Linklaters

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Guide to the European Market Infrastructure Regulation (EMIR).

Executive Summary

All entities active in the EU derivatives market (banks, corporates, funds, SPVs etc.), whether using derivatives for trading, hedging or investment purposes, are impacted by EMIR, which came into force on 16 August 2012.

EMIR imposes three main obligations on EU derivatives market participants, although deadlines for compliance vary:

> **reporting** of all derivatives (including retrospectively) to a trade repository – **12 February 2014** (OTC and exchange-traded);

> **clearing** of certain derivatives via a central counterparty (CCP) – likely to start in the **second half of 2014** for certain derivatives and counterparties; and

> **risk mitigation techniques** for derivatives not cleared via a CCP – certain obligations in effect since **15 March 2013** and others since **15 September 2013**; exchange of collateral likely to be phased-in from **December 2015**.

EU non-financial counterparties (e.g. corporates) that have 'systemically important' positions in 'non-hedging' derivatives (whether at an entity or group level) have also been required since **15 March 2013** to **notify their national competent authority** and **ESMA**.

Action points

> establish which EMIR category you/entities in your group fall into in order to ascertain which EMIR obligations apply

> comply with operational risk mitigation obligations in force since 15 March 2013 and 15 September 2013

> if you/entities in your group are non-financial entities in the EU, consider whether you need to notify your national competent authority and ESMA

> prepare to comply with the reporting obligation by 12 February 2014

> consider whether you/entities in your group may be subject to the clearing obligation when it takes effect and, if so, how you will comply with it

> consider the impact of future collateral exchange requirements

Impact

New obligations for non-cleared OTC derivatives may encourage market participants to clear derivatives (even when not obliged to do so).

Contents

EMIR Basics

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.

2. Which EU entities are affected by EMIR?

EMIR affects all entities "established" in the EU (banks, insurance companies, pension funds, investment firms, corporates, funds, SPVs etc.) that enter into derivatives, whether they do so for trading purposes, to hedge themselves against interest rate or foreign exchange risk or to gain exposure to certain assets as part of their investment strategy. We will refer to these entities as 'EU derivatives market participants' throughout this Guide.

> ***What does "established" mean?***
>
> Although "established" is not defined in EMIR, it is broadly understood by the market to mean "incorporated".

Unlike previous legislation covering financial regulation, which applied only to prudentially regulated entities such as banks or investment firms, EMIR imposes obligations on all EU derivatives market participants, including 'buy-side' participants such as corporates, unregulated funds and SPVs.

3. How does EMIR affect non-EU (i.e. third country) entities (3rdCEs)?

> ***What is a third country entity (3rdCE)?***
>
> A third country entity (3rdCE) is an entity "established" in a third country, i.e. a non-EU country. As mentioned above, "established" is broadly understood by market participants to mean "incorporated". Therefore, any entity incorporated in a jurisdiction outside the EU is a 3rdCE. Please note that branches located in the EU of such 3rdCEs are also 3rdCEs under EMIR.

Certain EMIR obligations (clearing and risk mitigation) may also affect non-EU (i.e. third country) entities (3rdCEs) in two sets of circumstances.

(1) EMIR can apply directly to 3rdCEs

The clearing obligation will apply directly to certain 3rdCEs when they enter into derivatives subject to the clearing obligation with certain EU derivatives market participants. In addition, in certain circumstances which are yet to be set out in further EU regulations, clearing and bilateral risk mitigation obligations such as collateral exchange will apply to derivatives entered into between two 3rdCEs. This is intended to catch contracts which have a direct, substantial and foreseeable effect in the EU or are aimed at evading EMIR's clearing and risk mitigation obligations (i.e. derivatives contracts or arrangements concluded without any business substance or economic justification).[1]

(2) EMIR can indirectly impact 3rdCEs when they enter into derivatives with EU derivatives market participants

As the EU derivatives market participant is subject to the relevant EMIR obligations in respect of that derivative, it can only enter into such derivative if the 3rdCE is willing to enter into it on terms that enable the EU derivatives market participant to comply with its EMIR obligations; otherwise the EU derivatives market participant will be at risk of enforcement action by its

[1] On 15 November 2013, ESMA published its final draft regulatory technical standards (RTS) on contracts having a direct, substantial and foreseeable effect within the EU and non-evasion of EMIR provisions. The European Commission has until 15 February 2014 to decide whether to endorse these draft RTS, which will then be subject to any potential objection by the Council and the European Parliament before they become EU regulations.

national competent authority for breach of EMIR. Therefore, although EMIR does not technically apply directly to the relevant 3rdCEs, it will in practice result in such 3rdCEs having to comply with certain EMIR risk mitigation obligations in order to be able to enter into derivatives with EU derivatives market participants.

4. What are "derivatives" under EMIR?

The definition of "derivative" is not set out in full in EMIR but cross-refers to a sub-set of financial instruments listed in another EU directive, MiFID.[2] Broadly speaking, a "derivative" includes any option, future, swap, forward and other derivative contract relating to securities, currencies, interest rates, financial indices, commodities, financial contract for differences and credit default swap.[3] This definition is however limited to bilateral derivative contracts, such as exchange-traded derivatives (ETDs) and OTC contracts and does not, as a rule, include derivatives embedded in other contracts, such as securities or loans.[4]

There has been some debate about the product scope of EMIR in particular in relation to FX derivatives. Although there is no blanket exemption for FX derivatives as an asset class, spot FX transactions fall outside the definition of "derivative" and as such are outside the EMIR product scope. However, the position is less clear in relation to FX forwards, pending further clarification by the European Commission or ESMA.

5. What are "OTC derivatives" under EMIR?

An "OTC derivative" is any derivative (as set out above) which is not executed on an EU regulated market (as defined in MiFID) or equivalent non-EU market.[5]

The distinction between "derivative" and "OTC derivative" is important as the reporting obligation applies in respect of all derivatives (i.e. OTC and exchange-traded) whilst the clearing and risk mitigation obligations only apply in respect of OTC derivatives.

6. What main obligations does EMIR impose?

EMIR imposes three main obligations on market participants:[6]

> **clearing**: certain OTC derivatives entered into between certain market participants will have to be cleared via a central counterparty (CCP) (see more detail in The Clearing Obligation section below);

> **reporting**: all derivatives (OTC and exchange-traded, including derivatives entered into since, or that were outstanding on,

Exchange-traded vs. OTC derivatives

Derivatives can broadly be divided into two categories on the basis of how they are traded: exchange-traded and OTC derivatives.

Exchange-traded derivatives (or ETDs) are derivative contracts that are traded via a derivatives exchange. These are standardised contracts, the terms of which are specified by the relevant derivatives exchange and traded on it anonymously between the parties.

Over-the-counter (or OTC) derivatives are derivative contracts that are negotiated and agreed directly between the parties. Whilst many OTC derivatives are also standardised, making them suitable for clearing (see question 25 and our commentary), many are not.

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2 The Markets in Financial Instruments Directive (Directive 2004/39/EC).
3 See points (4) to (10) of Section C of Annex I to MiFID.
4 Great care will, however, need to be taken in relation to the appropriate categorisation of highly structured or hybrid contracts, for example derivatives embedded in securities that are not freely transferable.
5 The European Commission is yet to publish a list of non-EU (or "third country") equivalent markets, so the current position is that all ETDs executed on markets outside the EU are treated as OTC derivatives under EMIR.
6 We use the term 'market participants' in this Guide to refer to both EU derivatives market participants and the 3rdCEs affected by EMIR.

16 August 2012) will have to be reported to a trade repository (see more detail in The Reporting Obligation section below); and

> **risk mitigation techniques**: OTC derivatives entered into between certain market participants and which are not cleared via a CCP are subject to risk mitigation obligations (see more detail in the Risk Mitigation Techniques section below).

