

## UK Regulators Consult on Amendments to Margin Requirements under UK EMIR

March 17, 2021

The Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) have published a Consultation Paper<sup>1</sup> with proposed changes to the secondary rules regarding margin requirements applicable to non-centrally cleared derivatives under the “onshored” UK European Market Infrastructure Regulation (EMIR).<sup>2</sup>

The proposed amendments implement into English law changes to ensure consistency with the EU requirements and global standards in three key areas, as discussed below.

### 1. Exemption from variation margin for physically settled foreign exchange (FX) forwards and swaps

Under the proposed amendments, counterparties may provide in their risk management procedures that variation margin is not required for physically settled FX forward contracts and physically settled FX swap contracts, provided that at least one of the counterparties does not meet the definition of an “institution”<sup>3</sup>, i.e., a “credit institution”<sup>4</sup> or an “investment firm”<sup>5</sup>; and, with respect to transactions with third-country entities, the third-country firm would not meet the definition of an “institution” if it were established in the United Kingdom.

The amendments formalise the approach set out in the joint statement issued by the European Supervisory Authorities in November 2017 regarding supervisory forbearance.<sup>6</sup>

### 2. Exemption from margin rules for single-stock equity options and index options

Under the proposals, the temporary exemption from the margin requirements for single-stock equity and index options will be extended until 4 January 2024, in line with the related EU derogation under EMIR.

UK firms already benefitted from this exemption, but it expired on 4 January 2020 with firms having continued making use of the exemption by way of supervisory forbearance following a statement by the European Securities and Markets Authority (ESMA), which the FCA also supported.<sup>7</sup>

### Contact Information

For further information or advice, please contact one of the partners named below or your usual contact at Akin Gump.

**Ezra Zahabi**

Partner  
[ezra.zahabi@akingump.com](mailto:ezra.zahabi@akingump.com)  
London  
+44 20.7661.5367

**Helen Marshall**

Partner  
[helen.marshall@akingump.com](mailto:helen.marshall@akingump.com)  
London  
+44 20.7661.5378

**Tim Pearce**

Partner  
[tpearce@akingump.com](mailto:tpearce@akingump.com)  
London  
+44 20.7012.9663

**Ian Meade**

Partner  
[imeade@akingump.com](mailto:imeade@akingump.com)  
London  
+44 20.7012.9664

*The contribution of **Andrea Gonzaga** is gratefully acknowledged.*

### 3. Initial margin phase-in deadlines and thresholds

The proposals amend the final two UK phase-in deadlines and thresholds for initial margin requirements for consistency with the revised EU requirements. Accordingly, the two final phase-in dates for the initial margin requirements under UK EMIR would be:

- a. 1 September 2021, where both counterparties have, or belong to groups each of which has, an aggregate average notional amount of non-centrally cleared derivatives that is greater than EUR 50 billion.
- b. 1 September 2022, where both counterparties have, or belong to groups each of which has, an aggregate average notional amount of non-centrally cleared derivatives that is greater than EUR 8 billion.

Firms have been aware of the amended thresholds and timelines following a statement issued by the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) in April 2020.<sup>8</sup>

#### Next Steps

The consultation period closes on 19 May 2021. Following consideration of the responses, the UK regulators will submit the proposed amendments to HM Treasury for approval. Upon approval by HM Treasury, the FCA and the PRA will make and publish the amendments to the technical standards for their respective firms.

<sup>1</sup> Binding Technical Standards 2016/2251 (See [here](#)) implementing Commission Delegated Regulation (EU) 2016/2251.

<sup>2</sup> CP6/21 - Margin requirements for non-centrally cleared derivatives: Amendments to BTS 2016/2251, 9 March 2021 (See [here](#)).

<sup>3</sup> As defined in point (3) of Article 4(1) of Regulation (EU) No. 575/2013 on prudential requirements for credit institutions and investment firms.

<sup>4</sup> A “credit institution” means an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account.

<sup>5</sup> An “investment firm” means firms authorised under Directive 2014/65/EU (MiFID 2) as implemented in the UK (excluding “credit institutions” and “locals”), that are not authorised to provide the ancillary services referred to below, only provide one or more of the following investment services and activities: reception and transmission of orders in relation to one or more financial instruments; execution of orders on behalf of clients; portfolio management; or investment advice, and that are not permitted to hold client money or securities and which for that reason may not at any time place themselves in debt with those clients.

The ancillary services referred to in the above definition are:

- i. Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash or collateral management and excluding providing and maintaining securities accounts at the top-tier level (“central maintenance service”) referred to in point (2) of Section A of the Annex to the Regulation (EU) No 909/2014 (Central Securities Depositories Regulation).
- ii. Granting credits or loans to an investor to allow the investor to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction.
- iii. Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings.
- iv. Foreign exchange services where these are connected to the provision of investment services.
- v. Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments.

vi. Services relating to underwriting.

vii. Investment services and activities as well as the ancillary services of the type referred to above related to the underlying of derivatives where these are connected to the provision of investment or ancillary services.

<sup>6</sup> Variation margin exchange for physically-settled FX forwards under EMIR, 24 November 2017 (See [here](#)).

<sup>7</sup> EMIR RTS on various amendments to the bilateral margin requirements and joint statement on the introduction of fallbacks in view of the international framework, 5 December 2019 (See [here](#)).

<sup>8</sup> Basel Committee and IOSCO announce deferral of final implementation phases of the margin requirements for non-centrally cleared derivatives, 3 April 2020 (See [here](#)).

[akingump.com](http://akingump.com)