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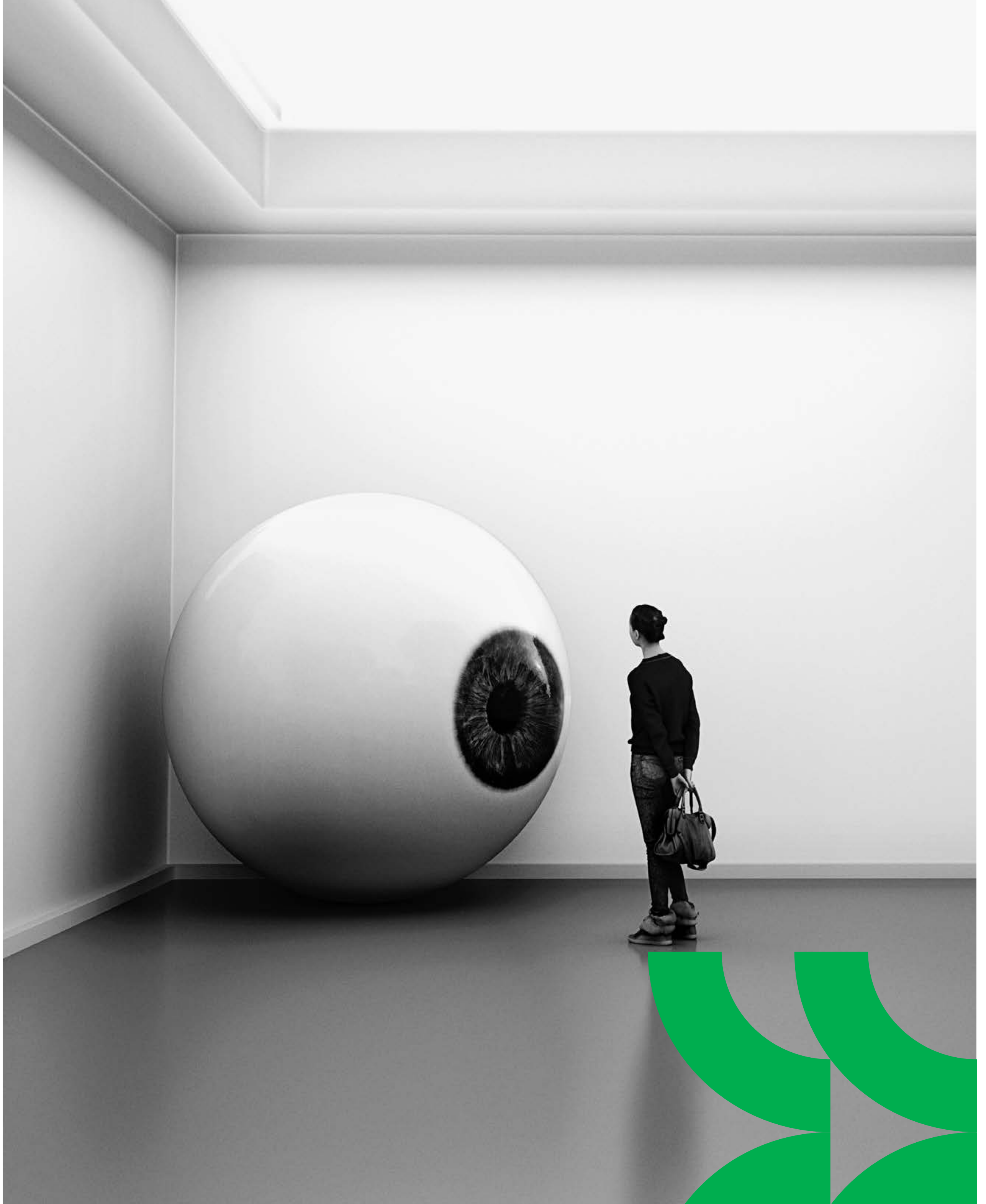


EMIR 3 – Impact on uncleared OTC derivatives markets

After some years in the EU legislative process, amendments to the European Market Infrastructure Regulation (known as **EMIR 3**) have been settled. EMIR 3 will enter into force on December 24, 2024,[1] although some provisions will not become effective until later as they are dependent on technical standards being drafted.