EU non-financial counterparties that have 'systemically important' positions in 'non-hedging' derivatives (whether at entity or group level) on any given day also have a **notification obligation** to their national competent authority and ESMA (see the NFC Notifications section below).

7. Are any exemptions from EMIR available?

Exemptions from the clearing and collateral exchange obligations may be available in respect of certain intragroup transactions. As the intragroup exemptions relate to the clearing and collateral exchange obligations only, they will not apply before the dates on which such clearing and collateral exchange obligations come into effect (likely to be in the second half of 2014 and December 2015 respectively). ESMA and national competent authorities are still developing processes for parties to apply for such exemptions (some national competent authorities have already put in place processes in relation to the intragroup exemption from the clearing obligation).

Pension funds are also exempt from the clearing obligation until August 2015 (extendable by another two to three years) in relation to OTC derivatives that reduce investment risks directly relating to the pension scheme arrangement's financial solvency.[7] Please see our client note on EMIR – Issues for Pension Funds for more detail.

All EU derivatives market participants will however be subject to the reporting obligation as well as certain risk mitigation obligations for non-cleared OTC derivatives (timely confirmation, dispute resolution, portfolio reconciliation and portfolio compression) from which there are no exemptions.

8. Are all market participants affected by EMIR in the same way?

The extent to which EMIR obligations apply to a market participant depends on whether the relevant market participant is:

(1) in the case of EU derivatives market participants

> a "financial counterparty" (FC); or

> a "non-financial counterparty" (NFC), and if so whether it is:

- an NFC above the clearing threshold (NFC+); or
- an NFC below the clearing threshold (NFC-).

(2) in the case of 3rdCEs

> a 3rdCE that would be an FC if it were established in the EU;

Intragroup transactions

Intragroup transactions are, broadly speaking, transactions between two counterparties that are members of the same group (see footnote 14 for the definition of "group") and that are consolidated on a full basis. They must also be subject to appropriate centralised risk evaluation, measurement and control procedures (and, where one of the counterparties is established outside the EU, the European Commission must have adopted an 'equivalence' decision in respect of the country where it is established (i.e. declared that third country 'equivalent' in terms of the legal, supervisory and enforcement arrangements)).*

Additional requirements such as the parties being subject to appropriate prudential requirements or part of the same institutional protection scheme apply where one of the parties is a financial counterparty.

* The European Commission has not yet adopted an 'equivalence' decision in respect of any third country.

[7] ESMA clarified in its EMIR Questions & Answers that only derivatives entered into after the expiry of the exemption from the clearing obligation may be subject to mandatory clearing.

> a 3rdCE that would be an NFC+ if it were established in the EU; or

> a 3rdCE that would be an NFC- if it were established in the EU.

For third country entities (3rdCEs) that may be subject to EMIR (see question 3 on when this may be the case), the extent to which EMIR obligations will apply directly also depends on whether the relevant 3rdCE would be an FC, NFC+ or NFC- if it were established in the EU (see question 17 on how EU derivatives market participants can determine whether a 3rdCE would be an FC, NFC+ or NFC- if it were established in the EU). As previously mentioned, any 3rdCE may also indirectly be impacted by certain EMIR risk mitigation obligations (even if not directly subject to any legal obligation to comply with them) when entering into derivatives with EU derivatives market participants that will need to put arrangements in place for their own compliance with EMIR.

9. Which EU derivatives market participants fall into the "financial counterparty" (FC) category?

Banks, insurance/assurance/reinsurance undertakings, alternative investment funds managed by alternative investment fund managers,[8] investment firms, UCITS and pension funds (all as defined under the relevant EU legislation under which they are authorised/regulated) are, broadly speaking, financial counterparties under EMIR. As such, they are subject to the reporting, clearing and risk mitigation obligations in EMIR.

10. Which EU derivatives market participants fall into the "non-financial counterparty" (NFC) category?

Any undertaking established in the EU that enters into derivatives and does not fall within the FC category will, by default, be an NFC. In other words, any 'non-regulated' EU entity (such as a corporate or an SPV[9] for instance) will be an NFC under EMIR. The NFC category also includes entities that may be regulated as types of financial entities under national legislation, but not pan-European legislation.[10] Note also that proposals in the forthcoming MiFID II/MiFIR[11] to regulate certain entities will change those entities' status from NFCs (as currently unregulated) to FCs under EMIR.

11. Which NFCs are categorised as NFC+s or NFC-s?

An NFC is an NFC+ when the rolling average of notional positions in OTC derivatives[12] (other than 'hedging' derivatives (see question 13 on what 'hedging' means)) over 30 working days of that NFC and any other non-

[8] Note that, until funds that have applied for authorisation become authorised under the AIFMD (Alternative Investment Fund Managers Directive (Directive 2011/61/EU)), they will be treated as non-financial counterparties for EMIR purposes.
[9] Provided that the SPV is not an alternative investment fund under the AIFMD.
[10] Examples include consumer credit lenders or financial leasing companies in Belgium, or non-banking financial intermediaries in Italy.
[11] Recast of the Markets in Financial Instruments Directive (Directive 2004/39/EC).
[12] See also footnote 5. This will for now include all ETDs traded outside Europe, so groups having subsidiaries that are non-financial entities that trade in significant volumes of such ETDs are likely to trigger the NFC+ threshold.

financial entity[13] in that NFC's group[14] exceed any of the clearing thresholds in any derivatives asset class (see question 12 on clearing thresholds).

An NFC is an NFC- when the rolling average of notional positions in OTC derivatives (other than 'hedging' derivatives) over 30 working days of that NFC and any other non-financial entity in that NFC's group is at or below all of the clearing thresholds in all derivatives asset classes.

It is important to note that, because all OTC positions of non-financial entities within a group are aggregated for the purpose of the NFC+/- distinction, a group cannot consist of a combination of NFC+ and NFC-. Rather, all NFCs in the same group will either be NFC+s or NFC-s.

NFCs/groups that only, or mainly, enter into hedging derivatives are therefore NFC-s.

International NFC groups

When an NFC aggregates its OTC positions with those of other non-financial entities in its group, that NFC needs to include positions of all other non-financial entities in its international group, including those established outside the EU.*

* Even if the definition of "group" in EMIR cross-refers to provisions in two EU directives, it needs to be applied to entities established inside and outside of the EU.

12. What are the "clearing thresholds" for the different derivatives asset classes?

The clearing threshold values are:

> EUR 1 billion for credit derivatives;

> EUR 1 billion for equity derivatives;

> EUR 3 billion for interest rate derivatives;

> EUR 3 billion for FX derivatives; and

> EUR 3 billion for commodity and other derivatives.[15]

Derivatives referencing more than one asset class should be allocated to the asset class in which the industry normally classifies that derivative (for example classifying a cross currency swap with an interest rate element into the FX category if market participants tend to view and treat the derivative as an FX swap rather than an interest rate swap) or, for derivatives which market participants normally see as 'hybrid' products, allocated to the "commodity and other derivatives" category.

13. What is a 'hedging' derivative under EMIR?

An OTC derivative contract will be considered as a 'hedging' derivative[16] when, broadly speaking, whether by itself or in combination with other derivative contracts, it covers risks arising from the potential change in the value of assets, services, commodities, liabilities etc. (or the indirect impact that fluctuations in interest rates, inflation rates, FX rates or credit, may have on the value of such assets, services etc.) owned, produced, incurred etc. in

[13] Non-financial entity covers all NFCs in the EU and all 3rdCEs in the group that would be NFCs if they were established in the EU.

[14] "Group" is defined in EMIR as the group of undertakings consisting of a parent undertaking and its subsidiaries within the meaning of Articles 1 and 2 of Directive 83/349/EEC (the Company Law Directive) or the group of undertakings referred to in Article 3(1) and Article 80(7) and (8) of Directive 2006/48/EC (the Bank Consolidation Directive).

