

# REPORTING REQUIREMENT UNDER EMIR

## GENERAL QUESTIONS

### **WHAT DOES THE REPORTING REQUIREMENT MEAN TO ME AS A TRADER IN DERIVATIVES?**

The EMIR reporting requirement means that the authorities require reporting all your derivatives trades to a trade repository. Failure to comply with the requirement will result in sanctions (a fine, for instance) under national legislation.

### **ARE TRADES OF ALL COUNTERPARTIES TO BE REPORTED?**

Yes. Apart from private individuals, central banks and a few exempt entities, all parties to a derivatives trade must report the trade to a trade repository.

However, in certain cases one of the parties has an obligation to report on behalf of both itself and its counterparty. As of 18 June 2020 all financial counterparties (FC) are responsible for reporting of over-the-counter (OTC) derivative contracts on behalf of both themselves and their non-financial counterparties that are not subject to the clearing obligation (NFC-), unless the NFC- counterparty has decided to trade report itself and has informed the financial counterparty accordingly.

### **WHICH PRODUCTS ARE COVERED BY THE REPORTING REQUIREMENT?**

In general, all non-cash trades and trades with settlement/ value date after the spot date must be reported. In theory, this applies also to foreign exchange forward contracts ("FX Forwards"). However, commercial FX forwards entered into by a non-financial counterparty (NFC) are exempt if they are settled physically and entered into in order to facilitate payment for identifiable goods, services or direct investments, provided that they are not traded on a trading venue. Repo transactions and deposits are not covered by the EMIR reporting requirement.

The technical definition of products defined as derivatives under the EMIR reporting requirement is set out in Directive 2014/65/EU of the European Parliament and of the Council, annex 1, section C, points 4-10. The criteria for exemption of forward exchange contracts are specified in Commission Delegated Regulation (EU) 2017/565, article 10(1)b.

### **WHAT ARE THE CLEARING THRESHOLDS?**

The clearing threshold in terms of notional amount for credit and equity derivatives is EUR 1 billion, EUR 3 billion for interest rate and foreign exchange derivatives and EUR 4 billion for commodity and other derivatives. Calculations to determine whether the clearing thresholds are exceeded must be made on the basis of the aggregate, average notional amount of OTC derivatives at month-end and must be performed once a year for the preceding 12 months.

Non-financial counterparties (NFCs) that exceed a threshold for derivatives positions (not related to the hedging of commercial activities or treasury financing) are subject to a clearing obligation for the asset class(es) exceeding the clearing thresholds. Financial counterparties (FCs) that exceed one of the clearing thresholds are subject to a clearing obligation for all asset classes. Category FC and NFC customers that do not perform the required calculations will be subject to a clearing obligation for the asset classes covered by a clearing obligation.

### **ARE BOTH CLEARED AND NON-CLEARED TRADES TO BE REPORTED?**

Yes.

### **ARE BOTH OTC AND ETD TRADES TO BE REPORTED?**

Yes.

### **ARE INTRA-GROUP TRADES ALSO TO BE REPORTED?**

Yes. Reporting is required for intra-group trades in financial companies. However, only trades between two different legal entities are to be reported. Trades within one and the same legal entity are NOT reportable. If at least one of the counterparties is a non-financial counterparty (NFC), an application for exemption of reporting of intra-group trades may be submitted to the relevant Financial Supervisory Authority.

### **WHAT ARE THE REQUIREMENTS FOR REPORTING OF HISTORICAL TRADES?**

The requirement for reporting of historical trades was lifted by the implementation of EMIR REFIT in 2019. This means that a reporting obligation applies only to trades outstanding at 12 February 2014 or trades made after that date.

### **WHO WILL HAVE ACCESS TO MY REPORTED DATA?**

Only relevant authorities within the EU will have access to your data in the trade repository.

### **WHO IS RESPONSIBLE FOR THE REPORTED DATA?**

When Danske Bank reports on your behalf under EMIR (you are a NFC- counterparty and enter into OTC derivatives trades with us), Danske Bank is responsible for the timely and accurate reporting. However, you must provide to us the data needed for reporting and remain responsible for the correctness of such data.

When Danske Bank does not have a regulatory obligation to report on your behalf, you (the customer) are ultimately responsible for the correctness and timely submission of data, even if the reporting task has been delegated to Danske Bank.

### **WHICH TRADE REPOSITORY WILL DANSKE BANK BE USING?**

Trades will be reported to DTCC Global Trade Repository.

## **DANSKE BANK'S REPORTING OF OTC DERIVATIVES ON BEHALF OF NFC-COUNTERPARTIES**

### **WHEN DANSKE BANK IS RESPONSIBLE FOR REPORTING ON MY BEHALF?**

As of 18 June 2020, Danske Bank is responsible for reporting on your behalf your OTC derivatives trades with Danske Bank if you are a NFC- counterparty. Danske Bank will also report any modification or termination of existing OTC derivative trades with NFC-counterparties if such modification or termination occurs on or after 18 June 2020.

