EMIR: Clearing Exemption for Pension Scheme Contracts

February 2015

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Introduction

The EU regulation on OTC derivatives, central counterparties and trade repositories (EMIR) provides a temporary exemption from the clearing obligation for certain contracts entered into by pension scheme arrangements.

Rationale

EMIR recognises that entities operating pension scheme arrangements, the primary purpose of which is to provide benefits upon retirement, typically minimise their allocation to cash in order to maximise the efficiency and the return for their policy holders. Recital 26 of EMIR recognises that requiring such entities to clear OTC derivative contracts centrally would lead to pension funds divesting a significant proportion of their assets for cash in order for them to meet the ongoing margin requirements of central counterparties (CCPs).

Temporary exemption for pension scheme arrangements from the clearing obligation

Article 89 of EMIR provides for a three year transitional period within which certain pension scheme arrangements will not need to comply with the clearing obligation in respect of "OTC derivative contracts that are objectively measurable as reducing investment risks directly relating to the financial solvency of pension scheme arrangements...".

OTC derivative contracts which benefit from this transitional period must be reported to trade repositories and comply with the risk mitigation rules in Article 11 of EMIR.

Length of transitional period

The transitional period commenced on 16 August 2012 (the date EMIR came into force) and is due to expire on 16 August 2015, unless extended by the European Commission.

The Commission has the power to extend the transitional period by a further two years (and then possibly by a further year) if, having consulted with ESMA and EIOPA, it determines that insufficient effort has been made by CCPs to develop appropriate technical solutions for the transfer by pension scheme arrangements of non-cash collateral as variation margins and that the adverse effect of centrally clearing derivative contracts on the retirement benefits of future pensioners remains unchanged.

The Commission was due to deliver a report setting out its conclusions in this regard by 17 August 2014. The Commission is expected to publish this report in the near future, and that it is likely to recommend the extension of the transitional period by another two years.

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Although the Article 89 exemption is commonly referred to as the "pension scheme exemption" it benefits both counterparties to the contract, not just the pension scheme arrangement.

The exemption applies at a contract level rather than at a counterparty level - it exempts contracts from the clearing obligation, provided certain conditions are met. During the initial stages of the clearing obligation, both counterparties will have incentives to ensure that the exemption can be used.

The incentive to rely on the pension scheme exemption will reduce, however, for both pension schemes and firms that deal with them when the EMIR margin requirements come into force. Contracts which benefit from the clearing exemption will need to comply with the risk mitigation rules in Article 11 of EMIR, including margin requirements which are expected to be phased-in from 1 December 2015*, and such contracts must also be reported to trade repositories.

The clearing obligation

On 1 October 2014, ESMA submitted final draft regulatory technical standards (RTS) on the clearing obligation for certain classes of interest-rate OTC derivatives (IRS) to the Commission. Final draft RTS for credit OTC derivatives (CDS) and foreign exchange non-deliverable forwards (NDFs) have been delayed whilst the RTS for IRS is finalised.

On 18 December 2014, the Commission wrote to ESMA expressing its intention to endorse with amendments the final draft RTS for IRS. On 29 January 2015, ESMA resubmitted the draft RTS to the Commission in the form of a formal opinion, incorporating the majority of the Commission's proposed amendments .

If the Commission adopts the resubmitted draft RTS in February 2015 and the Parliament and the Council confirm that they have no objections by early March 2015, it is possible that the RTS could be published in the Official Journal (OJ) and enter into force as early as March 2015. It is possible that this timetable may slip, particularly because of the divergence between the Commission and ESMA on the treatment of intragroup transactions.

The resubmitted draft RTS divide counterparties into four categories for the purpose of the phasing-in the clearing obligation. The categories referred to in this document are those proposed in the resubmitted draft RTS. This document has been prepared on the basis that the final RTS is adopted in a form substantially similar to the resubmitted draft RTS.

* There has been industry pressure on a global level to postpone the start of margin requirements for non-centrally cleared derivatives. It is possible, therefore, that the ESA's final draft RTS may contain a later start date for margin requirements

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(continued)

The pension scheme exemption in Article 89 of EMIR is also relevant for the determination of capital costs for uncleared OTC derivatives.

