

The European Market Infrastructure Regulation (EMIR) was introduced under a G20 commitment to improve transparency and mitigate the risks associated with over-the-counter (OTC) derivatives. EMIR seeks to achieve this by imposing requirements on entities to report on the details of their derivatives contracts; to clear certain transactions through a recognised central counterparty (CCP); and to implement risk mitigation standards for transactions that are not required to be cleared through a CCP.

Who is this relevant for?

Counterparties to derivatives transactions with a nexus to the EU (e.g. where one or more counterparties to the contract are established in the EU, or the contract would impact the EU market) will be subject to the EMIR requirements to some extent. MiFID investment firms, alternative investment funds (AIFs) managed by an AIFMD-authorized manager and UCITS funds are all recognised as financial counterparties (FCs) under EMIR (in addition to banks, pension funds and insurers). And when such entities enter into derivatives contracts with other FCs, or corporate entities (non-financial counterparties (NFC)) with OTC derivatives trading above set thresholds in the legislation (known as NFC+), the transaction will be subject to either mandatory clearing or heightened risk mitigation standards, such as mandatory exchange of margin. Contracts involving corporate entities trading below the legislative thresholds (known as NFC-) will not be subject to mandatory clearing but will still be subject to a number of risk mitigation standards.

The clearing and risk mitigation obligations will also apply to non-EU entities that would be subject to the obligations if they were established in the EU, for contracts that would impact EU markets or to prevent evasion of the EMIR requirements.

EMIR also requires that counterparties report all OTC and exchange-traded derivatives transactions involving an EU-established entity to a trade repository. Where the other party to the transaction is a non-EU entity, only the EU entity is obliged to report the transactions, although they may require data from the other party to meet the obligation.

What does it cover?

Key aspects of the regime for which EMIR introduces harmonised EU requirements include:

- **mandatory central clearing** of eligible OTC derivative contracts involving FCs and NFC+s (and eligible non-EU entities), including standardised classes of OTC derivatives already cleared by CCPs (including interest rate swaps and credit default swaps) and classes of derivatives listed on [ESMA's public register](#);
- implementing **risk mitigation standards** for OTC derivatives not cleared through a CCP, including timely confirmation of contract terms, implementing dispute resolution processes, and conducting portfolio reconciliation and compression. In addition, FCs and NFC+s must conduct daily mark-to-market valuations of outstanding contracts, and exchange of initial and variation margin;
- **reporting by both counterparties** of all OTC and exchange-traded derivatives contracts concluded, modified or terminated to a recognised trade repository on a T+1 basis; and
- the **regulation of CCPs and trade repositories**, and the regime for the recognition of non-EU entities to provide these services.

Important future dates

EMIR entered into force on 16 August 2012, however, implementation has been staggered according to when the necessary technical standards take effect. Firms have had to comply with reporting requirements since February 2014. The clearing obligations will apply on 21 December 2016 for in-scope AIFs, MiFID investment firms and non-EU firms with an aggregate month-end average of outstanding OTC derivatives > €8bn. And for firms falling below that threshold, mandatory clearing will apply on 21 July 2017. All firms will need to comply with variation margin requirements for non-centrally cleared transactions from 1 March 2017 (although this may be earlier for the largest firms, depending on the timing of the rules being published). The initial margin requirements will be phased in from early 2017 over a three-year period.

A review of EMIR was scheduled to take place during 2015, which is likely to continue over 2016 and 2017.

Where can I find more information?

Please contact AIMA's [markets regulation team](#) for more detail on any aspect of the new rules.