

# Revised trade reporting requirements under EMIR

June 2017

## Background

Article 9 of the European Market Infrastructure Regulation (EMIR) requires counterparties to report details of any derivative contract (including OTC (cleared and bilateral) derivatives, listed derivatives and physical commodities traded on a Multilateral Trading Facility) they have concluded, or which they have modified or terminated, to a registered or recognised Trade Repository (TR) no later than one working day following the conclusion, modification or termination of the contract.

The European Securities and Markets Association (ESMA) issued its final report on the regulatory technical standards (RTS) and implementing technical standards (ITS) relating to EMIR on 13 November 2015. The European Commission (EC) published its revisions to the EMIR RTS and ITS in the Official Journal on 21 January 2017. These revisions entered into force on 10 February 2017 and apply from 1 November 2017.

This paper provides an overview of the amendments to the EMIR trade reporting requirements made by the revised RTS and ITS and the implications for clients of Morgan Stanley. Please contact your usual Morgan Stanley representative with any questions you may have.

The revised RTS and ITS are available on the links shown below:

**The revised RTS:** [Click Here](#)<sup>1</sup>

**The revised ITS:** [Click Here](#)<sup>2</sup>

<sup>1</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0104&from=EN>

<sup>2</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0105&from=EN>

## Mandatory reporting of counterparty Legal Entity Identifier (LEI)

It is becoming increasingly important for global regulators to be able to identify the parties involved in a transaction. The chosen method to achieve this is through the adoption of a LEI which allows every legal entity to a financial transaction to be uniquely identified regardless of its jurisdiction.

In order to comply with the reporting obligation for EMIR, the reporting counterparty will, if applicable, require a LEI identifier for the following parties:

- a) a beneficiary which is a legal entity
- b) a broking entity
- c) a central counterparty (CCP)
- d) a clearing member
- e) a counterparty which is a legal entity
- f) a submitting entity

**How to obtain a LEI:** LEIs can be purchased from a LEI issuing organization; these can be found on the [Global Legal Entity Identifier Foundation's \(GLEIF\)](#) website<sup>3</sup>. A LEI must be renewed on an annual basis for a fee.

Morgan Stanley will capture your LEI from the GLEIF database, please ensure that your LEI is updated and present on this system ahead of the 1 November 2017 go-live.

When registering a LEI, the issuing organisation may take time to verify the information you have provided. Therefore in order to ensure that you can continue to trade post 1 November 2017, please allow for adequate time to process the LEI registration.

<sup>3</sup> <https://www.gleif.org/en/about-lei/how-to-get-an-lei-find-lei-issuing-organizations>

The level of the LEI is different for different regulations. For EMIR, the LEI is required at the principal level (e.g. fund), whereas for MiFID II and MiFIR the LEI is required at the order placer level (e.g. fund manager). A summary of the requirements for EMIR, MiFID II / MiFIR and Securities Financing Transaction Regulation (SFTR) are set out in the table below:

Regulation	Level of LEI	Description	Exchange of LEI information between firms	Timeframe
European Market Infrastructure Regulation (EMIR)	- Principal (fund level)	<ul style="list-style-type: none"> <li>- EMIR reporting originally went live in February 2014, with an LEI as one of the available methods to identify principals in a transaction.</li> <li>- In November 2017, LEIs will become mandatory to identify counterparties (excluding natural persons) to a derivative transaction. This will apply to all global counterparties.</li> <li>- Trading can only take place with firms with a valid LEI in place.</li> </ul>	<ul style="list-style-type: none"> <li>- Received from clients at account opening and stored as a static data item</li> <li>- Ongoing reconciliation to GLEIF to ensure validity of LEIs</li> </ul>	<ul style="list-style-type: none"> <li>- <b>Mandated LEIs from <u>November 2017</u></b></li> <li>- Please note that Morgan Stanley will be cross checking LEIs for its clients with the GLEIF system (please see below)</li> <li>- LEIs need to be uploaded to this database well ahead of go-live to ensure no issues on day one</li> </ul>
Markets in Financial Instruments Directive/Regulation (MiFID II/MiFIR)	- Order placer (fund manager level)	<ul style="list-style-type: none"> <li>- Under MIFID II/MiFIR in-scope investment firms (e.g. Morgan Stanley &amp; Co. International plc) can only take orders / execute transactions with firms that have provided a valid LEI (regardless of where such firms are located).</li> </ul>	<ul style="list-style-type: none"> <li>- Where a client trades via FIX, Morgan Stanley requests that they send the LEI on the order message.</li> </ul>	<ul style="list-style-type: none"> <li>- <b>Mandated LEIs from <u>3<sup>rd</sup> January 2018</u></b></li> <li>- Please note that Morgan Stanley will be cross checking LEIs for its clients from the GLEIF system (please see below)</li> <li>- LEIs need to be uploaded to this database well ahead of go-live to ensure no issues on day one</li> </ul>
Markets in Financial Instruments Directive/Regulation (MiFID II/MiFIR) (Commodities)	- Principal (fund level)	<ul style="list-style-type: none"> <li>- In addition to the information required above under MiFID II/MiFIR Morgan Stanley is required to submit commodity position reports identifying the principal where a commodity</li> </ul>	<ul style="list-style-type: none"> <li>- Received from clients at account opening and stored as a static data item</li> </ul>	<ul style="list-style-type: none"> <li>- <b>Mandated LEIs from <u>3<sup>rd</sup> January 2018</u></b></li> <li>- Please note that Morgan Stanley will be cross checking LEIs for its</li> </ul>

