



EMIR and DODD-FRANK FAQs

January 2017

This FAQs document relates to:

- the European Market Infrastructure Regulation or “**EMIR**”, Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories; and
- the “**Dodd-Frank Guidelines**” being the Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, published by the U.S. Commodity Futures Trading Commission (the “**CFTC**”) on July 26, 2013, and any updates thereto.

This FAQ document is provided for information only and does not constitute legal advice. It provides a simplified overview of the application of EMIR and the Dodd-Frank Guidelines and does not discuss the detail of any of the obligations that apply.

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- in respect of EMIR, at the European Securities and Markets Authority’s site; see <https://www.esma.europa.eu/regulation/post-trading>
- in respect of the Dodd-Frank Guidelines, at the CFTC site; see <http://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm>

You are encouraged to seek legal advice on how EMIR and the Dodd-Frank Guidelines will impact your business.

EMIR QUESTIONS AND ANSWERS

(updated January 2017)

Q1. What is the background to EMIR?

In September 2009, the G20 countries made an international commitment to address risks related to the over-the-counter (“OTC”) derivatives market. As a result, EMIR came into force across the European Union on 16 August 2012. EMIR introduced a number of rules that impact upon the derivatives market. It places new responsibilities on all participants in that market.

Q2. Who does EMIR apply to?

EMIR is not limited to regulated entities like banks or funds. In essence, it applies to any undertakings established in the EU which has entered into a derivatives contract.

Q3. What does EMIR require?

The main requirements of EMIR are aimed at:

- **Risk Mitigation:** “risk mitigation” rules applying to non-centrally cleared OTC derivatives contracts including timely confirmation, portfolio reconciliation and dispute resolution requirements;
- **Reporting:** reporting of derivative transactions to Trade Repositories;
- **Recordkeeping:** certain records need to be maintained in relation to derivatives.

Certain other EMIR requirements apply only to counterparties who are categorised as FCs or NFC+s under EMIR (see Q6 below). These include the obligation to clear certain OTC derivatives contracts through certain central counterparties (“CCPs”), the requirement to mark transactions to market and the requirement to exchange a mandatory amount of collateral (see Q19 and Q20 below).

Q4. What products does EMIR apply to?

EMIR applies to derivative contracts (including swaps, options, futures and forward rate agreements) relating to securities, currencies, interest rates, foreign exchange or commodities which may be physically settled or in cash. Credit derivatives and contracts for differences are also included. However, spot FX is excluded.

Q5. When will the EMIR requirements come into force?

EMIR is fully in force but some of its provisions are being implemented in a phased approach. For instance, some requirements, such as the key provisions of Risk Mitigation, Reporting and Recordkeeping have already been implemented, and other aspects of EMIR, such as clearing obligations and collateral exchange provisions, are being implemented on a basis scheduled by regulators.

Q6. What are the different categories of counterparty for the purposes of EMIR?

The categories of counterparties for the purposes of EMIR are:

- **Financial Counterparties (“FCs”):** Allied Irish Bank (GB) is a FC. FCs include the following entity types:

- Assurance Undertaking authorised in accordance with Directive 2002/83/EC.
 - Credit institution authorised in accordance with Directive 2006/48/EC.
 - Investment Firm in accordance with Directive 2004/39/EC.
 - Insurance Undertaking authorised in accordance with Directive 73/239/EC.
 - Alternative investment fund managed by AIFMs authorised or registered in accordance with Directive 2011/61/EU.
 - Institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC.
 - Reinsurance undertaking authorised in accordance with Directive 2005/68/EC.
 - UCITS and its management company, authorised in accordance with Directive 2009/65/EC.
- *Non-Financial Counterparties (“NFCs”)*: NFCs are undertakings which are established in the EU and which are not classified as FCs. There are two categories of NFCs, namely, non-financial counterparties whose trading volumes put them above the EMIR clearing threshold (“NFC+”), and non-financial counterparties whose trading volumes are small enough to fall below the clearing threshold (“NFC–”). (See questions 7 and 8 below for further detail).

Q7. What is the difference between a NFC+ and a NFC–?

