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Efficient
Markets

The ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol and the ISDA EMIR Reporting Guidance Note

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Agenda

1. EMIR Obligations
2. ISDA 2013 EMIR Reporting Guidance Note
3. ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol

Reporting – nature of the obligation – *Article 9*

- All counterparties and CCPs must report:
 - details of **all derivative contracts** concluded, modified or terminated
 - no later than the working day following the event
 - to registered or recognised trade repository, or if not available, ESMA
- Obligation applies to derivative contracts which:
 - were entered into before 16 August 2012 and remain outstanding on 16 August 2012
 - were entered into on or after 16 August 2012
- Distinction between Counterparty Data and Common Data
- Counterparties will also keep a record of any derivative contract they have concluded and any modification for at least 5 years following the termination of the contract.
- Application to third country entities
- Documentation questions

Risk Mitigation – Portfolio Reconciliation

- **Compliance start date:** 6 months after entry into force of technical standards (15 September 2013)
- FCs and NFCs must have formalised processes which are robust, resilient and auditable in order to reconcile portfolios (*Article 11(b)*)
- FCs and NFCs must agree in writing or by other equivalent electronic means with their counterparties the terms on which portfolios will be reconciled before entering into an OTC derivative contract (*Article 13(1), RTS 149/2013*)
- Portfolio reconciliation must cover key trade terms and the valuation attributed (*Article 13(2), 149/2013*)
- Portfolio reconciliation can be carried out by a third party
- Application to third country entities
- Documentation questions

Risk Mitigation – Portfolio Reconciliation

On-going compliance requirements:

FC and NFC+	NFC -
500 or more OTC derivatives contracts outstanding: <i>each business day</i>	More than 100 OTC derivative contracts outstanding: <i>once per quarter</i>
51-499 OTC derivative contracts outstanding: <i>once per week</i>	100 or less OTC derivative contracts outstanding: <i>once per year</i>
50 or less OTC derivative contracts outstanding: <i>once per quarter</i>	

* Where trades are concluded with an NFC-, the lower standard will apply.

Risk Mitigation – Dispute Resolution

- **Compliance start date:** 6 months after entry into force of technical standards (15 September 2013)
- FCs must report to the competent authority any disputes for an amount in excess of €15m and outstanding for at least 15 business days relating to:
 - an OTC derivative contract;
 - valuation of an OTC contract; or
 - exchange of collateral
 - *(Article 15(2), RTS 149/2013)*
- FCs and NFCs, must agree detailed procedures and processes at the outset in relation to:
 - the identification, recording and monitoring of disputes relating to the recognition or valuation of the contract and exchange of collateral
 - the resolution of disputes in a timely manner with a specific process for disputes outstanding for more than five business days
 - *(Article 15(2), RTS 149/2013)*
- Application to third country entities
- Documentation questions

ISDA - Reporting Guidance Note

- EMIR obligations – information
- Structure – background and language
- Draft language - bilateral
- Form
 - Considerable optionality; and
 - Service level agreement.

Reporting Guidance Note – Roles and Obligations

- What has to be reported
 - Counterparty data
 - Common Data
- Delegation
- Section 1 (Reporting Roles)
 - Delegation options between the parties
 - Appointment of a third party delegate
- Section 2 (Reporting Obligations)
 - Agreement of Data
 - Delegation obligations

Reporting Guidance Note – Confidentiality Waiver

○ Options for bilateral agreement:

- Reporting Protocol
- ISDA 2013 Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol
- Incorporate by reference:
 - ❖ Reporting Protocol - Dodd-Frank, EMIR and any “Specified Transaction”
 - ❖ The EMIR Protocol - EMIR related disclosure only

Reporting Guidance Note – Breaches and Errors

○ Remedies for Breach

Several options:

- No Event of Default and/or Termination Event
- Disagreement on Common Data - both parties report
- Reporting Party fails to report - non-Reporting Party can report or appoint a reporting delegate
- administrative/operational error
- or any other agreement

○ Correction of Errors

ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol - Summary

- Protocol Scope

- Portfolio Reconciliation
 - Two Reconciliation Methods
 - Adherent Status
 - Agents and Third Party Service Providers

- Dispute Identification and Resolution
 - Method
 - Agreed Processes

- Other Processes
- Confidentiality Waiver
- Remedies for Breach
- Standard Bilateral Agreement

ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol - Scope

○ “Protocol Covered Agreement”

- ISDA Master Agreements and any existing written agreements governing “derivatives” or “derivative contracts” (as defined in EMIR)

Exclusions:

- Other agreements which expressly reference these requirements or otherwise exclude the Protocol
- Portfolio reconciliation and dispute resolution provisions only apply to uncleared “OTC derivative contracts”
- Relationship to other processes

○ Confidentiality Waiver Scope – EMIR only

Protocol – Portfolio Reconciliation - Methods

- In accordance with the EMIR requirements

- The Two Reconciliation Methods:
 1. “Exchange of Portfolio Data”
 - Both parties send the Portfolio Data to each other
 - Both reconcile and notify the other of discrepancies (if any)

 2. “One-way Delivery of Portfolio Data”
 - Sender (PDSE) sends Portfolio Data to Receiver (PDRE)
 - Receiver reconciles and notifies Sender of discrepancies (if any)
 - Deemed affirmation if Receiver is silent

- Discrepancy - parties “*consult ... in an attempt to resolve ... in a timely fashion*”

Protocol – Portfolio Reconciliation - Methods

- Timing - “as agreed” with a fall back to EMIR
 - PR Due Date
 - Data Delivery Date
 - PR Requirement Start Date

- Portfolio Data

- Key Terms

- Data Reconciliation

Protocol – Portfolio Reconciliation –Status

○ Status:

- a Portfolio Data Sending Entity; or
- a Portfolio Data Receiving Entity

○ Which method applies?

- Two PDSEs = Exchange of Portfolio Data
- One PDSE, One PDRE = One-way Delivery of Portfolio Data
- Two PDREs = Bilaterally agree a method (or status change)

○ Changes to status

Portfolio Reconciliation – Agents/Third Party Service Providers

- Agents
- Third parties
- Appointment:
 - Affiliate as Agent – by written notice
 - Other Agents / third party service providers – by agreement
- Adherence letter election - third party service provider

Protocol – Dispute Resolution – Method/Agreed Process

- Dispute Notice

- Resolution
 - Consult
 - Try to resolve
 - Timely manner

- Agreed Process or Other Process

- Internal Processes

- Specific Process – 5 joint business days

Protocol – Confidentiality Waiver

- The Obligations – to report among others:
 - EMIR Article 9(1) and RTS(149) Articles 12(4), 14 and 15(2)
 - Practical considerations
 - EMIR Article 9(4)

- Part II Confidentiality Waiver
 - Each party consents to disclosure

 - *“to the extent required or permitted under, or made in accordance with,” EMIR and supporting regulation”*

 - Also covers: within groups, to service providers

- Scope is broad

Protocol – Remedies for Breach

○ Remedies for non-compliance

- not constitute an event of default or grant a termination right
- However:
 - ❖ other remedies remain
 - ❖ regulatory sanctions

Standard Bilateral Agreement

- Purpose
- Form – bilateral agreement
- Substance – as per the Protocol
- Scope – ISDA Master Agreements

Questions?