

Margin IGT User Guide

Applications for intragroup exemptions from the margin requirements under the European Market Infrastructure Regulation (“EMIR”)

Under some circumstances (set out in Article 11 of EMIR and Commission Delegated Regulation 2016/2551 (the '**Margin RTS**')) an exemption from the margin requirements in relation to non-cleared OTC derivatives is available to firms for their intragroup transactions. Certain conditions will have to be met and (except for UK to UK intragroup transactions) firms will have to apply to their national competent authority(ies) and have to be granted the exemption.

The FCA is the national competent authority ('**NCA**') responsible for receiving and assessing application forms from all UK counterparties (both financial and non-financial). This user guide should be used by firms to help them complete their application forms. Firms will need to refer to EMIR and the relevant supporting Regulatory Technical Standards (Commission Delegated Regulation 2013/149 and the Margin RTS) to assess their compliance with the legal requirements.

Types of Application

1. If your firm is a UK counterparty who wants to be exempt from the margin obligation in relation to non-centrally cleared OTC derivative transactions with another UK counterparty belonging to your group, no formal application is required. You should therefore satisfy yourself that you meet the relevant conditions (**Article 11(5) of EMIR**).
2. If your firm is a UK financial counterparty who wants to be exempt from the margin obligation in relation to non-centrally cleared OTC derivative transactions with another EU financial counterparty belonging to your group, you must apply to us for an exemption (**Article 11(6) EMIR**).
3. If your firm is a UK non-financial counterparty who wants to be exempt from the margin obligation in relation to OTC derivative transactions with another EU non-financial counterparty belonging to your group, you must apply to us for an exemption (**Article 11(7) EMIR**).
4. If your firm is a UK non-financial counterparty who wants to be exempt from the margin obligation in relation to non-centrally cleared OTC derivative transactions with an EU financial counterparty belonging to your group, no formal application is required by the UK non-financial counterparty (**Article 11(10) EMIR**). A notification of this exemption will be provided to us by the NCA of the EU financial counterparty.
5. If your firm is a UK counterparty who wants to be exempt from the margin obligation in relation to non-centrally cleared OTC derivative transactions with another counterparty belonging to your group established in a third country in respect of which the European

Commission has adopted an equivalence decision, you must apply to us for an exemption (**Article 11 (8) and (9) EMIR**).

6. If your firm is a UK counterparty who wants to benefit from a derogation from the margin obligation in relation to non-centrally cleared OTC derivative transactions with another counterparty belonging to your group established in a third country in respect of which the European Commission has not adopted an equivalence decision, you must apply to us to benefit from the derogation (**Article 36 of the Margin RTS**). Such derogation will be time limited and expire in accordance with Article 36 of the Margin RTS (after which counterparties will need to apply for an exemption pursuant to Article 11(8) or (9) of EMIR once the Commission has adopted an equivalence decision).

General Process

7. Following publication of the Margin RTS, we can confirm that we will start accepting applications for intragroup exemptions from the margin obligation from **4 January 2017**.
8. We have provided two types of application form which are available on the FCA EMIR web page under the "Notifications and Exemptions" sub-page.
 - **Single Pair Application Form**: This form should be used if your firm requires an exemption with just one other group entity.
 - **Multiple Pairs Application Form**: This form should be used if your firm requires an exemption with multiple entities within your group and the details required in Part 1 (Applicant Counterparty Details and Risk Management Procedures) are the same for all the entities within your application. Please note a maximum of 20 intragroup pairs can be submitted within this form.
9. The application forms are in Excel format. Please save a copy of the form before editing. Both the single pair and multiple pairs application forms have three tabs that the applicant counterparty needs to complete.
10. Applicant counterparties will need to provide supporting documentation to an application. See Part 3, Section G (below) for further details.
11. Applicant counterparties will need to send completed forms and the supporting documentation via email to MarginIGT@fca.org.uk.
12. The FCA has three months to assess each application. The decision will be communicated via email to the person of appropriate seniority as indicated in the form and the submitter of the form. Please note that where counterparties are established in 2 different EU Member States and the relevant NCAs disagree on whether the relevant conditions are met, counterparties should not rely on the exemption.

Application Form

Part 1 (Applicant Counterparty Details and Risk Management Procedures)

13. Part 1 consists of Sections A to C and relates to details on the applicant counterparty, risk management procedures and the existence of any impediment to the transfer of own funds or repayment of liabilities between the counterparties.
14. If you have multiple group entities for which you require an exemption and the details within Sections A to C are the same, please use the multiple pairs application form.

