altura

EUROPEAN MARKET INFRASTRUCURE REGULATION ("EMIR") - REPORTING OBLIGATION

Overview

EMIR objective remains to increase transparency in the derivative markets and to allow regulators to monitor systemic risk. In accordance with Article 9 of EMIR, counterparties must ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported to a registered or recognized Trade Repository ("TR") no later than the business day following the conclusion, modification, or termination of the contract.

The reporting requirement applies to exchange traded/listed derivatives ("ETD").

Who is required to report under EMIR?

EMIR reporting obligations apply to counterparties established in the EEA zone and in the United Kingdom (UK). Since Brexit, there is an EU EMIR and a UK EMIR regime. The EU EMIR regime applies to the EEA zone and the UK EMIR regime applies to the UK zone. Generally, EEA counterparties will have to report to an EU authorized/recognised TR and UK counterparties will have to report to a UK authorized/recognised TR.

The exact reporting obligation will depend on each entity's categorisation under EMIR and on the exemptions elected by entities under EMIR.

When did the reporting obligation under EMIR first begin?

ETD and OTC derivatives reporting requirements have been in place since 12 February 2014. Since then, ESMA introduced some technical amendments on 17 June 2019 which changed the way counterparties report derivatives.

Most recently, ESMA and the FCA have announced significant changes to reporting requirements under EMIR, these changes are referred to as "EMIR Refit" and come into force on 29 April 2024 for ESMA (EU EMIR) and 29 September 2024 for the FCA (UK EMIR).

Can I delegate my reporting to a third-party?

Yes, however you remain responsible for the accuracy completeness and timeliness of the EMIR reports submitted on your behalf.

Note: Altura Markets has been offering this reporting delegation service since February 12, 2014, if you would like to benefit from it, please contact us.

EMIR Refit

In order to further enhance the harmonisation and standardisation of reporting under EMIR, and in line with global regulatory efforts, both ESMA and the FCA have announced changes to the reportable fields under EMIR and ESMA has introduced specific requirements for errors and omissions.

Key changes to the data that is required to be reported.

ISO 20022: all reports must now be in the **new ISO format**, previous standards used to report will no longer be accepted.

There are additional data fields, increased **granularity in trade life cycle events** reporting, and **stricter requirements on counterparty data**, such as for the Entity Responsible for the Reporting determination, reporting obligation and corporate sector of all counterparties.

Counterparty identifiers and Legal Entity Identifier ("LEI")

If the LEI is not available, or not renewed, trade reports will start getting rejected for counterparties that are not natural persons.

If you do not have an LEI with a correct status, or if you do not share your LEI with us, it is likely that our reports facing you will be "rejected". To the extent that you have delegated your reporting to us, this will impact your reporting obligations.

It is therefore critical that you ensure that you provide us with your active LEI if not done already and ensure that your LEI is renewed in accordance with the terms of your accredited LEI issuer.

Unique Transaction Identifier ("UTI")

The UTI, which is mandatory for all reportable trades, must now have an LEI as a preface of the UTI generating party. This further emphasizes the importance regulators have placed on the LEI as a critical data element.

Whilst the reporting of the UTI is not new, attention should be paid on the determination of the UTI generating party.

Errors & Omissions Notifications

EU EMIR brings a renewed focus on data quality for completeness, accuracy, and timeliness of reports through a new Errors & Notifications process. Notifications to the National Competent Authorities ("NCAs") by the "Entities Responsible for Reporting" (ERRs) are required when significant issues with EMIR reports are identified. Notifications will also have to be sent by Report Submitting Entities to their delegated clients. ESMA has provided guidance on the thresholds which would trigger a notification to the NCA.

Similarly, UK EMIR also brings focus on data quality and embeds a requirement to notify the FCA (or the Bank of England for CCPs) of errors and omissions relating to UK EMIR reporting. The FCA and the Bank of England already have existing processes for submitting errors and omissions and these will remain as part of UK EMIR Refit. The FCA and the Bank of England have mandated for each entity to determine the materiality threshold.

As part of the errors notification requirement under EMIR, Report Submitting Entities ("RSEs") will have to notify the ERR of errors for their reports in a timely manner in order for the ERR to be able to submit a notification to their NCAs in the EU and the FCA/Bank of England in the UK.

Resources made available by the regulators

ESMA has published a Guideline document which provides guidance on reporting under REFIT. The document is available on ESMA's EMIR reporting website which is linked further below in this communication.

The FCA has published its Policy Statement (PS23/2) which provides some insights into the FCA's approach to REFIT. Additionally, the FCA has communicated to trade associations that it will be setting up a UK EMIR Reporting Industry Engagement Group with industry participants where the FCA is expected to provide further guidance to the industry.

Useful Links

ESMA's EMIR Reporting Page: EMIR Reporting (europa.eu)

FCA's EMIR Page: UK EMIR | FCA