PLANNING FOR EUROPEAN MARKET INFRASTRUCTURE REGULATION (EMIR) REFIT

March 2023

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The European Securities and Markets Authority (ESMA) recently conducted their regulatory fitness and performance programme (Refit) for the European Market Infrastructure Regulation (EMIR). The review found amendments to the regulation are necessary to address rising compliance costs and regulatory transparency issues. The Financial Conduct Authority (FCA) has followed suit, recently completing their equivalent consultation for the revised UK EMIR Rules.

EU EMIR REFIT will come into force on 29 April 2024 and UK EMIR REFIT will come into force 5 months later, on 30 September 2024.

The Depository Trust & Clearing Corporation (DTCC), which provides trade reporting services through its licensed trade repositories in 12 jurisdictions, servicing approximately 8,500 clients, has compiled this document to assist firms as they start their planning for the implementation of EMIR Refit. Reporting under EMIR is through DTCC Data Repository (Ireland) Plc (DDRIE) in the EU and DTCC Derivatives Repository Plc (DDRL) in the UK. Please note this checklist is not legal or compliance advice related to meeting your EMIR Refit requirements.

REGULATORY DIVERGENCE

"The FCA and Bank [of England] have predominantly aligned with the approach taken by ESMA throughout. There are, however, a small number of areas… that diverge from ESMA's proposals."

— FCA EMIR Refit Consultation Paper, Paragraph 2.13

SUB TASK	KEY CONSIDERATIONS
EU and UK EMIR Should Be Considered Separate Reporting Regimes	• Both ESMA and the FCA have indicated that their respective versions of EMIR should be considered as separate reporting regimes. Although they are currently aligned there is no guarantee that they will be in future. Reporting parties should ensure that any reporting systems are operationally separate wherever possible. • Can your reporting system accommodate divergence across all levels of reporting including submitting data in and ingesting reports from the trade repository? • It is unlikely the new EU and UK EMIR rules will come into force on the same date. Can your reporting systems accommodate a time period when one version of EMIR will require reporting under the new rules and the other will still require reporting in the current EMIR rules?

SUBMITTING DATA INTO THE TRADE REPOSITORY

"A key element for the correct functioning of the reporting regime under EMIR and ensuring the quality of derivative reporting is the validation by trade repositories (TRs) of the data submission by the counterparties that are subject to the reporting obligation."

— EMIR Refit Final Report, Paragraph 502

SUB TASK	KEY CONSIDERATIONS
New Technical Standards and Validation Rules	• The number of reportable fields is increasing significantly from 125 to 203. Have you completed the necessary gap analysis on the new reportable fields? • Do you have the relevant operational experience to map data from internal systems to appropriately populate these new fields? If not have you considered engaging with external consultants?
Cutover to the New Technical Standards	• ESMA indicated a six-month transition period for updating trades into the latest format. Do you have all the relevant data to update historic trades into the latest technical standards? • Do you understand your counterparties' intentions with regards to upgrading the open trade population? • If you have trades that are dual reportable under EU and UK EMIR, have you considered if your approach and timing to upgrading these will be aligned? The timing of when the respective EU and UK EMIR reporting rules coming into force should also be considered in any planning.
Response Files	• ESMA indicated they will provide a standard set of error codes for use in response files. What does this mean for your control framework if the TRs' proprietary ACK/NACK codes are no longer used post-go live? Does this mean your control framework will need to be redesigned or rebuilt? • Are the new error messages defined by ESMA and the FCA sufficiently granular for your control process?
Use of XML: ISO 20022	• Have you considered how you are going to generate XML files to submit into the TR? • Do you have sufficient experience in-house to implement the move to XML reporting? • Do you require a CSV-to-XML converter? • Can your reporting system accommodate two different versions of the ISO XML schema? It should be noted ESMA and the FCA will be publishing their own versions of the XML Schema.

VALUATION REPORTING

"ESMA proposes to leave the valuation fields and the guidance unchanged. The formats are also to be kept unchanged."

— EMIR Refit Final Report, Paragraph 362

SUB TASK	KEY CONSIDERATIONS
Valuation Reconciliation	• Whilst the reportable valuation fields will remain unchanged, the new valuation reconciliation requirement introduces a new layer of complexity. The point in time when contracts are valued may differ across counterparties; therefore, ESMA recommended that those details be reported at the end of each day. Would this contradict your current process for reporting valuations (i.e., contracts are valued intra-day or point in time)?

COLLATERAL REPORTING

"ESMA proposes to leave the valuation fields and the guidance unchanged. The formats are also to be kept unchanged." — EMIR Refit Final Report, Paragraph 362 "The current Regulatory Technical Standards and Implementing Technical Standards on reporting only require the reporting of margins before haircuts have been applied. However, providing both pre and post haircut information would enable authorities to identify emerging risks on derivatives markets due to changes in the applied haircuts."

