

## **Guidance on applying exemptions under Article 11(5) to (10) of EMIR from the exchange of collateral requirement under Article 11(3) of EMIR for intragroup transactions under Article 3 of EMIR**

(1) Pursuant to Article 11(3) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (hereinafter ‘EMIR’), **financial counterparties** under Article 2(8) of EMIR (hereinafter ‘**FCs**’), and **non-financial counterparties** under Article 2(9) of EMIR taking positions in over-the-counter (OTC) derivative contracts **which exceed the threshold** set out in Article 10(3) of EMIR (**hereinafter ‘NFC+s’**) must have risk management procedures that require the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts<sup>1</sup> not cleared by a central counterparty (**hereinafter ‘exchange of collateral requirement’**).

(2) Risk management procedures, including the levels and type of collateral and segregation arrangements, are specified in Commission Delegated Regulation (EU) 2016/2251 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk mitigation techniques for OTC derivative contracts not cleared by a central counterparty (hereinafter ‘the RTS on risk mitigation techniques’). The RTS for risk mitigation techniques entered into force on 4 January 2017. Pursuant to Articles 36, 37 and 38 thereof, they apply no earlier than one month after the date of their entry into force, i.e. on 4 February 2017, depending on the aggregate average notional amount of non-centrally cleared OTC derivatives of both counterparties. Commission Delegated Regulation (EU) 2016/2251 was corrected by Commission Delegated Regulation (EU) 2017/323 of 20 January 2017.

(3) The RTS on risk mitigation techniques include the following:

- a) in relation to OTC derivatives not cleared by a central counterparty (CCP), a provision requiring counterparties to exchange both initial and variation margins; this reduces counterparty credit risk, mitigates systemic risk, and ensures alignment with international standards;
- b) a list of eligible collateral for the exchange of margins, the criteria to ensure the collateral is sufficiently diversified and not subject to wrong-way risk, as well as the methods to determine appropriate collateral haircuts;
- c) operational procedures related to documentation, legal assessments of the enforceability of the exchange of collateral agreements and the timing of the collateral exchange;
- d) **procedures for counterparties and competent authorities when applying exchange of collateral requirement exemptions** (Article 32) for intragroup derivative contracts;
- e) applicable criteria on the legal and practical impediments **to the prompt transfer of own funds and repayment of liabilities between counterparties** when applying exchange of collateral requirement exemptions for intragroup derivative contracts (Articles 33 and 34 of the RTS on risk mitigation techniques).

(4) **Intragroup transactions** are defined in Article 3 of EMIR. With respect to intragroup transactions in the form of OTC derivative contracts, counterparties must meet the following general conditions:

- a) both counterparties are included in the same consolidation on a full basis (Article 3(3) of

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<sup>1</sup> Article 32 of Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012.

EMIR);

- b) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;
- c) a counterparty is established in the EU or, if it is established in a third country, the Commission has adopted an implementing act under Article 13(2) of EMIR in respect of that third country (Annex 1).

(5) For the purposes of paragraph 4(a), pursuant to Article 3(3) of EMIR, counterparties are considered to be included in the same consolidation when they are both either:

- a) included in a consolidation in accordance with Directive 83/349/EEC or International Financial Reporting Standards (IFRS) adopted pursuant to Regulation (EC) No 1606/2002 or, in relation to a group the parent undertaking of which has its head office in a third country, in accordance with generally accepted accounting principles of a third country determined to be equivalent to IFRS in accordance with Regulation (EC) No 1569/2007 (or accounting standards of a third country the use of which is permitted in accordance with Article 4 of that Regulation); or
- b) covered by the same consolidated supervision in accordance with Directive 2006/48/EC or Directive 2006/49/EC or, in relation to a group the parent undertaking of which has its head office in a third country, the same consolidated supervision by a third-country competent authority verified as equivalent to that governed by the principles laid down in Article 143 of Directive 2006/48/EC or in Article 2 of Directive 2006/49/EC.

