approach where, despite no CCP making an application to clear a class of OTC Contract, ESMA on its own initiative identifies and notifies the Commission of a class of OTC Contract that it considers should be subject to the Clearing Obligation.

What about Contracts entered into prior to EMIR?

Trades in Contracts entered into prior to EMIR coming into force will not need to be transferred to a CCP. However, under the "frontloading" principle, trades in a particular type of OTC Contract entered into after EMIR comes into force but prior to that type of OTC Contract becoming subject to the Clearing Obligation would need to be transferred to a CCP. Subject to the timing of the CCP authorization and ESMA Determination processes referred to above, counterparties will need to commence the frontloading process during Q3/Q4 2013 once the relevant CCP is authorized.

Are there any exemptions from the Clearing Obligation?

Yes – the Clearing Obligation will not apply to OTC Contracts that are entered into between members of the same group. In essence, any OTC Contracts entered into between a parent and its subsidiary or between two subsidiaries of the same parent would be excluded.

What about pension schemes?

The Clearing Obligation is, in effect, deferred until July 16, 2015 via a temporary exclusion for certain EEA occupational pension schemes. To benefit from this exclusion, the relevant pension scheme will have to make an application to the relevant regulator in its Home State.

What will be the most significant change for Buy-Side Entities from a system of uncleared OTC Contracts trades to a system of cleared OTC Contracts?

A central pillar of EMIR is the requirement for CCPs to manage their credit exposures. As part of that management process, EMIR requires a CCP to "impose, call and collect" margin from those entities facing the CCP, which will, in practice, be the institutions that are clearing members of CCPs ("**CMs**") appointed by the Buy-Side Entities.

This includes a requirement to take:

- variation margin calculated on a daily basis to ensure that its current exposures are fully collateralized – in practice, the CCP would expect to receive or return an amount reflecting the difference between a OTC Contract's value yesterday and its value today; and

- initial margin calculated at the outset (but subject to change depending on market volatility) to cover losses resulting from at least 99% of exposures movement over an appropriate time horizon – in practice, an amount to cover the expected cost of terminating a OTC Contract (to the extent that the variation margin is insufficient) calculated by reference to the market volatility and the creditworthiness of the CM.

Although the counterparty to an uncleared OTC Contract may expect to take collateral akin to variation margin and possibly expect an "independent amount" (to borrow the ISDA term) akin to initial margin, this is a matter of negotiation between the parties. EMIR, however, takes this choice away by, in effect, creating a mandatory margin requirement for OTC Contracts subject to the Clearing Requirement and for uncleared trades as a result of the Risk Management Requirements for Uncleared OTC Contracts.

How will EMIR ensure the protection of the margin posted by Buy-Side Entities?

EMIR will require a CCP to keep records and accounts to enable it to distinguish the assets and positions of one CM from the assets and positions of another CM and from those of the CCP. It will also require the CCP to distinguish between the CM's assets and positions held in its "house" account with the CCP from those which the CM holds in its "client" account. EMIR requires CMs to offer their clients individually segregated accounts held with the CCP as well as shared or "omnibus" accounts. Where a client chooses individual segregation, EMIR will require the CM to post any excess margin otherwise held with the CM to the CCP. This is to ensure that the Client is not exposed to losses connected to positions recorded in another account. The CM must disclose the levels of protection and offer these services "under reasonable commercial terms".

What will happen to the OTC Contract and margin if the clearing member appointed by a Buy-Side Entity becomes insolvent?

EMIR will require a CCP to have in place default procedures to deal with the failure by a CM to comply with the participation requirements of the CCP, e.g. where a CM becomes insolvent. The procedures will need to ensure that the CM's defaults are properly managed and the close-out of its positions does not disrupt the CCP's operations or expose the non-defaulting CMs to losses that they cannot anticipate or control.

EMIR will also require CCPs to provide for the transfer or "porting" of a client's positions and the relevant collateral from the defaulting CM to another "back-up" CM designated by the client and without the consent of the defaulting CM. This is to allow a client's OTC Contracts to remain alive and not to be closed out on account of the CM's default. EMIR permits a CCP to take all steps permitted by its rules to actively manage its risks in relation to the OTC Contracts, including liquidating positions and the relevant collateral held by the defaulting CM for the account of the client.

Will EMIR require a change in documentation?

Yes, although it is not yet certain whether documentation based on the current ISDA documentation or US "futures" style documentation will become the market standard – EMIR does not require a specific type of documentation.

The agreement between the client and CM would need to be consistent with the CCP rules and regulations. Modifications would need to address, in particular, the margin requirements of the CCP and possibly the porting requirements (although the CCP rules and/or contracts between the CCP and "back-up" CMs would be the primary mechanism for porting).

