

02 June 2021

## Circular on Updates to the Q&As on Regulation (EU) N° 648/2012 - the European Market Infrastructure Regulation ('EMIR'/ the 'Regulation')

### Introduction

This Circular is being addressed to all market participants, particularly entities who enter into derivative contracts and which fall within the scope of EMIR, namely, financial counterparties ('FCs') and non-financial counterparties ('NFCs') as defined under EMIR.

This Circular should be read in conjunction with the Regulation, its Delegated Regulations and previous Circulars issued by the Authority, as the case may be.

### Overview

The Authority would like to inform market participants that the European Securities and Markets Authority ('ESMA') has updated the [Q&A Document](#) ('the Q&A') on practical questions regarding data reporting, transparency and data availability, specifically questions relating to Article 9 and Article 81 of the Regulation.

The purpose of the Q&A is to promote common supervisory approaches and practices in the application of EMIR. It provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of the Regulation. This document aims to ensure that the supervisory activities of the competent authorities under the Regulation are converging along the lines of the responses adopted by ESMA. It should also help investors and other market participants by providing clarity on reporting requirements.

### Updates to the Q&A document<sup>1</sup>

#### TR Answer 3b – Explanation of the reporting scenario

12. Line 12: As result of the "Sell" transaction the position is modified to the quantity of zero. It should be noted that if the counterparty would decide to terminate the position, it would need to send the report with Action Type "Early Termination" ("C"). In such case the entity would not be expected to send the valuation reports (as described in lines 13-15). Furthermore, as the counterparty was the seller in the derivative concluded at trade level that resulted in the netting of the position, the **counterparty should report "S" in B/S indicator field in the report modifying the notional of the position to zero. The other counterparty, in the same scenario, should report "B" in B/S**

---

<sup>1</sup> In this section, sentences in bold reflect the amendments carried out to the Q&A Document

indicator field, as it was the buyer in the derivative concluded at trade level that resulted in the netting of the position.

TR Question 37 - Access to data by the Competent Authorities

d) Until the adoption of a unique product identifier in the European Union, the reports made to the trade repository in which the underlying is an index or a basket ~~of indices~~ are reported with an "X" or "B" in common data field 7. Which competent authorities have access to the all transaction data of the derivatives where the underlying identification type is reported with an "X" or a "B"?

Answer Question 37

d) Union competent authorities should be given access to all transaction data on derivatives when the field "Underlying type" (T2F7) is reported with an "X" or a "B" and the field "Underlying identification" (T2F8) is populated with either:

- i. ISIN of the underlying index or an ISIN belonging to any of the individual components of the underlying basket ~~of indices~~, whose first two letters represent the country code of that competent authority, or
- ii. an ISIN belonging to any of the individual components of the underlying basket, where the Relevant Competent Authority (RCA) as determined in the FIRDS database is that competent authority, or
- iii. ISIN of the underlying index or an ISIN belonging to any of the individual components of the underlying basket ~~of indices~~, whose first two letters do not represent the country code of that competent authority, however, is needed for that authority in order to perform its responsibilities and mandates, or
- iv. full names (assigned by index providers) of additional indices that, though not identified by ISIN, are needed for that authority in order to perform its responsibilities and mandates.

TR Question 53: Reporting of reference rates not included in Regulation (EU) 2017/105

To ensure consistency of reporting ~~Following to the creation of a new reference rate €STR, it is important to clarify how the counterparties should report derivatives based on this rate, as well as derivatives based on other~~ reference rates that are not included explicitly in the Regulation (EU) 2017/105, **such as €STR**. In particular:

- (a) How the fields related to floating rate should be populated?
- (b) How the fields related to underlying should be populated?
- (c) Specifically, in the case of outstanding derivative contracts referencing EONIA, should the counterparties report to the TRs when change the reference rate from EONIA to €STR? How the

counterparties should report in other similar scenarios, e.g. in the case of transition from LIBOR to risk-free rates?

(d) In the case of derivatives that are identified with an ISIN, should the counterparties modify also the field 2.6 Product ID?

### TR Answer 53

(a) At the time the Regulation (EU) 2017/105 was developed, €STR was not yet available, therefore the list of standardised codes for reporting of floating rate specified in this Regulation (for the fields 2.55 Floating rate of leg 1 and 2.58 Floating rate of leg 2) does not provide the code for reporting of this reference rate. Consequently, the counterparties need to use the free-text field to report €STR.

In order to ensure consistent reporting and enable the reconciliation of the reports in question, counterparties should report in the free-text field "€STR", i.e. the 4-letter code assigned to €STR in the ISO 20022 standard

Similarly, for other reference rates that are not included in the list of standardised codes, counterparties should report in the free-text field the 4-letter code assigned to that reference rate in the ISO 20022 standard, to the extent it is available, as described in ISO 20022 Benchmark Curve Name Code at the following [link](#).

(b) In the case of field 2.8 Underlying identification, counterparties should report ISIN assigned to a given rate, e.g. in the case of €STR it is "EU000A2X2A25". If ISIN is not available for a given rate, the counterparties should report the full name of that index as assigned by the index provider. It should be noted that the field 2.7 Underlying identification type should be populated with the value "X" standing for "Index".

(c) Yes. When the counterparties agree to change the reference index of the outstanding derivative contract from EONIA to €STR, they need to send the report with action type "Modify" to the trade repository. Similarly, once EONIA is discontinued, the counterparties that either actively transition to €STR or rely on the contractual fallback, will need to send the modification reports to the TRs.

The same approach should be applied in the case of other changes of the reference rates of the derivative. For example, in the case of LIBOR cessation the counterparties should report a modification of the derivative when the fallbacks are triggered. It should be noted that once the fallback is triggered, from the economic perspective the derivative is based on the fallback rate, thus the counterparty should report the modification (and update the relevant fields) even if the reference to LIBOR is maintained in the legal contract.

(d) Yes. Given that the derivative based on the fallback rate will be assigned a different ISIN than the equivalent derivative based on LIBOR, the counterparties should update the ISIN of the derivative when switching to a different rate.

TR Question 58 - Reporting of the field 'Delivery type' for Credit Derivatives

(a) **The field 2.24 'Delivery Type' allows for the values "C" ('Cash'), "P" ('Physical') and "O" ('Optional for counterparty or when determined by a third party'). How should a counterparty report the field 'Delivery type' for credit derivatives, in particular in the case of credit event auction?**

TR Answer 58

(a) Auctions are organised, and counterparties may subscribe to it only once a given credit event occurs. Thus, at the time of concluding the derivative it is not known whether the counterparties would participate in an auction. Furthermore, the credit protection buyer/seller may subscribe to the credit event auction individually, meaning that not necessarily both counterparties to the derivative would participate in the auction.

While the underlying instruments can be sold and physically delivered in the auction, the actual credit derivative would be cash-settled (as one counterparty, protection buyer, would receive from the other counterparty the cash compensation for the non-retrievable part of the underlying instruments and they would not have exchanged the underlying).

**Therefore, the counterparties should report "C" ('Cash') in the field 'Delivery type' for credit derivatives that are cash-settled, including where one or both counterparties subscribe to a credit event auction.**

For the avoidance of doubt, **the counterparties should report "P" ('Physical') in the case of physical delivery of the underlying of the credit derivative from the counterparty that is protection buyer to the other counterparty.**

Contacts

Should you have any queries on the above, please do not hesitate to contact the Authority's EMIR team on [EMIR@mfsa.mt](mailto:EMIR@mfsa.mt) for any further clarifications.