

A close-up photograph of an hourglass with blue sand, set against a solid blue background. The hourglass is positioned vertically, with the top bulb containing a small amount of sand. The sand is falling through the narrow neck into the bottom bulb. The lighting is soft, highlighting the texture of the sand and the glass.

This webinar will begin shortly.

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Presenters

Host:

Corinna Schempp, Head Of European Policy & Regulation, FIA

Speakers:

Gilles Herve, Policy Officer, European Commission (DG-FISMA)

Susanna Rosmarus, Policy Officer, European Commission (DG FISMA)

Anna Carrier, Legal Consultant, Norton Rose Fulbright

Emma Dwyer, Partner, Fieldfisher

Presentations prepared by  **NORTON ROSE FULBRIGHT** and **fieldfisher**



EMIR 3.0

Introductory remarks by Gilles Herve, DG-FISMA
Supported by Susanna Rosmarus, DG-FISMA



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EMIR 3.0



Beyond AAR – focus on other key elements of reform

Presented by Anna Carrier

Intragroup transactions

- **Amendments to Article 3** (*Intragroup transactions*) definition of intragroup transaction, both for NFCs and FCs:
 - For **cross-border intragroup transactions**: removal of equivalence requirement
 - Instead: cross-border intragroup exemptions will **not be possible** if a counterparty is located in either of the following:
 - Third-country that is a high-risk third country identified in accordance with AMLR*; or
 - Third-country is listed in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes**
 - Third-country identified by the EC in a delegated act ("*due to identified issues in the legal, supervisory and enforcement arrangements*")

Afghanistan	Gibraltar	Myanmar	South Africa	Uganda
Barbados	Haiti	Nigeria	South Sudan	United Arab Emirates
Burkina Faso	Jamaica	Panama * **	Syria	Vanuatu * **
Cameroon	Mali	Philippines	Tanzania	Vietnam
DR of the Congo	Mozambique	Senegal	Trinidad and Tobago * **	Yemen
American Samoa **	Fiji **	Palau **	Russia **	US Virgin Islands **
Anguilla **	Antigua and Barbuda **	Guam **	Samoa **	



Clearing threshold for NFCs

- **Amendments to article 10** (*Non-financial counterparties*):
 - NFC may calculate every 12 months its **uncleared positions** (instead of its aggregate month-end average position)
 - Calculation to cover **all OTC derivative contracts** not cleared by through an authorised EU CCP or a recognised third-country CCP, which are not objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or the group to which that counterparty belongs
- ESMA to develop draft RTS specifying (within 12 months from EMIR 3.0 entry into force):
 - The criteria for establishing when OTC contracts are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity
 - The values of the clearing thresholds for the uncleared positions
 - The mechanism triggering a review of the values of the clearing thresholds, following significant price fluctuations in the underlying class of OTC derivatives or a significant increase of financial stability risk

Post-trade risk reduction services

- **Introduction of new Article 4b** (*Post-trade risk reduction services*):
 - OTC derivative contracts that are initiated and concluded in a result of an **eligible** post-trade risk reduction (**PTRR**) exercise (**PTRR transaction**) to be exempted from the clearing obligation
 - A PTRR exercise **eligible** for the clearing obligation exemption must:
 - Be performed by an authorised investment firm that is independent of the counterparties to the OTC derivative contracts included in the PTRR exercise
 - Achieve a reduction in risk in each of the portfolios submitted
 - Be accepted in full (no cherry-picking regarding which trades to execute)
 - Be open only to the entities that submitted a portfolio to the PTRR exercise
 - Be market risk neutral
 - Not contribute to price formation
 - Take the form of a compression, rebalancing or optimisation, or a combination thereof
 - Be executed on a bilateral or multilateral basis
 - PTRR eligibility conditions for clearing obligation exemption apply to for both: (a) the entity performing the PTRR exercise (PTRR service provider); and (b) each participant in the PTRR exercise
 - Additional requirements applicable to PTRR service provider

ESMA to develop a draft RTS (within 12 months from EMIR 3.0 entry into force) to further specify the eligibility conditions and other characteristics of the PTRR exercise:

- *What constitutes market neutrality*
- *The required level of risk reduction*
- *The possible inclusion of mixed portfolios (cleared and uncleared transactions)*
- *The requirements re. the management of the exercise*
- *The requirements for different types of PTRR services*
- *Monitoring of the exemptions*
- *The criteria to assess whether the*



