

# Brexit: onshoring EMIR

OCTOBER 2020

# Agenda

Status of onshoring process

Application of standstill

Re-classification issues – transactions and parties

Loss of central bank exemptions

Clearing

Margining

Trade Reporting

Treatment of intra-group exemptions and derogations



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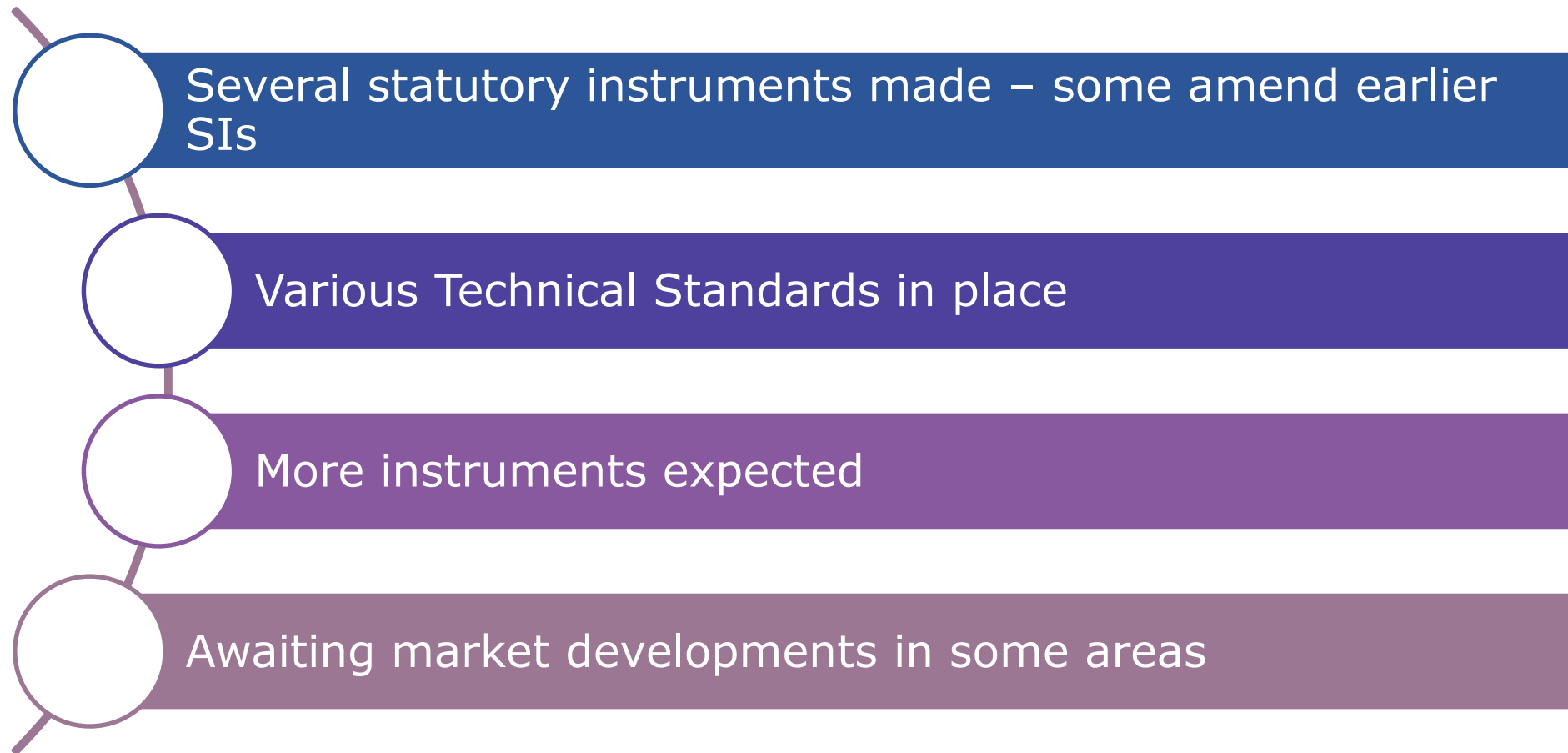
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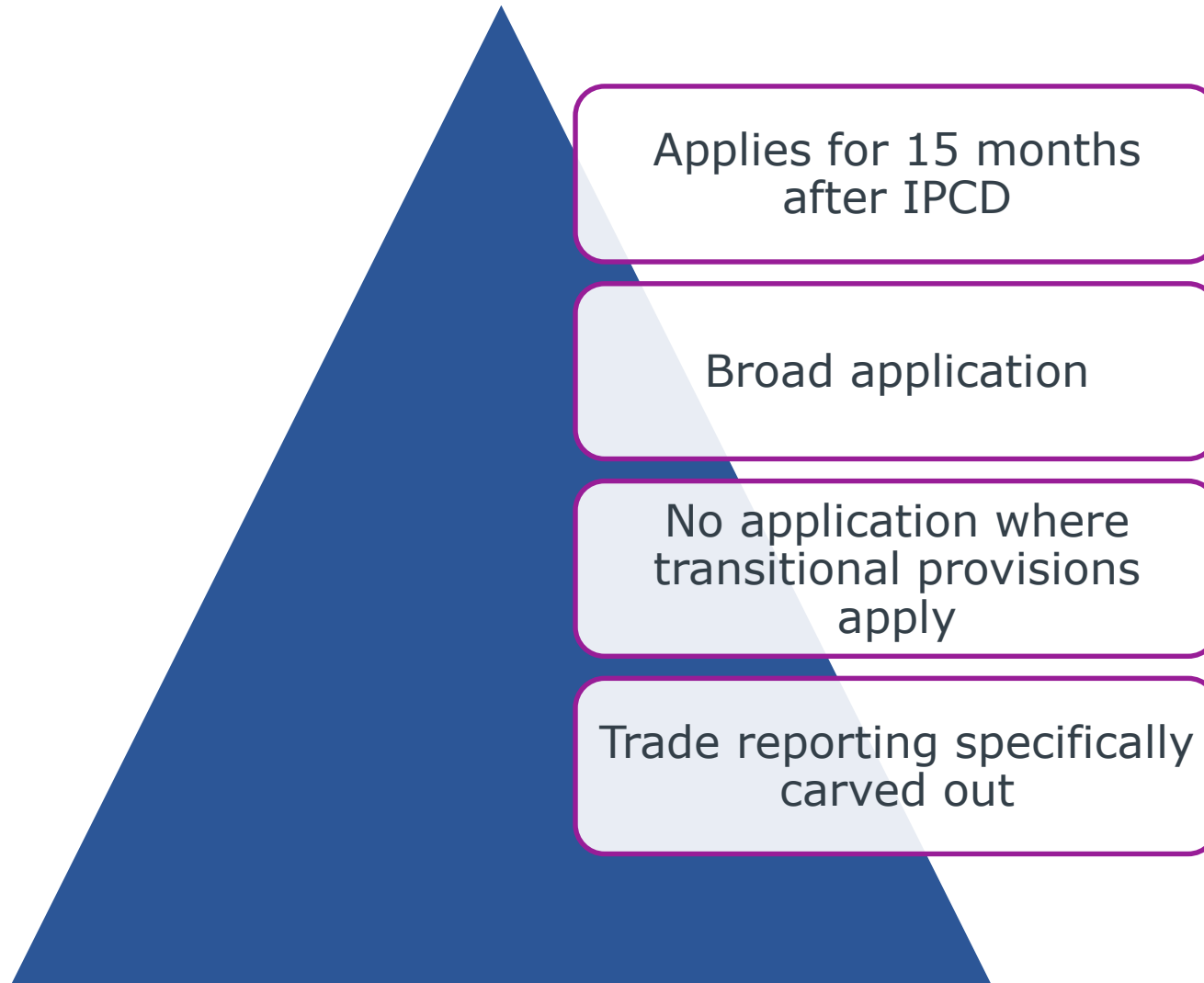
# EMIR onshoring