Firms subject to the Capital Requirements Regulation 575/2013 (CRR) are required to calculate own funds requirements for credit valuation adjustment (CVA) risk, in accordance with Title VI of the CRR, for all OTC derivative instruments in respect of its business activities, other than credit derivatives recognised to reduce risk-weighted exposure amounts for credit risk.

OTC derivatives which are cleared at a qualifying CCP (QCCP) are excluded from this calculation, as are client transactions with a clearing member where the clearing member is acting as an intermediary between the client and a QCCP.

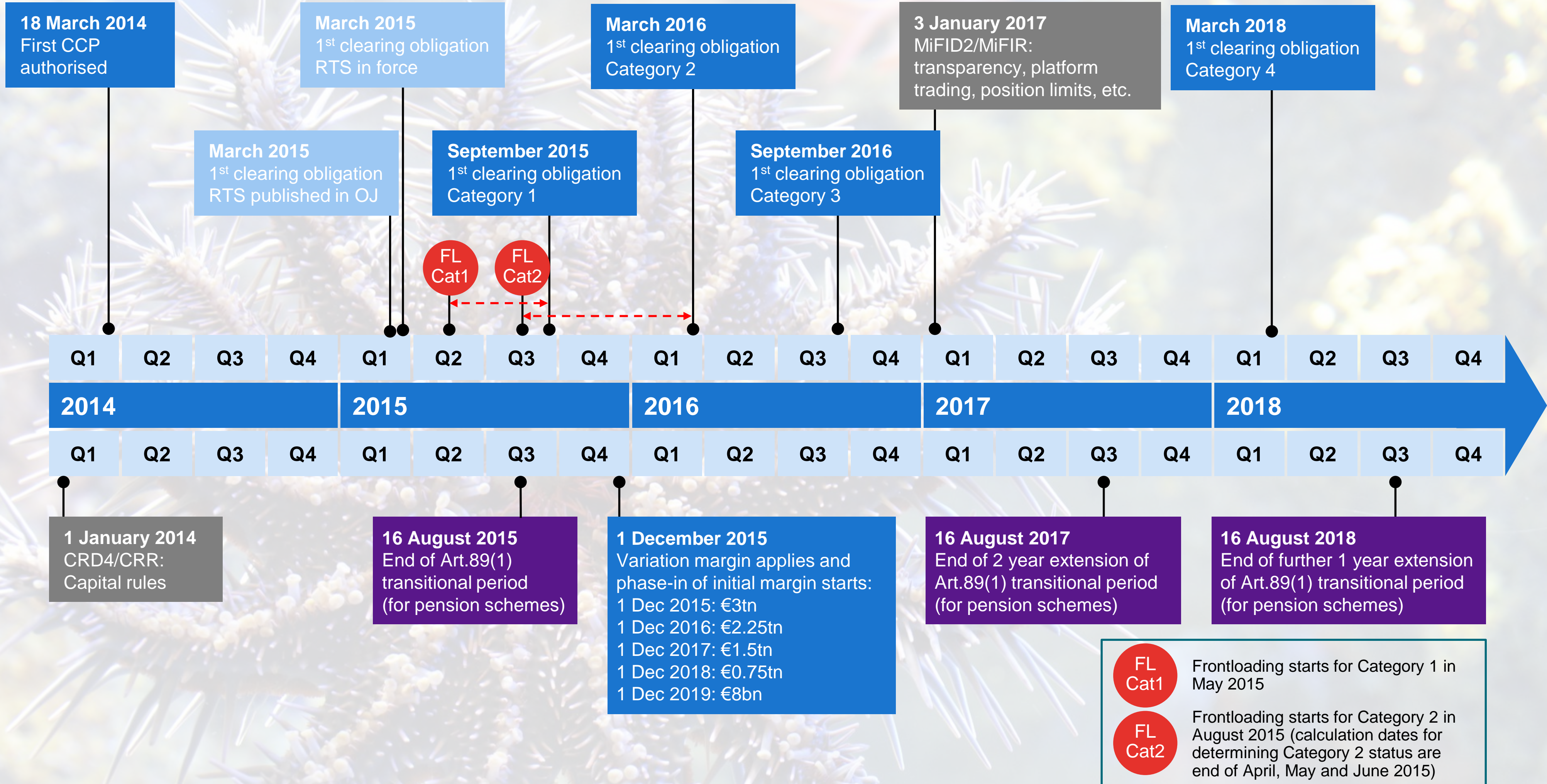
Article 382(4)(c) of the CRR provides an exemption from the capital charge for CVA for exposures to pension funds from transactions covered by the Article 89 pension scheme exemption*:

