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EMIR FAQ

The following information has been compiled for the purposes of providing an overview of EMIR and is not legal advice. The information is only accurate at date of publication and is subject to change.

Should you require advice about your obligations under EMIR, you should speak to your Legal or other professional advisers.

Table of Contents

1. WHAT IS EMIR?

EMIR is short for the European Market Infrastructure Regulation . EMIR is the EU's response to the commitments made at the 2009 G20 summit in Pittsburgh to improve transparency and reduce the risks associated with the derivatives market. EMIR is an EU regulation which introduces additional regulation of derivatives business in the European Economic Area, as well as introducing a requirement for central counterparties (CCPs) and trade repositories (TRs) to be authorised or recognised before providing services in the European Economic Area.

With the decision of the UK to leave the European Union, general adaption of EMIR remained unchanged. It was implemented on the back of the European Union (Withdrawal) Act 2018 and passed as UK Law which led to the creation of UK's version of EMIR, now commonly known as "UK EMIR".

EMIR REFIT

Revisions to EMIR were published on 28th May 2019 in the Official Journal of the European Union and certain provisions came into effect from 17th June 2019. These changes are collectively referred to as EMIR 'Refit.'

Further revisions to EMIR were published on 20th Dec 2022 wherein The European Securities and Markets Authority (**ESMA**), the EU's financial markets regulator and supervisor, called

out the legal provisions on reporting and data management under the amended EMIR rules and providing practical guidance on their implementation. New Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS) for reporting were also published. The updated validation rules were published by ESMA on 8th Sep 2023. **These are now commonly known across the industry as EMIR Refit 3.0**

As was the case with ESMA, on 24 February 2023, the **FCA** published a joint FCA/Bank of England Policy Statement alongside final amendments to Technical Standards and new rules for Trade Repositories (TRs) in relation to changes to the derivatives reporting framework under UK EMIR.

From 18 June 2020, FC's are required to report on behalf of EU NFC- and also UK NFC- post-Brexit. For more information on delegated reporting and EMIR Transaction reporting in general, please refer to **EMIR Reporting-FAQs**.

2. WHAT DOES EMIR COVER?

EMIR applies to all derivatives identified in Annex 1 Sections C (4) to (10) of The Markets in Financial Instruments Directive (**MiFID**). Similarly, UK EMIR applies to financial instruments referred to in paragraphs 4 to 10 of Part 1 of Schedule 2 to the Regulated Activities Order. The main obligations apply to transactions in over-the-counter (**OTC**) derivatives but some, for example the reporting obligation, apply to both OTC and exchange-traded derivatives (ETD).

Derivatives include options, futures, swaps and other derivative contracts on a variety of underlying instruments including interest rates, securities, FX and commodities. "OTC derivatives" are those derivative contracts where execution does not take place on a regulated market, Multilateral Trading Facility (**MTF**) or a non-EU or non-UK trading venue that is equivalent to a regulated market or MTF.

The key obligations under EMIR are:

- Risk Mitigation
- Clearing
- Reporting

3. WHO DOES EMIR APPLY TO?

EMIR affects all entities "established" in the EU or UK (banks, insurance companies, pension funds, investment firms, corporates, funds, SPVs etc.) that enter into derivative transactions.

Non-EU/UK entities, known as third country entities, may also be affected by some aspects of EMIR/UK EMIR respectively.

The key obligations under both versions of EMIR apply to financial counterparties (**FCs)**, non-financial counterparties (**NFCs**) and third country entities (**TCEs**), the meanings of which are summarized in the table below.

Under EMIR Refit the scope of 'Financial Counterparty' is expanded to include all EU Alternative Investment Funds (AIFs) and UK AIFs along with UCITS and IORP fund types. In addition, non-EEA incorporated AIF-like funds transacting with Standard Chartered Bank AG, Standard Chartered Bank (London), or their branches are in scope as Third Country Entities and captured by the expanded definition of FCs.

