

**C L I F F O R D**  
**C H A N C E**



92.595

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**EMIR 3.0 – NEW RULES FOR TRADING AND CLEARING DERIVATIVES IN THE EU**  
DECEMBER 2024

## EMIR 3.0

### NEW RULES FOR TRADING AND CLEARING DERIVATIVES IN THE EU

**New rules for trading and clearing derivatives in the EU will apply from 24 December 2024.**

The EMIR 3.0 package comprises EMIR 3.0 (a regulation amending EMIR, CRR and the MMF Regulation) and the EMIR 3.0 Directive (a directive amending CRD and the IFD).

Most of the changes in EMIR 3.0 apply from 24 December 2024.

However, the active account obligation will apply to the first group of in-scope counterparties from 25 June 2025 and the new counterparty categorisation rules will apply once the relevant technical standards are revised.

Member States must implement the new requirements in CRD and the IFD by 25 June 2026.

**The new rules aim to increase clearing at EU CCPs and reduce reliance on UK Tier 2 CCPs.**

Since Brexit, EU counterparties have continued to clear significant volumes of derivatives at UK CCPs pursuant to a time-limited equivalence decision due to expire on 30 June 2025 (unless extended by the European Commission).

Some clearing services offered by UK Tier 2 CCPs have been determined by ESMA to be of such substantial systemic importance to the EU's financial stability that they pose risks that are not capable of being fully mitigated under the EMIR framework for non-EU CCPs.

EMIR 3.0 seeks to reduce this reliance on UK Tier 2 CCPs by requiring some EU counterparties to hold active accounts at EU CCPs through which they must clear a representative number of trades. This obligation is supported by a range of other measures which are designed to incentivise greater clearing at EU CCPs.

**EMIR 3.0 makes other targeted changes which will impact EU counterparties which trade derivatives as well as their trading partners.**

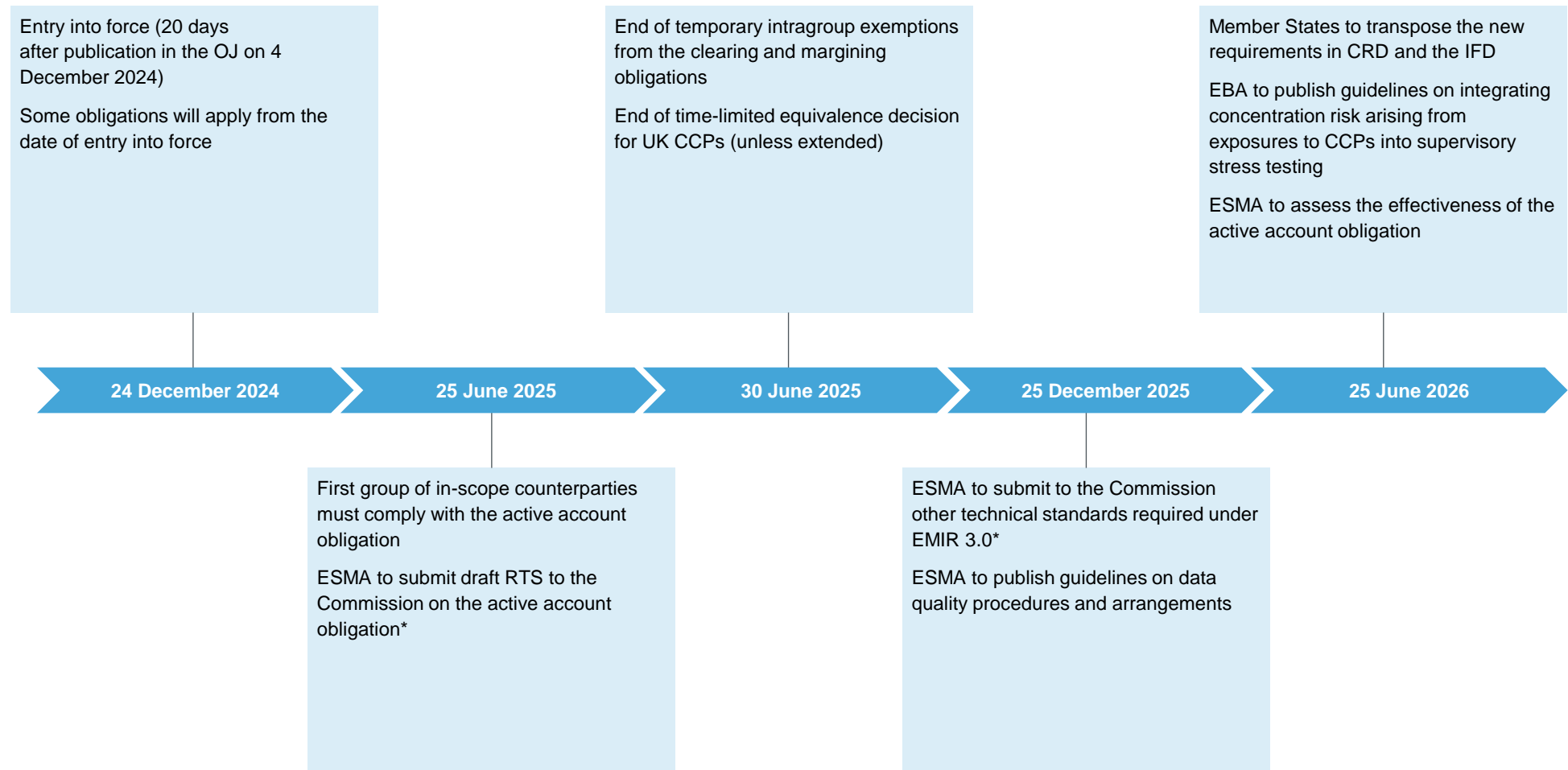
These changes are designed to fix long-standing issues such as the lack of equivalence decisions for non-EU jurisdictions as well as issues brought to light by the market stresses caused by the Covid-19 pandemic and the energy crisis, particularly in relation to ability of counterparties to plan for and meet CCP margin calls.

This briefing focuses on the new rules for counterparties which trade and clear derivatives. It does not consider changes to the EMIR regimes for EU and non-EU CCPs.

# CONTENTS

	Page
<b>Timing</b>	<b>4</b>
<b>Impact of EMIR 3.0 by counterparty type</b>	<b>5</b>
<b>Active account obligation</b>	<b>6</b>
<b>Other clearing changes:</b>	<b>13</b>
• Prudential changes relating to clearing	14
• Information requirements for clearing providers	15
• Reporting requirements for firms clearing at non-EU CCPs	16
• Exemption for OTC derivatives with non-EU pension schemes	17
• Exemption for post-trade risk reduction services	18
• Limitations on NFCs becoming clearing members	19
• Eligibility of guarantees as CCP collateral from NFCs	19
• Measures to facilitate porting of client positions	19
<b>Counterparty categorisation</b>	<b>20</b>
<b>Risk mitigation obligations:</b>	<b>23</b>
• Permanent exemption from the margin obligation for equity options	24
• Implementation period for NFC-s which become NFC+s	24
• IM model approval	25
<b>Reporting:</b>	<b>26</b>
• Measures to improve data quality	27
• Group reporting requirements for NFCs using intragroup exemption	27
• Removal of equivalence condition for NFC-s which trade with non-EU FCs	27
<b>Intragroup exemptions and equivalence:</b>	<b>28</b>
• Removal of equivalence condition	29
• De-linking CVA exemption from EMIR	29
• Article 13 equivalence mechanism changes	29
<b>Level 2 and 3 measures</b>	<b>30</b>

# TIMING



\* The Commission may amend ESMA's draft technical standards and RTS adopted by the Commission do not come into force until after the expiry of a non-objection period for the European Parliament and the Council of the EU.

