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# A Guide to EMIR Clearing Threshold Calculations

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**The Short Read**

Pursuant to (1) the European Market Infrastructure Regulation[1] ("EU EMIR") and/or (2) EU EMIR in effect in the United Kingdom ("UK") as UK-onshored EMIR[2] ("UK EMIR"), counterparties may calculate their aggregate month-end average positions in OTC derivatives for the previous 12 months to determine whether the applicable clearing thresholds are exceeded.

Under EU EMIR, the calculation (if being performed) must be conducted every 12 months. For many, the anniversary since the last calculation date will be 17 June 2021.

Under UK EMIR, the first calculation and notification to the UK Financial Conduct Authority ("FCA") must be made by 17 June 2021.

This *Briefs for the Buy side* considers how to perform the calculations, the consequences of the outcome of the calculations and the consequences of not performing the calculations. We consider the position under EU EMIR and UK EMIR in separate sections. Importantly, whilst the calculation methodology under both EU EMIR and UK EMIR is materially similar, significant differences in the definition of "OTC derivatives" under the two regimes may result in a different outcome under EU EMIR as compared with UK EMIR.

**The Full Read**

1. **EU EMIR and UK EMIR – Which Entities are In-Scope for the Clearing Threshold Calculations?**

*Directly Covered*

For the purposes of EU EMIR, "financial counterparties" ("EU FCs") and "non-financial counterparties" ("EU NFCs") are directly subject to a requirement to make a clearing threshold calculation under EU EMIR. The term EU FC includes a non-EU alternative investment fund ("AIF") managed by an alternative investment fund manager authorised or registered under AIFMD ("EU AIFM").

For the purposes of UK EMIR, "financial counterparties" ("UK FCs") and "non-financial counterparties" ("UK NFCs") are directly subject to a requirement to make a clearing threshold calculation under UK EMIR. The term UK FC includes a non-UK AIF managed by an alternative investment fund manager authorised or registered under the Alternative Investment Fund Managers Regulation 2013 (a "UK AIFM").

*Indirectly Covered*

'Hypothetical'[3] EU FCs and EU NFCs and 'hypothetical' UK FCs and UK NFCs may also need to provide their EU EMIR and UK EMIR classifications to their counterparties which are directly in-scope of EU EMIR and/or UK EMIR, to enable those counterparties to fulfil their own regulatory obligations.

(For completeness, in certain limited circumstances, EU EMIR and/or UK EMIR may require two third country entities to clear all OTC derivative contracts pertaining to all asset classes subject to the relevant clearing mandate. In such cases, those entities would also need to know their resultant regulatory classifications; however, this is not considered further in this *Briefs for the Buy side*.)

2. **Clearing Threshold Calculations under EU EMIR**

*Background*

Under EU EMIR:

1. an entity that is an actual or hypothetical EU FC must determine if it is (i) an actual or hypothetical Large EU FC or (ii) an actual or hypothetical Small EU FC. A Large EU FC is an EU FC which exceeds any of the clearing thresholds and a Small EU FC is one that does not exceed any clearing threshold[4]; and
2. an entity that is an actual or hypothetical EU NFC must determine if it (i) has exceeded any of the clearing thresholds (in which case it will be an actual or hypothetical "EU NFC+" but only in respect of the asset class(es) for which a clearing threshold has been exceeded) or (ii) has not exceeded any of the clearing thresholds (in which case it will be an actual or hypothetical "EU NFC-" in respect of all asset classes).

In either case, if the clearing threshold calculation is not performed, an entity's status will automatically be that of an actual or hypothetical Large EU FC or EU NFC+ for all asset classes.

*EU EMIR Clearing Threshold Calculation for EU FCs*

In order to determine whether an EU FC is a Large EU FC or a Small EU FC pursuant to EU EMIR, at 12 monthly intervals the EU FC may calculate its aggregate month-end average position in OTC derivatives for the previous 12 months ("EU EMIR Clearing Threshold Calculation").

