EMIR, UK EMIR and DODD-FRANK

Frequently Asked Questions

Updated 25 May 2021

This FAQs document relates to:

- *the European Market Infrastructure Regulation or **"EMIR"**, Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended by Regulation (EU) 2019/834;*
- *the UK version of EMIR being part of UK law by virtue of the European Union Withdrawal Act 2018 **(UK EMIR)**; and*
- *the **"Dodd-Frank Guidelines"** being the Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, published by the U.S. Commodity Futures Trading Commission (the **"CFTC"**) on July 26, 2013, and any updates thereto.*

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

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- *in respect of EMIR, at the European Securities and Markets Authority's site; see https://www.esma.europa.eu/regulation/post-trading*
- *in respect of UK EMIR, see https://www.fca.org.uk/markets/emir*
- *in respect of the Dodd-Frank Guidelines, at the CFTC site; see http://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm*

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

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EMIR QUESTIONS AND ANSWERS

(updated 25 May 2021)

Q1. What is the background to EMIR?

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

EMIR was recently reviewed and a new Regulation, known as the EMIR Refit Regulation, entered into force on 17 June 2019 directly amending certain provisions of EMIR.

Q2. Who does EMIR apply to?

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

Q3. What does EMIR require?

The main requirements of EMIR are aimed at:

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

Certain other EMIR requirements apply only to counterparties who are categorised as FCs or NFC+s under EMIR (see Q6 below). These include the obligation to clear certain OTC derivatives contracts through certain central counterparties (**"CCPs"**), the requirement to mark transactions to market and the requirement to exchange a mandatory amount of collateral (see Q20 and Q21 below).

Q4. What products does EMIR apply to?

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

Q5. When will the EMIR requirements come into force?

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

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

The categories of counterparties for the purposes of EMIR are:

- Financial Counterparties (**"FCs"**): AIB is a FC. FCs include the following entity types:
  - Credit institution authorised in accordance with Directive 2006/48/EC.
  - Investment Firm in accordance with Directive 2014/65/EU.
  - Insurance undertaking or reinsurance undertaking authorised in accordance with Directive 2009/138/EC of the European Parliament and of the Council.
  - Alternative investment fund as defined in article 4(1)(a) of Directive 2011/61/EU, which is either established in the Union or managed by AIFMs authorised or registered in accordance with Directive 2011/61/EU unless that AIF is set up exclusively for the purpose of serving one or more employee share purchase plans, or unless that AIF is a securitisation special purpose entity.
  - Institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC.
  - UCITS and its management company, authorised in accordance with Directive 2009/65/EC unless that UCITS is set up exclusively for the purpose of serving one or more employee share purchase plan.

- Central securities depository authorised in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council.
- Non-Financial Counterparties (**“NFCs”**): NFCs are undertakings which are established in the EU and which are not classified as FCs. There are two categories of NFCs, namely, non-financial counterparties whose trading volumes put them above the EMIR clearing threshold (**“NFC+”**), and non-financial counterparties whose trading volumes are small enough to fall below the clearing threshold (**“NFC–”**). (See Q7 and Q8 below for further detail).

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

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

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

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

The clearing threshold varies according to the class of OTC derivative contract and is calculated based on the total gross notional amounts of derivatives entered into by a NFC, as set out in the table above. Every 12 months, a NFC must calculate its aggregate month-end average position for the previous 12 months. If an NFC passes one of these thresholds or where an NFC does not calculate its positions –

- it must immediately notify ESMA and its national competent authority (in Ireland, the Irish Central Bank) and, where relevant, indicate the period used for the calculation.
- Establish clearing arrangements within four months of the notification for those asset classes in respect of which the result of the calculation exceeds the clearing thresholds or, where the NFC has not calculated its position, that pertain to any class of OTC derivatives that is subject to the clearing obligation.

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

If an NFC exceeds a clearing threshold, it will only be subject to the clearing obligation in respect of the asset class in which it has exceeded the clearing threshold. However, it will be an NFC+ for the purposes of the other EMIR obligations (for example, the obligation to collateralise non-cleared OTC derivatives) in respect of all asset classes (not just the asset class in which it has exceeded the clearing threshold).

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

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

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

Q9. What are the Recordkeeping obligations under EMIR?

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

Q10. What is the Reporting obligation?

The EMIR Refit Regulation introduced changes to the reporting obligation which took effect from 18 June 2020. Under EMIR, all counterparties were required to report the details of any derivatives contract (whether OTC or exchange traded) to a registered or recognised trade repository. Reporting remained the legal obligation of both counterparties to the transaction, whether they have delegated it to another party or not.