Categorisation	Definition	Sub-Categorisation	Applicability	Calculation
FC	FCs are certain entities authorized or registered in accordance with the relevant EU Directives: ▪ credit institutions; ▪ investment firms; ▪ insurance undertakings; ▪ assurance undertakings; ▪ reinsurance undertakings; ▪ UCITS and, where relevant, their authorised management companies; ▪ certain institutions for occupational retirement provision; and ▪ Alternative Investment Funds ▪ A central securities depository authorised in the European Parliament and of the Council (EU EMIR)	**FC+**	(a) FCs who have determined to exceed one or more of the clearing thresholds; or (b) FCs who have failed or opted not to perform the calculations that inform a determination of whether the Clearing Thresholds are exceeded. The Clearing Obligation will apply to all asset classes for FC+.	The calculation must: (a) To be based on a counterparty's aggregate month-end average position in the OTC derivatives contracts for the past twelve months; and (b) include all OTC derivatives positions, such as: (i) positions entered into for hedging purposes; and (ii) derivative positions of all the other entities within its group. (i.e. FCs and NFCs)
		SFC (Small Financial Counterparty)	FCs who have determined that they do not exceed any of the clearing thresholds and will not be subjected to the clearing obligation.	
NFC	NFCs are undertakings established in the EU or UK other than FCs. NFCs are sub-divided into (i) those exceeding the clearing threshold (**NFC+**) and (ii) those below the clearing threshold (**NFC-**), as outlined further below.	**NFC+**	(a) NFCs who have determined to exceed one or more of the clearing thresholds; or (b) NFCs who have failed or opted not to perform the calculations that inform a determination of whether the Clearing Thresholds are exceeded. The Clearing obligation will only apply to the asset class that has	The calculation: (a) must be based on a counterparty's aggregate month end average position in the OTC derivatives contracts for the past twelve months; (b) to include only derivative transactions entered by other NFCs in the group, if it

Categorisation	Definition	Sub-Categorisation	Applicability	Calculation
			exceeded the threshold.	is part of a broader group; and (c) may exclude hedging transactions.
		NFC-	NFCs who have determined that they do not exceed any of the clearing thresholds and will not be subjected to the clearing obligation.	
TCE	TCEs are third country entities established outside the EU which would be FCs or NFCs if they had been established in the EU or UK. Some obligations under EMIR, such as the clearing obligation, apply directly to TCEs. Other obligations, such as the EMIR risk mitigation obligations, apply to them indirectly (in that their EU/UK counterparty is expected to perform its obligations with both TCE counterparties and EU/UK counterparties caught by the relevant obligation and, in order to meet the obligation, is expected to make appropriate arrangements with its TCE counterparties to ensure compliance).			
Exempt Entities	There are other entities which are mostly exempt from the obligations under EMIR (Exempt Entities). An example is the central bank of Japan. Unless otherwise stated, references in this document to FCs and NFCs include their TCE equivalents.			

If your EMIR classification or clearing categorization changes, please inform us of this change via
e-mail to your usual relationship manager, (and update your representations on ISDA Amend, if applicable) as new obligations may apply between us.

Unless otherwise stated, references in this document to FCs and NFCs include their TCE equivalents.

The clearing threshold:

The clearing thresholds specified in both versions of EMIR are:

(a) EUR 1 billion in gross notional value for OTC credit derivative contracts;
(b) EUR 1 billion in gross notional value for OTC equity derivative contracts;
(c) EUR 3 billion in gross notional value for OTC interest rate derivative contracts;
(d) EUR 3 billion in gross notional value for OTC foreign exchange derivative contracts;
(e) EUR 3 billion in gross notional value for OTC commodity derivative contracts and other OTC derivative contracts not provided for under points (a) to (d) above.

In calculating its position, the NFC must include all OTC derivative contracts entered into by the NFC and by other NFCs within the group to which the NFC belongs. Certain hedging contracts may be excluded from the calculation of the clearing threshold, i.e., contracts objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the NFC or of that group.

EMIR uses an accounting-based definition of "group" to establish which entities should be included in the determination of whether the clearing threshold is exceeded. Analysis of the extent of the "group" should be conducted on a case-by-case basis.

Where an EU NFC takes positions in OTC derivative contracts and those positions exceed the specified clearing threshold on a rolling average basis over 30 working days, the EU NFC must: (a) immediately notify ESMA via their respective competent authority; (b) become subject to the clearing obligation for future contracts; and (c) clear all relevant future contracts within four months of becoming subject to the clearing obligation.

Similarly, in the UK entities need to notify the FCA, either of their decision not to perform the calculation (in such case they are automatically deemed to have exceeded the threshold) of the fact that they exceed the threshold for one or more clearable transaction types.

