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FREQUENTLY ASKED QUESTIONS FOR EEA CLIENTS
FINANCIAL MARKET INFRASTRUCTURE ACT / FINFRAG (FINANZMARKTINFRASTRUKTURGESETZ) & EMIR (EUROPEAN MARKET INFRASTRUCTURE REGULATION)

Following the financial crisis in 2008, the heads of the G20 states agreed to regulate the derivatives market with the intention to make trading in derivatives more transparent and to reduce the systemic risk. Since then various reforms have been implemented worldwide (e.g. Title VII of the US Dodd-Frank Wall Street Reform and Consumer Protection Act [Dodd-Frank] in the USA and the European Market Infrastructure Regulation [EMIR] in the EU). On 1 January 2016, the Swiss Finanzmarktinfrastrukturgesetz (FinfraG), also known as Financial Market Infrastructure Act (FMIA), has been enacted and aligns with the other derivatives-related reforms. FinfraG imposes a number of new obligations for Swiss market participants and their counterparties.

Clients established in the European Economic Area (EEA) face the situation that they may be affected by both regulations: EMIR and FinfraG. These frequently asked questions (FAQs) represent the understanding by Bank Julius Baer & Co. Ltd. (the Bank) of the FinfraG and EMIR requirements that apply to these clients.

1. GENERAL INFORMATION

Q1. Do clients established in the EEA fall under both EMIR and FinfraG regulations?
Yes, clients established in the EEA (which includes the EU and also Liechtenstein, Iceland and Norway after their ratification) are subject to EMIR. When trading derivatives with the Bank, these clients may also be subject to the Swiss reform, FinfraG, depending on the criteria set out below (please refer to Q2). In this case the clients will have to adhere to both EMIR and FinfraG obligations.

FinfraG and EMIR are similar but still differ, e.g. regarding counterparties within the scope, start dates of the obligations and products affected. These FAQs try to combine both perspectives to provide clients in the EEA with an overview of rules that are applicable to them. When trading with each other, both the Bank and the client need to be compliant with their own local regulation. Therefore, always the stricter obligation of both regulations will prevail and is outlined in these FAQs.

To reduce the amount of obligations for entities that are trading with counterparties worldwide, states are starting to acknowledge the derivatives-related reforms of other states (so-called equivalence decisions). Until the EU recognises the Swiss rules as equivalent to the EU rules, and vice versa, European clients are indeed affected by both regulations.

Q2. Who is affected by FinfraG and EMIR?
Within the scope are all market participants that are defined as companies. Companies are all kinds of businesses established in Switzerland and entered in the Swiss Commercial Register, including their foreign branches.

EEA legal entities – including personal investment companies, foundations and family offices as well as similar structures, trusts and individuals – are also defined as companies if they engage in 'economic activities' (i.e. trade with goods and/or services). They are affected by FinfraG only if they enter into derivative transactions with Swiss undertakings.

Bank clients that do not fall under the above-mentioned definition of 'company' may still be indirectly affected by these regulations when trading derivative contracts with the Bank (please refer to section 3).

Q3. What is meant by economic activity?
Economic activity is any kind of trading with goods or services. It is independent from the way a market participant is financed.

Q4. Which products are within the scope?
Within the scope are over-the-counter (OTC) and exchange-traded derivative (ETD) transactions. An OTC derivative contract is a bilateral, non-securitised derivative contract that is not executed on an organised market. Examples for OTC derivatives are FX and precious metals forwards and swaps, FX options or interest rate swaps. ETDs are standardised but also non-securitised contracts that are executed on an organised market. Examples of ETDs are futures or options on an equity index underlying.

The following products are entirely outside the scope:

- Transferable securities
- Money market instruments
- Investments in funds
- FX spot contracts
- Structured products
- Securities lending and borrowing
- Physically settled commodity OTC derivatives

Q5. What are the obligations?
The obligations can be divided into four broad categories:

1. Risk mitigation measures for OTC derivative contracts that are not centrally cleared via a central counterparty (CCP):

