

# WHAT DO CORPORATE TREASURERS NEED TO KNOW ABOUT EU EMIR AND UK EMIR AS WE APPROACH THE MIDPOINT OF 2025?

## 1. Overview

- 1.1 For groups subject to the UK derivatives regime, there has been little regulatory change for some time. As we approach the midpoint of 2025 the position is likely to stay the same for the rest of the year. Although a number of consultations are expected from the UK's PRA and FCA on the UK's derivatives regime ("UK EMIR"), these are expected to result in technical refinements rather than wholesale change.
- 1.2 For groups subject to the EU regime ("EU EMIR"), the changes brought about by the "EMIR 3" regulation and directive at the end of 2024 may have required some technical changes already, and further changes may result from finalisation of additional technical standards. The impact of these changes is likely to be muted for groups which are formed of "NFC-" entities. However, for entities near the borderline of the NFC- classification, the full impact of the changes will only become apparent when the detail of those technical standards is finalised.
- 1.3 This briefing summarises the recent and pending developments in these two regimes, as well as areas of divergence between them. These areas and the possibility of further divergence should be monitored closely as and when we hear further policy updates from the regulators.

### EU EMIR - recent key developments at a glance

- EU participants may continue to clear derivatives through UK CCPs until at least June 2028.
- However, from 25 June 2025, EU FC+ and EU NFC+ entities trading certain classes of derivatives are required to hold an active account at an EU CCP and clear a representative number of trades through the EU CCP. Penalties apply for non-compliance. In addition, EU participants that clear derivatives contracts at recognised non-EU CCPs must report annually on their clearing activities at such CCPs.
- The granting of intragroup exemptions in the EU from derivatives clearing and risk mitigation is no longer dependent on the issuance of an equivalence determination by the European authorities. Instead, an exemption may be available provided the third country has not been "blacklisted".
- An EU parent of an NFC that is exempt from the reporting requirement will in some circumstances now have an obligation to report intragroup derivatives transactions between the EU parent and that NFC.
- When an EU NFC calculates whether it will be subject to the OTC derivatives clearing threshold, OTC trades cleared through an EU CCP or a recognised non-EU CCP will be excluded from the calculation (conducted at an entity level and not at group level). Lower clearing thresholds for various asset classes have also been proposed in an ESMA consultation.
- Certain guarantees can now be accepted by EU CCPs as eligible collateral from NFC entities.
- The exemption from reporting for EU NFC- entities which trade OTC derivatives with non-EU FCs is no longer dependent on the issuance of an equivalence determination in respect of reporting in the non-EU FC entity's jurisdiction.
- There will now be a transition period for compliance where an NFC- entity becomes an NFC+.

## UK EMIR - recent key developments at a glance

- The UK regime does not include the changes introduced above by EMIR 3. A limited set of policy changes to UK EMIR are expected to be consulted on in 2025, though to date the only consultation issued is the joint PRA/FCA March 2025 consultation on proposed margin-related amendments to UK EMIR.
- Although the UK's derivatives reporting regime was updated on 31 March 2025, entities that are NFC- and transaction with financial counterparties should not have been affected by this change as their UK derivatives reporting should continue to be handled by their FC counterparties.
- EU-established CCPs continue to be recognised in the UK, under an indefinite equivalence decision.

## 2. EU Regime - “EMIR 3”

- 2.1 Regulation (EU) 2024/2987 (“**EMIR 3**”) and the corresponding EU directive came into force on 24 December 2024, although certain limited provisions do not apply until further technical standards are published and enter into force.
- 2.2 One of the key focuses of EMIR 3 is to introduce amendments to the EU's EMIR regime to reduce the overreliance, which EU regulators perceive, of EU derivative market participants on non-EU central clearing counterparties (“**CCPs**”), and particularly UK CCPs, for clearing derivative transactions. However, the EU authorities have recognised the reality that the European market for derivatives clearing is still heavily dependent on UK-based clearing houses such as LCH, and has permitted EU derivatives users to continue to clear through UK CCPs until at least June 2028.

