

Foreign Exchange Means of Payment Exclusion

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Background

The Markets in Financial Instruments Directive (MiFID) is a UK / European piece of financial regulation helping provide a legal framework for the securities and derivatives market including how financial instruments can be sold / traded, what disclosures have to be made and how transactions should be reported.

This applies to investment firms (such as NatWest Markets) authorised within the the UK and EEA when providing investment services that involves a Financial instrument/s.

FX Spot transactions and any FX Forwards qualifying for the ‘means of payment facilitation exemption’ are not regarded as MIFID financial instruments and therefore not in scope of either MiFID or the European Markets Infrastructure Regulation (EMIR). This in turn means that the transactions do not need to reported to a Trade repository and there is no requirement to obtain a Legal Entity Identifier (LEI) prior to trading (additional information can be found below on LEIs, etc.)

What Criteria must be met to qualify for the Exemption?

Counterparties trading FX forwards qualify for the means of payment facilitation exemption if they meet the following criteria:

- 1. The counterparty is a non-financial counterparty (‘NFC’) as defined under EMIR (i.e. Small / Medium body corporates); and*
- 2. The FX forwards are traded for the purpose of facilitating payment for identifiable goods or services (for example, entering into an FX forward in order to pay an upcoming invoice in a foreign currency, or in preparation of an upcoming purchase in a foreign currency, as opposed to trading FX forwards for speculative purposes); and*

3. *The FX forwards are traded bilaterally, as opposed to on a regulated trading venue (note that Agile Markets is not a regulated trading venue and does not affect eligibility); and*
4. *Your FX forwards must be physically settled. The exemption is not available for non-deliverable FX Forwards*

Under UK MIFID, the Financial Conduct Authority has provided some helpful examples of how the means of payment exemption works. These can be found under Question 31M of chapter 31 of the FCA Perimeter Guidance Manual (available [here](#)).

What is required if you do not qualify?

If you are not eligible for the exclusion, or do not wish for the exclusion to be applied to your FX transactions, then you will be required to comply with the following requirements when trading with NWM:

1. You must obtain a Legal Entity Identifier (LEI) number. Under MiFID, all counterparties trading financial instruments must obtain an LEI pre-trade. The background to this requirement and instructions on how to obtain an LEI can be found [here](#). LEIs can be obtained [online](#) at a cost of around \$220 (see our [LEI FAQs here](#)).
2. Your transactions in FX Forwards will be subject to the European Markets Infrastructure Regulation (EMIR) which means you will be asked to read and agree to NWM's EMIR terms of business prior to future trading in financial instruments.
3. You will need to report your FX forward trades to a Trade Repository (EMIR trade reporting requirement). NWM may be able to report these trades on your behalf if you enter into a delegated reporting agreement with us (see details [here](#)).

What about other products?

If you trade Markets products (other than excluded physically-delivered FX forwards) that are subject to the regulations (such as currency options, non-deliverable forwards, interest rate derivatives, other derivatives, securities or money markets products) then you are subject to the requirements in respect of those transactions regardless of the FX representation above. In such cases you should obtain an LEI and meet other obligations as applicable.

Please also note that regardless of whether or not your trading of FX Forwards with NatWest Markets falls within the FX payment facilitation exclusion, these trades are still covered by the standard NatWest Markets terms of business.