    - Timely confirmation: parties must confirm contract details in a timely manner (under EMIR in effect since 15 March 2013 and under FinfraG since 1 January 2017); please refer to Q10.
    - Portfolio reconciliation: parties must reconcile portfolios with each other to ensure that both parties have the same understanding of their open transactions (under EMIR in effect since 15 September 2013 andunder FinfraG since 1 January 2017); please refer to Q11.
    - Dispute resolution: parties must agree on procedures and processes to identify, record and monitor disputes with their counterparties, e.g. in relation to the terms or valuation of contracts and the exchange of collateral (under EMIR in effect since 15 September 2013 andunder FinfraG since 1 January 2017); please refer to Q12.
    - Portfolio compression: portfolios between counterparties with 500 or more contracts outstanding must be analysed for the possibility to compress at least twice a year (under EMIR in effect since 15 September 2013 andunder FinfraG since 1 January 2017).
    - Daily valuation: parties must calculate valuations for all outstanding contracts on a daily basis (under EMIR in effect since 15 March 2013 and under FinfraG since 1 January 2017); please refer to Q13.
    - Margin requirements: parties must have procedures in place to ensure the timely, accurate and appropriately segregated exchange of collateral (start date under EMIR for the Bank and its counterparties as of 1 March 2017 and under FinfraG as of 1 September 2017); please refer to Q14.

2. Reporting of OTC derivative and ETD transactions, including the reporting of collateral and valuation (under EMIR in effect since 12 February 2014/ August 2014; start date under FinfraG: earliest in Q3 2017); please refer to section 3.

3. Mandatory clearing of designated OTC derivative transactions. Under EMIR, the obligation started with interest rate swaps for the Bank and its clients in December 2016 and will be followed by credit default swaps as of August 2017. Under FinfraG, the clearing obligation will come into effect 12 months after the announcement of the clearing obligation for a certain product. Please refer to section 4.

4. Platform trading: parties will have to trade certain OTC derivative contracts on a trading venue or an organised trading facility authorised or recognised by the respective regulator. Platform trading is regulated by another EU regulation called MIFIR. Expected start date in the EU is 1 January 2018. It is expected that the obligation under FinfraG will enter into force shortly after that date, but in any event not earlier than the respective obligation in the EU. Please refer to section 5.

Q6. Do the obligations mentioned in answer 5. apply to the same extent to all counterparties within the scope of FinfraG and EMIR?
No, both regulations differentiate between certain types of counterparty classes (financial counterparties and non-financial counterparties). Due to the fact that FinfraG differentiates between small and large financial counterparties and EMIR does not, all clients are requested to classify themselves under the FinfraG classification as defined below:

Financial counterparties (FCs)
Financial counterparties are counterparties that are professionally involved in financial markets, such as banks, security dealers, (re-)insurance companies, parent companies of a financial or insurance group or a financial or insurance conglomerate, pension funds, investment foundations, fund management companies and certain other companies/persons licensed under the Collective Investment Schemes Act (CISA). Alternative investment funds (AIFs) managed by alternative investment fund managers (AIFMs) authorised or registered in accordance with Directive 2011/61/EU are considered FCs.

FCs are divided into large financial counterparties (FC+) and small financial counterparties (FC-). FC- have fewer obligations than FC+.

If a group's aggregated average notional amount of open OTC derivative contracts on a 30-working-day rolling position is above CHF 8 billion, it is classified as a FC+. Physically settled FX forwards and FX swaps are not taken into the threshold calculation.

Non-financial counterparties (NFCs)
Non-financial counterparties are all other entities that are defined as companies.

NFCs are divided into two subcategories:

- Large non-financial counterparties (NFC+) are higher-volume users of OTC derivatives and have exceeded a certain threshold (as set out below);
- Small non-financial counterparties (NFC-) are lower-volume users of OTC derivatives and have not exceeded the threshold. NFC- have fewer obligations than NFC+.

The relevant thresholds are set out in the table below:

Asset class	Clearing threshold (gross notional amount)
Credit derivatives	CHF 1.1bn
Equity derivatives	CHF 1.1bn
Interest rate derivatives	CHF 3.3bn
FX derivatives	CHF 3.3bn
Commodity and other derivatives	CHF 3.3bn

A company is considered an NFC+ if its aggregated rolling average position over 30 working days (including positions of any other NFC within its group, but excluding hedging contracts) exceeds the threshold in respect of at least one of the above asset classes. Physically settled FX forwards and FX swaps are not taken into the threshold calculation.

If the threshold is exceeded in at least one of these asset classes, the obligations will apply on all derivatives traded by the company, including those entered into for hedging purposes.

The client's entire volume in OTC derivatives must be taken into account for the threshold calculation. The Bank is therefore not in a position to determine whether a client is classified as NFC+ or NFC- (or as FC+ or FC-). For this reason the client's self-declaration is included in the FMIA Annex to the Conditions Governing Derivatives Transactions form. It is the client's obligation to provide the Bank with this information and to update the information as soon as the status changes.