### **CAN I CHOOSE TO REPORT MYSELF?**

Yes. If you wish to report OTC derivatives trades yourself after 18 June 2020, you can opt-out of Danske Bank's reporting on your behalf. In such case, you must give us a prior written notice in accordance with Danske Bank's Terms and Conditions for Mandatory Reporting, available <http://danskeci.com/ci/regulatory/emir/documents/terms-and-conditions-for-mandatory-reporting>.

### **DO I NEED TO TAKE ANY ACTION, IF DANSKE BANK REPORTS ON MY BEHALF?**

Yes. You must provide your LEI and maintain it for as long as you have existing over-the-counter derivatives transactions.

If any of your trades do not comply with the default values set out in Terms and Conditions for Mandatory Trade Reporting, you must notify us at [emir-tradereporting@danskebank.com](mailto:emir-tradereporting@danskebank.com) immediately and not later than on the day when the trade is made. This may be the case if you

make a trade for speculative purposes, as opposed to the default value (“commercial risk hedging”).

Please familiarize yourself with the full list of assumptions and rules for exchanging information under Danske Bank’s Terms and Conditions for Mandatory Trade Reporting, available <http://danskeci.com/ci/regulatory/emir/documents/terms-and-conditions-for-mandatory-reporting>.

#### **AM I TO INFORM DANSKE BANK OF MY LEI EVERY TIME I TRADE?**

No. We will register your LEI once and for all, but it will be used every time we report trades on your behalf through the Trade Reporting Service. You will, however, need to keep your LEI updated in a valid status with your LEI provider.

#### **WHAT HAPPENS IF REPORTING INCONSISTENCIES OCCUR?**

Financial regulators are expected to make inquiries about any identified inconsistencies. Danske Bank will monitor inconsistencies internally with a view to identifying and possibly correcting the cause of such inconsistencies.

#### **WHERE CAN I SEE WHAT DANSKE BANK HAS REPORTED ON MY BEHALF?**

If you need to check what has been reported by Danske Bank, please contact us at [emirtraderreporting@danskebank.com](mailto:emirtraderreporting@danskebank.com). You can obtain unlimited access to all trade repository data by entering into a separate agreement with DTCC Global Trade Repository ([www.dtcc.com](http://www.dtcc.com)).

### **DANSKE BANK’S TRADE REPORTING SERVICE**

#### **WHAT DOES DANSKE BANK’S TRADE REPORTING SERVICE COVER?**

Danske Bank’s Trade Reporting Service is an offer for you, as a customer, to have us report your derivatives trades with us.

Such service is offered and applies when Danske Bank does not have an obligation to report on your behalf under EMIR.

#### **WHAT IS THE CHARGE FOR THE TRADE REPORTING SERVICE?**

The service is currently provided free of charge. Trades will be reported to DTCC Global Trade Repository. Where DTCC Global Trade Repository charges Danske Bank a fee for the trades reported for you as a customer, Danske Bank reserves the right, however, to pass on such fee to you. We will notify you in advance if we change our pricing structure for the service.

#### **HOW DO I SET UP AN AGREEMENT ON TRADE REPORTING?**

If you would like to use Danske Bank’s Trade Reporting Service, but has not received any information about it, please contact your adviser.

#### **DO I HAVE TO TAKE ANY FURTHER ACTION (IF SIGNED UP FOR THE SERVICE)?**

As a user of Danske Bank’s Trade Reporting Service, no further action is generally required from you. If any of your trades do not comply with the default values of the general reporting agreement, you must notify us at [emir-traderreporting@danskebank.com](mailto:emir-traderreporting@danskebank.com) immediately and not later than on the day when the trade is made. This may be the case if you make a trade for speculative purposes, as opposed to the default value (“commercial risk hedging”).

If you do NOT use our Trade Reporting Service, you will need to set up an agreement with and report to a trade repository of your own choice. Alternatively, you may agree with a third party to report trades on your behalf.

### **CAN DANSKE BANK REPORT MY INTRA-GROUP TRADES AND TRADES WITH THIRD PARTIES?**

Danske Bank's Trade Reporting Service covers only trades made with Danske Bank as the counterparty.

### **WILL DANSKE BANK REPORT MARKET VALUES FOR MY TRADES?**

If you have signed a reporting agreement, Danske Bank will calculate and report market values according to the same models and principles as those applicable to the values currently provided to customers in the monthly derivatives overviews.

Only customers categorised as FC (financial counterparty) and NFC+ (non-financial party having exceeded the clearing threshold) are required to report daily market values for their trades.

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