

Regulatory Initial Margin: a Legal Perspective

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What we will cover

- Scoping
- Recap on key obligations
- Segregation of IM
- Documentation
- Implementation challenges

To whom does it apply?

- Applies **directly** to “financial counterparties” (FC) and “non-financial counterparties above clearing threshold” (NFC+)

Financial counterparty

- Authorised MiFID investment firm
- EU authorized credit institution
- EU authorized insurance/assurance/reinsurance firm
- UCITS
- EU institution for occupational retirement provision (IORPs)
- AIF with authorized AIFM

Non-financial counterparty

- Undertaking established in EU that is not a financial counterparty

Clearing threshold

- EUR 1 bn gross notional value in Credit or Equity
- EUR 3 bn gross notional value in Interest Rate, FX or Commodity and other

To whom does it apply?

- Applies *indirectly* to “third country entities” (TCE) that would be FC or NFC+ if established in the EU
 - but only when facing EU dealers
- Impact of imminent EMIR Refit changes on non-EU AIFs with non-EU AIFMs
- Some obligations won't apply to TCEs (e.g. independent legal reviews, back-testing and audit)

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

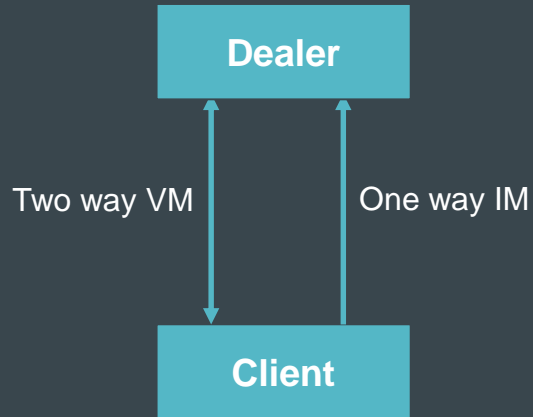
- Both posting to and collection from dealers; no offsetting; timing
- IM to be segregated from insolvency risk of collateral receiver
- Prescribed requirements on calculation methodology (e.g. ISDA SIMM)
- IM to be calculated at least every 10 business days
- Eligibility and haircut requirements; concentration limits
- Maximum Threshold Amount of EUR/USD 50 million
- Validation, backtesting, auditing of model
- Independent legal review x 2

Current lobbying

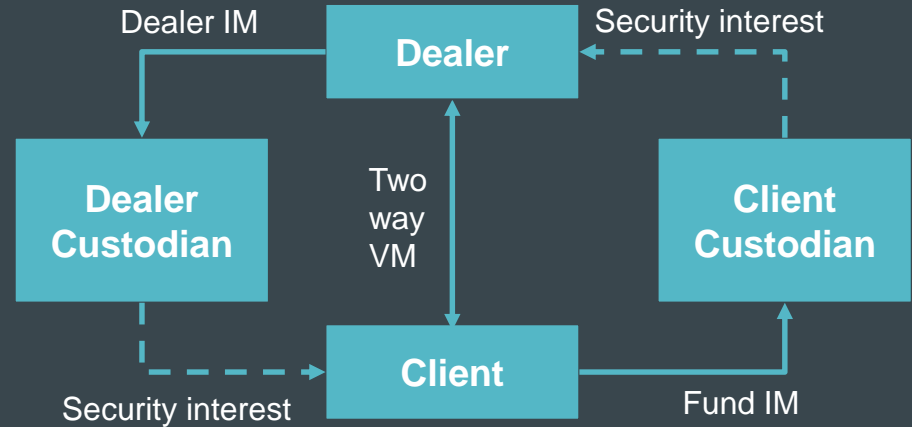
- EUR/USD 8 billion AANA
- FX trades in AANA
- EUR/USD 50 million Threshold

