

# EMIR Trade Reporting: Q&A

30<sup>th</sup> January 2014



Good afternoon, and welcome to the EMIR Regulation Question and Answer Session.

The speakers today are:

- **Aline De Leener**, Fixed Income Business Manager, Co-ordinating EMIR implementation for Fixed Income
- **Karin Verlinden**, Member of the Capital Market initiatives team covering implementation of EMIR from an IT and operations perspective
- **Ann-Marie Myhill**, Senior Lawyer in BNPP's Derivatives Policy and Development team within CIB Legal, covering EMIR legal implementation and documentation



The following Q&A session reflects BNP Paribas' views on the topics addressed, but we must stress that this does not constitute legal or regulatory advice and we recommend you address legal or regulatory concerns to your own advisors.

## Further information

If you wish to discuss further, please contact the BNP Paribas European Regulatory Reforms team ([Regreform.eu@uk.bnpparibas.com](mailto:Regreform.eu@uk.bnpparibas.com)) or your BNP Paribas Relationship Manager or Sales Representative.

## Trade Reporting

### 1. Who is subject to the EMIR Trade Reporting requirements?

If you are a counterparty established in the European Union that executes derivative transactions (OTC and exchange traded), then you will be subject to new reporting requirements in respect of those transactions from 12 February, 2014 under the European Market Infrastructure Regulation (EMIR). As an EU entity, we need to report our trades regardless of where our counterparties are located. The information to be reported is set out at Tables 1 and 2 of the Annex to the delegated reporting standards. Note that the obligation to report valuation and collateral data is postponed until 180 days after the go-live date (12 February), and will only apply to FCs and NFCs over the threshold.

### 2. Does a client need to sign up to the ISDA reporting Protocol?

A number of jurisdictions outside the EU are implementing mandatory trade reporting requirements. While, on the one hand, firms subject to the jurisdiction(s) of these countries will have to comply with the relevant reporting requirements. On the other hand, they may also be subject to contractual, statutory, regulatory or other legal limitations (under non-disclosure, confidentiality, bank secrecy or other laws) under other laws applicable to them which could prohibit the disclosure of the relevant information. This is not a problem for EU entities since EMIR at Article 9(4) contemplates disclosures, hence EU entities need not adhere – it is more of a question for third country entities. The ISDA Reporting Protocol was produced to enable entities



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to meet reporting obligations while addressing these disclosure limitations, since the Protocol contains a counterparty's consent to the disclosure of information in the terms therein described. However, the consent language in the Protocol may not be sufficient to fully address any applicable disclosure limitations or otherwise, which would need to be addressed on a bilateral basis. Clients who think they might be affected by restrictions around disclosures should thus obtain legal advice as to whether the provisions of the Protocol address their particular situation.

### **3. What data needs to be reported under EMIR?**

As from reporting start date, all counterparties on a derivatives transaction are required to report what ESMA calls "Counterparty data" and "Common data" related to new transactions and / or events on live transactions.

Counterparty data contains data related to the reporting counterparty, most of it is rather static (LEI, activity type, corporate sector) although some fields can be rather trade related (ultimate beneficiary, broker). Counterparty data also includes "exposure data" (related to the reporting of valuations and collateral data) for which we have a 6months delay and that is only to be reported by Financials and Non Financials.

The most complicated part of the reporting requirement is related to the "Common data" - this is typically the key economics you expect to find on the confirmation, and also contains the UTI (the unique trade reference) and the UPI (the unique product identifier - which can relate to the ISDA taxonomy).

### **4. What about FX Deals with maturity 'today' and 'tomorrow', are they in scope of EMIR / ESMA?**

As you may know, in terms of product scope, EMIR is framed by reference to MiFID and if a product is within certain classes under MiFID then it is in scope under EMIR. However, because of the role of national regulators, there is no consistent view across the EU as to which FX products fall within or outside scope. However, broadly speaking, spot FX (excluding rolling spot FX) is generally viewed as being outside scope of EMIR.