### *Active account requirement (AAR) and clearing through EU CCPs*

- 2.3 Perhaps the most notable development of EMIR 3 is the new requirement for financial counterparties and non-financial counterparties that are subject to the EU clearing obligation (“**FC+**” and “**NFC+**” entities respectively) to maintain an active account at an EU CCP and to clear a “representative number” of trades through that account. The active account requirement (“**AAR**”) only applies where the clearing threshold is exceeded<sup>1</sup> in respect of certain categories of derivatives: (i) interest rate derivatives denominated in euro or Polish zloty; and (ii) short-term interest rate derivatives denominated in euro. For counterparties who form part of a group subject to consolidated supervision in the EU, whether the relevant clearing threshold is exceeded for the purpose of AAR should be assessed on a group-wide basis, including derivative contracts cleared by third country entities in the group (excluding intragroup transactions). However, the AAR itself only applies to EU entities. In-scope entities must notify ESMA and their competent authority and establish an account with an EU CCP within six months of becoming subject to the obligation.
- 2.4 In most cases, however, corporate users of derivatives will not immediately notice any impact of the new AAR, as few will fall within the FC+ or NFC+ classification.
- 2.5 There is a longer-term risk that the EU will make clearing of derivatives on non-EU CCPs more difficult or costly, and therefore corporate treasurers that do use cleared derivatives for their EU entities should keep changes to the EU clearing regime under review particularly as we approach the June 2028 expiry date of the EU's equivalence decision for UK CCPs.
- 2.6 Regardless of their derivative trading volumes, corporates should expect to be provided with information about the *option* to clear derivative contracts through an EU CCP at least on a quarterly basis. EMIR 3 mandates that clearing members and firms which provide clearing services at both EU and recognised non-EU CCPs must inform their clients that derivative contracts may be cleared through an EU CCP. Rules on the disclosure of fees and charges for doing so are to be set out in technical standards. Corporates should ensure that they are aware of the full suite of options available to them when it comes to clearing derivative trades, particularly those that are mandated to clear.

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<sup>1</sup> EUR 3 billion in an individual category or on aggregate across categories.

### Implications for intragroup transactions

2.7 In addition, EMIR 3 introduces amendments which will impact intragroup derivative trading arrangements:

- (A) Intragroup exemption from reporting: Firms will continue to benefit from the intragroup exemption from reporting requirements in article 9 of EMIR, provided the relevant criteria are met. Notably, this exemption (which applies where at least one counterparty is an NFC, even if such NFC is non-EU) does not apply where the parent is established in a third country (e.g., the UK), meaning that groups headed by a UK entity are already subject to the EU reporting obligation for their EU entities' intra-group derivatives.
- (B) Under EMIR 3, however, where an NFC+ with an EU parent benefits from the intragroup exemption from reporting, the EU parent is required to report the net aggregate positions by class of derivatives entered into by the NFC+ on a weekly basis to the competent authority. EU corporate groups which include NFC+ entities may therefore find themselves subject to additional reporting requirements.
- (C) Intragroup exemption from clearing and margining: For intra-group transactions between EU and non-EU entities, to date, groups have to rely on the EU's equivalence determination in relation to non-EU regimes. Some of these have been temporary determinations and are due to expire on 30 June 2025. EMIR 3 has effectively made these determinations permanent, since the parties will now be able to access the intra-group exemption provided that the non-EU counterparty is not established in a "blacklisted" third country (broadly covering high-risk jurisdictions for money laundering, terrorist financing, and the list of non-cooperative tax jurisdictions). The other conditions which need to be satisfied in order to rely on the intragroup exemption from clearing and margining remain unchanged by EMIR 3.

### Changes to counterparty classification

2.8 The mechanism for calculating whether an EU NFC exceeds the clearing threshold has been amended so that only trades entered into by the NFC (at entity level rather than group level) and only those which are not cleared by an EU or recognised third country CCP, are included in the calculation. For those wondering whether these amendments will allow certain entities to no longer exceed the clearing threshold, in a recent [consultation](#) ESMA has proposed new lower clearing thresholds (see below) for uncleared positions - the aim being to ultimately try and capture a similar population of entities and notionals as before. With regards to the hedging exemption, the intention is for this to continue to apply at group level (despite the entity level approach mentioned above). No specific amendment to the hedging exemption has been proposed in the consultation, but ESMA has invited suggestions nevertheless, particularly with regard to the treatment of renewable financial or virtual power purchase agreements. No changes to counterparty classification will take effect until the technical standards are finalised and in force. Draft technical standards must be submitted to the European Commission by 25 December 2025, so the effective date of changes remains unclear at present.