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Position Reporting)		derivative transaction is entered into between Morgan Stanley and a client that is a non-financial entity. To perform this a valid LEI is required at the principal (Fund) level	Ongoing reconciliation to GLEIF to ensure validity of LEIs	clients from the GLEIF system (please see below) - LEIs need to be uploaded to this database well ahead of go-live to ensure no issues on day one
Securities Financing Transaction Regulation (SFTR)	Principal (fund level)	<ul style="list-style-type: none"> <li>- The reporting requirement under Article 4 of the SFTR is anticipated to go-live for phase 1 entities (credit institutions and investment firms) in Q4 2018. Phase 2, 3 and 4 counterparties will be required to report 3, 6 and 9 months after this date respectively.</li> <li>- The reporting requirement applies to EU legal entities and EU branches of non-EU entities.</li> <li>- SFTR mandates the use of LEIs to identify all entities involved in an SFT including agents and brokers.</li> </ul>	<ul style="list-style-type: none"> <li>- Received from clients at account opening and stored as a static data item</li> <li>- Ongoing reconciliation to GLEIF to ensure validity of LEIs</li> </ul>	<ul style="list-style-type: none"> <li>- <b><u>October 2018</u></b></li> <li>- Please note that Morgan Stanley will be cross checking LEIs for its clients from the GLEIF system (please see below)</li> <li>- LEIs need to be uploaded to this database well ahead of go-live to ensure no issues on day one</li> </ul>

## Reporting of Complex Derivatives

The revised ITS outline requirements for the reporting of complex derivatives composed of several derivative contracts. This is intended to provide greater transparency on the characteristics and individual component which make up complex derivatives<sup>4</sup>.

Separate legs are required to be reported for each component, with the introduction of an internal identifier to provide a linkage between those legs<sup>5</sup>. The identifier to be used is called the 'Complex trade component ID'<sup>6</sup> and must be internal to the reporting

counterparty and be unique to the group of trade reports resulting from the derivative contract. It may not be possible to report these types of contracts within a single report, therefore it is expected that counterparties will determine the number of reports and exchange UTI's required before the T+1 reporting deadline<sup>7</sup>.

## Reporting of Cleared Trades

There are new requirements on the reporting of a previously reported contract which is then

<sup>4</sup> Official Journal of the European Union, Article 1 Commission Implementing Regulation (EU) 2017/105) amending Delegated Regulation (EU) No 148/2013, Article 1 (2)

<sup>5</sup> Official Journal of the European Union, Commission Delegated Regulation (EU) 2017/104) (3)

<sup>6</sup> See Annex, Table 2, Field 14, Official Journal of the European Union, Commission Delegated Regulation (EU) 2017/104) (4)

<sup>7</sup> Official Journal of the European Union, Commission Delegated Regulation (EU) 2017/104) (4)

subsequently cleared by a CCP. The expectation is that the existing bilateral contract will be reported as terminated and that the new contract resulting from the cleared transaction will be reported<sup>8</sup>. The terminated contract will have the action type “Early Termination”. If the contract is concluded on a trading venue and cleared on the same day, the expectation is that only the cleared contract is reported<sup>9</sup>.

## Reporting of Collateral

There are new requirements on how collateral exchanged between counterparties is reported with an aim to introduce a standardised methodology for defining what is reported and who is required to report.

