NATIXIS
CORPORATE AND
INVESTMENT BANKING



EMIR 3.0: Clearing thresholds regime for OTC derivatives

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❖ Legal Entity Identifier (LEI)

- The unique identifier for market participants is called the "Legal Entity Identifier" (LEI).
- At its Los Cabos summit in June 2012, the G20 approved the creation of a Global Legal Entity Identifier System to facilitate risk management and control by both the private sector and public authorities. The reporting obligation for derivatives, imposed by the European Market Infrastructure Regulation (EMIR), came into force in February 2014. An LEI is designed to create and apply a standard, unique, and universal identifier to any organization or company involved in an international financial transaction. The reporting obligation requires, for example, an LEI. Pre-Local Operating Units are authorized to assign LEIs. Please refer to dedicated websites for more details. If the indicated country does not yet provide an LEI, apply for an interim identifier (CICI) on the dedicated website or any pre-LEI.
- During the current implementation phase of the global GLEIS system, a provisional entity identifier is assigned to provisional local operating units.

❖ Unique Product Identifier (UPI)

- The UPI is designed to create and apply a standard, unique, and universal identifier to any product.

❖ Personal Data

- Any information relating to an identified or identifiable natural person (hereinafter referred to as "data subject"); an "identifiable natural person" is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

❖ EMIR Classification

- The EMIR regulation distinguishes between types of market participants and defines two broad categories of counterparties.
  - **Financial Counterparties ("FCs")** include the following categories:
    - An investment firm authorized in accordance with Directive 2014/65/EU of the European Parliament and of the Council;
    - A credit institution authorized in accordance with Directive 2013/36/EU of the European Parliament and of the Council;
    - An insurance or reinsurance undertaking authorized in accordance with Directive 2009/138/EC of the European Parliament and of the Council;
    - A UCITS, and where applicable, its management company authorized in accordance with Directive 2009/65/EC, unless that UCITS is established exclusively for the purpose of serving one or more employee share schemes;
    - An institution for occupational retirement provision (IORP) within the meaning of Article 6(1) of Directive (EU) 2016/2341 of the European Parliament and of the Council;
    - an alternative investment fund (AIF) within the meaning of Article 4(1)(a) of Directive 2011/61/EU, which is either established in the Union, or managed by an alternative investment fund manager (hereinafter referred to as "AIFM") authorized or registered in accordance with that Directive, unless that AIF is established

exclusively for the purpose of serving one or more employee share schemes, or the AIF is an ad hoc securitisation vehicle referred to in Article 2(3)(g) of Directive 2011/61/EU and, where applicable, its AIFM established in the Union;

- A central securities depository authorized in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council; Also concerned is any entity established outside the European Union that would meet one of the above definitions if it were established in the European Union.

- **Non-Financial Counterparties ("NFCs")**, which include any entity established in the European Union that does not meet the definition of (Financial Counterparty or any entity established outside the European Union that would meet the definition of NFC). Non-financial counterparties are subdivided according to the extent of their exposure to over-the-counter derivatives: those that exceed the thresholds for uncleared notional amounts ("NFC +") and those for which the notional amount is below these thresholds ("NFC -"). An NFC + is a non-financial counterparty whose average over the last 12 months of its aggregated month-end positions in over-the-counter derivative contracts (excluding hedging derivatives) exceeds one of the clearing thresholds mentioned below. This calculation applies at the entity level.

Note: when an NFC exceeds a clearing threshold, it must:

- Immediately inform the European Securities and Markets Authority (ESMA) and its competent local authority, specifying the period used for the calculation;
- Establish clearing arrangements within four months of this notification;
- Clear over-the-counter derivative contracts subject to clearing belonging to the asset class whose threshold is exceeded and which are entered into or novated more than four months after the notification.

- **Small Financial Counterparty ("SFC"):** The EMIR regulation defines an SFC as a financial counterparty whose average, over the last 12 months, of its aggregated month-end positions in over-the-counter derivative contracts (including hedging derivatives) does NOT exceed any of the clearing thresholds mentioned above. This calculation applies at the group level or, if the counterparty is not part of a group, at the entity level. When the entity is an alternative investment fund (AIF) or a UCITS or an equivalent foreign (non-EU) investment fund, the calculation is made at the fund level only.

Note: when an SFC exceeds a clearing threshold, it must:

- Immediately inform the European Securities and Markets Authority (ESMA) and its competent local authority, specifying the period used for the calculation;
- Establish clearing arrangements within four months of this notification;
- Clear all over-the-counter derivative contracts subject to clearing that are entered into or novated more than four months after the notification.