The EU EMIR Clearing Threshold Calculation for EU FCs is undertaken on a 'group' basis, in which case the EU FC should include *all* OTC derivative contracts[5] (i.e., both cleared – whether on a mandatory or voluntary basis – and uncleared OTC derivative contracts) entered into both by it and by other entities within its 'group' (irrespective of whether such other entities are EU FCs, hypothetical EU FCs, EU NFCs or hypothetical EU NFCs). For UCITS and AIFs, calculations are made at the level of the fund or sub-fund (if legally segregated). In cases where a UCITS management company manages more than one UCITS, or an EU AIFM manages more than one AIF, the management company or the EU AIFM (as the case may be) will need to be able to demonstrate to the relevant National Competent Authority ("NCA")[6] that the calculation of positions at the UCITS / AIF level does not lead to: (i) a systematic underestimation of the positions of any of the funds they manage or the positions of the manager; and (ii) a circumvention of the clearing obligation. The purpose of this requirement is to prevent the derivatives activity of the EU FC from being artificially suppressed or reduced at month-end, in order to yield a low month-end average position.

Unlike EU NFCs, EU FCs are not allowed to exclude OTC derivative contracts which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the EU FC (or of its group) from the EU EMIR Clearing Threshold Calculation. (This is known as the 'hedging exemption'.)

*Consequences of being a Large EU FC*

The EU EMIR Clearing Threshold Calculation for EU FCs works on a 'breach one, breach all' basis. If an EU FC exceeds a clearing threshold in relation to (for example) the OTC interest rate derivatives asset class, it will be deemed to be a Large EU FC and will therefore be required to clear all OTC derivative contracts pertaining to all asset classes which are subject to the EU EMIR clearing mandate, subject to a four month grace period after notification of its status (see "*Notifications to the Authorities*", below) when trading with another EU FC, a hypothetical EU FC, an EU NFC+ or a hypothetical EU NFC+. Currently, only certain interest rate swaps and credit default swaps are subject to the mandatory clearing obligation under EU EMIR[7]. In addition, the EU FC will become subject to the derivatives trading obligation under EU MiFIR[8] for certain OTC derivative contracts[9] when trading with such counterparties.

*EU EMIR Clearing Threshold Calculation for EU NFCs*

In order to determine whether an EU NFC has exceeded a clearing threshold (in which case it will be an "EU NFC+") or has not exceeded a clearing threshold (in which case it will be an "EU NFC-"), at 12 monthly intervals the EU NFC may calculate its aggregate month-end average position in OTC derivatives for the previous 12 months ("EU EMIR Clearing Threshold Calculation"). The EU EMIR Clearing Threshold Calculation for EU NFCs must be undertaken on a 'group' basis, in which case the EU NFC should include in the calculation all OTC derivative contracts entered into by that EU NFC and by other EU NFCs and hypothetical EU NFCs within its 'group'. An EU NFC should exclude OTC derivative contracts which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the EU NFC or its group (i.e., the hedging exemption).

*Consequences of being an EU NFC+*

An EU NFC+ is obliged to clear only those OTC derivative contracts pertaining to the asset class for which the clearing threshold was exceeded, subject to a four month grace period after notification of its status (see "*Notifications to the Authorities*", below) when trading with another EU FC, a hypothetical EU FC, an EU NFC+ (in the relevant asset class) or a hypothetical EU NFC+ (in the relevant asset class). In which case, for example, for the purposes of the clearing obligation, an EU NFC might be an EU NFC+ in respect of the OTC credit derivatives asset class and it might be an EU NFC- in respect of all other asset classes.

However, an EU NFC which is classified as an EU NFC+ because it did not undertake the EU EMIR Clearing Threshold Calculation will be subject to the EU EMIR clearing obligation pertaining to all asset classes.

It is generally acknowledged that once an EU NFC is categorised as an EU NFC+ for one or more asset classes, the EU NFC+ categorisation will apply to other areas of EU EMIR. Therefore, an EU NFC+ would: (i) be subject to the EU EMIR risk mitigation techniques that apply to an EU NFC+ in respect of all its non-cleared OTC derivative contracts (including regulatory compliant exchange of collateral); (ii) not be able to rely on an EU FC to mandatorily report OTC derivative transactions under EU EMIR on its behalf and would also be required to report collateral and transaction valuation details of its derivative contracts; and (iii) become subject to the derivatives trading obligation under EU MiFIR for certain OTC derivative transactions.

*When must the EU EMIR Clearing Calculation be carried out?*

It is important to note that it is not mandatory to undertake an EU EMIR Clearing Threshold Calculation at all. If an EU FC chooses not to make an EU EMIR Clearing Threshold Calculation, it will be automatically categorised as a Large EU FC (and hence required to clear all OTC derivative contracts pertaining to all asset classes which are subject to the EU EMIR clearing mandate). If an EU NFC chooses not to make an EU EMIR Clearing Threshold Calculation, it will be automatically categorised as an EU NFC+ in relation to all asset classes (and hence also required to clear all OTC derivative contracts pertaining to all asset classes which are subject to the EU EMIR clearing

mandate).

