

# EMIR Frequently Asked Questions (FAQ)

## 1) What is EMIR?

EMIR is Regulation (EU) No 648/2012 of the European Parliament and the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories was adopted, as well as all relevant and related to this Regulation other regulations, including but not limited to implementing/delegated regulations which has been introduced to manage the risks associated with the over the counter (OTC) derivative market. It sets framework of obligations and requirements on all parties that enter into a derivative contract and is applicable to financial and non-financial counterparties along with Central Counterparties (CCPs) and Trade Repositories (TRs). The main objectives are to make sure the financial system is safer and to ensure that supervisors have a clear overview of the derivatives market.

## 2) What is the impact of EMIR?

Any person that enters into a derivative contract will be affected by one or more of the obligations under EMIR, and the nature and extent of these obligations will depend on how the person is categorised under EMIR. In contrast to previous derivatives regulation, EMIR imposes obligations on all participants in the derivatives market.

## 3) How are entities that enter into derivative contracts categorised under EMIR?

Under EMIR entities are categorised as:

- 1) a 'financial counterparty' (FC) which means investment firms, banks, insurers, registered UCITS funds, pension funds or alternative investment funds managed by alternative investment managers.
- 2) a 'non-financial counterparty' (NFC) which means any undertaking or person established in the EU or outside that does not come within the definition of a FC, including entities not involved in financial services such as corporate.

It is important to note that EMIR recognises two types of NFC: those that have an aggregate OTC derivatives contracts position (excluding commercial hedging) that exceed any of the specified clearing thresholds over a 30 working day period (NFC+) and those that do not (NFC-).

## 4) What are the NFC clearing thresholds under EMIR?

The NFC clearing thresholds are:

- EUR 1 billion Credit derivative contracts gross notional value
- EUR 1 billion Equity derivative contracts gross notional value
- EUR 3 billion Interest rate derivative contracts gross notional value
- EUR 3 billion Foreign exchange derivative contracts gross notional value
- EUR 3 billion Commodity and other derivative contracts and others gross notional value

OTC derivative contracts that are objectively measurable as reducing risks directly related to commercial (such as interest hedging) are excluded from the calculation of the volume of OTC derivatives contracts.

If and NFC- exceeds one of the thresholds for a particular class, they will need to clear all derivative contracts in all of the above asset classes for as long as they are over the clearing threshold.

From 15 March 2013, a NFC must notify its relevant competent authority "immediately" upon exceeding any of these thresholds.

## 5) What are my main obligations if I am a NFC-?

If you are a NFC- and enter into derivative contracts, you must:

- report derivative contracts to a trade repository;
- apply risk mitigation techniques to OTC derivative contracts; and
- monitor trading activity against the clearing thresholds and notify your competent authority where any of the clearing thresholds have been exceeded.

**6) What are my main obligations if I am a NFC+?**

If you are a NFC+ and enter into derivative contracts, you must:

- report derivative contracts to a trade repository;
- clear OTC derivative contracts that are subject to the clearing obligation (detailed clearing requirements are not introduced); and
- apply certain risk mitigation techniques to any OTC derivative contracts that are not subject to the clearing obligation.

**7) What are ‘risk mitigation techniques’?**

Risk mitigation techniques under EMIR include timely confirmation, portfolio reconciliation, compression, dispute resolution and daily valuations. The aim is to reduce counterparty credit risk in the bilateral non-cleared OTC market such that parties reduce their exposure to each other in the event of a default by either party.

As defined by EMIR risk mitigation measures applies (even in extra-territorial manner) to the OTC derivative contracts between following type of counterparties (financial and/or non-financial):

- 1) between two EU counterparties;
- 2) between EU and non-EU counterparties;
- 3) between non-EU counterparties and the contract has a direct, substantial and foreseeable effect within the EU or where ESMA considers it necessary or appropriate to prevent the evasion of any provision of EMIR.

If subject to separate European Commission adopted implementing act non-EU country regulatory framework of specific country will be recognized as equivalent to EMIR regulations, parties are allowed to apply respective non-EU country regulation.

