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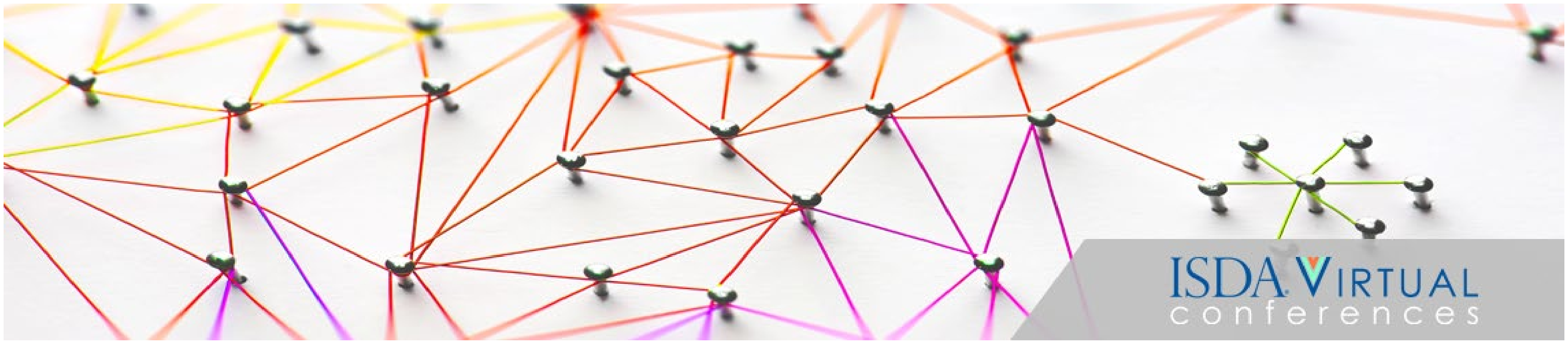

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ISDA and FIA Webinar: Overview of the Master Regulatory Reporting Agreement – derivatives reporting under EMIR

14 May 2020

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Background – the Development of the MRRA

EMIR Reporting Obligations

- Requirement for EU-established undertakings to report their derivatives to a trade repository since 2014.
- Even if an entity is reporting only its **own transactions**, it may still need information from/an agreement with its counterparty (LEI, confidentiality waivers).

Delegated Reporting

- Making reports requires significant resources, so **delegation arrangements** are common.
- Legal responsibility remains with the reporting party. Delegates are concerned to agree terms which **limit potential liability**.
- This has led to **delegated reporting agreements**, usually based on the ISDA/FIA Reporting Delegation Agreement.

Adapting to Change

- EMIR Refit and SFTR have triggered the need to **revisit existing arrangements and documentation**.

EMIR REFIT Reporting Changes

Greater FC Responsibility

In transactions between FCs and NFC-, the FC is legally responsible for reporting both sides of the transaction (unless NFC- elects to make its own report)
The NFC- need only provide FC with details that the FC cannot be reasonably expected to possess.

(From 18 June 2020)

Fund Manager Responsibility

EU fund managers will be legally responsible for making reports of derivatives entered into by their funds
(From 18 June 2020)

Mandatory Reporting and Interpretation

Mandatory reporting responsibilities raise questions of interpretation

- ISDA paper addressing some Operational Considerations for mandatory reporting by FC.
- ESMA Consultation Paper (March 2020) on changes to the current RTS and ITS on reporting.

SFTR Reporting

- The requirement to report transactions is being extended to securities financing transactions.
  - Fund managers legally responsible for reporting on behalf of their funds.
  - FCs responsible for reporting on behalf of some NFC counterparties ("**SMEs**").
- These requirements are being **phased in**. Due to **COVID-19**, regulatory forbearance has been granted.

Intention: April 2020	13 July 2020	13 October 2020	11 January 2021
Intended to start from April 2020 for banks and investment firms.	Reporting expected to start for banks, investment firms, CCPs and CSDs.	Reporting by insurers, funds and pension schemes (and therefore by fund managers for funds).	Reporting by NFCs (and therefore by FCs for NFC-SMEs) will be phased in.