(6) The applicant counterparty must prove to Národná banka Slovenska (NBS) its compliance with the condition of being subject to **appropriate centralised risk evaluation, measurement and control procedures** pursuant to paragraph 4(b), at least to the following extent:

- a) by describing the risk management and risk control policies, including how these policies are centrally defined and applied;
- b) by demonstrating that senior management is responsible for risk management and that risk measurement is being periodically reviewed (stating also the intervals between periodic reviews);
- c) by demonstrating that its organisation has in place regular and transparent communication mechanisms, such that the management board, senior management, relevant business line, risk management function, and other control functions can share information on the measurement, analysis and monitoring of risks;
- d) by demonstrating that internal procedures and information systems are consistent throughout the institution and are sufficiently reliable, thereby enabling all sources of relevant risks to be identified, measured and monitored on an aggregated basis and to the extent necessary for the entity, business line, and portfolio; and
- e) by demonstrating that key risk information is regularly reported to the central risk management function in order to allow appropriate centralised risk evaluation, measurement and control procedures across relevant entities within the group.

(7) For the exemption referred to in Article 11(5) of EMIR to be applied, there must be no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between counterparties.

(8) The exemptions referred to in Article 11(6) to (10) of EMIR apply provided that the following conditions are fulfilled:

- a) the risk management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;

b) there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.

(9) Pursuant to Article 33 of the RTS on risk mitigation techniques, a **legal impediment** to the prompt transfer of own funds or repayment of liabilities between the counterparties as referred to in paragraphs 5 to 10 of Article 11 of EMIR is deemed to exist where there are actual or foreseen restrictions of a legal nature including any of the following:

- a) currency and exchange controls;
- b) a regulatory, administrative, legal or contractual framework that prevents mutual financial support or significantly affects the transfer of funds within the group;
- c) any of the conditions on the early intervention, recovery and resolution as referred to in Directive 2014/59/EU of the European Parliament and of the Council<sup>2</sup> are met, as a result of which the competent authority (NBS) foresees an impediment to the prompt transfer of own funds or repayment of liabilities;
- d) the existence of minority interests that limit decision-making power within entities that form the group;
- e) the nature of the legal structure of the counterparty, as defined in its statutes, instruments of incorporation and internal rules.

(10) Pursuant to Article 34 of the RTS on risk mitigation techniques, a **practical impediment** to the prompt transfer of own funds or repayment of liabilities between the counterparties as referred to in paragraphs 5 to 10 of Article 11 of EMIR is deemed to exist where there are restrictions of a practical nature, including any of the following:

- a) insufficient availability of unencumbered or liquid assets to the relevant counterparty when due;
- b) impediments of an operational nature which effectively delay or prevent such transfers or repayments when due.

(11) The application of the exchange of collateral requirement exemption for intragroup transactions applies to transactions between two counterparties – the ‘applicant’ counterparty and the ‘intragroup’ counterparty. Each pair of intragroup counterparties must apply the exemption separately.

(12) Regarding the exemption from the exchange of collateral requirement, the application or notification from a counterparty to NBS pursuant to Article 11(6) to (10) of EMIR is deemed to have been received when NBS receives all of the following information:

- a) all the information necessary to assess whether the conditions specified in Article 3 and Article 11(6) to (10) of EMIR have been fulfilled;
- b) the information and documents referred to in Article 18 of Commission Delegated Regulation (EU) No 149/2013 (Annex 2).

(13) The application or notification referred to in paragraph 12 may not be **submitted to NBS** until the entry into force of the RTS on risk mitigation techniques.

(14) In the cases referred to in Article 11(6), (8) and (10) of EMIR, i.e. when at least

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<sup>2</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012 of the European Parliament and of the Council.

one of the counterparties is a financial counterparty, intragroup transactions are exempt totally or partially from the exchange of collateral requirement. Since EMIR does not provide additional information on partial exemptions from the exchange of collateral requirement and considering the initial and variation margin concept laid down in the RTS on risk mitigation techniques, it is expected that, following the entry into force of the RTS on risk mitigation techniques, the European Securities and Markets Authority (ESMA) will add a clarification of “partial exemption” to its [Questions and Answers](#), in the section “OTC questions – Intragroup transactions”.