# IMPACT OF EMIR 3.0 BY COUNTERPARTY TYPE

The table below indicates which changes are likely to be relevant to different types of EU counterparties based on their categorisation under EMIR.

Change	FC+	FC-	NFC+	NFC-	See page(s)
<b>Active account obligation</b>	✓	✗	✓	✗	7-12
<b>Other clearing changes:</b>					
• Prudential changes relating to clearing	✓	✓	✗	✗	14
• Information requirements for clearing providers	✓	✗	✗	✗	15
• Reporting requirements for firms clearing at non-EU CCPs	✓	✓	✓	✓	16
• Exemption for OTC derivatives with non-EU pension schemes	✓	✗	✓	✗	17
• Exemption for post-trade risk reduction services	✓	✗	✓	✗	18
• Limitations on NFCs becoming clearing members	✗	✗	✓	✗	19
• Eligibility of guarantees as CCP collateral from NFCs	✗	✗	✓	✓	
• Measures to facilitate porting of client positions	✓	✗	✗	✗	
<b>Counterparty categorisation</b>	✓	✓	✓	✓	21-22
<b>Risk mitigation obligations:</b>					
• Permanent exemption from the margin obligation for equity options	✓	✓	✓	✗	24
• Implementation period for NFC-s which become NFC+s	✗	✗	✓	✗	
• IM model approval	✓	✓	✓	✗	25
<b>Reporting:</b>					
• Measures to improve data quality	✓	✓	✓	✓	27
• Group reporting requirements for NFCs using intragroup exemption	✗	✗	✓	✓	
• Removal of equivalence condition for NFC-s which trade with non-EU FCs	✗	✗	✗	✓	
<b>Intragroup transactions and equivalence:</b>					
• Removal of equivalence condition	✓	✓	✓	✗	29
• De-linking CVA exemption from EMIR	✓	✓	✗	✗	
• Article 13 equivalence mechanism changes	✓	✓	✓	✓	

**Notes:**

(1) In some cases, the EMIR 3.0 changes will only be relevant to a subset of counterparties in a particular category (e.g., the active account obligation will only apply to some FC+s and NFC+s).

(2) The table assumes that firms providing clearing services are FC+s and that NFCs which are clearing members of CCPs are NFC+s.

(3) Some changes will be directly or indirectly applicable to non-EU entities.

## **ACTIVE ACCOUNT OBLIGATION**

# THE ACTIVE ACCOUNT OBLIGATION SCOPE

Article 7a EMIR

Some EU market participants will need to hold active accounts with EU CCPs and clear a representative number of trades through these accounts.

## In-scope derivatives

The active account obligation will apply to the following categories of derivatives:

- interest rate derivatives denominated in euro and Polish zloty; and
- short-term interest rate (STIR) derivatives denominated in euro.

These categories reflect two of the three clearing services identified by ESMA as being of substantial systemic importance to the EU's financial stability.\*

The specified categories include both OTC and exchange-traded derivatives, although for the representativeness obligation, ESMA has proposed limiting the first category to OTC derivatives.

These categories may be amended if ESMA determines (after conducting a cost-benefit analysis) that other clearing services provided by Tier 2 CCPs are of substantial systemic importance to the EU or one or more of its Member States or if the clearing services already identified as of substantial systemic importance cease to be so. Following this, the Commission may amend the categories of in-scope derivatives by way of a delegated act.

## In-scope counterparties

The active account obligation will apply to a subset of counterparties which are subject to the EMIR clearing obligation.

FC+s and NFC+s will need to comply with the active account obligation if they also exceed the **EUR 3 billion** clearing threshold for interest rate OTC derivatives in any of the in-scope categories of derivative contracts, in an individual category or on aggregate across all categories.

Counterparties which exceed this threshold must notify ESMA and their NCA.

Counterparties belonging to a group subject to consolidated supervision in the EU must consider all derivative contracts in the relevant categories that are cleared by any entity in the group, excluding intragroup transactions.

\* The two services are LCH Ltd's SwapClear service for the clearing of interest rate derivatives denominated in euro and Polish zloty and ICE Clear Europe Ltd's clearing service for STIR derivatives denominated in euro. ESMA's report also identified Ice Clear's credit default swaps service but this has since been closed.

# THE ACTIVE ACCOUNT OBLIGATION

## OPERATIONAL CONDITIONS

Article 7a EMIR

In-scope counterparties must hold at least one active account at an EU CCP which provides clearing services for the relevant categories of derivatives.

### Operational conditions

Active accounts must meet all of the following operational conditions:

- a) the account must be permanently functional, including with legal documentation, IT connectivity and internal processes associated to the account being in place;
- b) the counterparty must have systems and resources available to be operationally able to use the account, even at short notice, for large volumes of derivatives in the relevant categories at all times and to be able to receive, in a short period of time, a large flow of transactions from positions held in a clearing service of substantial systemic importance; and
- c) all new trades in derivatives in the relevant categories can be cleared in the account at all times.

These requirements must be fulfilled by in-scope counterparties within six months of becoming subject to the active account obligation and must be regularly stress-tested at least once a year.

These operational conditions, as well as the stress-testing requirements, must be further specified by ESMA in RTS.

### Access models

Recital (11) of EMIR 3.0 indicates that active accounts can be held “directly or indirectly”, i.e., in-scope counterparties can satisfy the active account obligation via clearing members or clients providing client clearing services (clearing providers).

### Exclusion

In-scope counterparties which clear **at least 85%** of their derivatives in the relevant categories at an EU CCP are not required to comply with the operational conditions.



# THE ACTIVE ACCOUNT OBLIGATION

## OPERATIONAL CONDITIONS - KEY PROPOSALS FROM ESMA

Article 7a EMIR

**ESMA is consulting on draft RTS specifying the conditions of the active account obligation. ESMA's key proposals for the operational conditions and stress-testing include:**

### Operational condition (a)

In-scope counterparties must establish:

- a contractual arrangement with an EU CCP or with a clearing provider;
- internal policies and procedures to access the clearing services of an EU CCP directly or indirectly via a clearing provider;
- cash and collateral accounts, with sufficient financial resources to meet the obligations arising from direct or indirect participation in an EU CCP; and
- an IT system with connectivity to an EU CCP or a clearing provider.

