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FIA Response to the FCA Consultation on changes to UK EMIR reporting requirements:

draft questions and answers

The Futures Industry Association (FIA)[1] welcomes the opportunity to respond to the FCA's public consultation setting out draft questions and answers as guidance to support the implementation of the updated UK EMIR reporting requirements that go live on 30 September 2024.

FIA commends FCA for addressing industry's request for supporting guidance on how the updated UK derivatives reporting framework should be implemented. Furthermore, as a member of the UK EMIR Reporting Industry Engagement Group, FIA commends the FCA and Bank of England for their proactive engagement with market participants. FIA welcomes regulators' efforts to foster dialogue among stakeholders and we are confident that this will result in the reporting of accurate, complete and timely data in compliance with EMIR.

FIA's response includes comments on several elements of the draft questions and answers. These are addressed in the responses to the FCA's questions as listed below.

1.3 Will outstanding derivative reports, that have not been updated to comply with the new requirements, be subject to reconciliation during the transition period?

Yes. TRs should include all outstanding derivative reports in the reconciliation process (see Section 2 Reconciliation for further detail on the reconciliation process) regardless of whether they have been updated to comply with the new requirements or not. Reconciliations should be based on the new requirements only. Only fields introduced in the new requirements should be reconciled. Fields that are no longer required under the new requirements do not need to be reconciled.

We are aware this approach will result in reconciliation breaks during the 6-month transition period, particularly where one counterparty reporting a trade may have updated a report to comply with the new requirements, but the other counterparty, reporting the same transaction, has not. However, we expect this to be a short-term issue, which will reduce as more reporting counterparties update their reports to comply with the new requirements. We will monitor progress during the 6-month transition period.

FIA response: Generally speaking, FIA members agree with the draft Q&A. Furthermore, members welcome that FCA acknowledges that, during the 6-month transition period, there will be an increase in reconciliation breaks. While not specific to the content of the draft Q&A set out in 1.3, FIA members wish to highlight that, during the 6-month transition period, the volume of reconciliation breaks is likely to stretch resources as reporting firms attempt to identify breaks as a result of business-as-usual reporting versus those breaks caused as a result one counterparty having updated a report to comply with the new requirements.

[1] FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, DC. Our membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers.

1.5 How should counterparties reporting at position level ensure outstanding reports are updated to comply with the new requirements, and which action/event type should be used in such circumstances?

Trade level derivatives that are included in a position are not outstanding and therefore do not need to be re-reported and updated to comply with the new requirements. Only the corresponding derivative at position level needs to be updated to comply with the new requirements, provided it is outstanding on 30 September 2024.

As with other outstanding reports, outstanding position level reports should be updated to comply with the new requirements with the action type 'Modify' and event type 'Update' before the conclusion of the transition period. However, this will not be necessary where counterparties have corrected or modified an outstanding report with the action type 'Modify' or 'Correct', since doing so will require updating the report to comply with the new requirements. Counterparties must ensure that outstanding position level reports that have not been modified or corrected during the transition period, regardless of whether daily valuation and collateral updates are being reported, are updated with the action type ‘Modify’ and the event type ‘Update’ since the daily valuation and collateral updates will not include details for every field.

Counterparties should keep in mind acceptable action and event type combinations when reporting at position level. See also Section 5 Actions and Events.

FIA response: FIA members agree with the draft Q&A. Given the nature of ETD reporting under UK EMIR, it is likely that reporting firms will update outstanding positions upon go-live (or one business day following go-live) as firms submit ‘Modify’ reports to account for trading activity which is ultimately compressed into an existing position.

While not specific to the content of the draft Q&A set out in 1.5, FIA members wish to highlight industry concerns relating to the population of field 2.42 Execution timestamp when updating outstanding positions to comply with the new requirements. As set out in Policy Statement (PS23/2), the Execution timestamp for position level reporting should refer to the time when the position was opened for the first time. FIA members welcome this clarification for the updated UK EMIR reporting requirements, however we should note that, under the existing UK EMIR reporting rules, many firms do not populate the Execution timestamp for position level reporting. The rationale is that a position is not ‘executed’ in the true sense of the word but rather it is created/updated as a result of an end-of-day compression of buy/sell trading activity during the day. For legacy positions, a number of FIA members are concerned that they will be unable to identify the date and time when the position was originally opened. FIA would be happy to engage further on this to ensure that outstanding position level reports are updated in an efficient manner.

3.1 What approach should entities responsible for reporting take when correcting errors and omissions in historic reports?

Entities with an obligation to report the details of derivative trades under Article 9 of UK EMIR are required to ensure that such details are complete, accurate and reported on time.

