Guide to the European Market Infrastructure Regulation (EMIR)

By Andrea Peratitis

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1 A spate of regulatory reform

After the 2007/2008 crisis that led the financial markets to chaos, there was an urge for the implementation of regulatory reforms to recreate a stable and efficient financial system.

The introduction of Basel III and MiFID II, as well as the continuous updated obligations, under EMIR are some examples of how the Regulators aim to set strict rules for the entire financial system in view of avoiding another crisis.

Derivatives (especially over-the-counter (OTC)) have been blamed for being one of the main drivers behind the financial panic of 2007/08. The opaque exposures in the OTC market have augmented the need for data standards and management of counterparty risk for OTC instruments to mitigate systematic risk and improve transparency in the derivatives market.

In regards to the reduction of systematic risk from OTC derivatives, the G20 proposed that:

- All standardised OTC derivatives should be traded on exchanges or where available by electronic means
- All standardised OTC derivatives should be cleared through central counterparties (CCPs). The clearing process is.
- Both OTC derivative contracts and listed derivatives should be reported to trade repositories (TR)

Non-centrally cleared derivatives contracts should be subject to higher capital requirements
1.1 What is EMIR?

EMIR is the reaction of the European Union to the proposal of the G20 at the Pittsburgh summit to increase supervision and thus stability in the derivatives’ market.

EMIR is the abbreviation for European Market Infrastructure Regulation, which was the original name of today’s “Regulation of the European Parliament and Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories”, which entered into force on 16 August 2012.

1.2 What are the objectives of EMIR?

- Increased Safety and Transparency
- Reduction of Counterparty Credit Risk
- Mitigation of Operational Risk

- Execution
- Reporting to Trade Repositories (Article 9 of EMIR)
- Mandatory clearing for OTC contracts (Article 4 of EMIR)
- Risk Mitigation standards for contracts not cleared by Error! Reference source not found. e.g. reconciling portfolios periodically and agreeing dispute resolution procedures between counterparties (Article)
- Use of electronic means for timely confirmation of the terms of Error! Reference source not found. (Article 11(1)(a) of EMIR)
1.3 How derivative markets work under EMIR?

Derivative Market

OTC Derivatives

OTC derivatives not subject to clearing

OTC Derivatives fails into asset classes of financial instruments covered by CCPs authorization

Risk Mitigation

- Timely Confirmation
- Portfolio Reconciliation
- Portfolio Compression
- Dispute Resolution
- Daily Valuation

Clearing
ESMA has two approaches in process for determining the class of OTC derivative contracts subject to clearing obligation
- Bottom-up approach
- Top-down approach

Margin
CCP will require that clearing members collect initial and variation margin from parties
Initial Margin is collected by CCP on a gross basis; clearing members will make margin calls of clients.

CCPs authorized (for European CCPs) or recognized (if non-EU CCPs) by ESMA.

CCPs are differentiated in terms of asset classes being cleared.

Top-Down
Bottom-Up

ESMA
### 2 EMIR Obligations at a Glance

<table>
<thead>
<tr>
<th>EMIR Obligations</th>
<th>FCs</th>
<th>NFC+s</th>
<th>NFC-s</th>
<th>TCEs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clearing</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>Reporting</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
</tbody>
</table>

#### Risk Mitigation for non-centrally cleared OTC Derivatives

<table>
<thead>
<tr>
<th>Risk Mitigation</th>
<th>FCs</th>
<th>NFC+s</th>
<th>NFC-s</th>
<th>TCEs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Timely Confirmation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Portfolio Reconciliation</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Portfolio Compression</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Dispute Resolution</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Daily Valuation</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>Margin for uncleared OTCs</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>Capital</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
</tr>
</tbody>
</table>
3 What are EMIR Reporting requirements?

As stated in Article 9 of EMIR, reporting is the process by which counterparties and CCPs ensure that the details of any derivative contract are submitted to a trade repository. The aim of reporting is to promote transparency by making the information on derivatives available to regulators and thus making the regulation of the financial markets more prudent.

3.1 Who needs to report?

1. Financial counterparties (FCs)
2. Non-financial counterparties (NFCs)
3. TCEs
4. Exemptions: BIS, member of ESCB and other entities involved with the management of public debt and intragroup transactions.
   - The reporting party may be the counterparty to the trade, or a third-party (such as a CCP or trading platform).
   - When an investment firm is involved in a derivative contract, there are two possible scenarios when reporting: one in which the investment firm is actually the counterparty to the trade and thus should submit an EMIR report and the second in which it is not. In the latter case the investment bank acts on the account of and on behalf of the client to execute the trade and is not expected to submit a report under EMIR.

3.1.1 EMIR reporting for funds - who is the counterparty - the fund or the fund manager?

Funds (e.g. UCITS, AIFs and unincorporated funds) are considered as FCs. ESMA’s Q&A clarifies that:

- the counterparty to the derivative transaction is generally the fund. When a fund manager executes a block trade, it should immediately allocate the relevant part of that transaction to the relevant funds and report accordingly.
- Only in rare circumstances, when the fund manager executes trades on its own account rather than on behalf of the funds it manages, the counterparty would be the fund manager.
- If the derivative contract is concluded at the level of the sub-fund, the counterparty should be the sub-fund and not the umbrella fund. In that case, the sub-fund needs to have an LEI for reporting purposes and be identified as the counterparty. Otherwise, the umbrella fund should have an LEI for reporting purposes and be identified as the counterparty. The sub-fund should be identified as the beneficiary.
3.1.2 EMIR reporting for charity or non-profit organisations

- If the activity performed by a charity or non-profit organisation falls under the definition of economic activity that qualifies it as an undertaking (EMIR: Frequently Asked Questions updated 10 July 2014) the organisation would be considered as a NFCs.

3.2 What to report?

- The reporting requirement includes: all exchange-traded derivatives, OTC derivative trades and intragroup trades
- Both counterparties must report each trade unless by prior arrangement, one party can report on behalf of both counterparties or one/both counterparties can report using a third party vendor.
- Firms that provide investment services (e.g. execution of orders) are not obliged to report under EMIR unless they act as a counterparty of a transaction. This is because, when a counterparty is having a bilateral agreement with another counterparty through an introducing broker, the broker is not signing or entering into any derivative contract with any of the counterparties thus, is not considered as a counterparty under EMIR and consequently there is no obligation for reporting from his side.

3.3 How to report?

All counterparties to all derivative contracts need to report post-trade, contract details to a Trade Repository registered with ESMA or recognised by ESMA. (Article 9 of EMIR)

The possibility for CCPs’ applying for registration as a trade repository is legally excluded.
4 What is EMIR clearing?

As defined in Article 2(3) of EMIR, clearing means the process of establishing positions including the calculation of net obligations, and ensuring that financial instruments, cash or both, are available to secure the exposures arising from those positions.

In practice, clearing is the process by which a CCP acts as the intermediary between a bilateral derivative agreement and intakes the credit risk of both counterparties. Counterparties meet the clearing obligation as a direct clearing member, client of a clearing member or indirectly through a clearing member.

4.1 Who needs to clear?

Whether a transaction is subject to clearing obligation depends on the categorisation of both involved counterparties (buy and sell side).

Clearing applies to:

1. FCs
2. NFC+S
3. Third Country Entities (TCE) subject to the following conditions:
   • EU counterparties trade with entities established outside the EU
   • Two entities established outside the EU trade together, and
   • When an impact on EU markets exist (a direct, substantial and foreseeable effect in the EU)

4. Exemptions: Intragroup transactions as defined in Article 3 of EMIR, Central banks, sovereigns and multilateral development banks, BIS and NFC-s.