A NFC+ is a NFC whose positions in OTC derivatives (*excluding hedging positions being positions which reduce risks directly related to the commercial activities or treasury financing activity of that NFC*) exceed the clearing threshold specified in the table below, for a period of time.

A NFC– is any other NFC, in other words, an NFC whose positions in OTC derivatives (*excluding hedging positions*) are below the clearing threshold specified in the table below.

Relevant Class of OTC Contract	Clearing Threshold (Gross Notional Amount)
Credit Derivatives Contracts	EUR 1 billion
Equity Derivatives Contracts	EUR 1 billion
Interest Rate Derivatives Contracts	EUR 3 billion
Foreign Exchange Derivatives Contracts	EUR 3 billion
Commodity Derivatives Contracts and others	EUR 3 billion

The clearing threshold varies according to the class of OTC derivative contract and is calculated based on the total gross notional amounts of derivatives entered into by a NFC, as set out in the table above. If a NFC passes one of these thresholds –

- *on any given day*, it must immediately notify ESMA and its national competent authority (in England, the Financial Conduct Authority and in Ireland, the Irish Central Bank).

- *on a rolling average basis over a 30 working day period*, enhanced obligations will apply under EMIR. At this time the NFC becomes a NFC+.

The threshold is assessed on a group-wide basis of all non-financial entities within the NFC's group and not by reference to individual entities. Therefore, NFCs must calculate the total gross notional amount of derivatives entered into by each company in their group (as long as those companies are also NFCs, or would be classed as NFCs were they established in the EU). It is this total amount of gross notional amounts across the NFC's group (*excluding all hedging positions permitted to be excluded by EMIR*) that will determine whether the NFC falls above or below the clearing threshold.

The calculation of the clearing threshold (including what constitutes excluded hedging positions) can be complicated and should be considered carefully. Legal advice should be obtained if you are uncertain.

Q8. Why is the difference between a NFC+ and a NFC– important?

It is important that you are correctly classified as this determines the application and extent of the requirements of EMIR. For example, certain requirements apply to NFC+s only, such as the obligation to clear OTC derivatives contracts declared subject to the clearing obligation through an authorised CCP, the requirement to mark transactions to market on a daily basis and a requirement to exchange a mandatory amount of collateral. In addition, the timely confirmation deadlines are shorter and portfolio reconciliation requirements are more frequent for NFC+s.

Q9. What are the Recordkeeping obligations under EMIR?

All counterparties are required to keep records of any derivatives contracts as well as any modification to such contracts (whether OTC or exchange traded) for 5 years following the termination of each contract.

Q10. What is the Reporting obligation?

All counterparties must report the details of any derivatives contract (whether OTC or exchange traded) to a registered or recognised trade repository no later than the working day following the conclusion, modification or termination of the derivatives contract. Certain codes will be required to be included in the transaction reports including a Legal Entity Identifier (“**LEI**”), a code unique to each counterparty (see further below). It is important to bear in mind that reporting will remain the legal obligation of both counterparties to the transaction, whether they have delegated it to another party or not.

What are the Timelines for Reporting?

From 12 February 2014, impacted derivatives contracts must be reported no later than the working day following the conclusion, modification or termination of the contract.

Relevant historic trades, which existed on or were entered into on or after 16 August 2012 (even if subsequently terminated), are also reportable under EMIR subject to certain grace periods.

Q11. Can I delegate Reporting?

Yes, you can delegate Reporting to a third party including your counterparty to the trade, however, it remains your legal obligation to report notwithstanding delegation.

Q12. Reporting appears complex, how can Allied Irish Bank (GB) help?

Allied Irish Bank (GB) offers an EMIR Delegated Trade Reporting service to all corporate counterparties categorised as NFC-s in respect of impacted derivatives contracts which are entered into with us. The EMIR Delegated Trade Reporting Service is undertaken by our parent company, Allied Irish Banks, p.l.c. (**AIB plc**). Please see the Treasury Services Registration Form for further details of how to avail of the Delegated Trade Reporting service.

Q13. What is a Legal Entity Identifier or LEI?

A LEI is a 20-digit alpha-numeric reference code which is unique to each counterparty. The LEI is designed to enable the identification and linking of parties to financial transactions in order to manage systemic and counterparty risk.