Q7. Which obligations apply to the different types of counterparties?
The client's obligations depend on the classification:

	FC+	FC-	NFC+	NFC-
Timely confirmation	✓	✓	✓	✓
Portfolio reconciliation	✓	✓	✓	✓
Dispute resolution	✓	✓	✓	✓
Portfolio compression	✓	✓	✓	✓
Trade reporting obligation	✓	✓	✓	✓
Daily valuation, reporting valuations & collateral	✓	✓	✓	
Clearing obligation	✓	✓	✓	
Margin requirements	✓	✓	✓	
Platform trading	✓	✓	✓	

Q8. What is the Bank's counterparty classification?
The Julius Baer Group's aggregated average notional amount of open OTC derivative contracts on a 30-working-day rolling position is above CHF 8 billion. Therefore, all entities of the Julius Baer Group, including the Bank, are classified as an FC+.

2. RISK MITIGATION MEASURES

Q9. Which products are within the scope of the risk mitigation measures?
Counterparties within the scope of FinfraG and/or EMIR have to implement risk mitigation techniques for all OTC derivative contracts that have not been cleared via a CCP.

Q10. What is meant by 'timely confirmation'?
Under EMIR, EEA counterparties are required to ensure that trade confirmations are sent in a timely manner (in effect since March 2013):

- All OTC derivatives traded between FCs, NFC+s: at the latest one business day after the execution
- All OTC derivatives traded with NFC-: at the latest two business days after the execution

Since 1 January 2017, the FinfraG requirements apply for the Bank and its clients: counterparties are required to exchange and confirm trade confirmations within a specific timeline. The timeline depends on the classification of the other counterparty, the time when the trade was executed (before or after 4.00 p.m.) and on the complexity of the product (i.e. whether or not the client needs to countersign the confirmation):

- In general, all OTC derivative contracts must be confirmed within two business days after the execution.
- Contracts that are executed after 4.00 p.m. must be confirmed within three business days after the execution.

The deadlines are extended by one business day if the contract is traded with a small counterparty and if the client is required to countersign the confirmation.

Clause 6 of the FMIA Annex to the Conditions Governing Derivatives Transactions form states that the client's consent is assumed after the respective deadline. In case the client does not agree with the terms provided on the trade confirmation, the Bank must be informed within the above-mentioned deadlines.

For trade confirmations that require the client's countersignature, clients need to return the signed trade confirmations within the timelines above. Hold mail are encouraged to switch to an electronic communication channel (e.g. e-banking).

Q11. How can counterparties fulfil their portfolio reconciliation obligations?
Under EMIR, all FCs and NFCs are required to have appropriate processes in place to exchange portfolio data on outstanding OTC derivative contracts with their counterparty, and to reconcile the data. The obligation started in September 2013.

All EEA clients that have signed the form EMIR information and representation (EMIR form), including the respective section regarding portfolio reconciliation service, already receive their portfolio data.

All other clients mandatorily receive their data with the FinfraG enforcement (1 January 2017).

Under FinfraG, the frequency of the portfolio reconciliation increases in correlation to the number of outstanding OTC derivative contracts between the counterparties:

- $\geq$ 500 outstanding trades: daily
- 51–499 outstanding trades: weekly
- $\leq$ 50 outstanding trades: quarterly

Unless otherwise agreed, the Bank will send the portfolio reconciliation report to the client's general mailing address separately for each individual account. The client is obliged to reconcile the data received with its own data. Clients also have the possibility to use TriOptima for portfolio reconciliation. In this case, the Bank and the client will send the data to TriOptima (bank-client confidentiality is waived in this regard). TriOptima perfoms the reconciliation on an automated basis and informs both counterparties of potential divergences.

If the client has mandated an independent asset manager, the Bank will send the portfolio reconciliation report to both the client and the independent asset manager. The client is responsible for ensuring that portfolio data are reconciled. The client may delegate this obligation to the independent asset manager.

Q12. How can counterparties fulfil their dispute resolution obligations?
Counterparties within the scope of FinfraG and/or EMIR are required to define the processes of how disputes are handled between the counterparties. Under EMIR, this obligation has been in effect since 15 September 2013 and respective provisions are included in the EMIR form. The start date under FinfraG was 1 January 2017. Provisions on how to handle disputes in case of deviations in the portfolio data as of then are included in the FMIA Annex.

Q13. Which methodology should be used for the daily valuation of open positions?
FCs and NFC+s are required to evaluate their outstanding OTC derivative contracts on a daily basis. A mark-to-model methodology is allowed where market conditions prevent mark-to-market prices.

Q14. When will margin requirements come into force?
Counterparties that are classified as FC+, FC- or NFC+ are required to collect and post initial margin as well as to

exchange variation margin for non-centrally cleared OTC derivative trades.

