Oliver McCausland
Market Conduct & Post-Trade Policy Team
Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

16 January 2026

Sent via email: cp25-30@fca.org.uk & FMIPolicyBranch@hmtreasury.gov.uk

Dear Oliver,

Response to CP25/30 Streamlining the UK EMIR Intragroup Regime

The International Swaps and Derivatives Association, Inc. (ISDA) and UK Finance – hereby the "Associations" welcome the opportunity to respond to CP25/30 on streamlining the UK EMIR Intragroup Regime. The Associations are highly supportive of creating a more permanent, streamlined, intragroup regime within UK EMIR.

The Associations support the FCA in reducing regulatory burdens and supporting more efficient business practices. In particular, we welcome the removal of the condition requiring there to be an equivalence determination in place for the relevant non-UK jurisdiction where a UK counterparty seeks to rely on the exemptions for transactions with non-UK affiliates. We submit the response to CP25/30 and feedback on the draft SI ('Over-the-Counter Derivatives (Intragroup Transactions) Regulations 2026') together, with comments on the SI at the end of this document.

1. Do you agree with our proposal to reduce the detail and supporting documentation currently listed under Article 18 of BTS 2013/149 from the documentation required for a margin exemption?

We welcome this proposal as a step in the right direction. However, our members support deletion of the notification requirements altogether:

- The US rules exempt transactions with affiliates which meet specified conditions without requiring pre-notification to regulators or giving regulators an opportunity to object to the counterparty relaying on the exemption.
- The notification requirement imposes a burden both on counterparties and on the FCA which must maintain a resource which is dedicated to reviewing the notifications and deciding whether or not to object.
- Where the counterparty is PRA-authorised or part of a PRA supervised group it arguably may not make sense for FCA to review the reliance on the exemptions.

We acknowledge that the FCA values the notification process for visibility and ensuring conditions are met. Given the arguments above however, we do feel that notifications could be simplified (if not deleted altogether).

In summary, our members feel that this notification requirement is unnecessary and adopting a similar approach to the US would be beneficial for UK market participants seeking to rely on the exemption.

Although this question specifically asks about the margin exemption, our members also support deletion of the notification requirement for the clearing exemption.

2. Is there anything about the notification process for clearing and margin exemptions which you would like to raise?

Removal of 'practical or legal impediments'

The availability of the intragroup exemption from the margin requirements is conditional upon applicants demonstrating that there is no 'current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities'. The meaning of this expression and the underlying driver for its inclusion make interpretation of its more detailed sub-provisions extremely challenging and this has led to firms limiting the scope of their applications to particular jurisdictions only: we understand from our recent discussion with the FCA that this is not the intention.

In particular, some firms have read sub-paragraph (a) of Article 33 of BTS 2016/2251 as meaning that an affiliate incorporated in a jurisdiction that has currency or exchange controls would not be eligible for an exemption. Although we now understand that this was not the intention, it makes it difficult to work out what would then be captured under this head. The condition in sub-paragraph (b) is extremely broad in nature and again, it is unclear to us what is intended to be covered: is it trying to get at regimes like financial assistance or contractual provisions such as negative pledges? Many legal systems might have pieces of legislation that would have this effect in certain circumstances but it is far from clear what is meant here. The legal opinions (discussed with the FCA during the consultation process) assess matters such as capacity and authority and the risk of a derivative being voidable as an illegal gambling contract: while these opinions arguably address this head to some extent it is not obvious that this is what is intended to be covered, especially as firms would presumably not enter into derivatives at all in jurisdictions where there was a high risk of voidability. Our members find sub-paragraph (c) just as confusing: is the intention simply that the firm runs some kind of solvency check on its affiliates or is this intended to capture something entirely other?

We are highly supportive of the removal of this provision and the greater alignment of the position on intra-group transactions with that under other margin regimes. The FCA has other powers that it can utilise if it has concerns about particular types of intragroup trading or particular jurisdictions and we think the removal of this condition would be helpful in simplifying the UK regime.

Eligibility Issue for Non-UK Counterparties

Members also advocate for allowing non-UK counterparties subject to the UK clearing and margin obligations to rely on the intragroup exemptions (e.g., for transactions between two UK branches of affiliated non-UK banks). Members highlight that recent FCA guidance on transaction reporting through branches may exacerbate the eligibility issue, as a broader definition of branch activity could affect exemption applicability.

Reporting obligation

All conditions in the intragroup exemption from the reporting obligation for transactions involving an NFC or non-UK NFC should be removed other than the requirement for both counterparties to be members of the same group. This would simplify and clarify the process for firms and end the discrimination against groups headed by UK counterparties that are FCs.