[15] Note that this is the combined threshold for commodities as well as any asset class other than credit, equity, interest rate, FX or commodities (e.g. inflation or hybrid/multi-asset class derivatives).

[16] EMIR refers to derivatives that are "objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity" of an NFC or its group.

the normal course of the NFC/group's business, or it qualifies as a hedging contract pursuant to the International Financial Reporting Standards (IFRS).[17]

The relevant OTC derivative only needs to constitute a hedge at the time it is entered into, not necessarily throughout its life. EMIR also recognises that a risk may evolve over time and that OTC derivative contracts initially executed for hedging purposes may have to be offset through the use of additional OTC derivative contracts. Such offsetting OTC derivative contracts will also amount to hedging.

Hedging can also include (i) 'proxy hedging' (i.e. using an instrument closely correlated to the relevant risk), (ii) forward-looking/anticipatory hedging, (iii) macro/portfolio[18] hedging used by groups of NFCs which enter into OTC derivative contracts via a single entity to hedge their risk in relation to the overall risks of the group and (iv) entering into stock options arising from employee benefit plans.

14. Why is the categorisation as NFC+ or NFC- important for NFCs?

For NFCs, the NFC+/- categorisation determines which EMIR obligations they are subject to:

> NFC+s are subject to broadly the same obligations as FCs under EMIR (i.e. reporting, clearing and all risk mitigation obligations); and

> NFC-s are subject to fewer obligations under EMIR (broadly speaking, reporting and certain risk mitigation obligations only).

15. Why is the categorisation as NFC+ or NFC- important for NFCs' counterparties?

For NFCs' counterparties (mainly FCs such as banks), the categorisation of their NFC counterparty determines the extent to which certain EMIR obligations apply to them; e.g. a swap that is part of a class subject to the clearing obligation (see question 25) between a bank and an NFC- will not be subject to the clearing obligation, but one between a bank and an NFC+ will.

16. How can an entity know whether their NFC counterparty is an NFC+ or an NFC-?

It is difficult for any entity other than the NFC itself to know whether it is an NFC+ or an NFC-. ESMA stated in its EMIR Questions & Answers that "*FCs should obtain representations from their NFC counterparties detailing the NFC's status*" and added that "*FCs are not expected to conduct verifications of the representations received from NFCs […] and may rely on such representations unless they are in possession of information which clearly demonstrates that those representations are incorrect*".

Therefore, for example, where an NFC represents to a bank that it is an NFC-, unless the bank has derivative positions with that NFC/group over and above

Commentary

Until the EMIR clearing and collateral obligations come into effect, the consequences for an FC of dealing with an NFC+ or an NFC- are not significant, as they currently amount to complying with a tighter trade confirmation timeframe and a higher portfolio reconciliation frequency for their non-cleared OTC derivatives.

However, when the EMIR clearing and collateral obligations come into effect, the consequences for an FC of dealing with an NFC+ or an NFC- will be more significant as they will amount to an obligation to clear or to collateralise derivatives with that NFC if it is an NFC+.

Therefore, NFCs may find that their counterparties become more concerned about obtaining NFC+ or NFC- representations from them as the EMIR clearing and collateral obligations come into effect.

Note that suggestions by certain market participants that ESMA might publish a list of NFC+s have not been met with agreement for various reasons, including because ESMA only receives notifications from NFCs that exceed a clearing threshold on a given day but not when they become an NFC+.

[17] The EMIR recitals state that for NFCs that use local accounting rules, it is expected that most of the contracts classified as hedging under such local rules would fall within the general EMIR hedging definition.

[18] Note that ESMA has provided guidance on how NFCs using macro or portfolio hedging should demonstrate compliance with the hedging definition in its EMIR Questions & Answers.

the clearing threshold in any asset class and the bank knows that such positions are not 'hedging' derivatives (clearly pointing towards that NFC being an NFC+/all group NFC entities being NFC+s), the bank will be able to rely on the NFC's representation.

17. How can EU derivatives market participants determine whether a 3rdCE would be an FC, NFC+ or NFC- if it were established in the EU?

It is also difficult for any EU derivatives market participant to determine whether any 3rdCE it enters into derivatives with would be an FC, NFC+ or NFC- if that 3rdCE were established in the EU.

In relation to a 3rdCE's FC status, ESMA has provided guidance in its EMIR Questions & Answers that EU derivatives market participants would need to assess this in cooperation with their 3rdCE "*taking into account the nature of the activities undertaken by the [3rdCE] in question*" and added that market participants should document the process and any assumptions made in order to arrive at their determination.

In relation to determining whether a 3rdCE would be an NFC+ or an NFC-, ESMA also provided some guidance in its EMIR Questions & Answers[19] but stated that if, after applying such guidance, it was not possible for a market participant to determine whether the 3rdCE would be an NFC+ or an NFC- if it were established in the EU, it should assume that the 3rdCE's status is NFC+ and apply EMIR accordingly.

18. How should NFCs or 3rdCEs make representations to their counterparties?

EMIR does not prescribe the form or means by which such NFC or 3rdCE representations can be made. Therefore, NFCs and 3rdCEs that would be NFCs if they were established in the EU may wish to use the ISDA March 2013 EMIR NFC Representation Protocol or other contractual routes to make representations detailing their NFC status to their counterparties. Alternatively, online solutions (such as the ISDA Amend EMIR Counterparty Classification Tool launched by the International Swaps and Derivatives Association (ISDA), The British Bankers Association, The Investment Management Association and Markit) have been developed to facilitate EMIR counterparty classification for derivatives market participants.

19. What is the ISDA 2013 NFC Representation Protocol?

On 8 March 2013, ISDA published the ISDA March 2013 EMIR NFC Representation Protocol (the NFC Protocol). The NFC Protocol is designed to help market participants amend multiple ISDA Master Agreements to incorporate representations relating to a party's NFC (or 3rdCE that would be an NFC) status. As the extent to which certain EMIR obligations apply to a

What is an ISDA protocol?

An ISDA protocol is a multilateral contractual amendment process whereby parties can, by adhering to the protocol, amend existing ISDA Master Agreements with all of their counterparties that also adhere to the protocol, thereby avoiding costly and time-consuming bilateral negotiations.

[19] If the 3rdCE is part of an international group which also includes NFCs established in the EU, market participants can assume that the 3rdCE's NFC+/- status is the same as that of the EU NFCs (market participants should request that information from the 3rdCE). If however the 3rdCE is not part of such a group "*but benefits from a similar, limited exemption in its own jurisdiction*", market participants may assume that the 3rdCE would be an NFC-. Although it is not clear what ESMA refers to when it describes "*a similar, limited exemption*", we assume that ESMA refers to a categorisation similar to that of an NFC-.

market participant is determined not only by its own EMIR category but also its counterparty's,[20] the NFC Protocol is intended to facilitate market participants determining their counterparties' NFC+/- (or 3rdCE that would be an NFC+/-) status.

20. What are the consequences of EU market participants being in breach of their obligations under EMIR?

EMIR leaves it up to Member States to lay down the rules on penalties applicable to infringements of the rules under EMIR. Penalties must be effective, proportionate and dissuasive and must include at least administrative fines. An infringement will not, however, affect the validity of an OTC derivative contract, prevent the parties from enforcing the provisions of that contract, or give rise to any right of compensation from a party to that contract.

EMIR Obligations

NFC Notifications

21. Which notification obligations are NFCs subject to?

On the first day an NFC exceeds any of the clearing thresholds, it has to notify ESMA and its national competent authority. Where a group has NFCs established in different EU jurisdictions, the group is expected to submit a single notification to ESMA and all NFCs established in a particular jurisdiction are expected to notify the national competent authority in that jurisdiction. These notifications are required regardless of whether the NFC actually ends up exceeding the relevant clearing threshold(s) on the basis of the 30 working day rolling average test (see question 11) and therefore becomes an NFC+. Rather surprisingly, no notifications are required upon NFCs actually becoming NFC+s.

