

Make the data portability between trade repositories as easy as possible

Transfer of contracts is very burdensome for
non-financial companies

Introduction

Deutsches Aktieninstitut (identification number: 38064081304-25) represents the entire German economy interested in the capital markets. The about 200 members of Deutsches Aktieninstitut are listed corporations, banks, stock exchanges, investors and other important market participants. Deutsches Aktieninstitut keeps offices in Frankfurt, Brussels and in Berlin. We followed the legislation process regarding EMIR very closely, expressing the view of non-financial companies using derivatives in their risk management.

More and more of our member companies want to benefit from the option that the FC reports on their behalf. Nevertheless, the requirement to transfer the legacy contracts to the TR of the FC is very burdensome. Therefore, data portability has to be as easy as possible in order to facilitate the delegation of the reporting obligation.

Answers to selected questions

Q2. What other issues related to transfer of data have been observed? Please elaborate on the reasons for your response.

We experienced several issues related to the transfer of data between TRs some of which are still unresolved after more than a year. Our member companies submitted the following examples:

After the withdrawal of one of the TRs, which was used by one of the counterparties, a huge amount of unpaired transactions appeared. The TR that took over the non-outstanding deal data was not able to keep the correct pairing and matching status of those deals within their own database which led to a break of the links. The TR was not able to recover those links and therefore the two counterparties needed to find out a burdensome workaround to resolve this unpaired issue.

Furthermore, problems occurred while the actual transfer between TRs (e.g. meaning the transfer of data from DTCC to Regis-TR, which does not work since June 2020). The reason is a "multi FC problem" meaning the transfer of data from one NFC to two FCs which is still not possible for those TRs.

Difficult is also the case where the counterparty which reported on behalf of the NFC- wants to switch the deal data to another TR. There were also issues which have not been resolved in the last months.

Q5. Do you agree that the new TR may charge fees to the TR participants for the transfer of outstanding and non-outstanding derivatives? Which other aspects need to be considered? Please elaborate on the reasons for your response.

No, we do not agree with the proposal. First, it is not clear why the TR participant should pay for the case of a wind down of a TR, as the wind down is clearly not the responsibility of the participant. Second, we doubt that information for non-outstanding derivatives are of any benefit for supervisory authority. At least, ESMA is supposed to explain where the benefit lies. It is therefore incomprehensible why the participant should pay for something that he is not responsible for and which is obviously lacking any benefits.

Q6. Do you agree with the upgrade of outstanding derivatives that are subject to transfer to the most up to date reporting requirement at the latest by 23:59:59 on the Thurs-day ahead of the weekend on which the porting takes place? Which other aspects need to be considered? Please elaborate on the reasons for your response.

No, we do not agree as the effort for the portability of the data must be reasonable. Upgrading the technical data standards of outstanding derivatives that are subject to the transfer is very cost-intensive and burdensome. This holds especially true for non-financial counterparties, which has to transfer their data to the TR of the FC in order to benefit from the delegation option.

Q7. Do you agree that TR participants should submit reports pertaining to the outstanding derivatives that are subject to data transfer to the new TR on the first business day following the data transfer? Which other aspects need to be considered? Please elaborate on the reasons for your response.

No, we do not agree, as we do not see the benefit of these additional reports after the transfer to the new TR, which should include every information necessary, as stored and validated with the formerly used TR.

Q11. Do you agree with confirmation of the aggregate information by the TR participants or the entities reporting on their behalf prior and after the data transfer? Which other aspects need to be considered? Please elaborate on the reasons for your response.

No, we do not agree, as we do not see the added value of this requirement. Information is confirmed and validated immediately after the conclusion of the

derivative. We wonder, why this information should be confirmed and validated a second or third time prior and after the data transfer, which would cause additional efforts by the TR participants. ESMA should at least clarify the benefit of this requirement, otherwise should refrain from its introduction.

Q12. Do you agree with that the inclusion of TR Q&A 54(d) in the guidelines? Which other aspects need to be considered? Please elaborate on the reasons for your response.

We would like to reiterate that the transfer of data to the financial counterparty TR is complex and burdensome for non-financial companies (NFC-). This applies in particular if the legacy contracts has to be transferred not to only one, but to the different trade repositories of the respective banks.

Rejecting the transfer for cost reasons would lead to the situation that the NFC- would have to continue to report its legacy contracts by its own. However, this would entail enormous additional costs for maintaining the interfaces to the trade repository, keeping track of modifications of the contracts and adjustments of the new reporting standards, for the monitoring of the reporting by the external auditor etc. Overall, this would contradict the aim of EMIR Refit to reduce the costs for NFC-.

Therefore, ESMA should allow NFC- to stop reporting also for derivatives outstanding before 18/06/2020. As modifications/terminations of the derivatives in question mostly depend on the agreement of both counterparties, FCs have this information available and, hence, should report them to their trade repositories. For supervisory purposes there is no information loss at all. Of course, FCs should be solely liable for the correctness of the data they provide transaction registers from their own records. ESMA should also bear in mind that derivatives used by NFC- account for a small minority of financial transactions/derivatives and are mainly subject to hedging purposes anyway, therefore not increasing risk in the financial system.

In order to create a real value in practice, trades with financial counterparties outside of the EU should be also exempted from any reporting obligation. At least, it is of urgent need that the EU Commission enacts equivalence decisions especially for jurisdictions like the US or UK. If a financial counterparty outside the EU is not able to report on behalf of the EU Corporate, a reporting infrastructure still needs to be maintained by the NFC-. Even when the financial counterparty outside the EU reports on behalf of the NFC-, the NFC- remains legally liable for the correctness and has to keep track of the data being reported. By this, processes still need to be maintained, documented and audited.

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