Report

New in RegTech:

Enhanced EMIR Reporting and T+1 Settlement.

by:

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Expanded EMIR reporting about to go live in EU, and then UK

In the Fall of 2009 in Pittsburgh, Pennsylvania, G20 leaders revamped financial regulation in Europe and elsewhere, in the wake of the global financial crisis. Among the many sweeping changes that resulted (such as MiFID II, and the creation of regulators ESMA, the EBA and EIOPA) was the introduction of a major regime addressing one of the chief culprits of the crisis according to EU authorities: the European Markets Infrastructure Regulation (EMIR), confronting systemic risk in the derivatives market.

A key requirement of EMIR is that counterparty firms, dealing in over-the-counter or exchange-listed derivatives, must report their trades to a regulator-approved trade repository on a T+1 basis. That requirement was enhanced with EMIR REFIT, a wide-ranging set of amendments to EMIR which, starting on 29 April 2024, will oblige firms to report using the ISO-20022-XML template and include 74 more data fields. The Commission's relevant technical standards set forth all of the 203 fields reportable going forward: see the Annex within both the RTS (with a description of what is to be reported for each item) and the ITS (with the format required for each responsive item).

For context, a REFIT is EU jargon for the Commission's "regulatory fitness and performance program", part of its Better Regulation agenda presented in 2015. ("Better Regulation" had been a term used in the 2000s in Member States such as the UK and adopted by the Commission and the OECD for their joint series of reports on creating more effective regulation.) REFITS have been employed across a wide variety of European frameworks, from agriculture to energy to taxation.

With respect to EMIR, its REFIT amends the reporting requirements (as described above), the scope of reporting parties, the clearing obligations for OTC derivatives, and other aspects. Casual observers would be forgiven for losing track of the many changes at play, with EMIR REFIT sometimes being referred to as EMIR 2.1, further amendments impacting central clearing counterparties known as EMIR 2.2, and yet more changes relating to central clearing that were recently agreed upon and are being labeled as EMIR 3.

EMIR REFIT is supported by extensive guidance from ESMA that also takes effect on 29 April 2024, including guidelines for reporting, validation rules, reconciliation tolerances, a template for reporting errors or omissions, reporting schemas, a mapping table, and RTSs for trade repositories with respect to their reconciliation of data and disclosure of derivatives data. These documents are listed and downloadable, with compliance dates noted, at ESMA's web page EMIR Reporting.

Five months later, across the Channel, the onshored UK EMIR's version of REFIT will go live. Its 204 reportable fields are listed in Appendix 1 of the Bank of England's and FCA's recently issued joint Policy Statement, which goes into effect on 30 September 2024 (except for certain aspects related to TRs which came into effect immediately). Those regulators are also developing extensive guidance, subject to consultation in two parts: the first closed recently on March 28, with the other being slated for late Spring of 2024..

- Greg Hotaling, Regulatory Content Manager at Confluence

"One of the key things with EMIR Refit is that even if firms in scope delegate reporting, they cannot delegate the responsibility for completeness or accuracy"

Anusha Shetty, Product Manager, Global Transaction Reporting, Confluence

T+1 settlement cycle: US to transition on 28 May 2024, while EU and UK take next steps

As investment firms and others prepare for the US's new settlement deadline of T+1 for securities trades on its markets (starting on 28 May 2024), the EU and the UK are moving cautiously in the same direction, having just issued reports contemplating a move to T+1. Currently, most trades must settle by T+2.

The US rules emanate from the SEC which, starting on 28 May 2024, will require (i) broker-dealers to give effect to most of their securities transactions no later than one working day after the trade date (T+1), (ii) broker-dealers to complete allocations, confirmations and affirmations during the trade date itself (T+0), (iii) registered investment advisers to keep records of confirmations, allocations and affirmations, and (iv) central matching service providers (CMSPs) to implement straight-through processing and document that effort in written policies as well as an annual report. Citing advances in technology, as well as the potential to reduce settlement risk, the SEC also pointed to recent history: its similar move to shorten the cycle in 2017 (from T+3 to T+2) did not result in increased settlement failures or otherwise negatively hamper markets.

While Canada has aligned with the US (the Canadian Securities Administrators providing for a switch to T+1 starting on 27 May 2024), the EU and UK are a few years behind as they face complexities ranging from market infrastructure to currency variation to political boundaries. (The EU for example, with equity markets valued in total at one quarter those of the US, nevertheless has triple the number of stock exchanges and 20 times the number of CCPs and CSDs as does the US.)

But adjustment in the EU and UK, however inconvenient, appears unavoidable. For many, change can't come soon enough, with the prospect of a years-long global misalignment between T+2 and T+1 jurisdictions looming. December 2023 saw publication of the EU's Central Securities Depositories Regulation (CSDR) REFIT, which requires ESMA to submit a report on shortening the settlement cycle. ESMA launched a Call for Evidence seeking stakeholder views, and on 21 March 2024 published a description of those views (characterizing them as "quite mixed") and a preliminary analysis in its 59-page feedback statement. ESMA must submit its final report, on the potential switch to T+1 settlement, to the European Commission by 17 January 2025. In addition, acknowledging the need to further discourage settlement failures in light of a possible future move to T+1, ESMA recently concluded a consultation on increasing the relevant penalties under CSDR, and is expected to submit to the Commission its final report on that topic by 30 September 2024.

In the UK the Accelerated Settlement Taskforce, created by the Government in 2022 to explore the case for T+1, has just published detailed recommendations in favor of it. The Government immediately voiced its support, and announced the creation of a Technical Group to help implement (i) relevant operational changes to be required by the end of 2025 and (ii) the final transition to T+1 by the end of 2027.

The regulators of all three jurisdictions (the US, EU and UK) did consider a move to T+0, meaning same-day settlement of trades. But they concluded that, despite the proven technical feasibility of T+0 (and indeed, some examples of its current implementation globally), moving to T+1 for the time being would constitute a more prudent path of adjustment.

Looking further ahead, a next possible frontier for the settlement cycle is not merely T+0, but atomic settlement: the near-instantaneous settlement of a transaction. As advancements such as distributed ledger technology become more widespread, that frontier could approach sooner than expected in securities trading, providing yet more debates and challenges for regulators and stakeholders.

- Greg Hotaling, Regulatory Content Manager at Confluence

"Investment in systems and processes to move to T+1 will need to have in mind a subsequent move to T+0 or Atomic Settlement."

Accelerated Settlement Taskforce Report, UK Government, March 2024

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