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Cc :

Mairead McGuinness
Commissioner for Financial Services, Financial Stability and Capital Markets Union
200, rue de la Loi
1049 Brussels

10 November 2023

Dear Chairwoman Hielkema,

Dear Chairwoman Ross,

Dear Chairman Campa,

Bilateral margining exemption for equity options: need for timely action to avoid detrimental market disruption

Executive summary

The Alternative Investment Management Association (AIMA), European Association of Co-operatives Banks (EACB), European Banking Federation (EBF), European Fund and Asset Management Association (EFAMA), International Swaps and Derivatives Association (ISDA), Invest Europe, Managed Funds Association (MFA), Nordic Securities Association (NSA), hereafter referred to as 'The Associations', are writing to you regarding the current temporary exemption from margin requirements for single-stock equity options or index options ('equity options') set out in the regulatory technical standards (RTS) on the risk mitigation techniques for OTC derivative contracts not cleared by a central counterparty ('bilateral margin RTS'). This exemption has been repeatedly extended and is now set to expire on 4 January 2024.

Following the European Supervisory Authorities' (ESAs) request[1] (June 2023) that the co-legislators clarify in EMIR 3 what the permanent treatment of equity options should be, the co-legislators signalled their intention to provide a non-time limited exemption from bilateral margining requirements for these products.

The Associations therefore respectfully ask the ESAs to, as soon as practicable, and ahead of the 4 January 2023 deadline, either:

- publish guidance to national competent authorities to exercise their supervisory powers in relation to margin requirements in a proportionate and risk-based manner with respect to equity options between 4 January 2024 and the entry into force of EMIR 3, or
- extend the temporary exemption provided in the bilateral margin RTS until entry into force of EMIR 3. The amended RTS would need to enter into force before 4 January 2024 or be accompanied by a supervisory statement to bridge the gap between 4 January 2024 and entry into force of the RTS.

[1] ESA 2023 11 - ESAs Letter on EMIR bilateral margining framework and equity options (europa.eu)

Position of the co-legislators on the treatment of equity options in EMIR 3

The European Parliament compromise proposal on EMIR 3, which is expected to be approved by ECON on 27 November 2023, includes a non-time limited exemption for equity options. It requires the European Securities Market Authority (ESMA) to monitor the impact of the exemption on financial stability and regulatory developments in other jurisdictions, and to submit a report to the Commission at least every two years. After submission of the report by ESMA, the Commission shall assess whether international developments have led to more convergence in the treatment of equity options and whether the temporary exemption of such options is still justified. The Commission is empowered to adopt a delegated act specifying that, after the expiry of an adaptation period, the exemption is to be removed.

The Council compromise text dated 20 October includes a similar non-time limited exemption from bilateral margining requirements for equity options. In line with the European Parliament text, it requires ESMA, in cooperation with European Banking Authority (EBA) and European Insurance Occupational Pensions Authority (EIOPA), to monitor regulatory developments in other jurisdictions and the evolution of the exposures of EU counterparties to uncleared equity options, and to submit a report to the Commission at least every three years assessing whether international developments have led to more convergence in the treatment of equity option and whether the exemption endangers financial stability in the Union. The Commission is empowered to adopt a delegated act specifying that, after the expiry of an adaptation period, the exemption is to be removed.

Given the clear convergence of the Council and European Parliament positions regarding the introduction of a non-time limited exemption from bilateral margining requirements, the final EMIR 3 text agreed by the co-legislators should also include this exemption.

Impact of equity options being temporarily subject to bilateral margining requirements

In the absence of a timely action by the ESAs (ahead of the 4 January deadline) to bridge the gap between 4 January 2024 and entry into force of EMIR 3, EU market participants would have to comply with the bilateral margining requirement, including the exchange of variation and initial margin.

This would require market participants to put in place Credit Support Documentation or amend existing documentation and to establish segregated initial margin accounts. Developing regulatory initial margin credit support documentation and an initial margin calculation method and governance are legally and operationally complex tasks. It would be disproportionate to ask market participants, in particular small buy side participants, to put this in place for a few months. It is also highly likely that non-EU clients, especially in the US, would cease trading with EU banks/dealers to avoid having to comply with the bilateral margining requirements.

To avoid an unnecessary and highly disruptive situation where market participants are required to comply with the bilateral margining requirements for a few months, we urge the ESAs to take appropriate action as soon as practicable to provide certainty to the market.

Danny O’Connell

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Finance Denmark

Current Presidency of Nordic Securities Association

About AIMA

The Alternative Investment Management Association (AIMA) is the global representative of the alternative investment industry, with around 2,100 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than US$2.5 trillion in hedge fund and private credit assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialised educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For further information, please visit AIMA's website, www.aima.org

About EACB

The European Association of Co-operative Banks (EACB) is the voice of cooperative banks in Europe. It represents, promotes, and defends the common interests of its 26 member institutions in banking as well as cooperative legislation. With 2,700 banks and 40,000 branches, cooperative banks are widely established across the European Union and play a vital role in its financial and economic system. They have a longstanding tradition serving their 227 million customers, mainly consumers, retailers, and communities. An important task of the EACB is to raise awareness on the unique characteristics of the cooperative business model: democracy, transparency, and proximity. In Europe, cooperative banks represent 89 million members, providing employment to 720,000 individuals and maintaining an average market share of approximately 20%.

About the EBF

The European Banking Federation is the voice of the European banking sector, uniting 33 national banking associations in Europe that together represent some 3,500 banks – large and small, wholesale and retail, local and international – employing about 2,7 million people.

About EFAMA

EFAMA is the voice of the European investment management industry, which manages over EUR 30 trillion of assets on behalf of its clients in Europe and around the world. We advocate for a regulatory environment that supports our industry's crucial role in steering capital towards investments for a sustainable future and providing long-term value for investors.

Besides fostering a Capital Markets Union, consumer empowerment and sustainable finance in Europe, we also support open and well-functioning global capital markets and engage with international standard setters and relevant third-country authorities. EFAMA is a primary source of industry statistical data and issues regular publications, including Market Insights and the authoritative EFAMA Fact Book.

More information is available at www.efama.org

About ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 77 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on Twitter, LinkedIn, Facebook and YouTube.

About Invest Europe

Invest Europe is the association representing Europe's private equity, venture capital and infrastructure sectors, as well as their investors. Our members take a long-term approach to investing in privately held companies, from start-ups to established firms. They inject not only capital but dynamism, innovation and expertise. This commitment helps deliver strong and sustainable growth, resulting in healthy returns for Europe's leading pension funds and insurers, to the benefit of the millions of European citizens who depend on them.

About MFA

Managed Funds Association (MFA), based in Washington, DC, New York, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 170 member firms, including traditional hedge funds, credit funds, and crossover funds, that collectively manage nearly €2.8 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time.

About NSA

About NSA The Nordic Securities Association (NSA) is a Nordic cooperation that works to promote a sound securities market primarily in the Nordic region. The NSA is formed by Capital Market Denmark (Kapitalmarked Danmark), Finance Finland (Finanssiala), the Norwegian Securities Dealers Association (Verdipapirforetakenes Forbund) and the Swedish Securities Markets Association (Svensk Värdepappersmarknad), NSA - Nordic Securities Association (nsa-securities.eu). Nordic Securities Association's public ID number in the Transparency Register is: 622921012417-15