The prudent approach may be to consider that remaining FX, including where there is optionality or where the contract is non-deliverable, is within scope, but this is an area where regard should be had to national regulators' guidance.

### **5. What options do clients have to report their trades?**

ESMA has confirmed that one party to a derivative transaction can report on behalf of both parties or, alternatively, a third party (e.g. a CCP) can report on behalf of one or both parties. If Clients wish to report directly themselves, they would need to on-board with an approved trade repository. If they would like BNPP to report of their behalf, they will need to sign the BNPP form of reporting service level agreement with us and take the other steps which will be discussed later on this call.

### **6. To which Trade Repository will BNP Paribas report to?**

Our principal trade repository membership is with Depository Trust & Clearing Corporation (DTCC). We will use our membership of DTCC both for the purposes of meeting our own reporting obligations and also providing our agency reporting services. We will inform you if we decide to use other trade repositories in the future.

### **7. Which Trade Repository has been approved by ESMA so far?**

So far, six trade repositories have been approved by ESMA. These are:

- DTCC Derivatives Repository Ltd. (DDRL), All asset classes, approval effective 14 November 2013
- Krajowy Depozyt Papierów Wartościowych S.A. (KDPW), All asset classes, approval effective 14 November 2013
- Regis-TR S.A., All asset classes, approval effective 14 November 2013
- UnaVista Limited, All asset classes, approval effective 14 November 2013
- CME Trade Repository Ltd. (CME TR), All asset classes, approval effective 5 December 2013
- ICE Trade Vault Europe Ltd. (ICE TVEL), Commodities, credit, equities, interest rates, approval effective 5 December 2013

### **8. What are the penalties in case of non-compliance with the EMIR reporting obligations?**

EMIR leaves it up to Member States to lay down the rules on penalties (provided that these are effective, proportionate and dissuasive and must include at least administrative fines) applicable to infringements of the rules under EMIR. An infringement will not affect the validity of an OTC derivative contract, prevent the parties from enforcing the provisions of that contract, nor will it give rise to any right of compensation from a party to that contract.



## Trade reporting on behalf

### 9. Is BNP Paribas offering the reporting of trades on behalf of clients?

We appreciate that many of our clients will not be direct members of any trade repository registered under EMIR. However, ESMA have confirmed in their EMIR FAQ that it is permissible for one party to a derivatives transaction to report on behalf of both parties or, alternatively, a third party (e.g. a CCP) to report on behalf of one or both counterparties.

With this in mind, we have therefore been developing dedicated EMIR reporting services for clients that execute OTC derivatives transactions with us and some of our affiliates.

### 10. Will BNP Paribas also report the valuation and collateral data that will be required for Financial Counterparties?

As things stand, our initial offering will not cover the reporting of valuation and collateral data. The requirement to report this information is not due to be phased in until 180 days after the “go-live” date (i.e. until 11 August 2014). We will keep you updated as we get closer to the phase-in of this requirement.

### 11. What are the conditions for this service to be free of charge? And will it stay free of charge?

At present there are no conditions (bar the client being a current/ live client). We don't currently plan to introduce fees, but we are looking at whether our service might be developed, e.g. to include valuation and collateral reporting, reporting back from what TRs receive etc., and such extension might necessitate the introduction of fees - we unfortunately can't say for certain at present.

### 12. Do clients need to sign up to the ISDA PR/DR Protocol in order to take advantage of BNP Paribas' reporting services?

The PR/DR obligations are separate to those for reporting, and as such, you do not have had to adhere to the PR/DR protocol in order to receive reporting services. However, the PR/DR requirements have now been in force since September 15th last year and if you have not adhered to the PR/DR Protocol or a bilateral agreement covering the PR/DR obligations, we would ask that you do so as soon as possible. The obligations under this regime also closely interrelate to the reporting obligations, for instance, complying with timely confirmation would likely highlight whether there are any discrepancies and therefore corrections required to reports.

### 13. Will BNP Paribas also report intra-group trades on behalf of clients?

At this stage, our reporting services will cover OTC derivatives trades that you enter into with BNP Paribas. If you also execute transactions with one of our affiliates then, depending on the circumstances, they may also be able offer reporting services to you. Our initial service will not cover trades that you enter into with unrelated third parties or intra-group trades.