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# Standstill – application and gaps

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## Re-classification – parties

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Under EMIR, all non-EU entities are referred to as “non-EU” or “third country” entities

After IPCD, UK entities will be third country entities under EMIR

EU entities will be third country entities under UK EMIR

Limited impact on obligations, but new status may need to be notified to counterparties

# Re-classification – transactions

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Some EMIR obligations only apply to “OTC derivatives”

“...a derivative contract the execution of which does not take place on a regulated market [...] or on a third-country market considered to be equivalent to a regulated market [under EMIR]...”

Exchange-traded derivatives executed on an EU regulated market are not “OTC derivatives” under EMIR

Absent equivalence decisions, ETDs traded on EU venues will be categorised as “OTC” under UK EMIR (and vice versa)

These would need to be taken into account when determining + or – status

New obligations could apply

Reciprocal equivalence decisions needed to remedy this issue

# Loss of Central Bank exemptions

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Member of the ESCB and certain other EU public bodies are exempt from EMIR

EU will continue to exempt Bank of England and certain UK public bodies after IPCD

UK EMIR currently only exempts Bank of England

**BUT UK Government has officially stated intention to exempt ESCB members and other EU public bodies**

# Clearing – UK EMIR

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UK EMIR will require clearing through a CCP authorised or recognised by the Bank of England

UK EMIR incorporates a Temporary Recognition Regime, which grants temporary recognition to EU CCPs which:

- are permitted to act in the EU under EU EMIR; and
- have notified the BoE of their intention to provide clearing services in the UK after IPCD

Temporary recognition lasts for at least three years

List of CCPs available on BoE [website](#)

Existing EU equivalence decisions are revoked; UK will conduct its own analysis but is expected to find the same regimes equivalent



# Clearing – EU EMIR

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EU EMIR will continue to require clearing through a CCP authorised or recognised by ESMA

UK CCPs recently received EU recognition following a temporary equivalence decision by the European Commission

Lasts from IPCD until June 2022

UK CCPs will need to apply for “full” recognition in the meantime

# Margining – UK EMIR

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Onshored Margin Rules expected to mirror EU Margin Rules

Where there are deviations, counterparties will need to comply with the stricter set of rules but these deviations will be minimised during a 15 month transitional period

EU Margin Rules currently pending amendments (new “opt-outs”, amended IM phase-in timetable, extension of derogations for intragroup transactions)

# Margining – EU EMIR

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No Brexit related amendments or dispensations being made under EU EMIR margin rules

Debt securities of UK regional governments, local authorities not treated as central government exposures and of UK public sector entities not treated as regional government or local authority exposures posted as collateral subject to a higher haircut and minimum rating

UK UCITS securities will likely no longer be eligible collateral

Cash collateral exchanged as initial margin needs to be held by an EU credit institution unless and until equivalence is given to UK EMIR

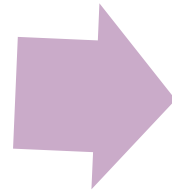
Transactions novated to EU affiliates to avoid multiple regime application will not currently be grandfathered

The intragroup exemption will not be available unless and until an equivalence decision is made with respect to the UK

# Margining – further implementation

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Draft UK Technical Standards reflect the anticipated final EU position



Some provisions are not covered by the UK onshoring documents e.g. IM implementation phases 5 and 6 and derogations

- IM phases 5 and 6 will be implemented after IPCD, so do not form part of the onshoring process;
- derogations and exemptions are covered comprehensively in the UK onshoring SIs

# Trade reporting – UK EMIR

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UK entities will need to report to FCA registered or recognised TR

No standstill – applies from IPCD

No transitional regime as such

BUT

- conversion regime for UK TRs registered with ESMA;
- temporary (3 years) registration for UK TRs which are part of a group containing an ESMA registered TR; and
- early application regime for new UK TRs

List of TRs intending to operate in the UK after IPCD on FCA [website](#)

Consider whether consent to disclose information to the TR is needed

# Trade reporting – delegated reporting

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# Intragroup exemptions

“True” IGT exemptions apply as between:

- two EU entities; and
- an EU entity and an entity from an equivalent TC

Requires application or notification to competent authorities

Where an exemption applies at IPCD, it is grandfathered under UK EMIR for three years

If a relevant equivalence decision is made in the meantime, the exemption expires two (for clearing) or four (for margining) months after the decision

# Intragroup derogations – clearing

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Relevant for trades that would be intragroup transactions were an equivalence decision to be made

Clearing obligation is deferred until 21 December 2020 OR 60 days after a relevant equivalence decision

Requires notification and confirmation

Grandfathering under UK EMIR is available for derogations that are in effect on IPCD

If the deferral date is not extended, grandfathering will not be available

Separate provisions allow application for a new exemption, after IPCD



# Intragroup derogations – margining

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Relevant for trades that would be intragroup transactions were an equivalence decision to be made

Margining obligation is deferred (in practice) until 21 December 2020 OR four months after a relevant equivalence decision

Requires application or notifications

Grandfathering under UK EMIR is available for derogations that are in effect on IPCD

If the deferral date is not extended, grandfathering will not be available

Separate provisions allow application for a new exemption, after IPCD

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