

# EUROPEAN MARKET INFRASTRUCTURE REGULATION (“EMIR”) - REPORTING OBLIGATION

## Overview

The European Market Infrastructure Regulation (“EMIR”) is a European Union (“EU”) and United Kingdom (“UK”) Regulation setting out reporting requirement for both “Over the Counter” (“OTC”) derivative contracts and Exchange Traded / Listed derivatives (“ETD”). Its main objective of increasing transparency in the derivative markets and allowing regulators to monitor systemic risk.

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. 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 30 September 2024 for the FCA (UK EMIR).

Under EMIR, the details of any conclusion, modification or termination of a derivative contract are to be reported to a registered or recognized Trade Repository (“TR”) no later than the business day following the conclusion, modification, or termination of such contract.

## 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. 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.

## 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: Société Générale has been offering this reporting delegation service since February 12, 2014, if you would like to benefit from it, please contact us.*

## How do I see my reports?

To see what’s being reported, a free DTCC read only account is available. You will be required to onboard to Depository Trust and Clearing Corporation (« DTCC ») Global Trade Repository (« GTR ») platform in order to obtain access to the DTCC reports that we have reported on your behalf. Contact: [gtr\\_onboarding@dtcc.com](mailto:gtr_onboarding@dtcc.com).

## SOCIETE GENERALE ‘S ENTITIES

Société Générale wholesale banking entities offering delegated or assisted reporting services to clients:

Legal Name	Entity Identifier (LEI)	EMIR Reporting Obligation	EMIR Refit Classification	FC corporate sector	GLEIF Link
SOCIETE GENERALE	O2RNE8IBXP4R0TD8PU41	Yes under ESMA	FC+	CDTI	<a href="https://search.gleif.org/#/record/O2RNE8IBXP4R0TD8PU41">https://search.gleif.org/#/record/O2RNE8IBXP4R0TD8PU41</a>
SOCIETE GENERALE INTERNATIONAL LIMITED	0IKLU6X1B10WK7X42C15	Yes under FCA	FC+	INVF	<a href="https://search.gleif.org/#/record/0IKLU6X1B10WK7X42C15">https://search.gleif.org/#/record/0IKLU6X1B10WK7X42C15</a>
SG AMERICAS SECURITIES, LLC	549300F35UE0BOM1WJ55	No	FC+	INVF	<a href="https://search.gleif.org/#/record/549300F35UE0BOM1WJ55">https://search.gleif.org/#/record/549300F35UE0BOM1WJ55</a>

## EMIR Refit

### Main changes to the data to be reported:

- ISO 20022: all reports must now be in the **new ISO 20022 XML format**, previous standards used to report will no longer be accepted. Collateral data are reported on separate margins report which are no longer part of the derivative trade report.
- EMIR Refit requires additional fields, such as **on counterparty data**:
  1. **Nature of Counterparty 2**: FC, NFC, CCP, Other.
  2. **Corporate Sector of Counterparty 1 & 2**: required for FC or NFC. Left blank for CCPs and entities in third countries or without EMIR reporting obligation.
  3. **Clearing Threshold of Counterparty 2**: True or False depending on whether above or below Clearing threshold.
  4. **Reporting Obligation of Counterparty 2**: True or False.
  5. **Entity Responsible for Reporting (“ERR”)**<sup>1</sup>
    - **Voluntary delegated reporting**: ERR is the LEI of Counterparty 1 having delegated its reporting to SG.
    - **Mandatory delegated reporting with NFC-**: ERR is the LEI of the FC reporting for the NFC-. However, if an NFC- moves to being an NFC+ during the life of the trade, the NFC will have to inform the FC in a timely manner of its status change and no later than the date when its status change becomes effective.<sup>2</sup>
  6. **UK EMIR** introduced an additional optional field **Execution Agent** in the EMIR reporting to allow to identify the entity that executed the trade on behalf of the counterparty.
- Some examples of new or amended fields under EMIR Refit: “**Event date**”, “**Custom basket code**”, “**Delta**” for changes in derivative price vs. change in price of the underlier for options and swaptions, extension of **collateralization categories**, pre-haircut and post-haircut margins, standard ESMA codes for underlying index, trade direction “MAKE” or “TAKE” (previously payer/ receiver).
- Increased **granularity in trade life cycle events** reporting, with new combinations of action types and event types to provide more details of the underlying action (trade, early termination, allocation, clearing, corporate event...), **linking IDs** to allow identification of reports related to the same life cycle events such as for allocations, compressions...(Prior UTI, Subsequent position UTI, Post-Trade Risk Reduction Identifier).

