

2 December 2020

## Circular on Regulation N<sup>o</sup> 648/2012 – The European Markets Infrastructure Regulation ('EMIR' the 'Regulation') -

New proposed Regulatory Technical Standards on various amendments to bilateral margin requirements and on the clearing obligation regarding intragroup transactions, as well as on novations from UK to EU counterparties

This Circular is being addressed to all market participants, particularly entities who enter into derivative contracts and which fall within the scope of EMIR, namely, financial ('FC') and non-financial counterparties ('NFC') as defined under EMIR (jointly hereinafter referred to as 'Counterparties').

This Circular should be read in conjunction with Regulation (EU) N<sup>o</sup> 648/2012 (['EMIR'](#)), its Delegated Regulations and previous circulars issued by the Authority.

### Bilateral Margin Requirements

On 23 November 2020, European Supervisory Authorities, namely, the European Banking Authority (EBA), the Insurance and Occupational Pensions Authority (EIOPA), and the European Securities and Markets Authority (ESMA) have published a [Final Report](#) presenting new draft regulatory technical standards (RTS) on risk mitigation techniques for OTC derivative contracts not cleared by a CCP. The RTS have been developed under Article 11(15) of EMIR and propose to amend Commission Delegated Regulation (EU) 2016/2251 (the 'Bilateral Margin Delegated Regulation') that sets out the detailed bilateral margin requirements.

The Bilateral Margin Delegated Regulation originally introduced a temporary exemption for equity options to facilitate international regulatory convergence with regard to risk management procedures. The amendments included in the draft RTS on bilateral margin propose to extend the temporary exemption for single-stock equity options or index options (equity options) for three years.

### Clearing Obligation

ESMA's [Final Report](#) regarding the EMIR RTS proposing to amend the three Commission Delegated Regulations<sup>1</sup> on the clearing obligation ('Clearing Obligation Delegated Regulations') under EMIR was also published on 23 November 2020. The RTS have been developed under Article 5(2) of EMIR.

In the absence of equivalence decisions, on 19 December 2018, Commission Delegated Regulations were adopted, to postpone the date from when the clearing obligation with respect to certain

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<sup>1</sup> Commission Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178

intragroup transactions with a third country entity applied. The clearing obligation is currently deferred until 21 December 2020.

The amendments included in the draft RTS propose to extend the temporary exemption for 18 months for intragroup transactions.

#### Novations from UK Counterparties to EU Counterparties

UK counterparties will be allowed to be replaced by EU counterparties without triggering the bilateral margin and clearing obligation requirements under certain conditions.

#### Next Steps

The draft RTSs have been submitted by the ESAs to the Commission for endorsement in the form of Commission Delegated Regulations.

Following their endorsement, they are then subject to non-objection by the European Parliament and the Council.

#### Contacts

Should you have any queries in relation to the above, please do not hesitate to contact the Authority on [EMIR@mfsa.mt](mailto:EMIR@mfsa.mt).