Initially, EU EMIR required that an EU EMIR Clearing Threshold Calculation be undertaken on 17 June 2019 and annually thereafter. Therefore, for market participants subject to that initial calculation, the next scheduled annual date by which to make the EU EMIR Clearing Threshold Calculation will be 17 June 2021 ("Calculation Date").

An entity which took positions in OTC derivative contracts only after 17 June 2019 (e.g. a fund which launched after that date or did not trade OTC derivatives before that date) would (assuming it chooses to make the EU EMIR Clearing Threshold Calculation) need to make the EU EMIR Clearing Threshold Calculation 12 months after the commencement of taking positions in OTC derivative contracts (in which case the 12 month anniversary of such a calculation would be a date other than 17 June, such date being an "Other Calculation Date").

*Notifications to the Authorities*

The required notifications to the European Securities and Markets Authority ("ESMA") and the relevant NCA will depend both on the results of the EU EMIR Clearing Threshold Calculation and whether or not a prior notification has been made. Hypothetical EU FCs and hypothetical EU NFCs do not need to make such notifications under EU EMIR.

*Where a prior notification has been made*

Where an EU FC has previously notified ESMA and the relevant NCA that a clearing threshold has been exceeded (or was deemed exceeded as a result of the EU FC not undertaking the EU EMIR Clearing Threshold Calculation), if the results of the new EU EMIR Clearing Threshold Calculation do not indicate a change in classification as of the Calculation Date or Other Calculation Date (or if a new EU EMIR Clearing Threshold Calculation is not undertaken), then there is no need to notify ESMA and the relevant NCA.

Where an EU NFC has previously notified ESMA and the relevant NCA that a clearing threshold has been exceeded (or was deemed exceeded as a result of the EU NFC not undertaking the EU EMIR Clearing Threshold Calculation), if the results of the new EU EMIR Clearing Threshold Calculation do not indicate a change in classification as of the Calculation Date or Other Calculation Date (or if a new EU EMIR Clearing Threshold Calculation is not undertaken), then there is no need to notify ESMA and the relevant NCA. However, ESMA and the relevant NCA should be notified if a clearing threshold in an additional asset class is exceeded or if a clearing threshold in a previously notified asset class is no longer exceeded.

*Where a prior notification has not been made*

Those EU FCs and EU NFCs which: (i) exceed one or more clearing thresholds for the first time; or (ii) choose not to undertake an EU EMIR Clearing Threshold Calculation, must notify ESMA and the relevant NCA on the Calculation Date or Other Calculation Date and, where relevant, indicate the period used for the calculation.

*Trading counterparty representations*

If an entity's status has changed, it will be necessary to update any representations or other documentation provided to trading counterparties as to counterparty classification for EU EMIR purposes (whether provided in ISDA EMIR Classification Letters or other representation letters, the ISDA Master Agreement itself or via ISDA Amend).

*Does the EU EMIR Clearing Calculation always need to be performed annually?*

If an entity is a Large EU FC or an EU NFC+ (either because it exceeded a clearing threshold or is deemed as such because it did not undertake an EU EMIR Clearing Threshold Calculation) and is therefore subject to the clearing obligation, it may at any time demonstrate to the relevant NCA that its aggregate month-end average position for the previous 12 months does not exceed the clearing threshold (i.e., there is no requirement to wait until the anniversary of the Calculation Date or Other Calculation Date to make the clearing threshold determination).

The date of the notification to ESMA and the relevant NCA would then become the annual date on which the calculation should be conducted in the future.

3. **A Step-by-Step Overview of the EU EMIR Clearing Threshold Calculation to be Performed[10]**