Under the EMIR Refit Regulation, mandatory trade reporting applies in certain cases. Where an OTC derivatives transaction is entered into between an FC, such as AIB, and a client that is an NFC which is below the relevant clearing threshold for all asset classes (NFC -), AIB is solely responsible, and legally liable, for reporting on behalf of itself and its NFC- client, and for ensuring the correctness of the reporting details. However, the NFC- client must provide AIB with the information that it needs for reporting purposes that AIB cannot reasonably be expected to possess. The NFC- client is also responsible for ensuring that the information it provides to the FC is correct. This is sometimes referred to as the EMIR mandatory trade reporting regime.

Where the EMIR mandatory trade reporting regime does not apply, both parties to a relevant transaction are required to report details of those transactions to a trade repository. However you can delegate Reporting to a third party including your counterparty (see Q11 below).

What are the Timelines for Reporting?

Impacted derivatives contracts must be reported no later than the working day following the conclusion, modification or termination of the contract.

Q11. EMIR mandatory trade reporting does not apply. Can I still delegate Reporting?

Where EMIR mandatory trade reporting does not apply, you can delegate reporting to a third party including your counterparty to the trade. However, in such cases, it remains your legal obligation to report notwithstanding delegation.

Q12. Reporting appears complex, how can AIB help?

Where EMIR mandatory trade reporting applies, AIB will report transaction details on your behalf to a trade repository in accordance with the requirements of the EMIR Refit Regulation. Where EMIR mandatory trade reporting applies but you already have reporting capabilities and wish to continue reporting transactions to a trade repository yourself, you can elect to do so by notifying us in advance of your intention to do so.

Where EMIR mandatory trade reporting does not apply, AIB offers a Delegated Trade Reporting service to clients in certain circumstances. Please see the Treasury Services Registration Form for further details of how to avail of the Delegated Trade Reporting service.

Q13. What happens if I am currently an NFC- but change my regulatory status in the future?

In the event your regulatory status changes and you are no longer an NFC-, AIB ceases to be required under the EMIR Refit Regulation to report transactions on your behalf. However, in this scenario the Delegated Trade Reporting service will apply automatically, unless you should decide that you do not want to delegate transaction reporting to AIB any longer, in which case you will need to terminate the Delegated Reporting service.

Q14. What is a Legal Entity Identifier or LEI?

A LEI is a 20-digit alpha-numeric reference code which is unique to each counterparty. The LEI is designed to enable the identification and linking of parties to financial transactions in order to manage systemic and counterparty risk. LEI codes are issued by appointed Local Operating Units (**"LOUs"**) such as the Irish Stock Exchange.

Q15. How can I get my LEI?

LEI codes are issued by appointed LOUs. In Ireland you can apply for a LEI code through the Irish Stock Exchange at www.ISEdirect.ie. When applying for a LEI you will be required to provide certain information such as the legal name of the undertaking, address, country of incorporation, company registration number, VAT number. An LEI must be updated at least once a year or it will lapse and will no longer be accepted for transaction reporting purposes. Fees apply for the application and annual renewal of an LEI.

Q16. Why do I need to obtain my LEI and maintain it on an annual basis?

An LEI is required to comply with the information requirements under the Reporting obligation in EMIR. We will need your LEI to report relevant transaction details to our trade repository. It is also important that your LEI is renewed annually with your LOU and remains valid and up-to-date. We cannot report transactions on your behalf without a valid and up-to-date LEI.

Q17. What is a Unique Trade Identifier?

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

Q18. What are the Risk Mitigation rules for uncleared contracts?

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

(a) Timely Confirmation Requirements

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

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

AIB, as FC, must have procedures for monthly reporting of unconfirmed transactions to the relevant Irish regulatory authority; you may therefore experience increased communications from us in relation to any outstanding confirmations.

(b) Portfolio Reconciliation

Essentially, the EMIR portfolio reconciliation requirement will involve AIB sending you data relating to certain FX forwards and other OTC derivatives transactions that are outstanding between us. This data must then be reviewed by you in order to highlight any differences or discrepancies (i.e. reconciliation of data). Any discrepancies may then lead to a dispute resolution procedure. Reconciliation should cover key trade terms and must at least include the valuation (mark to market) attributed to the transaction.

The frequency of the portfolio reconciliation exercise varies depending on the size of your portfolio and customer classification. For example, for NFC–s with 100 OTC derivatives contracts or less, the portfolio reconciliation needs to be done once a year.

(c) Dispute Resolution

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

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

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

AIB, as FC, must report certain disputes which remain unresolved for 15 business days to the Central Bank. The report will disclose certain information about the parties to the dispute and the dispute itself.