### **Examples of the application of the exchange of collateral requirement exemption for intragroup transactions**

Counterparties to OTC derivative contracts not cleared by a central counterparty (Annex 1) may **apply the exemptions under Article 11(5) to (10) of EMIR from the exchange of collateral requirement under Article 11(3) of EMIR for intragroup transactions under Article 3 of EMIR** in accordance with Examples 1 to 6 below.

#### **Example 1:**

**An intragroup transaction referred to in Article 3 of EMIR which, pursuant to Article 11(5) of EMIR, is entered into by counterparties established in Slovakia.**

Where both **counterparties are established in Slovakia, they may automatically apply the exemption referred to in Article 11(5) of EMIR from the exchange of collateral requirement** laid down in Article 11(3) of EMIR, i.e. EMIR does not require them to notify NBS of the application of the exemption or to apply for the exemption to NBS, nor does it require information to be exchanged between NBS and ESMA, 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.**

#### **Example 2:**

**An intragroup transaction referred to in Article 3(2)(a), (b) or (c) of EMIR which, pursuant to Article 11(6) of EMIR, is entered into between a counterparty established in Slovakia and a counterparty established in another EU Member State, with at least one of the counterparties being a financial counterparty.**

(1) Pursuant to **Article 11(6) of EMIR, counterparties of an intragroup transaction under Article 3(2)(a), (b) or (c) of EMIR** (at least one of which is a financial counterparty) **must each separately notify** their respective competent authority in writing that they intend to apply the exchange of collateral requirement exemption for intragroup transactions relating to OTC derivative contracts concluded between each other and not cleared by a central counterparty; i.e. the counterparty established in Slovakia must apply to NBS for the exemption and the counterparty established in another Member State must apply to the competent authority of that Member State for the exemption.

(2) Pursuant to Article 32(1) of the RTS on risk mitigation techniques, the application from a counterparty established in Slovakia to NBS for authorisation to apply the exchange of collateral requirement exemption is deemed to have been received when NBS receives all of the following information:

- a) all the information necessary to assess whether the conditions specified in Article 11(6) of EMIR have been fulfilled;
- b) the information and documents referred to in Article 18 of Commission Delegated Regulation (EU) No 149/2013 (Annex 2).

(3) Where NBS determines that further information is required in order to assess whether the conditions referred to in paragraph 2(a) are fulfilled, it must submit a written request for information to the counterparty.

(4) NBS and the competent authority of another Member State may reach a positive decision on the total or partial exemption from the exchange of collateral requirement, provided that the following conditions are fulfilled:

- a) the risk management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;
- b) there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.

(5) To demonstrate compliance with the conditions specified in paragraph 4 for applying the exchange of collateral requirement exemption for intragroup transactions, the applicant counterparty established in Slovakia must complete the relevant fields in the template (Annex 3) in accordance with this Guidance or provide the required information in an annex to the template.

(6) The intragroup counterparty established in another Member State must demonstrate compliance with the conditions for applying the exchange of collateral requirement exemption for intragroup transactions in accordance with the procedures laid down by the competent authority of that Member State.

(7) NBS and the competent authority of another Member State must inform each other of receipt of the notification from the relevant counterparties.

(8) NBS and the competent authority of another Member State should reach a joint decision (positive or negative). If NBS and that competent authority fail to reach a positive decision (agreement) **within 30 calendar days** of receipt of the application for exemption, ESMA may, at the request of either of those authorities, assist them in reaching an agreement in accordance with its powers under Article 19 of Regulation (EU) No 1095/2010.

(9) A decision by NBS under Article 11(6) of EMIR must be communicated to the relevant counterparty within three months of receipt of all the information referred to in paragraph 2.

(10) Where NBS reaches a positive decision (allows the exchange of collateral requirement exemption) under Article 11(6) of EMIR, it must communicate that positive decision to the counterparty in writing, specifying at least the following:

- a) whether the exemption is a full exemption or a partial exemption;
- b) in the case of a partial exemption, a clear identification of the limitations of the exemption.

