

22 February 2024

Circular on Updates to the Q&As on Regulation (EU) N° 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 February 2024, updated the EMIR [Q&A Document](#) and issued a number of new [Q&As](#)¹ in relation to EMIR Refit.

The amendment relates to the table included within Scenario 1 of ETDs Reporting Question 2, in relation to which parties are required to report. The new Q&As, on the other hand, relate to the following:

- Reporting under STM/CTM model
- Update of the client codes
- Reporting of a Counterparty falling within scope of Article 1(4)(a) and (b)
- Portability of Schedules
- Subsidiaries

¹ For Q&As issued from 1 January 2024, please search in the ESMA Q&A IT-tool.

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.

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 Clearing Member 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		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		Clearing member	Invest- ment firm	'P'	'S'	MIC	CCP

New Questions and Answers

Reporting under STM/CTM model.

Question: Guidelines on reporting under EMIR REFIT clarify that under Collateralise-to-Market model (CTM) the counterparties should report total variation margin and total collateral, whereas under the Settle-to-Market model the counterparties should report the daily change in the variation margin and the collateral. In which field counterparties should report whether the portfolio of cleared derivatives is collateralised under CTM or STM model?

Answer: There is no separate field to report which model has been used for a given portfolio. In order to ensure that data users can interpret correctly the reported values, the counterparties should indicate it as part of the collateral portfolio name by using prefix 'STM' where the Settle-to-Market model is used. For example, if currently a portfolio code reported for a given portfolio is 12345ABCDE, under EMIR REFIT the code could be updated to STM12345ABCDE.

Update of the client codes.

Question: Are the reporting counterparties and entities responsible for reporting expected to update during the transition period any client codes not compliant with the requirements set out under EMIR REFIT?

Answer: Yes, counterparties and entities responsible for reporting are expected to update all fields (except for UTIs) at the latest by the end of the 180-day transition period, or earlier whenever a relevant lifecycle event needs to be reported.

Given that the modification of a client code once it has been reported is not allowed, the counterparties and entities responsible for reporting should apply in this case the procedure for the update of the identifier set out in the Article 8 of the ITS on reporting and described in the 'Procedure when a counterparty undergoes a corporate action' Section in the Guidelines. TRs may reach proactively to their clients to coordinate and facilitate update of the client codes. It should be noted that the procedure for update of client codes concerns only outstanding derivatives. If counterparties need to revive a derivative with a legacy client code, they should do so (it is allowed under the validation rules) and subsequently request the TR to update the client code in line with the procedure.

Reporting of a Counterparty falling within scope of Article 1(4)(a) and (b) of EMIR.

Question: How should a counterparty falling within scope of Article 1(4)(a) and (b) of Regulation (EU) No 648/2012 be reported under Field 11 of Table 1 of the RTS on reporting under EMIR REFIT, 'Nature of Counterparty 2'?

Answer: In the eventuality that a counterparty falling within scope of Article 1(4)(a) and (b) of EMIR is identified as the 'Other Counterparty', they should be classified as 'Other' in Field 11 of Table 1 of the RTS on reporting under EMIR REFIT, 'Nature of Counterparty 2'.

Portability of Schedules.

Question: As clarified in the Guidelines on transfer of data between Trade Repositories under EMIR and SFTR, in the case of transfer of data requested by a TR participant the TRs should transfer only the latest state of the outstanding derivatives ('Trade State Report', TSR). Are the TRs expected to follow this guideline with regards to the notional

schedules, given that the TSR will not contain the full schedules (for the notional quantity, amount etc.) but only the currently applicable value?

Answer: Yes, TRs should follow the Guidelines on transfer of data also with regards to the schedule information and port only the TSR which does not include the entire schedule information.

To ensure accurate representation of the schedule values in the TSR generated by the new TR, a counterparty should report to the new TR a modification containing the complete schedule information which will enable the new TR to update the TSR with the relevant values.

Subsidiaries.

Question: Table 102 of the Guidelines specifies that GLEIF database should be used to determine the access rights of the relevant members of the ESCB, including the ECB in carrying out its tasks within a single supervisory mechanism, when applying the filtering for the fields 2.144 'Reference entity', 1.4 'Counterparty 1 (Reporting counterparty)', 1.9 'Counterparty 2', 1.15 'Broker ID' and 1.16 'Clearing member'. Should the authorities in question have also access to the derivatives involving subsidiaries of the relevant entities and, if so, how the access rights should be determined?

Answer: Yes, the members of ESCB, as well as any other authority covered under Article 2(11) and 2(13) of RTS 151/2013, should have access to transaction data on derivatives in which the subsidiaries of the entities falling under their supervision are involved. To determine whether an entity is a subsidiary of a supervised entity, the trade repositories should use the relationship data (so called Level 2 data) in GLEIF database.

Please note that Q&A documents issued by ESMA, are not updated after 31 December 2023. For Q&As issued from 01 January 2024, market participants are kindly requested to search in the [ESMA Q&A IT-Tool](#).

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.