**8) What are the deadlines for the confirmations?**

EMIR regulatory framework requires to confirm each OTC derivative contract which is not subject to clearing requirements. Contracts which confirmation is outstanding more than five business days must be reported to competent authorities. As defined by EMIR specific latest confirmation deadlines are applicable per asset class – see below table. The Bank in its practice will apply deadline for confirmations – the end of next business day (T+1).

	Asset class	Start date to comply			
		15.03.2013	01.09.2013	01.03.2014	01.09.2014
NFC-	IR and CR derivatives	T+5	T+3		T+2
	EQ, FX, COMM and other derivatives	T+7	T+4		T+2
NFC+	IR and CR derivatives	T+2		T+1	
	EQ, FX, COMM and other derivatives	T+3	T+2		T+1

**9) What is ‘portfolio reconciliation’ and how often it should be done?**

Portfolio reconciliation is the process of comparing of outstanding OTC derivative contracts between both parties. The frequency of reconciliation is dependent on the status of number of outstanding contracts:

Category	Number of outstanding contracts with a single party	Frequency
NFC-	100 or less contracts	Annually
	More than 100 contracts	Quarterly
NFC+	50 or less contracts	Quarterly
	51 to 500 contracts	Weekly
	More than 500 contracts	Daily

**10) What are the main dispute resolution requirements?**

Subject to EMIR requirements agreement on dispute identification, recording, monitoring and resolution of disputes must be done. Dispute resolution requirements apply to recognition of contract or valuation or exchange of collateral.

**11) How the reporting will be processed? What are the deadlines for Trade Reporting?**

Reporting is the process when specific information on derivative contracts (OTC and exchange traded derivatives) should be submitted to newly established institutions – trade repositories.

Starting from 12<sup>th</sup> of February 2014, parties must perform reporting by the following working day on the execution, modification or termination of a derivative contract. In addition, previously concluded derivative contracts with settlement date after 15th August 2012 have to be reported by parties:

Trade date of contract:	Settlement date of contract:	Reporting date:
before 16.08.2012	before 16.08.2012	No reporting obligation
before 16.08.2012	from 16.08.2012 by 11.02.2014	from 12.02.2014 by 11.02.2017
before 16.08.2012	12.02.2014 or later	from 12.02.2014 by 13.05.2014
from 16.08.2012 by 11.02.2014	from 16.08.2012 by 11.02.2014	from 12.02.2014 by 11.02.2017
from 16.08.2012 by 11.02.2014	12.02.2014 or later	12.02.2014
12.02.2014 or later	12.02.2014 or later	By the end of next working day

**12) Can I delegate Trade Reporting?**

Yes, you can delegate Trade Reporting to a third party or to your counterparty to the contract (if they agree). It is important to note that you still remain legally responsible for the report. In order to report a contract to a Trade Repository, you must obtain a Legal Entity Identifier (LEI), as per the process set out below.

**13) What is a Legal Entity Identifier (LEI)?**

The LEI is a 20 digit alphanumeric reference code that uniquely identifies a legal entity. The LEI is designed to enable the identification and linking of parties to financial transactions in order to manage systemic and counterparty risk. The global quality standard setter, the Central Operating Unit (COU), is not yet fully operational, therefore a pre-LEI code process has been established.

**14) How can I get my pre-LEI?**

You can find the latest list of sponsored Pre- LOUs at [http://www.lei.org/list/leioc\\_gls/tid\\_162/index.htm](http://www.lei.org/list/leioc_gls/tid_162/index.htm)  
[http://www.lei.org/publications/gls/lou\\_20131003\\_2.pdf](http://www.lei.org/publications/gls/lou_20131003_2.pdf)

or

**15) Is obtaining a pre-LEI necessary?**

Yes, for legal entities registered in EU it is important that you obtain your pre-LEI as soon as possible. You will require this to comply with the information requirements under the Trade Reporting obligation in EMIR.

**16) Further reference**

ESMA information on EMIR

<http://www.esma.europa.eu/page/European-Market-Infrastructure-Regulation-EMIR>

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