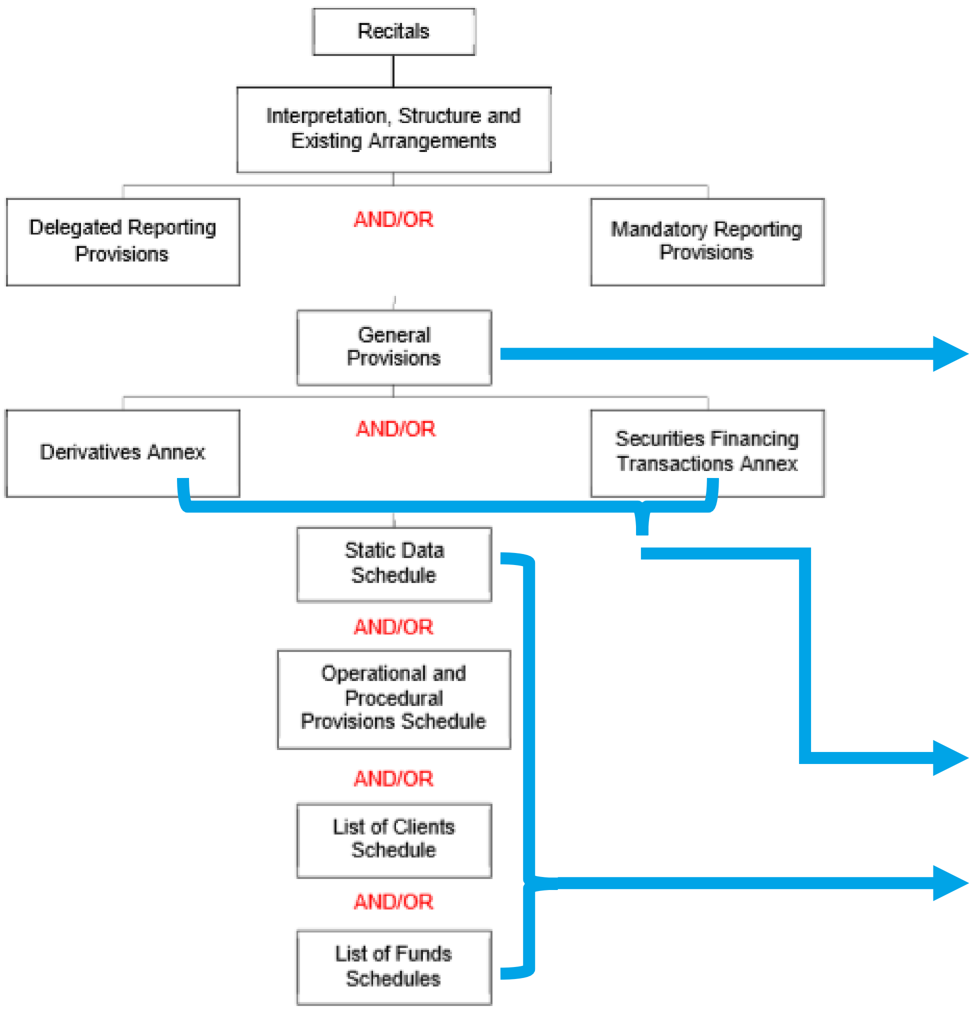
MRRA and Explanatory Memorandum

> **Master Regulatory Reporting Agreement** – December 2019: https://www.isda.org/2019/12/19/mrra/ and https://www.fiadocumentation.org/fia/master-regulatory-reporting-agreement

> A detailed **Explanatory Memorandum**: https://www.isda.org/a/fVyTE/Master-Regulatory-Reporting-Agreement-Explanatory-Notes.pdf and https://www.fiadocumentation.org/fia/master-regulatory-reporting-agreement/mrra-explanatory-memorandum-publication-version

