EMIR 3.0 is now live; What Irish funds need to know

January 2025

On 24 December 2024, the package of proposals amending EMIR[1] seeking to make derivatives clearing in the EU more attractive (**EMIR 3.0**) entered into force. The EMIR 3.0 Regulation is available here. The EMIR 3.0 Directive is available here.

EMIR 3.0 Regulation

EMIR 3.0 introduces revisions to the clearing requirements, risk mitigation requirements, reporting requirements, changes to certain exemptions from clearing and margining and other miscellaneous changes (including the requirement for validation of initial margin models).

We summarise the main amendments arising under EMIR 3.0 which will apply to financial counterparties, such as Irish funds[2].

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

2 This briefing paper does not address the obligations of non-financial counterparties such as subsidiaries/ special purpose vehicles established by funds

Two of the key obligations introduced under the EMIR 3.0 Regulation (namely, the active account requirements and the changes regarding initial margin model validation (**IMMV**) are expected to apply to only a small number of Irish funds.

While the majority of the EMIR 3.0 provisions apply from 24 December 2024, certain requirements under the Regulation adhere to alternative implementation timelines.

Changes to the Clearing Calculation

EMIR 3.0 introduces a second method of calculation for determining whether or not a fund has exceeded clearing thresholds for the purposes of determining whether an OTC trade must be centrally cleared through a CCP. This additional method of calculation will allow the fund to base the calculation on the aggregate of its uncleared OTC derivatives

only (i.e. those not cleared at an authorised CCP or recognised third country CCP). The current method of calculation will also continue to apply, namely, the aggregate of its cleared and uncleared OTC derivatives (the "**aggregate position**" test). The changes to the clearing calculation will not apply until the entry into force of an RTS which the ESMA is mandated to submit to the European Commission by 25 December 2025. This should be monitored by Irish funds during the course of this year.

Active Account Requirement

Under EMIR 3.0, funds which are: (i) subject to the clearing obligation under EMIR on 24 December 2024 or become subject to the clearing obligation thereafter (i.e. which are FC+s); and (ii) exceed the €3 billion clearing threshold in respect of EUR and PLN-denominated interest rate OTC derivatives and EUR short-term interest rate OTC derivatives will need to hold active accounts with at least one EU CCP (the "**active account requirement**"). Such funds must be operationally ready to clear a significant number of transactions – see "operational requirements" below. Funds must comply with such requirements by 24 June 2025 or within 6 months of becoming subject to that obligation, if later. Irish funds must assess if they are in scope and if so, to take steps to proceed with the opening of the account and associated requirements.

Operational requirements

Three elements must be satisfied in order for the account to be deemed operationally ready:(a) the account must be permanently functional (including with legal documentation, IT connectivity and internal processes associated to the account being in place); (b) the fund must have systems and resources available to be operationally able to use the account, even at short notice and for large volumes; and (c) the fund must be able to clear all new EUR and PLN-denominated interest rate derivatives and EUR short-term interest rate derivatives.The requirements must be regularly stress-tested at least once a year.

Representativeness requirement

An Irish fund which is subject to the active account requirement must clear certain representative number of trades through that EU CCP only if the fund exceeds a threshold of a notional clearing volume outstanding of €6b billion when all contracts for EUR and PLN-denominated interest rate derivatives and EUR short-term interest rate derivatives are aggregated. For each category of in-scope derivative contracts, ESMA has defined derivative classes and associated subcategories that are based on different maturity ranges and trades sizes. Generally, funds are required to clear, on annual average basis, at least five trades in each of the most relevant subcategories per class of derivative contracts and per reference period. Different requirements apply in certain circumstances.

Consultation Paper

ESMA released a consultation paper on the draft RTS specifying the operational conditions and the representativeness obligations on 20 November 2024. The consultation period is due to close on 27 January 2025. The Consultation Paper can be found here and feedback to the consultation can be submitted here.