- The derivative contracts relevant for this purpose are all cleared and uncleared OTC derivative contracts.
- There are five asset classes in respect of which the EU EMIR Clearing Threshold Calculation should be calculated: (i) OTC credit derivatives; (ii) OTC equity derivatives; (iii) OTC interest rate derivatives; (iv) OTC foreign exchange derivatives; and (v) OTC commodity derivative contracts and other OTC derivative contracts not mentioned above.
- For each of those five asset classes: (i) in the case of an EU FC, the EU FC's aggregate month-end average position in OTC derivatives in the asset class for the previous 12 months should be calculated together with those of any other entities within its 'group'; and (ii) in the case of an EU NFC, the EU NFC's aggregate month-end average position in OTC derivatives in the asset class for the previous 12 months should be calculated together with those of any other EU NFCs and hypothetical EU NFCs within its 'group'.
- Taking the OTC equity derivative asset class as an example and 17 June 2021 as the appropriate Calculation Date:
    - the group's month-end position in OTC equity derivatives for each of the month-ends from June 2020 to May 2021 (this means on the last day of the relevant month and is referring to the updated 'notional amounts' of such contracts) is calculated;
    - in the case of an EU NFC only, OTC derivative contracts which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the EU NFC or its group should be excluded;
    - these 12 calculations are added together to produce an aggregate month-end position covering the previous 12 months; and
    - that number is divided by 12 to yield the aggregate month-end average position covering the previous 12 months ("Aggregate Month-End Average Position for Equity Derivatives").
- For OTC derivative contracts not denominated in Euros, the applicable exchange rate for each relevant month-end should be used.
- The Aggregate Month-End Average Position for Equity Derivatives is then compared against the EU EMIR clearing threshold for the OTC equity derivatives asset class – currently €1 billion gross notional value.
- Note that, in relation to netting, the ESMA Questions and Answers Implementation of EU EMIR (defined earlier in this piece as the 'ESMA EMIR Q&A') suggests that to determine whether an entity is above or below the EU EMIR clearing thresholds, positions should first be netted per counterparty and contracts, with the absolute notional value of all those net positions (calculated based on the notional amounts of the contracts) being added together. Such netting applies only in respect of fully or partially offsetting contracts having exactly the same characteristics (type, underlying, maturity etc) with the only exception being the direction of the trade and notional amount (in case of partial offset) concluded with the same counterparty.
- Following a calculation in respect of the OTC equity derivatives asset class, the above steps should then be performed again for (i) the OTC credit derivatives asset class, (ii) the OTC interest rate derivatives asset class, (iii) the OTC foreign exchange derivatives asset

class and (iv) the OTC commodity derivatives asset class and other OTC derivatives (not mentioned above) asset class. In other words, five separate calculations as to 'aggregate month-end average position for the previous 12 months' in each asset class are made.

- The resulting aggregate month-end average position for the previous 12 months *in each class* is then compared against the EU EMIR clearing threshold *for the relevant class*. These are currently:
  - OTC credit derivatives and OTC equity derivatives asset classes = €1 billion gross notional value; and
  - OTC interest rate derivatives asset class, OTC foreign exchange derivatives class, OTC commodity derivatives asset class and other OTC derivatives (not mentioned above) class = €3 billion gross notional value.

- In the case of an EU FC:
  - if the aggregate month-end average position for the previous 12 months in each asset class is below the relevant EU EMIR clearing threshold for such asset class, then the EU FC will be an EU Small FC; and
  - if the aggregate month-end average position for the previous 12 months in *any* asset class is above the relevant EU EMIR clearing threshold for that asset class, then the EU FC will be an EU Large FC (i.e., only one clearing threshold need be breached for the EU Large FC classification to apply).

- In the case of an EU NFC:
  - if the aggregate month-end average position for the previous 12 months in each asset class is below the relevant EU EMIR clearing threshold for such asset class, then the EU NFC will be an EU NFC- in respect of all asset classes;
  - if the aggregate month-end average position for the previous 12 months in each asset class is above the relevant EU EMIR clearing threshold for that asset class, then the EU NFC will be an EU NFC+ in respect of all asset classes; and

- if the aggregate month-end average position for the previous 12 months in *a particular* asset class is above the relevant EU EMIR clearing threshold for such asset class, then the EU NFC will be an EU NFC+ in respect of the asset class(es) for which the clearing threshold has been exceeded and an EU NFC- in respect of the asset class(es) for which the clearing threshold has not been exceeded.

We recommend retaining evidence of the calculations and determinations relating to an EU EMIR Clearing Threshold Calculation and the resultant classification of the entity as an actual or hypothetical EU Large FC, Small EU FC, EU NFC+ or EU NFC-. This may be necessary both for internal audit purposes and to be provided to the relevant NCA, if so required. In addition, it may be necessary to demonstrate to the NCA (if the NCA so requests) that the calculation of the aggregate month-end average position for the previous 12 months does not lead to a systematic underestimation of the position.