15. The table below provides further detail on the information an applicant firm should provide.

Question(s)	Detail required	Relevant regulation
A1 – A5	Fill in relevant details about the applicant counterparty.	N/A
A6 – A10	Provide details regarding the supervisory authority(ies) of the applicant counterparty, including supervisor contacts within the FCA and PRA if the firm has a dedicated supervisor contact, or “contact centre” if not. Leave blank if the applicant counterparty is a non-financial counterparty under EMIR.	N/A
A11 - 12	Select option from drop-down menu	N/A
B1	Select option from drop-down menu	Article 3, EMIR
B2	Summarise the applicant counterparty’s group risk management procedures. Supporting documentation will need to be provided in Section G2 to support this answer. However, note that a summary is required here in addition to the relevant supporting documentation. Refer to OTC Q&A 6(d) from ESMA EMIR Q&As (intragroup exemptions from the clearing exemption) for guidance.	Article 3, EMIR
B3	Select option from drop-down menu	Paragraph (a), Articles 11(6) to (10), EMIR
B4	Describe how the applicant counterparty’s group risk management procedures ensure the regular monitoring of the intragroup exposures. Describe how they ensure the timely settlement of the obligations resulting from the intragroup OTC derivative contracts is guaranteed based on the monitoring and liquidity tools at group level. Describe how the monitoring and liquidity tools are consistent with the complexity of the intragroup transactions.	Paragraph (a), Articles 11(6) to (10), EMIR
C1	Select option from drop-down menu	Paragraph (b), Articles 11(6) to (10), EMIR
C2	Describe the test/measures the applicant counterparty has undertaken to determine whether there is any current or foreseen legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.	Paragraph (b), Articles 11(6) to (10), EMIR Article 33 of Commission Delegated

		Regulation 2016/2551
C3	Select option from drop-down menu	Paragraph (b), Articles 11(6) to (10), EMIR
C4	Describe the test/measures the applicant counterparty has undertaken to determine whether there is any current or foreseen practical impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.	Paragraph (b), Articles 11(6) to (10), EMIR Article 34 of Commission Delegated Regulation 2016/2551

Part 2 (Intragroup Counterparty Details and Transaction Details)

16. Part 2 consists of Sections D to F and relates to information on the intragroup counterparty and transaction details.
17. If you are completing a multiple pairs application form, all the questions in this part will need to be answered for each intragroup entity pair in each relevant column on the right hand side of Part 2 of the form. There is a maximum of 20 intragroup pairs (i.e. 20 columns) per application.
18. The table below provides further detail on the information an applicant firm should provide.

Question(s)	Detail required	Relevant regulation
D1 – D5	Fill in relevant details about the intragroup counterparty	N/A
D6	Select option from drop-down menu.	N/A
D7	Provide details regarding the supervisory authority reviewing the application of the intragroup counterparty, including supervisor contacts if known. Leave blank if not applicable (i.e. if the intragroup counterparty is not an EU firm)	N/A
E1	Select option from drop-down menu.	Article 11 (6) to (10), EMIR Article 36, Commission Delegated Regulation 2016/2551
E2	Select option from drop-down menu.	Article 3, EMIR
E3	Select option from drop-down menu. Supporting documentation will need to be provided in Section G1 to support this answer.	Article 18, Commission Delegated Regulation 2013/149
E4	Provide the name of the national competent authority to whom the intragroup counterparty will send its application form (if applicable, i.e. if the intragroup	N/A

	counterparty is also an EU firm).	
E5	Select option from drop-down menu.	Article 3, EMIR
E6	Describe how the intragroup counterparties are included in the same consolidate accounts.	Article 3, EMIR
E7	Select option from drop-down menu.	Article 3, EMIR
E8 – E10	Provide information about the national competent authority who is responsible for exercising consolidated supervision of the counterparties.	N/A
F1 – F3	Select "X" from the drop-down menu for all the options that apply between the applicant and intragroup counterparty.	Article 18, Commission Delegated Regulation 2013/149
F4	Fill in all the relevant currencies for each asset class relevant to the OTC derivatives contracts between the applicant and intragroup counterparty.	Article 18, Commission Delegated Regulation 2013/149
F5	Fill in the maximum tenure (in years) of the OTC derivatives contracts between the applicant and intragroup counterparty.	Article 18, Commission Delegated Regulation 2013/149
F6	Select "X" from the drop-down menu for all the options that apply between the applicant and intragroup counterparty.	Article 18, Commission Delegated Regulation 2013/149
F7	Size: Fill in the anticipated average size of OTC derivative transactions between the applying counterparties for the forthcoming year. Applicants should provide the average notional amount of OTC transactions in million euros per transaction.	Article 18, Commission Delegated Regulation 2013/149
F8	Volume: Fill in the anticipated volume of OTC derivative transactions between the applying counterparties for the forthcoming year. Applicants should provide the total gross notional in million euros for all transactions.	Article 18, Commission Delegated Regulation 2013/149
F9	Frequency: Fill in the anticipated number of OTC derivative transactions between applying counterparties for the forthcoming year.	Article 18, Commission Delegated Regulation 2013/149

Part 3 (Supporting Documentation and Declaration)

19. Part 3 consists of Sections G and H and relates to the applicant counterparty confirming that they have provided the relevant supporting documentation and understand the terms under which they have submitted the application.