Under EMIR, the obligation to exchange variation margin on a daily basis is in effect since 1 March 2017 for all counterparties whose aggregated month-end average notional amount of non-centrally cleared derivative trades does not exceed EUR 3 trillion. This deadline applies to the Bank.

Under EMIR physically settled FX forwards are exempted from the margin requirements until 31 December 2018; equity and index options are exempted until 2020.

Under FinfraG the obligation to exchange variation margin on a daily basis will start on 1 September 2017 for all counterparties whose aggregated month-end average notional amount of non-centrally cleared derivative trades does not exceed CHF 3 trillion. Physically settled FX forwards and FX swaps are exempted from this obligation.

Under both EMIR and FinfraG the implementation of the initial margin requirement follows a phased-in approach. For the Bank, whose aggregated month-end average notional amount of non-centrally cleared derivative trades does not exceed EUR 750 billion, the obligation starts on 1 September 2020.

Q15. What are the clients' duties?

To comply with the margin requirements under EMIR and FinfraG, FC+, FC- and NFC+ clients need to sign a new 'Credit Support Annex' and daily exchange variation margin.

3. EMIR/FINFRAG REPORTING

Q16. What needs to be reported under EMIR and FinfraG?

All openings, modifications and closures of trades within the scope of EMIR and FinfraG need to be reported to a trade repository by the end of the day after the execution. This includes the conclusion, modification and termination of any derivative contract within the scope (OTC and ETD) with any counterparty (including individuals and third-country entities). The transmitted data include both transaction and counterparty data. The report must indicate the other counterparty of the trade. This is done via the Legal Entity Identifier (LEI) or alternatively the Business Identifier Code (BIC) for legal entities, or an internal code number (anonymised) for natural persons. In addition, FCs and NFC+s are required to report the daily valuation of all outstanding derivative contracts.

The trade repositories store all data and make them available to the regulators.

Q17. When does the reporting obligation start?

The reporting obligation under EMIR has been in effect since 12 February 2014 for both OTC derivatives and ETD transactions.

In addition to the OTC derivative and ETD transaction reports, FCs and NFC+s are required to report collateral and valuation of open transactions on a daily basis. The start date of this obligation was 12 August 2014.

Under FinfraG, the reporting obligation of FC+s for OTC derivative contracts starts six months after a trade repository has been recognised by the Swiss regulator FINMA (earliest Q3 2017), and for ETD contracts, 12 months after the FINMA recognition (earliest Q1 2018). The Bank reserves the right to start reporting both OTC derivative and ETD contracts at the same time.

Q18. Do Bank clients established in the EEA have to report themselves?

Yes, EMIR requires dual-sided reporting. Therefore, clients established in the EEA and that are within the scope of EMIR are required to report their trades to a trade repository. The Bank offers its EEA clients to delegate their reporting obligation to the Bank.

In this case, the Bank submits the transaction, position, valuation and collateral reports required under EMIR on behalf of the client, but the liability for the correctness of the data remains with the client.

The Bank's delegated reporting service is subject to the following restriction:

The Bank only reports transactions done with the Bank. The onboarding of clients requesting delegated reporting services is currently valid only for assets booked with the Bank through booking centres Switzerland and Guernsey.

As soon as Switzerland has recognised the EU reporting rules as equivalent, and vice versa, it should be sufficient to report the transactions once under FinfraG. The Bank will then terminate all existing EMIR reporting delegation agreements without further information.

Q19. What is required from EEA clients that wish to delegate their EMIR reporting obligation to the Bank?

Clients need to inform their relationship manager that they wish to delegate their EMIR reporting obligation to the Bank. This can be done in section 12.5 of the FMIA Annex. The following requirements need to be met in order to enable the Bank to report on the client's behalf:

- The client needs to obtain a LEI and provide it to the Bank. For details on how to obtain a LEI, please see Q19.
- Clients receive the 'Delegation Registration Data' spread sheet from their relationship manager and need to fill in this spread sheet as explained in the tab 'Instructions'.
- The 'EMIR Reporting Delegation Agreement' needs to be signed. This agreement is a standard document developed by the International Swaps and Derivatives Association (ISDA) and the Futures and Options Association (FOA) and has been adjusted for the Bank accordingly. The Bank prepares this agreement based on the information provided in the 'Delegation Registration Data' spread sheet.
- EMIR does not allow delegation of liability with respect to the reported data, i.e. the client remains responsible for the reports submitted by the Bank. In order to be able to monitor the reports submitted by the Bank, the Bank recommends that its clients open an account with the trade repository chosen by the Bank, which is the Depository Trust & Clearing Corporation (DTCC). For more information on the DTCC onboarding requirements, please contact the DTCC Global Trade Repository onboarding team at gtr_onboarding@dtcc.com.