### 14. As part of BNP Paribas EMIR Reporting is it possible to only report to DTCC those positions that are not Markitwire affirmed? What is the danger of BNP Paribas reporting OTC's to DTCC and having Markitwire also report those transactions?

Indeed this is how it works. So we would only report to DTCC those positions that are not Marketwire affirmed and the reason for this are as follows:

- BNPP also delegates to Markit the trades that are affirmed/confirmed on their platform and we will not report these on behalf of the client as Markit reports for us
- Client needs to onboard on Markit separately (and also communicate the counterparty information)
- Deals that are outside the platform will be reported by BNPP should the client sign up for reporting on behalf

### 15. What does a client need to do if they wish to delegate?

If you are interested in taking advantage our agency reporting services, which initially will be provided free of charge, we would need the client to do three things:

- Provide us with a Legal Entity Identifier (LEI). LEI stands for Legal Entity Identifier and is designed to create and apply a single, universal standard identifier to any organization or firm involved in a financial transaction internationally.



Each country will have a specific authority responsible for generating LEIs for counterparties in their jurisdiction (e.g. the London Stock Exchange's in the UK).

If an authority has not been authorised to issue LEI in your country, you should apply for a CICI via website: <https://www.ciciutility.org/index.jsp> - where this can be obtained irrespective of country of incorporation.

If you have not already sought a LEI, then we would encourage you to do so as soon as possible. Using a LEI (rather than, e.g. an interim standard) should eliminate the need to complete a number of counterparty-specific reporting fields.

- Review and sign our service agreement relating to the provision of the reporting service by BNP Paribas, including making elections as to the reporting services selected. Please note that we cannot negotiate this document. You must make sure you are aware of your obligations under this agreement as failure to meet these could affect our provision of the reporting service.
- BNP Paribas will provide you with a template file (in electronic format) which you will need to complete with the counterparty data BNP Paribas will report on your behalf.

Please be aware this is the information that will be reported to the TR, so it is extremely important this data is accurate. To avoid manual processing and mistakes that could result from this, we ask that you return the file back in electronic format with the data in the format specified.

Looking ahead, we will need you to advise BNP Paribas immediately of any changes to your data through the following e-mail address: ([regreform.eu@uk.bnpparibas.com](mailto:regreform.eu@uk.bnpparibas.com)).

#### **16. Is BNP Paribas offering partial delegation?**

At this stage and for the first 6 months following the go-live date, we will report the common and the static counterparty data, excluding valuation and collateral, on behalf of clients. Partial delegation is not available at this stage.

Once the reporting of valuation and collateral kicks in, we will be able to offer partial delegation, carving out these values from our reporting.

#### **17. Will BNP Paribas report ETD on behalf?**

Not BNP Paribas per se but BNP Paribas Securities Services will be able to report your ETD on your behalf if you have appointed them as your clearing broker. Feel free to contact them should you have any question on ETD reporting.

#### **18. Will BNP Paribas provide copies report ETD on behalf?**

Unfortunately we cannot provide this service at present. If you need sight of exactly what has been reported, you would need to onboard directly with the trade repository.

#### **19. Can client's correct errors in reports submitted to the Trade Repository?**

If errors are identified, we will use reasonable efforts to submit corrected reports.

#### **20. If a client takes up BNP Paribas' agency reporting, do they need to onboard directly with the trade repository?**

The client would need to onboard if they wished to view the reports submitted.

### **LEI**

#### **21. What is a LEI? Is it required for Trade Reporting? How can a client obtain a LEI?**

LEI stands for Legal Entity Identifier and is designed to create and apply a single, universal standard identifier to any organization or firm involved in a financial transaction internationally. You need a LEI for EMIR reporting. You can register for a LEI at the LOU (Local Operating Unit) in your country.