The table below demonstrates how different entities are subject to the clearing obligations when they enter in a derivative contract:

<table>
<thead>
<tr>
<th>CP 1</th>
<th>FC</th>
<th>NFC+</th>
<th>NFC-</th>
<th>TCE (FC/NFC+)</th>
<th>TCE (NFC-)</th>
</tr>
</thead>
<tbody>
<tr>
<td>FC</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
<td>NO</td>
</tr>
<tr>
<td>NFC+</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
<td>NO</td>
</tr>
<tr>
<td>NFC-</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>TCE FC/NFC+)</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
<td>*</td>
<td>NO</td>
</tr>
<tr>
<td>TCE (NFC-)</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
</tbody>
</table>

* If conditions for TCEs apply (point 3 of this section)
4.2 What needs to be cleared?

If FCs, NFC+s and TCE, under the specific conditions described above, have derivative contracts of a group of classes determined by ESMA then mandatory clearing is applied from a specific period in time as discussed below.

ESMA has two approaches in process for determining the classes of OTC derivative contracts subject to clearing obligation:

- **Bottom-up approach**: The competent authority authorises a CCP to clear a class of derivatives and inform ESMA which will determine, after consulting the ESRB, the class of OTC derivative contract subject to clearing among the classes that are already cleared. ([Article 5(2) of EMIR](#))

- **Top-down approach**: ESMA, in consultation with ESRB, identifies classes of OTC derivative contracts, that no CCP has cleared, for clearing obligation. In addition, ESMA proposes the implementation of proposals for the clearing of those classes. ([Article 5(3) of EMIR](#))

The complete list of classes subject to the clearing obligation can be found in the Public Register available on [ESMA website](#).

The Clearing Obligation Public Register contains two types of information:

1. Classes of OTC derivatives subject to the clearing obligation and dates of application.
2. Classes of OTC derivatives that European CCPs have been authorised to clear as notified to ESMA.

The first [Commission Delegated Regulation (EU) 2015/2205 of 6 August 2015 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation](#) requires mandatory clearing through CCPs for the following Interest Rate Swaps (IRS) denominated in G4 currencies (GBP, EUR, JPY and USD):

- Fixed-to-floating IRS (so called “plain-vanilla” IRS)
- Floating-to-floating swaps (so called “basis swaps”)
- Forward Rate Agreements (FRA)
- Overnight Index Swaps (OIS)

The exact asset types that are subject to clearing obligation are presented below:

<table>
<thead>
<tr>
<th>Type</th>
<th>Reference Index</th>
<th>Settlement Currency</th>
<th>Maturity</th>
<th>Settlement Currency Type</th>
<th>Optionality</th>
<th>Notional Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basis</td>
<td>EURIBOR</td>
<td>EUR</td>
<td>28D-50Y</td>
<td>Single Currency</td>
<td>No</td>
<td>Constant or Variable</td>
</tr>
<tr>
<td>Basis</td>
<td>LIBOR</td>
<td>GBP</td>
<td>28D-50Y</td>
<td>Single Currency</td>
<td>No</td>
<td>Constant or Variable</td>
</tr>
<tr>
<td>Basis</td>
<td>LIBOR</td>
<td>JPY</td>
<td>28D-30Y</td>
<td>Single Currency</td>
<td>No</td>
<td>Constant or Variable</td>
</tr>
<tr>
<td>Basis</td>
<td>LIBOR</td>
<td>USD</td>
<td>28D-50Y</td>
<td>Single Currency</td>
<td>No</td>
<td>Constant or Variable</td>
</tr>
</tbody>
</table>

**Fixed-to-floating Interest Rate Swaps Class**
Moreover, in ESMA’s consultation paper published on 11 May, it is proposed to extend the scope of mandatory clearing of IRS through CCPs for the following 6 currencies:

- Czech Koruna (CZK)
- Danish Krone (DKK)
- Hungarian Forint (HUF)
- Norwegian Krone (NOK)
- Polish Zloty (PLN)
- Swedish Krona (SEK)

The third Commission Delegated Regulation (EU) 2016/1178 of 10 June 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation was followed, which requires mandatory clearing through CCPs for the following Interest Rate Swaps (IRS) denominated in NOK, PLN and SEK:

- Fixed-to-float IRS (so called “plain-vanilla” IRS)
- Forward Rate Agreement (FRA)

The relevant section of the Delegated Regulation showing the exact assets types that are subject to clearing obligation is presented below:

<table>
<thead>
<tr>
<th>Type</th>
<th>Reference Index</th>
<th>Settlement Currency</th>
<th>Maturity</th>
<th>Settlement Currency Type</th>
<th>Optionality</th>
<th>Notional Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fixed-to-float IRS</td>
<td>NIBOR</td>
<td>NOK</td>
<td>28D-10Y</td>
<td>Single Currency</td>
<td>No</td>
<td>Constant or Variable</td>
</tr>
<tr>
<td>Fixed-to-float IRS</td>
<td>WIBOR</td>
<td>PLN</td>
<td>28D-10Y</td>
<td>Single Currency</td>
<td>No</td>
<td>Constant or Variable</td>
</tr>
<tr>
<td>Fixed-to-float IRS</td>
<td>STIBOR</td>
<td>SEK</td>
<td>28D-15Y</td>
<td>Single Currency</td>
<td>No</td>
<td>Constant or Variable</td>
</tr>
<tr>
<td>Forward Rate Agreement</td>
<td>EURIBOR</td>
<td>NOK</td>
<td>3D-2Y</td>
<td>Single Currency</td>
<td>No</td>
<td>Constant or Variable</td>
</tr>
<tr>
<td>Forward Rate Agreement</td>
<td>LIBOR</td>
<td>PLN</td>
<td>3D-2Y</td>
<td>Single Currency</td>
<td>No</td>
<td>Constant or Variable</td>
</tr>
</tbody>
</table>
The second Commission Delegated Regulation (EU) 2016/592 of 1 March 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation requires the mandatory clearing of the following Index Credit Default Swaps (CDS):

- Untrancheed iTraxx CDS (Main, EUR,5Y)
- Untrancheed iTraxx Index CDS (Crossover, EUR,5Y)

The relevant section of the Delegated Regulation showing the exact assets types that are subject to clearing obligation is presented below:

<table>
<thead>
<tr>
<th>European untrancheed Index CDS Class</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type</td>
</tr>
<tr>
<td>------</td>
</tr>
<tr>
<td>Index CDS</td>
</tr>
<tr>
<td>Index CDS</td>
</tr>
</tbody>
</table>

On 1 October 2014, ESMA published the **2014-ESMA-1185 Consultation Paper on clearing obligation under EMIR no. 3**. This consultation paper proposed the mandatory clearing of certain non-deliverable foreign-exchange forwards (NDF).

On 4 February 2015, ESMA published a feedback statement on the consultation on the Clearing Obligation for Non-Deliverable Forwards( **2015/ESMA/234**) concluding that mandatory clearing for NDF would be implemented at a later stage.

ESMA has temporarily suspended the delivery of the above rules until the first set of rules on the clearing obligation for IRS are finalised.