### Operational conditions (b) and (c)

In-scope counterparties must:

- set up internal systems to monitor their exposures and internal arrangements to support a large flow of transactions from positions held in clearing services of substantial systemic importance under different scenarios, assessing any potential legal and operational barriers;
- appoint at least one staff member with sufficient knowledge to support the proper functioning of the clearing arrangements at all times; and
- obtain from the EU CCP, directly or indirectly via a clearing provider, a signed written statement confirming that the account of the counterparty has the operational capacity to clear up to three times the notional outstanding cleared for the previous 12 months in the relevant categories of derivatives. This statement must confirm that the increase of clearing activity can take place on both the house and the client accounts within one month.

### Stress-testing

In-scope counterparties must :

- conduct technical and functional tests verifying the operational capacity and the functioning of the IT connectivity with the CCP or clearing provider; and
- request from the EU CCP, directly or indirectly via a clearing provider, a signed written statement that the account of the counterparty has the capacity to withstand a substantial increase in outstanding and new clearing activity of up to 85% of the total outstanding clearing activity of the counterparties in the relevant categories of derivatives (as published on ESMA's website).

The increase in clearing activity which needs to be simulated in the stress tests run by EU CCPs must take place on both the house and client clearing accounts within five business days for OTC derivatives and two business days for other financial instruments.

EU CCPs must run these stress-tests annually for in-scope counterparties with a notional clearing volume outstanding of less than EUR 100 billion in the relevant categories of derivatives and every six months for other in-scope counterparties.

# THE ACTIVE ACCOUNT OBLIGATION REPRESENTATIVENESS

## In-scope counterparties must clear a representative number of trades in their active accounts.

### Representativeness

In-scope counterparties must clear, on an annual average basis, **at least five trades** in each of the most relevant subcategories per class of derivatives per reference period.

Where the resulting number of trades exceeds half the total trades of a counterparty for the preceding 12 months, the counterparty must only clear at least one trade in each of the most relevant subcategories per class of derivatives per reference period. This 'scaled-down' obligation is intended to assist EU pension schemes which typically have a limited number of large, long-dated interest rate derivatives.

ESMA must prepare RTS specifying:

- The different classes of derivatives (up to three), the different maturity ranges (up to four) and the different trade size ranges (up to three). These will determine the subcategories of relevant derivatives.
- The number (up to five) of the most relevant subcategories per class of derivatives to be represented in the active account. The most relevant subcategories are those containing the highest number of trades during the reference period.
- The duration of the reference period, which must not be less than:
  - six months for counterparties with a notional clearing volume outstanding of less than EUR 100 billion in derivatives in the relevant categories (small counterparties); and
  - one month for counterparties with a notional clearing volume outstanding of more than EUR 100 billion in derivatives in the relevant categories (large counterparties).

### Exclusions

- Counterparties with a notional clearing volume outstanding of **less than EUR 6 billion** in derivatives in the relevant categories are not required to comply with the representativeness obligation.
- Counterparties do not need to comply with the representativeness obligation in relation to their client clearing business.

### Future changes

Although EMIR 3.0 does not set quantitative thresholds, it leaves the door open for them in the future.

By 25 June 2026 (or at any time if required by the Joint Monitoring Mechanism), ESMA (in close cooperation with the ESCB and the ESRB, and after consulting the Joint Monitoring Mechanism) must assess the effectiveness of the active account obligation in mitigating the financial stability risks for the EU represented by the exposures of EU counterparties to Tier 2 CCPs offering services of substantial systemic importance.

This assessment must be accompanied by a report to the European Parliament, the Council and the Commission, with a fully reasoned impact assessment on complementing measures, including quantitative thresholds.

Within six months of receiving ESMA's report, the Commission must prepare its own report which may be accompanied by a legislative proposal.

# THE ACTIVE ACCOUNT OBLIGATION

## REPRESENTATIVENESS – KEY PROPOSALS FROM ESMA

Article 7a EMIR

ESMA is consulting on draft RTS specifying the conditions of the active account obligation. ESMA's key proposals for the representativeness obligation include:

Category	Classes (up to 3)	Maturity ranges (up to 4)	Trade size ranges (up to 3)	Total number of subcategories	Number of most relevant subcategories (up to 5)	Reference period*	Number of trades to be cleared†
Interest rate OTC derivatives in EUR	EUR Fixed-to-float	0-5Y 5Y-10Y 10Y-15Y 15Y+	0-25M 25M-50M 50M+	12	5	<ul style="list-style-type: none"> <li>1 month for large counterparties</li> <li>6 months for small counterparties</li> </ul>	At least 5 trades in each of the 5 most relevant subcategories over the reference period
	EUR OIS	0-1Y 1Y-2Y 2Y-5Y 5Y+	0-25M 25M-100M 100M+	12	5	<ul style="list-style-type: none"> <li>1 month for large counterparties</li> <li>6 months for small counterparties</li> </ul>	At least 5 trades in each of the 5 most relevant subcategories over the reference period
	EUR FRA	0-6M 6M-12M 12M-18M 18M+	0-75M 75M-200M 200M+	12	5	<ul style="list-style-type: none"> <li>1 month for large counterparties</li> <li>6 months for small counterparties</li> </ul>	At least 5 trades in each of the 5 most relevant subcategories over the reference period
Interest rate OTC derivatives in PLN	PLN Fixed-to-float	Any maturity	Any trade size	1	1	<ul style="list-style-type: none"> <li>12 months for all counterparties</li> </ul>	At least 5 trades over the reference period
	PLN FRA	Any maturity	Any trade size	1	1	<ul style="list-style-type: none"> <li>12 months for all counterparties</li> </ul>	At least 5 trades over the reference period
EUR STIR	EUR STIR referencing 3-month Euribor	0-6M 6M-12M 12M-18M 18M+	Any trade size	4	4	<ul style="list-style-type: none"> <li>1 month for large counterparties</li> <li>6 months for small counterparties</li> </ul>	At least 5 trades in each subcategory over the reference period
	EUR STIR referencing 3-month €STR	0-6M 6M-12M 12M-18M 18M+	Any trade size	4	4	<ul style="list-style-type: none"> <li>6 months for large counterparties</li> <li>12 months for small counterparties</li> </ul>	At least 5 trades in each subcategory over the reference period

\* Large counterparties: Counterparties with a notional clearing volume outstanding of more than EUR 100 billion in derivatives in the relevant categories. Small counterparties: Counterparties with a notional clearing volume outstanding of less than EUR 100 billion in derivatives in the relevant categories.

† Where the resulting number of trades exceeds half the total trades of a counterparty for the preceding 12 months, the counterparty will only need to clear at least one trade in each of the most relevant subcategories per class of derivatives per reference period.