If the specified country does not yet provide LEIs, The following independent bodies are currently able to issue LEIs:

- CICI Utility (SWIFT and DTCC) [www.ciciutility.org](http://www.ciciutility.org) (CICI Utility will be renamed to the Global Markets Entity Identifier (GMEI) utility and will be accessible via [www.gmeiutility.org](http://www.gmeiutility.org).)
- GEI Utility (BaFin) is live at <https://www.geiportal.org/index.php?a=hom> - in German and English

A LEI identifies a legal entity (so full branches have the same LEI as the mother entity as they are part of the same legal entity)



## UTI

### 22. What is a UTI?

The UTI is the Unique Trade Identifier – required for the transaction reporting under EMIR. ESMA imposes both parties on a derivative transaction to report, and in order to avoid duplication, both parties – prior to reporting – must “pair” the transaction and exchange a unique identifier that will be the matching key and allow ESMA to aggregate and compare the data.

### 23. Is a UTI different from a USI?

The USI is the Unique Swap Identifier used to report transaction to CFTC. If the transaction is subject to CFTC and EMIR reporting obligations, the USI will be reused as UTI.

### 24. Who will generate the UTI?

For all new transactions as from reporting start date, we will follow the industry best practices in the following order:

- If the transaction is also CFTC reportable and has a USI, BNPP will use this USI as UTI (not applicable for Commodities - where we will generate our own EMIR UTI)
- If the transaction is executed on a central platform, of up-front affirmed (ex on DS Match, on Markitwire) and if a UTI can be generated and communicated by the platform BNPP will use this reference as UTI
- If it is a single sided submission for EMIR (the counterparty on the transaction is exempt or is non EU/US) : BNPP will generate the UTI (for Commodities we will generate the UTI if the counterparty on the transaction is exempt or is non EU)
- If BNP Paribas are reporting on behalf, and the transaction has no UTI issued by a platform, BNPP will issue the UTI on the transaction
- If you are an NFC, BNPP will generate the UTI \*. We apply this logic because in most cases BNPP will also generate the confirmation for these transactions, and this will allow us to exchange the UTI in the most appropriate way. Should you nevertheless want to opt for asset class specific tiebreaker logic please let us know.
- For all other transactions, we will apply asset class specific tiebreaker logic as described in ISDA Whitepaper
- If required, BNPP will have the possibility to override the UTI generation logic \*, and we suggest to follow the logic of confirmation generation (ex if BNPP is generating the confirmation for a certain asset class, we propose you to require BNPP to issue the UTI for this same asset class).

***\*Not yet applicable for Equity transactions – for which BNPP will follow tiebreaker rule***

Some Examples of tiebreaker rule:

**FX** – For Options, the UTI Generating Party is the seller of the option.

**Credit** – Where floating rate payer (seller) can be identified – then float rate payer will determine UTI

**Prime Brokerage** – the Executing Dealer is the UTI generator for the ED/PB leg, while the Prime Broker is the UTI generator for the Client/PB leg.

As mentioned earlier, we also need a UTI on the “historical” transactions (transactions that were live on or concluded on or after 16 August 2012) and that are still outstanding on reporting start date. We will apply the same logic in order to be able to backload the live transactions to the trade repository.

### 25. Is there any guidance on how clients create UTI for intercompany deals? Or is it possible to start just from 1, 2, 3, 4...?

In order to ensure uniqueness across all reportable transactions, a Unique Trade Identifier (UTI) is comprised of two parts:

1. A 10 character UTI Prefix – unique to the party generating the UTI ( either the CFTC USI namespace – if this is available, either the characters 7-16 of the LEI )
2. A max 42 character long suffix which is the transaction reference. In order to make sure there is uniqueness- you could mention the system that issues the reference, and then our own transaction reference.

Example of UTI issued by BNPP SA on FX transaction: 1030247694FI-FXO-4439710301



## **26. How will the UTI be communicated to clients?**

UTI generation and communication should occur at the earliest possible point in the trade flow and by electronic means. If no electronic means are available, BNPP will communicate the UTI via exchange of the paper confirm and through reconciliation reporting, if applicable.