One of the key aims of EMIR 3 is to incentivise the development of clearing in the EU and reduce exposures to and usage by EU entities of third country central counterparties (**CCPs**). This has led to the introduction of the new, so-called "active account" requirement. This is a requirement to hold at least one active account at an EU CCP and clear a representative number of trades though that account. This topic was hotly debated in the market, and among EU Member States, Parliamentarians and the European Commission. The active account requirement remains the subject of ongoing consultation, since much of the detail will now be contained within regulatory technical standards.[2]

A number of other changes relating to cleared OTC derivatives have also been made, including exemptions relating to third country pensions schemes and post-trade risk reduction services, changes to the cross-border intragroup exemption, the calculation of the clearing threshold for financial counterparties (**FCs**), additional requirements for clearing members and clients that provide clearing services as well as amended requirements that apply to CCPs themselves.[3]

However, EMIR 3 also makes a number of changes impacting **uncleared** OTC derivatives markets which is the focus of this note.

[1] The final EMIR 3 text can be accessed here: https://eur-lex.europa.eu/eli/reg/2024/2987/oj.

[2] See the ESMA Consultation Paper on Conditions of the Active Account Requirement dated November 20, 2024: https://www.esma.europa.eu/sites/default/files/2024-11/ESMA91-1505572268-3856_Consultation_Paper_EMIR_3_Active_Account_Requirement.pdf.

[3] Cleared derivatives will also be impacted by the reporting changes outlined below.

At a glance: Impact on uncleared OTC derivatives markets

COUNTERPARTY CLASSIFICATION

- Calculation of the clearing thresholds for non-financial counterparties (**NFCs**) will change (albeit not straight away) which could impact which EMIR obligations apply to corporates, SPVs and other non-financial entities.
- Critically, the treatment of certain non-EU exchange-traded derivatives as "OTC" for purposes of the NFC clearing threshold will end, where transactions are cleared by an authorised or recognised CCP.
- In addition, there will no longer be a requirement for NFCs to take into account the OTC derivatives of non-financial entities in the wider group.
- Note that FC clearing thresholds are also changing.

RISK MITIGATION REQUIREMENTS

- The uncleared margin exemption for single-stock options and equity index options is being made permanent.
- New requirements for initial margin (**IM**) model validation are being introduced for FCs and NFC+s in scope for IM.
- The equivalence requirement for cross-border intragroup exemptions for margin is being removed, meaning that most intragroup transactions will be exempted automatically, eliminating the need for rolling temporary derogations (in the absence of equivalencies having been established).
- NFC-s, that cross the clearing threshold and so change status to NFC+ and come into scope of margin and valuation rules for the first time, now have four months to comply from the date of notification to regulators of the status change.

REPORTING REQUIREMENTS

- Further to the EMIR reporting changes introduced in April 2024, there is a continued regulator focus on data quality with specific penalties if counterparties fail to fulfil data quality requirements.
- An additional reporting requirement will apply where an NFC+ benefits from the intragroup exemption from reporting.
- Currently, reporting of OTC derivatives to a trade repository is not required for NFC-s when trading with third country FCs if certain conditions are met – one of the conditions is being removed, although this is not expected to materially impact the status quo.

EQUIVALENCE

- Article 13 equivalence will now only ever be relevant for risk mitigation (including margin) requirements.
- Note the requirement for equivalence to obtain CCP and trade repository recognition remains in place.
- Equivalence for the purposes of determining which derivatives are "OTC" (i.e. which third country markets are equivalent to regulated markets) also remains in place.

Counterparty classification – NFC clearing thresholds will change

1.1 OVERVIEW

Counterparty classification is important under EMIR because it determines which requirements under EMIR apply.

Broadly speaking (and exemptions aside), an entity is classified as an FC or an NFC under EMIR or a third country equivalent of either entity type. FCs include credit institutions and investment firms as well as insurance or reinsurance undertakings, pension schemes, certain funds and central securities depositories. NFCs include most other types of entities including corporates and SPVs. The FC and NFC categories are split into: (a) FCs and NFCs which exceed the "clearing threshold" (**FC+s** and **NFC+s** respectively); and (b) FCs and NFCs which do not exceed the "clearing threshold" (**FC-s** and **NFC-s** respectively).[4]

The difference between FC+s and FC-s is critical as it determines whether the mandatory clearing obligation will apply. However, the difference between NFC+s and NFC-s is not only relevant for the purposes of the application of the mandatory clearing obligation; it also determines whether, among other things, the obligation to exchange margin in relation to non-centrally cleared OTC derivatives applies. NFC classification is, therefore, significant in an uncleared context.