How can NFCs comply with their notification obligations?

Specimen notification forms and further information are available on the websites of ESMA and other relevant national competent authorities.

NFC+s also need to notify ESMA and their national competent authority as soon as the 30 working day rolling average of their notional positions in OTC derivatives (excluding 'hedging' ones) no longer exceeds the relevant clearing threshold(s).

22. When do the notification obligations apply to NFCs?

The notification obligations applicable to NFCs have been in effect since 15 March 2013.

The Clearing Obligation

23. What is "clearing" for OTC derivatives?

Clearing for OTC derivatives is the process by which two parties to an OTC derivative contract replace it with two separate contracts with a central counterparty (CCP) which takes over each party's positions under the original contract. The two parties no longer have a contract with each other but

[20] See question 15 on why the NFC+/- categorisation is important for NFCs' counterparties.

instead with the CCP, thereby making the CCP the counterparty to each of the original parties.[21]

The aim of clearing is to promote financial stability by reducing counterparty credit risk (as parties become exposed to the CCP's credit risk instead of each other's) and operational burdens, as well as increasing transparency and standardising the default management process. Clearing does, however, result in a concentration of risk in some entities – the CCPs, which have become systemically important and given rise to a new category of 'too big to fail' institutions. CCPs are therefore subject to regulation under EMIR designed to mitigate this risk.

24. Which market participants will be subject to the EMIR clearing obligation?

The clearing obligation will only apply if the relevant OTC derivative is of a class that has been declared subject to the clearing obligation and entered into between any combination of FCs and NFC+s,[22] provided one or more of the parties is established in the EU (the clearing obligation may also apply, in limited circumstances, where neither party is established in the EU (see question 3)). The clearing obligation will not apply where at least one of the counterparties is an NFC- (or a 3rdCE that would be an NFC- if it were established in the EU).

25. Which OTC derivatives will be subject to the clearing obligation?

Only OTC derivatives of a class that has been declared subject to the clearing obligation will have to be cleared. Over time, ESMA and the European Commission will develop various technical standards setting out which relevant classes of OTC derivatives will be subject to the clearing obligation.[23]

26. When will the clearing obligation start?

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 depending on the counterparty classification.

When ESMA develops the technical standards referred to above setting out the classes of OTC derivatives subject to the clearing obligation, it is also expected to set out different dates for FCs and NFC+s to comply with the clearing obligation ('phasing-in').

The first clearing obligations are expected to start some time in the second half of 2014 for FCs, in 2015 or 2017 for NFC+s[24] and in 2015 or 2017-2018

Commentary

The market expects the first clearing obligations to be in respect of the most standardised/liquid classes of OTC derivatives (such as certain vanilla interest and credit derivatives) and in time, as the market develops clearing solutions for a broader range of products, to extend to a wider range of derivatives.

Having said that, clearing is not an optimal solution for the risk management of all derivatives. For example, illiquid derivatives (which are hard to value) are not particularly suitable for clearing as they lead to an increase in the concentration of risk in CCPs that is difficult to manage, with the potential for CCPs to become just as risky as the market counterparties that they replace, but with a greater systemic threat.

[21] See Schedule on Clearing Models.

[22] Including, for this purpose, a 3rdCE that would be an FC or an NFC+ if it were established in the EU.

[23] ESMA is expected to start publishing consultations on draft technical standards relating to the clearing obligation by the end of 2013/early 2014 (ESMA had published a discussion paper on the clearing obligation on 12 July 2013).

[24] A three-year phasing-in was granted by the European Commission to NFC+s, but it remains uncertain whether the three-year period starts when EMIR came into force (16 August 2012) or when the clearing obligation starts for FCs (expected in the second half of 2014).

for pension funds.[25] Therefore, FCs entering into OTC derivatives with NFC+s or pension funds will only be subject to the clearing obligation when the clearing obligation starts applying to NFC+s or pension funds as applicable.

27. How is clearing achieved?

Different clearing models may be used to achieve the clearing of OTC derivatives:

> a market participant can become a clearing member of a CCP (Member Clearing) – this is likely to be used by a limited range of market participants given the onerous requirements imposed on clearing members;

> a market participant can become a client of a CCP clearing member (Client Clearing) – this is likely to be used by the majority of market participants that wish to clear their OTC derivatives without becoming CCP clearing members; or

> a market participant could also become the client of a clearing member's client (Indirect Clearing) - Indirect Clearing was formally introduced into EMIR somewhat late in the legislative process and there is no widely accepted market solution for Indirect Clearing in place yet.

Diagrams and explanations of each clearing model are set out in more detail in the Schedule on Clearing Models.

The Reporting Obligation

28. What is "reporting"?

Reporting means the process by which data relating to derivatives and their counterparties is submitted to a trade repository. A trade repository is an organisation that is established to manage data on a secure and confidential basis and is regulated under EMIR. The aim of reporting is to promote transparency by making the information on derivatives provided to such trade repositories available to regulators, thereby providing them with an accurate overview of the derivatives market and the exposures of market participants with a view to aiding prudential regulation of the financial markets.

Reporting challenges

Challenges associated with reporting include: the lack of standardisation for data across a number of products and markets; the ability of regulators to consume the reported data (given the volume likely to be reported); the difficulty for regulators to access and consolidate the reported data (given the high number of trade repositories globally and different reporting requirements in different jurisdictions); and, in certain jurisdictions, the ability for parties to report the data without breaching any national confidentiality rules.

29. Which parties will be subject to the reporting obligation?

All EU derivatives market participants (i.e. FCs, NFC+s and NFC-s) will be subject to the reporting obligation under EMIR, whether they enter into derivatives with other EU counterparties or 3rdCEs. 3rdCEs will not be subject to the reporting obligation under EMIR.

30. Which derivatives are subject to the reporting obligation?

When the reporting obligation comes into effect, EU derivatives market participants will have to ensure that they report to a trade repository

[25] Pension funds benefit from an exemption for certain derivatives until August 2015 (extendable by another two to three years). Please see our client note on EMIR – Issues for Pension Funds for more detail.

authorised by ESMA the entry into, any modification and the termination of all derivatives (OTC and ETD) by the working day following the entry into, modification or termination of such derivatives (T+1).

The reporting obligation will not only apply in relation to derivatives entered into from the date of the reporting obligation coming into effect (12 February 2014), but also to all derivatives entered into on or after 16 August 2012, as well as derivatives that were entered into prior to 16 August 2012 and were outstanding on that day (even if they have since been terminated).

31. When will the reporting obligation apply?

The start of the reporting obligation in respect of all derivatives asset classes will be 12 February 2014.

The date by which derivatives will need to be reported also depends on when the derivative was entered into and terminated, as set out in the table below.

Derivative entered into	Derivative to be reported by
On or after 12 February 2014	T+1
Since 16 August 2012 and outstanding on 12 February 2014	12 February 2014
Before 16 August 2012 and outstanding on 12 February 2014	13 May 2014
Before 16 August 2012 and outstanding on 16 August 2012 but no longer outstanding on 12 February 2014	12 February 2017
Since 16 August 2012 but no longer outstanding on 12 February 2014	12 February 2017

In addition, FCs and NFC+s will have an obligation to report collateral and daily mark-to-market valuations from 11 August 2014 (i.e. 180 calendar days after the reporting start date).

32. How can EU derivatives market participants comply with their reporting obligation?

Parties may wish to submit the relevant reports directly to trade repositories, in which case they should approach one or more trade repositories[26] in order to test their reporting processes before the first obligations apply from 12 February 2014.