Exemption

Funds may be exempt from certain aspects of the active account requirement (including the representativeness requirement) if they meet specific conditions, such as clearing at least 85% of their derivatives in the relevant categories at an EU CCP.

New Reporting Requirements

Funds subject to the active account requirement will be

obliged to report to the Central Bank on the information necessary to assess compliance with the active account requirements on a six-monthly basis. ESMA is mandated to prepare a draft RTS to provide details on this.

Initial Margin Model Validation/ IMMV

Under EMIR 3.0, those funds which are obliged to exchange initial margin under EMIR are obliged to apply for authorisation from their competent authorities before using, or adopting a change to the initial margin model. Typically funds will use industry wide pro forma model (e.g., the ISDA SIMM). In circumstances where such a pro forma model is intended to be used, the EBA is mandated to approve that model and it is also mandated to produce an RTS. The scope of the RTS to be finalised by the EBA will relate solely to credit institutions and investment firms that have an aggregate month-end average notional amount of non-centrally cleared OTC derivatives exceeding the threshold of EUR 750 billion. As the RTS on the INMV is not yet in force, the EBA published a "no action letter" on 17 December 2024 in relation to this requirement – see here. Given that the new RTS mandate only applies in relation to larger credit institutions and investment firms, it is unclear what steps Irish funds are required to take.

EMIR Trade Reporting

EMIR 3.0 introduces new penalties for breaches of EMIR reporting obligations where the details reported repeatedly contain systematic manifest errors. The periodic penalty imposed shall not exceed a maximum of 1 % of the average daily turnover for the preceding business year. In addition, a new obligation is introduced into EMIR by EMIR 3.0 requiring that counterparties and CCPs that are required to report the details of derivative contracts shall ensure that such details are reported correctly and without duplication, including where the reporting obligation has been delegated.

Exemption for single stock equity options and equity index options

EMIR 3.0 includes an exemption for uncleared single stock equity options and equity index from the variation margin and initial margin requirements.

Money Market Fund Regulation

EMIR 3.0 incorporates certain amendments to the Money Markets Fund Regulation[3] including amendments to the counterparty risk limit therein.

EMIR 3.0 Directive

Disapplication of counterparty risk limits

The EMIR 3.0 Directive amends the UCITS Directive[4] to disapply counterparty risk limits where a derivative is cleared at an authorised or recognised CCP under EU law. The reference to an "OTC" derivative has been removed and hence the counterparty risk limit will apply to both OTC and ETD derivatives unless they cleared at an authorised or recognised CCP under EU law.

The EMIR 3.0 Directive also amends the CRD IV Directive[5] and the Investment Firms Directive[6] with the aim of encouraging institutions and investment firms to take the necessary steps to adapt their business models to ensure consistency with the new requirements for clearing under EMIR 3.0 and to enhance overall their risk management practices.

The amendments under the EMIR 3.0 Directive will become applicable eighteen months later, as Member States need to transpose the amendments in their respective national law.

3 Regulation 2017/1131/EU
4 Directive 2009/65/EC as amended
5 Directive 2013/36/EU as amended
6 Directive 2019/2034

CONTACT US

Our Offices

Dublin
33 Sir John Rogerson's Quay
Dublin 2
Ireland
Tel: +353 1 667 0022

Cayman Islands
Landmark Square
West Bay Road, PO Box 775
Grand Cayman KY1-9006
Cayman Islands
Tel: +1 345 949 0022

New York
33 Irving Place
New York
NY 10003
United States
Tel: +1 646 770 6080

Tokyo
12th Floor,
Yurakucho Itocia Building
2-7-1 Yurakucho, Chiyoda-ku
Tokyo 100-0006,
Japan
Tel: +813 6860 4885

CONTACT POINTS

For more details on how we can help you, to request copies of most recent newsletters, briefings or articles, or simply to be included on our mailing list going forward, please contact any of the team members below.

Karen Jennings
Of Counsel | Dublin
E karen.jennings@dilloneustace.ie
T + 353 1 667 0022

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