— EMIR Refit Final Report, Paragraph 366

SUB TASK	KEY CONSIDERATIONS
Pre and Post Haircut Collateral Reporting	• Currently, EMIR only requires the reporting of margin before the haircut has been applied. Will your collateral systems support the added complexity of reporting pre and post haircut?

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END-OF-DAY REPORTS

"Trade Repositories should provide the reporting counterparties, report submitting entities, entities responsible for reporting as well as third parties which have been granted access to information under Article 78(7) EMIR as applicable, with certain end-of-day information which should allow them to enhance the quality of the data reported under EMIR."

— EMIR Refit Final Report, Paragraph 612

SUB TASK	KEY CONSIDERATIONS
Standard Set of End-of-Day Reports (Trade Activity, Trade State, Rejection, Reconciliation, Valuation, Collateral and an Abnormal Values Report)	• Are the End of Day reports defined by ESMA sufficient for reporting parties to manage their data? • These reports will not be in the format of the current reports (i.e., the submission report, TSR or TAR) that you receive today from DTCC. Have you budgeted for the technology build to ingest these new report formats?
XML or CSV Reporting	• TRs are expected to make available XML reports as a minimum however there is a provision in the guidelines for TRs to provide other format via the TR interface, for example CSV equivalents of the regulatory XML report. Is your preferred format XML or CSV? • Have you considered any additional internal tooling operational teams may require?
End-of-Day Report SLAs	• As indicated in the final report, TRs will be required to provide reports by 6 a.m. UTC on the following working day to which the trade was reported. With the earlier provision of these reports, is there any way operational processes can be enhanced (i.e., correct mismatches earlier in the day)? • With the TSR being Event Date + 2 and Recon being Event Date + 3, have you considered how this will impact your internal completeness controls process?

KEY NEW FIELDS

"ESMA proposed to leverage on the opportunity to revise the regulatory and implementing technical standards on reporting under Article 9 of EMIR and align, to the extent feasible, the reporting requirements in EU with the global guidance in order to foster the data harmonization and facilitate the reporting to the entities that must comply also with the reporting requirements in other jurisdiction(s)."

— EMIR Refit Final Report, Paragraph 2

SUB TASK	KEY CONSIDERATIONS
Event Type Versus Action Type and Managing Lifecycle Events	• ESMA indicated that firms must now indicate the action type and the event type, which is a significant change to lifecycle event management. Have you considered the implications to event choreography? • The internal sources of these new event types may sit across multiple applications. Have you mapped these event types to application sources and determined how this feeds reporting systems?
Action Type: Revive	• While this is not a new field, the action type "revive" has been added to provide counterparties with the ability to reopen trades after being terminated or canceled by mistake. Are changes needed in your reporting system to account for reviving a previously closed trade? • The action type "compression" has also been removed—are changes needed in your reporting system to account for this?
UPI	• In the long term, the Unique Product Identifier (UPI) should simplify reporting and data aggregation as it reduces the number of reportable fields. Have you considered how you will incorporate the UPI into reporting applications? • Have you budgeted to pay for the UPI service?
Prior UTI	• Prior Unique Trade Identifiers (UTIs) provide entities the ability to link transactions. Is the prior UTI obtainable for trades that must be upgraded to the latest technical standards? • Have you considered how you would link these transactions and any impact of sourcing the prior UTIs?
PTRR ID	• The PTRR ID will be used to link trades that have been through an event such as a compression. Will all service providers be able to provide this ID with sufficient time to meet T+1 reporting?

Key New Fields (cont.)

SUB TASK	KEY CONSIDERATIONS
Entity Responsible for Reporting	• This field represents the entity responsible and legally liable for reporting. If you are a reporting submitting entity, have you considered the scenarios in which the entity responsible for reporting field is to be populated? • In certain cases, the entity responsible for reporting field must be populated with details of the fund management company. If you are a reporting submitting entity, do you have sufficient details of the fund management company to facilitate this?
Direction of Leg 1 / Leg 2	• As outlined in the final report, there are certain transactions (i.e., equity swaps, FX swaps and FX forwards) where the counterparties should determine the payer and the receiver of each leg as determined at the time of the transaction. Would this information be stored for reporting trades that are open pre-EMIR Refit?
Reporting Obligation of the Counterparty 2	• This field is an indicator of whether the counterparty 2 has the reporting obligation under EMIR. Are you able to determine your counterparties' reporting obligations? • Are you able to determine your counterparties' reporting obligations? Do you have the internal capability to store the additional counterparty data?
Notional Schedule Fields (Multiple)	• Under the EMIR Refit Final Report firms must report the notional amount schedules up front. Have you considered the implications for how to construct a repeatable notional schedule?
Package Fields (Multiple)	• Under EMIR Refit, the package spread must be reported, which may provide challenges if package deals are booked as two separate trades. Have you considered how you book package deals in your trade capture systems?