LEI codes are issued by appointed Local Operating Units (“**LOUs**”) such as the London Stock Exchange and the Irish Stock Exchange.

Q14. How can I get my LEI?

LEI codes are issued by appointed LOUs. In the UK, the London Stock Exchange has been sponsored by the FCA to issue LEIs. In Ireland you can apply for a LEI code through the Irish Stock Exchange at www.ISEdirect.ie.

When applying for a LEI you will be required to provide certain information such as the legal name of the undertaking, address, country of incorporation, company registration number, VAT number. Fees apply.

Q15. By when must I obtain my LEI?

An LEI is required to comply with the information requirements under the Reporting obligation in EMIR. If you would like to delegate your Reporting obligation to AIB plc, we will need your LEI to report on your behalf.

Q16. What is a Unique Trade Identifier?

For each transaction reported to a Trade Repository, a Unique Trade Identifier (“**UTI**”) needs to be generated, agreed between the counterparties and reported to a Trade Repository. For counterparties classified as NFCs, Allied Irish Bank (GB) proposes to generate the UTI for each trade unless otherwise agreed between the parties. Where a transaction is agreed over an electronic dealing platform which generates a UTI, Allied Irish Bank (GB) proposes to use the UTI generated by that platform for that purpose.

Q17. What are the Risk Mitigation rules for uncleared contracts?

The risk mitigation rules applying to NFC-s which have entered or are entering into OTC derivatives contracts are as follows:

(a) Timely Confirmation Requirements

All impacted derivatives transactions must be confirmed by a confirmation by the parties by set deadlines. For NFC-s, transactions must be confirmed with two business days of the date of entering into the transaction. Note that “confirmation” in this context means the documentation of the agreement of the counterparties to all the terms of an OTC derivatives contract. The confirmations which we would ordinarily send to you to sign, alongside any other documentation which we have entered into in connection with the transaction, should be sufficient for these purposes.

We appreciate your continued cooperation in returning signed confirmations to us in a timely manner. In order to comply with the short timely confirmation deadlines of EMIR, please ensure that you have procedures and arrangements in place to confirm transactions as soon as possible and, at the latest, by the relevant deadline.

Allied Irish Bank (GB), as a FC, must have procedures for monthly reporting of unconfirmed transactions to the FCA; you may therefore experience increased communications from us in relation to any outstanding confirmations.

(b) Portfolio reconciliation

Essentially, the EMIR portfolio reconciliation requirement will involve Allied Irish Bank (GB) sending you data relating to certain FX forwards and other OTC derivatives transactions that are outstanding between us. This data must then be reviewed by you in order to highlight any differences or discrepancies (i.e. reconciliation of data). Any discrepancies may then lead to a dispute resolution procedure. Reconciliation should cover key trade terms and must at least include the valuation (mark to market) attributed to the transaction. The frequency of the portfolio reconciliation exercise varies depending on the size of your portfolio and customer classification. For example, for NFC-s with 100 OTC derivatives contracts or less, the portfolio reconciliation needs to be done once a year.

(c) Dispute Resolution

Under EMIR, each of us is required to agree procedures with the other for the identification, recording, monitoring and resolution of disputes relating to uncleared OTC derivatives contracts (including disputes arising from the portfolio reconciliation procedure, as noted above).

If a party considers that an issue is serious or material and does not expect to resolve it easily at an operational or relationship level, it can send a formal dispute notice to its counterparty. Once a dispute notice has been sent, the parties are required to consult in good faith with one another to resolve the dispute in a timely manner.

For disputes which are not resolved within five business days, both parties are required that to have a specific process in place to ensure that the matter has been referred to appropriately senior staff.

Allied Irish Bank (GB), as FC, must report certain disputes which remain unresolved for 15 business days to the FCA. The report will disclose certain information about the parties to the dispute and the dispute itself.

Q18. What are the additional requirements that apply to FC and NFC+?

EMIR includes additional requirements that apply to FCs and NFC+ only. These include the obligations to clear certain classes of OTC derivatives through a CCP, to value certain transactions on a daily basis and to exchange collateral (i.e. margining).

Q19. What are the clearing obligations that apply to FC and NFC+?

