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UK EMIR Reporting Changes: key points summarised

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In line with the European Union (EU) European Market Infrastructure Regulation ("EU EMIR") refit reporting changes introduced on 30 April 2024, the Financial Conduct Authority ("FCA") and the Bank of England have, together, published similar regulatory changes on the reporting of derivative transactions applicable in the UK, coming into effect on 30 September 2024.

These changes generally follow the EU changes, subject to certain differences – in particular, regarding the scope and thresholds of the notification obligation. This news article outlines the context and implications of these changes, as well as who is affected and the differences between the EU and UK regulations.

Why has the FCA implemented these changes?

Since 2012, when EMIR was first introduced, regulators have sought to obtain detailed and accurate records of market activity in order to manage risk and assess financial stability more effectively in a global context. This has included, since early 2014, the mandatory reporting by all trade counterparties (both financial counterparties ("FCs") and non-financial counterparties ("NFCs")) of all over-the-counter ("OTC") derivatives as well as exchange-traded derivatives. The current round of changes represents a tightening of the regulations, following the EMIR Refit in 2019, in relation to the information that an entity responsible for reporting ("ERR") is required to submit to the trade repositories ("TRs"), with the objective of increasing transparency and improving the quality of data available to regulators. The FCA and the Bank of England have been acting under the guidance of the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions (CPMI-IOSCO), which have sought to address the reporting issues on a global scale.

What are the major changes?

Reporting fields

The number of reporting fields has increased from 129 to 204 in the UK, facilitating more detailed reports, including in relation to notional amount reporting. Not every field, however, will be applicable for every transaction.

Reporting format

The FCA requires that all reports submitted to TRs follow the ISO-20022-XML standards.

Derivative identifiers

There are new requirements relating to the use of Unique Product Identifiers ("UPIs") and updated requirements for the use of Unique

Transaction Identifiers ("UTIs") and Legal Entity Identifiers ("LEIs"). Most derivative transactions are now required to be identified using an ISO 4914 UPI, other than if the derivative transaction is (a) trading or traded on a trading venue or (b) traded on a systemic internaliser and its underlying is admitted to trading or traded on a trading venue or is an index or basket composed of instruments traded on a trading venue. Each derivative transaction requires a specific UTI, following the ISO 23897 format, to be used when updating reports. The FCA has also emphasised the requirement for counterparties to keep their ISO 17442 LEI codes up to date, in order to prevent reports being rejected. The FCA also notes that in cases where an FC is responsible for reporting the details of OTC contracts on behalf of an NFC counterparty, the FC must ensure that the NFC's LEI has not expired.

Notification requirement

Under the new UK regulations, ERRs are obliged to notify the FCA of 'material' reporting errors or omissions as soon as they become aware of them. This differs from the equivalent EU regulations insofar as the EU regulations are more prescriptive about the significance/materiality of error that requires reporting. The FCA has been unspecific over what constitutes 'materiality' but, should an ERR be in doubt, it should act in a 'conservative'[1] manner and make a report. The FCA does note, however, in its questions and answers ("Q&As"), that materiality should be assessed with regards to the size, nature, and complexity of the ERR's business.

Verification and reconciliation

The standardisation of format as outlined above is designed in part to reduce the number of reconciliation breaks (where the account data on the same trades does not match). However, if reconciliation breaks appear, the regulations require these to be resolved as soon as possible. To further improve data accuracy and consistency, there are now stricter verification steps and procedures for the TRs to carry out, ensuring that certain factors are in line with the EMIR Technical Standards on the Standards, Formats, Frequency and Methods and Arrangements for Reporting 2023. These include verifying identity, format and authorisation, as well as checking for originality (i.e., that information does not relate to previous reports or that a report has been submitted twice), and correctness.

Reporting at position level

If counterparties wish to report at position level, a written agreement between the two counterparties is now required. Previously, reporting at position level was permitted, so long as both counterparties were doing so.

Differences between EU and UK regulations

The most significant differences lie in the thresholds of the notification requirement, as mentioned above. The EU regulations are more prescriptive in determining the need for notification, including more objective tests, whereas the UK regulations take a more cautious approach, encouraging notification in cases of uncertainty. The UK regulations contain an extra, and optional, reporting field covering the execution agent, if counterparties make use of one. The EU regulations also include slightly different rules on validation.

When do these changes come into effect?

All new derivative reports from 30 September 2024 must follow the new rules, and a six-month transition period applies until 31 March 2025, by which time ERRs need to have updated existing reports to meet the new standards.

How to prepare?

Firms should first and foremost familiarise themselves with the new rules to understand what information will need to be entered and the formats required, including the differences between the sets of regulations if operating in both the UK and the EU. In addition to familiarisation with the FCA/Bank of England joint policy statement confirming changes to the derivative reporting framework under UK EMIR, an understanding of the FCA Q&As will be necessary. To be able to comply with these new rules, ERRs will need to ensure their systems are up to date and able to handle the new requirements.

Firms reporting on behalf of another party may need to gather further information to complete the reports, including those that need updating. They may therefore need to dedicate significant resources to interpreting the guidance provided, in the context of their own operations.

Firms which have in place delegated reporting agreements ("DRAs") with their counterparties should review the DRAs in relation to the new rules and may expect, as a practical matter, to have to provide additional information in relation to reporting.

[1] P25 FCA policy