# EMIR RTS on various amendments to the bilateral margin requirements and joint statement on the introduction of fall-backs in view of the international framework

**The European Supervisory Authorities (ESAs) published today joint draft Regulatory Technical Standards (RTS) to amend the Delegated Regulation on the risk mitigation techniques for non-cleared OTC derivatives (bilateral margining) as well as a joint statement on the introduction of fallbacks in OTC derivative contracts and the requirement to exchange collateral. BothRTS and the statement were developed to facilitate further international consistency in the implementation of the global framework agreed by the Basel Committee on Banking Supervision (BCBS) and the International Organisation of Securities Commissions (IOSCO).**

First of all, in view of the clarifications and changes of the global framework made over the past months by the BCBS and IOSCO, the report and related RTS clarify the expectations in relation to the threshold above which initial margin is expected to be exchanged, as well as introduce a further phase-in of one year for the smaller counterparties in scope for the initial margin requirements. Secondly, taking into account the progress made globally towards the implementation of the international framework as well as the risks that the BCBS and IOSCO framework was developed to address, a few amendments have been included in relation to the treatment of physically settled FX forward and swap contracts, intragroup contracts and equity option contracts. Lastly, the statement clarifies the view of the ESAs that amendments made to outstanding uncleared OTC derivative contracts for the sole purpose of introducing such fall-backs should not create new obligations on these legacy contracts.

**Legal basis, background and next steps**

The ESAs' RTS and the statement were developed in order to facilitate further international consistency in the implementation of the global framework agreed by the Basel Committee on Banking Supervision (BCBS) and the International Organisation of Securities Commissions (IOSCO).

The ESAs have developed the RTS under Article 11(15) of Regulation (EU) No 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories (EMIR).

The ESAs have now submitted the draft RTS to the Commission for endorsement in the form of a Commission Delegated Regulation, i.e. a legally binding instrument applicable in all Member States of the European Union. Following the endorsement, they are then subject to non-objection by the European Parliament and the Council.

The ESAs cannot disapply EU law. However, in view of the remaining steps mentioned above that the draft RTS need to go through before being finalised and entering into force, and in light of some of the soon approaching deadlines, with regards to the bilateral margin requirements and the treatment of physically settled FX forward and swap contracts, intragroup contracts, equity option contracts and the implementation of the last phase of the initial margin requirements as proposed in the draft RTS, the ESAs expect competent authorities to apply the EU framework in a risk-based and proportionate manner until the amended RTS enter into force.

Lastly, with regards to the statement in relation to fall-backs, the ESAs believe it useful to ensure legal certainty on this issue, in case or to the extent this is not already provided in some jurisdictions. While, neither the ESAs nor competent authorities possess any formal power to disapply directly applicable EU legal text, the ESAs are in contact with the co-legislators to see how a legislative change could be achieved to ensure this legal certainty.