<sup>1</sup> *In the case of delegation with funds*, SG will apply [EMIR Refit regulation Article 9.1 \(b\), 9.1 \(c\), 9.1 \(d\)](#) to determine as ERR, the **Alternative Investment Fund Manager** (AIFM) legally liable for reporting on behalf of an AIF. Similarly, the **management company** is the entity responsible for the reporting on behalf of the UCITS, and the entity responsible for managing and acting on behalf of an IORP reports for that pension fund. (cf. scenarios examples Annex III of **AMAFI note** <https://amafi.fr/download/pages/Q3rGxNrambvukYwRkQ5AR3OfMGHrseoRbNOlaSx.pdf>). The ERR of the fund must have a correct renewed LEI status (not lapsed).

<sup>2</sup> However, mandatory delegated reporting does not apply to ETDs listed on EEA or [Third-Countries equivalent markets](#).

## 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](#)<sup>3</sup>. 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”.

For us to meet reporting obligations on your behalf and avoid a rejection of the reports, it is crucial that you ensure that you have communicated an LEI and that LEI is valid throughout the life of our derivative contracts. You must therefore renew your LEI annually before its annual expiry date in accordance with the terms of any of the accredited Local Operating Units (“LOUs”) of the Global LEI System (“GLEIF”).

Please visit [GLEIF Website](#) to help you with this process.

## Identification of OTC derivatives

EMIR Refit introduces a requirement to report the [Unique Product Identifier \(UPI\) code](#) for OTC derivatives if the International Securities Identification Number (ISIN) code is not applicable.

The ISIN code is used to identify derivatives a) that are admitted to trading or traded on a trading venue, or b) are traded on a systematic internaliser and its underlying is admitted to trading or traded on a trading venue, or c) the underlying is an index or basket trading on a trading venue. **All other derivatives shall be identified and reported using a Unique Product Identifier (UPI) code.**

UPI is administered by ANNA DSB. Trade repositories will cross reference the ANNA DSB database to ensure that the UPI reported is administered by ANNA DSB and the value is an accurate value.

## 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. For pre-existing transactions and positions, 6-month tolerance period to upgrade to the Global UTI format after EMIR Refit go live.

Under this new EMIR Refit approach, counterparties are required to generate and exchange the UTI before **10:00 AM UTC** on the business day following the date on which the derivative contract is entered into.

In order to agree on the entity responsible for generating the UTI for their transactions, counterparties subject to EMIR are required to follow the UTI waterfall tree, in accordance with [Article 7 of the ITS EMIR Refit Reporting](#) and the [ESMA Guidelines section 4.11](#). For deals concluded bilaterally, counterparty agreement will not preempt steps described within the regulatory UTI waterfall.

## Errors & Omissions (E&O) 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”) are required to be sent by the “Entities Responsible for Reporting” (ERRs) as defined by EMIR REFIT when **significant** issues with EMIR reports having crossed ESMA thresholds are identified.

Notifications of those significant reporting errors will also have to be sent by Report Submitting Entities to their delegated clients which remain responsible for their reporting as “ERRs”. The ERRs will be required to notify their National Competent Authorities for the following scenarios:

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<sup>3</sup> Physical persons do not need an LEI, however the client code identifying them must be pre-fixed by the LEI of the counterparty 1 to the trade.

- (a) Any misreporting caused by flaws in the reporting systems that would affect a significant number of reports
- (b) Any reporting obstacle preventing the report submitting entity from sending reports to a trade repository within the reporting deadline
- (c) Any significant issue resulting in reporting errors that would not cause rejection by a trade repository.

The template for E&O notification to the NCAs has been published on the ESMA [website](#).

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 E&O 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](#)

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