# THE ACTIVE ACCOUNT OBLIGATION

## MONITORING THE ACTIVE ACCOUNT OBLIGATION

Articles 7a, 7b and 23b EMIR

### To monitor and enforce compliance with the active account obligation, EMIR 3.0 introduces:

#### 1 New reporting requirements for in-scope counterparties

In-scope counterparties must:

- a) Calculate their activities and risk exposures in the relevant categories of derivatives and **report every six months** to their NCA the information necessary to assess compliance with the active account obligation. Counterparties must use the information reported under Article 9 of EMIR where relevant and ensure that their reports demonstrate that the legal documentation, IT connectivity and internal processes associated to the active account are in place.
- b) If they hold accounts at Tier 2 CCPs for the relevant categories of derivatives in addition to active accounts, they must **report every six months** to their NCA information on the resources and systems that they have in place to ensure that operational condition (b) is met.

The reporting obligation in point (b) above does not apply to in-scope counterparties which clear **at least 85%** of their in-scope derivatives at an EU CCP.

NCA may require more frequent reporting, e.g., where based on the information reported, insufficient steps have been taken to meet the active account obligation.

These reporting requirements must be further specified by ESMA in RTS.

#### 2 Enhanced penalties for non-compliance

NCA is required to impose administrative penalties or periodic penalty payments (up to a maximum of 3% of the average daily turnover in the preceding year) to compel in-scope counterparties to put an end to any infringements of the active account obligation.

Member States may also provide for and impose criminal penalties.

#### 3 Monitoring and intervention powers

NCA must ensure that in-scope counterparties take appropriate steps to fulfil the active account obligation, including using their supervisory powers or imposing penalties where necessary.

NCA must monitor and calculate on an entity, group and aggregate average basis the level of activity in the relevant categories of derivatives and transmit this information to the Joint Monitoring Mechanism.

The Joint Monitoring Mechanism must monitor the implementation at aggregate EU level of the active account obligation. Where, on the basis of the information received through the Joint Monitoring Mechanism, ESMA considers that:

- NCA has failed to ensure clearing members' and clients' compliance with the active account obligation or ESMA identifies a risk to the financial stability of the EU due to alleged breach or non-application of EU law, ESMA may institute a breach of EU law procedure; and/or
- compliance with the active account obligation does not effectively ensure the reduction of EU clearing members' and clients' excessive exposure to Tier 2 CCPs, it must review the active account RTS and, where necessary, set an appropriate adaptation period not exceeding 12 months.

**OTHER CLEARING CHANGES**

## OTHER CLEARING CHANGES

### PRUDENTIAL CHANGES RELATING TO CLEARING

Various articles in CRD, IFD,  
UCITS Directive and  
MMF Regulation

The EMIR 3.0 package amends the prudential rules for certain EU regulated entities to encourage greater clearing, especially at EU CCPs.

#### EU credit institutions and investment firms

These must:

- have effective processes to identify, manage, monitor and report on concentration risk arising from exposures towards CCPs, taking into account the active account obligation; and
- ensure that the management body develops specific plans and quantifiable targets in accordance with the active account obligation to monitor and address the concentration risk arising from exposures towards CCPs offering services of substantial systemic importance.

NCA's must:

- assess and monitor developments in the practices of credit institutions and investment firms concerning the management of their concentration risk towards CCPs, including the specific plans developed, as well as the progress made in adapting their business models to the active account obligation; and
- have the power to require credit institutions and investment firms, where they consider that there is excessive concentration risk towards a CCP, to reduce exposures towards that CCP or to realign exposures across their clearing accounts in accordance with the active account obligation.

The EBA, in cooperation with ESMA, must publish guidelines to specify a consistent methodology for integrating the concentration risk arising from exposures to CCPs into supervisory stress testing.

#### UCITS and MMFs

EMIR 3.0 amends the MMF Regulation and the UCITS Directive to set regulatory counterparty risk limits by reference to whether or not the relevant transaction is cleared at an EU CCP or a recognised non-EU CCP, with generally lower or no limits set where clearing takes place at such CCPs.

## OTHER CLEARING CHANGES

### INFORMATION REQUIREMENTS FOR CLEARING PROVIDERS

Articles 7c and 38(8) EMIR

**Providers of clearing services must provide information to clients to ensure they can take informed decisions where to clear their derivative transactions and have better visibility and predictability of margin calls.**

#### **1** Information about a client's option to clear at an EU CCP

- Clearing members and clients that provide clearing services at both an EU CCP and a recognised non-EU CCP must inform their clients, where the offer is available, of the possibility to clear their contracts through an EU CCP.
- This information must be provided to clients when the client clearing relationship is first established and then on at least a quarterly basis.

#### **2** Information about costs of clearing services

- Clearing members and clients that provide clearing services to clients must disclose, in a clear and understandable manner, for each CCP at which they provide clearing services, the fees to be charged to such clients for the provision of clearing services and any other fees charged including fees charged to clients which pass on costs, and other associated costs related to the provision of clearing services.
- ESMA must specify in RTS the information to be provided.

#### **3** Transparency obligations in relation to margin models

- Clearing members and clients that provide clearing services must provide clients with information about how CCPs' margin models work, including in stress events, including a simulation of the margin requirements to which clients might be subject under different scenarios.
- The simulation must include both the margins required by the CCP and any additional margins required by the clearing member or client providing clearing services.
- Upon the request of a clearing member, a CCP must, without undue delay, provide that clearing member with the information requested to allow that clearing member to comply with its obligations to provide information to its clients, unless such information is already provided by the CCP.
- ESMA is required to prepare RTS further specifying the scope and format of the exchange of information between CCPs and clearing members and between clearing members and their clients.

Similarly to the approach taken towards the disclosure requirements in Article 39 of EMIR, these obligations may apply to both EU and non-EU providers of clearing services at an EU CCP. Tier 2 non-EU CCPs are also subject to Title IV of EMIR. These CCPs may need to amend their requirements for clearing members to reflect the changes to Article 38 of EMIR (subject to comparable compliance).

## OTHER CLEARING CHANGES

### REPORTING REQUIREMENTS FOR FIRMS CLEARING AT NON-EU CCPS

Articles 6(2), 7d and 7e EMIR

To increase the EU's visibility over clearing activities taking place at non-EU CCPs, clearing members and clients that clear contracts at recognised non-EU CCPs must report information on their clearing activities at such CCPs.

**These reports must contain the scope of the clearing activity in the recognised CCP on an annual basis, specifying the:**

- type of financial instruments or non-financial instruments cleared;
- average values cleared over one year per EU currency and per asset class;
- amount of margins collected;
- default fund contributions; and
- largest payment obligation.

Reported information must distinguish between securities transactions, derivative transactions on regulated markets and OTC derivative transactions.

Clearing members and clients that are part of a group subject to EU consolidated supervision should report this information on a consolidated basis to the NCA of the EU parent undertaking. Other EU entities should report to their NCAs.

**ESMA must specify:**

- the content of the information to be reported and the level of detail of the information to be provided, taking into account the existing reporting channels and the information already available to ESMA under the existing reporting framework, including the reporting obligation under Article 9 of EMIR; and
- the format of the information to be reported.

This reporting obligation does not apply to activities at EU CCPs, but EU CCPs will need to report similar information (which ESMA is required to further specify in technical standards).