RECONCILIATION

"The TRs should reconcile the details of the two sides of the derivative that are reported. This results from the legal basis in Article 78(9)(a) EMIR, as amended by EMIR REFIT, which provides that the TR shall establish 'procedures for the effective reconciliation of data between trade repositories.' Furthermore, Article 78(10)(a) EMIR, as amended by EMIR REFIT, mandates ESMA to develop Regulatory Technical Standards (RTS) specifying those procedures."

— EMIR Refit Final Report, Paragraph 523

SUB TASK	KEY CONSIDERATIONS
30 Days Post-Maturity	• In line with Securities Financing Transaction Regulation (SFTR), ESMA confirmed that trades should only be reconciled for 30 days post-maturity or termination. Have you considered the operational impact of this?
Trade Versus Valuation Reconciliation Statuses	• Whilst the valuation reconciliation is to launch two years post-EMIR Refit go live, it should be considered as soon as possible. Have you considered the quality of your valuation data?
Increase in Number of Reconcilable Fields	• At the point of go live, there will be 85 reconcilable fields. Two years post-go live, there will be an additional 66 fields introduced into the reconciliation. Have you assessed your data quality in all of these newly reconcilable fields?
Reconciliation During the Six-Month Transition Period	• ESMA indicated a six-month transition period for updating trades into the latest format. Have you considered how this will impact reconciliation? • Do you need to coordinate this activity with your counterparties?
Correcting Reconciliation Breaks	• As documented in the EMIR Refit Final Report, ESMA will require counterparties to engage with each other to resolve reconciliation breaks without undue delay. • Do you have relationships with all counterparties and entities responsible for reporting? • Have you considered the impact of having to correct Reconciliation breaks without undue delay? Do you have a reporting application that will support this remediation work?
Documenting How the P&M Works	• As documented in the EMIR Refit Final Report, firms must put in place written procedures ensuring resolution of all reconciliation breaks. Have you considered what these procedures must contain?
Managing Two Different Reconciliations	• As documented in the EMIR Refit Final Report, firms must put in place written procedures ensuring resolution of all reconciliation breaks. Have you considered what these procedures must contain?

MANDATORY DELEGATED REPORTING

"Financial counterparties shall be solely responsible, and legally liable, for reporting on behalf of both counterparties, the details of Over-the-Counter (OTC) derivative contracts concluded with a nonfinancial counterparty that does not meet the conditions referred to in the second subparagraph of Article 10(1) [of EMIR], as well as for ensuring the correctness of the details reported."

— EMIR Refit Final Report, Paragraph 5

SUB TASK	KEY CONSIDERATIONS
NFC- and FC Notifications	• ESMA indicated the non-financial counterparty (NFC) has 10 working days to notify report submitting entities (RSEs) of changes. Based upon financial counterparties (FCs) current operating model, is this sufficient time to stop or start reporting for an entity? • ESMA stated that for scenarios where information is not available on TR reports (such as related outages or IT incidents) they expect the report submitting entities to inform the reporting counterparties and entities responsible for reporting. Do you have procedures in place for this today?
Removal of Mandatory Delegated Indicator	• The removal of the mandatory delegated indicator under EMIR Refit will result in the "clearing threshold" and 'entity responsible for reporting' fields being used to indicate a mandatory delegated obligation. Are you comfortable with this logic, and do you capture whether a counterparty is above or below the aforementioned clearing threshold?

EXPLICIT PERMISSIONING

SUB TASK	KEY CONSIDERATIONS
Negative or Positive Consent for Authority to Report on behalf of	• TRs must ask for confirmation from the reporting counterparty (RC) or entity responsible for reporting (ERR) that the report submitting entity is allowed to report on their behalf. Do you have sufficient operational relationships with counterparties, so as not to inhibit timely reporting and/or become a major operational burden? Note: DTCC has submitted a proposal to ESMA outlining issues with obtaining consent if the RC or ERR is not onboarded.

REPORTING SIGNIFICANT ISSUES TO REGULATORY AUTHORITIES

"ESMA, leveraging on similar requirement in MiFIR transaction reporting, proposed to establish a requirement for the counterparties to notify their NCAs of any error or omission within a derivative report, any failure to submit reports."