Q19. What are the additional requirements that apply to FC and NFC+?

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

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

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

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

EMIR Refit Regulation has introduced a new category of "small FCs" which are exempted from the clearing obligation. An FC will only be subject to the clearing requirement if it fails to calculate its positions (at a group level) or where the result of the calculation exceeds any of the clearing thresholds previously applicable only to NFCs - see table in question 7 above. Hedging transactions must be included in the calculation. To benefit from the new small FC regime, an FCs position must be below all of the clearing thresholds.

Q21. What are the margining obligations that apply to FC and NFC+?

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

Determining whether margining obligations apply to you can be complicated and should be considered carefully. Legal advice should be obtained.

UK EMIR QUESTIONS AND ANSWERS

(updated 25 May 2021)

Q1. What is Brexit?

On 23 June 2016 the United Kingdom voted to leave the EU. The process of withdrawing the UK from the EU began on 29 March 2017 when the UK gave notice under Article 50 of the Treaty on European Union. The UK's Article 50 notice started the legal process that brought an end to the UK's membership of the EU. The UK has left the EU as of 11pm (UK time) on the 31 December 2020.

Q2. What is the background to UK EMIR?

EU Withdrawal Act 2018 (as amended by the EU Withdrawal Agreement) onshores EMIR into the UK, which would otherwise no longer operate effectively after the end of the Brexit transition period, i.e. on 31 December 2020 at 11pm (UK time) (**the IP completion day**).

The following EU Exit instruments are relevant in the context of UK EMIR:

- The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018
- The Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018
- The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019
- The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020

(together the **"UK EMIR SIs"**)

Q3. When does UK EMIR apply?

UK EMIR will come into force after the IP completion day. However, certain provisions may become applicable to you at a later date.

Legal advice should be obtained if you are uncertain about which obligations under UK EMIR will apply to you and when.

Q4. Who does UK EMIR apply to?

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

Q5. What does UK EMIR require?

The main requirements of EMIR are aimed at:

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

Certain other UK EMIR requirements apply only to counterparties who are categorised as FCs or NFC+s under UK EMIR (see Q6 below). These include the obligation to clear certain OTC derivatives contracts through certain central counterparties (**"CCPs"**), the requirement to mark transactions to market and the requirement to exchange a mandatory amount of collateral (see Q20 and Q21 below).

Q6. What products does UK EMIR apply to?

UK EMIR applies to derivative contracts (including swaps, options, futures and forward rate agreements) relating to securities, currencies, interest rates, foreign exchange or commodities which may be settled physically or in cash as set out in paragraphs 4 to 10 of Part 1 of Schedule 2 to the Regulated Activities Order 2001. Credit derivatives and contracts for differences are also included. However, spot FX is excluded.

Q7. What are the different categories of counterparty for the purposes of UK EMIR?

The categories of counterparties for the purposes of UK EMIR are:

- Financial Counterparties (**"FCs"**): AIB UK is a FC under UK EMIR. FCs include the following entity types:
- Credit institution as defined in Article 4(1)(2A) of the onshored version of the Capital Requirements Regulation).
- Investment Firm as defined in Article 2(1A) of the onshored version of the Regulation No 600/2014, which:
  - (i) has its registered office or head office in the United Kingdom;
  - (ii) has permission under Part 4A of the Financial Services and Markets Act 2000 (**"FSMA"**) to carry on regulated activities relating to investment services and activities (as defined in Article 2(1)(2) of UK MIFIR) in the United Kingdom;
  - (iii) would require an authorisation given under Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and 2011/61/EU (as it had effect immediately before exit day) if it had its registered office (or if it does not have a registered office, its head office) in an EEA state; and
  - (iv) is not a firm which has permission under Part 4A of the FSMA to carry on regulated activities as an exempt investment firm, within the meaning given in regulation 8 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017.
- Insurance Undertaking or a reinsurance undertaking within the meaning given in section 417 of the FSMA.
- An AIF (within the meaning given in regulation 3 of the Alternative Investment Fund Managers Regulation 2013) which is either established in the UK or managed by an AIFM (within the meaning given in regulation 4 of UK EMIR) authorised or registered in accordance with that those Regulations, unless that AIF is set up exclusively for the purpose of serving one or more employee share purchase plans, or unless that AIF is a securitisation special purpose entity as defined in Article 24.1(3an) of Directive 2011/61/EU, and, where relevant, its AIFM is established in the United Kingdom.
- An occupational pension scheme within the meaning given in section 1(1) of the Pension Schemes Act 1993 which is established in the United Kingdom.
- UK UCITS (within the meaning given in section 237(3) of the FSMA and its management company (within the meaning given in section 237(2) of the Financial Services and Markets Act 2000) unless that UCITS is set up exclusively for the purposes of serving one or more employee share purchase plans.
- A central securities depository authorised in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories;

Non-Financial Counterparties (**"NFCs"**): NFCs are undertakings which are established in the United Kingdom and which are not classified as FCs under UK EMIR. There are two categories of NFCs, namely, non-financial counterparties whose trading volumes put them above the UK EMIR clearing threshold (**"NFC+"**), and non-financial counterparties whose trading volumes are small enough to fall below the clearing threshold (**"NFC–"**). (See Q8 & Q9 below for further detail).