ESMA must include in the public register the proportion, as of the end of the calendar year, of derivatives cleared at EU CCPs compared with derivatives cleared at recognised non-EU CCPs, presented on an aggregated basis and per asset class.



## OTHER CLEARING CHANGES

### EXEMPTION FOR OTC DERIVATIVES WITH NON-EU PENSION SCHEMES

Article 4(1), second sub paragraph EMIR

**EMIR 3.0 introduces an exemption from the EU clearing obligation for EU counterparties which trade OTC derivatives with non-EU pension schemes.**

The EMIR exemption from the clearing obligation for EU pension schemes ended on 18 June 2023. Although this exemption did not cover transactions with non-EU pension schemes, some EU NCAs have operated informal exemptions for local banks trading with UK pension schemes, which are exempted from the UK clearing obligation until at least 18 June 2025.

To ensure a formal EU-wide exemption, EMIR 3.0 exempts transactions from the EU clearing obligation with non-EU pension schemes which:

- are established in a third country;
- operate on a national basis;
- authorised, supervised and recognised under national law;
- have as their primary purpose the provision of retirement benefits; and
- are exempted from the clearing obligation under their national law.

Whilst UK pension schemes are likely to be the main focus of this change, the exemption will apply to any non-EU pension schemes which meet the relevant conditions.

Transactions with non-EU pension schemes which are exempt from the EU clearing obligation will also be exempt from the EU DTO under MiFIR. Article 28(2a) of MiFIR provides that “transactions in derivatives that are exempt from or not subject to the clearing obligation [under EMIR] shall not be subject to the trading obligation”.

#### Interaction with the CVA provisions in CRR

There is no exemption from the own funds requirements for CVA risk in CRR for transactions with non-EU pension schemes which benefit from the new EMIR exemption.

Transactions with EU pension schemes do not benefit from a CVA exemption.

The UK is expected to remove its CVA exemption for derivatives with pension schemes from 1 January 2026.

## OTHER CLEARING CHANGES

### EXEMPTION FOR POST-TRADE RISK REDUCTION SERVICES

Article 4b EMIR

## EMIR 3.0 seeks to encourage the use of post-trade risk reduction services by exempting resulting transactions from the clearing obligation.

Before a PTRR transaction can be treated as exempt from the clearing obligation, the NCA of the PTRR service-provider must notify ESMA of the name of the PTRR service-provider and share with ESMA its assessment of how the conditions (see the table) are complied with by the service-provider.

The NCA must reconfirm on an annual basis that the PTRR service-provider continues to comply with the conditions or that it has ceased providing PTRR services.

The NCA of a PTRR service-provider must notify ESMA without undue delay where a PTRR service-provider no longer complies with the conditions and ESMA must remove them from its list. From the date when the PTRR service-provider has been removed from the list, PTRR transactions resulting from a PTRR exercise performed by that service-provider will no longer be exempt from the clearing obligation.

MiFIR already provides that transactions resulting from PTRR services are exempt from the DTO where those services meet criteria set out in a delegated act adopted by the Commission under MiFIR.

**To be an eligible PTRR exercise, the following conditions must be met (which must be further specified by ESMA in RTS):**

**Requirements which must be complied with by the PTRR service-provider and by each participant**

PTRR exercise must:

- Be performed by an entity incorporated in the EU and authorised under MiFID2 that is independent of the counterparties to the OTC derivative contracts included in the PTRR exercise;
- Achieve a reduction in risk in each of the portfolios submitted to the PTRR exercise;
- Be accepted in full and, as a result, the participants in the PTRR exercise must not be able to choose which trades to execute under the PTRR exercise;
- Be open for participation only to entities that initially submitted a portfolio to the PTRR exercise;
- Be market risk neutral;
- Not contribute to price formation;
- Take the form of a compression, rebalancing or optimisation exercise or a combination thereof;
- Be executed on a bilateral or multilateral basis.

**Requirements which must be complied with by the PTRR service-provider**

- Comply with the pre-agreed rules of the PTRR exercise, including methods and algorithms in prescheduled cycles, and act in a reasonable, transparent and non-discriminatory manner;
- Ensure that entities participating in a PTRR exercise have no influence over the result of the PTRR exercise;
- Undertake regular compression exercises where PTRR exercises result in new PTRR transactions;
- Keep complete and accurate records of all transactions executed pursuant to a PTRR exercise;
- Upon request, make available, without undue delay, its records to the relevant NCA and to ESMA;
- Monitor the transactions resulting from the PTRR exercise to ensure, to the extent possible, that the PTRR exercise does not result in any misuse or circumvention of the clearing obligation.

In the UK, the Bank of England has power to make rules exempting transactions resulting from risk reduction services from the UK clearing obligation. The Bank of England has not yet consulted on proposed rules (although the FCA has consulted on exempting such transactions from the UK DTO).

### Limitations on NFCs becoming clearing members

A CCP may only accept NFCs as clearing members if they can demonstrate how they intend to fulfil the margin requirements and default fund contributions of the CCP, including in stressed market conditions.

An NFC which acts as a clearing member can only provide client clearing services to other NFCs in its group and can only keep accounts at the CCP for assets and positions held for its own account or the account of those other NFCs.

ESMA must further specify in RTS the elements to be considered when a CCP assesses the ability of NFCs acting as clearing members to meet margin requirements and default fund contributions.

### Eligibility of guarantees as collateral from NFCs

CCPs will be able to accept public guarantees, public bank guarantees and commercial bank guarantees as collateral from NFCs.

Such guarantees must be unconditionally available upon request within the liquidation period and a CCP must set in its operating rules the minimum acceptable level of collateralisation for the guarantees it accepts and may specify that it can accept fully uncollateralised bank guarantees.

ESMA must further specify in RTS the conditions under which guarantees can be accepted as eligible collateral.

### Measures to facilitate porting of client positions

To facilitate the transfer of a client's positions in the event of a clearing member default, EMIR 3.0 gives the receiving clearing member time to comply with certain requirements that come with the provision of client clearing services, namely:

- the receiving clearing member may, for three months from the date of transfer, rely on the due diligence performed by the defaulting clearing member for the purposes of complying with its anti-money laundering obligations; and
- where the receiving clearing member is subject to CRR, it must comply with the capital requirements for exposures of clearing members towards clients within a period agreed with its NCA, which must not exceed three months from the date of transfer.

CCPs will now be required to port all of a defaulting clearing member's client assets and positions to another designated clearing member unless the client objects (rather than simply on request). The transferee clearing member may be given time to comply with AML due diligence and capital requirements for exposures to transferred clients.

