

20 June 2019

Circular on Updates to the Q&As on Regulation (EU) No 648/2012 - the European Market Infrastructure Regulation ('EMIR')

This circular is being addressed to all market participants, particularly entities who enter into derivative contracts which fall within the scope of EMIR, *inter alia* financial and non-financial counterparties as defined in Article 2 of EMIR.

This circular should be read in conjunction with the Q&As, Regulation (EU) N° 648/2012 (['EMIR'](#)), its Delegated Regulations and previous circulars issued by the Authority.

Updates to the Q&As to further clarify the implementation of the EMIR Refit

Calculation of the clearing threshold following the entry of EMIR Refit

The question and answer numbered 3, which is related to the calculation of the clearing threshold, has been replaced.

Following the introduction of the EMIR Refit, financial and non-financial counterparties may calculate whether the counterparty falls above or below the clearing thresholds by aggregating the month-end average position in OTC derivatives for the previous 12 months, on the last day of the 12 months, in accordance with the calculation rules as per Article 4a(3) or Article 10(3) for each entity in the group. When calculating the total position, the updated notional amount and the applicable exchange rate for each of the relevant month-ends are expected to be used.

When calculating positions, derivative contracts, which qualify as hedging contracts and are concluded by an NFC in the group, then the corresponding external contracts should also be considered as hedging contracts. Where the derivative contracts do not qualify as hedging

contracts, then the corresponding external contracts should not be qualified as hedging contracts.

Furthermore, the question and answer clarifies which OTC derivative transactions should be counted against the clearing thresholds in the case of: intra group transactions between two NFCs; contracts which are cleared on a voluntary basis; positions taken by a third-country counterparty in the same group as an EU NFC; positions taken by a third-country counterparty in the same group as an EU FC; and positions taken by jointly controlled entities or entities accounted for under the equity method.

Finally, the question and answer goes into the merit of whether counterparties are allowed to take into account any netting effect when calculating positions in OTC derivatives to be compared to the values of the clearing thresholds and how the calculation of the aggregate month-end average position for the previous 12 months is to be applied when the calculation takes place right after month end.

Changes in the reporting obligation under Article 9(1) of EMIR

Question and answer 51 regarding the notifications to be made by market participants to their competent authorities to apply an intragroup exemption from reporting has been newly added to the EMIR Q&As.

More specifically, counterparties may notify the competent authority of their intention to apply for an exemption from the reporting obligation from the day on which the EMIR Refit came into force. A 3 month period will start one day after the national competent authority receives the notification. The exemption will apply from the date upon which the national competent authority confirms to the counterparty(ies) the use of the exemption. Should no objection be provided by the national competent authority, the exemption will be valid from the end of the three-month period. Where the conditions referred to in the third sub-paragraph of Article 9(1) EMIR change, the counterparties need to inform the relevant NCAs. The NCAs can object to the

use of the exemption due to the change in the conditions and the exemption will thus not be valid.

Further to the above, question and answer 51 further specifies more information on the obligations relating to the intragroup exemption, including whether counterparties need to report during the three-month period; how the **reference to “parent undertaking” should be understood**; whether the parent undertaking is to provide a notification for the group; what should the counterparties communicate to their NCAs; whether NCAs need to agree on whether the conditions laid down in Article 9(1) EMIR are met; whether a derivative contract is eligible for an intragroup exemption from reporting under certain conditions and the actions to be taken on outstanding derivatives once the reporting exemption becomes valid.

Contacts

Should you have any queries on the above, please do not hesitate to contact Mr Nathan Fenech, Senior Manager, Securities and Markets Supervision (NFenech@mfsa.com.mt) or Mr Daniel Theuma, Analyst, Securities and Markets Supervision (DTheuma@mfsa.com.mt) for any further clarifications.