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

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

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

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

The clearing threshold varies according to the class of OTC derivative contract and is calculated based on the total gross notional amounts of derivatives entered into by a NFC, as set out in the table above. Every 12 months, a NFC must calculate its aggregate month-end average position for the previous 12 months. If a NFC passes one of these thresholds –

- it must immediately notify the Financial Conduct Authority and, where relevant, indicate the period used for the calculation; and
- establish clearing arrangements within four months of the notification for those asset classes in respect of which the result of the calculation exceeds the clearing thresholds or, where the NFC has not calculated its position, that pertain to any class of OTC derivatives that is subject to the clearing obligation.

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

If an NFC exceeds a clearing threshold, it will only be subject to the clearing obligation in respect of the asset class in which it has exceeded the clearing threshold. However, it will be an NFC+ for the purposes of the other UK EMIR obligations (for example, the obligation to collateralise non-cleared OTC derivatives) in respect of all asset classes (not just the asset class in which it has exceeded the clearing threshold).

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

Q9. Why is the difference between a NFC+ and a NFC– important?

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

Q10. What are the Recordkeeping obligations under EMIR?

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

Q11. What is the Reporting obligation?

UK EMIR reflects the changes introduced with the EMIR Refit Regulation. Following these changes, mandatory trade reporting applies in certain cases. Where an OTC derivatives transaction is entered into between an FC, such as AIB UK, and a client that is an NFC which is below the relevant clearing threshold for all asset classes (NFC-), AIB UK is solely responsible, and legally liable, for reporting on behalf of itself and its NFC- client, and for ensuring the correctness of the reporting details. However, the NFC- client must provide AIB UK with the information that it needs for reporting purposes that AIB UK cannot reasonably be expected to possess. The NFC- client is also responsible for ensuring that the information it provides to the FC is correct. This is sometimes referred to as the UK EMIR mandatory trade reporting regime.

Where the UK EMIR mandatory trade reporting regime does not apply, both parties to a relevant transaction are required to report details of those transactions to a trade repository. However you can delegate your reporting to a third party including your counterparty (see Q12 below).

What are the Timelines for Reporting?

Impacted derivatives contracts must be reported no later than the working day following the conclusion, modification or termination of the contract.

Q12. Where UK EMIR mandatory trade reporting does not apply, can I delegate reporting?

Where UK EMIR mandatory trade reporting does not apply, you can delegate reporting to a third party including your counterparty to the trade. However, in such cases, it remains your legal obligation to report notwithstanding delegation.

Q13. Reporting appears complex, how can AIB UK help?

Where UK EMIR mandatory trade reporting applies, AIB UK will report transaction details on your behalf to a trade repository in accordance with the requirements of the UK EMIR. Where UK EMIR mandatory trade reporting applies but you already have reporting capabilities and wish to continue reporting transactions to a trade repository yourself, you can elect to do so by notifying us in advance of your intention to do so.

Where UK EMIR mandatory trade reporting does not apply, AIB UK offers a Delegated Trade Reporting service to clients in certain circumstances. Please see the Treasury Services Registration Form for further details of the Delegated Trade Reporting service and how to avail of it.

Q14. What happens if I am currently an NFC- but change my regulatory status in the future?

In the event your regulatory status changes and you are no longer an NFC-, AIB UK will be required under the UK EMIR to report transactions on your behalf. However, in this scenario the Delegated Trade Reporting service will apply automatically, unless you should decide that you do not want to delegate transaction reporting to AIB UK any longer, in which case you will need to terminate the Delegated Trade Reporting Service.

Q15. What is a Legal Entity Identifier or LEI?

A LEI is a 20-digit alpha-numeric reference code which is unique to each counterparty. The LEI is designed to enable the identification and linking of parties to financial transactions in order to manage systemic and counterparty risk. LEI codes are issued by appointed Local Operating Units (**"LOUs"**) such as London Stock Exchange.

Q16. How can I get my LEI?