**COUNTERPARTY CATEGORISATION**

## EMIR 3.0 will change the way counterparties are categorised under EMIR.

FC+/FC- categorisation	NFC+/NFC- categorisation	Clearing thresholds and hedging	Impact of changes
<p>FCs will need to conduct two calculations:</p> <ul style="list-style-type: none"> <li>• <b>Uncleared positions:</b> FCs must calculate their group-wide aggregate month-end average position for the previous 12 months in OTC derivatives which are not cleared through an EU CCP or a recognised non-EU CCP. The existing clearing thresholds (which may be revised by ESMA) will apply for this calculation.</li> <li>• <b>Aggregate positions (cleared and uncleared):</b> FCs must calculate their group-wide aggregate month-end average position for the previous 12 months in cleared and uncleared OTC derivative contracts. ESMA has a new mandate to prepare RTS specifying the clearing thresholds for this calculation to “ensure the prudent coverage” of FCs under the clearing obligation.</li> </ul> <p>FCs will be subject to the clearing obligation if they exceed a clearing threshold for uncleared or aggregate positions (or if they do not undertake the calculations).</p>	<p>NFCs will only need to conduct one calculation (for uncleared positions).</p> <p>They will need to calculate their aggregate month-end average position for the previous 12 months in OTC derivatives which are not cleared through an EU CCP or a recognised non-EU CCP. The existing clearing thresholds (which may be revised by ESMA) will apply for this calculation.</p> <p>NFCs must calculate their uncleared positions on an entity-level basis, rather than a group-basis. The hedging exemption will continue to apply to OTC derivatives which hedge group risks.</p> <p>NFCs will be subject to the clearing obligation on an asset class-by-asset class basis if they exceed a clearing threshold (or for all asset classes if they do not undertake the calculation).</p> <p>EMIR 3.0 introduces new supervisory and reporting arrangements for NFCs in groups to ensure EU authorities understand the level of exposure at group level.</p>	<p>ESMA must specify in RTS (amongst other things):</p> <ul style="list-style-type: none"> <li>• the clearing thresholds for the FC and NFC uncleared positions calculations;</li> <li>• the clearing thresholds for the FC aggregate positions (cleared and uncleared) calculation; and</li> <li>• the criteria for establishing which OTC derivatives are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of an NFC or its group.</li> </ul> <p>The existing hedging criteria are to be reviewed by ESMA to ensure that they remain appropriate in light of market developments.</p> <p>When setting the clearing thresholds, ESMA must consider providing more granularity for commodity derivatives, e.g., by separating the clearing thresholds by sector and type.</p> <p>ESMA must submit draft RTS to the Commission by 25 December 2025.</p>	<ul style="list-style-type: none"> <li>• UK ETDs (which are considered OTC derivatives due to the lack of an Article 2a equivalence decision) should not be included in the uncleared positions calculations as they are cleared on recognised CCPs.</li> <li>• NFCs in the same group may be categorised differently.</li> <li>• The scope of transactions to be included in the uncleared positions calculations remains different to the AANA calculation for margin purposes (which excludes all cleared OTC derivatives, not just those cleared on an EU CCP or a recognised non-EU CCP).</li> <li>• Unless the counterparty categorisation rules in UK EMIR are amended, counterparties may be categorised differently under EU and UK EMIR.</li> <li>• Counterparties will need to reassess their categorisation, update existing representations (if necessary) and consider how they will deal with the possible changing status of their trading counterparties (both EU and non-EU).</li> </ul>

These changes will not apply until the revised RTS setting the clearing thresholds enter into force.

## COUNTERPARTY CATEGORISATION (CONTINUED)

Articles 4a and 10 EMIR

The table below compares the FC and NFC calculations after the EMIR 3.0 changes take effect.

	NFCs	FCs	
<b>Type of calculation</b>	Uncleared positions	Uncleared positions	Aggregate positions (cleared and uncleared)
<b>In-scope transactions</b>	All OTC derivatives that are not cleared at an EU CCP or at a recognised non-EU CCP	All OTC derivatives that are not cleared at an EU CCP or at a recognised non-EU CCP	All cleared and uncleared OTC derivatives
<b>Exemption for hedging contracts?</b>	Yes, a group-hedging exemption applies	No	No
<b>Group or entity level?</b>	Entity-level	Group-level (except for UCITS and AIFs which can assess at fund level)	Group-level (except for UCITS and AIFs which can assess at fund level)
<b>Time period</b>	Previous 12-month period	Previous 12-month period	Previous 12-month period
<b>Type of calculation</b>	Aggregate month-end average positions	Aggregate month-end average positions	Aggregate month-end average positions
<b>Application of clearing obligation if a clearing threshold is exceeded</b>	Asset-class by asset-class basis All asset classes if calculation is not undertaken	All asset classes All asset classes if calculation is not undertaken	All asset classes All asset classes if calculation is not undertaken
<b>Clearing thresholds</b>	ESMA to set clearing thresholds in RTS under Article 10(4)(b)	ESMA to set clearing thresholds in RTS under Article 10(4)(b)	ESMA to set clearing thresholds in RTS under Article 4a(4)

## **RISK MITIGATION OBLIGATIONS**

## Permanent exemption from the margin obligation for single stock options and equity index options

EMIR 3.0 introduces a permanent exemption to replace the rolling temporary derogation in the Margin RTS (which expired on 4 January 2024, although the ESAs had issued a no-action opinion instructing NCAs to deprioritise enforcement in relation to equity options until the entry into force of EMIR 3.0).

ESMA is required to monitor and, every three years, report on:

- regulatory developments in non-EU jurisdictions in relation to the treatment of single stock options and equity index options;
- the impact of the derogation on the financial stability of the EU or of one or more Member States; and
- the development of exposures in single stock options and equity index options not cleared by a CCP.

Within one year of receipt of ESMA's report, the Commission must assess whether international developments have led to more convergence in the treatment of single stock options and equity index options and whether the derogation endangers the financial stability of the EU or of one or more Member States. The Commission has the power to revoke the derogation by way of a delegated act following an adaptation period which cannot exceed two years.

The UK authorities are also considering whether to replace the UK temporary exemption (which expires on 4 January 2026) with a permanent solution.

## Implementation period for NFC-s which become NFC+s

EMIR 3.0 introduces a four-month implementation period for NFC-s which become NFC+s to prepare for daily valuations and the margin obligation. NFC+s will not need to comply with these requirements for any uncleared OTC derivatives entered into during this four-month period.

With respect to the margin obligation, this implementation period is shorter and applies in a narrower range of circumstances than the fallback transitional provisions which the UK authorities introduced in 2022. The UK transitional provisions comprise:

- a 12-month implementation period for firms which come into the scope of the margin requirements for the first time due to a change in the netting status of a jurisdiction; and
- a six-month implementation period (or until the end of the calendar year, whichever period is longest from the date the firm first comes into scope) for all other circumstances where firms come into scope of the margin requirements for the first time and the rules apply immediately.

The UK has not yet introduced an implementation period in respect of the daily valuation obligation.



## RISK MITIGATION OBLIGATIONS (CONTINUED)

### EMIR 3.0 further specifies the requirement (introduced in EMIR Refit) for in-scope counterparties to obtain approval for initial margin (IM) models.

#### FCs and NFC+s will need to apply for authorisation before using, or adopting a change to, an IM model

NCA's will have six months to consider an application for a new model and three months to consider an application for a change to an already authorised model.

In the UK, the PRA and the FCA have confirmed that they do not intend to introduce requirements for UK firms to apply for pre-approval of IM models.

