

Joint ESAs Q&As on exchange of collateral

The Joint Q&As were developed by the European Supervisory Authorities (EBA, EIOPA and ESMA) based on their joint mandate under Article 11(15) of EMIR¹ to define bilateral margin requirements.

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¹ European Market Infrastructure regulation (EMIR)

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0648&from=EN>

1. Intragroup transactions

1.1. Partial exemption

Question 1: [last update 18 March 2021]

Intragroup transactions can be exempt “totally or partially” from the requirement related to the exchange of collateral for OTC derivatives contracts not cleared by a CCP. What is the scope of this partial exemption?

Answer 1:

When making a decision on the exemption from the requirement to exchange collateral, the relevant competent authorities shall assess whether the “the risk-management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction.” Competent authorities can conclude that the risk-management procedures of the counterparties are consistent with an exemption from initial margins, but not from variation margins. In this case, as it is foreseen in Article 32(4) of the Commission Delegated Regulation 2016/2251, competent authorities could grant a partial exemption, i.e. an exemption limited to the exchange of initial margins.

1.2. Application process for intragroup transactions between financial counterparties and non-financial counterparties

Question 2: [last update 18 March 2021]

In the process related to the intragroup exemption from the exchange of collateral, where a counterparty is a financial counterparty and the other counterparty is a non-financial counterparty and they are established in different Member States. Which competent authority should decide on the exemption?

Answer 2:

Only the financial counterparty should apply to its competent authority (as it is mentioned in Article 11(10) of EMIR). According to Article 32(9) of the Commission Delegated Regulation 2016/2251, the competent authority of the financial counterparty will make a decision and will communicate it to the competent authority of the non-financial counterparty.

2. Covered bonds exemption

2.2 Scope of the covered bonds exemption

Question 3: [last update 18 March 2021]

Does the exemption in Article 30 Commission Delegated Regulation (EU) 2016/2251 (RTS 2016/2251) of the margin rules concerning OTC derivatives concluded in connection with covered bonds apply where the conditions in Article 30(2) RTS 2016/2251 are satisfied in

respect of all such covered bonds or only to those covered bonds that are issued by credit institutions that have their registered office in the European Union and which are subject to special public supervision designed to protect bond holders?

Answer 3:

According to Article 30 of the Commission Delegated Regulation (EU) 2016/2251 (RTS 2016/2251), each of the conditions set out in Article 30(2) RTS 2016/2251 must be fully met. Article 30(2)(f) of RTS 2016/2251 also requires that the covered bond with which the OTC derivative transaction is associated with must meet the requirements in paragraphs (1), (2), and (3) of Article 129 of the CRR Regulation (EU) No 575/2013.

Article 129(1) of the CRR provides preferential credit risk weighting treatment only for “bonds as referred to in Article 52(4) of Directive 2009/65 (“UCITS Directive”)”. Article 52(4) of the UCITS Directive in turn refers to bonds that are issued by a credit institution, which has its registered office in a Member State and is subject by law to special public supervision designed to protect bond-holders.

Hence, the exemption can only be applied to those covered bonds that are issued by EU based credit institutions that have their registered office in the European Union and which are subject to special public supervision designed to protect bond holders.