> "*The following transactions shall be excluded from the own funds requirements for CVA risk:*
> *...*
> *(c) transactions with counterparties referred to in point (10) of Article 2 of Regulation (EU) No 648/2012 and subject to the transitional provisions set out in Article 89(1) of that Regulation until those transitional provisions cease to apply;*
> *...*
> *The exemption from the CVA charge for those transactions referred to in point (c) of this paragraph which are entered into during the transitional period laid down in Article 89(1) of Regulation (EU) No 648/2012 shall apply for the length of the contract of that transaction."*

Without this exemption, firms subject to the CRR may have been disincentivised from trading with pension schemes on an uncleared basis, thus damaging the effectiveness of the exemption for pension schemes.

* This exemption is also repeated in Article 482 of the CRR, which provides "In respect of those transactions referred to in Article 89 of [EMIR] and entered into with a pension scheme arrangement as defined in Article 2 of that Regulation, institutions shall not calculate own funds requirements for CVA risk as provided for in Article 382(4)(c) of [CRR]."

EMIR illustrative implementation timeline



Note: Assumes: (i) the Commission adopts the RTS on the first clearing obligation in February 2015, the Parliament and the Council confirm that they do not object by early March 2015 and the RTS are published in the OJ and come into force in March 2015 (this timetable may slip, in particular because of the divergence between the Commission and ESMA on the treatment of intragroup transactions); (ii) the Commission determines, under Article 85 of EMIR, to extend the three year period referred to in Article 89(1) once by two years and once by one year; and (iii) the Margin RTS are adopted in the form originally proposed by the ESAs for consultation.

Conditions of the exemption

There are two key conditions which must be satisfied in order for a contract entered into by a pension scheme arrangement to benefit from the clearing exemption:

- The pension scheme arrangement must fall within one of the subparagraphs of Article 2(10) of EMIR.

  Pension scheme arrangements which fall within Article 2(10)(a) or (b) of EMIR benefit automatically from the exemption in respect of certain OTC derivative contracts (those described in the second bullet point below). In contrast, pension scheme arrangements which fall with Article 2(10)(c) or (d) must be granted the exemption by their home national competent authority (NCA).

- The OTC derivative contract must be "...objectively measurable as reducing investment risks directly relating to the financial solvency of pension scheme arrangements...".

  It is possible, therefore, that not all OTC derivative contracts entered into by pension scheme arrangements will benefit from the exemption, even if the pension scheme falls within Article 2(10) of EMIR.

The exemption is also extended to entities established for the purpose of providing compensation to members of pension scheme arrangements in case of default.

What pension scheme arrangements are covered?

Some types of pension scheme arrangements benefit automatically from the exemption, without needing to apply to their home NCA.

Pension scheme arrangements which fall within Article 2(10)(a) or (b) of EMIR benefit automatically from the exemption in respect of any OTC derivative contracts that are objectively measurable as reducing investment risks directly relating to the financial solvency of the pension scheme arrangement.

Entities established for the purpose of providing compensation to members of pension scheme arrangements in case of default also benefit from the automatic exemption.

Other types of pension scheme arrangements must apply to their home NCA and be granted the exemption.

Pension scheme arrangements which fall within Article 2(10)(c) or (d) of EMIR must apply to their home NCA to use the exemption. The NCA must notify ESMA and EIOPA of each request it receives and ESMA is required, after consulting with EIOPA, to issue an opinion assessing compliance of the type of entities or the type of arrangements with Article 2(10)(c) or (d) of EMIR as well as the reasons why an exemption is justified due to difficulties meeting the variation margin requirements of CCPs.