CVA exemptions

The UK's aim is to ensure that the planned modifications to Article 3 of UK EMIR align with the PRA framework. The PRA has already announced a framework by which it will exempt intragroup transactions from the capital requirements of CVA risk that apply to PRA authorised institutions subject to UK CRR rules.

We suggest the following drafting to align these sets of regulations (Article 3(3) of UK EMIR with PRA rule 3.2(1)).

Replace UK EMIR Article 3(3)(a) with the following:

(a) included in a consolidation in accordance with accounting standards applicable to one of the counterparties or to the ultimate parent undertaking of the counterparties [other existing text deleted].

The policy note also states that the government intends that the PRA's process will be the only route through which firms apply to receive CVA capital exemptions. This indicates that HMT intends to revoke Article 382(4)(b) UK CRR which currently provides an automatic exemption from CVA charges in relation to intragroup transactions. We are happy to work with HMT to ensure that any transitional provisions to carry over existing CVA exemptions on the basis of EMIR equivalence decisions are drafted in helpful terms.

3. Do you agree with our proposal to consolidate the provisions for margin exemption notifications solely into BTS 2016/2251?

If the notification requirement is maintained, the Associations agree with the proposal to consolidate the provisions for margin exemption notifications into BTS 2016/2251.

4. Do you agree with our proposal to make consequential amendments to BTS 2016/2251, BTS 2013/149, and the EMIR Q&As on the Intragroup Regime to align with the Treasury's proposed amendments to UK EMIR?

The Associations agree with the above proposal to make the relevant consequential amendments.

In addition, the following changes should be made:

- Revoke the application of Q&A 6(d); and

- Issue new guidance stating that a firm notifying the FCA under amended Article 4(2)(b) UK EMIR should provide the same information as is envisaged by amended Article 32(1) of BTS 2016/2251.

This would align the information requirements for firms notifying proposed use of the clearing and margin exemptions for intragroup transactions with non-UK affiliates in a way that reduces the initial burden on firms while allowing the FCA to require further information where it considers it necessary to verify the satisfaction of the conditions in amended Article 4(2)(b) or Article 11(8) UK EMIR.

The FCA may then wish to amend Article 32(2) of the BTS to refer to the information currently mentioned in Q&A 6(d) (to indicate that the FCA may request this information).

Comments on draft regulations in response to the HMT draft SI:

Reference[1]	**Proposed change**	**Comment**
Article 3(1) UK EMIR	Delete "an" before "appropriate centralised risk evaluation, measurement and control procedures"	Corrects error in original English version of EU EMIR.
Article 3(3)(a) UK EMIR	Replace with "included in a consolidation in accordance with accounting standards applicable to one of the counterparties or the ultimate parent undertaking of the counterparties;"	As discussed above in response to question 2 of CP25/30, we have suggested this drafting to align the sets of regulations (Article 3(3) of UK EMIR with PRA rule 3.2(1)).
Article 4(2)(a) UK EMIR	Delete "and belonging to the same group".	The deleted words are redundant because Article 3 defines an intragroup transaction as a transaction between counterparties which are part of the same group. Article 11(5) and (8) do not include corresponding wording.
Article 4(2)(b) UK EMIR	Delete "belonging to the same group".	See comment on Article 4(2)(a) UK EMIR above.
Article 4(2)(b) UK EMIR	Replace with "to OTC derivative contracts between a counterparty established in the United Kingdom and a counterparty established in a third country where the transactions between the counterparties meet the conditions in Article 3."	As discussed above in response to question 1 of CP25/30, the notification requirement should be removed entirely.

[1] The references to UK EMIR in this table refer to UK EMIR as it would be amended by the HMT draft SI.