#### The EBA is tasked with a central validator function for pro forma models

A pro forma model is defined as an IM model established, published and revised through market-led initiatives (e.g., the ISDA SIMM).

FCs and NFC+s using a pro forma model must apply to the EBA for validation of that model. The EBA has six months to consider a validation request for a new model and three months to consider a validation request for a change to an already authorised model.

FCs and NFC+s using pro forma models validated by the EBA must pay an annual fee to the EBA to cover the costs incurred by the EBA for its central validator function. The Commission is empowered to adopt a delegated act setting out the method for determining the amount of the fees and modalities of the payment of the fees.

#### The requirements for larger credit institutions and investment firms will be set out in RTS

The ESAs must prepare draft RTS, by 25 December 2025, further specifying the IM model approval requirements for credit institutions and investment firms that have, or belong to a group that has, a monthly average outstanding notional amount of non-centrally cleared OTC derivatives of at least EUR 750 billion.

As the ESAs have already prepared draft RTS under the previous EMIR Refit mandate, they may be able to finalise these within a shorter timeframe.

Given that the new RTS mandate only applies in relation to larger credit institutions and investment firms, it is unclear what other counterparties will need to do to obtain approval where they use IM models, especially as many of these will use the ISDA SIMM which will need to be validated by the EBA.

# **REPORTING**



## Further measures to improve the quality of data reported under Article 9 of EMIR

Reporting parties will need to put in place appropriate procedures and arrangements to ensure the quality of the data they report. ESMA is required to publish guidelines further specifying these procedures and arrangements, taking into account the possibility to apply the requirements in a proportionate manner.

Where the “details reported repeatedly contain systematic manifest errors” NCAs must impose administrative penalties or periodic penalty payments (up to a maximum of 1% of the average daily turnover for the preceding business year). ESMA must specify in RTS what constitutes systematic manifest errors.



## New group reporting requirement for transactions where the intragroup exemption for NFCs is used

EMIR provides an exemption from the reporting obligation for intragroup transactions where at least one counterparty is an NFC or a non-EU NFC, provided certain conditions are met.

EMIR 3.0 maintains this exemption, despite the Commission’s original proposal to delete it. However, in recognition of concerns raised about the lack of visibility of NFC intragroup transactions (particularly during the recent energy crisis), EMIR 3.0 requires that where an NFC+ benefits from the exemption, its EU parent undertaking must report the net aggregate positions by class of derivatives of that NFC+ to its NCA on a weekly basis. The NCA of the parent undertaking must share the information with ESMA and with the NCA of the EU counterparty.



## Equivalence no longer a condition of the exemption for NFC-s which trade with non-EU FCs

EMIR provides an exemption from the reporting obligation for NFC-s which trade OTC derivatives with a non-EU FC, provided certain conditions are met.

EMIR 3.0 amends this exemption by removing the condition that the non-EU FC must be established in a jurisdiction declared equivalent for reporting purposes under Article 13 EMIR.

However, EMIR 3.0 has not removed the need for the non-EU FC to report transactions to a trade repository that is subject to a legally binding and enforceable obligation to grant EU authorities direct and immediate access to such data. Currently there are no arrangements between the EU and any non-EU jurisdictions which grant this type of access for EU authorities to data held by non-EU trade repositories.

# **INTRAGROUP TRANSACTIONS AND EQUIVALENCE**

## Equivalence no longer a condition for the intragroup exemptions from clearing and margining

EMIR 3.0 replaces the equivalence condition for non-EU jurisdictions with a requirement that the non-EU entity is not established in:

- a high-risk third country that has strategic deficiencies in its anti-money laundering / counter-terrorism financing regime;
- a third country listed as non-cooperative for tax purposes; or
- a third country identified by the Commission in a delegated act.

The Commission has the power to adopt a delegated act for a third country “where appropriate due to identified issues in the legal, supervisory and enforcement arrangements of a third country and where those issues result in increased risks, including counterparty credit risk and legal risk”.

The removal of the equivalence condition means that counterparties will no longer need to rely on the temporary derogations which are due to expire on 30 June 2025. However, the other conditions of the intragroup exemptions will continue to apply.

## No link between the CVA exemption for intragroup transactions in CRR and EMIR

The CVA exemption in CRR will no longer be linked to EMIR. Instead, for transactions with non-EU group entities, it will be necessary for the Commission to adopt an equivalence decision for the relevant non-EU jurisdiction under CRR.

Where a firm wishes to rely on the CVA exemption in respect of transactions with an NFC, the following conditions must also be met:

- the firm and the NFC must be included in the same consolidation on a full basis and subject to supervision on a consolidated basis in accordance with Part One, Title II, Chapter 2 of CRR; and
- the firm and the NFC must be subject to appropriate centralised risk evaluation, measurement and control procedures.

## Article 13 equivalence mechanism retained in a modified form

The Article 13 mechanism for avoiding duplicative or conflicting rules will be:

- Limited to the risk mitigation obligations in Article 11 EMIR. To date, equivalence decisions have only covered these obligations.
- Applicable where at least one of the counterparties is subject to the requirements of the relevant non-EU jurisdiction. This is an improvement on the previous wording which required at least one of the counterparties to be established in the relevant non-EU jurisdiction. This change will be helpful in scenarios where a non-EU jurisdiction’s rules apply to EU firms directly, e.g.:
  - Some non-EU jurisdictions apply their rules to foreign entities with no local presence if they have a local affiliate or carry on business with local entities that requires them to be registered or authorised under local law.
  - Some non-EU jurisdictions apply their rules to foreign entities with a branch in the jurisdiction.

**LEVEL 2 AND 3 MEASURES**

## EMIR 3.0 – LEVEL 2 AND 3 MEASURES

Change	Type	Article	Timing (*draft)
<b>Active account obligation</b>	RTS	7a(8) EMIR	25 June 2025*
<b>Other clearing changes:</b>			
• Prudential changes related to clearing	Guidelines	100(5) CRD	25 June 2026
• Information requirements for clearing providers	RTS RTS	7c(4) EMIR 38(10) EMIR	25 December 2025*
• Reporting requirements for firms clearing at non-EU CCPs	RTS ITS	7d(2) and 7e(2) EMIR 7d(3) and 7e(3) EMIR	25 December 2025* 25 December 2025*
• Exemption for OTC derivatives with non-EU pension schemes	-	-	-
• Exemption for post-trade risk reduction services	RTS	4b(6) EMIR	25 December 2025*
• Limitations on NFCs becoming clearing members	RTS	37(7) EMIR	25 December 2025*
• Eligibility of guarantees as CCP collateral from NFCs	RTS	46(3) EMIR	25 December 2025*
• Measures to facilitate porting of client positions	-	-	-
<b>Counterparty categorisation</b>	RTS RTS	4a(4) EMIR 10(4) EMIR	25 December 2025* 25 December 2025*
<b>Risk mitigation obligations:</b>			
• Permanent exemption from the margin obligation for equity options	Delegated Act	11(3a) EMIR	At Commission's discretion
• Implementation period for NFC-s which become NFC+s	-	-	-
• IM model approval	RTS Delegated Act	11(15)(aa) EMIR 11(12a) EMIR	25 December 2025* Not specified
<b>Reporting:</b>			
• Measures to improve data quality	Guidelines RTS	9(4a) EMIR 12(5) EMIR	25 December 2025 25 December 2025*
• Group reporting requirements for NFCs using intragroup exemption	-	-	-
• Removal of equivalence condition for NFC-s which trade with non-EU FCs	-	-	-
<b>Intragroup transactions and equivalence:</b>			
• Removal of equivalence condition	Delegated Act	3(5) EMIR	At Commission's discretion
• De-linking CVA exemption from EMIR	Implementing Act	382(4c) CRR	At Commission's discretion
• Article 13 equivalence mechanism changes	-	-	-