Q20. How can clients obtain a LEI?

Companies may register at designated institutions, called Local Operating Units (LOUs), to obtain a LEI. The London Stock Exchange in the UK and WM-Datenservice in Germany are such LOUs. A list of LOUs may be found under www.leiroc.org.

Clients may have already registered for a 'CFTC Interim Compliant Identifier' (CICI), which is used for reporting under the US Dodd-Frank regime. The CICI can also be used as LEI for the purposes of FinfraG and EMIR.

A guideline on how to obtain a LEI can be found here[1].

Q21. What is the Bank's LEI?

The Bank's LEI is: PNWU8O0BLT17BBV61Y18
It can be found here[1]

Q22. Does the Bank provide Unique Trade Identifiers (UTIs) to clients that fulfil their EMIR reporting obligation themselves?

Due to the dual-sided nature of the EMIR reporting obligation, the UTI is required in order to match the reports of the two counterparties; i.e. the UTI must be agreed between the two parties. Given that the Bank is considered a third-country entity and therefore does not have to adhere to the reporting obligations, the UTI does not have to be agreed between the client and the Bank. As a consequence, the Bank does not provide UTIs to its clients.

Guidance on how the UTI must be generated can be found in the EMIR Q&A of the European regulator ESMA (http://www.esma.europa.eu/page/post-trading).

4. CLEARING VIA A CCP

Q23. Who is affected by the clearing obligation of OTC derivative transactions?

Clients established in the EEA are subject to the clearing obligation if they are classified as FCs or NFC+s. As a consequence, the Bank will be required to clear OTC derivative transactions with such clients.

Pension Scheme Arrangements are exempted from the clearing obligation until 16 August 2018.

Q24. How can the clearing obligation be met?

Counterparties within the scope of the clearing obligation can either become a clearing member of an authorised CCP and clear their OTC derivative transactions via this CCP directly, or become a client of a clearing member. The Bank itself is not a clearing member of an authorised CCP and does not offer clearing broker services. The Bank transactions will be cleared via the London Clearing House (LCH).

The list of CCPs authorised by ESMA can be found on the ESMA website[2]

Q25. Which products are within the scope of the clearing obligation under EMIR and FinfraG, and when will the obligation start?

The clearing obligation under FinfraG will start at the earliest in 2018 for the Bank and its clients, and the Swiss regulator FINMA will announce which products are within the scope of this obligation.

- Under EMIR, ESMA determines which products are subject to the clearing obligation. ESMA has published the start dates for interest rate swaps (IRS) in the G4 currencies (USD, EUR, JPY and GBP), which follow a phased-in approach, depending on the classification of the counterparties.

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[1] www.juliusbaer.com/ch/otc-derivative-reforms

[2] http://mifiddatabase.esma.europa.eu/Index.aspx?sectionlinks_id=24&language=0&pageName=CENRAL_COUNTERPARTIES_Display&subsection_id=0

The Bank centrally clears such IRS transactions with its EEA clients. The clearing obligation for the currencies SEK, NOK and PLN starts for the Bank and its clients in August 2017. The start date for the central clearing of certain credit default swaps starts in August 2017.

It is assumed that FinfraG aligns with EMIR and also starts the clearing obligation with IRS and CDS contracts. If so, there will be no change for the Bank and its EEA clients because the clearing obligation is already fulfilled under EMIR.

5. PLATFORM TRADING

Q26. When will the platform trading obligation start?
In the EU, the obligation to trade certain products/asset classes via a trading venue or an organised trading facility is not part of EMIR, but of another reform called MiFID II/MiFIR. In the EU platform, trading is expected to enter into force on 1 January 2018. The Swiss rules regarding platform trading will not enter into force before the respective EU provisions are enacted. FINMA will then announce the products/asset classes that have to be traded via a trading venue operator of an organised trading facility authorised by FINMA. FX forwards and FX swaps are exempted from this obligation. The implementation deadlines follow a staggered approach:

- 6 months after the announcement if both counterparties are clearing members
- 9 months after the announcement if a clearing member enters into a transaction with an FC+ or if both counterparties are FC+s
- 12 months if an FC+ enters into a transaction with an NFC+ or if both counterparties are NFC+s

Given that the Bank is no clearing member, transactions with the Bank will become subject to the platform trading obligation no earlier than 9 or 12 months after the FINMA announcement, depending on the client's classification.

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