ASSET CLASS	CURRENT THRESHOLDS	PROPOSED EMIR 3 THRESHOLDS
IRD	€3 bn	€1.8 bn
Credit derivatives	€1 bn	€0.7 bn
Equity derivatives	€1 bn	€0.7 bn
FX derivatives	€3 bn	€3 bn
Commodity derivatives	€4 bn (commodity and other)	€3 bn (commodity and emissions)

### Reporting changes

- 2.9 In addition to the changes for reporting of intragroup transactions above, there are a few other changes to reporting. NFC+ entities that clear contracts at recognised non-EU CCPs must report annually (on a group basis, if part of a group subject to EU consolidated supervision) on their clearing activities at such CCPs, including information such as type of instruments, average values cleared, amount of margin collected and largest payment obligations. There are also new measures to improve quality of data reported.
- 2.10 For NFC- entities which trade OTC derivatives with non-EU FCs, their exemption from derivatives trade reporting will no longer depend on the issuance of an equivalence determination in respect of reporting in the non-EU FC's jurisdiction, providing certain conditions are met.

### *Other changes affecting NFC+ entities*

- 2.11 For NFC+ entities, EMIR 3 introduces an exemption to clearing in respect of any transaction resulting from post-trade risk reduction services provided certain procedures are followed and conditions met. Margin-related changes brought about by EMIR 3 which are relevant for such NFC+ entities include the introduction of a permanent exemption from the margin obligation for single stock options and equity index options, and the introduction of an implementation period for NFC-entities becoming NFC+ (which allows four months to prepare for daily valuations and the margin obligation).
- 2.12 For any corporate entity transferring collateral in respect of cleared trades, EU CCPs will now be able to accept public guarantees, public bank guarantees and commercial bank guarantees as collateral. In order for such guarantees to be eligible, further detail is to be specified in technical standards, but they 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 (if any) for the guarantees it accepts.
- 2.13 In light of these changes, corporates should consider and review their intragroup exemptions, whether any additional reporting will be required, including for EU groups where an intragroup exemption from reporting currently applies, and understand how clearing threshold calculations, obligations in relation margin, and treatment of risk-reduction trades may change in due course.

### **3. UK Regime - Will the UK follow suit?**

- 3.1 Although to date the UK regulators have taken action to keep the UK's derivatives regime broadly in line with the EU regime, the UK has so far been relatively quiet on whether it will adopt further amendments to UK EMIR to align with the EU's EMIR 3 changes. Perhaps one driver for this apparent inaction is the strength of UK-based clearing services within the derivatives market; the UK Government won't be feeling the same sense of unease about exposure to EU CCPs as the EU clearly feels towards UK CCPs.
- 3.2 However, it is possible that further policy changes may be adopted in due course as and when the UK Government seeks to repeal assimilated law (inherited from the EU) and replace it with relevant provisions into the UK regulators' rules. The Bank of England indicated recently that it aims to consult on a limited set of policy changes in 2025 which will seek to enhance the resilience of UK CCPs, but details of such changes are not yet available.<sup>2</sup>
- 3.3 For NFC entities, divergence in counterparty classification is an area to closely watch. For corporate groups with entities in the UK and EU, whether the counterparty classification determination is assessed at a group level (as is currently still the case under UK EMIR) or entity level (as will be the case under EU EMIR) may produce different categorisation and so will any differences between the hedging exemption and clearing thresholds between the UK and EU.
- 3.4 For NFC+ entities, the current divergence in relation to the margin obligation under EU EMIR and UK EMIR is also an area to closely monitor. We currently see divergence between the EU and UK in relation to the implementation period for NFC-entities which become NFC+. In relation to the exemption from margin obligation for single stock options and equity index options, it looks likely (following a March 2025 joint PRA/FCA consultation paper) that the UK will make this a permanent exemption in line with the EU (and US). Two further margin related changes to UK EMIR are proposed in that March 2025 consultation - firstly allowing UK firms to align period dates and entry-into-scope dates related to the Average Aggregate Notional Amount (AANA) calculation with another jurisdiction, when facing a non-UK counterparty, and secondly removing legacy contracts from the scope of initial margin requirements for firms which subsequently fall out-of-scope of the margin requirements.
- 3.5 Another potential change the UK might make to its rules, which would follow a change brought about by EMIR 3, might be widening the range of eligible collateral from NFCs at CCPs in order to ease sudden spikes in demand for high-quality collateral from corporates and other NFCs that may not hold large amounts of cash or government bonds. The UK is also expected to address concerns and international standards and recommendations in relation to sudden surges in CCP margin calls experienced during market disruption for example. An area we know the UK won't follow suit, at least for now, is the EU requirement for parties that use their own initial margin model to obtain pre-approval for new and altered initial margin models - the PRA and FCA have confirmed that the existing framework will be retained for UK firms at this stage.

