

CENTRAL BANK QUESTIONS:

Question One: Do you think that this is the optimal categorisation which the Central Bank should use to underpin our supervisory framework? If not what other categorisation would you propose? .

Answer:

- The categorization of entities as small, medium or large needs to have clear criteria associated with each entity type to avoid any potential discrepancies in interpretation or classification.
- The nature of the financial derivatives should be taken into consideration with a clearly stated definition of what constitutes a forward being clarified as this is open to interpretation at present e.g. At present the FCA in the UK holds the view that FX Forwards would be exempt if used for commercial purposes whilst the CBI in Ireland have issued a guidance stating that FX transactions settled in a period longer than 7 days are reportable. Without a clearly stated definition of what constitutes a forward there will be uncertainty, confusion & lack of a cohesive approach.
- In circumstances where the relevant NFC has delegated all reporting responsibility to a third party that the exemption should be in full ie cover both director sign off & third party certification. The submission of a 'tailored ERR' for Small NFC's who have EMIR delegated reporting in place should not be required ,a basic report from auditors to show compliance should be sufficient .

Question Two: Should the minimum threshold be set at a level above the criteria specified in the S.I. and if so, what would be the appropriate level?

Answer:

- Yes the minimum threshold should be raised above the criteria specified in the SI.
- The Criteria Specified in the SI under , Regulation 14(5) (a)-(c) are:
 - (a) the counterparty has **less than 100 outstanding OTC derivative contracts** at any time during the reporting period to which the EMIR regulatory return relates.
 - (b) the counterparty has outstanding OTC derivative contracts which cumulatively have a **gross notional value of less than €100 million** at the time the request was made;
 - (c) the counterparty has **delegated the reporting** of the details of their OTC derivative contracts to a third party or parties in accordance with Article 9(1) of Regulation 648/2012 during the entire period to which the EMIR return relates.
- An entity could have a portfolio of high volume low value derivatives; in this instance the number of < 100 outstanding derivatives may be easily exceeded. A number of <500 might ensure that more entities meet the exemption provisions and thus the more correct classification as a Small NFCs , more especially when there is an associated gross notional value of <Eur 100m with same. It is difficult to state what an appropriate level would be until such time as a clear definition of a forward is agreed upon.

Question Three: Do you envisage any operational or other difficulties with the Central Bank adopting this approach?

If so please provide commentary as to how these difficulties could be resolved?

Answer: Yes.

- The exemption threshold for the number of outstanding derivatives & associated gross notional value should be increased as advised previously so that Small NFC's do not get incorrectly classified as Medium NFC's.
- If Small NFC's are to be included in both targeted & random thematic inspections on a sample basis & have delegated reporting agreements in place with their banks a tailored ERR should not be required. Small NFC's with delegated reporting agreements in place should be completely exempt from any form of ERR
- Furthermore, in lieu of inspections for Small NFC's EMIR compliance should form part of that entity's audit review . Audit confirmation of EMIR compliance should be sufficient for Small NFC's who have delegated reporting in place
- Flexibility as to the submission date of the ERR will not in itself have a direct impact on costs as the volume of work involved will remain unchanged; particularly for medium & large companies where they have to submit an annual independently assessed ERR. Fees for same are likely to vary widely depending on the profession offering these services.
- Clear criteria as to what records need to be kept on file to demonstrate compliance needs to confirmed.

Question Four: Should the Central Bank accommodate tailored submission periods from NFCs, or should it determine a fixed date for the submission of all ERRs?

Answer :

- Tailored submission periods should be accommodated to allow for more flexibility. Data submitted by the banks with whom delegated reporting agreements are in place, varies in frequency & format from bank to bank depending on the number of derivatives traded & the banks own interpretation of what is actually classified as an EMIR reportable derivative. E.g. one of our banks has stated that if an entity has less than 100 trades there is only a requirement for them to report once a year on our behalf. Other banks report trades daily regardless of the number of trades in existence.
- Furthermore it is the case that some banks will send reports, which vary in format & content from bank to bank, to an NFC whom has delegated reporting in place with them on what has been reported to EMIR . Other banks will not provide such a service and will stipulate that the NFC has to open an account with the relevant TR to view what data has been submitted by the banks on their behalf.
- The opening of an account with a TR is not a straight forward exercise and is time consuming. A tailored submission date may help entities with this obligation as some NFC's will need to have an account open with more than one TR. This will be required to assist in obtaining the answers to the questions asked in the ERR

Question Five: If the ERR was not adopted, how should the Central Bank charge supervisory costs to all categories of NFCs? Should we for example have a sliding scale for NFCs, which is dependent on the level of derivative activity?

Answer:

• Yes, a sliding scale for NFCs, which is dependent on the level of derivative activity, would be an option. The nature, value & number of financial derivatives should also be taken into consideration & a clear definition of forwards needs to be agreed upon. The entity categorization as small /medium or large should be considered within this sliding scale as well as the fact if delegated reporting is in place or not. Also due consideration

should be given to intragroup forwards, ideally these should be either completely exempt or on the very lower end of any such sliding scale.

Question Six: If you are of the view that the ERR should be adopted, as broadly outlined, are we asking the right questions in the ERR? If there are questions which can be improved upon, please let us have this feedback.

Answer

- For small entities whom have delegated reporting agreements in place an ERR should not be required. EMIR compliance as confirmed by auditors should be sufficient.
- For medium /large entities are their systems capable of obtaining the data necessary to answer the questions, particularly in Section Two of the ERR Template. Notwithstanding the fact that the TR data itself may at present prove difficult & time consuming to set up & once set up may not be easily interpreted.

Question Seven: If there is specific feedback re any professional disclosures, please submit details to the Central Bank.

- Audit confirmation of compliance for Small NFC's who have delegated reporting in place should be sufficient, hence we do not have any feedback re professional disclosures for third party assessors

Question Eight: What is your view on the proposed role of a Third Party Assessor?

Answer :

- Cost would be a significant concern. A third party assessor would be unfamiliar with the business and may take considerable time & resources to be satisfied as to EMIR compliance in an unfamiliar business.
- Auditors on the other hand should be very familiar with the business and its class of derivatives and should be able to provide an opinion as to EMIR compliance as part of the normal course of its audit work.
- What professions are third party assessors to be resourced from & how will consistency in independently assessing EMIR compliance be ensured? How are these independent assessors to be appointed in the

first instance? Will guidance fees be something that could be considered?

- Trade Repository platforms need to be fit for purpose before any third party assessor would easily be able to retrieve the relevant data for comparison to a company's derivative data on a TMS or other company platform.
- In reference to the point in the consultation paper 'The Central Bank shall issue rules and standards which will provide greater clarity on the role of the Third Party Assessor and which shall specify their expectations in terms of responses to the questions raised in the ERR'.
When will these rules & standards be issued?