As EMIR also provides that reporting may be delegated, certain EU market participants may prefer to appoint their derivatives counterparty (if it is willing to assume the task) or a third party (e.g. bank, broker, trading platform, CCP

[26] ESMA announced on 7 November 2013 that it has approved the registration of the first four trade repositories under EMIR: DTCC Derivatives Repository Ltd. (DDRL) (based in the United Kingdom), Krajowy Depozyt Papierów Wartosciowych S.A. (KDPW) (based in Poland), Regis-TR S.A. (based in Luxembourg) and UnaVista Ltd (based in the United Kingdom). ESMA is currently processing other trade repository applications, although registration of additional trade repositories will not impact upon the timeline for the reporting obligation (see question 31).

etc.) to submit the relevant reports on their behalf.[27] Parties that choose to do so will need to use due care and diligence when selecting the entity they appoint to report on their behalf, and make sure they have processes in place to check that the reporting has been done in compliance with EMIR (as they remain legally responsible despite the delegation). They will also need to ensure that the party reporting on their behalf will be able to report all their trades (including intragroup and historical trades, in which case the relevant information will need to be provided to the reporting party) or that there is an appropriate division of responsibility where more than one person/entity (including the reporting entity itself) will be reporting trades, as EMIR provides that reporting must be done without duplication.

33. Which information will need to be reported?

Information about the counterparties to the derivative contracts (also referred to as "counterparty data") and information about the derivative contracts themselves (also referred to as "common data") will need to be reported by all EU derivatives market participants. Click here to see the details required to be reported as set out in Regulation (EU) No. 148/2013.

In addition, FCs and NFC+s will also have to report daily the mark-to-market (or mark-to-model) value of their derivatives as well as the value of the collateral posted in respect of such derivatives.

34. Do market participants have to obtain an LEI to comply with the reporting obligation under EMIR?

EMIR provides that market participants should obtain a global legal entity identifier (LEI) when available for purposes of reporting counterparty data. The Regulatory Oversight Committee (ROC) is currently finalising the global LEI initiative, which should result in a number of operating units being approved to issue LEIs that are mutually recognised by as many jurisdictions as possible. The market expectation is for the new global LEI infrastructure to be in place by the end of 2013/early 2014.

ESMA clarified in its EMIR Questions & Answers that a pre-LEI issued by any of the endorsed pre-Local Operating Units[28] (pre-LOUs) listed on the LEI ROC website should be used to identify counterparties.

Note that EU derivatives market participants dealing with U.S. counterparties are also likely to be required by their U.S. counterparties to obtain an LEI as U.S. counterparties have to report their counterparties' LEI.[29]

What is an LEI?

LEI stands for "Legal Entity Identifier" and is the result of an initiative originally led by the Financial Stability Board (FSB) and supported by the G20 for the development of a global unique identification system for parties to financial transactions. Since January 2013, the LEI Regulatory Oversight Committee (ROC) has taken over the responsibility for the development and implementation of the global LEI system.

[27] In order to document such delegation arrangements, market participants may wish to use the Reporting Guidance Note published by ISDA in July 2013 or use an alternative reporting servicing agreement.

[28] The following pre-LOUs have been endorsed by the LEI ROC: CICI utility, Institut National de la Statistique et des Etudes Economiques, London Stock Exchange, Takasbank and WM Datenservice.

[29] Authorised U.S. persons can register a foreign (here EU) entity for an LEI and many U.S. counterparties have done so because their non-U.S. counterparties did not themselves apply for LEIs prior to the applicable compliance date. Non-U.S. entities may check whether they have been registered for a CICI/LEI by going to www.ciciutility.org (or other websites for issuers of LEIs conforming to the ISO 17442 standard). No two legal entities anywhere in the world should have the same LEI and obtaining an LEI does not subject an entity to any particular jurisdiction.

Risk Mitigation Techniques

35. What are "risk mitigation techniques"?

Risk mitigation techniques apply in respect of OTC derivatives that are not cleared via CCPs. They consist of:

> operational risk mitigation techniques – these obligations relate to:

- timely confirmation of trades;
- daily mark-to-market valuations of trades;
- having dispute resolution processes in place; and
- engaging in portfolio reconciliation and considering portfolio compression;

> exchange of collateral; and

> capital requirements for prudentially regulated counterparties.[30]

36. What is the timely confirmation requirement and when does it apply?

Since 15 March 2013, before any EU derivatives market participant (FC, NFC+ or NFC-) enters into non-cleared OTC derivatives, it needs to have procedures in place for both parties to confirm the terms of such derivatives within specific timelines from the date of execution of the transaction, ranging from one to seven days, depending on the type of OTC derivative, the type of counterparty and when the derivatives were entered into, as set out in the table below (with the currently applicable timeline underlined).

	Both parties are FCs/NFC+s	One party is an NFC-
Credit default swaps and interest rate swaps	Entered into: before 28 Feb 2014 **<u>T+2</u>** after 28 Feb 2014 **T+1**	Entered into: before 31 Aug 2013 **T+5** from 31 Aug 2013 to 31 Aug 2014 **<u>T+3</u>** after 31 Aug 2014 **T+2**
Equity swaps, FX swaps, commodity swaps and all other derivatives	Entered into: before 31 Aug 2013 **T+3** from 31 Aug 2013 to 31 Aug 2014 **<u>T+2</u>** after 31 Aug 2014 **T+1**	Entered into: before 31 Aug 2013 **T+7** from 31 Aug 2013 to 31 Aug 2014 **<u>T+4</u>** after 31 Aug 2014 **T+2**

How to comply with the timely confirmation requirement?

The European Commission clarified that the confirmation deadlines were not hard deadlines and that the obligation was focused on market participants having appropriate processes in place in order to achieve those deadlines. According to the European Commission FAQs, if FCs and/or NFCs have appropriate processes in place but nevertheless do not achieve the deadline for legitimate reasons, this should be reported to their relevant Member State competent authority. The competent authority will then examine the counterparties' processes for confirmations and review whether they are adequate with a view to complying with the deadlines.

[30] New capital requirements applicable to prudentially regulated FCs are set out in the recast of the Capital Requirements Directive (CRD IV) and the new Capital Requirements Regulation (CRR), which will gradually come into force (in phases) from 2014, rather than in EMIR.

37. What is the ISDA 2013 Form of Timely Confirmation Amendment Agreement?

On 8 March 2013, ISDA published the ISDA 2013 Timely Confirmation Amendment Agreement, which is a form of agreement that market participants can use as part of their tool kit for compliance with the new timely confirmation requirements under EMIR.

38. What is the daily mark-to-market valuation requirement and when does it apply?

Since 15 March 2013, all FCs and NFC+s are required to mark the value of their outstanding non-cleared OTC derivatives to market on a daily basis or mark-to-model where market conditions prevent marking-to-market.

The model can be developed internally or externally but must be approved by the board of directors (or a delegated committee) of the relevant FC or NFC+. It will have to be used in respect of any non-cleared OTC derivative when the market is inactive (i.e. when quoted prices are not readily and regularly available and the prices available do not represent actual and regularly occurring market transactions on an arm's length basis) or where the range of reasonable fair values estimates is significant and the probabilities of the various estimates cannot reasonably be assessed.

39. What is the dispute resolution requirement and when does it apply?

Since 15 September 2013, before entering into any non-cleared OTC derivative, all EU derivatives market participants need to have agreed procedures to identify disputes relating to the valuation of the contract or collateral, record such disputes (at least the length of time for which they are outstanding, the counterparty and the amount disputed), monitor them and resolve them in a timely manner (with a specific process for those disputes that are not resolved within five business days).[31]

FCs also have to report at least once a month (unless their national competent authority requires more frequent reporting) any disputes over EUR 15 million that are outstanding for at least 15 business days.

ESMA clarified in its EMIR Questions & Answers that the dispute resolution requirement also applies to any outstanding non-cleared OTC derivative as of 15 September 2013.