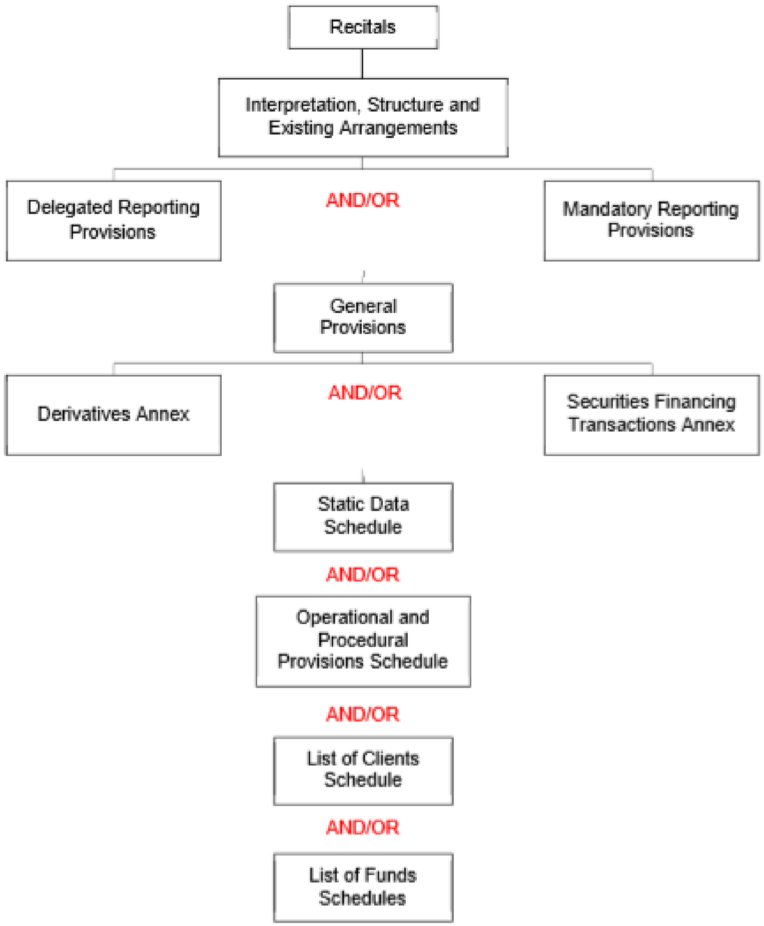
MRRA Functionality

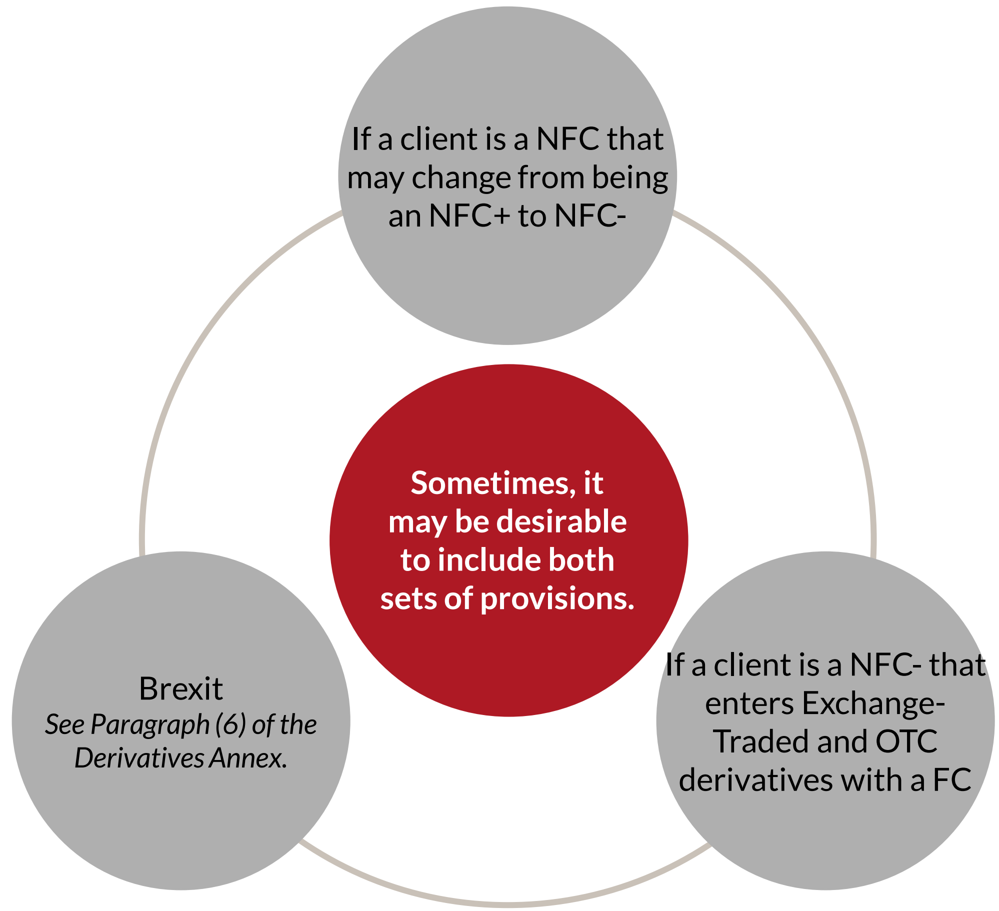
Architecture of the MRRA



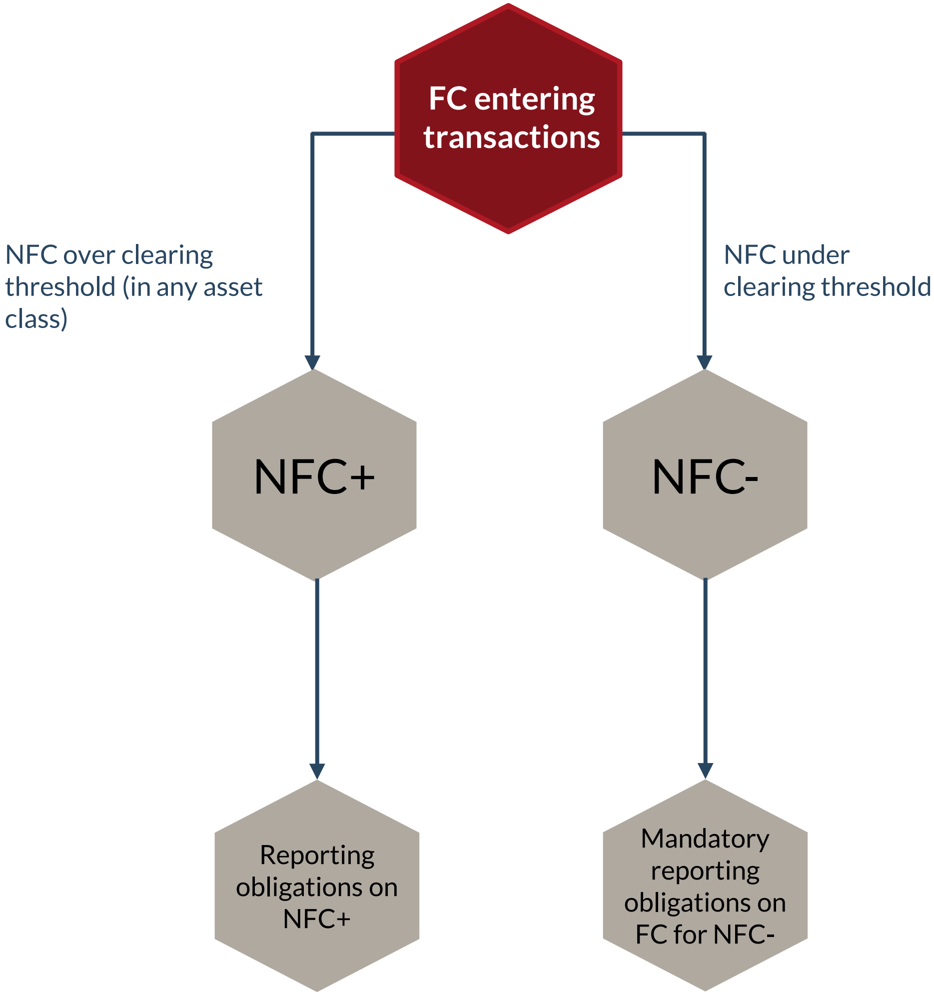
- An asset manager or other intermediary may enter the MRRA as agent, to arrange for the client to fulfil its own reporting responsibility through delegation.
- A Fund Manager can be the entity that delegates the reporting to the Reporting Party.
- The **general provisions** closely follow the earlier Reporting Delegation Agreement. They include:
  - Confidentiality Waiver.
  - Representations.
  - Notices provisions.
  - Definitions.
- Annexes for derivatives and SFTs can be added or omitted as needed.
- Various schedules may be included setting out information provided by the client and operational provisions.