EMIR 3 changes the way that **both** the FC **and** NFC clearing thresholds (which have always been calculated differently) are determined. As the FC clearing threshold is only relevant in the context of the mandatory clearing obligation, we do not discuss the changes further. However, we note that the changes will require FCs to calculate both: (i) "uncleared positions" (taking into account OTC derivatives not cleared by an authorised or recognised CCP mirroring the change made to the NFC clearing threshold – see further below); and (ii) "aggregate positions" (taking into account all cleared and uncleared OTC derivatives). FC entities (such as funds) will need to carefully work through the changes to determine how they are impacted.

1.2 TIMING

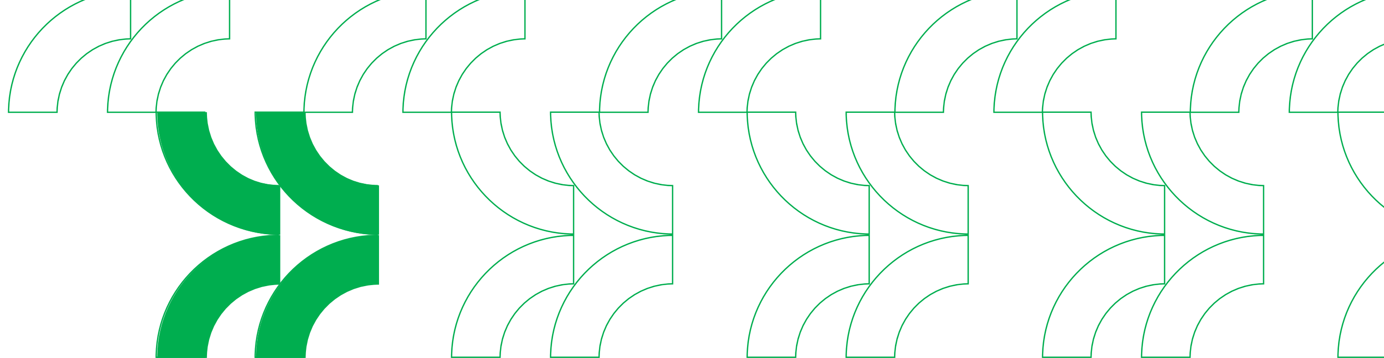
The EMIR 3 changes relating to the calculation of the FC and NFC clearing thresholds will not come into effect until the related clearing threshold technical standards (**Clearing Threshold RTS**) are effective. EMIR 3 mandates ESMA to submit draft Clearing Threshold RTS to the European Commission by December 25, 2025 and so, while a more expediated timeframe cannot be excluded, it is possible we may not see these changes enter into effect until 2026.

1.3 KEY CHANGES TO THE NFC CLEARING THRESHOLD

The NFC clearing threshold will be calculated in the same way as the existing threshold except that:

i. **Only OTC derivatives not cleared by an authorised or recognised CCP should be taken into account (as opposed to all cleared and uncleared OTC derivatives previously).** This is a highly significant change, because previously, exchange-traded derivatives (**ETDs**) done on certain non-EU exchanges were treated as "OTC" under EMIR. As a result and following Brexit, all transactions in derivatives on U.K. exchanges became categorised as OTC, resulting in numerous EU market participants crossing the clearing threshold as a result of their transactions on U.K. exchanges. This change in EMIR was hard-won by the financial industry and means that, for example, an ETD done on a U.K. regulated market will no longer counterintuitively be deemed to be "OTC", if it is cleared by an EMIR-recognised third country CCP.

