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.

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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.

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’.

Under EMIR Refit the exemption from the clearing obligation for pension schemes has been extended: until 18 June 2023 for UK EMIR and until 18 June 2022 for EU EMIR. This exemption is also applied retrospectively to all in-scope transactions entered into since 16 August 2018 when the previous exemption expired.

From 18 June 2020 FCs are required to report on behalf of EU NFC- and also UK NFC- post-Brexit. For more information on delegated reporting please refer to EMIR REFIT Reporting FAQs.

BREXIT

The UK formally left the EU on 31 January 2020. At the end of the transition period (31 December 2020) EU EMIR was converted into UK law by operation of the European Union (Withdrawal) Act 2018 (hereafter referred to as UK EMIR and UK EMIR REFIT). Further information can be found on the FCA website here. The European Market Infrastructure Regulation (EMIR) has been onshored into UK legislation via a number of statutory instruments (SIs) and Binding Technical Standards (BTS). A list of UK EMIR onshoring legislation can be found on the UK EMIR library page of the FCA website.

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). 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, 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, under UK EMIR, non-UK) trading venue that is equivalent to a regulated market or MTF.

The key obligations under EMIR are:
- Risk Mitigation
- Clearing
- Reporting

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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. Under EU EMIR, non-EU entities, known as third country entities, may also be affected by some aspects of EU EMIR; under UK EMIR non-UK entities will be known as third country entities. For clarity, this means UK entities are considered third-country entities under EU EMIR and EU entities are considered third-county entities under EU EMIR.

The key obligations under EU and UK 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. 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.

<table>
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<tr>
<th>Categorisation</th>
<th>Definition</th>
<th>Sub-Categorisation</th>
<th>Applicability</th>
<th>Calculation</th>
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| **FC**         | FCs are certain entities authorized or registered in accordance with the relevant EU and UK regulations:  
- 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 | **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. | The calculation must:  
(a) be based on an 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) |
| **NFC**        | NFCs are undertakings established in the EU (or in the UK for UK EMIR) 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. | The calculation:  
(a) must be based on an aggregate month end average position in the OTC derivatives contracts for the past twelve months;  
(b) to include only derivative |
<table>
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<tr>
<th>TCE</th>
<th>NFCs who have determined that they do not exceed any of the clearing thresholds.</th>
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TCEs are third country entities established outside the EU (or UK under UK EMIR) which would be FCs or NFCs if they had been established in the EU (or UK under UK EMIR). 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).

<table>
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<tr>
<th>Exempt Entities</th>
<th>transactions entered by other NFCs in the group, if it is part of a broader group; and may exclude hedging transactions.</th>
</tr>
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</table>

There are other entities which are mostly exempt from the obligations under UK and EU EMIR (Exempt Entities). An example is an EU central bank. 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 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 commodity derivative contracts and other 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. Please be mindful of the differences in definition of OTC derivative between the UK and EU Regimes. Under UK EMIR the definition of an OTC derivative contract now includes derivative contracts which are not executed on a UK regulated market.

Where an EU or UK 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 or UK NFC must: (a) immediately notify 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.
4. WHAT ARE THE MAIN OBLIGATIONS?

A. RISK MITIGATION
For uncleared OTC derivative contracts, EU and UK 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) analyse 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, 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?

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

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 next phase in dates are as follows:

Phase 5: FC or NFC+s which have over €50 billion aggregate group level month-end average notional amount of non-centrally cleared derivatives for the months March, April and May of 2021, being required to exchange initial margin from 1st September 2021.

Phase 6
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 2022, being required to exchange initial margin from 1st September 2022.
B. CLEARING

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 Third Country Entity which would be an FC or NFC+ if it were established in the EU (or UK for UK EMIR), to be cleared by an authorised or recognised CCP.

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

- Another FC;
- An 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 for UK EMIR).

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: [https://www.esma.europa.eu/system/files_force/library/public_register_for_the_clearing_obligation_under_emir.pdf](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](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, all 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+

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. All Counterparties with the exception of Exempt Entities and TCEs must report their transactions to the authorised trade repository.
Though TCEs are not subject to the EMIR reporting obligation, they must provide the following details to any EEA and/or UK Counterparties with whom they transact to fulfil the EEA and/or UK Counterparties’ reporting obligations.

(a) Legal Entity Identifier ("LEI"); and
(b) Country of Registered Office.

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.

- **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**

EU and UK 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.

**Collateral 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.
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

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

Regulatory Guidance

ESMA principal EMIR information page

ESMA Public Register

ESMA Questions and Answers

FCA (UK regulator) principal UK EMIR information page
https://www.fca.org.uk/markets/uk-emir

FCA (UK regulator) UK EMIR notifications and exemptions page
https://www.fca.org.uk/markets/uk-emir/notifications-exemptions

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