

IMAS 6th Regulatory/Legal Round-up Forum

UK/European Update

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What we will cover in this session

- Initial Margin
- Brexit
- EMIR Refit

Initial Margin
for
Non-Centrally Cleared
Derivatives



What we will cover

- Scoping - EMIR
- Recap on key obligations
- Implementation challenges
- Documentation issues

To whom does it apply?

- Applies *directly* to FCs and NFC+s
- Applies *indirectly* to hypothetical FCs and NFC+s when facing EU dealers
 - N.B. impact of EMIR Refit on non-EU AIFs with non-EU AIFMs
- Some obligations won't apply to TCEs (e.g. legal reviews, back-testing)

Phase-in dates

AANA of uncleared OTC derivatives for March, April and May of relevant year of over:	EU (determined as of last business day of each month)	US (determined as of each business day in each month)
USD/EUR 3 trillion (Phase 1)	4 February 2017	1 September 2016
USD/EUR 2.25 trillion (Phase 2)	1 September 2017	
USD/EUR 1.5 trillion (Phase 3)	1 September 2018	
USD/EUR 750 billion (Phase 4)	1 September 2019	
USD/EUR 8 billion (Phase 5)*	1 September 2020 and annually thereafter	

* USD threshold only for Financial End User to determine “without Material Swaps Exposure” and is determined over June, July, August of preceding year

Recap on key obligations

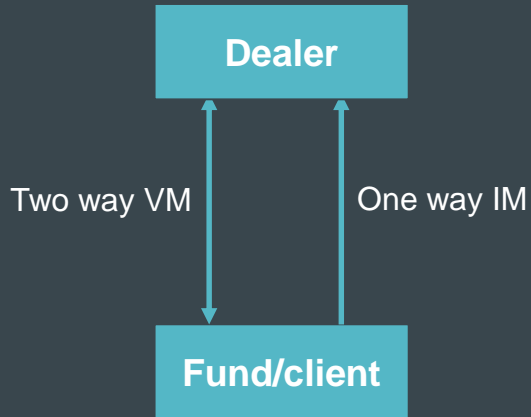
- Prescribed requirements on calculation methodology (e.g. ISDA SIMM)
- IM to be calculated within 1 business day of certain events and at least every 10 business days
- Eligibility and haircut requirements; concentration limits
- Maximum Threshold Amount of EUR/USD 50 million
- Both posting to and collection from dealers; no offsetting; timing
- IM to be segregated from insolvency risk of collateral receiver

Current lobbying

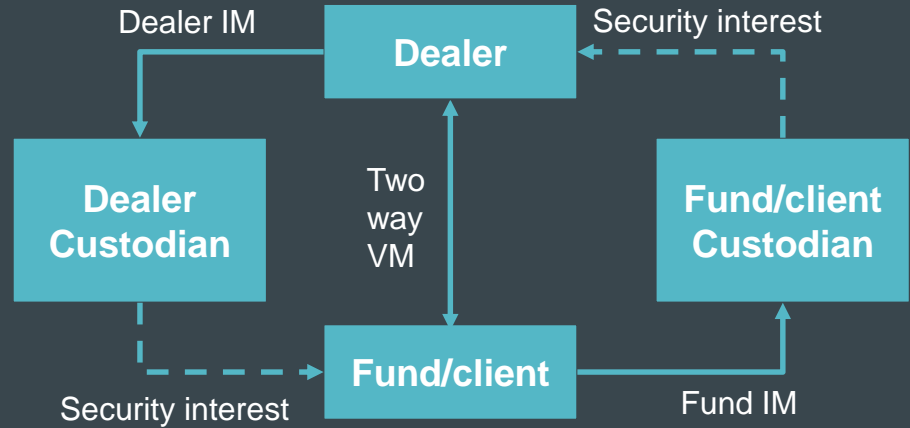
- Industry lobbying for EUR 8 billion to be increased
- Some dealers argue that no need for IM documentation if Threshold expected to be <EUR 50 million