40. What is the portfolio reconciliation requirement and when does it apply?

Since 15 September 2013, before entering into non-cleared OTC derivative, all EU derivatives market participants need to have agreed arrangements with their counterparties to reconcile the key terms (including, amongst other things, at least the valuation, scheduled maturity date, payment/settlement

How to comply with the dispute resolution and portfolio reconciliation requirements?

Parties need to amend their derivatives documentation as well as their actual procedures to reflect the dispute resolution and portfolio reconciliation requirements.

In July 2013, ISDA published the EMIR 2013 Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol which is intended to facilitate parties amending their derivative contracts to comply with the documentation-related aspects of these obligations. Parties may also choose to amend their derivative contracts bilaterally, using the ISDA Standard Amendment Agreement or an alternative bilateral agreement.

[31] ESMA stated in its EMIR Questions & Answers that market participants could agree upfront that discrepancies that amount to a value below a pre-defined threshold do not count as disputes.

dates, notional amount and currency) of their non-cleared OTC derivatives portfolios (to be carried out either between each other or by a third party), in order to identify any discrepancy.

The frequency of such portfolio reconciliations ranges from once a year to every business day, depending on the number of contracts outstanding between two parties and whether both parties are FC/NFC+[32] or one party is an NFC-.[33]

ESMA clarified in its EMIR Questions & Answers that the portfolio reconciliation requirement also applies to portfolios of outstanding non-cleared OTC derivatives as of 15 September 2013.

41. What is the portfolio compression requirement and when does it apply?

Since 15 September 2013, EU derivatives market participants with 500 or more non-cleared OTC derivatives outstanding with a single counterparty need to have procedures in place with that counterparty to regularly (at least twice a year) consider whether it would be possible to conduct a portfolio compression exercise to reduce their counterparty credit risk to each other, and engage in such an exercise if so.

42. What is the collateral requirement and when does it apply?

The requirement for market participants to exchange collateral in relation to non-cleared OTC derivatives has not yet been set out in technical standards, as ESMA indicated its wish to wait until the work by BCBS-IOSCO[34] on agreeing a set of international rules on margin requirements for non-centrally cleared derivatives was complete. Therefore, it is likely that the relevant technical standards will follow the BCBS-IOSCO final policy framework on margin requirements for non-centrally cleared derivatives (published on 2 September 2013) and that the collateral requirement:

> will only apply to contracts between any combination of financial firms and systemically important non-financial entities,[35] provided that one or more of the parties is established in the EU;

> will not apply to contracts where at least one of the counterparties is a non-systemically important non-financial entity; and

> will start applying in December 2015 but will be phased-in gradually.

How to comply with the portfolio compression requirement?

The obligation is focused on parties considering the possibility of, rather than actually engaging in, portfolio compression – but parties that do not engage in portfolio compression have to provide a reasonable and valid explanation for deciding not to do so.

As no changes to the derivatives contractual documentation are required for parties to comply with this obligation, ISDA have indicated that no protocol will be published in this respect.

How to comply with the collateral requirement?

Parties will have to amend their derivatives documentation as well as their actual procedures to reflect the collateral requirement. ISDA have indicated that they will prepare standard documentation in due course to deal with the documentation-related aspects of this new requirement.

[32] Each business day if parties have 500 or more OTC derivatives outstanding with each other, once per week if they have between 51 and 499 outstanding at any time during the week and once per quarter when they have 50 or fewer outstanding at any time during the quarter.

[33] Once per quarter if the parties have more than 100 OTC derivatives outstanding with each other at any time during the quarter and once per year when the counterparties have 100 or less outstanding with each other (ESMA clarified in its EMIR Questions & Answers that the first quarterly reconciliation should be performed by 15 December 2013 and the first annual reconciliation should be performed by 15 March 2014).

[34] Basel Committee on Banking Supervision and International Organization of Securities Commissions.

[35] The expectation is that the terms “financial firms” and “systemically important non-financial entities” used in the BCBS-IOSCO policy framework will be transposed into the relevant technical standards as “FCs” and “NFC+s” respectively.

Please see our client note on the BCBS/IOSCO Margin requirements for non-centrally cleared derivatives for more detail.

43. What is the likely impact/cost of the collateral requirement for market participants?

The requirement to exchange collateral (as well as the imposition of higher capital charges on prudentially regulated entities such as banks) for non-cleared OTC derivatives will inevitably lead to additional costs for market participants (either directly when providing collateral or indirectly as a result of bank counterparties reflecting higher capital costs in the price of non-cleared derivatives) entering into such derivatives.

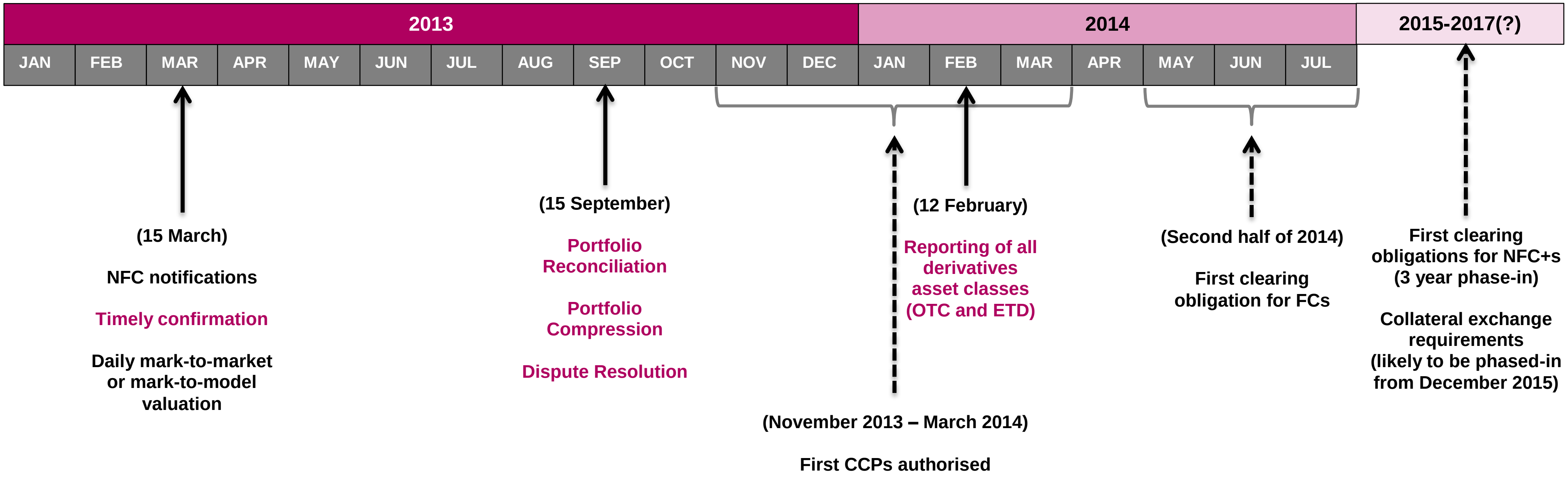
This may encourage market participants to clear derivatives (even when not obliged to do so under EMIR) and therefore to enter into 'clearable' (i.e. more standard/liquid) derivatives rather than more bespoke non-clearable ones.

