

2 April 2020

Circular on Regulation (EU) No 2019/834 on the European Market Infrastructure Regulation ('EMIR') REFIT - Consultation on draft Regulatory and Implementing Technical Standards (RTS and ITS)

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 [Regulation \(EU\) N° 2019/834](#), its Delegated Regulations and previous circulars issued by the Authority.

Changes to ITS and RTS

The European Securities and Markets Authority ('ESMA') is empowered through EMIR to develop draft a number of technical standards. Amongst others, ESMA has been mandated to draft the following Implementing and Regulatory Technical Standards: [i] ITS on reporting of derivatives to the Trade Repositories ('TRs'); [ii] ITS and RTS on registration of TRs; [iii] RTS on the procedures to be applied by the TRs to reconcile and validate the data; and [iv] RTS on the publication and provision of data by the TRs to the relevant authorities.

As part of the process to issue the aforementioned ITS and RTS under EMIR, ESMA has recently issued a consultation paper which covers the technical standards on reporting requirements, procedures to reconcile and validate the data and access by the relevant authorities under EMIR REFIT. Additionally, ESMA proposes to revise certain aspects of reporting to the TRs in order to align the reporting requirements in the EU with the global guidance on harmonisation of OTC derivatives data elements reported to TRs, as developed by the CPMI and IOSCO working group for the harmonisation of key OTC derivatives data elements

The consultation builds upon existing rules whilst also addressing several essential aspects related to the enhancement of the quality of the reported derivatives data. In particular, there is a description of methods and arrangements that the counterparties should have in place in the case of mandatory allocation of responsibility for reporting and of the delegation as well as methods and arrangements to ensure the correct reporting. As a result, the use of ISO 20022 XML is being extended for reporting to authorities through the whole reporting chain, from the reporting entity to TRs. TRs will also be making use of the standard for reconciling between each other.

Another point to note in the consultation paper is the discussion on the level of details that should be reported for derivatives. This includes an analysis of the data elements recommended in the CPMI and IOSCO guidance which seeks alignment in reporting as per the global guidance on harmonisation of OTC derivatives data elements reported to TRs. The global guidance has been developed by the CPMI and the IOSCO working group with the intention of harmonising key OTC derivatives data elements. Thus, such changes are reflected both in the ITS on reporting, as well as the RTS on reporting, which

specify the details of the reports to be reported to TRs under EMIR. There are also considerations regarding the date of application of the revised technical standards and the treatment of derivatives that will be outstanding on that date.

Way Forward

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1 therein. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by 19 June 2020. All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

ESMA will then consider the feedback it received to this consultation in Q3 2020 and expects to publish the final report and submit the draft technical standards to the European Commission for endorsement in Q4 2020.

This circular has been published following a [press release](#) by ESMA. In this respect, the consultation paper which has been published can be accessed from [here](#).

Contacts

Should you have any queries on the above, please do not hesitate to contact Mr Daniel Theuma or Mr. Luca Caruana, Analysts within the Securities and Markets Supervision, on emir@mfsa.mt for any further clarifications.