Risk Management Requirements for Uncleared OTC Contracts

What is the general requirement under the Risk Management Requirements for Uncleared OTC Contracts?

FCs and Non-FCs that enter into OTC Contracts not cleared by a CCP must ensure, exercising due diligence, that appropriate procedures and arrangements are in place to measure, monitor and mitigate operational risk and counterparty credit risk.[5]

Are Contracts entered into by a non-EEA entity subject to the Risk Management Requirements for Uncleared OTC Contracts?

The Risk Management Requirements for Uncleared OTC Contracts apply to FCs and Non-FCs who are, by definition, EEA entities. However, the Risk Management Requirements for Uncleared OTC Contracts may have an impact on non-EEA counterparties to uncleared OTC Contracts. For example, the requirement to exchange collateral will, in practice, apply not only to an EEA counterparty to a trade with a non-EEA entity but also to that non-EEA entity.

What are the particular requirements under the Risk Management Requirements for Uncleared OTC Contracts?

EMIR and the relevant RTSR require FCs and Non-FCs to put in place measures to achieve:

- **Timely Confirmation** of the terms of the relevant Contract which, must be provided as soon as possible and in any event, depending on the type of Contract, for FCs a on T+1 or a T+2 basis, with Non-FCs having periods of up to T+5 depending on the type of Contract;

[5] As the label suggests but for the avoidance of doubt, the Risk Management Requirements for Uncleared OTC Contracts do not apply to exchange traded Contracts.

- **Portfolio Reconciliation** with robust, resilient and auditable formalized processes covering key trade terms and identifying the valuation attributed to each Contract performed each business day where the FC or Non-FC has 500 or more outstanding Contracts, once a week where the number of outstanding Contracts is between 51 and 499, and once per quarter where the FC or Non-FC has 50 or fewer outstanding Contracts;

- **Dispute Resolution** with processes to identify disputes between parties regarding the valuation of Contracts and exchange of collateral between counterparties and allowing the resolution of disputes in a timely manner with a specific process for disputes that are not resolved within 5 business days;

- **Daily Mark-to-Market Valuation** unless market conditions, which include conditions that arise where a market is inactive or where the range of reasonable fair value estimates is significant, prevent this, in which case they may adopt a reliable and prudent mark-to- model approach; and

- **Portfolio Compression** with procedures to regularly and, at least twice a year, analyze the possibility of compressing any portfolio of 500 or more Contracts in order to reduce counterparty credit risk.

In addition to the requirements above, EMIR requires FCs to hold an appropriate and proportionate amount of capital to manage the risk not covered by appropriate exchange of collateral. There is not yet an RTSR governing the FC capital requirements.

What about collateral requirements?

EMIR requires FCs to have risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral with respect to Contracts that are entered into on or after 16 August 2012. For Non-FCs, this requirement only applies where the clearing threshold is exceeded.[6] An RTSR on the collateral requirement will be issued once the Basel Committee on Banking Supervision ("**BCBS**") and the International Organization of Securities Commissions ("**IOSCO**") have finalized their policy on margin requirements for uncleared trades. The BCBS-IOSCO paper deals with seven elements: scope of coverage – instruments subject to the requirements; scope of coverage – scope of applicability; baseline minimum amounts and methodologies for initial and variation margin; eligible collateral for margin; treatment of provided initial margin; treatment of transactions with affiliates; interaction of national regimes in cross-border transactions; and the phase-in of requirements. The consultation period ended on March 15, 2013 and publication of the policy is expected in Q3/Q4 2013.

Are there any relevant exemptions?

Yes – as is the case with the Clearing Obligation, the collateral requirement will not apply to Contracts that are entered into between members of the same group. In essence, any Contracts entered into between a parent and its subsidiary or between two subsidiaries of the same parent would be excluded.

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[6] As mentioned above, for the following types of Contracts the thresholds are as follows: credit – EUR 1 billion in gross notional value; equity – EUR 1 billion in gross notional value; Interest rate – EUR 3 billion in gross notional value; foreign exchange – EUR 3 billion in gross notional value; and, commodity and other – EUR 3 billion in gross notional value.

When are the Risk Management Requirements for Uncleared OTC Contracts due to come into effect?

The Timely Confirmation and Daily Mark-to-Market requirements came into force on March 15, 2013. The Portfolio Reconciliation, Dispute Resolution and Portfolio Compression requirements are due to come into force on September 15, 2013. As discussed above, the timing of the collateral requirements is contingent on completion of the BCBS-IOSCO process and the capital requirements for FCs are not expected until Q3/Q4 2013.