Summary of EMIR Obligations and Timings

Timing	EMIR Obligation	Counterparties
15 March 2013	Notification to national competent authority(ies) + ESMA	NFCs (on first day they exceed clearing threshold) and NFC+s (when 30 working day rolling average no longer exceeds clearing threshold)
15 March 2013	Timely confirmation of non-cleared OTC derivatives	All EU derivatives market participants (more lenient requirements for NFC-s)
15 March 2013	Daily mark-to-market/model valuation of non-cleared OTC derivatives	FCs and NFC+s
15 September 2013	Dispute resolution, portfolio reconciliation and portfolio compression of non-cleared OTC derivatives	All EU derivatives market participants (more lenient requirements for NFC-s)
12 February 2014	Reporting of OTC derivatives (including retrospectively) to registered trade repository	All EU derivatives market participants
11 August 2014	Reporting of collateral and daily mark-to-market valuations to registered trade repository	FCs and NFC+s
Second half of 2014 (likely)	Clearing of certain OTC derivatives	FCs (only if derivative is with another FC)[36] – except pension funds[37]
Phased-in from 1 December 2015 (likely)	Collateral exchange for non-cleared OTC derivatives	FCs and NFC+s
2015 (or 2017/2018?)	Clearing of certain OTC derivatives	Pension funds
Summer 2015-2017(?)[38]	Clearing of certain OTC derivatives by systemically important non-financial counterparties	NFC+s (if derivative is with FCs or other NFC+s)[39]

[36] Or a 3rdCE that would be an FC if it were established in the EU. Note that the clearing obligation could also apply to contracts entered into between two 3rdCEs (see question 3).
[37] Pension funds benefit from an exemption for certain derivatives until August 2015 (extendable by another two to three years). Please see our client note on EMIR – Issues for Pension Funds for more detail.
[38] A three-year phasing-in was granted by the European Commission to NFC+s, but it remains uncertain whether the three-year period starts when EMIR came into force (16 August 2012) or when the clearing obligation starts for FCs (expected in the second half of 2014).
[39] Or a 3rdCE that would be an FC or an NFC+ if it were established in the EU. Note that the clearing obligation could also apply to contracts entered into between two 3rdCEs (see question 3).

EMIR Implementation Timeline



Obligations of NFC-s are in **magenta**.

Action Points

Counterparty classification, representations and notifications

The following have been in place since 15 March 2013:

1. In order to ascertain which EMIR obligations they are (and will become) subject to, all EU derivatives market participants need to identify which EMIR category (FC, NFC+ or NFC-) they *and their counterparties* fall within.

2. EU derivatives market participants dealing with an NFC may wish to obtain representations detailing its NFC status (using the ISDA NFC Protocol or other routes).

3. On each working day, NFCs need to:

> calculate the aggregate notional OTC derivatives positions (other than 'hedging' derivatives) of itself and any other non-financial entity in its international group in respect of that day,

> calculate the 30 working day rolling average of such positions, and

> assess whether or not it exceeds any of the clearing thresholds (a) on the basis of its daily positions (this will trigger the obligation to notify national competent authority(ies) and ESMA) and/or (b) on the basis of its 30 working day rolling average (this will make the NFC an NFC+ and therefore subject to the highest level of EMIR obligations).

Clearing

FCs should consider whether they will be in a position to start clearing in the second half of 2014, by using Member Clearing if they are CCP Clearing Members, or otherwise by using Client Clearing.

Although NFC+s are likely to have more time to put clearing arrangements in place, they should start discussing clearing arrangements with potential Clearing Member(s) with a view to putting the relevant contractual framework in place, as 'on-boarding' can at times be a long process.

Reporting

EU derivatives market participants wishing to submit their reports directly to a trade repository should start engaging with at least one trade repository in order to be in a position to comply with the reporting obligation by 12 February 2014.

EU derivatives market participants intending to delegate the reporting obligation should (i) start discussing reporting arrangements with potential reporting parties with a view to putting adequate contractual arrangements in place for an effective delegation, (ii) have processes in place to carry out regular checks ensuring that the reporting has been done and (iii) check whether the reporting party will be able and willing to report all of their derivatives – including any old trades and any intragroup transaction (as otherwise, processes will need to be in place for direct reporting of those transactions to a trade repository).

EU derivatives market participants are also encouraged by national competent authorities to start applying to obtain an interim LEI, pending the global LEI initiative being finalised.

Risk mitigation techniques

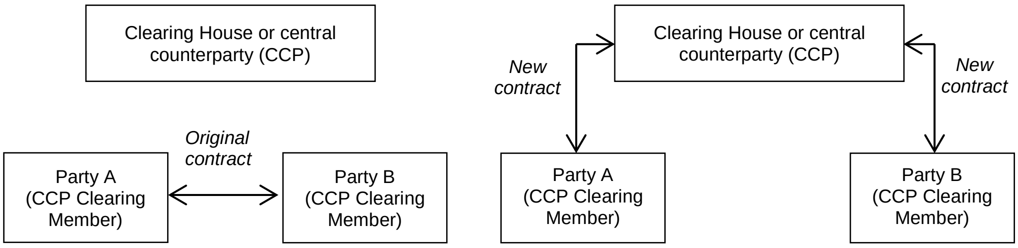
EU derivatives market participants need to make sure they have arrangements in place to comply with the risk mitigation techniques already in effect since 15 March 2013 (i.e. having processes in place for the timely confirmation of any non-cleared OTC derivatives they enter into and (for FCs and NFC+s only) calculating the daily mark-to-market (or mark-to-model) value of any outstanding non-cleared OTC derivatives).

Since 15 September 2013, before entering into new non-cleared OTC derivatives, EU derivatives market participants need to make sure their actual internal processes and, in most cases, their derivatives documentation, comply with the dispute resolution, portfolio reconciliation and portfolio compression obligations (note that there is no documentation requirement for portfolio compression). They also need to comply with these obligations in respect of their portfolios of outstanding non-cleared OTC derivatives as of 15 September 2013. The documentation-related aspects of these obligations are facilitated by the ISDA EMIR 2013 Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol or can be achieved by way of bilateral amendment agreements.

Schedule – Clearing Models

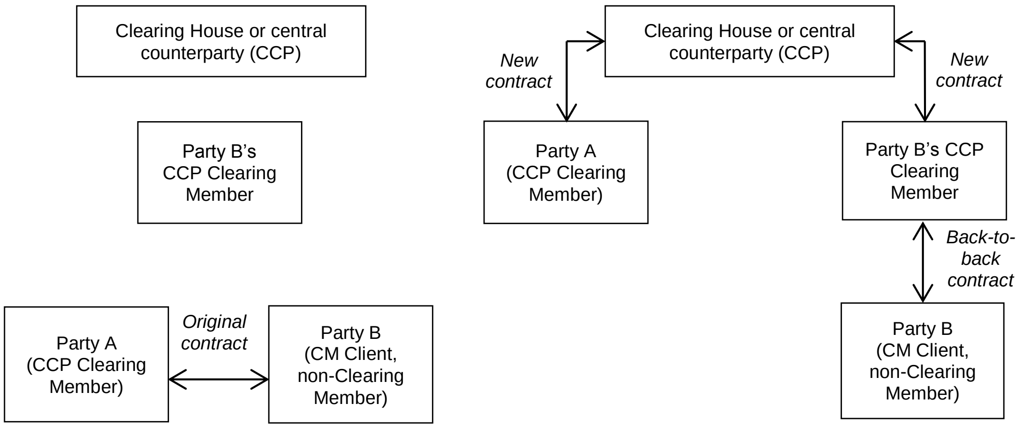
Member Clearing

Broadly speaking, Member Clearing is the process whereby parties (Party A and Party B) become clearing members of a CCP, and the original bilateral contract between Party A and Party B is ‘replaced’ by two contracts: one between Party A and the CCP and one between Party B and the CCP. The ‘replacement’ of the original contract with the two new contracts can be achieved by each of Party A and Party B separately novating their positions under the original contract to the CCP (see the diagram below).