The effective start dates for the **EMIR clearing categories** described above are:

<table>
<thead>
<tr>
<th>Categories</th>
<th>Description</th>
<th>Asset Classes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>IRS in G4</td>
</tr>
<tr>
<td><strong>Category 1 (C1)</strong></td>
<td>C1 includes clearing members of at least one authorised or recognised CCP to clear at least one of asset classes subject to the clearing obligations</td>
<td>21 June 2016</td>
</tr>
</tbody>
</table>

Effective date: 6 months after Interest Rate RTS come into force and 9 months after CDS RTS come into force
| Category 2  
(C2) | C2 includes FCs and Alternative investment funds(AIFs) that are NFC+s which are not included in C1 and whose group’s aggregate month-end average outstanding gross notional amount of uncleared derivatives for the 3 months after the relevant RTS is more than EUR 8 billion | 21 December 2016 | 9 July 2017 | 9 August 2017 |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective date: 12 months after Interest Rate RTS come into force and 15 months after CDF RTS come into force</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| Category 3  
(C3) | C3 includes FCs and alternative investment funds(AIFs) that are NFC+s is not included in C1 or C2 and whose group’s aggregate month-end average outstanding gross notional amount of uncleared derivatives for the 3 months after the relevant RTS is less than €8bn | 21 June 2019 | 21 June 2019 | 21 June 2019 |
| Effective date: 18 months after Interest Rate RTS come into force and 21 months after CDS RTS come into force | | | | |
| Category 4  
(C4) | C4 includes NFCs not included in the other categories | 21 December 2018 | 9 July 2019 | 9 May 2019 |
| Effective date: 3 years after Interest Rate RTS and CDS RTS come into force | | | | |

When counterparties from two different categories enter into a transaction mandatory clearing is required on the later of the two relevant dates.

4.3 How to clear?

There are three different models used for the clearing of OTC derivatives:
1. **Member Clearing**: Both parties become clearing members of a CCP and thus the original bilateral agreement between the two parties becomes two separate agreements between the party and the CCP.

2. **Client Clearing**: Parties become clients of a clearing member (CM Client) and not itself a Clearing Member. In other words, parties enter into contractual arrangements with a CCP Clearing Member, in order to clear OTC derivative contracts entered by CM Clients and other parties.

This is the general format of the model. There are many alterations that are not presented here.

3. **Indirect clearing**: Enables market participants to clear derivatives by becoming a client of a CM Client. This model is still at an early stage of development.
5 What are EMIR risk mitigation techniques?

The risk mitigation techniques apply to FCs and NFCs exceeding the clearing thresholds, which enter into non-centrally cleared OTC derivative contracts and aim to measure, monitor and mitigate operational and counterparty credit risk. They are outlined in Article (11) (1) - (4) of EMIR and consist of:

- Timely Confirmation
- Portfolio Reconciliation
- Portfolio Compression
- Dispute Resolution
- Daily Valuation
- Margin Requirements
- Capital Requirements

Robust procedures and arrangements should be put in place so as for counterparties to comply with risk mitigation requirements. ISDA 2013 Timely Confirmation Amendment Agreement, ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Dispute Protocol, ISDA Standard Amendment Agreement and ISDA 2016 Variation Margin Protocol are some documentations published by ISDA with the intention to aid parties to comply with some risk mitigation techniques. Some of these requirements/measures, in particular portfolio reconciliation and dispute resolution, should be agreed on before the OTC derivative contract is entered into.

5.1 Timely Confirmation

Reference: Article 12 of Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP

5.1.1 What is timely confirmation?

A confirmation of the terms of non-centrally cleared derivatives at a predetermined timeline following the date of execution of the OTC derivative contract, depending on the asset class of the derivative, the type of the counterparty and when the specific derivative came into force. The starting point to calculate the confirmation deadline is the date of execution of the transaction, irrespective of the execution process. So if a transaction is executed over the phone on date T, the reference day to start calculating the confirmation deadline is T.
<table>
<thead>
<tr>
<th>Both parties are FCs or NFC+s</th>
<th>Timely Confirmations frequency*</th>
<th>Contract enters into force</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Rate derivatives</td>
<td>T+2</td>
<td>Before 28 Feb. 2014</td>
</tr>
<tr>
<td>Credit derivatives</td>
<td>T+1</td>
<td>After 28 Feb. 2014</td>
</tr>
<tr>
<td>Equity derivatives</td>
<td>T+3</td>
<td>Before 31 Aug. 2013</td>
</tr>
<tr>
<td>Commodity derivatives</td>
<td>T+1</td>
<td>After 31 Aug. 2014</td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| One party is NFC-             |                                |                           |
| Interest Rate derivatives     | T+3                            | Before 31 Aug. 2013       |
| Equity derivatives            | T+1                            | After 31 Aug. 2014        |
| Foreign Exchange derivatives  | T+7                            | Before 31 Aug. 2013       |
| Other                         | T+2                            | After 31 Aug. 2014        |

*T+n: n business days following the date of execution of the OTC derivative contract
- FCs must have procedures to report to the regulator on a monthly basis the number of unconfirmed trades that exist for more than five business days.

5.1.2 Who needs to comply?

Applies to FCs and NFCs irrespective of whether they exceed the clearing threshold or not. The only difference between NFC+s and NFC-s will be the frequency of confirmations.

ESMA’s Q&A updated on 16 February 2016 states that requirements for timely confirmation, portfolio reconciliation, portfolio compression and dispute resolution should be met when at least one of the counterparties is established within the EU. Therefore, when an EU party is transacting with a third country entity, the EU counterparty should ensure that the requirements for the risk mitigation techniques are met even though the third country entity would not itself be subject to EMIR. However, if the third country entity is established in a
jurisdiction to which the commission has adopted an implementing act, the counterparty could comply with equivalent rules in the third country.

5.1.3 How to comply?

Based on ESMA’s Q&A updated on 16 February 2016, to comply with the confirmation requirements the counterparties must reach a legally binding agreement to all the terms of an OTC derivative contract. ESMA RTS on OTC derivatives implies that both parties must comply with it and agree in advance on a specific process to do so. Processes under which documentation is deemed to be finalised and accepted by both parties after a fixed deadline has expired would be compliant provided that both counterparties have agreed in advance to confirm by this process.

Conformation may be done using, where available, by electronic means, or by both parties signing a document.

5.1.4 Timely confirmation under REMIT:

Confirmations are not expected to be reported under REMIT reporting framework as a confirmation is not an activity related to the execution or modification of a transaction entered into a wholesale energy market. Hence the reporting of lifecycle events under REMIT differs from lifecycle events reported under other EU-l legislations.

5.2 Portfolio Reconciliation

Reference: Article 13 of Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP

5.2.1 What is portfolio reconciliation?

Portfolio reconciliation is a process to accurately capture lifecycle events such as amendments or novations and to identify and correct any material discrepancies of the OTC derivative contract so as to ensure that parties’ books and records are matched.

5.2.2 Who needs to comply?

Applies to FCs and NFCs irrespective of whether they exceed the clearing threshold or not. The only difference between NFC+s and NFC-s will be the frequency of reconciliations. ESMA’s Q&A updated on 16 February 2016 states that requirements for timely confirmation, portfolio reconciliation, portfolio compression and dispute resolution should be met when at least one of the counterparties is established within the EU. Therefore, when an EU party is transacting with a third country entity, the EU counterparty should ensure that the requirements for the risk mitigation techniques are met even though the third country entity would not itself be subject to EMIR. However, if the third country entity is established in a jurisdiction to which the commission has adopted an implementing act, the counterparty could comply with equivalent rules in the third country.
ISDA's EMIR Portfolio Reconciliation Operation Guidance Note published on 10th September 2013 explains that for portfolio resolution and dispute resolution obligations, entities subject to obligations depend on the counterparty location. As explained, if a counterparty is established in the EU, the EMIR regulation requires that the counterparty should reconcile portfolios with all its counterparties (both EU and non-EU). On the other hand, if a counterparty is established outside the EU but trades with an EU counterparty, that counterparty is required to reconcile portfolios and is required to take actions to facilitate its compliance.