Clearing is a process that occurs after the execution of an OTC derivatives transaction, whereby a CCP steps in between counterparties to guarantee the performance of the counterparties pursuant to the relevant transaction. This means that each of the original counterparties to a transaction no longer represents direct risk to the other counterparty, and the CCP for all intents and purposes becomes each counterparty's new counterparty.

For clearing purposes, transactions are categorised by the type of transaction and the currency of the transaction. The parties to any relevant transaction (being FCs and NFC+) are then further categorised (category 1, 2, 3 & 4) based on trading volume. Based on the type of transaction, the currency of the transaction, and the respective category of each of the parties, the obligation to clear is determined.

The dates from which counterparties are obliged to clear transactions are phased in and are set by regulators.

Q20. What are the margining obligations that apply to FC and NFC+?

Margining typically consists of initial margin (collateral exchanged by the counterparties to an OTC derivatives transaction at the outset of a transaction) and variation margin (collateral exchanged throughout the duration of a transaction, based on the mark to market valuation of each transaction).

The obligation to exchange variation margin applies to all FCs and NFC+s from 01 March 2017, and applies to all uncleared OTC derivatives transactions (other than spot FX transactions). There is, however, a delay applicable to FX forwards (expected to exchange variation margin from 3 January 2018) and single-stock equity options and index options (expected to exchange variation margin from 4 January 2020).

Counterparties will also be obliged to exchange initial margin, expected from 2020.

DODD-FRANK GUIDELINES QUESTIONS AND ANSWERS

(updated December 2015)

I. What is this about?

The Dodd-Frank Wall Street Reform and Consumer Protection Act is a U.S. law that introduced comprehensive mandatory regulations applying to derivatives markets, and aims to effect greater regulatory control by regulating swap trading activity between U.S. persons and also the swap trading activity of non-U.S. persons who trade with U.S. persons.

In the Treasury Services Registration Form, customers of Allied Irish Bank (GB) are asked to respond to certain questions designed to establish whether those customers have certain U.S. connections. If so, Allied Irish Bank (GB) and/or the customer may be required to comply with certain CFTC Swap Regulations.

II. What is meant by “U.S. connections”?

We are required to establish whether:

- the customer falls within any of the U.S. Person Categories under the Interpretive Guidance.
- the customer is an “*affiliate conduit*” under the Interpretive Guidance.
- the customer’s obligations to Allied Irish Bank (GB) in connection with the relevant Swap are supported by any Guarantee from a person or entity that falls within any of the U.S. Person Categories under the Interpretive Guidance.

III. What do the questions in the Registration Form mean?

By responding “No” to each of the questions in the Registration Form, the customer represent to us that, to the best of the customer’s understanding and belief:

- the customer does not fall within any of the U.S. Person Categories under the Interpretive Guidance.
- the customer is not an “*affiliate conduit*” under the Interpretive Guidance.
- the customer’s obligations to Allied Irish Bank (GB) in connection with the relevant Swap are not supported by any Guarantee from a person or entity that falls within any of the U.S. Person Categories under the Interpretive Guidance.

IV. What happens if I cannot answer “No” to each of the questions in the Registration Form?

Please respond to each of the questions truthfully. If you have answered “Yes” to any of the questions, Allied Irish Bank (GB) will contact you separately to discuss.

Definitions:

“*CEA*” means the U.S. Commodity Exchange Act, as amended.

“*CFTC*” means the U.S. Commodity Futures Trading Commission.

“*CFTC Swap Regulations*” means the rules, regulations, orders and interpretations adopted or issued by the CFTC, as in effect from time to time, that apply to Swaps and that are promulgated under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection

Act or that are otherwise designated by the CFTC as being subject to the Interpretive Guidance.¹

“**Guarantee**” means an agreement or arrangement under which a person commits to provide a financial backstop or funding against potential losses that may be incurred by another person in connection with a Swap.²

“**Interpretive Guidance**” means the *Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations*, 78 Fed. Reg. 45292 (July 26, 2013), as amended or supplemented by the CFTC from time to time.³

“**Swap**” means a “swap” as defined in the Section 1a(47) of the CEA and CFTC Regulation 1.3(xxx). The term “Swap” also includes any foreign exchange swaps and foreign exchange forwards that may be exempted from regulation as “swaps” by the Secretary of the Treasury pursuant to authority granted by Section 1a(47)(E) of the Commodity Exchange Act.