Segregation of IM

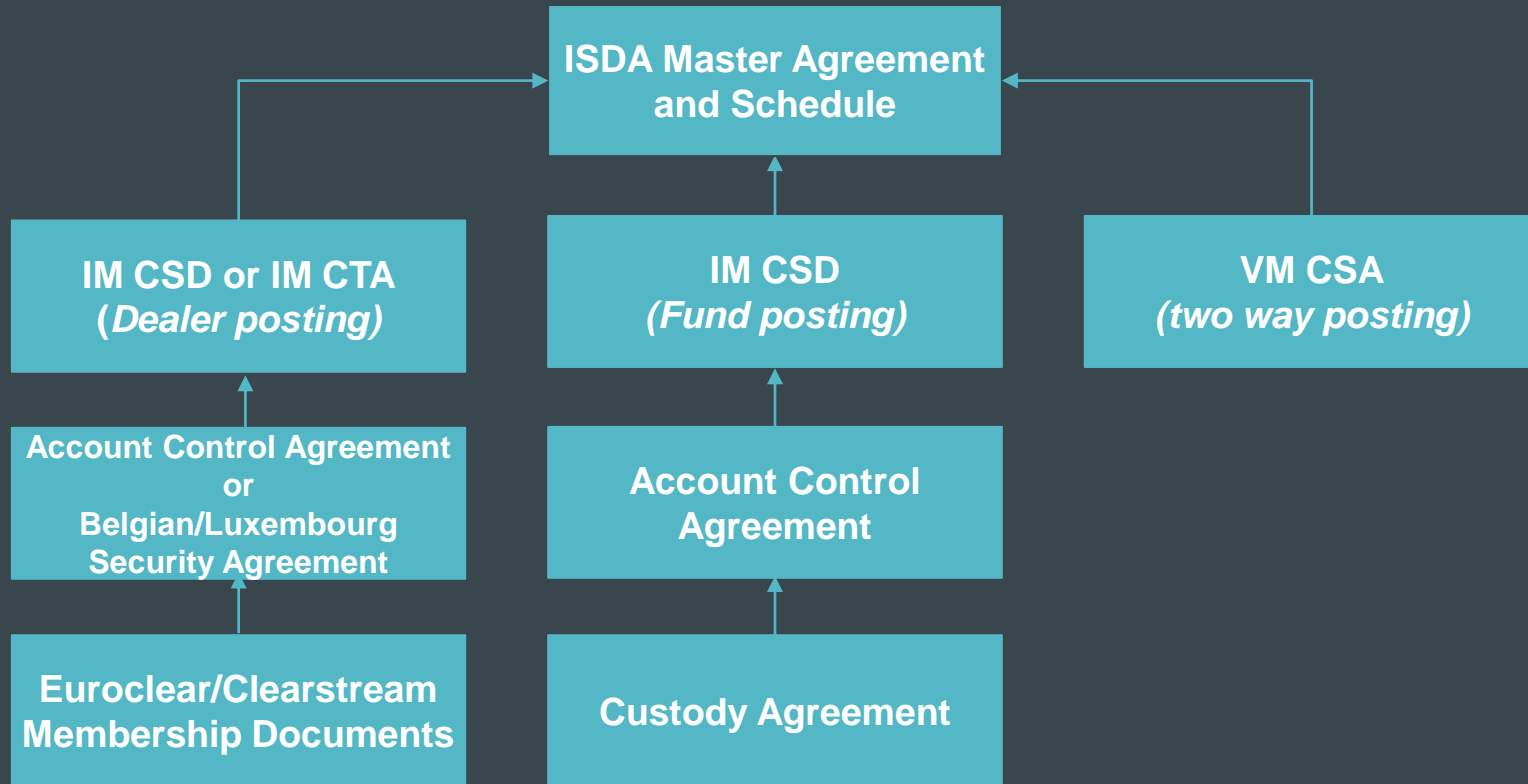
Pre-regulation



Post-regulation



Initial Margin – documentation structure



Initial Margin for uncleared OTC derivatives

Challenges

- Custodian issues
- IM calculation issues
- IM model monitoring and back-testing obligations
- Legal opinions
- Complex documentation negotiation
- Timing issues

Brexit



Brexit

Licensing impact – loss of passporting

- Existing contracts
 - Contractual obligations
 - Lifecycle events
- New contracts
 - EU hub for EU clients only? Phased transfer – ultimate goal
- Need to face EU hub?
 - Risk view of broker – how certain?
 - Analysis may differ depending on jurisdiction in question
 - General desire for buy-side not to repaper

Brexit

If repapering to face new hub

- Approach – replicate and amend -vs- new document
- Due diligence
- Exposure limits
- Independent legal reviews for new jurisdictions
- Consider impact of a novation – margin / clearing triggered?
- Tax
- Consider any changes you may need to make to reflect your Brexit restructuring

Brexit

Clearing, trade reporting and other trading impact

- Clearing
 - UK CCP vs EU27 CCP
 - EUR denominated trades
- Reporting
- Uncleared margining derives from BCBS-IOSCO
- Treatment of ETDs on UK regulated markets (EU 27 NFCs)
- Possible future UK divergence – categorisation / scope

Brexit

Miscellaneous

- Contractual provisions
- Governing law
- Jurisdiction
- BRRD
- Withdrawal Agreement

EMIR Refit



EMIR Refit

Key changes

- Categorisation
 - EU AIFs without authorised AIFMs will be FCs
 - Introduction of Small FC

- Clearing
 - Threshold calculation changes
 - Extension of pension scheme exemption

- Reporting and risk mitigation
 - Automatic “delegation” to UCITS ManCos and AIFMs
 - Removal of reporting backloading

EMIR Refit

Practical implications

- Client and counterparty communications re. categorisation
- Adjusting process for clearing threshold changes
- Expansion of uncleared margin obligations to AIFs without authorised AIFM
- Adjustment of contractual arrangements of UCITS ManCos and AIFMs
- What about VM for FX transactions?