5.2.3 How to comply?

- Counterparties must agree portfolio reconciliation arrangements before trading.
- All OTC derivative Contracts (both collateralised and uncollateralised) need to be reconciled.
- **Key trade terms** should be covered. ESMA’s Q&A updated on 16 February 2016 provides guidance on what “key trade terms” are: “As provided for in Article 13 of RTS on OTC derivatives, such terms shall include the valuation attributed to each contract in accordance with Article 11(2) of EMIR. They should also include other relevant details to identify each particular OTC derivative contracts, such as the effective date, the scheduled maturity date, any payment or settlement dates, the notional value of the contract and currency of the transaction, the underlying instrument, the position of the counterparties, the business day convention and any relevant fixed or floating rates of the OTC derivative contract.
- Frequency of reconciliation varies by counterparty type and portfolio size as shown below:

<table>
<thead>
<tr>
<th>Number of trades with a single counterparty</th>
<th>FCs and NFC+s</th>
<th>NFC-s</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;=50 trades</td>
<td>Quarterly</td>
<td>Monthly</td>
</tr>
<tr>
<td>&gt;50&lt;=500 trades</td>
<td>Weekly</td>
<td>Daily</td>
</tr>
<tr>
<td>&gt;500 trades</td>
<td>Annually</td>
<td>Quarterly</td>
</tr>
</tbody>
</table>

5.3 Portfolio Compression

**Reference:** Article 14 of Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP

5.3.1 What is portfolio compression?

Portfolio compression means a risk reduction service in which two or more counterparties wholly or partially terminate some or all of the derivatives submitted by those counterparties for inclusion in the portfolio compression and replace the terminated derivatives with another derivative whose combined notional value is less than the combined notional value of the
terminated derivatives. (MiFIR - REGULATION (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012) In other words, portfolio compression is a mechanism for reducing notional and number of outstanding contracts of similar or offsetting transactions in order to reduce counterparty credit risk.

As MiFIR underlines, portfolio compression reduces non-market risks in existing derivatives portfolios without changing the market risk of the portfolios.

5.3.2 Who needs to comply?

Applies to FCs and NFCs that have 500 or more non-centrally cleared OTC derivative contracts outstanding with a single counterparty.

ESMA’s Q&A updated on 16 February 2016 states that requirements for timely confirmation, portfolio reconciliation, portfolio compression and dispute resolution should be met when at least one of the counterparties is established within the EU. Therefore, when an EU party is transacting with a third country entity, the EU counterparty should ensure that the requirements for the risk mitigation techniques are met even though the third country entity would not itself be subject to EMIR. However, if the third country entity is established in a jurisdiction to which the commission has adopted an implementing act, the counterparty could comply with equivalent rules in the third country.

5.3.3 How to comply?

- Should conduct portfolio compression exercise at least twice a year.
- Portfolio compression may be provided by a range of firms which are not regulated under MiFID II or MiFIR like CCPs, trade repositories, investment firms and market operators.

5.3.4 Portfolio Compression under REMIT:

Portfolio compression is not expected to be reported under REMIT reporting framework as the compression is not an activity related to the execution or modification of a transaction entered into on the wholesale energy market.

5.4 Dispute Resolution

Reference: Article 15 of Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP

5.4.1 What is dispute resolution?

Dispute Resolution framework intends to identify, record and monitor any disputes on the valuation and the exchange of collateral stemming from contracts that are not centrally
cleared, by requiring parties to have agreed procedures between them before entering into any contract.

Disputes should be resolved in a timely manner. Specific processes for disputes that remain unsolved for more than 5 business days should be established.

5.4.2 Who needs to comply?

Applies to FCs and NFCs irrespective of whether they exceed the clearing threshold or not. The only difference between NFC+s and NFC-s will be the frequency of reconciliations.

**ESMA’s Q&A updated on 16 February 2016** states that requirements for timely confirmation, portfolio reconciliation, portfolio compression and dispute resolution should be met when at least one of the counterparties is established within the EU. Therefore, when an EU party is transacting with a third country entity, the EU counterparty should ensure that the requirements for the risk mitigation techniques are met even though the third country entity would not itself be subject to EMIR. However, if the third country entity is established in a jurisdiction to which the commission has adopted an implementing act, the counterparty could comply with equivalent rules in the third country.

**ISDA’s EMIR Portfolio Reconciliation Operation Guidance Note published on 10th September 2013** explains that for portfolio resolution and dispute resolution obligations, entities subject to obligations depend on the counterparty location. As explained, if a counterparty is established in the EU, the EMIR regulation requires that the counterparty should reconcile portfolios with all its counterparties (both EU and non-EU). On the other hand, if the counterparty is established outside the EU but trades with an EU counterparty, that counterparty is required to reconcile portfolios and is required to take actions to facilitate its compliance.

5.4.3 How to comply?

Counterparties are required to report to the regulator, on a monthly basis (unless the national competent authority requires otherwise), any disputes in valuation or exchange of collateral for an amount higher than EUR 15 million which is outstanding for at least 15 business days.

The amount or value of outstanding disputes should be calculated and reported on a trade-by-trade basis whenever possible. However, a portfolio basis may be used if the disputed valuation or collateral, for example, initial margin is calculated at the portfolio level.

Counterparties may agree upfront that discrepancies that amount to a value below a predefined threshold do not count as disputes. If that is the case, these minor discrepancies would not count as disputes. All the other discrepancies would give rise to disputes and be treated according to **Article 15 of the RTS** on OTC derivatives.

5.5 Daily Valuation

**Reference:** Articles 16 and 17 of **Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue,**
non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP

5.5.1 What is valuation?

Entities are required to mark the value of their outstanding non centrally cleared OTC derivatives. Methodologies to be used are:

- Mark-to-Market on a daily basis
- Mark-to-Model where mark-to-market is not possible

5.5.2 Who needs to comply?

Applies only to FCs and NFC+s.

5.5.3 How to comply?

When mark-to-market valuation is not possible, mark-to-model may be used if the model meets specific criterial and is approved by the Board of Directors at least annually.

5.6 What are margin requirements?

Margin is defined in the Final document issued by BCBS and IOSCO on margin requirements for non-centrally cleared derivatives as “default-pay”. This means that in the event of a counterparty default, margin protects the surviving party by absorbing losses, using the collateral provided by the default entity.

The aim of margin is to aid market participants to protect against counterparty credit risk and to promote resilience in the markets in times of stress.

In order for margin to achieve its objectives, it must be:

(i) Accessible when needed and;

(ii) Provided in a form that can be liquidated rapidly and at a predictable price even in a time of financial distress.

Eligible collateral which meets the IM and VM requirements includes cash, high quality government and corporate bonds, shares in major stock indices and gold.

The amount of margin requirement for centrally cleared OTC derivatives, which has to be transferred either as IM or VM, is determined by the concerned CCP.

Margin requirements for non-centrally cleared OTC derivatives are presented in the following section.

5.6.1 What is Initial Margin?

As stated in the Final document issued by BCBS and IOSCO on margin requirements for non-centrally cleared derivatives, Initial Margin protects the transacting parties from the potential future exposure that could arise from future changes in the mark-to-market value of the contract during the time it takes to close out and replace the position in the event that one or more counterparties default. The amount of initial margin reflects the size of the potential future exposure. It depends on a variety of factors, including how often the contract
is revalued and variation margin is exchanged, the volatility of the underlying instrument, and the expected duration of the contract closeout and replacement period, and can change over time, particularly where it is calculated on a portfolio basis and transactions are added to or removed from the portfolio on a continuous basis. IM should be exchanged by both parties, without netting of amounts collected by each party.