(11) Where NBS reaches a negative decision (rejects the exchange of collateral requirement exemption) under Article 11(6) of EMIR, it must communicate that negative decision to the counterparty in writing, specifying at least the following:

- a) the conditions of Article 11(6) of EMIR that are not fulfilled;

b) a summary of the reasons for considering that such conditions are not fulfilled.

(12) As referred to in paragraph 1, an intragroup OTC derivative transaction not cleared by a CCP may be exempt totally or partially from the exchange of collateral requirement under Article 11(3) of EMIR only if NBS and the relevant competent authority of another Member State reach a positive decision on the authorisation of the exemption.

(13) Counterparties that have received a positive decision according to Article 11(6) of EMIR must immediately notify the relevant competent authority (which for counterparties established in Slovakia is NBS) of any change that may affect the fulfilment of the conditions set out in paragraph 4. NBS may withdraw its positive decision following any change in circumstances that could affect the fulfilment of those conditions.

(14) Where a negative decision is communicated by NBS, the relevant counterparty may only submit another application where there has been a material change in the circumstances that formed the basis of NBS's negative decision.

(15) Pursuant to Article 11(11) of EMIR, the counterparty of an intragroup transaction which has been exempted from the exchange of collateral requirement in respect of intragroup transactions under Article 11(6) of EMIR must publicly disclose information on the exemption. The exemption information to be publicly disclosed is specified in Article 20 of Commission Delegated Regulation (EU) No 149/2013 (Annex 2).

(16) Under Article 11(11) of EMIR, NBS must notify ESMA of any decision adopted pursuant to Article 11(6) of EMIR, and must provide ESMA with the details of the intragroup transaction concerned within one month from the decision being submitted to the counterparty with respect to a decision of the competent authority of another Member State. The intragroup transaction notification to ESMA must include the information specified in Article 19 of Commission Delegated Regulation (EU) No 149/2013 (Annex 2). NBS must submit the notification through the EMIR Intragroup Notifications Register, ESMA's IT system.

### **Example 3:**

**An intragroup transaction referred to in Article 3(1) of EMIR which, pursuant to Article 11(7) of EMIR, is entered into by an NFC+ established in Slovakia and an NFC+ established in another EU Member State.**

(1) Pursuant to Article 11(7) of EMIR, where one counterparty is an **NFC+ established in Slovakia** and the other counterparty is an **NFC+ established in another EU Member State**, each counterparty must **notify** their respective competent authority **in writing** that they intend to apply the exchange of collateral requirement exemption for intragroup transactions relating to OTC derivative contracts concluded between each other and not cleared by a central counterparty; i.e. the counterparty established in Slovakia must notify NBS, and the counterparty established in another Member State must notify the competent authority of that Member State.

(2) Pursuant to Article 32(1) of the RTS on risk mitigation techniques, the notification from an NFC+ established in Slovakia to NBS of its intention to apply exchange of collateral requirement exemption is deemed to have been received when NBS receives all of the following information:

a) all the information necessary to assess whether the conditions specified in Article 11(7) of

EMIR have been fulfilled;

b) the information and documents referred to in Article 18 of the Commission Delegated Regulation (EU) No 149/2013 (Annex 2).

(3) Where NBS determines that further information is required in order to assess whether the conditions referred to in paragraph 2(a) are fulfilled, it must submit a written request for information to the NFC+.

(4) Where NBS objects to a notification under Article 11(7) of EMIR, it must communicate that objection to the NFC+ in writing, specifying at least the following:

- a) the conditions of Article 11(7) of EMIR that are not fulfilled;
- b) a summary of the reasons for considering that such conditions are not fulfilled.

(5) Where, after receiving a notification from an NFC+, NBS or the competent authority of another Member State considers that the conditions under Article 11(7) of EMIR, as referred to in paragraph 2(a) or (b), are not fulfilled, it must notify the other competent authority within two months of receipt of the notification.

(6) NBS and the competent authority of another Member State must notify the NFC+s of the objection referred to in paragraph 4 within three months of receipt of the notification.