LEI codes are issued by appointed LOUs. In the UK, the London Stock Exchange has been sponsored by the FCA to issue LEIs. When applying for a LEI you will be required to provide certain information such as the legal name of the undertaking, address, country of incorporation, company registration number, VAT number. An LEI must be updated at least once a year or it will lapse and will no longer be accepted for transaction reporting purposes. Fees apply for the application and annual renewal of an LEI.

Q17. Why do I need to obtain my LEI and maintain it on an annual basis?

An LEI is required to comply with the information requirements under the Reporting obligation in UK EMIR. We will need your LEI to report relevant transaction details to our trade repository. It is also important that your LEI is renewed annually with your LOU and remains valid and up-to-date. We cannot report transactions on your behalf without a valid and up-to-date LEI.

Q18. What is a Unique Trade Identifier?

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

Q19. What are the Risk Mitigation rules for uncleared contracts?

The risk mitigation rules applying to NFC–s which have entered or are entering into OTC derivatives under the UK EMIR are the same as under the EU EMIR. We kindly refer you to our explanation of the risk mitigation rules under the EU EMIR.

Q20. What are the additional requirements that apply to FC and NFC+?

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

Q21. What are the clearing obligations that apply to FC and NFC+?

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

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

Q22. What are the margining obligations that apply to FC and NFC+?

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

Determining whether margining obligations apply to you can be complicated and should be considered carefully. Legal advice should be obtained.

DODD-FRANK GUIDELINES QUESTIONS AND ANSWERS

(updated 25 May 2021)

I. What is this about?

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

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

II. What is meant by "U.S. connections"?

We are required to establish whether:

- the customer falls within any of the U.S. Person Categories under the Interpretive Guidance.
- the customer is an "affiliate conduit" under the Interpretive Guidance.
- the customer's obligations to AIB in connection with the relevant Swap are supported by any Guarantee from a person or entity that falls within any of the U.S. Person Categories under the Interpretive Guidance.

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

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

- the customer <u>does not</u> fall within any of the U.S. Person Categories under the Interpretive Guidance.
- the customer <u>is not</u> an "affiliate conduit" under the Interpretive Guidance.
- the customer's obligations to AIB in connection with the relevant Swap <u>are not</u> supported by any Guarantee from a person or entity that falls within any of the U.S. Person Categories under the Interpretive Guidance.

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

Please respond to each of the questions truthfully. If you have answered "Yes" to any of the questions, AIB will contact you separately to discuss.

Definitions:

"CEA" means the U.S. Commodity Exchange Act, as amended.

"CFTC" means the U.S. Commodity Futures Trading Commission.

"CFTC Swap Regulations" means the rules, regulations, orders and interpretations adopted or issued by the CFTC, as in effect from time to time, that apply to Swaps and that are promulgated under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act or that are otherwise designated by the CFTC as being subject to the Interpretive Guidance.[1]

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

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

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

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

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

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

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

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

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

(i) any natural person who is a resident of the United States;

(ii) any estate of a decedent who was a resident of the United States at the time of death;

(iii) any corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of enterprise similar to any of the foregoing (other than an entity described in prongs (iv) or (v), below) (a "legal entity" in each case that is organized or incorporated under the laws of a state or other jurisdiction in the United States or having its principal place of business in the United States;[6]

(iv) any pension plan for the employees, officers or principals of a legal entity described in prong (iii), unless the pension plan is primarily for foreign employees of such entity;

(v) any trust governed by the laws of a state or other jurisdiction in the United States, if a court within the United States is able to exercise primary supervision over the administration of the trust;

(vi) any commodity pool, pooled account, investment fund, or other collective investment vehicle that is not described in prong (iii) and that is majority-owned by one or more persons described in prong (i), (ii), (iii), (iv), or (v),[7] except any commodity pool, pooled account, investment fund, or other collective investment vehicle that is publicly offered only to non-U.S. persons and not offered to U.S. persons;[8]

(vii) any legal entity (other than a limited liability company, limited liability partnership or similar entity where all of the owners of the entity have limited liability) that is directly or indirectly majority-owned by one or more persons described in prong (i), (ii), (iii), (iv), or (v) and in which such person(s) bears unlimited responsibility for the obligations and liabilities of the legal entity;[9] and

(viii) any individual account or joint account (discretionary or not) where the beneficial owner (or one of the beneficial owners in the case of a joint account) is a person described in prong (i), (ii), (iii), (iv), (v), (vi), or (vii).

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[4] *Interpretive Guidance at pp. 45316-17.*

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

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

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

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

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

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

AIB Customer Treasury Services is a registered business name of Allied Irish Banks, p.l.c.

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