

25 April 2023

Circular on Updates to the Q&As on Regulation (EU) No 648/2012 - the European Market Infrastructure Regulation ('EMIR' or 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 in March 2023, updated the EMIR [Q&A Document](#). These changes mainly relate to:

- an amendment to TR Answer 9, in relation to the table of fields reportable to Trade Repositories ('TRs');
- the addition of TR Question 59, in relation to the inclusion of derivatives in the Trade State Report and;
- an amendment to the table included within Scenario 1 of ETDs Reporting Question 2, in relation to which parties are required to report.

Updates to the Q&A Document

The modifications and inclusions made to the Q&A document are being represented in bold below, for ease of reference.

TR Question 9

Article 9 of EMIR ITS (Table of Fields) – Reporting to TRs

(e) If a broker is itself the counterparty (legal principal) to a trade, should it be reported in both the “broker” and “counterparty” fields?

TR Answer 9 (modified)

(e) No, when a broker is a counterparty to a derivative, it should report the derivative and identify itself as a counterparty. In line with the RTS on reporting and more particularly with regard to the details to be reported in the field 1.8, the broker is then not required to report its LEI in the field ‘Broker ID’.

TR Question 59 (new)

Inclusion of derivatives in the Trade State Report (TSR)

- (a) Should the derivatives maturing on day T be included in the TSR for that day?**
- (b) Should the counterparty be allowed to ‘reopen’ a derivative by modifying the maturity or termination date to a future date once the derivative expired or was terminated?**

TR Answer 59

- (a) Yes, the TRs should ensure that derivatives that mature on a given day should still be included in the TSR for that day. For the avoidance of doubt, the derivatives that were terminated or cancelled on a given day with any of the following action types: ‘E’, ‘C’, ‘P’ or ‘Z’, should not be included in the TSR for that day.**
- (b) No, it is not possible to change the status of the derivative from non-outstanding to outstanding by modifying the maturity or termination date.**

Modification or correction of a maturity date to a future date should be allowed only until the day following the previously reported maturity date. In the case of modifications or corrections reported after that day, the new maturity date should be earlier than the date part of the field ‘Reporting Timestamp’ (Field 1.1).

With regards to the termination date, it cannot be modified nor corrected to a future date once the derivative was terminated with action type ‘C’, ‘Z’ or ‘P’, therefore, counterparties should use these action types diligently. In the case of modifications or

corrections reported after the submission of a report with action type 'C', 'Z' or 'P', the new termination date should be earlier than the date part of the field 'Reporting Timestamp' (Field 1.1).

ETDs Reporting Question 2

Which parties have to report ETD contracts?

ETDs Reporting Answer 2 (*modified*)

Scenario 1: the investment firm bears the risk vis-à-vis the CM and, thus, is itself counterparty. In this case the following reports should be submitted:

Re- port	Who has the reporting ob- ligation^{26} ?	Trade ID^{27}	Report tracking number	Reporting Counterp arty ID (2)	ID of the other coun- terparty (3)	Broker ID (8)	Clearing member ID (10)	Beneficiary ID (11)	Trading capacity (12)^{28}	Counte- rparty side (13)	Venue of ex- ecution	CCP
1	Clearing member	UTI001	RTN1	Clearing member	CCP		Clearing Member	Clearing member	'P'	'B'	MIC	CCP
2	CCP	UTI001	RTN1	CCP	Clearing member		Clearing member	CCP	'P'	'S'	MIC	CCP
3	Invest-ment firm	UTI002	RTN1	Investme nt firm	Clearing member	Invest- ment firm	Clearing member	Invest- ment firm	'P'	'B'	MIC	CCP
4	Clearing member	UTI002	RTN1	Clearing member	Invest- ment firm	Invest- ment firm	Clearing member	Clearing member	'P'	'S'	MIC	CCP
5	Client	UTI003	RTN1	Client	Invest- ment firm	Invest- ment firm	Clearing member	Client	'P'	'B'	MIC	CCP
6	Invest-ment firm	UTI003	RTN1	Investme nt firm	Client	Invest- ment firm	Clearing member	Invest- ment firm	'P'	'S'	MIC	CCP

Contacts

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