The NCA is only permitted to grant the exemption where it is fully satisfied that the type of entities or the type of arrangements comply with Article 2(10)(c) or (d) and that they encounter difficulties in meeting the variation margin requirements of CCPs.

ESMA is required to publish on its website a list of the types of entities and types of arrangements referred to in Article 2(10)(c) and (d) which have been granted an exemption by their NCA and will conduct a peer review of the entities included in the list every year.

The FCA has said that it expects to grant exemptions on an industry-wide basis for a type of entity or arrangement and that it is currently coordinating with the relevant UK trade associations to facilitate this process. It is unclear whether this process will be completed before the entry into force of the first RTS on the clearing obligation. It is also unclear at this stage how easy it will be to determine from this industry wide exemption, whether particular pension scheme arrangements fall within its scope.

What pension scheme arrangements are covered?
(continued)

The following types of pension scheme arrangements will fall within the scope of the automatic exemption:

	Pension scheme arrangement	References to other pieces of legislation	Examples	FC or NFC?*
Article 2(10)(a)	institutions for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC	Article 6(a) of Directive 2003/41/EC: "'institution for occupational retirement provision', or 'institution', means an institution, irrespective of its legal form, operating on a funded basis, established separately from any sponsoring undertaking or trade for the purpose of providing retirement benefits in the context of an occupational activity on the basis of an agreement or a contract agreed: ■ individually or collectively between the employer(s) and the employee(s) or their respective representatives, or ■ with self-employed persons, in compliance with the legislation of the home and host Member States, and which carries out activities directly arising therefrom."	A funded occupational pension scheme for the purpose of providing retirement benefits e.g. an arrangement set up by an employer (company pension fund) or group of employers (industry pension fund) for the benefit of their employees. In the UK or Ireland it would typically be a trust, but it may take a different form in other EU jurisdictions (e.g. the *Stichting* in the Netherlands or the *Pensionskasse* or *Pensionsfonds* in Germany).	FC
	including any authorised entity responsible for managing such an institution and acting on its behalf as referred to in Article 2(1) of that Directive	Article 2(1) of Directive 2003/41/EC: "This Directive shall apply to institutions for occupational retirement provision. Where, in accordance with national law, institutions for occupational retirement provision do not have legal personality, Member States shall apply this Directive either to those institutions or, subject to paragraph 2, to those authorised entities responsible for managing them and acting on their behalf."	An authorised entity responsible for managing such an institution may be an appointed investment manager.	FC or NFC
	as well as any legal entity set up for the purpose of investment of such institutions, acting solely and exclusively in their interest	N/A	A special purpose investment vehicle.	Most likely NFC
Article 2(10)(b)	occupational retirement provision businesses of institutions referred to in Article 3 of Directive 2003/41/EC	Article 3 Directive 2003/41/EC: "institutions for occupational retirement provision which also operate compulsory employment-related pension schemes which are considered to be social-security schemes covered by Regulations (EEC) No 1408/71 and (EEC) No 574/72 shall be covered by this Directive in respect of their non-compulsory occupational retirement provision business. In that case, the liabilities and the corresponding assets shall be ring-fenced and it shall not be possible to transfer them to the compulsory pension schemes which are considered as social-security schemes or vice versa."	Institutions which manage both social-security schemes and occupational pension schemes. The exemption only applies in respect of OTC derivative contracts entered into in respect of the occupational pension scheme business, and not the social-security scheme business.	Most likely NFC

* If the pension scheme arrangement is an NFC, it will only be subject to the clearing obligation if it exceeds the clearing threshold (i.e. if it is a NFC+).

