

Meeting Name:	MINUTES OF EMIR REVIEW INDUSTRY ROUNDTABLE WITH UK REGULATORS
Date & Time:	24 June 2015, 10am to midday
Location	Bank of England, Conference Centre (Bartholomew Lane)
Attendees:	<p>Perrine Herrenschmidt – Bank of England (Chair)</p> <p>Paul Bedford – Bank of England Paul Brione – Bank of England Darren Massey – Bank of England Ben Mitchell – Bank of England</p> <p>Victoria Hinton – FCA Sean O’Grady – FCA Heather Pilley – FCA Tom Springbett – FCA</p> <p>Roland Phillips – HM Treasury Kavi Unadkat – HM Treasury</p> <p>Paul Avanzato – JPMorgan Jenny Cosco – Goldman Sachs Mark Finney – Citi Mark Frith – HSBC Caroline Kostka - Credit Suisse Joe McHale – Deutsche Bank Christiana Norman – BAML Demetria O’Sullivan - ABNAMro Clearing Andrew Payne – Morgan Stanley Gary Saunders – Barclays</p> <p>Simon Puleston Jones – FIA Europe Matt Cameron – ISDA Andrew Harvey – AFME Sam Mannion – British Bankers Association</p>

Agenda	
1.	Introductory remarks
2.	Scope of EMIR Requirements
3.	Clearing
4.	Reporting
5.	CCPs

Summary of INDUSTRY feedback

Scope of EMIR Requirements	
	Equivalence: Equivalence assessments remain outstanding under Articles 2(7), 13 and 25. Risk of liquidity fragmentation. Lack of equivalence assessment under Art 19(6) MiFID means that all futures traded in third countries are treated as OTC derivatives under Art 2(7) EMIR. More transparency on the progress of equivalence assessments is required. Article 13 equivalence should be capable of being granted on an EMIR Article-by-Article basis. The link between Article 25 and Article 13 equivalence requires clarification. More transitional arrangements to address delays in equivalence assessments would be useful. If a trade is concluded between 2 EU counterparties, but at least one is also subject to third country legislation, they should be permitted to comply with such third country legislation in lieu of EMIR.
	Counterparty categorisation: Firms are finding it challenging to categorise non-EU counterparties.
	Counterparties in scope: Should all NFCs be subject to all obligations under EMIR? Disproportionate impact on NFC- in particular: are they sufficiently systemically important to justify the cost? Non-EU NFC- should be exempt from the EMIR margin requirements for non-cleared trades.
	Definition of “OTC derivative”: Not only should trades executed on Regulated Markets be excluded, so should trades executed on MTFs and OTFs.
	Indirect clearing: Leapfrog payment susceptible to successful challenge by the insolvency official of the direct client. Primacy of EU principle does not enable EMIR to override insolvency laws of third countries.
Clearing	
	Portfolio compression: trades resulting from portfolio compression by certified third party vendors should be exempt from mandatory clearing obligation.
	Suspension: authorities must be given the power to suspend specific derivatives from the scope of mandatory clearing.
	Frontloading: frontloading should not apply to future contracts or currencies brought into scope of mandatory clearing.
	Segregation: Article 39(5) should be amended to specify (i) <i>by when</i> a client has to confirm their choice of segregation model in writing and (ii) if they don't, what the default position should be (net omnibus).
	1 day gross vs 2 day net: The issue is not that simple – must also consider the numerous other inputs that go into the total margin call. FIA Global will in due course publish a paper on the margining of cleared derivatives (target audience is CPMI-IOSCO: it is <i>not</i> designed to address US recognition under EMIR).
	Regulatory Capital and leverage ratio: CRDIV has a very significant impact on access to clearing. The leverage ratio should be amended so that it recognises the exposure-reducing effect of segregated margin.
Reporting	
	Exempt ETD from EMIR reporting (exchanges and CCPs already have the data that regulators need), failing which adopt single sided <i>position</i> reporting. For all other asset classes, adopt single sided <i>transaction</i> reporting. Uptake of delegated reporting services by the buy-side is a mixed bag. A single EU reporting regulation would be preferable to today's disjointed reporting regimes across numerous regulations.
	Hierarchy will be required to determine whom the reporting party should be.
CCPs	
	All CCPs (not just those authorised as credit institutions) should have access to central bank liquidity, in ordinary times as well as stressed situations. Such access should not be a <i>requirement</i> for CCPs. More transparency is needed regarding the central bank liquidity facilities on offer to CCPs; which facilities are used by which CCPs and the principle terms of such facilities. Interaction between BRRD and EU CCP Recovery and Resolution regime needs clarification. EU CCP Recovery and Resolution regime should be incorporated into EMIR itself. Risk committees need to be more of a <i>determinative</i> body.