— EMIR Refit Final Report, Paragraph 53

SUB TASK	KEY CONSIDERATIONS
Identifying Significant Issues	• Both ESMA and the FCA have indicated that when reporting parties experience significant issues these must be reported to relevant supervisory authority. Significant issues are defined as reporting obstacles that prevent reporting, misreporting by a reporting system flaw or an issue that causes a large number of rejected reports. Is your Control Framework sufficiently strong to ensure the fast identification of "Significant Issues"?
Significant Issues Impacting Other Reporting Parties	• Do your delegated reporting relationships have in place the appropriate agreements and escalation procedures to ensure "Significant Issues" are reported to the appropriate authority? This may include the Entity Responsible for Reporting notifying their own regulatory authority alongside the regulatory authority of the Reporting Counterparty.
Resolving Significant Issues	• Underpinning this requirement for reporting parties to notify the regulatory authorities of Significant Issues is the enhanced focus on data quality. This means that whilst reporting parties must have the ability to identify issues, they should also have the ability to remediate them in a timely manner. • If you use a vendor for your reporting, do you have the appropriate SLAs in place for incident identification and remediation?

MISCELLANEOUS

SUB TASK	KEY CONSIDERATIONS
Third-Party Viewer	• The third-party viewer field is a proprietary field and will no longer be available when EMIR Refit goes live (due to XML schema restrictions). Have you considered the alternatives for providing third parties access to your data?
Internal Trade ID	• The internal trade ID or transaction ID field is a proprietary field and will no longer be available when EMIR Refit goes live (due to XML schema restrictions). Have you determined how this field is used by your firm? • Have you considered any alternatives noting there are no free format fields within ISO 20022 XML?
Execution Agent	• The Execution Agent field is a DTCC proprietary field. ESMA has decided not to include it in the ESMA ISO 20022 XML however, ESMA has approved for Execution Agent to be placed within the TR Extension XML Wrapper but outside of the ESMA ISO 20022 XML. DTCC Specifications for EU EMIR REFIT are on the Learning Center. • For UK EMIR REFIT however, the FCA have agreed to include Execution Agent within the FCA ISO 20022 XML. DTCC Specifications for UK EMIR REFIT will be published on the Learning Center too in the coming weeks.
Reserved for Participant 1 – 5	• The reserved for participant 1-5 fields are proprietary fields and will no longer be available at the point EMIR Refit goes live (due to ISO XML schema restrictions). Have you determined how this field is used by your firm? • Have you considered any alternatives noting there are no free format fields within ISO 20022 XML?

DTCC IS HERE TO HELP EVERY STEP OF THE WAY

Whilst the EMIR reporting regime is already in place, we believe the challenges the EMIR Refit poses are significant. From the move to ISO 20022 and the introduction of the new fields, to the changes to reporting and reconciliation, we strongly believe impacted firms should begin their planning as soon as possible.

DTCC will be making its user-acceptance-testing environment available for clients to start testing well in advance of the go live date in addition to a multitude of readiness workshops and events.

ALLEVIATE THE PRE & POST REPORTING BURDEN WITH DTCC REPORT HUB LET THE POST-TRADE EXPERTS HELP YOU TRANSFORM YOUR REPORTING CONTROL FRAMEWORK

When it comes to your reporting infrastructure, controls, and processes, consider finding a service that delivers the greatest value and readies you for the regulatory changes taking effect in 2022 and beyond. The DTCC Report Hub® service is a highly efficient pre and post trade reporting solution that can help manage the complexities of meeting multiple regulatory mandates across jurisdictions. With comprehensive jurisdictional and regulation coverage, the service can help you to mitigate compliance risks, enhance operational efficiencies and drive down costs.

LET THE POST-TRADE EXPERTS HELP YOU TRANSFORM YOUR REPORTING CONTROL FRAMEWORK

In addition, you can tap into our expertise to help you tackle your reporting challenges and assist in getting you ready for your compliance reporting. Our DTCC Consulting Services is uniquely positioned to provide firms with consulting services that tap into the breadth and depth of our experience to help you transform your post-trade business operations, increase efficiencies, reduce risks and drive down costs. For over 45 years, our clients have trusted us to solve some of the biggest issues facing the global financial services industry. This unique vantage point has enabled us, through DTCC's family of companies, to develop techniques and tools that can help firms drive innovation and transformation.

With the help of our post-trade experts, we can help you address these challenges and help you get ready for the swathe of regulatory changes, including EMIR Refit, taking effect over the next few years. DTCC Consulting Services experts leverage our proprietary **Reporting Control Framework Model** to conduct a deep-dive diagnosis and propose an implementation plan to enable you to enhance your reporting processes by aiming to increase operational efficiencies, drive down costs and mitigate risks.

DTCC Consulting Services. Our Expertise, Your Organization.