- **Asset classes and clearing thresholds for uncleared OTC derivative positions**

Asset classes	New thresholds for uncleared OTC derivatives positions in gross notional value
Interest rate derivatives	2.2 billions euros
Foreign exchange derivatives	3 billions euros
Commodity and other emission allowance derivatives	4 billions euros
Credit derivatives	0.8 billion euros
Equity derivatives	0.7 billion euros

- **Asset classes and clearing thresholds for aggregate cleared and uncleared positions in gross national value**

Asset classes	New thresholds for aggregate cleared and uncleared positions in gross notional value
Interest rate derivatives	3 billions euros
Credit derivatives	1 billion euros

❖ Identification of pension funds within the meaning of Article 2(10) of EMIR

- Institutions for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC, including any authorized entity which is responsible for managing such an institution and acts on its behalf in accordance with Article 2(1) of that Directive, and any legal entity established for the purpose of investments of such institutions and acting solely and exclusively in their interest;
- The activities of providing occupational retirement provision of the institutions referred to in Article 3 of Directive 2003/41/EC;
- The activities of providing occupational retirement provision carried out by life assurance undertakings falling within Directive 2002/83/EC, provided that all assets and liabilities corresponding to those activities are ring-fenced, managed, and organized separately from the other activities of the assurance undertakings, with no possibility of transfer;
- Any other authorized and supervised entity or arrangement;
- Operating within a national framework, provided that: (i) they are recognized by national law; and (ii) their primary purpose is to provide retirement benefits.

❖ Non-EU Counterparties

- Non-EU Counterparties are subject to the EMIR clearing obligation if:
  - For contracts where only one of the Counterparties is established in a third country, said Counterparty would be subject to the clearing obligation if it were established within the European Union (EU) or;
  - For contracts where both Counterparties are established in a third country:
    - Both non-EU Counterparties would be subject to the clearing obligation if they were established within the EU;
    - And if:
      - The contract has a direct, substantial, and foreseeable effect within the European Union; or if

- The clearing obligation is necessary or appropriate to prevent the circumvention of any provision of the EMIR regulation.

- Determination of the status of non-EU Counterparties
  - The EU-established Counterparty must assess the EMIR status of the non-EU Counterparty in cooperation with said non-EU Counterparty and taking into account the nature of the activities carried out by said non-EU Counterparty and its positions in over-the-counter derivative contracts calculated at group level.

Note:

- Non-EU Counterparties deemed to be FCs:
  - If a non-EU Counterparty belongs to a group that includes EU-established FCs and would be an FC if it were established in the European Union, the process for determining its EMIR status (FC + or SFC) follows the same rules as for EU-established FCs;
  - If a non-EU Counterparty does not belong to a group that includes EU-established FCs, the determination of its EMIR status must rely on the calculation of its positions at its group level against the clearing levels defined by the EMIR regulation. The process and assumptions used in the determination must be documented.
- Non-EU Counterparties deemed to be NFCs:
  - If the Counterparty belongs to a group that includes EU-established NFCs, the process for determining its EMIR status (NFC + or NFC -) follows the same rules as for EU-established NFCs;
  - If the Counterparty is not part of a group that includes EU-established NFCs, but benefits from a limited exemption in its own jurisdiction, it can be assumed that said Counterparty would be an NFC if it were established in the European Union;
  - If neither of the above two rules applies, the only way to determine the status of a third-country entity is to calculate its position at the entity level and compare it to the clearing thresholds defined by the EMIR regulation. EU-established Counterparties could obtain declarations from their third-country Counterparties regarding their NFC status.
- The EU Counterparty does not have to verify declarations made by a third-country entity about its status and can rely on such declarations unless it is in possession of information clearly demonstrating that such declarations are inaccurate. If it is not possible to determine what the Counterparty's EMIR status would be, companies must consider the Counterparty's status to be FC or NFC+ and apply the EMIR regulation requirements accordingly.

❖ Markit ISDA Amend Service

- ISDA Amend is a joint service provided by Markit and the International Swaps and Derivatives Association (ISDA). It offers swap dealers and their clients an online service for classifying entities that enter into swaps, and for amending and sharing multiple ISDA master agreements. ISDA Protocols and Specific Annexes ISDA has published various protocols to which participants can adhere on a unilateral basis, via an adherence letter on the ISDA website. These protocols only apply if both Counterparties have adhered to them.
- For further information, use the following link: http://www2.isda.org/functional-areas/protocol-management/open-protocols/

❖ ISDA 2013 EMIR NFC Representation Protocol

- This protocol is designed to help all market participants amend, at once, multiple ISDA master agreements by incorporating declarations regarding their NFC status. The classification of parties and their counterparty determines whether risk reduction techniques are required by the EMIR regulation. This protocol applies only to ISDA master agreements. Natixis has adhered to the "ISDA 2013 EMIR NFC Representation Protocol".