What pension scheme arrangements are covered?
(continued)

The following types of pension scheme arrangements must apply to their home NCA for the exemption:

	Pension scheme arrangement	References to other pieces of legislation	Examples	FC or NFC?*
Article 2(10)(c)	occupational retirement provision businesses of life insurance undertakings covered by Directive 2002/83/EC, provided that all assets and liabilities corresponding to the business are ring-fenced, managed and organised separately from the other activities of the insurance undertaking, without any possibility of transfer	Directive 2002/83/EC does not define 'life insurance undertakings' but the Directive requires certain entities to seek authorisation where they provide services of life assurance, annuities, supplementary assurance carried on by life assurance undertakings and permanent health insurance not subject to cancellation.	Insurance companies commonly have a separately identifiable business to cover their dealings with occupational pension schemes (for example, in the UK, many will have a tax exempt "pension business").	FC
Article 2(10)(d)	any other authorised and supervised entities, or arrangements, operating on a national basis, provided that: i. they are recognised under national law; and ii. their primary purpose is to provide retirement benefits	N/A	Some Member States have pension schemes which operate on a national basis. For example, the state pension scheme in the UK, and in France there are some large national pension funds to which most or all employers contribute.	Most likely NFC

In addition, Article 89 also provides an automatic exemption for:

	Pension scheme arrangement	References to other pieces of legislation	Examples	FC or NFC?*
Article 89	Entities established for the purpose of providing compensation to members of pension scheme arrangements in case of default	N/A	The Pension Protection Fund and the Financial Assistance Scheme in the UK. Pension benefits in Germany are insured by the *Pensions-Sicherungs-Verein Versicherungsverein auf Gegenseitigkeit* (PSVaG).	Most likely NFC

* If the pension scheme arrangement is an NFC, it will only be subject to the clearing obligation if it exceeds the clearing threshold (i.e. if it is a NFC+).

What OTC derivative contracts are covered?

The exemption applies only in relation to OTC derivative contracts entered into with covered pension scheme arrangements which are "...objectively measurable as reducing investment risks directly relating to the financial solvency of pension scheme arrangements...".

There is potentially a mismatch between the scope of derivatives covered by Article 89 of EMIR and the range of derivatives that pension schemes are allowed to enter into.

For example, Article 18(1) of the IORP Directive provides that IORPs may enter into derivative instruments "insofar as they contribute to a reduction of investment risks or facilitate efficient portfolio management".

This has been transposed into UK national law through Regulation 4 of The Occupational Pension Scheme (Investment) Regulations 2005, which provides that IORPs may enter into derivative transactions "only insofar as they:

- contribute to a reduction of risks; or
- facilitate efficient portfolio management (including the reduction of costs or the generation of additional capital or income with an acceptable level of risk)...".

Whether this mismatch is intended is unclear and there has yet to be any guidance from ESMA on the scope of contracts covered by the exemption.

Given that this mismatch exists, it cannot be assumed that derivatives entered into by pension scheme arrangements will necessarily fall within the clearing exemption. For example, some techniques of efficient portfolio management may involve assumption rather than hedging of risk.

It is unclear from the text of Article 89 of EMIR whether the exemption applies in respect of all OTC derivative contracts entered into by entities established for the purpose of providing compensation to members of pension scheme arrangements in case of default or whether the exemption only applies in respect of contracts which are objectively measurable as reducing investment risks directly relating to the financial solvency of pension scheme arrangements.

Application of the clearing obligation to EU pension scheme arrangements

To determine whether a contract, which is subject to the clearing obligation, will need to be cleared when entered into with a pension scheme arrangement during the transitional period provided for by Article 89 of EMIR, you will need to know:

- Whether the pension scheme arrangement is an FC, NFC+ or NFC-
  - This will determine whether the pension scheme is subject to the clearing obligation.
  - If the clearing obligation is applicable, this will also form part of the categorisation process for the purposes of the clearing obligation.
  - Representations from pension schemes likely to be needed as it may otherwise be difficult for firms to determine whether: (i) the entity is an FC or NFC; and (ii) if the entity is an NFC, whether it falls above or below the clearing threshold.
- Which limb of Article 2(10) of EMIR the pension scheme falls within
  - This will determine whether the pension scheme benefits from the automatic exemption or whether the exemption must be granted by the home NCA.
  - Representations from pension schemes likely to be needed as otherwise it may be difficult for firms to determine whether a national exemption is needed and, if so, whether a specific pension scheme falls within the scope of a national exemption which has been granted (particularly where a NCA grants the exemption in respect of *types* of entities or arrangements).
- Whether the contract is objectively measurable as reducing investment risks directly relating to the financial solvency of the pension scheme arrangement
  - This will determine whether the exemption applies to a particular contract.
  - As this will be a trade-by-trade assessment for pension schemes, firms will need to think about how they will obtain this information from their pension scheme counterparties as some pension scheme counterparties may be able to represent that all their trades will be "hedging" transactions.
- Whether the pension scheme arrangement is a clearing member for a class of OTC derivative contracts subject to the clearing obligation at a relevant CCP
  - Whilst pension schemes are unlikely to be clearing members in practice, this will determine whether or not the pension scheme is a Category 1 counterparty for the purposes of the clearing obligation.
- If the pension scheme arrangement is an FC or NFC+ AIF, whether it exceeds the EUR 8 billion threshold
  - This will determine whether the pension scheme is a Category 2 or Category 3 counterparty for the purposes of the clearing obligation.

Application of the clearing obligation to EU pension scheme arrangements
(continued)

Calculating the NFC+ threshold

Should contracts which are "objectively measurable as reducing investment risks directly relating to the financial solvency of the pension scheme arrangement" be included?

- Under Article 10 of EMIR an NFC is subject to the clearing obligation (i.e. an NFC+) and other additional obligations under EMIR if its positions in OTC derivatives (aggregated with those of other members of its group) exceed a specified clearing threshold.
- However, contracts which are "objectively measureable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of [its] group" do not count towards the threshold under Article 10 of EMIR.
- The "hedging" definition in Article 89 of EMIR does not align with the "hedging" definition used for the purpose of determining whether a contract should be counted towards the NFC+ clearing threshold.
- It is conceivable that transactions which benefit from the exemption under Article 89 (because they are hedging transactions for those purposes) still count towards the calculation under Article 10 (because they are not hedging transactions for those purposes).
- A pension scheme which is an NFC would need to apply the test under Article 10 of EMIR to each transaction to determine whether it should be counted towards the NFC+ threshold.

Calculating the Category 2 threshold

Should contracts which are 'objectively measurable as reducing investment risks directly relating to the financial solvency of the pension scheme arrangement' be included?

- The resubmitted draft RTS for IRS treats FCs and AIFs that are NFC+ as Category 2 counterparties if their positions in non-centrally cleared derivatives exceed a EUR 8 billion threshold. Category 2 counterparties are subject to a shorter phase-in period (and if they are FCs are subject to the frontloading requirement).
- All non-centrally cleared derivatives must be counted in determining whether a counterparty falls within Category 2.
- Pension schemes' "hedging" transactions are included in the calculation of the Category 2 threshold even though such transactions would benefit from an exemption to the clearing obligation.
- Foreign exchange forwards, swaps and currency swaps must be included if they are "OTC derivatives".
- The calculation of the Category 2 threshold is intended to reflect the proposed EUR 8 billion threshold used in the draft RTS on margin requirements to determine whether a counterparty is subject to the initial margin requirements.

Impact of frontloading

Some contracts entered into with pension scheme arrangements may be subject to the "frontloading" requirement under EMIR.

Article 4(1)(b)(ii) of EMIR requires counterparties subject to the clearing obligation to clear OTC derivatives (pertaining to a class of derivatives declared subject to the clearing obligation) that are entered into on or after the notification of the authorisation of a CCP under Article 5(1) of EMIR and before the date on which the clearing obligation takes effect, if the contracts have a remaining maturity higher than a specified minimum remaining maturity at that date. This is known as "frontloading".

The frontloading requirement does not apply to contracts to which at least one counterparty is an NFC+.

Therefore pension scheme arrangements that are NFC+ will not be subject to the frontloading requirement (and pension schemes that are NFCs under the clearing threshold are not subject to the clearing obligation at all).

Also, the resubmitted draft RTS reduces the scope of the frontloading obligation for other categories of counterparties, including pension schemes that are FCs, but does not eliminate the obligation for those counterparties.