# GLOSSARY

**AANA** – Aggregate month-end average notional amount of non-centrally cleared OTC derivatives

**CCP** – Central counterparty

**CPMI-IOSCO PFMI**s – principles for financial market infrastructures published by Committee on Payment and the International Organization of Securities Commissions Settlement Systems

**CRD** – Capital Requirements Directive (Directive 2013/36/EU)

**CRR** – Capital Requirements Regulation (Regulation (EU) No 575/2013)

**CVA** – Credit valuation adjustment

**DTO** – Derivatives trading obligation

**EBA** – European Banking Authority

**EMIR** – European Market Infrastructure Regulation (Regulation (EU) 648/2012). References in this briefing to EMIR refer to EMIR as amended by EMIR 3.0

**EMIR 3.0** – Regulation amending EMIR, CRR and the MMF Regulation (Regulation (EU) [2024/2987](#))

**EMIR 3.0 Directive** - Directive amending CRD and the IFD (Directive (EU) [2024/2994](#))

**EMIR Refit** – Regulation amending EMIR (Regulation (EU) 2019/834)

**ESAs** – European Supervisory Authorities

**ESCB** – European System of Central Banks

**ESMA** – The European Securities and Markets Authority

**ESRB** – European Systemic Risk Board

**ETD** – Exchange traded derivative

**EU** – European Union. References in this briefing to the EU include the European Economic Area where applicable

**FC / FC+ / FC-** – Financial counterparty, as defined in Article 2(8) of EMIR, which is either a large FC (FC+) or a small FC (FC-)

**FCA** – Financial Conduct Authority

**IFD** – Investment Firm Directive (Directive (EU) 2019/2034)

**ITS** – Implementing technical standards

**Joint Monitoring Mechanism** – The body to be established pursuant to Article 23b of EMIR (as introduced by EMIR 3.0)

**Margin RTS** – Commission Delegated Regulation (EU) 2016/2251

**MiFID2** – Markets in Financial Instruments Directive (Directive 2014/65/EU)

**MiFIR** – Markets in Financial Instruments Regulation (Regulation (EU) 600/2014)

**MMF Regulation** – Money Market Funds Regulation (Regulation (EU) 2017/1131)

**NCA** – National competent authority

**NFC / NFC+ / NFC-** – Non-financial counterparty, as defined in Article 2(9) of EMIR, which is either a large NFC (NFC+) or a small NFC (NFC-)

**OJ** – Official Journal

**PRA** – Prudential Regulation Authority

**RTS** – Regulatory technical standards

**Tier 2 CCP** – A recognised non-EU CCP which has been determined as systemically important or likely to become systemically important for the financial stability of the EU or of one or more Member States

**UCITS Directive** – Directive 2009/65/EC

**UK EMIR** – EMIR as it forms part of the domestic law of the UK by virtue of the European Union (Withdrawal) Act 2018



## CONTACTS



**STEPHANIE PEACOCK**  
SENIOR ASSOCIATE,  
LONDON

**T** +44 20 7006 4387  
**M** +44 7908 223827  
**E** stephanie.peacock  
@cliffordchance.com



**MARC BENZLER**  
PARTNER, FRANKFURT

**T** +49 69 7199 3304  
**M** +49 1709222892  
**E** marc.benzler  
@cliffordchance.com



**CAROLINE DAWSON**  
PARTNER, LONDON

**T** +44 20 7006 4355  
**M** +44 7949 443527  
**E** caroline.dawson  
@cliffordchance.com



**MARIA LUISA ALONSO**  
COUNSEL, MADRID

**T** +34 91 590 7541  
**M** +34 659780081  
**E** marialuisa.alonso  
@cliffordchance.com



**CHRIS BATES**  
SPECIAL COUNSEL,  
LONDON

**T** +44 20 7006 1041  
**M** +44 7785 700236  
**E** chris.bates  
@cliffordchance.com



**ANNA BIALA**  
COUNSEL, WARSAW

**T** +48 22429 9692  
**M** +48 608042015  
**E** anna.biala  
@cliffordchance.com



**LUCIO BONAVITACOLA**  
PARTNER, MILAN

**T** +39 02 8063 4238  
**M** +39 3479571560  
**E** lucio.bonavitacola  
@cliffordchance.com



**MICHAEL BROWN**  
PARTNER, LONDON

**T** +44 20 7006 8359  
**M** +44 7930 104503  
**E** michael.brown  
@cliffordchance.com



**LOUINA CZUPPER**  
PARTNER, BRUSSELS

**T** +32 2 533 5987  
**M** +32 496239987  
**E** lounia.czupper  
@cliffordchance.com



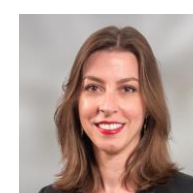
**PAGET DARE BRYAN**  
PARTNER, LONDON

**T** +44 20 7006 2461  
**M** +44 7890 558971  
**E** paget.darebryan  
@cliffordchance.com



**YOLANDA GHITA-BLUJDESCU**  
SENIOR ASSOCIATE,  
LUXEMBOURG

**T** +352 48 50 50 489  
**M** +352 661485226  
**E** yolanda.ghita-blujdescu  
@cliffordchance.com



**HELENE KOUYATE**  
COUNSEL, PARIS

**T** +33 1 4405 5226  
**M** +33 619967466  
**E** helene.kouyate  
@cliffordchance.com



**PAUL LENIHAN**  
SENIOR ASSOCIATE,  
LONDON

**T** +44 20 7006 4622  
**M** +44 7432 551129  
**E** paul.lenihan  
@cliffordchance.com



**JURGEN VAN DER MEER**  
PARTNER,  
AMSTERDAM

**T** +31 20 711 9340  
**M** +31 621517107  
**E** jurgen.vandermeer  
@cliffordchance.com



**JEREMY WALTER**  
PARTNER, LONDON

**T** +44 20 7006 8892  
**M** +44 7717 693702  
**E** jeremy.walter  
@cliffordchance.com



**WILL WINTERTON**  
PARTNER, LONDON

**T** +44 20 7006 4386  
**M** +44 7508 050194  
**E** will.winterton  
@cliffordchance.com

**C L I F F O R D**  
**C H A N C E**

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

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