(7) The exemption from the exchange of collateral requirement is valid unless, **within three months of the date of the notification**, either NBS or the competent authority of another Member State does not agree upon fulfilment of the following conditions referred to in Article 11(7) of EMIR:

- a) the risk management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;
- b) there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.

(8) Counterparties that have submitted a notification according to Article 11(7) of EMIR must immediately notify the relevant competent authority (NBS in the case of counterparties established in Slovakia) of any change that may affect the fulfilment of the conditions set out in paragraph 7. NBS may object to the notification following any change in circumstances that could affect the fulfilment of those conditions.

(9) Where an objection is communicated by NBS, the relevant counterparty may only submit another notification where there has been a material change in the circumstances that formed the basis of NBS's decision.

(10) Pursuant to Article 11(11) of EMIR, the counterparty of an intragroup transaction which has been exempted from the exchange of collateral requirement in respect of intragroup transactions under Article 11(7) of EMIR must publicly disclose information on the exemption. The exemption information to be publicly disclosed is specified in Article 20 of Commission Delegated Regulation (EU) No 149/2013 (Annex 2).

(11) NBS must notify ESMA of any notification received pursuant to Article 11(7) of EMIR (concerning the intention to apply the exemption), and must provide ESMA with the details of the intragroup transaction concerned within one month from receipt of the notification with respect to a notification under Article 11(7) of EMIR. The intragroup transaction notification to ESMA must include the information specified in Article 19 of Commission

Delegated Regulation (EU) No 149/2013 (Annex 2). NBS must submit the notification through the EMIR Intragroup Notifications Register, ESMA's IT system.

**Example 4:**

**An intragroup transaction referred to in Article 3(2)(a) to (d) of EMIR which, pursuant to Article 11(8) of EMIR, is entered into between a counterparty established in Slovakia and a counterparty established in a third country, with at least one of the counterparties being a financial counterparty.**

(1) Pursuant to Article 11(8) of EMIR, where **one of the counterparties is established in Slovakia and the other counterparty is established in a third country**, the counterparty established in Slovakia **must apply NBS in writing** for authorisation to apply the exchange of collateral requirement exemption for intragroup transactions relating to OTC derivative contracts concluded between each other and not cleared by a central counterparty.

(2) Pursuant to Article 32(1) of the RTS on risk mitigation techniques, the application from a counterparty established in Slovakia to NBS for authorisation to apply the exchange of collateral requirement exemption is deemed to have been received when NBS receives all of the following information:

- a) all the information necessary to assess whether the conditions specified in Article 11(8) of EMIR have been fulfilled;
- b) the information and documents referred to in Article 18 of Commission Delegated Regulation (EU) No 149/2013 (Annex 2).

(3) Where NBS determines that further information is required in order to assess whether the conditions referred to in paragraph 2(a) are fulfilled, it must submit a written request for information to the counterparty.

(4) NBS and the competent authority of another Member State may reach a positive decision on the total or partial exemption from the exchange of collateral requirement, provided that the following conditions specified in Article 11(8) of EMIR are fulfilled:

- a) the risk management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;
- b) there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.

(5) To demonstrate compliance with the above conditions for applying the exchange of collateral requirement exemption for intragroup transactions, the applicant counterparty established in Slovakia must complete the relevant fields in the template (Annex 3) in accordance with this Guidance or provide the required information in an annex to the template.

(6) Where NBS reaches a positive decision (allows the exchange of collateral requirement exemption) under Article 11(8) of EMIR, it must communicate that positive decision to the counterparty in writing, specifying at least the following:

- a) whether the exemption is a full exemption or a partial exemption;
- b) in the case of a partial exemption, a clear identification of the limitations of the exemption.

(7) Where NBS reaches a negative decision (rejects the exchange of collateral requirement exemption) under Article 11(8) of EMIR, it must communicate that negative



decision to the counterparty in writing, specifying at least the following:

- a) the conditions of Article 11(8) of EMIR that are not fulfilled;
- b) a summary of the reasons for considering that such conditions are not fulfilled.

