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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. Further information can be found at ESMA's website on the* European Market Infrastructure Regulation (EMIR) *and their frequently updated Q&A.*
Should you require advice about your obligations under EMIR, you should speak to your legal or other professional advisers.

1. WHAT IS EMIR?

EMIR is short for European Market Infrastructure Regulation, which was the original name of the regulation in its first draft stages. Its 'real' name is the Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.
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.

2. WHEN DOES EMIR COME INTO EFFECT?

EMIR came into force on 16 August 2012 but many provisions only applied after Regulatory Technical Standards (RTS) have entered into force. Some obligations have phase-in periods following the publication of various RTSs.

Obligation	Commencement Date
Timely Confirmation	15 March 2013
Daily Valuations	
Portfolio Reconciliation	15 September 2013
Portfolio Compression	
Dispute Resolution	
Reporting to TRs	12 February 2014
Reporting to TRs (data on mark-to-market/model)	11 August 2014
Clearing	21 June 2016
Margining	4 February 2017

3. 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**). 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.

Derivatives include options, futures, swaps and other derivative contracts on a variety of underlying instruments including interest rates, credit, equity, 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 trading venue that is equivalent to a regulated market or MTF.

4. WHO DOES EMIR APPLY TO?

EMIR affects all entities "established" in the EU (banks, insurance companies, pension funds, investment firms, corporates, funds, SPVs etc.) that enter into derivative transactions. Non- EU entities, known as third country entities, may also be affected by some aspects of EMIR.

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

- 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
    - certain alternative investment funds managed by authorised or registered alternative investment fund managers.

- NFCs are undertakings established in the EU 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.

- TCEs are third country entities established outside the EU which would be FCs or NFCs if they had been established in the EU. 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 counterparty is expected to perform its obligations with both TCE counterparties and EU 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).

- There are other entities which are mostly exempt from the obligations under EMIR. An example is an EU central bank.

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

The clearing threshold:

The clearing thresholds specified in 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 other OTC derivative contracts not provided for under points (a) to (d).

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.

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 and the relevant 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.

5. WHAT ARE THE MAIN OBLIGATIONS?

A. RISK MITIGATION

For OTC derivative contracts that are not cleared by a CCP, EMIR imposes specific risk mitigation obligations including:

- **Timely Confirmations:**

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 it counterparties who are NFC-, T+2

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Confirmation means the documentation of the agreement 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) analyses the possibility of conducting a portfolio compression exercise.

- **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.

- **Daily Valuation:**

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

B. CLEARING

EMIR introduces a mandatory clearing obligation for certain OTC derivative contracts.

EMIR requires OTC derivative contracts of a class declared subject to the clearing obligation by ESMA, and concluded between counterparties which are classified as either an FC or NFC+ or a TCE which would be an FC or NFC+ if it were established in the EU, to be cleared by an authorised or recognized Central Clearing Counterparty (CCP).

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

- Another EU FC;
- An EU NFC+; and
- A TCE entity that would be an FC or an NFC+ if it were established in the EU

The OTC derivative contracts subject to mandatory clearing obligation are a subset of those contracts cleared by CCPs authorised or recognized under EMIR. At present, ESMA has introduced clearing mandates for certain Interest Rate Swaps (IRS) denominated in USD, GBP, JPY, EUR, NOK, PLN, and SEK, as well as certain index Credit Default Swaps (CDS). See the tables below for the full list of in-scope products.

Clearing applies to OTC derivative contracts concluded or novated on or after the date from which the clearing obligation takes effect.

What are the clearing categories and when does the clearly obligation apply to each category?

The clearing obligation will start on different dates depending not only on when the relevant classes of OTC derivatives are declared subject to the clearing obligation, but also on the counterparty classification and clearing categorisation.

In any transaction between counterparties in different categories, the clearing obligation applies on the later date (e.g. a trade between Category 1 and Category 2 must be cleared within the deadline applicable to Category 2 counterparties).

Category 1 entities are clearing members in at least one of the classes of OTC derivatives mandated for clearing.

- This is assessed for each clearing mandate – for G4 IRS, for EEA IRS, and for CDS – meaning that entities can be Category 1 for one category of OTC derivatives where they act as a clearing member, but Category 2 or 3 for another category of OTC derivatives. See “Will an entity be the same category for all products” below.

Category 2 and 3 entities are FCs that are not clearing members, and alternative investment funds (AIFs) that are not managed by an EU authorised manager and are therefore considered NFCs.

Category 4 entities are all other NFCs that are above the clearing threshold (NFC+).

Will an entity be the same category for all products that are mandated for clearing under EMIR?