**What is to be reported?**<sup>10</sup>: Fields have been added and include details of all posted and received collateral as well as an indicator detailing where collateral posting is on a transactional or portfolio basis. The reporting details have been increased to report Initial Margin (IM), Variation Margin (VM) and Excess Collateral. Alongside each of these, the currency and posted versus received details will also be reported. Where collateral is posted on a portfolio basis, a code is to be reported identifying the portfolio related to the reported amount. The type of collateral to be reported is dependent on what has been agreed within the collateral agreement.

## Reporting of Notional Amount

Definitions for how the notional amount should be calculated have been included in article 3A of the RTS<sup>11</sup>.

**Swaps, futures and forwards (traded in monetary units)** – the notional should be the reference amount from which contractual payments are determined in derivatives markets.

**Options** - calculated using the strike price.

**Financial CFDs and derivative contracts relating to commodities denominated in units (e.g. barrels or tons)** - the notional should be the resulting amount of the quantity at the relevant price set in the contract.

**Derivative contracts where the notional amount is calculated using the price of the underlying asset and such price is only available at the time of settlement** - the end of day price of the underlying asset at the date of conclusion of the contract.

**For the initial report of a derivative which has a notional amount which is variable over time** – this shall specify the notional amount as applicable at the date of conclusion of the derivative contract.

## Reporting of Buyer/Seller

Definitions for the Buyer & Seller have been included in article 3A of the ITS within “Counterparty Side” details:

1. The counterparty side to the derivative contract referred to in field 14 of Table 1 of the Annex shall be determined in accordance with paragraphs 2 to 10.
2. In the case of options and swaptions, the counterparty that holds the right to exercise the option shall be identified as the buyer and the counterparty that sells the option and receives a premium shall be identified as the seller.
3. In the case of futures and forwards other than futures and forwards relating to currencies, the counterparty buying the instrument shall be identified as the buyer and the counterparty selling the instrument shall be identified as the seller.
4. In the case of swaps related to securities, the counterparty that bears the risk of price movement of the underlying security and receives the security amount shall be identified as the buyer and the counterparty that pays the security amount shall be identified as the seller.
5. In the case of swaps related to interest rates or inflation indices, the counterparty paying the fixed rate shall be identified as the buyer and the

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<sup>8</sup> Commission Delegated Regulation (EU) 2017/104) (2)

<sup>9</sup> Commission Delegated Regulation (EU) 2017/104) (2)

<sup>10</sup> Article 1(2), Official Journal of the European Union , Commission Implementing Regulation (EU) 2017/105)

<sup>11</sup> Article 1(3), Official Journal of the European Union , Commission Delegated Regulation (EU) 2017/104)

counterparty receiving the fixed rate shall be identified as the seller. In the case of basis swaps, the counterparty that pays the spread shall be identified as the buyer and the counterparty that receives the spread shall be identified as the seller.

6. In the case of cross-currency swaps and swaps and forwards related to currencies, the counterparty receiving the currency which appears first when sorted alphabetically by International Organization for Standardization (ISO 4217) standard shall be identified as the buyer and the counterparty delivering that currency shall be identified as the seller.
7. In the case of swaps related to dividends, the counterparty receiving the equivalent actual dividend payments shall be identified as the buyer and the counterparty paying the dividend and receiving the fixed rate shall be identified as the seller.
8. With the exception of options and swaptions, in the case of derivative instruments for the transfer of credit risk, the counterparty buying the protection shall be identified as the buyer and the counterparty selling the protection shall be identified as the seller.
9. In the case of derivative contracts relating to commodities, the counterparty that receives the commodity specified in the report shall be identified as the buyer and the counterparty that delivers the commodity shall be identified as the seller.
10. In the case of forward-rate agreements, the counterparty paying the fixed rate shall be identified as the buyer and the counterparty receiving the fixed rate shall be identified as the seller.

## Backloading (terminated trades) deadline extended to February 2019

The deadline for reporting trades terminated prior to 12 February 2014 (i.e. prior to the commencement date of the EMIR trade reporting obligation) has been extended from 12 February 2017 to 12 February 2019<sup>12</sup>.

## Credit Derivatives

There are new requirements on the reporting of credit derivatives. A new asset class section specific to credit derivatives has been created containing 10 fields.

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<sup>12</sup> Article 1(7), Official Journal of the European Union , Commission Implementing Regulation (EU) 2017/105)