4. **Clearing Threshold Calculations under UK EMIR**

The clearing threshold calculation under UK EMIR for both UK FCs and UK NFCs (each, a "UK EMIR Clearing Threshold Calculation") operates in the same way and is subject to the same methodology as the EU EMIR Clearing Threshold Calculation (although note that the scope of what constitutes an "OTC derivative" is different[11]). As such, the above sections (other than as set out below) all have relevance in the context of UK EMIR Clearing Threshold Calculations and should be interpreted as such. Under UK EMIR, the FCA is the relevant body for UK FCs and UK NFCs to notify a UK EMIR Clearing Threshold Calculation (where necessary to do so) and UK EMIR status (instead of ESMA and the relevant NCA as is the case under EU EMIR).

For the purposes of UK EMIR, the following details relating to the UK EMIR Clearing Threshold Calculation are different to the EU EMIR Clearing Threshold Calculation:

*When must the UK EMIR Clearing Threshold Calculation be carried out?*

It is not mandatory to undertake a UK EMIR Clearing Threshold Calculation. If a UK FC chooses not to make a UK EMIR Clearing Threshold Calculation, it will be automatically categorised as a Large UK FC (and hence required to clear all OTC derivative contracts pertaining to all asset classes which are subject to the UK EMIR clearing mandate). If a UK NFC chooses not to make a UK EMIR Clearing Threshold Calculation, it will be automatically categorised as a UK NFC+ in relation to all asset classes (and hence also required to clear all OTC derivative contracts pertaining to all asset classes which are subject to the UK EMIR clearing mandate).

The first UK EMIR Clearing Threshold Calculation must be submitted to the FCA by 17 June 2021 and, as such, the UK EMIR Clearing Threshold Calculation must performed (if an entity chooses to perform it) before then. It would then be performed annually thereafter.

Entities taking positions in OTC derivative contracts only after 17 June 2020 (e.g., a fund which launched after that date or did not trade OTC derivatives before that date), and which therefore do not have a full 12 month period to aggregate, would (assuming it chooses to make the UK EMIR Clearing Threshold Calculation) need to make the UK EMIR Clearing Threshold Calculation 12 months after the commencement of taking positions in OTC derivative contracts.

*Notifications to the FCA*

With respect to the first notification under UK EMIR, all Large UK FCs and UK NFC+s (whether so categorised because they did not undertake the UK EMIR Clearing Threshold Calculation or because they exceeded a UK EMIR Clearing Threshold Calculation) must make a notification to the FCA even if previously a Large EU FC or EU NFC+ under EU EMIR prior to Brexit (i.e., even where a notification had already been made to the FCA (being the UK's NCA under EU EMIR) pursuant to EU EMIR before 1 January 2021).

The FCA has stated that it must always be notified if the result of the UK EMIR Clearing Threshold Calculation means that a UK FC or a UK NFC no longer exceeds the UK EMIR clearing threshold[12]. Therefore, if a UK FC or UK NFC was previously a Large EU FC or EU NFC+ under EU EMIR and, as a result of performing the first UK EMIR Clearing Threshold Calculation it is now a Small UK FC or UK NFC-, it must notify the FCA and demonstrate the same.

With respect to subsequent UK EMIR Clearing Threshold Calculations, so long as the outcome of the calculation is the same as the first UK EMIR Clearing Threshold Calculation, there is no need to notify the FCA that an entity's status remains unchanged.

5. **A Note on the Meaning of "OTC Derivatives"**

Under EU EMIR, an "OTC derivative" or an "OTC derivative contract" is a derivative contract which is not executed on an EU regulated market or on a third country market which is considered as equivalent to an EU regulated market (pursuant to Article 2a of EU EMIR). UK regulated markets are now third country markets for the purposes of EU EMIR and the European Commission ("EC") has not so far adopted implementing acts making an equivalence determination in respect of UK regulated markets under Article 2a of EU EMIR (and is not showing any signs of doing so in the near future). This means that all derivative contracts executed on a UK regulated market (e.g., futures and listed options traded on a UK exchange) ("UK ETDs") which were entered into on or after 1 January 2021[13] will be considered as "OTC derivative contracts" under EU EMIR and must be included in the EU EMIR Clearing Threshold Calculation.