[4] The clearing thresholds are currently as follows: (a) EUR1 billion in gross notional value for each of OTC credit and OTC equity derivatives; (b) EUR3bn in gross notional value for each of OTC interest rate and OTC foreign exchange derivatives; and (c) EUR4bn in gross notional value for OTC commodity and any other OTC derivatives contracts.



ii. **The "group" test will be removed.** There will be no requirement to include OTC derivatives contracts entered into by other non-financial group entities in the NFC clearing threshold calculation (although, note that the hedging exemption remains and can still be applied at a group level).

iii. **Further changes may be made to: (a) the hedging exemption; (b) the values of the NFC clearing thresholds (unsurprising given that the methodology for calculation is changing); and (c) the mechanisms triggering a review of the values of the clearing thresholds following significant price fluctuations in the underlying class of OTC derivatives or a significant increase of financial stability risks.** This is as a result of ESMA's mandate to consider these elements when drafting a new or revised Clearing Threshold RTS. The considerations are motivated by recent market developments and issues faced by commodity firms.[5] In addition, ESMA is required to produce a report (by December 25, 2027) including information relating to energy, agricultural and commodity markets. This could further inform policy in the context of commodity derivatives.

The new clearing thresholds will be reviewed by ESMA every two years or earlier "where necessary" following which further changes to the clearing thresholds may be proposed. In addition, ESMA is required to report at least every two years on the activities of EU NFCs in OTC derivatives, identifying areas where there is a lack of convergence and coherence in the application of EMIR as well as potential risks to financial stability. This is one way of monitoring whether the NFC clearing threshold is still fit for purpose in light of market developments and stresses.

In addition, EMIR 3 introduces a new provision which states that NFC-s that change status to NFC+ and come into scope of margin and valuation rules for the first time now have four months to comply from the date of notification to regulators of the status change. Unlike the changes to the calculation of the clearing thresholds, this change is effective from December 24, 2024.

1.4 PRACTICAL POINTS TO NOTE ABOUT THE NFC CLEARING THRESHOLD

- Trading on U.K. and other third country regulated markets which are cleared by an EU-authorised or recognised third country CCP will no longer be counted towards the clearing threshold.
- Changes to the clearing threshold calculations may mean that the classification of certain NFCs for EMIR purposes changes which may impact which EMIR obligations apply to them.
- If an NFC moves above or below the clearing threshold (or if it fails to calculate the threshold), notifications to regulators will be required and counterparty status representations in deal or relationship documentation with counterparties or communicated via industry solutions will need to be updated. For large institutions, client outreach and a refresh of status representations is likely to be needed, once the new thresholds are published and related timings are known.
- When the new NFC clearing threshold does come into effect, counterparties will need to consider by which date they actually need to make the calculations and any relevant regulator notifications as this is an annual test. It may be that, as with EMIR Refit changes in 2019, we will see some guidance from regulators on this closer to the time.
- Absent the further Clearing Threshold RTS detail, we do not yet have full clarity on how the new changes will operate so market participants that may potentially be affected should follow this space closely.

[5] See Recital (21) of EMIR 3.

Risk mitigation requirements

2.1 THE UNCLEARED MARGIN EXEMPTION FOR SINGLE-STOCK OPTIONS AND EQUITY INDEX OPTIONS IS BEING MADE PERMANENT

(a) Overview

The market has been relying on a derogation and regulator forbearance (currently until January 4, 2026) to exempt single-stock options and equity index options from the uncleared margin requirements.

EMIR 3 will make the exemption permanent. However, there is provision to make changes to the permanent exemption in the future if regulators deem it necessary.

(b) Impacts

Overall, this is a welcome change in respect of which the industry has advocated for several years on the basis that an exemption avoids market fragmentation and ensures a level playing field for EU counterparties at a global level (i.e. it acknowledges the fact that in some jurisdictions the exchange of margin for these contracts is not subject to equivalent margin requirements (notably in the U.S.)). It will apply from December 24, 2024.

2.2 NEW REQUIREMENTS FOR IM MODEL VALIDATION (IMMV) ARE BEING INTRODUCED FOR FCS AND NFC+S IN SCOPE FOR IM

(a) Overview

This is a new requirement introduced by EMIR 3:

- **Requirement for authorisation and validation** – There is a new requirement that FCs and NFC+s in scope for IM must apply for authorisation from their national competent authorities (**NCAs**) before initial use of, or before adopting a change to, an IM model. If the relevant model is a "pro-forma model" – i.e. a model established, published and revised through market-led initiatives, for example, ISDA SIMM – counterparties must also apply to the EBA for validation. NCAs may only grant authorisation once the pro-forma model has been validated. Counterparties are required to provide relevant information to their NCAs/EBA via a central database.
- **Timing and process** – NCAs and the EBA are required to grant authorisation/validation of margin models within six months (for a new model) or three months (for a change to a model) from receipt of application. The EBA is required to assist NCAs in their authorisation processes, including by producing an annual report on its validation work and by issuing recommendations for NCAs on model validation as required. The EBA may also issue guidelines for counterparties on the authorisation/application process (no such guidelines have yet been published).
- **More proportionate requirements for smaller entities** – The final EMIR 3 text applies to all counterparties in scope of IM. However, the intention appears to be that supervision under the new requirements will be more focused on larger counterparties. The EBA is mandated to draft technical standards on IM models but the mandate is limited to credit institutions and investment firms that have, or belong to a group that has, a monthly average outstanding notional amount of non-centrally cleared OTC derivatives of at least EUR750bn. The technical standards must be drafted by December 25, 2025. Separately, the EBA has stated that it will "develop proportionate requirements for entities within the scope of IM model authorisation, especially for smaller entities (the so called "Phase 5" and "Phase 6" entities)".[6] It, therefore, appears that while there will be an approval process of some description for smaller market participants, this is likely to involve a lighter touch approach.
- **EBA as a central validator** – The EBA will set up and provide a central validation function for IMMV and will serve as the main point of contact for discussions with market participants and developers of pro-forma models. Developers of pro-forma models are required to provide the EBA with all necessary information to facilitate its validation work. However, until the EBA has publicly announced that it has set up its central validation function, the validation of pro-forma models shall be carried out by NCAs.
- **Fees for model validation** – The EBA will charge an annual fee for FCs/NFC+s using pro-forma models based on the monthly average outstanding notional amount of non-centrally cleared OTC derivatives over the last 12 months of counterparties using the pro-forma models validated by the EBA to cover the EBA's costs. The applicable fees have not yet been finalised. The European Commission will produce a delegated act on the method for determining fees and modalities of payment based on advice from the EBA (with the current deadline for the EBA to produce its technical advice set as June 30, 2025).[7]

[6] See here: https://www.eba.europa.eu/publications-and-media/press-releases/eba-asks-input-entities-falling-within-scope-initial-margin-model-authorisation-under-revised.

[7] See the European Commission's call for advice on fees published in July 2024: https://www.eba.europa.eu/sites/default/files/2024-07/f88fb040-79cb-4498-b2ed-b65c4f104590/LETTER~1.PDF; https://www.eba.europa.eu/sites/default/files/2024-07/3ac62522-3ab8-4a7e-be35-47005bf4e460/EMIR%203_0%20-%20Fees%20-%20EBA%20mandate%20%28Art_%2011%2812%29%29%20-%20provisional%20mandate.pdf. The EBA is in the process of considering its approach to fees and the setup of its central validation function and has already conducted a short survey for relevant market participants seeking relevant information. See here: https://www.eba.europa.eu/publications-and-media/press-releases/eba-asks-input-entities-falling-within-scope-initial-margin-model-authorisation-under-revised.

(b) Uncertainties and expected timing of application

On the face of the EMIR 3 regulation, IMMV provisions will enter into effect as of December 24, 2024. However, the EBA has confirmed that: "Closer to the EMIR 3 publication, the EBA will publish on its website operational clarifications aimed to ensure a smooth, convergent entry into force of EMIR 3 requirements in the EU."[8] There are a number of elements of the new rules that need to be clarified and/or put in place such as the central database, relevant fees and the EBA's central validation function before the IMMV rules are fully operational. The hope is that the EBA will address the current lack of transitional provisions in EMIR and provide in-scope counterparties with additional time to get to grips with the new requirements as more detail emerges on how the provisions will operate in practice (in the form of EBA technical standards and guidelines).

2.3 END OF THE EQUIVALENCE REQUIREMENT FOR CROSS-BORDER INTRAGROUP EXEMPTIONS FOR MARGIN

(a) Overview

Currently, for a cross-border counterparty pairing, an equivalence decision in respect of the relevant third country regime is required as a pre-requisite to a permanent intragroup exemption being granted on a cross-border basis. To date, in the context of margin, equivalence decisions exist for certain transaction and entity types regulated in Australia, Brazil, Canada, Hong Kong, Japan, Singapore and the U.S. (for the latter, those regulated by the Commodity Futures Trading Commission (**CFTC**) and Prudential Regulators[9] only). EU entities of course have subsidiaries, parents and affiliates in many other countries than these, or which are regulated by other regulators in those countries where equivalency is partial. For example, many banks have extensive networks in Asia, Latin America and some in Africa, where intragroup derivatives would be subject to onerous obligations.