5.6.2 What is Variation Margin?

As stated in the Final document issued by BCBS and IOSCO on margin requirements for non-centrally cleared derivatives, Variation Margin protects the transacting parties from the current exposure that has already been incurred by one of the parties from changes in the mark-to-market value of the contract after the transaction has been executed. The amount of variation margin reflects the size of its current exposure. It depends on the mark-to-market value of the derivatives at any point in time, and can therefore change over time. The valuation of a derivative’s current exposure can be complex and, at times, become subject to question or dispute by one or both parties. In the case of non-centrally cleared derivatives, these instruments are likely to be relatively illiquid. The associated lack of price transparency further complicates the process of agreeing on current exposure amounts for variation margin purposes. Accordingly, parties to derivatives contracts should have rigorous and robust dispute resolution procedures in place with their counterparty before the onset of a transaction. In the event that a margin dispute arises, both parties should make all necessary and appropriate efforts, including timely initiation of dispute resolution protocols, to resolve the dispute and exchange the required amount of variation margin in a timely fashion.

5.6.3 Margin requirements for non-centrally cleared OTCs

Important points to consider for margin requirements for non-centrally cleared OTCs are outlined in Final Draft Regulatory Technical Standards on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP under Article 11(15) of Regulation (EU) No 648/2012, Consultation paper on the draft regulatory technical standards on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP under Article 11(15) of Regulation (EU) No 648/2012 and in the final document issued by BCBS and IOSCO on margin requirements for non-centrally cleared derivatives.

5.6.3.1 What are the Initial Margin requirements for non-centrally cleared derivatives?

- **Threshold**: IM requirement will be posted without netting of amounts collected by each party (i.e. on a gross basis) given that the total IM calculated at group level is minimum EUR 50 million. In other words, where the total IM calculated is equal to or lower than EUR 50 million, counterparties may agree that no initial margin will be exchanged and that they will hold capital against their exposure to their counterparties. IM requirements will be phased-in as shown below. At the end of the phase-in period there will be a minimum level of non-centrally cleared derivatives activity (EUR 8 billion of gross notional outstanding amount) necessary for covered entities to be subject to IM requirements.
<table>
<thead>
<tr>
<th>Time period</th>
<th>Threshold</th>
</tr>
</thead>
<tbody>
<tr>
<td>01/09/2016</td>
<td>Any covered entity belonging to a group whose aggregate month-end average notional amount of non-centrally cleared derivatives for March, April, and May of 2016 exceeds €3.0 trillion will be subject to the requirements when transacting with another covered entity (provided that it also meets that condition). The requirements to exchange variation margin between these covered entities only applies to new contracts entered into after 1 September 2016. Exchange of variation margin on other contracts is subject to bilateral agreement.</td>
</tr>
<tr>
<td>01/03/2017</td>
<td>All covered entities will be required to exchange variation margin. Subject to the issue raised above, the requirement to exchange variation margin between covered entities only applies to new contracts entered into after 1 March 2017. Exchange of variation margin on other contracts is subject to bilateral agreement. The valuation of a derivative’s current exposure can be complex and, at times, become subject to question or dispute by one or both parties.</td>
</tr>
<tr>
<td>01/09/2017</td>
<td>Any covered entity belonging to a group whose aggregate month-end average notional amount of non-centrally cleared derivatives for March, April, and May of 2017 exceeds €2.25 trillion will be subject to the requirements when transacting with another covered entity (provided that it also meets that condition).</td>
</tr>
<tr>
<td>01/09/2018</td>
<td>Any covered entity belonging to a group whose aggregate month-end average notional amount of non-centrally cleared derivatives for March, April, and May of 2018 exceeds €1.5 trillion will be subject to the requirements when transacting with another covered entity (provided that it also meets that condition).</td>
</tr>
<tr>
<td>01/09/2019</td>
<td>Any covered entity belonging to a group whose aggregate month-end average notional amount of non-centrally cleared derivatives for March, April, and May of 2019 exceeds €0.75 trillion will be subject to the requirements when transacting with another covered entity (provided that it also meets that condition).</td>
</tr>
<tr>
<td>01/09/2020</td>
<td>Any covered entity belonging to a group whose aggregate month-end average notional amount of non-centrally cleared derivatives for March, April, and May of the year is less than €8 billion will not be subject to the initial margin requirements described in this paper.</td>
</tr>
</tbody>
</table>

*Covered entity: FCs and NFC+s

**For the calculation of the group aggregate month-end average notional amount should be calculated by using all of the group’s non-centrally cleared derivatives, including physically settled FX forwards and swaps.

- **Minimum transfer amount:** The exchange of collateral is subject to a de-minimis minimum transfer amount of € 500.000. In other words, where the total collateral amount is equal to or lower than EUR 500 000 the counterparties may agree not to exchange collateral.
• **Threshold based on notional amount**: IM requirements don’t apply to transactions where at least one of the counterparties aggregate month-end average notional amounts of non-centrally cleared derivatives for June, July and August in a given year is below € 8 billion.

• **Exemptions from IM requirements:**
  a) Physically settled FX forwards and swaps, including those associated with the exchange of principal in cross-currency swaps. VM is still applicable to such contracts.
  b) Covered bonds issues and covered pools are exempted from posting (but not from collecting) IM or VM in case the following conditions are satisfied:
     1. The derivative is not terminated in case of default of the covered bond issuer;
     2. The derivative counterparty ranks at least pari-passu with the covered bond holders;
     3. The derivative is registered in the cover pool of the covered bond programme in accordance with national covered bond legislation and is used only for hedging purposes
     4. The netting set does not include derivatives unrelated to the covered bond programme
     5. The covered bond programme meets the requirements of Article 129 of Regulation (EU) No 575/2013 (CRR)
     6. The covered bond programme is subject to a legal collateralization requirement of at least 102%

• Counterparties are required to **recalculate and collect initial margin**, at least when:
  1. A new contract is executed with that counterparty
  2. An existing contract with that counterparty expires
  3. An existing contract triggers a payment, other than posting or collecting variation margins, or a delivery
  4. An existing contract is reclassified in terms of asset category by way of reduced time to maturity
  5. Initial margin model is recalibrated
  6. No initial margin recalculation has been performed in the last 10 business days

• **Eligible collateral** for Initial and Variation Margin include cash and gold, high quality government and corporate bonds, shares in major stock indices and UCITS.

• Eligible collateral can be denominated in any currency in which payment obligations under the non-centrally cleared derivatives may be made, or in highly liquid foreign currencies subject to appropriate haircuts to reflect the inherent FX risk involved. Potential methods for determining appropriate haircuts could include either internal or third-party quantitative model-based haircuts or schedule-based haircuts. For quantitative models, derivatives counterparties should also have the option of using
standardised haircuts established by BCBS and IOSCO adopted in the Basel Accord’s comprehensive approach to collateralised transactions framework and can be found below:

<table>
<thead>
<tr>
<th>Asset Class</th>
<th>Haircut (% of market value)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash in same currency</td>
<td>0</td>
</tr>
<tr>
<td>High-quality government and central bank securities: residual maturity less than 1 year</td>
<td>0.5</td>
</tr>
<tr>
<td>High-quality government and central bank securities: residual maturity between 1 and 5 years</td>
<td>2</td>
</tr>
<tr>
<td>High-quality government and central bank securities: residual maturity greater than 5 years</td>
<td>4</td>
</tr>
<tr>
<td>High-quality corporate/covered bonds: residual maturity less than 1 year</td>
<td>1</td>
</tr>
<tr>
<td>High-quality corporate/covered bonds: residual maturity between 1 and 5 years</td>
<td>4</td>
</tr>
<tr>
<td>High-quality corporate/covered bonds: residual maturity greater than 5 years</td>
<td>8</td>
</tr>
<tr>
<td>Equities included in major stock indices</td>
<td>15</td>
</tr>
<tr>
<td>Gold</td>
<td>15</td>
</tr>
<tr>
<td>Additional (additive) haircut on asset in which the currency of the derivatives obligation differs from that of the collateral asset</td>
<td>8</td>
</tr>
</tbody>
</table>

- All entities shall exchange Variation Margin (VM) at least on a daily basis to prevent the build-up of uncollateralised exposure, starting from the business day following the execution of the contract.