Under UK EMIR, the same issue arises insofar as a derivative which is not executed on a UK regulated market or on a third country market considered as equivalent to a UK regulated market is considered to be an "OTC derivative" or an "OTC derivative contract". However, in contrast to the EC's stance under EU EMIR, HM Treasury has determined that, under UK EMIR, each EEA state regulated market is equivalent for this purpose[14]. The effect being that counterparties undertaking the UK EMIR Clearing Threshold Calculation can continue to treat derivatives traded on EEA state regulated markets as exchange-traded derivatives and not as OTC derivatives for the purposes of UK EMIR and the UK EMIR Clearing Threshold Calculation.

This inconsistency may result in an entity being an actual or hypothetical Small UK FC or UK NFC- for the purposes of UK EMIR, but an actual or hypothetical Large EU FC or EU NFC+ for the purposes of EU EMIR. This would result in not only a difference in the application of the clearing mandate to an entity under the two regimes but also a disparity in the application of other obligations under EU EMIR and UK EMIR to the entity, such as reporting obligations and risk mitigation techniques (including regulatory compliant exchange of margin).

[1] 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 (available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ%3AL%3A2012%3A201%3A0001%3A0059%3AEN%3APDF), as amended from time to time including by EMIR REFIT (available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0834&from=EN).

[2] The full suite of amending statutory instruments and EU Exit Instruments making changes to onshore EU EMIR as of 11pm on 31 December 2020 by operation of the European Union (Withdrawal) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020) can be found at: https://www.fca.org.uk/markets/uk-emir/library

[3] i.e. An entity established in a third country that would be: (i) an EU FC or an EU NFC for the purposes of EU EMIR if it were established in the EU; or (ii) a UK FC or a UK NFC for the purposes of UK EMIR if it were established in the UK. Sometimes called 'third country' EU FCs, EU NFCs, UK FCs or UK NFCs, for the purposes of this *Briefs for the Buy side* we use the terms 'hypothetical' EU FC, 'hypothetical' UK FC, 'hypothetical' EU NFC and 'hypothetical' UK NFC.

[4] The current clearing thresholds are: (i) EUR 1 billion gross notional value for (x) OTC credit derivative contracts and (y) OTC equity derivative contracts; and (ii) EUR 3 billion gross notional value for (x) OTC interest rate derivative contracts, (y) OTC foreign exchange derivative contracts and (z) OTC commodity derivative contracts and other OTC derivative contracts not mentioned.

[5] See Section 5 "*A Note on the Meaning of "OTC Derivatives"*" below for important information on what constitutes an "OTC derivative" for EU EMIR purposes.

[6] An NCA refers to the relevant authority designated by the Member State and is usually the national regulator. So, for example, in the case of Ireland, the NCA is the Central Bank of Ireland.

[7] The classes of OTC derivatives subject to the EU EMIR clearing obligation are set forth in the *Public Register for the Clearing Obligation under EMIR* (available at: https://www.esma.europa.eu/sites/default/files/library/public_register_for_the_clearing_obligation_under_emir.pdf).

[8] Article 28 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial

instruments and amending EMIR (available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0600&from=EN), as amended from time to time.

[9] Currently, eight sub-classes of interest rate swaps and two sub-classes of index credit default swaps are subject to the EU MiFIR derivatives trading obligation. The full list is set forth in the *Public Register for the Trading Obligation for derivatives under MiFIR* (available at: https://www.esma.europa.eu/sites/default/files/library/public_register_for_the_trading_obligation.pdf

[10] Interested parties may also wish to review the answer to OTC Question 3 in the ESMA *Questions and Answers Implementation of EU EMIR* (the "ESMA EMIR Q&A"; available at: https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_qa_on_emir_implementation.pdf) which sets out similar steps.

[11] See Section 5 "*A Note on the Meaning of "OTC Derivatives"*" below for important information on what constitutes an "OTC derivative" for UK EMIR purposes.

[12] See the FCA's November 2020 UK EMIR news headed "*Notifying us of clearing thresholds for UK FCs and NFCs under UK EMIR*"; available at: https://www.fca.org.uk/firms/uk-emir/news.

[13] The answer to OTC Question 1(e) in the ESMA EMIR Q&A (see *fn. 10* above) states that outstanding UK ETDs which were executed before the UK was a 'third country' do not fall into the definition of "OTC derivatives" under EU EMIR.

[14] Pursuant to The European Market Infrastructure Regulation (Article 2A) Equivalence Directions 2020; available at: https://www.legislation.gov.uk/uksi/2019/541/pdfs/uksiod_20190541_en_013.pdf