❖ ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol

- This protocol is intended to define the "written agreements/detailed procedures and processes agreed upon" regarding portfolio reconciliation and dispute resolution. It therefore allows parties to automatically amend the terms of their ISDA master agreements to take into account the portfolio reconciliation and dispute resolution obligations imposed by the EMIR regulation.
- This protocol may also apply to other agreements (Fédération bancaire française / Contrato Marco de Operaciones Financieras / Rahmenvertrag / European Master Agreement) if you specify to us that this protocol should apply and not the national agreement.
- Natixis has adhered to the "ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure" protocol as a SENDER.
- Specific annexes related to national master agreements German EMIR Annex.
- The Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht – BAFIN) has published an annex to its master agreement, which is entitled "EMIR-Anhang zu dem oben genannten Rahmenvertrag für Finanztermingeschäfte". This annex allows, in particular, a status declaration (FC/NFC) and compliance with the requirements of risk reduction techniques.

❖ European Banking Federation (EBF) EMIR Annex

- The European Banking Federation has published an annex to the European Master Agreement. This annex allows, in particular, a status declaration (FC/NFC) and compliance with the requirements of risk reduction techniques.

❖ Spanish EMIR Annex

- The Asociación Española de Banca (AEB) has published an annex to its master agreement (Contrato Marco de Operaciones Financieras). This annex allows, in particular, a status declaration (FC/NFC) and compliance with the requirements of risk reduction techniques.

❖ Categories of US Persons

- Refers to the categories of "US Persons" cited in the Interpretive Guidance document. For informational purposes, we reproduce below the text relating to these categories (but not the related interpretive guidelines):
  - (i) any natural person who resides in the United States;
  - (ii) any estate of a deceased person who resided in the United States at the time of death;
  - (iii) any corporation, partnership, limited liability company, enterprise or trust, association, capital company, fund or any similar form of enterprise to the entities just cited (but not an entity described in paragraphs (iv) and (v) below) (a "legal entity"), which is incorporated in accordance with the laws of a State or other jurisdiction of the United States or which has its principal place of business in the United States;
  - (iv) any pension plan for the benefit of employees, officers or agents of a legal entity cited in paragraph (iii), except where said pension plan is primarily for the benefit of foreign employees of such an entity;
  - (v) any trust governed by the laws of a State or other jurisdiction of the United States if a United States court can exercise primary supervision over its administration;
  - (vi) any collective investment scheme in commodity futures, any common account, any investment fund or any other collective investment vehicle not cited in paragraph (iii) and which is majority-owned by one or more of the entities cited in paragraphs (i), (ii), (iii), (iv) and (v), with the exception of any collective investment scheme in commodity futures, any common account, any investment fund or any other collective investment vehicle which is publicly offered only to non-US persons and which is not offered to US persons;
  - (vii) any legal entity (other than a limited liability company, a limited partnership or a similar entity whose owners all benefit from limited liability) which is majority-owned, directly or indirectly, by one or more of the entities described in paragraphs (i), (ii), (iii), (iv) and (v) and in respect of which such entities have unlimited liability for its obligations and commitments;
  - (viii) any individual account or any joint account (discretionary or not) whose beneficial owner (or one of the beneficial owners in the case of a joint account) is an entity cited in paragraphs (i), (ii), (iii), (iv), (v), (vi) and (vii).

❖ Guarantee

- Refers to a contract or agreement under which an entity undertakes to provide financial protection or funding to cover potential losses to which another entity may be exposed due to an exchange contract.

❖ Member of the same group as a Canadian person

- With respect to that territory and that Canadian person is generally responsible for your liabilities. A Canadian person may be responsible for your liabilities if they have guaranteed all or substantially all of them (and not just your liabilities under transactions between us). If you are an unlimited liability company that is a member of the same group as a Canadian person, you must determine if your shareholder is responsible for your liabilities.

- **Canadian Person**
  - With respect to a territory of Canada, any person, other than an individual, that is organized under the laws of that territory or has its head office or principal place of business there. For this purpose, the term "person" includes unincorporated organizations such as partnerships, associations, unions and trusts. The term "company" includes any incorporated entity and the term "territory" means a province or territory of Canada or, concerning the territory of organization only, the federal jurisdiction of Canada.

- **AANA**
  - "AANA" means an aggregate month-end average notional amount of non-centrally cleared derivatives, as calculated in accordance with the EU Margin Requirements.

- **CCP**
  - "CCP" means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer.
  - The list of central counterparties (CCPs) authorised or recognised by ESMA is available via this link:
    - List of Central Counterparties authorised to offer services and activities in the Union