(8) A decision by NBS under Article 11(8) of EMIR must be communicated to the counterparty established in Slovakia within three months of receipt of all the information referred to in paragraph 2.

(9) The exchange of collateral requirement exemption for intragroup transactions is valid, provided that NBS has reached a positive decision on the exemption pursuant to Article 11(8) of EMIR.

(10) Counterparties that have received a positive decision according to Article 11(8) of EMIR must immediately notify NBS of any change that may affect the fulfilment of the conditions set out in paragraph 4. NBS may withdraw its positive decision following any change in circumstances that could affect the fulfilment of those conditions.

(11) Where a negative decision is communicated by NBS, the relevant counterparty may only submit another application where there has been a material change in the circumstances that formed the basis of NBS's decision.

(12) Pursuant to Article 11(11) of EMIR, the counterparty of an intragroup transaction which has been exempted from the exchange of collateral requirement in respect of intragroup transactions under Article 11(8) of EMIR must publicly disclose information on the exemption. The exemption information to be publicly disclosed is specified in Article 20 of Commission Delegated Regulation (EU) No 149/2013 (Annex 2).

(13) NBS must notify ESMA of any decision adopted pursuant to Article 11(8) of EMIR (concerning the application of the exemption), and must provide ESMA with the details of the intragroup transaction concerned within one month from the decision being submitted to the counterparty with respect to a decision of the competent authority of another Member State under Article 11(8) of EMIR. The intragroup transaction notification to ESMA must include the information specified in Article 19 of Commission Delegated Regulation (EU) No 149/2013 (Annex 2). NBS must submit the notification through the EMIR Intragroup Notifications Register, ESMA's IT system.

#### **Example 5:**

**An intragroup transaction referred to in Article 3(1) of EMIR which, pursuant to Article 11(9) of EMIR, is entered into by an NFC+ established in Slovakia and a counterparty established in a third country.**

(1) Pursuant to Article 11(9) of EMIR, where one counterparty is **an NFC+ established in Slovakia and the other counterparty is established in a third country**, the NFC+ established in Slovakia **must notify NBS in writing that it intends** to apply the exchange of collateral requirement exemption for intragroup transactions relating to OTC derivative contracts concluded between each other and not cleared by a central counterparty.

(2) Pursuant to Article 32(1) of the RTS on risk mitigation techniques, the notification from an NFC+ established in Slovakia to NBS of its intention to apply the exchange of collateral exemption is deemed to have been received when NBS receives all of the following

information:

- a) all the information necessary to assess whether the conditions specified in Article 11(9) of EMIR have been fulfilled;
- b) the information and documents referred to in Article 18 of the Commission Delegated Regulation (EU) No 149/2013 (Annex 2).

(3) Where NBS determines that further information is required in order to assess whether the conditions referred to in paragraph 2(a) are fulfilled, it must submit a written request for information to the NFC+.

(4) The exemption from the exchange of collateral requirement is valid unless, within three months of receipt of the notification referred to in paragraph 2, NBS does not agree upon fulfilment of the following conditions referred to in Article 11(9) of EMIR:

- a) the risk management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;
- b) there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.

(5) To demonstrate compliance with the conditions specified in paragraph 4 for applying the exchange of collateral requirement exemption for intragroup transactions, the notifying NFC+ established in Slovakia must complete the relevant fields in the template (Annex 3) in accordance with this Guidance or provide the required information in an annex to the template.

(6) Where NBS objects to a notification under Article 11(9) of EMIR of (concerning the intention to apply the exemption), it must communicate that objection to the counterparty in writing, specifying at least the following:

- a) the conditions of Article 11(9) of EMIR that are not fulfilled;
- b) a summary of the reasons for considering that such conditions are not fulfilled.

(7) NFC+s that have submitted a notification according to Article 11(9) of EMIR must immediately notify NBS of any change that may affect the fulfilment of the conditions set out in paragraph 4. NBS may object to the notification following any change in circumstances that could affect the fulfilment of those conditions.

(8) Where an objection is communicated by NBS, the relevant counterparty may only submit another notification where there has been a material change in the circumstances that formed the basis of NBS's decision.