Relations with third countries

- Amendments to Article 25 (*Recognition of a third-country CCP*)
 - Possibility for the EC to adopt an equivalence decision **irrespective of whether the legal framework of a third-country provides for an effective equivalent system for the recognition of CCPs** authorised under third-country legal regimes → under condition that it is in the interest of the EU and considering the potential risks to the financial stability of the EU due to the expected participation of EU clearing members and trading venues in CCPs established in a third-country
 - Amendments to the provisions on ESMA cooperation arrangements with the relevant competent authorities of third countries
- Amendments to Article 25a (*Comparable compliance*)
 - Specifications of conditions under which ESMA can grant/withdraw comparable compliance for Tier 2 CCPs
- Amendments to Article 25b (*Ongoing compliance with the conditions for recognition*)
- Amendments to Article 25f (*Request for information*)
- Amendments to Article 25o (*Amendments to Annexes III and IV*)
- Amendments to Article 25p (*Withdrawal of recognition*)

Requirements for CCPs

Number of amendments to various provisions on requirements for CCPs, including (non-exhaustive):

- **New Article 15a** (*Exemption from authorisation of an extension of clearing services or activities*)
 - Exemption for an authorisation requirement for an extension of CCP's business when the envisaged additional service or activity would not have a material impact on the CCP's risk profile
- **Amendments to Article 37** (*Participation requirements*)
 - Possibility for CCPs to **accept NFCs as clearing members**, subject to conditions
 - NFC being a clearing member can **only provide clearing services to NFCs belonging to the same group** and may only keep accounts at the CCP for assets and positions held for its own account or the account of those NFCs
- **Amendments to Article 46** (*Collateral requirements*)
 - CCPs can only accept public guarantees, public bank guarantees or commercial bank guarantees to cover their initial and ongoing exposures to its **clearing members that are NFCs** or to clients of clearing members, provided that **those clients are NFCs**
 - Permission for CCPs to **accept public guarantees**, including **public bank guarantees** or **commercial bank guarantees**, provided that they are unconditionally available upon request within the liquidation period
 - Obligation for CCPs to set in their operating rules the **minimum acceptable level of collateralisation** for the guarantees it accepts and it may specify that it can accept fully uncollateralised bank guarantees
 - **Acceptance of public bank guarantees or commercial bank guarantees**, provided that they are unconditionally available upon request within the liquidation period

ESMA to develop draft RTS specifying, among other issues:

- *The elements to be established when a CCP assesses the ability of NFCs acting as clearing members to meet margin requirements and default fund contributions*
- *The type of collateral that can be considered as highly liquid, such as cash, gold, government and high-quality corporate bonds and covered bonds*
- *The haircuts*
- *The conditions under which public guarantees, public bank guarantees or commercial bank guarantees may be accepted as collateral*



Thank you for your attention!



Anna Carrier

Legal Consultant

E: anna.carrier@nortonrosefulbright.com

T: +32 2 237 61 46



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AAR/Disclosure/Transparency

Emma Dwyer
Partner
Fieldfisher LLP

Active Account Requirement

- **New Article 7a**
 - Designed to incentivise clearing of certain Euro and Polish zloty derivatives in the EU and reduce excessive exposures to clearing services of substantially systemic important 3rd country CCPs
- **Who does it apply to?**
 - FC+s and NFC+s who are subject to the clearing obligation AND who exceed the clearing threshold (individually or in aggregate) for the active account in-scope transactions
 - Determination to include all active account in-scope transactions of the entity and other entities in its group except intragroup transactions if the group is subject to consolidated supervision in the EU
- **What does it apply to?**
 - Active account in-scope transactions
 - Interest rate derivatives denominated in euro and Polish zloty
 - Short-term interest rate derivatives denominated in euro (STIRS)
 - EC (following ESMA recommendation) empowered to amend in-scope transactions
- **Timing**
 - AAR apply from entry into force subject to timing in the Level 1 text
 - Consultation paper published on 20 November 2024, closes 27 January 2025



Active Account Requirement (continued)