Entities responsible for reporting are expected to remediate **all** errors and omissions to their reports. This includes **both** live and matured trades regardless of age. However, where remediation may be large and complex, entities responsible for reporting should engage bilaterally with the relevant Authority to agree a remediation plan that is proportionate to the complexity of the error and/or omission that requires remediation.

Where any material errors or omissions are identified, entities responsible for reporting must notify the relevant Authority as soon as practicably possible.

- **CCPs** should notify the Bank of England by completing the Errors and Omissions form available on its website.

- **All other reporting counterparties** should notify the FCA by completing the Errors and Omissions form available on its website.

Whereas completion of the form can be performed by any party, it is the responsibility of the counterparty in scope of UK EMIR Article 9 reporting requirement who should submit the notification to the relevant Authority.

FIA response: FIA welcomes the opportunity to discuss how the draft Q&A set out in 3.1 will work in practice. If a reporting entity were to correct an error in a trade level report submitted, by way of example, seven days prior, does the FCA expect that all subsequent position reports would be updated to reflect this correction? Based on the FCA's draft Q&A set out in 2.2, is it correct to assume that the FCA does not expect firms to update subsequent position reports as set out in the example above and the 'latest is greatest' principle should apply when TRs perform reconciliations? That said, FCA's draft Q&A set out in 3.1 gives the impression that the regulator expects that all errors are remediated, irrespective of whether the error relates to a live or matured trade. Given that an ETD trade, compressed into an end-of-day position, is neither live or matured, FIA welcomes feedback from FCA on this and stands ready to engage at the FCA's convenience.

3.2 What arrangements should entities responsible for reporting have in place to identify errors and omissions in their reported data?

At a minimum, we expect entities responsible for reporting to have systems and controls in place to ensure timely and complete reporting in accordance with Article 9 of UK EMIR.

In addition, entities responsible for reporting should ensure they have in place:

- effective governance to oversee their UK EMIR reporting
- effective systems and controls to identify and remediate errors and omissions (including the notification of any errors and omissions to the relevant Authority); and
- arrangements with counterparties to address reconciliation breaks

Entities responsible for reporting should assess the materiality of any errors or omissions in their UK EMIR reporting (including identification of any errors and omissions that are to be reported to the relevant Authority) based on the size, nature, and complexity of their business.

FIA response: Generally speaking, FIA members agree with the draft Q&A. FIA members support open dialogue between reporting entities and their respective National Competent Authority to enhance transparency and improve the accuracy of reported data. Furthermore, FIA members agree on the need for effective systems and controls working alongside a robust governance framework to oversee UK EMIR reporting.

FIA members ask that UK regulators seek to prevent a disproportionate burden being placed on reporting entities who have established robust controls with the aim of detecting errors and omissions in their reporting. On the contrary, where a reporting entity has failed to implement robust mechanisms to detect errors and omissions, the requirement as set out in draft Q&A 3.1 and 3.2 will be disproportionately applied across the market and will excessively target reporting firms who have established controls for detection. FIA members ask that the FCA use supervisory powers in a proportionate and risk-based manner to limit the impact of this occurring.

3.4 What is the status of reports included in the Warnings Feedback message provided by TRs? How should entities responsible for reporting use the Warnings Feedback message?

The Warnings Feedback message provided by TRs to entities responsible for reporting is to identify missing data and potential outlier values without rejecting the reports, and to help reporting counterparties identify and remediate possible errors and omissions within reported data. The reports included within the Warnings Feedback message have been accepted by the TR which is reflected in its status (Acknowledged or ACK).

Entities responsible for reporting should use the information provided in the Warnings Feedback message to monitor the accuracy of their reporting by investigating the potential issues. They should then confirm if remediation is required to correct any errors or omissions without undue delay to comply with Article 9 UK EMIR, including by submitting an Errors and Omissions form on the appropriate Authority's website where necessary.

FIA response: Draft Q&A 3.4 clearly outlines FCA's expectations on how firms should use Warnings Feedback message from TRs. FIA members interpret the highlighted language above to mean that Warnings Feedback messages should be used by the entity responsible for reporting to make an internal decision on whether remedial action is required, including the potential for submitting an Errors and Omissions form. FIA members do not anticipate responding bilaterally to TRs upon receiving a Warnings Feedback messages but may make the decision, upon analysis, to submit an Errors and Omissions to the appropriate Authority.

4.1 Should pre-existing UTIs be modified?

No. In line with the UK EMIR Validation Rules (applicable from 30 September 2024), UTIs should not be amended once they have been reported.