(9) Pursuant to Article 11(11) of EMIR, the counterparty of an intragroup transaction which has been exempted from the exchange of collateral requirement in respect of intragroup transactions under Article 11(9) of EMIR must publicly disclose information on the exemption. The exemption information to be publicly disclosed is specified in Article 20 of Commission Delegated Regulation (EU) No 149/2013 (Annex 2).

(10) NBS must notify ESMA of any notification received pursuant to Article 11(9) of EMIR (concerning the intention to apply the exemption) and must provide ESMA with the details of the intragroup transaction concerned within one month from receipt of the notification. The intragroup transaction notification to ESMA must include the information specified in Article 19 of Commission Delegated Regulation (EU) No 149/2013 (Annex 2). NBS must submit the notification through the EMIR Intragroup Notifications Register,

ESMA's IT system.

**Example 6:**

**An intragroup transaction referred to in Article 3(1) of EMIR which, pursuant to Article 11(10) of EMIR, is entered into by an NFC+ and an FC which are established in different EU Member States.**

(1) Intragroup transactions referred to in Article 11(10) of EMIR include the following cases:

- a) the FC is established in Slovakia and the NFC+ is established in another Member State; or
- b) the FC is established in another Member State and the NFC+ is established in Slovakia.

(2) Pursuant to Article 11(10) of EMIR, where one counterparty, an NFC+, and the other counterparty, an FC, are established in different Member States, the FC must apply in writing to the competent authority responsible for its supervision for authorisation to apply the exchange of collateral requirement exemption; i.e. an FC established in Slovakia must apply to NBS for the exemption, and an FC established in another Member State must apply for the exemption to the competent authority of that Member State. In such cases, the NFC+ is not required to take any formal steps in order to apply the exemption.

(3) Regarding the role of competent authorities from different Member States in the authorisation process for the exemption under Article 11(10) of EMIR, it is expected that, following the entry into force of the RTS on risk mitigation techniques, ESMA will add a clarification of their role to its [Questions and Answers](#), in the section "OTC questions – Intragroup transactions".

(4) Pursuant to Article 32(1) of the RTS on risk mitigation techniques, the application from an FC established in Slovakia to NBS for authorisation to apply the exchange of collateral requirement exemption under Article 11(10) of EMIR is deemed to have been received when NBS receives all of the following information:

- a) all the information necessary to assess whether the conditions specified in Article 11(10) of EMIR have been fulfilled;
- b) the information and documents referred to in Article 18 of Commission Delegated Regulation (EU) No 149/2013 (Annex 2).

(5) Where NBS determines that further information is required in order to assess whether the conditions referred to in paragraph 4(a) are fulfilled, it must submit a written request for information to the counterparty.

(6) NBS may reach a positive decision on the total or partial exemption from the exchange of collateral requirement, provided that the following conditions specified in Article 11(10) of EMIR are fulfilled:

- a) the risk management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;
- b) there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.

(7) To demonstrate compliance with the above conditions for applying the exchange of collateral requirement exemption for intragroup transactions, the applicant FC established in Slovakia must complete the relevant fields in the template (Annex 3) in accordance with this

Guidance or provide the required information in an annex to the template.

(8) Where NBS reaches a positive decision (allows the exchange of collateral requirement exemption) under Article 11(10) of EMIR, it must communicate that positive decision to the FC in writing, specifying at least the following:

- a) whether the exemption is a full exemption or a partial exemption;
- b) in the case of a partial exemption, a clear identification of the limitations of the exemption.

(9) Where NBS reaches a negative decision (rejects the exchange of collateral requirement exemption) under Article 11(10) of EMIR, it must communicate that negative decision to the FC in writing, specifying at least the following:

- a) the conditions of Article 11(10) of EMIR that are not fulfilled;
- b) a summary of the reasons for considering that such conditions are not fulfilled.

(10) Pursuant to Article 32(9) of the RTS on risk mitigation techniques, NBS, as the FC's competent authority referred to in Article 11(10) must communicate its decision to the competent authority of the NFC+ within two months from the receipt of all the information referred to in paragraph 4 and to the counterparties within three months of receipt of that information.