Summary of UK REGULATOR feedback

Scope of EMIR Requirements	
	Equivalence: These issues are on the EC's radar. EC more open to granting Art 13 equivalence for counterparties located outside of EU; politically hard to swallow where both counterparties are located in EU. Note that Art 13 equivalence timetable runs for 3 years. Art 13 equivalence may not be granted for all applicable third countries before the clearing obligation goes live. There is no political blockage on the EU side, but work has not yet started on the Art 13 equivalence assessments. Level 1 and 2 is flexible enough to enable Art 13 recognition on an EMIR Article-by-Article basis. A more prescriptive approach to Art 13 recognition may not be desirable, for regulators or the industry.
	Counterparties in scope: Small Financial Counterparties are subject to the same requirements as large Financial Counterparties. The "stricter rule" approach applies to cross-border trades, where clearing obligation applies in one jurisdiction but not another.
	Definition of "OTC derivative": FCA queried whether the scope of Art 2(7) (definition of "OTC derivative") should be expanded, so as to exclude trades executed on an MTF or OTF.
	Indirect clearing: Noted the industry's concerns.
Clearing	
	Extent of potential changes to EMIR resulting from this review: EC has not said that it will not consider changes to Level 1 text. Equally, that does not mean they will do so. Noted that EC Commissioner Hill has expressed a keen desire under Capital Markets Union to reduce the regulatory burden.
	Segregation: FCA definitely see the case for providing the requested clarification to Article 39(5) (client confirming their choice of segregation model in writing).
	1 day gross vs 2 day net: FCA queried whether (i) 1 day gross (Dodd-Frank) or 2 day net (EMIR) results in more margin and (ii) clearing members in Europe would object to moving to a gross model.
	Excess collateral: FCA noted that if clearing members call for more collateral from their clients than the clearing member is called for by the CCP, it can reinvest such collateral in its business (if it is not holding such excess pursuant to the UK's client money regime, etc.).
	FIA Global paper on margin: FCA encouraged FIA Europe to ensure this paper discusses the impact of regulatory capital and leverage ratio requirements on direct clients, as well as on clearing members (CRR Article 305 etc.).
Reporting	
	Exemption ETD from the reporting obligation: How would regulators be able to identify the end-users who were entering into the ETD transactions? Exchanges / CCPs do not typically hold such data.
	Dual-sided reporting: Provides a data quality-check. Bilateral input into the trade reporting may not have to occur at the outset of the reporting process. Queried if trade affirmation platform data could be used for reporting.
	Inter-TR reconciliation: FCA acknowledge UTI is the big challenge here.
	Market abuse monitoring: Some National Competent Authorities use EMIR reporting data for this purpose. EMIR reporting data is the first port of call for regulators.
	Reporting in general: IOSCO engaged in data harmonisation. Single EU reporting regime would be a long-term project, but FCA supportive in principle.
CCPs	
	BoE not aware of any appetite in Brussels to incorporate CCP Recovery and Resolution into EMIR. BoE interested in having follow up discussions with trade associations on access to central bank liquidity. Industry must clarify the specific changes for which it is asking in EMIR with respect to risk committees.