To cater for this, therefore, if there is no applicable equivalence decision, entities may look to the temporary cross-border derogation which is presently available until June 30, 2025 (noting that the derogation will only apply if certain conditions are satisfied). Many intragroup transactions of EU entities would be treated as extra-group under the current EMIR, were it not for repeated extensions that have been enacted to the temporary derogation to exempt intragroup transactions pending delays to discussions on equivalence.

EMIR 3 will remove the requirement for an equivalence decision in the context of cross-border intragroup exemptions for margin and will replace this with a form of "negative equivalency". Instead, there will be a requirement that the relevant third country is not on an anti-money laundering or tax blacklist (in other words, identified as a high-risk third country that has strategic deficiencies in its regime on anti-money laundering and counter terrorist financing (pursuant to Article 29 of Regulation (EU) 2024/1624)[10] and is not listed in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes).[11] In addition, the EC must not have adopted a delegated act identifying the relevant third country as an entity not permitted to benefit from any of the exemptions for intragroup transactions despite those third countries not being identified in the other lists.

(b) Impacts

There is still some uncertainty as to how the changes to the exemption will work from a practical perspective.

In addition, if relevant to a particular group, counterparties will need to monitor the applicable lists to ensure that they are aware of any changes that may impact any relevant intragroup exemptions.

[8] See here: https://www.eba.europa.eu/publications-and-media/press-releases/eba-asks-input-entities-falling-within-scope-initial-margin-model-authorisation-under-revised. At the time of writing, the EBA had not published any such clarifications.

[9] Namely, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration and the Federal Housing Finance Agency.

[10] Note that this provision has entered into force but does not apply until July 10, 2027. In the interim, we assume that the legislation intends to refer to the following list: https://finance.ec.europa.eu/financial-crime/high-risk-third-countries-and-international-context-content-anti-money-laundering-and-countering_en#strategic-deficiencies.

[11] The list is available here: https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/.

Reporting requirements

3.1 THERE IS A CONTINUED REGULATOR FOCUS ON DATA QUALITY WITH PENALTIES IF COUNTERPARTIES FAIL TO FULFIL DATA QUALITY REQUIREMENTS

(a) Overview

Amended EMIR reporting rules entered into effect at the end of April 2024 – see here for further information. However, EMIR 3 introduces some additional changes to the EMIR reporting regime. While these changes are distinct from the revised EMIR reporting rules, there is a continued focus on data quality.

Entities subject to the reporting obligation will be required to put in place appropriate procedures and arrangements to ensure the quality of the data they report (even if reporting is delegated). ESMA is mandated to produce guidelines setting out what these procedures and arrangements will involve to address "concerns raised by the supervisory community about the quality of the data reported".

To ensure that the new requirements on data quality are fulfilled, additional powers are introduced to impose administrative penalties or periodic penalty payments (not to exceed 1% of the average daily turnover for the previous business year) for infringement of the reporting requirement where the details reported repeatedly contain systematic manifest errors. These powers are in addition to the existing general penalty powers under Article 12 of EMIR. Entities shall be obliged to pay per day of breach until compliance with the obligation is restored and penalties may be imposed for a period of up to six months.

ESMA is mandated to produce technical standards by December 25, 2025 setting out what constitutes a systematic manifest error.

(b) Impacts

Notwithstanding the fact that the associated guidelines and technical standards will remain outstanding, the requirements will enter into effect as of December 24, 2024. Market participants should therefore ensure that they build on the work done during the implementation of the revised EMIR reporting rules by continuing to focus on the quality of data reported and ensuring appropriate internal policies and governance is in place to minimise any errors in reporting. It will also be necessary to continue to monitor this space to ensure compliance with the relevant guidelines when they are published.

3.2 AN ADDITIONAL REPORTING REQUIREMENT WILL APPLY WHERE AN NFC+ BENEFITS FROM THE INTRAGROUP EXEMPTION FROM REPORTING

(a) Overview

There is a new requirement that provides that where an NFC+ that is part of a group benefits from the intragroup exemption, the EU parent undertaking of that counterparty shall report the net aggregate positions by class of derivatives of that counterparty to its competent authority on a weekly basis. For an EU counterparty, the competent authority of the parent undertaking shall share the information with ESMA and with the competent authority of that counterparty.