20. All supporting documentation should be in Word, Excel or PDF format and attached to the cover email along with the accompanying completed application form(s).
21. Under Section G (“Supporting Documentation”), the FCA does not require applicants to submit a Legal Opinion to support their application. However, note that **the FCA may request a Legal Opinion from an applicant counterparty, if required, to further support their application.**
22. The table below provides further detail on the information an applicant firm should provide

Question(s)	Detail required	Relevant regulation
G1	<p>Applicants will need to provide documentation to support the answer provided in Question E3 on the corporate relationship between the counterparty(ies).</p> <p>A group structure chart or documentation detailing the relationship between the intragroup counterparties will be sufficient.</p> <p>If using a multiple pairs application form, one group structure chart that includes all the group entities listed in the application will be sufficient.</p> <p>Naming convention: [APPLICANT NAME]_CODE 1_FCA_[Sequence No of document attached]_[YEAR]</p>	Article 18(2), Commission Delegated Regulation 2013/149
G2	<p>Applicants will need to provide documentation to support the answer provided in Question B2 on the group risk management procedures.</p> <p>If using a multiple pairs application form, one risk management procedures document that covers all the group entities listed in the application will be sufficient.</p> <p>Naming convention: [APPLICANT NAME]_CODE A_FCA_[Sequence No of document attached]_[YEAR]</p>	Article 18(2), Commission Delegated Regulation 2013/149
G3	<p>Applicants will need to provide documentation to support the answers provided in Section F on transaction details between the intragroup counterparties.</p> <p>Applicants should provide details of intragroup transactions (including the outstanding notional positions and the number of trades entered into) for the previous 12 months unless a different period of time is necessary to provide the FCA with visibility of the intragroup pairs’ typical trading activity.</p> <p>A snapshot of trading for the above period of time will be sufficient for each entity pair.</p> <p>Naming convention: [APPLICANT NAME]_CODE B_FCA_[Sequence No of document attached]_[YEAR]</p>	Article 18(2), Commission Delegated Regulation 2013/149

G4	<p>Applicants will need to provide documentation to support the answers provided in Section F on transaction details between the intragroup counterparties.</p> <p>If using a multiple pairs application form, copies of contracts of the relevant ISDA schedules (if available) will need to be provided for each entity pair.</p> <p>Naming Convention: [APPLICANT NAME]_CODE C_FCA_[Sequence No of document attached]_[YEAR]</p>	Article 18(2), Commission Delegated Regulation 2013/149
H1 – H3	<p>Select the option from the drop-down menu to confirm the information you have provided is correct and that you have attached the relevant supporting documentation.</p> <p>Applications that do not provide supporting documentation as requested in Section G above will be deemed incomplete.</p>	N/A
H4	<p>This question should be answered for all UK to EU intragroup applications.</p> <p>Select the option from the drop down menu to confirm the scope of the application (and therefore, the details provided about the transactions for which the applicant seeks the exemption) is the same in the application as the scope and transaction detail described in the application submitted by the intragroup counterparty to their relevant national competent authority.</p> <p>Leave blank if not applicable (i.e. if the intragroup counterparty is not an EU firm).</p>	N/A
H5	<p>Select the option to confirm the applicant counterparty agrees to notify the FCA immediately of any change that may affect the fulfilment of the conditions of Article 3 and Article 11 (6) to (10) of EMIR, and Articles 32 to 34 of the Commission Delegated Regulation 2016/2251, as applicable.</p> <p>Firms should notify the FCA of any change as described above via email to MarginIGT@fca.org.uk as soon as the change has occurred.</p>	N/A
H6	<p>Select the option to confirm that the declaration has been read and understood.</p>	N/A
H7 – H10	<p>Fill in contact details of the person of appropriate seniority.</p> <p>The application form must be submitted by a person of appropriate seniority within the applicant counterparty, e.g. an executive director, company secretary or head compliance officer. That person</p>	N/A

	must verify that all of the information in the application form is accurate.	
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Please email the **completed application** form to MarginIGT@fca.org.uk. The FCA has three months to assess each application. The decision will be communicated via email to the person of appropriate seniority and the submitter of the form.

For any **queries** relating to the completion of this application form please email EMIR@fca.org.uk.