5.6.3.2 How is Initial Margin calculated for non-centrally OTC derivatives?

- Covered entities shall calculate and collect initial margin using one of the two methods:
  1. Initial Margin Model (Quantitative Portfolio Margin Model)
  2. The standardised approach

- Derivatives market participants should not be allowed to switch between model and schedule-based margin calculations in an effort to pick the most favourable initial margin terms. The choice between the model for initial margin calculations should be made consistently over time for all transactions within the same well defined asset class.

- At the same time, it is quite possible that a market participant may use a model-based initial margin calculation for one class of derivatives in which it commonly deals and a schedule-based initial margin in the case of some derivatives that are less routinely employed in its trading activities.

- Parties to derivative contracts should have rigorous and robust dispute resolution procedures in place with their counterparty before the onset of a transaction. In the event that a margin dispute arises, both parties should make all necessary and appropriate efforts, including timely initiation of dispute resolution protocols, to resolve the dispute and exchange the required amount of initial margin in a timely manner.
**Initial Margin Model:**

*Important points to consider for Initial Margin Model:*

1. Initial Margin Models are required to assume the maximum variations in the value of the netting set at a confidence level of 99% with a risk horizon of at least 10 days.

2. Initial Margin Model must be approved by the relevant supervisory authority. An unregulated counterparty that wishes to use an Initial Margin model may use an approved one.

3. Models must be either internally developed or sourced from the counterparties or third-party vendors but in all such cases these models must be approved. In the event that a third party-provided model is used for initial margin purposes, the model must be approved for use within each jurisdiction and by each institution seeking to use the model.

4. Models must be calibrated on a historical period of at least three years, including a period of financial stress. In particular, observations from the period of stress must represent at least 25% of the overall data set.

5. The models shall be recalibrated at least semi-annually.

6. Initial margin models shall assign a derivative contract to an underlying class based on its primary risk factor, defined in terms of sensitivity of the value of the contact to the market risk drivers. The following underlying classes shall be considered:
   a) Interest rates, currency and gold
   b) Equity
   c) Credit
   d) Commodity and other

7. To limit the recognition of diversification benefits, a model can only account for offset benefits for derivative contracts belonging to the same netting set and the same asset class. For a netting set, initial margin must be calculated first at underlying class level and then summing the initial margin requirements for each underlying class within the netting set.

8. The model shall be subject to a back testing programme.

9. Quantitative initial margin models must be subject to an internal governance process, including an initial and period validation by independent parties and an audit process to assess of the data and assumptions used.

10. If initial margin models cease to comply with the requirements, counterparties shall notify the relevant competent authorities and shall compute the required initial margin using the Standardised Method.
Standardised Approach:

1. The required initial margin is computed by referencing the standardised margin rates shown in table below. The notional amounts or underlying values of derivative contracts in netting set shall be multiplied by these standardised margin rates:

<table>
<thead>
<tr>
<th>Asset Class</th>
<th>Initial Margin Requirement (% of notional exposure)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Credit: 0-2-year duration</td>
<td>2</td>
</tr>
<tr>
<td>Credit: 2-5-year duration</td>
<td>5</td>
</tr>
<tr>
<td>Credit: 5+ year duration</td>
<td>10</td>
</tr>
<tr>
<td>Commodity</td>
<td>15</td>
</tr>
<tr>
<td>Equity</td>
<td>15</td>
</tr>
<tr>
<td>Foreign Exchange</td>
<td>6</td>
</tr>
<tr>
<td>Interest Rate: 0-2-year duration</td>
<td>1</td>
</tr>
<tr>
<td>Interest Rate: 2-5-year duration</td>
<td>2</td>
</tr>
<tr>
<td>Interest Rate: 5+ year duration</td>
<td>4</td>
</tr>
<tr>
<td>Other</td>
<td>15</td>
</tr>
</tbody>
</table>

2. The required initial margin amount would be calculated in the following steps:

i. Margin rate in the provided schedule would be multiplied by the gross notional size of the derivatives contract, and then this calculation would be repeated for each derivative contract. This amount may be referred to as the gross standardised initial margin.

ii. Gross initial margin amount is adjusted by the ratio of the net current replacement cost to gross current replacement (NGR).

This is expressed through the following formula:

\[
Net\ standardised\ Initial\ Margin = 0.4 \times Gross\ Initial\ Margin + 0.6 \times NGR \times Gross\ Initial\ Margin;
\]

where NGR is defined as the level of net replacement cost over the level of gross replacement cost for transactions subject to legally enforceable netting agreements.
5.7 What are capital requirements?

As stated in Article 11(4) of EMIR “financial counterparties shall hold an appropriate and proportionate amount of capital to manage the risk not covered by appropriate exchange of collateral”. This requirement is satisfied by imposing an additional requirement in the calculation of Capital Adequacy Ratio. This is the so called Credit Valuation Adjustment (CVA) risk introduced in Basel III framework and covered in Article 381-386 of CRR.

CVA risk is the risk of loss caused by changes in the credit spread of counterparty due to changes in its credit quality. The additional capital charge applies to OTC derivative transactions and certain SFTs entered into by credit institutions and investment firms with:

1. FCs that are not exempted and third country equivalents of them (including other authorised credit institutions, authorised investment firms, alternative investment funds (AIFs) managed by authorised or registered alternative investment fund managers (AIFMs), authorised insurance, assurance and reinsurance undertakings and authorised UCITS AIFMs).

2. NFC+s and third country equivalents of them given that these transactions are not centrally cleared through a CCP nor are intragroup transactions.

Exemptions:

1. Transactions cleared by CCP
2. Transactions with NFC-s
3. Intragroup transactions
4. Transactions with Out-of-Scope Entities as defined in Article 1(4) and 1(5) of EMIR
6 Appendix

Bank of International Settlements (BIS):
The Bank for International Settlements (BIS) is the world's oldest international financial organisation. The mission of the BIS is to serve central banks in their pursuit of monetary and financial stability, to foster international cooperation in those areas and to act as a bank for central banks.

Basel III:
"Basel III" is a comprehensive set of reform measures, developed by the Basel Committee on Banking Supervision, to strengthen the regulation, supervision and risk management of the banking sector.

Basel Committee on Banking Supervision (BCBS):
Committee on Banking Supervisory authorities framing international guidelines and standards. Its objective is to enhance understanding of key supervisory issues and improve the quality of banking supervision worldwide.

Clearing Broker (CB):
Clearing member at a CCP, which acts as an intermediary between buyers and sellers.

Central Counterparty (CCP):
As defined in Article 2(1) of EMIR, a 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.

Counterparties choose among all the CCPs depending on the asset class of the derivative to be cleared.