This requirement has been introduced as a response to "recent stress episodes in commodities markets [which] have highlighted the importance of authorities having a comprehensive picture of the derivatives activities and exposures of [NFC+s]."[12]

(b) Impacts

The requirement will enter into effect as of December 24, 2024. It is not yet clear what the practical impact of this provision will be (for example, whether the additional burden will have the effect of discouraging the use of the intragroup exemption in instances where a counterparty is an NFC+). Further clarity is needed on how this requirement will work in practice.

3.3 CURRENTLY, OTC REPORTING IS NOT REQUIRED FOR NFC-S WHEN TRADING WITH THIRD COUNTRY FCS IF CERTAIN CONDITIONS ARE MET – ONE OF THE CONDITIONS IS BEING REMOVED, ALTHOUGH THIS IS NOT EXPECTED TO IMPACT THE STATUS QUO

(a) Overview

Currently, if certain conditions are met, NFC-s would not be required to report in respect of OTC derivatives where they trade with third country FCs. One condition is an equivalence decision for the third country FC's home jurisdiction reporting regime and the other condition is that there is a data sharing agreement in place which gives EU authorities access to data reported under the non-EU reporting regime. If these conditions are satisfied, this would mean that the OTC derivative would only be reported in the third country jurisdiction.

EMIR 3 will delete the equivalence requirement.

(b) Impacts

Absent any data sharing agreements, this change will not make a practical difference to the status quo (although it is one to watch in the future potentially to the extent that data sharing agreements are agreed).

[12] See Recital 19 of EMIR 3.

Equivalence – Article 13 equivalence will now only ever be relevant for risk mitigation (including margin) requirements

4.1 OVERVIEW

Previously, under Article 13 of EMIR, if the European Commission adopted an implementing act on equivalence relating to the legal, supervisory and enforcement arrangements of a third country, the counterparties entering into a transaction would be deemed to have fulfilled the reporting, clearing and/or risk mitigation requirements where at least one of the counterparties was "established in that third country". We have only seen equivalence decisions for risk mitigation requirements to date and, as discussed above, only for certain transaction and entity types regulated in Australia, Brazil, Canada, Hong Kong, Japan, Singapore and the U.S. (CFTC and Prudential Regulators only).

The concept of equivalence established by Article 13 is now being removed other than in the context of risk mitigation (which includes uncleared margin) requirements. Importantly though, equivalence **is** being removed in an uncleared margin context for cross-border intragroup exemptions – see further above.

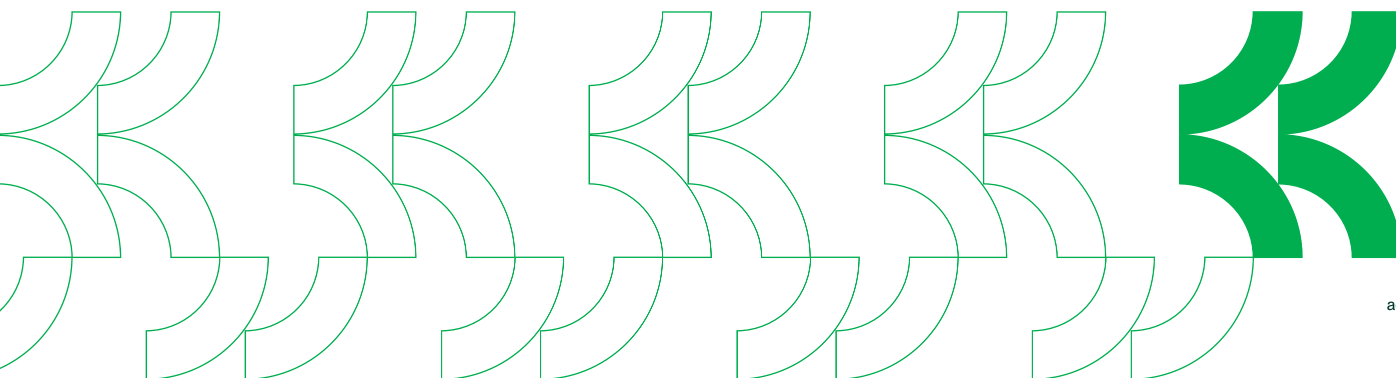
We note that this change only impacts equivalence under Article 13 of EMIR. The requirement for equivalence to obtain CCP and trade repository recognition remains in place.