Mandatory and/or Delegated Reporting Provisions





Categorisation of a Counterparty



- FCs can use paragraph 5 of the Derivatives Annex to the MRRA to obtain confirmation of a counterparty's status and require that counterparty to notify the FC of any change to its status.
- NFC should calculate whether it exceeds the clearing threshold every 12 months and should therefore be able to give the FC advance notice if it expects to go from NFC- to NFC+ (or from NFC+ to NFC-).
- ESMA CP – FCs not to be treated as in breach where the NFC- had failed to notify the FC of its change in status, and FC should not have to back-report transactions entered prior to the notification.

Mandatory Reporting - General

Reasons to have an agreement in place:

> For NFC- to provide information the FC cannot reasonably be expected to possess e.g. whether transaction is for hedging purposes.

> Generation of Unique Transaction Identifier (UTI) for transactions.

> NFC- to maintain and renew its LEI.

> NFC- to elect to report some transactions itself?

Mandatory Reporting – Election by NFC- to Report?

Pre-Existing Transactions

> Mandatory reporting will apply in respect of **both new transactions and life-cycle events under existing transactions**.

> The FC and NFC- can agree that the FC is only responsible for reporting new transactions, for example through electing in paragraph (3) of the Derivatives Annex for the MRRA only to apply to transactions concluded on or after 18 June 2020.

OTC vs Exchange-Traded Derivatives

> Mandatory reporting only applies to **OTC Derivatives**, which poses some complications in respect of derivatives traded on third-country venues that have not been recognised as equivalent.

> These are technically not exchange-traded derivatives but are reported as such.

> The MRRA Derivatives Annex provides the option of the NFC- agreeing to opt out of mandatory reporting for such transactions.

From Delegated to Mandatory Reporting

> Where the FC is **already** reporting transactions under a delegated reporting agreement, certain provisions **may no longer make sense** in the context of mandatory reporting.

> If the FC and NFC- enter the MRRA, including the Mandatory Reporting Provisions, the MRRA will **supersede** the earlier agreement (paragraph 1.3 MRRA).

> The MRRA is not intended to **replace** any existing reporting agreements under other regulatory regimes.

Mandatory Reporting Where No Prior Delegation

> If the FC is **not** already reporting as delegate, it will need to confirm whether the NFC- intends to report for itself, and if not to obtain the necessary data to carry out mandatory reporting itself. This can be done through the Schedules to the MRRA.

> For **existing, outstanding transactions on 18 June** that had not been reported by the FC as delegate, if the FC is to assume reporting responsibility, trade data may need porting to a different trade repository.

This is an operational issue and **not** addressed by the MRRA.

If problematic, elect in MRRA for NFC- to continue reporting on life-cycle events for existing transactions?

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Delegated Reporting

Where the MRRA is being used to appoint the Reporting Party as delegate, what are the key issues to consider?

- Responsibility of delegating party
- Indemnities and Limitation of Liability
- Notification of material errors
- Responsibility for notification of rejected reports, reporting errors or validation breaks.
- Who is appointing the reporting party as delegate?

Derivatives Annex

> Sets out the scope of the reporting under MRRA.
> There is a great deal of **optionality**.
> Client categorisation as **NFC+ or NFC-**.
> Any opt-out from mandatory reporting?
> The Annex allows for **automatic transition** (no repapering necessary) to delegated or mandatory reporting, which may be relevant where:

- NFC's status changes;
- Post-Brexit, where a FC is in the EU but the NFC- client is in the UK; or
- Post Brexit, where a FC is in the UK and NFC- client is in the EU.

Key Contacts

Mitja Siraj, *Vice President of Legal, Europe, FIA*
msiraj@fia.org
+44 7867 369 799

Ciarán McGonagle, *Assistant General Counsel, ISDA*
cmcgonagle@isda.org
+44 (0)20 3808 9734

Pauline Ashall, *Partner, Derivatives and Structured Products*
pauline.ashall@linklaters.com
+44 7796 692 458

Doug Shaw, *Partner, Derivatives and Structured Products*
doug.shaw@linklaters.com
+44 7920 712 673

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