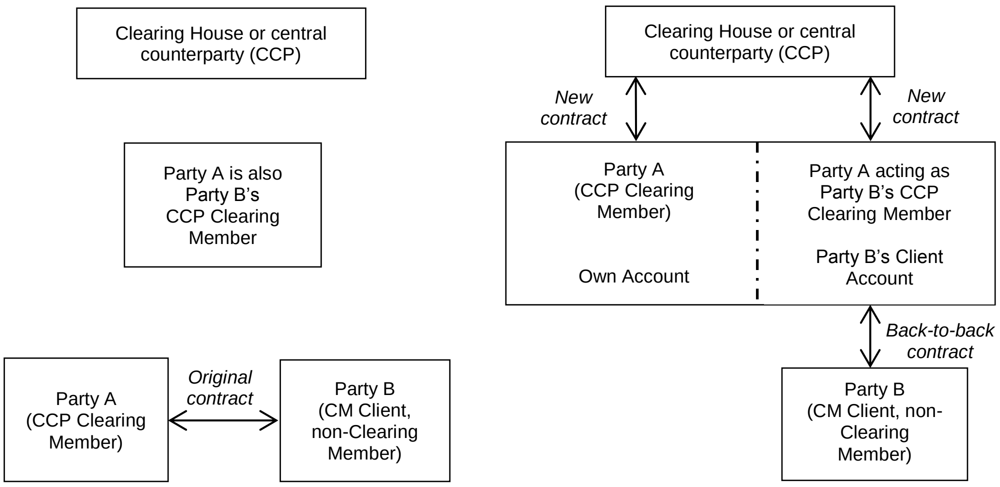
Client Clearing

Client Clearing is, broadly speaking, the process whereby parties become clients of a clearing member (CM Client), i.e. enter into contractual arrangements with a CCP Clearing Member, in order to clear OTC derivative contracts entered into by the CM Client (e.g. Party B below) and other parties (e.g. Party A below).

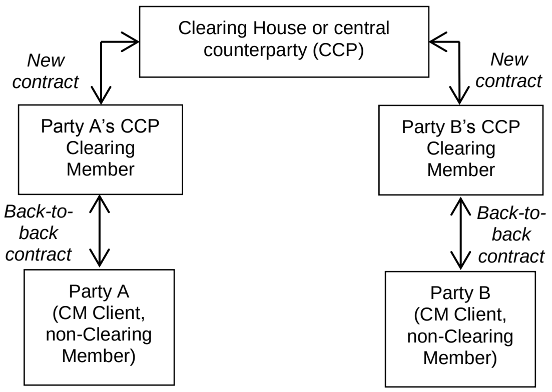


Possible variations of the example above are where a party enters into a derivative contract with its own Clearing Member and clears the contract through that Clearing Member (see diagram (a) below), or where both parties have to clear their contract through a Clearing Member, either using different Clearing Members (see diagram (b) below) or the same Clearing Member (see diagram (c) below).

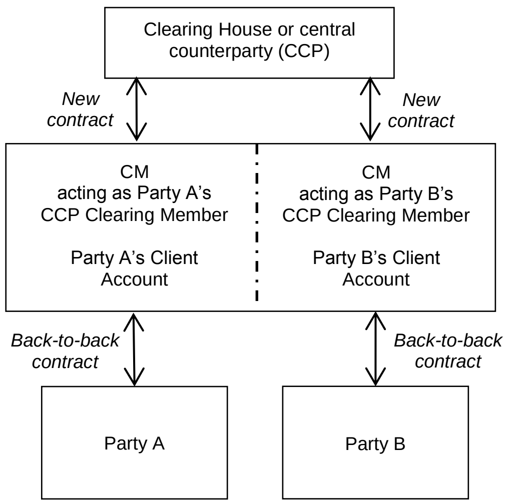
(a) Party B enters into a derivative with its own CCP Clearing Member (Party A in the example below) and clears it through that CCP Clearing Member



(b) Party A and Party B clearing through different Clearing Members

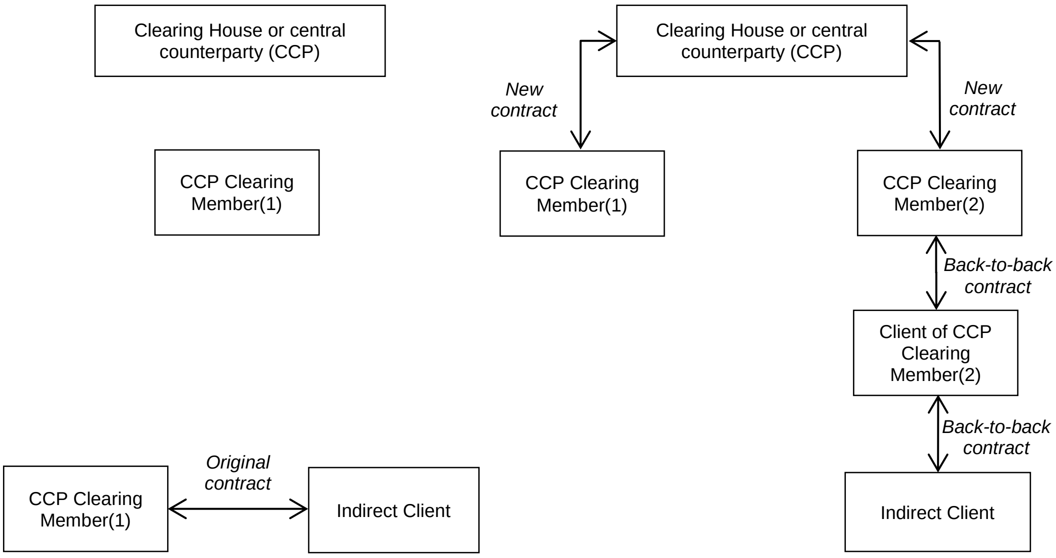


(c) Party A and Party B clearing through the same Clearing Member (CM in the example below)



Indirect Clearing

Indirect Clearing is still at an early stage of development. It enables market participants to clear derivatives by becoming a client of a CM Client rather than a direct client of a Clearing Member.



Linklaters

Where can I find other Linklaters client materials on EMIR and Clearing?

See below links to other Linklaters Client Knowledge Portal EMIR and Clearing materials.

BCBS/IOSCO Margin requirements for non-centrally cleared derivatives (Publication - September 2013)

EMIR – Issues for Pension Funds (Publication - September 2013)

How Does EMIR Impact my ISDA Master Agreement – Seminar recording and slides (September 2013)

ISDA/FOA Client Cleared OTC Derivatives Addendum – An Overview (Publication - June 2013)

CCP Client Clearing of OTC Derivatives (Seminar slides - June 2013)

What is Client Clearing (Seminar recording and materials - May 2013)

ISDA/FOA Addendum (Seminar recording and materials - May 2013)

EMIR: Obligations of non-financial counterparties coming into force from 15 March 2013 (Publication - March 2013)

EMIR Briefing (Recording and Presentation Materials - 28 February 2013)

Short video on the Implications of EMIR for Corporates (November 2012)

EMIR: Impact on Corporates - Seminar recording and slides (October 2012)

New EU Regulation on Derivatives - What Corporates Need to Know (August 2012)

Author: Anne-Laure Condat

Contacts

For further information please contact:

Anne-Laure Condat
Managing Associate, Derivatives and Structured Products, London

(+44) 20 7456 5101
anne-laure.condat@linklaters.com

Harry Eddis
Partner, Financial Regulation Group, London

(+44) 20 7456 3724
harry.eddis@linklaters.com

Carl Fernandes
Partner, Financial Regulation Group, London

(+44) 20 7456 3002
carl.fernandes@linklaters.com

Michael Kent
Partner, Financial Regulation Group, London

(+44) 20 7456 3772
michael.kent@linklaters.com

Sarah Parkhouse
Partner, Financial Regulation Group, London

(+44) 20 7456 2674
sarah.parkhouse@linklaters.com

Deepak Sitlani
Partner, Derivatives and Structured Products, London

(+44) 20 7456 2612
deepak.sitlani@linklaters.com

Michael Voisin
Partner, Derivatives and Structured Products, London

(+44) 20 7456 4606
michael.voisin@linklaters.com

One Silk Street
London EC2Y 8HQ

Telephone (+44) 20 7456 2000
Facsimile (+44) 20 7456 2222