The list of CCPs that have been authorised (for European CCPs) or recognised (for third-country CCPs) and the classes of financial instruments covered by the CCP’s authorisation have been published by ESMA in accordance with Article 88(1) of EMIR and are found here.

In the EU there are 17 CCPs operating in several market segments, including equities, bonds, energy, commodities, repos, clearing cash instruments and both exchange-traded and OTC derivatives.

Commodity Exchange Act (CEA):
The Commodity Exchange Act (CEA) regulates the trading of commodity futures in the United States.

Common Equity Tier 1 (CET1):
Institutions' capital instruments, share premium, retained earnings, accumulated other comprehensive income, other reserves and funds for general banking risk.

Commodity Futures Trading Commission (CFTC):
The mission of the Commodity Futures Trading Commission (CFTC) is to foster open, transparent, competitive, and financially sound markets, to avoid systemic risk, and to protect the market users and their funds, consumers, and the public from fraud,
manipulation, and abusive practices related to derivatives and other products that are subject to the Commodity Exchange Act.

**CFTC Interim Compliant Identifier (CICI):**
The CFTC Interim Compliant Identifier or CICI is designed to be an identifier for all legal entities dealing in Over-the-Counter derivatives falling under CFTC jurisdiction.

**Clearing Member (CM):**
Clearing member at a CCP, which acts as an intermediary between buyers and sellers.

**Chicago Mercantile Exchange (CME):**
Financial Institution offering execution, clearing and trade repository reporting of ETD and OTC derivatives.

**Capital Requirements Directive IV (CRD IV):**
Basel III directive on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

**Capital Requirements Regulation (CRR):**
Basel III regulation on prudential requirements for credit institutions and investment firms.

**Credit Valuation Adjustment (CVA):**
An adjustment to the mid-market valuation of the portfolio of transactions with a counterparty. That adjustment reflects the current market value of the credit risk of the counterparty to the institution, but does not reflect the current market value of the credit risk of the institution to the counterparty.

**Derivatives Clearing Organisation (DCO):**
A derivatives clearing organization (DCO) is a clearing house, clearing association, clearing corporation, or similar entity that enables each party to an agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the DCO for the credit of the parties; arranges or provides, on a multilateral basis, for the settlement or netting of obligations; or otherwise provides clearing services or arrangements that mutualize or transfer credit risk among participants.

**Dodd-Frank Act (DFA):**
The Dodd–Frank Wall Street Reform and Consumer Protection Act aims to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

**Depository Trust & Clearing Corporation (DTCC):**
Global trade repository.

**Executing Broker (EB):**
Trading counterparty to a client of a Clearing Broker when clearing at a CCP.

**European Banking Authority (EBA):**
The European Banking Authority (EBA) is an independent EU Authority that works to ensure effective and consistent prudential regulation and supervision across the European banking
sector. Its overall objectives are to maintain financial stability in the EU and to safeguard the integrity, efficiency and orderly functioning of the banking sector.

**The European Commission (EC):**

The European Commission is the EU’s executive body. It represents the interests of the European Union as a whole (not the interests of individual countries).

**European Economic Area (EEA):**

Economic union comprising all EU countries together with Iceland, Liechtenstein and Norway.

**European Market Infrastructure Regulation (EMIR):**

Requires two-sided reporting to Trade Repositories, mandatory CCP clearing for some OTC derivatives, margins for non-centrally cleared OTC derivatives and risk-mitigation techniques and extra capital requirements for OTC derivatives trading entities.

**The European Parliament (EP):**

The Parliament acts as a co-legislator, sharing with the Council the power to adopt and amend legislative proposals and to decide on the EU budget. It also supervises the work of the Commission and other EU bodies and cooperates with national parliaments of EU countries to get their input.

**European System of Central Banks (ESCB):**

It comprises the European Central Bank (ECB) and the national central banks (NCBs) of all EU Member States.

**European Securities and Markets Authority (ESMA):**

ESMA is an independent EU Authority that contributes to safeguarding the stability of the European Union’s financial system by enhancing the protection of investors and promoting stable and orderly financial markets; ESMA is the author of detailed rules like EMIR and MiFID II.

**Exchange Traded Derivatives (ETD):**

Standardised derivative contracts traded on regulated exchanges and cleared CCPs.

**EU directive (EU directive):**

Form of EU regulation transposed to the national law of each member state.

**EU regulation (EU regulation):**

Form of EU regulation which enters into force immediately and cannot be transposed to national law.

**Financial counterparties (FCs):**

As defined in Article 2 (8) of EMIR, a financial counterparty means an investment firm authorised in accordance with Directive 2004/39/EC, a credit institution authorised in accordance with Directive 2006/48/EC, an insurance undertaking authorised in accordance with Directive 73/239/EEC, an assurance undertaking authorised in accordance with Directive 2002/83/EC, a reinsurance undertaking authorised in accordance with Directive 2005/68/EC, a UCITS and where relevant, its management company, authorised in
accordance with Directive 2009/65/EC, an institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC and an alternative investment fund managed by AIFMs authorised or registered in accordance with Directive 2011/61/EU.

Examples include banks, insurances, investment firms, UCITS, pension funds, some AIFs (some AIFs are considered as non-financial counterparties – ESMA’s Q&A).

Front loading:
The obligation to clear OTC derivative contracts entered into after a central counterparty (CCP) has been authorised under EMIR and before the date of application of the clearing obligation. Therefore, the frontloading requirement implies that contracts concluded on a bilateral basis following the authorisation of a CCP might become subject to the clearing obligation before their expiration date.

Financial Stability Board (FSB):
An international body that monitors and makes recommendations about the global financial system.

Group of Twenty (G20):
The Group of Twenty (G20) brings together the world’s major advanced and emerging economies, comprising the European Union (EU) and 19 country members.

Global LEI System (GLEIS):
The framework for identifying financial parties with a unique reference number (see LEI).

ICE Trade Vault Europe Ltd. (ICE TVEL):
European Trade Repository.

Initial Margin (IM):
Collateral to cover potential future exposure in case of the default of a counterparty.

Intragroup transaction:
As defined in Article 3 of EMIR, an intragroup transaction is an OTC derivative contract entered into with another counterparty which is part of the same group provided that both counterparties are included in the same consolidation on a full basis, and they are subject to an appropriate centralised risk evaluation, measurement and control procedures and that the counterparty is established in the Union or in a TCE nation.

International Organization of Securities Commissions (IOSCO):
The international body that brings together the world’s securities regulators and is recognized as the global standard setter for the securities sector.

International Swaps and Derivatives Association (ISDA):
ISDA’s pioneering work in developing the ISDA Master Agreement and a wide range of related documentation materials, and in ensuring the enforceability of their netting and collateral provisions, has helped to significantly reduce credit and legal risk.

Krajowy Depozyt Papierów Wartosciowych (KDPW):
Polish trade repository.
Liquidity Coverage Ratio (LCR):

Introduced in Basel III. The objective of the LCR is to promote the short-term resilience of the liquidity risk profile of banks. It does this by ensuring that banks have an adequate stock of unencumbered high-quality liquid assets (HQLA) that can be converted easily and immediately in private markets into cash to meet their liquidity needs for a 30 calendar day liquidity stress scenario.

LEI:

The abbreviation for Legal Entity Identifier is a unique code identifying the counterparty. Universal global counterparty identification code required for regulatory reporting and other regulatory purposes (e.g. for EMIR Trade Repository reporting).