(11) The exemption from exchange of collateral requirement is valid unless the competent authority of the NFC+ notified in accordance with paragraph 10 does not agree upon fulfilment of the conditions referred to in paragraph 6(a) and (b).

(12) If NBS and the competent authority of another Member State fail to reach an agreement, ESMA may, at the request of either of those authorities, assist them in reaching an agreement in accordance with its powers under Article 19 of Regulation (EU) No 1095/2010.

(13) Counterparties that have received a positive decision according to Article 11(10) of EMIR must immediately notify NBS of any change that may affect the fulfilment of the conditions set out in paragraph 6. NBS may withdraw its positive decision following any change in circumstances that could affect the fulfilment of those conditions.

(14) Where a negative decision is communicated by NBS, the relevant FC established in Slovakia may only submit another application where there has been a material change in the circumstances that formed the basis of NBS's decision.

(15) Pursuant to Article 11(11) of EMIR, the counterparty of an intragroup transaction which has been exempted from the exchange of collateral requirement in respect of intragroup transactions under Article 11(10) of EMIR must publicly disclose information on the exemption. The exemption information to be publicly disclosed is specified in Article 20 of Commission Delegated Regulation (EU) No 149/2013 (Annex 2).

(16) Under Article 11(10) of EMIR, NBS must notify ESMA of any decision adopted pursuant to Article 11(10) of EMIR (concerning the intention to apply the exemption), and must provide ESMA with the details of the intragroup transaction concerned within one month from the decision being submitted to the counterparty with respect to a decision of the competent authority of another Member State referred to in Article 11(10) of EMIR. The intragroup transaction notification to ESMA must include the information specified in Article 19 of Commission Delegated Regulation (EU) No 149/2013 (Annex 2). NBS must submit the notification through the EMIR Intragroup Notifications Register, ESMA's IT system.

## Sending a notification or application

Regarding notifications of their intention to apply the exchange of collateral requirement exemption pursuant to Article 11(7), (9) and (10) of EMIR (Examples 3, 5 and 6 above), or their applications for the exemption pursuant to Article 11(6), (8) and (10) of EMIR (Examples 2, 4 and 6 above), the following counterparties must send their notification or application in the Slovak and English languages to NBS at the address below:

**counterparties which are a credit institution, insurance undertaking, reinsurance undertaking, investment firm, management company,<sup>3</sup> supplementary pension management company,<sup>4</sup> or non-financial counterparty<sup>5</sup> (if exceeding the clearing threshold)**

Národná banka Slovenska  
Útvar dohľadu nad finančným trhom  
Imricha Karvaša 1  
813 25 Bratislava

**(The notification/application template is given in Annex 3)**

### ANNEXES:

Annex 1: List of countries for which the Commission has adopted an implementing act as referred to in Article 13(2) of EMIR

Annex 2: Articles 18, 19, and 20 of Commission Delegated Regulation (EU) No 149/2013

Annex 3: Template for the notification under Article 11(7), (9) and (10) of EMIR or for the application under Article 11(6), (8) or (10) of EMIR concerning an exemption from the exchange of collateral requirement under Article 11(3) of EMIR for intragroup transactions

Annex 4: List of markets considered equivalent to an EU regulated market for the purposes of OTC derivatives definition

Annex 5: Instructions for completing selected fields in the notification or application template

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<sup>3</sup> For the purposes of the exemption for intragroup transactions, standard and alternative investment funds managed by management companies are excluded as the condition of inclusion in the same consolidation is not met.

<sup>4</sup> For the purposes of the exemption for intragroup transactions, supplementary pension funds (third-pillar funds) managed by supplementary pension management companies are excluded as the condition of inclusion in the same consolidation is not met.

<sup>5</sup> Including pension fund management companies; however, for the purposes of the exemption for intragroup transactions, pension funds (second-pillar funds) managed by pension management companies are excluded as the condition of inclusion in the same consolidation is not met.