

July 2019



# EMIR IMPLEMENTATION UPDATE

## RISK MITIGATION AND REPORTING RULES

THIS NOTE IS AN UPDATE TO THE ONE WE SENT OUT IN FEBRUARY 2014. IT SUMMARISES EUROPEAN MARKET INFRASTRUCTURE REGULATION (EMIR) RISK MITIGATION AND REPORTING OBLIGATIONS AND EXPLAINS THE ACTIONS INSIGHT IS TAKING TO HELP YOU FULFIL YOUR OBLIGATIONS FOR ANY MANDATES WE MANAGE ON YOUR BEHALF (INCLUDING IN A QIAIF STRUCTURE).

Insight is working to ensure our clients comply with the EMIR rules for the mandates that we manage. The formal responsibility for complying with the EMIR rules resides with the counterparty to a derivative transaction (i.e. the client itself for segregated mandates), therefore we would encourage all entities covered by EMIR to ensure they are aware of the rules and their specific responsibilities.

This note highlights the rules that we believe are relevant to our clients, and sets out the actions that we are taking to help our clients fulfil their obligations. Please note that this is not intended as an all-encompassing document on EMIR, and does not comprise legal advice. We take no responsibility for any omissions or inaccuracies in the interpretation of the rules. Insight's actions set out below only apply to the mandates that we manage and will not apply to any client trades not managed by us.

### ISDA 2013 EMIR PROTOCOL

The EMIR risk mitigation rules include requirements relating to portfolio reconciliation, dispute resolution and portfolio compression for over-the-counter (OTC) derivatives that are not cleared. The International Swaps and Derivatives Association (ISDA) has created a protocol (the ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol) for market participants to agree mutually relevant procedures so that they can comply with the new rules.

**Insight's actions:** We will adhere to this protocol on behalf of our clients (for segregated mandates where trading is conducted under our umbrella documentation) and our pooled funds.

### PORTFOLIO RECONCILIATION

Key terms of non-cleared OTC derivative trades must be reconciled regularly with the bank counterparties to the trade. The frequency of reconciliation will be determined by the size of the portfolio and could range from daily to annually.

**Insight's actions:** We already conduct daily portfolio reconciliation with our counterparties on all of our collateralised

OTC derivative portfolios. We have procedures in place to ensure that the portfolios are reconciled at least as frequently as EMIR requires.

### DISPUTE RESOLUTION

Counterparties are required to have agreed detailed procedures and processes to deal with disputes over valuation or collateral relating to non-cleared OTC derivatives positions. The disputes must be resolved in a timely manner and specific processes must be in place for any disputes that are not resolved within five business days.

**Insight's actions:** Resolving disputes in a timely manner has always been an important part of Insight's operational procedures and we have processes in place to be compliant with the EMIR requirements.

### DISPUTE RESOLUTION REPORTING

Any disputes for an amount greater than €15 million that are outstanding for over 15 business days need to be reported to the national regulator.<sup>1</sup>

**Insight's actions:** For those clients who are invested only in our pooled funds we will report any relevant disputes to the regulator.

For all other clients we will provide the information to you if a relevant dispute occurs, so that you can pass them on to your national regulator.

### PORTFOLIO COMPRESSION

Counterparties with at least 500 non-cleared OTC derivatives contracts need to consider whether to conduct a portfolio compression exercise. These are designed to collapse offsetting positions and can help to reduce counterparty and operational risks. If a decision is taken not to conduct a portfolio compression exercise, the counterparty must be able to provide a reasonable explanation to their national regulator. Counterparties must conduct such an exercise at least twice a year.

<sup>1</sup> This obligation applies to all pension funds, insurers, UCITS funds and investment funds designated as financial counterparties by EMIR. However, it does not apply to corporates and other entities that are classified as being non-financial entities under EMIR.

**Insight's actions:** For relevant mandates that exceed 500 trades with any single counterparty we will analyse the potential benefits of portfolio compression every six months at least, and we will compress positions if we feel that it is beneficial to the client to do so. If we believe there is no benefit to be gained by conducting a portfolio compression exercise then we will record why we decided against portfolio compression and, if required, provide such analysis to the Trustee and the competent authority. This could be the case for example, if a portfolio had only one-directional positions as it would not benefit from a portfolio compression exercise.

## TIMELY CONFIRMATION OF TRADES

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Counterparties trading non-cleared OTC derivative contracts should have appropriate procedures and arrangements in place ~to enable the contracts to be confirmed within certain timelines (typically one or two business days from trade date) by electronic means where available.

**Insight's actions:** Ensuring contracts are confirmed in a timely manner has always been an important part of our operational procedures. We have long-established processes and procedures for confirmations and have invested significantly so that a very high proportion of trades can be electronically confirmed. Insight will use best endeavours to ensure confirmations are completed within the timeframe required by EMIR. This often involves working with our counterparties to ensure that they also meet the relevant obligations. We will use all reasonable endeavours to obtain timely confirmations from our counterparties, if appropriate.