Re SWIFT confirmed FX derivatives, if we are UTI generating party and if the trade is SWIFT confirmable, as from EMIR reporting start date we will use the UTI specific fields SWIFT will integrate in the new release 11/2013 (we do not use the temporary solution through field 72)

BNP Paribas will complete the following fields:

22L – Reporting Jurisdiction

22M – UTI Namespace

22N – UTI Transaction Ref

## **27. Will BNP Paribas be using the UTI generated by electronic platforms?**

When an electronic platform generates and shares a genuine UTI, BNPP has the intention – as soon as possible – to confirm the UTI and use this as the UTI on the transaction. There are some conditions:

- The reference MUST be a genuine UTI
- Must contain a 10 char prefix identifying the platform and a suffix that contains a transaction reference that is unique for this platform
- The UTI can be built up by 2 distinct parts (prefix and suffix) or 1 concatenated string (that we can split automatically in the 2 distinct parts: we are obliged to report towards DTCC a UTI composed of 2 fields)

Except for transactions that BNPP will backload through Markit and DSMatch, BNPP will not consume platform generated UTI prior to 12 February 2014.

If no clarity on the fields that will contain the UTI, or if USI and UTI are different references in different fields, BNP Paribas will build the logic asap after 12 February 2014 but might not be ready for reporting start date.

## **28. As UTI generating entity will BNP Paribas' swift messages contain additional fields as required?**

Yes, BNPP will populate these fields as follows: 22L – Reporting Jurisdiction; 22M – UTI Namespace; 22N – UTI.

## **29. Which platforms are generating UTI that can be used for reporting purposes?**

BNP Paribas are building the list of platforms for which we can consume the USI or UTI as from the reporting start date.

## **30. Can clients receive the UTI before final deal reconciliation over Mysis? Can clients directly receive the UTI via email after trading with BNP Paribas sales person on the phone?**

No, we cannot commit to that as we do not have the UTI on the FO systems – it is generated by the systems that generate the reporting and will be added to the confirmation.

We will avoid adding it to e-mails or exchange it over the phone as potentially it is a long reference (may be 52 characters) and contains both figures and letters, and some can be confusing (ex 0 and O).

## **31. How will BNP Paribas proceed in the backloading of UTI?**

### **Overall principles**

- All trades that were live on or concluded on or after 16 August 2012 must be backloaded
- We have a 3 year backloading period for all trades that are dead on the reporting start date (12 February 2014) – for the moment we see no need to exchange UTI (ESMA Q&A mentioned the need for UTI on live transactions – our deduction is it will not be necessary for dead trades)
- Historical trades that are still live on 12 February 2014 must be reported prior to the reporting start date (theoretically we have a 90 days relief period but as this is only applicable to transactions that were concluded prior 16 August 2012 and as transactions concluded on or after that date should be reported prior to reporting start date, in practice back loading must be done prior to reporting start date)





## How do BNP Paribas proceed?

### UTI generation waterfall

- Put UTI on trades where we know we can be UTI generator
  - trades against counterparty that is non EEA
  - trades against counterparty that is fully exempt for EMIR
  - trades against counterparty for which we report on behalf
- Intention is to generate UTI when facing NFC and potentially FC who would require this and share the UTI with by adding it on the portfolio rec statements as from end of Jan 2014, and to backload during the period as foreseen.
- We participate to tri-optima sharing/pairing exercise – there we will face larger FC counterparties

The UTI sharing and pairing exercise on tri-optima should result in a UTI generated and consumed prior to the back loading period. Should this not be the case (we face a counterparty with whom we want to do the exercise but one of us cannot be ready for the back loading deadline) we will opt to backload the trades with ""our ref"" and a blank UTI. Once the UTI is shared we will update our record with the UTI.

For the "tail" (trades not matched on tri-optima / financials not present on tri-optima) we have bilateral contacts

- We pair the trades based upon a statement provided by BNPP
- Agree with counterparty on who will be UTI generator

We prefer not to use tiebreaker rule on bilateral pairing.

**Thank you all for attending the Emir Regulation Call. Distribution of this Q&A will follow shortly together with a request for feedback.**

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