

Foreign Exchange Means of Payment Exclusion



Please note that no part of this information constitutes advice from NatWest Markets to you. NatWest Markets does not owe any fiduciary duties to you in connection with this, and/or any related transaction and no reliance may be placed on NatWest Markets for any representation made by you. You should seek your own independent advice before making any representation.

Background

Previously there were differences across the EU in terms of how FX Forwards were treated for the purpose of MiFID and other financial regulations. The new rules (MiFID2) attempt to harmonise the treatment of FX forwards across the EU.

Those FX forwards used for the purposes of payment facilitation (eligibility criteria below) will not be classed as financial instruments. Rather they will be treated in the same way as spot FX, and will therefore not be subject to certain financial regulations (such as MiFID 2 and EMIR).

FX Forwards will qualify for the means of payment exclusion if they meet the following criteria:

- (i) The counterparty is a corporate entity (a non-financial counterparty ('NFC') as defined under EMIR);
- (ii) 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
- (iii) 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).

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 under new EU regulations when trading with NatWest Markets:

- (i) Obtain a Legal Entity Identifier (LEI) number. Under MiFID 2, 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](#)).
- (ii) will be subject to the European Markets Infrastructure Regulation (EMIR) which means you will be asked to read and agree to NatWest Markets EMIR terms of business prior to future trading in financial instruments.
- (iii) You will need to report your FX forward trades to a Trade Repository (EMIR trade reporting requirement). NatWest Markets may be able to report these trades on your behalf if you enter into a delegated reporting agreement with us (see details [here](#)).

If you trade markets products (other than excluded 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.