No. Clearing categorisation is based on asset class as well as counterparty. This means that an entity could be one category for one set of mandated products and a different category for a different set of mandated products. For each set of mandated products, ESMA will issue a separate RTS identifying the specific products that will be subject to the clearing obligation.

There is also the possibility that different categorisations may be required within one asset class. The consultation paper for the second group of IRS mandated products for EEA currencies specifically allows for the possibility that an entity can have a different categorisation for that which the entity has for the G4 currency mandated products. However this is subject to the final EEA rates RTS.

What is the calculation period for the threshold calculation and how is this threshold calculation applied to investment funds?

Category 2 comprises counterparties (not belonging to Category 1) which belong to a group whose aggregate month-end average of outstanding gross notional amount of all of the group's non-centrally cleared derivatives is above EUR 8 billion. This includes all OTC derivatives, e.g. FX, rates, credit and other derivatives. FX spot is not included as it is not a derivative.

The calculation period for the EUR 8 billion threshold are the months of January, February and March 2016.

For investment funds (AIFs / UCITS) the threshold should be applied separately to each fund as long as, in the event of fund insolvency or bankruptcy, each investment fund constitutes a completely segregated and ring-fenced pool of assets that is not collateralised, guaranteed or supported by other investment funds or the investment manager itself.

Standard Chartered Bank (LEI: RILFO74KP1CM8P6PCT96) and SCB branches are Category 1 counterparties for the purpose of clearing in-scope interest rate derivatives under EMIR. Additionally, Standard Chartered Bank and SCB branches are Category 2 counterparties for the purpose of clearing in-scope Credit Default Swaps (CDS)

SCB uses LCH SwapClear to comply with the mandatory clearing obligation for G4 IRS

What products are subject to the clearing obligation?

The classes of over the counter (OTC) derivatives as set out in the 3 tables below will be subject to the mandatory clearing obligation.

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G4 IRS Currencies

Class/Type	Reference Index	Settlement Currency	Maturity
Fixed-to-float IRS (Vanilla)	EURIBOR LIBOR LIBOR LIBOR	EUR GBP JPY USD	28D-50Y except JPY 28D-30Y
Basis Swap	EURIBOR LIBOR LIBOR LIBOR	EUR GBP JPY USD	28D-50Y except JPY 28D-30Y
Forward Rate Agreement	EURIBOR LIBOR LIBOR	EUR GBP USD	3D-3Y for all
Overnight Index Swap	EONIA Fed Funds SONIA	EUR USD GBP	7D-3Y for all

EEA IRS Currencies

Class/Type	Reference Index	Settlement Currency	Maturity
Fixed-to-float IRS (Vanilla)	NIBOR WIBOR STIBOR	NOK PLN SEK	28D-10Y except SEK 28D-15Y
Forward Rate Agreement	NIBOR WIBOR STIBOR	NOK PLN SEK	3D-2Y Except SEK 3D-3Y

Credit Default Swaps (CDS)

Class/Type	Reference Index	Settlement Currency	Series and Maturity
European untranched index CDS	iTraxx Europe Main	EUR	Series 17 onwards 5Y
European untranched index CDS	iTraxx Europe Crossover	EUR	Series 17 onwards 5Y

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Dates of application for each set of products

	Description	G4 IRS Clearing Obligation Start Date	EEA IRS Clearing Obligation Start Date	CDS Clearing Obligation Start Date
Category 1	FC and NFC+ who are existing clearing members of CCPs authorised or recognised by ESMA	21 June 2016	9 Feb 2017	9 Feb 2017
Category 2	other FCs and AIFs (regardless of whether they are FCs or NFC+s), who are above the frontloading threshold, in that they belong to a group whose aggregate month-end average of outstanding gross notional amount of non-cleared derivatives for each of the three months January, February and March 2016 are above the EUR 8 b	21 December 2016	9 July 2017	9 August 2017
Category 3	Other FCs and other AIFs who are below the EUR 8bn frontloading threshold	21 June 2019	21 June 2019	21 June 2019
Category 4	All other (NFCs+)	21 December 2018	9 July 2019	9 May 2019

Note:
(i) Mandatory clearing does not apply to NFC- counterparties.

ESMA maintains and publishes on its website a full register of the products that are subject to the EMIR clearing obligation. Refer to the following link:

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

Why is an EMIR classification important and why do I need to notify SCB/ my counterparties of my clearing categorisation ?