As set out in CP21/31, we are not expecting the generation of new UTIs for outstanding trades and the UK EMIR Validation Rules (applicable from 30 September 2024) permit the use of old format UTIs to reflect this. UTIs allocated to a trade should remain the same throughout the lifetime of the trade and a new UTI should be used only if a trade is replaced by one or more trades, for example following a post trade risk reduction (PTRR) event. Therefore, TRs should reject any modifications to pre-existing UTIs

FIA response: For avoidance of doubt, draft Q&A 4.1 should be amended to reference outstanding positions as well as trades:

"As set out in CP21/31, we are not expecting the generation of new UTIs for outstanding trades and positions and the UK EMIR Validation Rules (applicable from 30 September 2024) permit the use of old format UTIs to reflect this."

4.5 What should be used if an ISIN does not exist for a derivative traded on a third country organised trading platform?

A product identifier is not required to be reported for derivatives executed on a third country organised trading platform if neither an ISIN nor a UPI exist.

FIA response: FIA members appreciate this clarification. It is worth noting that a UPI will not exist for listed derivatives (ETDs and Future & Options traded on 3rd country non-equivalent markets). As a result, in the scenario where an ISIN does not exist, FIA members plan to leave the ISIN field and UPI field blank.

4.6 Should fields which overlap with UPI reference data be reported?

Yes. Entities responsible for reporting must report all the applicable fields specified in the Technical Standards on the Minimum Details of the Data to be Reported to Trade Repositories 2023, including those which overlap with UPI reference data.

However, we will continue to monitor the implementation of the UPI system under the UK regime and will communicate any developments accordingly.

FIA response: While not specific to the content of the draft Q&A set out in 4.6, FIA members ask that the FCA also consider working alongside market stakeholders when considering developments relating to fields which overlap with *ISIN* reference data.

4.8 Are entities responsible for reporting required to ensure the LEI of their counterparty has not lapsed?

No, except in the case of mandatory delegated reporting.

Article 4 of the Technical Standards on the Standards, Formats, Frequency and Methods and Arrangements for Reporting 2023, requires entities responsible for reporting to ensure the reference data related to their LEI is renewed in accordance with the terms of any of the accredited Local Operating Units of the Global LEI System.

For mandatory delegated reporting, the non-financial counterparty (NFC) is responsible for renewing and maintaining its LEI, as explained in PS23/2. But as required under Article 10 of the Technical Standards on the Standards, Formats, Frequency and Methods and Arrangements for Reporting 2023, financial counterparties must have in place arrangements for due renewals by the NFC of its LEI to ensure accurate reporting for which the FC is solely responsible and legally liable.

Accordingly, the UK EMIR Validation Rules (applicable from 30 September 2024) require the LEI status of Counterparty 1 (Table 1, Item 4) and the Entity responsible for reporting (Table 1, Item 3) to be Issued, Pending transfer or Pending archival for certain action types. However, for Counterparty 2 (Table 1, Item 9) the LEI status may be Lapsed for certain action types. The Validation Rules provide further details as to what LEI status is required for the different action types.

FIA response: For mandatory delegated reporting, the NFC remains solely responsible for renewing and maintaining its LEI but the FC must have arrangements in place for due renewals by the NFC of its LEI to ensure accurate reporting for which the FC is solely responsible and legally liable. FIA members interpret this to mean that the FC should have arrangements in place to communicate with the NFC, notifying the NFC that their LEI is due for renewal. Members do not feel the obligations require further action, on the part of the FC, to renew the LEI on behalf of the NFC. If this interpretation does not align with FCA's expectations, we would kindly ask that draft Q&A 4.8 is updated to avoid non-compliance.

5.3 What should be reported when a transaction that has been included in a position is identified as incorrect?

When a transaction is reported incorrectly and is subsequently compressed into a position, a correction should be sent for both the terminated transaction and the outstanding position. The transaction should not be revived.

Figure 5.1 illustrates a scenario where a transaction is reported incorrectly and subsequently compressed into a position.

FIA response: The level column in Figure 5.1 should be amended to 'PSTN' rather than 'POSC'. FIA members wish to ensure this aligns with draft Q&A set out in 3.1 where if a reporting entity were to correct an error in a trade level report submitted, by way of example, seven days prior, FIA seek to understand if FCA expects that all subsequent position reports would be updated to reflect this correction? Based on the FCA's draft Q&A set out in 2.2, is it correct to assume that the FCA does not expect firms to update subsequent position reports as set out in the example above and the 'latest is greatest' principle should apply when TRs perform reconciliations? That said, FCA's draft Q&A set out in 3.1 gives the impression that the regulator expects that all errors are remediated, irrespective of whether the error relates to a live or matured trade. Given that an ETD trade, compressed into an end-of-day position, is neither live or matured, FIA welcomes feedback from FCA on this and stands ready to engage at the FCA's convenience.