“**Swap Transaction**” means any transaction that results in the creation of a new Swap between two or more parties or in a change to the terms of an existing Swap between parties, including execution, termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a Swap.

“**United States**” or “**U.S.**” means the United States, its states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and any other territories or possessions of the United States government, or enclave of the United States government, its agencies or instrumentalities.

“**U.S. Person Categories**” means the enumerated categories of “U.S. persons” that are provided in the Interpretive Guidance.⁴ For informational purposes only, the text of the categories (but not the related interpretive materials) is reproduced below:

- (i) any natural person who is a resident of the United States;
- (ii) any estate of a decedent who was a resident of the United States at the time of death;
- (iii) any corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of enterprise similar to any of the foregoing (other than an entity described in prongs (iv) or (v), below) (a “**legal entity**”),⁵ in each case that is organized or incorporated under the laws of a state or other jurisdiction in the United States or having its principal place of business in the United States;⁶
- (iv) any pension plan for the employees, officers or principals of a legal entity described in prong (iii), unless the pension plan is primarily for foreign employees of such entity;
- (v) any trust governed by the laws of a state or other jurisdiction in the United States, if a court within the United States is able to exercise primary supervision over the administration of the trust;

¹ The application of the “U.S. person” concept to swap regulation is discussed at p. 45316 of the Interpretive Guidance and the related concept of “swaps activities” is discussed at p. 45297 & fn. 38.

² For a full discussion of how the CFTC interprets the term “guarantee,” see the Interpretive Guidance at p. 45320 & fn. 267 and also at p. 45355.

³ Available at: <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2013-17958a.pdf>.

⁴ Interpretive Guidance at pp. 45316-17.

⁵ See the Interpretive Guidance at p. 45309 regarding the inclusion of legal entities that engage in non-profit activities, U.S. state, county and local governments and their agencies and instrumentalities. The treatment of international financial institutions such as the World Bank is discussed at p. 45353 & fn. 531.

⁶ The CFTC indicates that the concept of “principal place of business” as applied to collective investment vehicles requires special consideration due to the nature of such vehicles. In particular, the location of senior personnel responsible for implementing the vehicle’s investment strategy and for forming and/or promoting the vehicle is discussed. For discussion of the relevant considerations, see the Interpretive Guidance at pp. 45309-12.

- (vi) any commodity pool, pooled account, investment fund, or other collective investment vehicle that is not described in prong (iii) and that is majority-owned by one or more persons described in prong (i), (ii), (iii), (iv), or (v),⁷ except any commodity pool, pooled account, investment fund, or other collective investment vehicle that is publicly offered only to non-U.S. persons and not offered to U.S. persons;⁸
- (vii) any legal entity (other than a limited liability company, limited liability partnership or similar entity where all of the owners of the entity have limited liability) that is directly or indirectly majority-owned by one or more persons described in prong (i), (ii), (iii), (iv), or (v) and in which such person(s) bears unlimited responsibility for the obligations and liabilities of the legal entity;⁹ and
- (viii) any individual account or joint account (discretionary or not) where the beneficial owner (or one of the beneficial owners in the case of a joint account) is a person described in prong (i), (ii), (iii), (iv), (v), (vi), or (vii).

Please note that telephone calls may be recorded in line with market practice.

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⁷ For purposes of making this determination, the CFTC indicates that collective investment vehicles should “look through” direct investors in certain circumstances. See the Interpretive Guidance at pp. 45313-14 for discussion of when a look-through is required. In addition, the Interpretive Guidance indicates that majority ownership for this purpose is “the beneficial ownership of more than 50 percent of the equity or voting interests.”

⁸ See the Interpretive Guidance at p. 45314 regarding exclusion of collective investment vehicles that are publicly offered only to non-U.S. persons and not offered to U.S. persons from the U.S. Person Categories.

⁹ Regarding the circumstances in which a majority of the owners of an entity are considered to be U.S. persons with unlimited responsibility for the obligations and liabilities of the legal entity, see the Interpretive Guidance at pp. 45312-13.