

Requirements and directions under reg. 8(4) and (7) of the Financial Services and Markets Act 2000 (Over the Counter Derivatives, etc) Regulations 2013

1. Purpose

The Financial Conduct Authority ('FCA') issues the following requirements and directions, pursuant to regulations 8(4) and (7) of the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013, in relation to the information to be contained in an application for, or notification of, exemption under paragraph (8) or (9) of Article 11 of Regulation No 648/2012 ('EMIR'), and the form in which that information must be provided.

The categories of application and notification to which this instrument applies are set out in paragraph 2 below.

2. Categories of application and notification

This instrument is limited to applications and notifications in relation to UK counterparties who benefited from an exemption under paragraph 2 of Article 36 or paragraph 3 of article 37 of Regulation 2016/2251, where:

- a) the exemption was not objected to or withdrawn by the FCA before its expiry on 4 January 2020; and
- b) no equivalence decision has yet been adopted pursuant to Article 13(2) of EMIR for the purposes of Article 11(3) of EMIR, in respect of the third country in which its counterparty is established.

It also applies to UK counterparties who benefited from FCA supervisory practice to permit such exemptions on or after 4 January 2020 (following expectations of the European Supervisory Authorities set out in paragraph 35 of their [Final Report 2019/20](#)).

3. Content and form of an application or notification

The FCA requires and directs as follows:

- a) No additional information to that we have already received is required to complete an application or notification unless:
 - circumstances relevant to the satisfaction of exemption conditions have relevantly changed (and have not already been notified under article 32(10) of Regulation 2016/2251); or
 - in the case of an application, the counterparty requires individual communication of the positive decision.
- b) Where either of the conditions in the above paragraph apply:
 - in the first case, the updated information should be emailed by the counterparty to us at our usual address for applications and notifications for intragroup exemptions from margin requirements (MarginIGT@fca.org.uk).

- In the second case, where individual communication is required, the counterparty must provide a current email address to us by email to MarginIGT@fca.org.uk. If individual communication is required, an application will not be deemed complete without a current email address being provided to us.
- c) In general, the FCA does not expect to issue a personal communication of the positive decision, and expects that this general communication of the decision, as updated upon the commencement of regulation 82 (New exemptions from certain clearing obligations and risk-management obligations) of the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc, and Transitional Provision) (EU Exit) Regulations 2019 (SI 2019/335), will be sufficient.
- d) Accordingly, the FCA communicates that exemptions will be provided on the same basis and subject to the same specifications and limitations as previously advised to the counterparty, and that no further information is required to complete a notification or application, except where:
- circumstances relevant to the satisfaction of exemption conditions have relevantly changed (and have not already been notified); or
 - the counterparty requires individual communication of the decision.

4. Amendment of this instrument

This instrument may be amended by the FCA by further instrument.

Financial Conduct Authority
[30 October 2020]