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<sup>2</sup> The Bank of England's supervision of financial market infrastructures - Annual Report 2024 and Bank of England Chair/CEO/INEDs Roundtable for UK Financial Market Infrastructure firms.

- 3.6 In relation to the EMIR 3 exemption for transactions resulting from post-trade risk reduction services, whilst the Bank of England has consulted on exempting such transactions from the UK derivatives trading obligation under UK MIFIR it has not yet consulted on proposed rules for any exemption in relation to the UK clearing obligation.
- 3.7 In September 2024, updated Technical Standards in the FCA rules on reporting under UK EMIR took effect for new or modified derivative trades. Outstanding derivative reports were afforded a transition period but were required to be updated to comply with the new requirements by 31 March 2025. The changes concern technical aspects on the content and format of trade reports and were designed to align the UK regime with international technical guidance as well as previous EMIR REFIT amendments introduced in the EU. Earlier this month the FCA/Bank of England consulted on an additional field “Execution Agent” for reporting, amongst other minor changes. These technical reporting changes should not have affected NFC- entities that trade derivatives with financial counterparties, as their derivatives reporting should continue to be handled by the FC counterparty.

#### 4. Equivalence and temporary permissions for CCPs

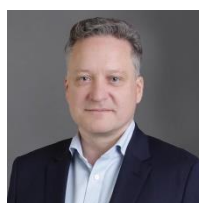
- 4.1 The role of CCPs is integral to the operation of the UK and EU derivatives market. Under both UK and EU EMIR, third country CCPs - that is, non-UK or non-EU CCPs, respectively - can be “recognised” and permitted to provide clearing services to clearing members and/or trading venues established in the UK or EU (as applicable) if an equivalence determination has been issued under article 25(6).
- 4.2 The UK has granted equivalence to EU member states for an indefinite period for EU-established CCPs, meaning that EU CCPs are eligible for recognition status in the UK. In contrast, the EU has issued only a time-limited equivalence decision in respect of the UK. This temporary equivalence has recently been extended from 30 June 2025 until 30 June 2028 to ensure that recognised UK CCPs can continue to serve EU clearing members and trading venues whilst the AAR of EMIR 3 is implemented (see above). On 17 March 2025 ESMA confirmed that recognition applies during this period for three UK CCPs: ICE Clear Europe Ltd, LCH Ltd and LME Clear Ltd.
- 4.3 With EMIR 3 serving a strong message warning against overreliance on UK CCPs and reducing risks to EU financial stability, it is unclear whether we will see further extensions to the temporary permissions in respect of UK CCPs. However, the criticality of UK CCPs to the EU derivatives market at present is clear. Any further extension or even permanence to the equivalence decision may be dependent on the success of the EU’s new AAR over the next few years.

#### Further information and contacts

For more information, please speak to your usual Slaughter and May contact or one of the lawyers listed below.



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