The scope and impact of the EMIR requirements depends on the classification of the counterparty, clearing categorisation and the asset class of the contract. Understanding the classification of the counterparty helps SCB to identify both our, and/or your, obligations under EMIR. In particular, this will be key for the purposes of determining whether derivative transactions we enter into with you /your funds are subject to the mandatory clearing obligation, if so, how the phase-in provided for these obligations applies to the trades we enter into with you.

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

Yes - SCB as an EU bank is obliged to meet the EMIR clearing obligations with in-scope counterparties both within and outside the EU. If a non-EU entity is an FC or an NFC+, SCB has a regulatory obligation to clear the relevant trades. We would ask you to respond to our mandatory clearing letter with your categorizations.

What happens if my classification changes?

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.

C. MARGINING OF UNCLEARED OTC DERIVATIVES

Under EMIR, FCs must have risk management procedures requiring timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts entered into on or after 16 August 2012. NFC+'s are likewise required to have procedures for the exchange of collateral with respect to OTC derivative contracts that are entered into on or after the clearing threshold is exceeded.

What is the Margining Obligation under EMIR?

EMIR imposes various risk mitigation procedures and techniques on non-centrally cleared OTC derivatives. Of these the obligation to Margin uncleared OTC derivatives will have the most significant impact.

The obligation has come into force on 4 February 2017 with subsequent phasing in dates for Variation Margin and Initial Margin.

The EMIR Collateral Margining Obligation 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.

What products and clients will be subject to the Margining Obligation and from when?

All non-centrally cleared OTC derivatives entered into or novated after the relevant implementation date will be subject to the IM and VM requirements.

VM obligation phase-in:

Transactions between counterparties who both have over €3 trillion aggregate group level month-end average notional amount of non-centrally cleared derivatives for March, April and May of 2016 being subject to the obligation from **4 February 2017** and all other in-scope transactions being subject to the obligation from **1 March 2017** for all counterparties that are not part of the first VM phase-in date.

IM Obligations will be phased-in over a longer period on the following basis:

Category 1: FC or NFC+s which have over €3 trillion aggregate group level month-end average notional amount of non-centrally cleared derivatives for the months March, April and May of 2016, being required to exchange initial margin from **4 February 2017**;

Category 2: FC or NFC+s which have over €2.25 trillion aggregate group level month-end average notional amount of non-centrally cleared derivatives for the months March, April and May of 2017, being required to exchange initial margin from **1 September 2017**;

Category 3: FC or NFC+s which have over €1.5 trillion aggregate group level month-end average notional amount of non-centrally cleared derivatives for the months March, April and May of 2018, being required to exchange initial margin from **1 September 2018**;

Category 4: FC or NFC+s which have over €0.75 trillion aggregate group level month-end average notional amount of non-centrally cleared derivatives for the months March, April and May of 2019, being required to exchange initial margin from **1 September 2019**;

Category 5: FC or NFC+s which have over €8 billion aggregate group level month-end average notional amount of non-centrally cleared derivatives for the months March, April and May of 2020, being required to exchange initial margin from **1 September 2020**.

D. REPORTING

- **Transaction Reporting**

  Under EMIR, all 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 Trade Repository (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+.

Please note that the reporting obligation applies to all derivative contracts within the scope of EMIR including in relation to cleared and non-cleared OTC derivatives and to exchange-traded derivatives. The reporting obligation under EMIR came into force on the 12 February 2014. Certain enhanced reporting requirements have applied from 1 November 2017.

As a counterparty with an obligation to report these trades you should consider connecting directly to a registered TR or have made arrangements for a third party to report on your behalf.

While the TR reporting obligation is expressed to apply to "counterparties", the Questions and Answers document, published by ESMA and updated periodically, indicates the obligation applies only to EU FCs and EU NFCs. Whenever an EU counterparty deals with a non-EU counterparty, the EU counterparty shall report the relevant derivative irrespective of the fact that the non-EU counterparty is subject to reporting obligations in its home jurisdiction.
The EU entity would have to report under EMIR and also report the identity of its non-EU counterparty.

- **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, in practice, this means that if the value of a trade changes daily, then the relevant information must be reported daily no later than the working day following the change in valuation. For collateral reporting, the counterparty is responsible for reporting all IM, VM and excess collateral movements, on a portfolio or on a single transaction basis. Again, the relevant information must be reported by the end of the day following the valuation date.

For collateral reporting, this must refer to the total market value that has been posted 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.

- **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. Link is http://www.leiroc.org/ LEIs issued by authorised providers are acceptable for reporting under EMIR in the EU, 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.

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

ESMA Public Register

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

ESMA Questions and Answers

https://www.esma.europa.eu/press-news/esma-news/esma-updates-its-emir-qa-3

FCA (UK regulator) principal EMIR information page

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

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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