The resubmitted draft RTS set minimum remaining maturities that effectively cancel the frontloading obligation for FCs, including pension funds, that fall into Category 3 (because their positions in uncleared OTC derivatives fall below the EUR 8 billion threshold). Also the frontloading obligation will only begin for Category 1 counterparties 2 months after the RTS enter into force and for Category 2 counterparties 5 months after the RTS enter into force (in respect of contracts which have a remaining maturity higher than the specified minimum remaining maturity at the date the clearing obligation becomes effective).

In addition, ESMA has made clear that the frontloading obligation does not apply to contracts benefiting from the pension scheme exemption under Article 89 of EMIR that are entered into before the expiry of that exemption.

ESMA addressed this issue in its Q&A (OTC Question 16): "...OTC derivative contracts entered into during the temporary exemption are not subject to the clearing obligation. Therefore only new contracts entered into after the expiry of the exemption would have to be cleared."

As a result, the frontloading requirement should only have a limited impact on derivatives with pension scheme arrangements.

Based on the resubmitted draft RTS, the frontloading requirement only applies to pension scheme arrangements if they are FCs falling in Category 1 or 2 and they enter into mandatorily clearable OTC derivatives during the applicable frontloading period under the RTS and:

- The contract is not objectively measurable as reducing risks directly relating to the financial solvency of the pension scheme arrangement; or
- The clearing exemption under Article 89 expires before the end of the applicable frontloading period and the contract is entered into after the expiry of the exemption.

Application of the clearing obligation to non-EU pension scheme arrangements

It seems unlikely that contracts entered into with non-EU pension scheme arrangements will benefit, either directly or indirectly, from the clearing exemption even though non-EU pension schemes are likely to face similar difficulties posting margin to CCPs as EU pension schemes.

Can a non-EU pension scheme benefit from the exemption directly?

OTC Question 13 of ESMA's Q&A asks whether a pension scheme established in a third country can benefit from the exemption from the clearing obligation provided under EMIR. ESMA responds:

"EMIR provides for the conditions that European pension schemes shall meet in order to benefit from the exemption. These conditions are specific for defined categories of pension schemes established in the EU. Therefore, the exemption from the clearing obligation does not apply to a pension scheme established in a third country".

Can a non-EU pension scheme benefit from the exemption indirectly?

Despite some ambiguity regarding the territorial scope of the IORP definition used in Article 2(10)(a) of EMIR, the better view is that a non-EU pension scheme would not fall within the definitions of FC or NFC. For the purposes of determining whether the clearing obligation applies to a particular contract entered into with a non-EU pension scheme, EU firms will need to know whether the non-EU pension scheme would be subject to the clearing obligation if established in the EU. It is likely, on this test, that many non-EU pension schemes would be subject to the clearing obligation if established in the EU (most likely because they would be an IORP and required to register under the IORP Directive).

The key question is whether the parties can rely on the indirect effect of Article 89 of EMIR on the theory that Article 4(1)(a)(iv) of EMIR only imposes the clearing obligation if the non-EU pension scheme is "a third-country entity that would be subject to the clearing obligation if it were established in the EU" and if the non-EU pension scheme were established in the EU, it would be able to rely on the exemption in Article 89 of EMIR for those transactions that are hedging transactions.

There are a number of factors which point towards the conclusion that the exemption is not intended to be indirectly available to non-EU pension schemes. Furthermore, it seems unlikely that ESMA was not aware of this issue when answering OTC Question 13 and its response may in fact have been intended to address the indirect rather than the direct application of Article 89 of EMIR.

Therefore, FCs or NFC+s may have to clear their OTC derivatives with non-EU pension schemes if the non-EU pension scheme would be an FC or an NFC+ if it were established in the EU.

Implementation issues for firms and pension scheme arrangements

Categorisation of pension schemes

In many cases, three layers of categorisation will be needed in order to determine whether a pension scheme counterparty is subject to the clearing obligation, when it must start clearing, whether it is subject to frontloading and whether it can benefit from the automatic exemption in Article 89 of EMIR or whether a national exemption must be granted (and whether one has in fact been granted covering the specific pension scheme arrangement):

- FC, NFC+ or NFC-
- Article 2(10) category
- Clearing phase-in category

Identification of contracts which may benefit from the exemption

Pension schemes will need to be able to identify which contracts are objectively measurable as reducing investment risks directly relating to the financial solvency of the pension scheme.