4. WHAT ARE THE MAIN OBLIGATIONS?

A. RISK MITIGATION

For uncleared OTC derivative contracts, both UK and EU EMIR impose specific risk mitigation obligations including:

- **Timely confirmation:**

  OTC derivative contracts shall be confirmed as soon as possible and at the latest deadline by:

  - Between SCB and its counterparties who are FCs and NFC+, T+1
  - Between SCB and its counterparties who are NFC-, T+2

  Confirmation means the documentation of the agreements of the counterparties to all the terms of an OTC derivative contract.

- **Portfolio Reconciliation:**

  SCB must agree in writing with all its FC and NFC counterparties arrangements under which portfolios shall be reconciled. Such agreement must be reached **before** entering into the OTC derivative contract. Portfolio reconciliation processes involve identifying discrepancies in the material terms of each contract, including, at least, the valuation attributed to them. The frequencies at which a firm is required to reconcile OTC derivatives transactions under EMIR are:

  FCs and NFCs above threshold (NFC+)
  - Each business day for > 500 outstanding OTC contracts
  - Once per week for 51-499
  - Once per quarter for ≤50

  NFCs below the threshold (NFC-)
  - Once per quarter for >100
  - Once per year for ≤100

- **Portfolio Compression:**

  SCB must have in place, with all its counterparties with whom it has 500 or more non-cleared OTC derivative contracts outstanding, procedures to regularly (and at least twice a year) analyze the possibility of conducting a portfolio compression exercise. Firms should ensure they are able to provide a reasonable and valid explanation to their regulator/relevant competent authority for concluding that a portfolio compression exercise is not appropriate.

- **Dispute Resolution:**

  SCB must when concluding OTC derivative contracts with its counterparties have agreed detailed procedures and processes in relation to:

- Identification, recording and monitoring of disputes relating to recognition or valuation of the contract and to the exchange of collateral between counterparties; and

- Resolution of disputes in a timely manner with a specific process for those disputes that are not resolved within five business days.

Both in the UK and in the EEA, FCs are required to report to their national competent authority any disputes between counterparties relating to an OTC derivative contract, its valuation or the exchange of collateral for an amount or a value higher than EUR 15 million and outstanding for at least 15 business days.

- **Daily Valuation:**

FCs and NFCs exceeding the clearing threshold (NFCs+) must each, daily, mark-to-market their derivative contracts or if market conditions prevent marking-to-market then a mark-to-model valuation shall be performed.

- **Margining**

What is the Margining Obligation under EMIR?

Both EU and UK EMIR require all FCs and NFC+s to have risk management procedures in place that require the exchange of collateral for OTC derivative contracts not cleared by a CCP.

The Margining Obligation, which came into force on 4 February 2017 can be broken down into 2 types of Margin that firms are required to exchange, Variation Margin (VM) and Initial Margin (IM). These will be documented in bilateral legal agreements i.e. regulatory compliant Credit Support Annex (CSA), which form part of ISDA Master Agreements.
The IM obligation has been phased in and the table below demonstrates the relevant dates and thresholds:

Date of phase-in	Category
4 February 2017	Entities with group notional amount above EUR 3 trillion (entities with the largest portfolios on a group basis)
September 2017	Entities with group notional amount above EUR 2.25 trillion
September 2018	Entities with group notional amount above EUR 1.5 trillion
September 2019	Entities with group notional amount above EUR 0.75 trillion
September 2021	Entities with group notional amount above EUR 50 billion
September 2022	Entities with group notional amount above EUR 8 billion

B. CLEARING

EMIR requires OTC derivative contracts of a class declared subject to the clearing obligation by ESMA and the Bank of England, concluded between counterparties which are classified as either an FC or NFC+ or a Third Country Entity which would be an FC or NFC+, if it were established in the EU or the UK, to be cleared by an authorised or recognized CCP.

The clearing obligation applies to OTC derivative contracts which are concluded between SCB and:

- Another EU/UK FC
- An EU/UK NFC+ in scope of the clearing obligation
- A TCE entity that would be an FC or an NFC+ if it were established in the EU or UK

Under UK EMIR Refit the exemption from the clearing obligation for pension schemes has been further extended until 18 June 2025. This exemption is also applied retrospectively to all in-scope transactions entered into since 16 August 2018 when the previous exemption expired.

SFCs will not be subjected to mandatory clearing but the margining obligations continue to apply. Under EMIR REFIT, NFC+ only have to clear OTC derivative contracts pertaining to the asset class(es) in which they exceed the clearing threshold(s).

