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Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Topic

UCITS global exposure

Subject Matter

Impact of EMIR on UCITS - Exemption for intra-group transactions under EMIR

Question

Where a UCITS is subject to the clearing obligation of Article 4(1) of EMIR, can it make use of the exemption for intragroup transactions (Article 4(2) of EMIR)?

ESMA Answer

[ESMA 34-43-392 UCITS Q&A, section 6, Q&A 2]

ESMA is of the view that in the case of UCITS the exemption for intragroup transactions should be construed narrowly, and that in most cases it will not be possible for the exemption to be used. A UCITS can only make use of the exemption for intragroup transactions if it has been established to form part of the same group (as defined in Article 2(16) of EMIR) as the counterparty to the OTC derivative contract and if it fulfils all the criteria for intragroup transactions set out in Article 3(2)(a)(i)-(iv), (b), or (d) of EMIR.

Article 3(2)(a)(iii) of EMIR requires both counterparties to be included in the same consolidation on a full basis. In addition, they have to be subject to appropriate centralised risk evaluation, measurement and control procedures, as well as fulfil other specific requirements set out in Article 3(2) of EMIR.

An exemption to the clearing obligation based on Article 4(2) of EMIR can only be granted after a thorough case-by-case assessment, which will have to take into account whether the UCITS has been established to form part of the same group as the counterparty to the OTC derivative contract and whether the UCITS fulfils all the criteria set out in Article 3(2)(a), (b), or (d) of EMIR.

Where a UCITS is granted an intragroup exemption for the clearing obligation, it follows that the UCITS will not be considered a distinct entity and will not be treated separately for other purposes under EMIR either, in particular for the purpose of the bilateral margining thresholds calculation. Therefore, the aggregate month-end average notional amount referred in Article 28(1) of Commission Delegated Regulation (EU) 2016/2251 shall be calculated at the group level (including the relevant UCITS).