Firms will need to rely on their pension scheme counterparties to inform them, possibly on a trade-by-trade basis, as to whether a contract benefits from the exemption.

Non-EU pension schemes

ESMA has said that third-country entities are not directly subject to the clearing obligation when they trade with EU firms.

As it seems unlikely that non-EU pension schemes can benefit directly or indirectly from the Article 89 exemption, EU firms trading contracts which are subject to the clearing obligation with non-EU pension schemes may need to clear these contracts.

EU firms may face difficulties persuading their non-EU pension scheme counterparties to establish the necessary clearing arrangements, particularly as non-EU pension schemes are likely to face similar difficulties posting cash margin to CCPs as EU pension schemes.

Glossary

- **AIF:** alternative investment fund as defined in the alternative investment fund managers directive
- **Category 1, 2, 3 and 4:** categorisation of counterparties under the resubmitted draft RTS on the clearing obligation for OTC interest rate derivatives
- **CCP:** central counterparty
- **Clearing obligation:** requirement to clear at a CCP all OTC derivative contracts pertaining to a class of OTC derivatives that has been declared subject to the clearing obligation in accordance with the procedure in Art.5(2) EMIR
- **Commission:** the European Commission
- **Council:** the Council of the European Union
- **CRD4/CRR:** the capital requirements directive and regulation implementing Basel III in the EU
- **Derivative:** as defined in EMIR, i.e. a financial instrument as set out in points (4) to (10) Section C, Annex 1, MiFID, as implemented by the MiFID implementing regulation
- **EIOPA:** European Insurance and Occupational Pensions Authority
- **EMIR:** the EU regulation on OTC derivatives, central counterparties and trade repositories
- **ESA:** European Supervisory Authority (i.e. EBA, EIOPA or ESMA)
- **ESMA:** European Securities and Markets Authority
- **EU:** European Union
- **FC:** financial counterparty as defined in EMIR, i.e. an investment firm, credit institution, insurance/reinsurance undertaking, UCITS, pension scheme and alternative investment fund managed by an alternative investment manager, in each case where authorised or registered in accordance with the relevant EU directive
- **Frontloading:** the requirement in Art.4(1)(b)(ii) EMIR to clear OTC derivatives (pertaining to a class of OTC derivatives that has been declared subject to the clearing obligation) that are entered into after the notification referred to in Art.5(1) EMIR and before the date of application of the clearing obligation
- **IM:** initial margin
- **IORP:** institution for occupational retirement provision within the meaning of Article 6(a) of the IORP Directive
- **IORP Directive:** the EU directive on occupational pension funds
- **MiFID:** the EU markets in financial instruments directive
- **MiFID2 and MiFIR:** the EU directive and regulation repealing and replacing MiFID
- **MRM:** minimum remaining maturity as referred to in Art.4(1)(b)(ii) EMIR
- **NFC:** non-financial counterparty as defined in EMIR, i.e. an undertaking established in the EU which is not a financial counterparty or a CCP
- **NFC+:** a NFC whose positions in OTC derivatives (excluding positions reducing risks directly relating to commercial or treasury financing activity) exceed the clearing threshold
- **NFC-:** a NFC whose positions in OTC derivatives (excluding positions reducing risks directly relating to commercial or treasury financing activity) do not exceed the clearing threshold
- **OJ:** Official Journal
- **OTC derivative:** over-the-counter derivative as defined in EMIR, i.e. a derivative executed outside a regulated market or equivalent non-EU market
- **Parliament:** the European Parliament
- **QCCP:** a CCP which has been authorised under Article 14 of EMIR or recognised under Article 25 of EMIR
- **RTS**: regulatory technical standards proposed by an ESA and adopted by the Commission under powers conferred by an EU regulation or directive
- **VM:** variation margin

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Version 1