Markets in Financial Instruments Directive II (MiFID II):

On 20 October 2011, the European Commission adopted a legislative proposal for the revision of MiFID which took the form of a revised Directive and a new Regulation. Building on the rules already in place, these new rules are designed to take into account developments in the trading environment since the implementation of MiFID in 2007 and, in light of the financial crisis, to improve the functioning of financial markets making them more efficient, resilient and transparent.

Markets in Financial Instruments Regulation (MiFIR):

The regulation part of the revision of the MiFID directive, e.g. broadening the scope into non-equities.

Multilateral Trading Facility (MTF):

A multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules.

Non-financial counterparties (NFCs):

As defined in Article 2 (9) of EMIR, a non-financial counterparty means an undertaking established in the Union, other than a central counterparty or a financial counterparty. There are two distinct classes of NFCs:

1. NFC+: non-financial counterparties exceeding EMIR clearing threshold.

The EMIR clearing threshold values for NFC+s are set in accordance to Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP Article 11:
<table>
<thead>
<tr>
<th>Asset Class</th>
<th>Clearing Threshold</th>
</tr>
</thead>
<tbody>
<tr>
<td>Credit derivative</td>
<td>EUR 1 billion in gross notional value</td>
</tr>
<tr>
<td>OTC Equity derivative</td>
<td>EUR 1 billion in gross notional value</td>
</tr>
<tr>
<td>OTC Interest rate derivative</td>
<td>EUR 3 billion in gross notional value</td>
</tr>
<tr>
<td>OTC Foreign Exchange derivative</td>
<td>EUR 3 billion in gross notional value</td>
</tr>
<tr>
<td>OTC Commodity derivative and all other OTC derivatives</td>
<td>EUR 3 billion in gross notional value</td>
</tr>
</tbody>
</table>

Important points to consider for the NFC+s:

- Thresholds are calculated on group level
- Only speculative trades are considered
- Only fully consolidated entities are counted towards the clearing threshold
- Breach of threshold in one product class entails breach in all classes
- Netting per counterparty/contract type allowed

2. NFC+: non-financial counterparties that do not exceed clearing threshold.

Notional or nominal amount:

The reference amount from which contractual payments are determined in derivatives markets.

Net Stable Funding Ratio (NSFR):

Introduced in Basel III framework. The objective of NSFR to promote a more resilient banking sector. The NSFR will require banks to maintain a stable funding profile in relation to the composition of their assets and off-balance sheet activities. The NSFR limits overreliance on short-term wholesale funding, encourages better assessment of funding risk across all on- and off-balance sheet items, and promotes funding stability.

OTC Derivative:

Abbreviation of Over-the-counter derivative. As defined in Article 2 (7) of EMIR, is a derivative contract the execution of which does not take place on a regulated market or on a third-country market considered as equivalent to a regulated market.

Thus, derivative contracts traded on MTFs, as well as derivative contracts that are not executed on a regulated market and are not governed by the rules of an exchange at the point of execution, even if after execution they are exchanged for contracts traded in a regulated market, are OTC derivatives in the context of EMIR.
Organised Trading Facility (OTF):
A multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system.

Proprietary trading (Prop trading):
Proprietary trading occurs when a financial firm trades financial instruments with its own money and not on behalf of the customer to make a profit for itself.

Qualifying CCP (QCCP):
An entity that is licensed to operate as a CCP (including a license granted by way of confirming an exemption), and is permitted by the appropriate regulator/overseer to operate as such with respect to the products offered. This is subject to the provision that the CCP is based and prudentially supervised in a jurisdiction where the relevant regulator/overseer has established, and publicly indicated, that it applies to the CCP on an ongoing basis, domestic rules and regulations that are consistent with the CPSS-IOSCO Principles for Financial Market Infrastructures.

Regis-TR (Regis-TR):
European trade repository.

Regulatory Technical Standards (RTS):
Detailed regulatory rules in the form of regulatory standards adopted by the European Commission.

Standard Initial Margin Model (SIMM):
Standardized model for bilateral Initial margin requirements currently being developed by an ISDA working group.

Third Country Entities (TCEs)
Counterparties established in the European Economic Area (EEA), or with direct, substantial and foreseeable effect within the EEA.

The Council of the European Union (The Council):
The European Council defines the EU's overall political direction and priorities. It is not one of the EU's legislating institutions, so does not negotiate or adopt EU laws.

Trade Repository:
As defined in Article 2(2) of EMIR, a Trade Repository is a legal person that centrally collects and maintains records of derivatives.

ESMA approved the following 6 Trade Repositories under EMIR:
## Trade Repository

<table>
<thead>
<tr>
<th>Trade Repository</th>
<th>Asset Classes</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>DTCC Derivatives Repository Ltd (DDRL)</td>
<td>All asset classes</td>
<td>14/11/2013</td>
</tr>
<tr>
<td>Krajowy Depozyt Papierow Wartosciowych S.A. (KDPW)</td>
<td>All asset classes</td>
<td>14/11/2013</td>
</tr>
<tr>
<td>Regis- TR S.A.</td>
<td>All asset classes</td>
<td>14/11/2013</td>
</tr>
<tr>
<td>UnaVista Limited</td>
<td>All asset classes</td>
<td>14/11/2013</td>
</tr>
<tr>
<td>CME Trade Repository Ltd.</td>
<td>All asset classes</td>
<td>05/12/2013</td>
</tr>
<tr>
<td>ICE Trade Vault Europe Ltd. (ICE TVEL)</td>
<td>All asset classes</td>
<td>04/06/2015</td>
</tr>
</tbody>
</table>

The list can also be accessed in: [https://www.esma.europa.eu/supervision/trade-repositories/list-registered-trade-repositories](https://www.esma.europa.eu/supervision/trade-repositories/list-registered-trade-repositories).

**Unavista (Unavista):**

European trade repository.

**Unique Product Identifier (UPI):**

It is used to uniquely identify a product, and has sufficient specificity to be used for reporting to global financial regulators. The classification of products is provided via the ISDA OTC taxonomies.

**Unique Swap Identifier (USI):**

It is used to uniquely identify a trade or contract for regulatory reporting.

**Unique Trade Identifier (UTI):**

It is used to uniquely identify a trade or contract for regulatory reporting.

**Variation Margin (VM):**

Collateral to cover daily mark to market losses (or gains).

**“Where available by electronic means”:**

Electronic confirmation may be available to the market (e.g. confirmation platforms) but not to a specific counterparty. If the counterparty is able to justify that electronic confirmation is not available to it then confirmation may be performed by fax, paper, or manually processed emails.
Clearing and Margin Requirements

- **21 June**: Mandatory clearing for C1 IRS of G4
- **IM req. if AMEANA > EUR 3trln.**
- **21 Dec**: Mandatory clearing for C2 IRS of G4

- **21 Feb**: Mandatory clearing for C1 IRS of NOK/PLN/SEK and C1 CDS
- **VM req.**

- **3 March**: Mandatory clearing for C3 IRS of G4
- "ESMA proposed to replace the date"

- **21 June**: Mandatory clearing for C2 IRS of NOK/PLN/SEK and C2 CDS
- **IM req. if AMEANA > EUR 2.25trln.**

- **09 Feb**: Mandatory clearing for C1 IRS of NOK/PLN/SEK and C1 CDS

- **09 May**: Mandatory clearing for C4 IRS of NOK/PLN/SEK

- **09 Jul**: Mandatory clearing for C4 IRS of CDS
- **IM req. if AMEANA > EUR 0.75trln.**

- **01 Sept**: IM req. if AMEANA < EUR 8bln.

AMEANA: Group aggregated month-end average notional amount of non-centrally cleared derivatives for June, July and August