- **What products are subject to the clearing obligation?**

  EU EMIR: ESMA maintains and publishes on its website a full register of the products that are subject to the EMIR clearing obligation, which is updated periodically. For the latest version, please refer to the following link:

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https://www.esma.europa.eu/system/files_force/library/public_register_for_the_clearing_obligation_under_emir.pdf

UK EMIR: The Bank of England maintains and publishes on its website a full register of the products that are subject to the UK EMIR clearing obligation, which is updated periodically. For the latest version, please refer to the following link: https://www.bankofengland.co.uk/-/media/boe/files/eu-withdrawal/clearing-obligation-public-register.pdf

- **Is EMIR Clearing still applicable to me even though I am incorporated and based outside of the EU or UK?**

  Yes –Standard Chartered Bank AG and Standard Chartered Bank (London) are obliged to meet the EMIR clearing obligations with in-scope counterparties both within and outside the EU or UK. If a non-EU/UK entity is an FC or an NFC+, SCB has a regulatory obligation to clear the relevant trades. We would still ask you to respond to our mandatory clearing letter with your categorizations.

C. REPORTING

- **Transaction Reporting**

Under EU EMIR and UK EMIR, obligated counterparties must each ensure that certain details of any derivative contract they have concluded (and certain details of any modification or termination of a contract) are reported to an authorised or recognised TR. Details of all OTC and ETD products must be reported no later than the working day following the conclusion, modification or termination of the contract, including daily valuation and collateral reporting if you are a FC or NFC+.

As a counterparty with an obligation to report these trades, you should consider connecting directly to a registered Trade Repository or making arrangements for a third party to report on your behalf.

For more information on Delegated reporting and EMIR Transaction reporting in general, please refer to **EMIR Reporting-FAQs**.

- **What is an LEI and do I need one?**

A Legal Entity Identifier (LEI) is a unique counterparty identifier that facilitates representations between market participants. All counterparties subject to the reporting obligation are required to have a Legal Entity Identifier. There are a number of authorised providers of LEIs such as the LSE which can be found on the Regulatory Oversight Committee website. LEIs issued by authorised providers are acceptable for reporting under EMIR in both the EU and the UK, swap data reporting in the US and also for certain other jurisdictions which mandate the use of the LEI for trade reporting.

In addition, if you are not subject to the reporting obligation but transact with a counterparty that is subject to the reporting obligation, you will need to obtain an LEI. This is so that your counterparty can report the transactions it enters into with you.

- **Collateral and Valuation Reporting**

From 11 August 2014 EU established financial counterparties (FC) and non-financial counterparties (NFC+s) that exceed the €1bn or €3bn clearing threshold), are expected to comply with further reporting obligations of providing daily collateral and valuation reports for any OTC or exchange-traded derivatives trades.

For **valuation reporting**, the mark-to-market or mark-to-model valuations of contracts shall be reported to a trade repository on a daily basis.

C**ollateral reporting** refers to the initial or variation margin as well as any excess margin that has been posted or received by the counterparty responsible for the report, on a portfolio basis or on a single transaction basis. Again, the relevant information must be reported by the end of the day following the valuation date.

5. SCB AG DISCLOSURES

https://www.sc.com/de-en/regulatory-disclosures/

6. ADDITIONAL RESOURCES

Links to Industry Resources

ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol http://www2.isda.org/functional-areas/protocol-management/protocol/15

ISDA Amend/Markit EMIR Classification Tool
http://www.markit.com/product/isda-amend

ISDA 2013 EMIR Non-Financial Counterparty Representation Protocol
https://www.isda.org/protocol/isda-2013-emir-nfc-representation-protocol/

The Legal Entity Identifier Regulatory Oversight Committee
http://www.leiroc.org/

Regulatory Guidance

ESMA principal EMIR information page

https://www.esma.europa.eu/regulation/post-trading

https://www.esma.europa.eu/press-news/esma-news/esma-publishes-guidelines-and-technical-documentation-reporting-under-emir

ESMA Public Register

https://www.esma.europa.eu/databases-library/registers-and-data

ESMA Questions and Answers

https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_qa_on_emir_implementation.pdf

FCA (UK regulator) principal EMIR information page

https://www.fca.org.uk/markets/emir

https://www.fca.org.uk/markets/uk-emir/reporting-obligation

FCA (UK regulator) EMIR notifications and exemptions page

https://www.fca.org.uk/markets/european-market-infrastructure-regulation-emir/notifications-exemptions

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