Reference[1]	Proposed change	Comment
Article 9(1), third and fourth sub-paragraph UK EMIR	Delete all conditions in the intragroup exemption from the reporting obligation for transactions involving an NFC or non-UK NFC other than the requirement for both counterparties to be members of the same group.	As discussed above in response to question 2 of CP25/30, all conditions in the intragroup exemption from the reporting obligation for transactions involving an NFC or non-UK NFC should be deleted other than the requirement for both counterparties to be members of the same group.
Article 11(5) UK EMIR	Delete "provided that there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between counterparties" in Article 11(5).	As discussed above in response to question 2 of CP25/30, the "practical or legal impediment" condition should be removed.
Article 11(8) UK EMIR	Replace Article 11(8) UK EMIR with "An intragroup transaction falling within Article 3(1), which is entered into by a counterparty established in the United Kingdom and a counterparty established in a third country is exempt from the requirement in paragraph 3 of this Article provided that the risk-management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction."	As discussed above in response to question 1 of CP25/30, the notification requirement should be removed entirely. As discussed above in response to question 2 of CP25/30, the "practical or legal impediment" condition should be removed.
Article 11(5) and (8) UK EMIR	Insert "material" before "practical or legal impediment".	This amendment would align these conditions with the corresponding condition in proposed PRA rule 3.2(3) and would address concerns that minor or insubstantial impediments might prevent a counterparty relying on the intragroup exemptions. (Please note that it is the Associations' preference that the practical or legal impediment wording is removed entirely. We include this technical

Reference[1]	Proposed change	Comment
		comment in the circumstance that HMT is unwilling to remove the condition entirely).
Article 11(14)(c) UK EMIR	Delete "(c) the details of the exempted intragroup transactions to be included in the notification referred to in paragraph 8".	As discussed above in response to question 1 of CP25/30, the notification requirement should be removed entirely. If this change is accepted, there will be no need for these technical standards.
Article 11(16) UK EMIR	Delete "The FCA may make technical standards specifying the procedures for the counterparties and the relevant competent authorities to be followed when applying the exemptions under paragraph 8".	As discussed above in response to question 1 of CP25/30, the notification requirement should be removed entirely. If this change is accepted, there will be no need for these technical standards.
Article 11(17) UK EMIR	Replace with "The FCA may make technical standards specifying the applicable criteria referred to in paragraph 8."	As discussed above in response to question 2 of CP25/30, the "practical or legal impediment" condition should be removed. If this change is accepted, there will be no need for the PRA or the FCA to specify in technical standards what should be considered as a practical or legal impediment.

Proposed amendments to UK EMIR to extend the application of the exemptions to OTC derivatives between two non-UK counterparties

Proposed HMT amendments to Article 3(1) UK EMIR	Possible Associations proposed amendment to Article 3(1) UK EMIR
In relation to a financial counterparty or a non-financial counterparty, an intragroup transaction is an OTC derivative contract	In relation to a ~~non-financial~~ counterparty, an intragroup transaction is an OTC derivative contract entered into with another

entered into with another counterparty which is part of the same group provided that both counterparties are included in the same consolidation on a full basis and they are subject to an appropriate centralised risk evaluation, measurement and control procedures [rest of text deleted]	counterparty which is part of the same group provided that both counterparties are included in the same consolidation on a full basis and they are subject to an appropriate centralised risk evaluation, measurement and control procedures [rest of text deleted]
	Possible Associations proposed amendment to Article 4(2) UK EMIR – insert after point (b):
	(c) to OTC derivative contracts between two counterparties established in third countries [and belonging to the same group]*, where the transactions between the counterparties meet the conditions in Article 3;
	Possible Associations proposed amendment to Article 11 UK EMIR – insert after paragraph 8:
	8a. The requirement laid down in paragraph 3 of this Article shall not apply to an intragroup transaction referred to in Article 3 that is entered into by counterparties which are established in third countries.
Notes ***These words could be omitted. See technical comments above.**	

Thank you for the opportunity to comment and we remain at your disposal for further engagement.

Contacts:

Fiona Taylor, Head of UK Public Policy, ftaylor@isda.org

Perrine Herrenschmidt, Head of Brussels Office, European Public Policy, pherrenschmidt@isda.org

Yvonne Deane Harte, Director, Secondary Markets & Post Trade Policy, UK Finance, Yvonne.deaneharte@ukfinance.org.uk

Andrea Macleay, Manager, Capital Markets & Wholesale Policy, UK Finance, andrea.macleay@ukfinance.org.uk

About ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 77 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on LinkedIn, Facebook and YouTube.

About UK Finance

UK Finance is the collective voice for the banking and finance industry. Representing more than 300 firms across the industry, it seeks to enhance competitiveness, support customers and facilitate innovation. Our primary role is to help our members ensure that the UK retains its position as a global leader in financial services. To do this, we facilitate industry-wide collaboration, provide data and evidence-backed representation with policy makers and regulators, and promote the actions necessary to protect the financial system. UK Finance's operational activity enhances members' own services in situations where collective industry action adds value. Our members include both large and small firms, national and regional, domestic and international, corporate and mutual, retail and wholesale, physical and virtual, banks and non-banks. More information is available on our website.