In addition, equivalence for the purposes of determining which derivatives are "OTC" (i.e. which third country markets are equivalent to regulated markets) remains in place. However, the impact of the lack of such equivalence is now reduced as the clearing threshold for NFCs will now be calculated without taking into account transactions which are cleared on EU-authorised or recognised third country CCPs. As discussed above, previously, transactions done on non-equivalent third country regulated markets were treated as OTC under EMIR, causing certain entities trading in such markets to attain FC+ or NFC+ status and being subjected to more onerous obligations for any uncleared OTC derivatives entered into.

4.2 IMPACTS

We have only seen equivalence decisions in the context of risk mitigation requirements to date, with the decisions typically being limited to specific counterparties and/or transaction types. Therefore, in practice, the removal of the possibility of equivalence in a reporting and clearing context will not make any significant difference as there are currently no equivalence decisions that apply.

The equivalence provision has been amended so that the words "established in that third country" (see above) are replaced with "subject to the requirements which are considered equivalent under that implementing act". This reflects the fact that an entity subject to the third country requirements may not necessarily be "established" in the third country (i.e. it closes off an area of uncertainty that had affected certain market participants in practice).



Will we see corresponding changes in the context of U.K. EMIR?

From an uncleared OTC derivatives perspective, the U.K. has already dealt with some of the issues the EMIR 3 changes seek to address (for example, it declared EEA regulated markets as equivalent to U.K. regulated markets following Brexit, meaning that U.K. entities could continue to treat derivatives traded on EEA regulated markets as ETDs rather than OTC derivatives under U.K. EMIR and it already has a six-month grace period for compliance with margin obligations when an NFC- becomes an NFC+). In addition, and as indicated above, the U.K. has separately considered or is already taking forward a number of other aspects covered by EMIR 3 (for example, it has already considered IMMV[13] and is considering whether the exemption from single-stock options and equity index options should be permanent). While on the whole the U.K. and EU EMIR regimes remain largely aligned, there are some important differences and, in respect of other areas of change enacted by EMIR 3 (such as a permanent intragroup exemption for margin which is not predicated on an equivalence decision[14] and the removal of the group test in the context of the NFC clearing threshold), it remains to be seen whether and when any similar changes may be considered under U.K. EMIR.

HM Treasury is in the process of reviewing the U.K. regulatory framework post-Brexit and has set out the areas where it intends to prioritise policy reform next as part of "Tranche 3" of its reforms.[15] While "Tranche 3" will include a review of the provisions of U.K. EMIR relating to CCPs, we do not yet have any indication of the likely timing of the review of the remainder of U.K. EMIR, what any changes may entail and when such provisions will be moved to U.K. regulator rulebooks.

Over time, we may increasingly start to see a greater divergence between the U.K. and EU EMIR regimes. EU and U.K. counterparty pairings will need to track developments closely to ensure compliance with their own regulatory obligations but also to assess any impacts of both rulesets applying when trading with each other. In particular, depending on when the EMIR 3 changes to the clearing thresholds enter into effect and whether any corresponding changes are made to U.K. EMIR, it is possible that we could see a divergence between EU and U.K. EMIR counterparty scope – this is one to watch for EU entities trading with U.K. counterparties.

[13] The U.K. regulators have stated that there are currently no plans for equivalent IMMV requirements in the U.K.. See PRA policy statement 18/23/FCA policy statement 23/19 published on December 18, 2023.

[14] The U.K. has extended its equivalent temporary derogation until January 4, 2026 stating that this would allow the U.K. regulators to gather the evidence necessary to create a permanent regime for these types of transactions. However, at the time of writing, U.K. proposals on this topic are still awaited.

[15] See HM Treasury "Building a Smarter Financial Services Regulatory Framework for the UK: The next phase" available here: https://assets.publishing.service.gov.uk/media/65fab2cbaa9b76001dfbdb63/Building_a_Smarter_Financial_Services_Regulatory_Framework_Next_phase__1_.pdf.

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