- **What must an entity do if AAR applies to it?**
 - Notify ESMA and its NCA
 - Establish an Active Account for all categories of in-scope transactions within 6 months of becoming subject to the obligation
 - Clear a representative number of transactions in the Active Account on an annual average basis
- **What are the requirements for an Active Account?**
 - Must be permanently functional with legal documentation, IT connectivity and internal processes being in place
 - Counterparty must have systems and resources available to use the account for large volumes of in-scope transactions and to receive a large flow of transactions from a substantially systemically important CCP
 - All new in-scope transactions capable of being cleared in the account at all times
 - Counterparty must report information necessary to assess compliance to its NCA and ESMA every 6 months and stress-test requirements once a year
 - RTS to further specify these requirements must be submitted by ESMA by 6 months following entry into force of EMIR 3.0

Active Account Requirement (continued)

- **What is Representativeness?**

- Specified by ESMA
- Assessed according to the following criteria:
 - Classes of derivative contracts (up to 3)
 - Interpretation [3 in total/3 per bucket of in-scope transactions/something else]
 - Maturity ranges (up to 4)
 - Trade sizes (up to 3)
- Up to 5 of the most relevant subcategories per class of derivative then selected to be represented in the Active Account
- Relevant subcategories will be those containing the highest number of trades during the Reference Period

- **Reference Period**

- Specified by ESMA
- Not less than 6 months for counterparties with a notional clearing volume outstanding in in-scope transactions of less than EUR 100 billion
- Not less than 1 month for counterparties with a notional clearing volume outstanding in in-scope transactions of more than EUR 100 billion
- Calculation not to include client clearing activity

- **Trading Requirement**

- Requirement to clear on an annual average basis at least 5 trades in each of the most relevant subcategories per reference period

Active Account Requirement - Exemptions

- 85% of in-scope transactions at an EU CCP
 - Effectively exempt from AAR
- Notional amount outstanding of in-scope transactions of less than EUR 6 billion
 - Exempt from requirement to clear a representative number of trades in the Active Account
- Half total trades for preceding 12 months
 - If AAR exceeds half total trades of that counterparty in the preceding 12 months, trading requirement fulfilled by clearing at least 1 trade in each of the most relevant subcategories per Reference Period
- Client Clearing Services

Clearing Member Obligations - Disclosure

- **Information on the provision of clearing services (Article 7c)**

- CMs and clients that provide clearing services at both authorised and recognised CCPs to inform clients of possibility to clear at EU CCP when they establish a client clearing relationship and on a quarterly basis
- Disclose fees to be charged for provision of clearing services including fees that pass on costs and other associated costs
- ESMA to submit RTS on the fee disclosure withing 12 months of entry into force of EMIR 3.0

- **Information on clearing activity in recognised CCPs (Article 7d)**

- CMs and clients that clear through a third country CCP shall report scope of the clearing activity on an annual basis
- Report to NCA and NCA report to ESMA and new Joint Monitoring Mechanism
- ESMA to submit RTS and ITS on content and format of information by 12 months of entry into force of EMIR 3.0

Clearing Member Obligations - Transparency

- **Margin (Article 38(8))**

- CMs and clients providing clearing services shall provide clients with information relating to margin involved in clearing
- Includes a simulation of the margin requirements clients might be subject to under different scenarios relating to both margins required by the relevant CCP and any additional margins required by CM or client providing the clearing service
- CCPs to provide CMs upon request with the information CMs need to comply and for transmission to their clients

- **Losses on Default Management (Article 38(9))**

- CMs and clients providing clearing services shall inform existing and potential clients of the potential losses and costs they may bear under default management procedures.
 - Information to be sufficiently detailed to ensure clients understand worst-case scenario if CCP takes recovery measures
- RTS to be submitted by ESMA by 12 months of entry into force of EMIR 3.0



Thank you for your attention!



Emma Dwyer

Partner

Emma.Dwyer@fieldfisher.com

tel:+44 330 460 6713



Q&A Session

Please submit your questions via the chat function



Thank you!

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- **Gilles Herve**, Policy Officer, European Commission (DG-FISMA)
- **Anna Carrier**, Legal Consultant, Norton Rose Fulbright
- **Emma Dwyer**, Partner, Fieldfisher
- **Susanna Rosmarus**, Policy Officer, European Commission (DG FISMA)



Thank you for joining us today!

Upcoming Webinar:



Self-Reporting in the Age of Whistleblowers
10:00 – 11:00 AM ET

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The logo consists of the letters 'F', 'I', and 'A' in a bold, sans-serif font. The 'F' is dark grey. The 'I' is dark grey. The 'A' is formed by overlapping shapes: a light green triangle on the left, a darker green triangle on the right, and a blue triangle on the right side of the 'A'.