## REPORTING OF UNCONFIRMED TRADES

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Most counterparties<sup>2</sup> are required to have procedures in place to report to national regulators on a monthly basis the number of non-cleared OTC derivative contracts that are not confirmed within five business days. We understand that the information does not need to be provided automatically to the national regulators but the information should be made available upon request.

**Insight's actions:** We retain information on trades that are unconfirmed for more than five business days, and can provide the relevant data to our clients or the regulator upon request.

## DAILY MARK-TO-MARKET VALUATIONS

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For all non-cleared OTC derivative positions, most counterparties<sup>3</sup> need to conduct daily valuations of positions: either mark-to-market valuations or mark-to-model valuations where market conditions prevent marking-to-market.

**Insight's actions:** Daily valuations of OTC derivative positions have always been an integral part of Insight's operational procedures, and we will maintain this process.

## MARK-TO-MARKET MODEL

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EMIR prescribes the situations when mark-to-model can be used instead of mark-to-market, outlines a set of criteria that the mark-to-model approach must satisfy, and sets out a formal process for the models to be approved. Specifically, it requires that the mark-to-model approach is documented and approved by the board of directors of the counterparty to the trade (i.e. the client itself for segregated mandates), as frequently as necessary following any material change, and at least annually. This can be delegated to a committee.

**Insight's actions:** As soon as reasonably practicable upon either (i) Insight determining that it is reasonably foreseeable that market conditions may prevent mark-to-market of any outstanding uncleared managed OTC derivative transactions and (ii) any London business day on which market conditions reasonably cause Insight to conclude that it is no longer appropriate for marking-to-market of an outstanding uncleared managed OTC derivative transaction, Insight will:

- take all steps that are reasonably practicable to notify the client that it will, or reasonably believes it will mark-to-model such outstanding uncleared managed OTC derivative transaction;
- provide details and any necessary explanation of the relevant model (as required by the client) to enable the client to review, approve and document the model; and
- only use a model which has been approved by the client unless it is not both reasonably practicable for Insight to obtain such consent and Insight reasonably believes that it is in the client's best interests to use a mark-to-model, prior to the receipt of such approval.

Insight has procedures in place for situations when mark-to-model may be used and the approach used to calculate a mark-to-model valuation.

## RECORD KEEPING

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Counterparties will be required to keep a record of any derivative contract they have concluded, and any modification to a contract, for at least five years after the termination of the contract.

**Insight's actions:** Insight will retain such records for the mandates that we manage to meet this requirement.

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<sup>2</sup>This obligation applies to all pension funds, insurers, UCITS funds and investment funds designated as financial counterparties by EMIR. However, it does not apply to corporates and other entities that are classified as being non-financial entities under EMIR. <sup>3</sup>This obligation applies to all counterparties including pension funds, insurers, UCITS funds, and other investment funds designated as financial counterparties by EMIR. It does not apply to corporates and other entities that are defined as being non-financial entities and that are below the clearing threshold set out in EMIR. This obligation applies to all pension funds, insurers, UCITS funds and investment funds designated as financial counterparties by EMIR. However, it does not apply to corporates and other entities that are classified as being non-financial entities under EMIR.

## TRADE REPORTING

The requirement to report OTC derivative, exchange-traded derivative and forward foreign exchange trades has been in effect since 12 February 2014 under EMIR. This aims to provide greater transparency to regulators through the reporting to authorised third party utilities called trade repositories. Note that whilst the action of reporting can be delegated, the regulatory responsibility resides with the principal to the trade which for segregated accounts is our underlying clients.

**Insight's actions:** Insight shall take all reasonable steps to report on behalf of our clients, for the mandates that we manage, to meet the requirements stipulated within EMIR. We will report the data to the UnaVista trade repository, part of the London Stock Exchange Group. We will report directly to UnaVista, rather than delegating this responsibility to a third party, although we may source some data from brokers where necessary, which will include exchange-traded derivative trade information.

We will confirm that the data set out in your monthly and quarterly reports, including the valuation and transaction reports, is consistent with the data that we have submitted to the trade repository on your behalf.

**Client actions:** A valid Legal Entity Identifier (LEI) will need to be provided to Insight for each entity entering into derivatives in order to meet these trade reporting requirements. Our clients should ensure that they have obtained a LEI and that it is renewed when required to ensure its ongoing validity.

## VALUATION AND COLLATERAL REPORTING

Under EMIR there is a further requirement to report daily valuations for open derivative contracts and collateral data underlying these derivative contracts to a registered trade repository.

**Insight's actions:** As with trade reporting, Insight shall take all reasonable steps to report valuation and collateral data on behalf of our clients, for the mandates that we manage, to meet the requirements stipulated within EMIR. We will report directly to the UnaVista trade repository, rather than delegating this responsibility to a third party.

We confirm that the data set out in your monthly and quarterly reports, including the valuation and transaction reports, is consistent with the data that we have submitted to the trade repository on your behalf.

### FIND OUT MORE

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