Segregation of IM

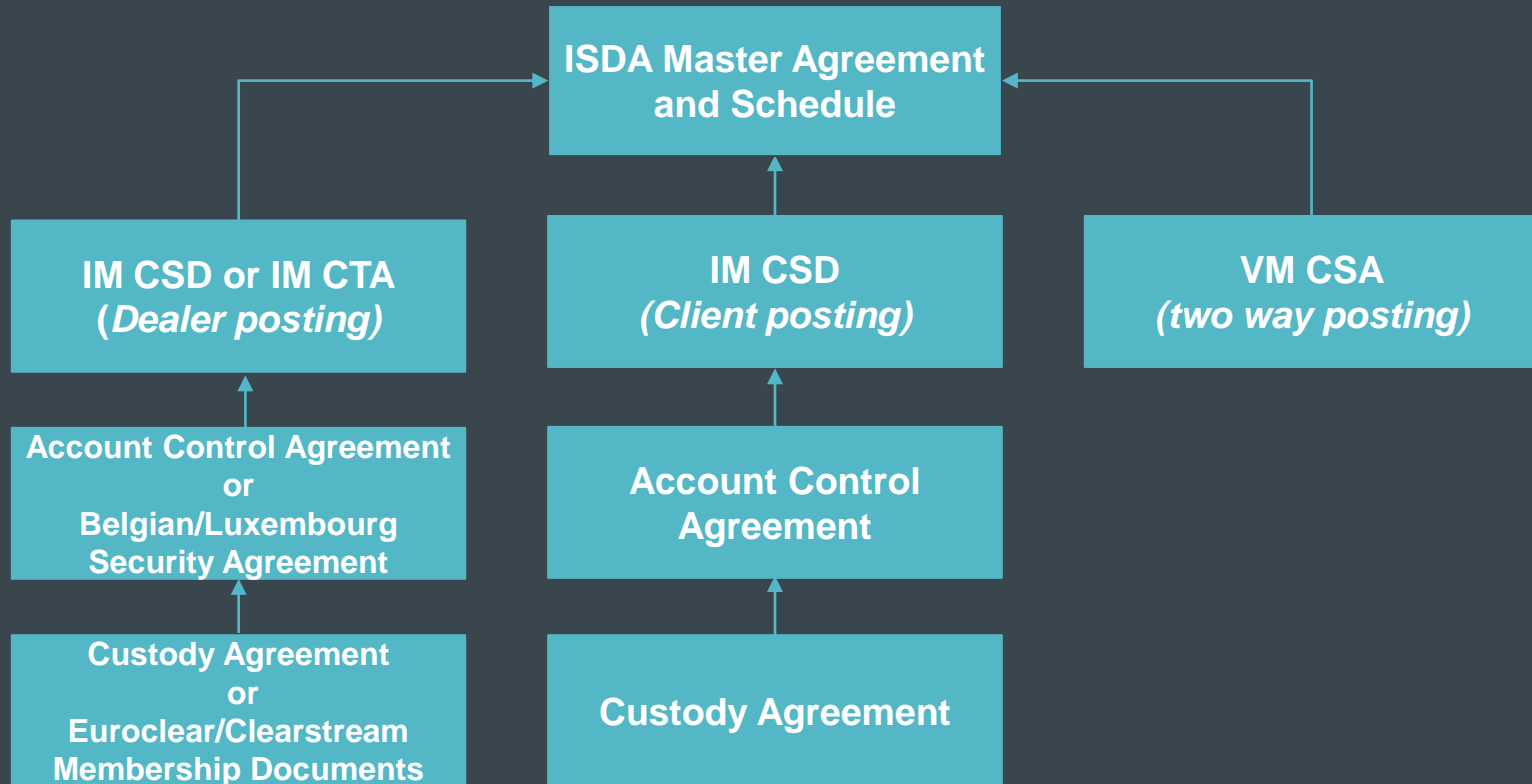
Pre-regulation



Post-regulation



Documentation structure



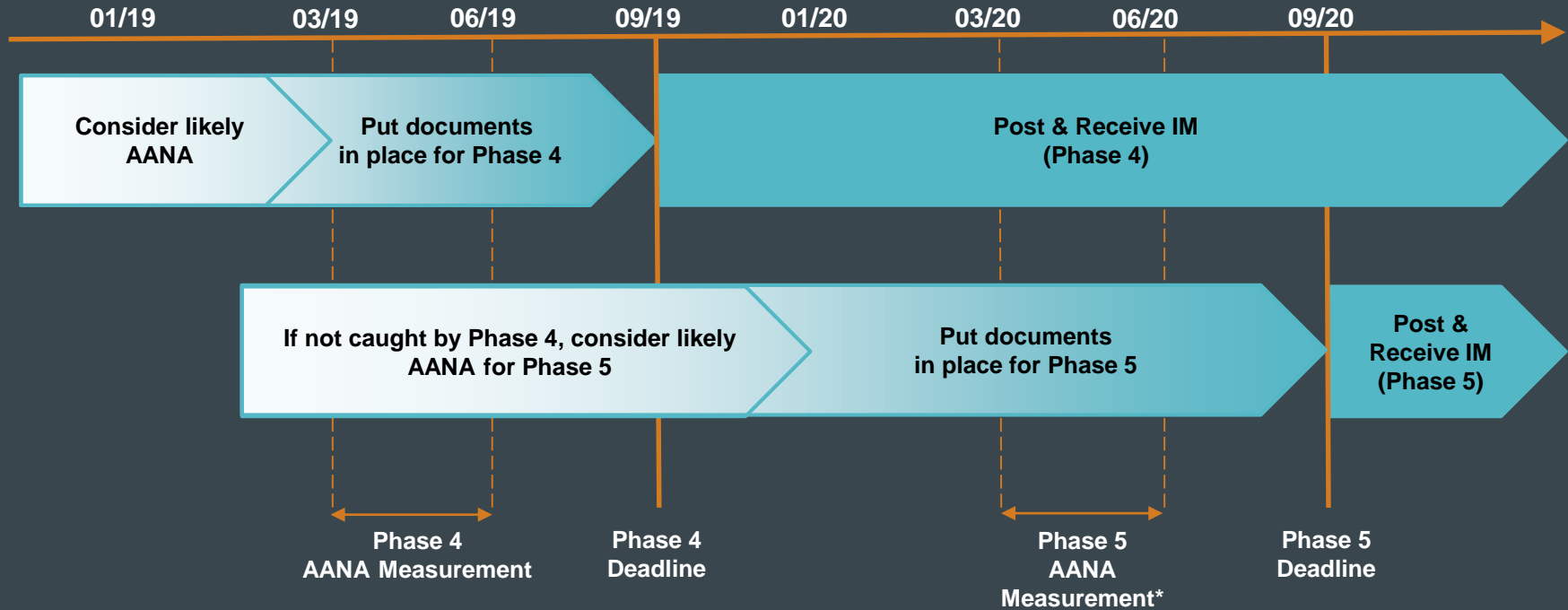
Documentation issues

- Calculation methodology:
 - Regulatory IM vs House IM
 - Legacy vs Covered Transactions
- Sole vs dual Calculation Agent
- Responsibility for Custodian; Custodian Events
- Secured Party Rights Event/Chargor Rights Event
- Impact of existing segregated IA structures

Implementation challenges

- IM documentation exercise is different from VM documentation upgrade:
 - Greater number of documents per counterparty
 - More complex, involving legal issues (e.g. FCD, AIFMD, UCITS)
- Timing concerns are significant:
 - Custodian issues and deadlines
 - IM calculation issues
- New obligations for clients:
 - IM model monitoring and back-testing obligations
 - Legal reviews

Implementation timeline



*under US rules, Phase 5 measurement period is June to August 2019

Any questions?

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