Brexit Guidance Notes

Introduction

BREXIT introduces separate regulatory regimes in the UK and the EU where previously the UK had been subject to EU regulation. This document does not provide any guidance to companies regarding regulatory compliance in the post BREXIT era, however it does explain how Equias plans to minimise the technical and operational impact of BREXIT upon the users of its services and sets out specific guidance of an operational and technical nature with regard to each affected service.

Process Specific Guidance

Electronic Regulatory Reporting (eRR) – EMIR

The UK plans to transpose the EMIR rules 1:1 into UK legislation. This means that initially, at least, there will be identical reporting regimes in both jurisdictions: EMIR-UK and EMIR-EU and the major trade repositories (Una Vista, DTCC and Regis-TR) have all established parallel EU and UK instances. How this will affect companies using eRR for EMIR reporting depends both on where they are established (EU27 or UK) and on whether they wish to report under only one or under both regimes. Although a company must report for itself under the regime applying in its place of establishment (EU27 or UK) as defined by its LEI code, EMIR permits reporting on behalf of (ROBO) using a dual sided report submitted on behalf of both the 'Counterparty' and the 'Other Counterparty', alternatively an eRR user can report on behalf of others by submitting a single sided report from the perspective of the other counterparty, and furthermore it is possible for independent reporting agents who are not a party to the transaction being reported to submit reports using eRR on behalf of clients of their reporting service. In each of these 'ROBO' scenarios an eRR user may need to report to both EU and UK trade repositories. The following provides a more technical description of how eRR-EMIR will address these BREXIT related issues and some guidance for eRR-EMIR users preparing for BREXIT.

Technical Guidance – eRR EMIR

eRR accepts separate CpML documents for each of the 3 regulatory regimes: EMIR (Europe), Dodd-Frank (US) and FInfraG (Switzerland). In the long run, CpML will need to develop a UK section distinct from the current Europe section requiring users to create separate CpML eRR input documents for UK and EU reporting via eRR. For a transitional period whilst the UK regime remains sufficiently similar to that of the EU, eRR will support both UK and EU 'flavours' of EMIR reporting for CpML input documents with a Europe section meaning the current CpML input documents will continue to be accepted regardless of whether the report is being submitted to the EU or to the UK. Furthermore eRR will support cross regime ROBO reporting between the UK and the EU for dual sided CpML input documents, where one counterparty is register in the UK and the other in the EU, by splitting a single dual sided input CpML document by counterparty LEI into two output reports, one to the EU trade repository and the other to the UK trade repository. The only limitation being that each output document will be submitted to the UK or EU TR provided by a single TR operator: either UnaVista or DTCC or Regis-TR; that operator will be the one identified in the input CpML document or enriched from the standing instructions of the sender of the CpML document. Users making use of cross regime ROBO reporting by submitting a dual sided CpML input document where one counterparty is register in the UK and the other in the EU, will need to adapt their eRR response processing to process results from both the underlying UK and EU TRs. The strong recommendation from Equias however, is that users (eventually) discontinue using the dual sided reporting capability for EMIR reporting in favour of submitting two single sided reports, one for themselves and one for the other counterparty (reversing the perspective of the reported trade). Although not necessary before BREXIT adopting single sided ROBO reporting in the longer run will ensure a consistent response from eRR with only a single response being returned for each CpML document submitted, resulting in a simpler and cleaner implementation for eRR users. In either case, clients need to ensure that they have an account in both the EU and UK TRs of their TR operator if they ever expect to report on behalf of a counterparty who is not regulated under the same regime as they are themselves. Regarding ISINs, eRR will continue to enrich ISINs published by UK exchanges whilst this continues.

Electronic Regulatory Reporting (eRR) - REMIT

OFGEM have indicated that they are happy to revert to gathering market data via the price reporting agencies and brokers and that existing EU27 ACER Codes will be accepted as valid identifiers post BREXIT thereby minimising the operational impact of BREXIT on energy market regulation for UK and EU27 companies wishing to trade UK energy products post BREXIT. However UK and EU27 Market Participants (MPs) and Organised Market Places (OMPs) who wish to trade or arrange REMIT eligible products post BREXIT are affected under both REMIT itself and under MiFID II in the context of the REMIT carve-out. The UK is in the process of applying a carve out under UK legislation to REMIT eligible contracts executed on both UK and EU OTFs, however EU27 based MPs must await an equivalence decision with respect to the UK before UK venues become subject to the carve out under EU regulation. Consequently MPs are considering either re-registering through CREMP in one of the EU27 thereby giving up their OFGEM ACER Code and replacing it with an EU27 ACER Code, or novating their post BREXIT open REMIT eligible positions to an EU27 legal entity which they may have newly established for the purpose; whilst UK OTC OMPs (UK brokers) have in general established new OTFs in the EU27 to which they plan to migrate their EU and UK energy products. The following provides a more technical description of how eRR-REMIT will address these BREXIT related issues and some guidance for both MP and OMP eRR-REMIT users preparing for BREXIT.

Technical Guidance Market Participants – eRR REMIT

eRR users with a UK ACER code must either:

- add their new EU ACER code to the CMS, if they re-register in CREMP, or;
- if they are novating positions to an EU legal entity, must on-board the entity (if not already done) to the CMS as a new internal entity of the existing CMS Organisation

Group using the Amendment Agreement for Affiliates available on the Equias website.

If REMIT positions have been novated to an EU entity, then reporting can commence on completion of the eRR on-boarding process which can be prior to BREXIT; however all contract novations must be reported to ACER before any lifecycle events can subsequently be reported.

eRR will continue to accept reports containing UK ACER codes as it is not clear at this time how the timing of the operational cutover from UK ACER codes will be managed nor how 'orphaned' transaction reports previously submitted with a UK ACER code prior to BREXIT can be maintained after BREXIT; although it may be expected that ACER will reject reports submitted using UK ACER codes in an invalid context e.g. for new transaction reports post BREXIT. Depending on clarification by ACER on how the cutover from UK to EU27 ACER Codes will be handled, eRR may be able to map pre-BREXIT UK ACER Codes to post-BREXIT EU27 ACER Codes where appropriate to minimise the potential rejection rates resulting from submission of reports containing invalid codes.

eRR will continue to accept reports containing UK delivery points however these reports will be filtered out centrally by eRR and will not be delivered to ACER; in such cases a response "NO REPORT" will be returned to the sender. Centralised filtering of reports for UK deliveries mitigates the impact of BREXIT on client backend reporting processes, allowing clients to concentrate on either the switch over to the use of their new EU ACER code, in the case of re-registration or, in the case of novation to an EU legal entity, the on boarding of that entity to the eRR service and the novation of EU delivery trades with the related reporting obligations ("cancel" and "new" reports for each novated trade).

eRR requires each MP using the services to explicitly permit OMPs to report on their behalf through the eRR service. MPs enter and maintain these settings using the user configurable 'whitelist' functionality within the service. If an MP does not explicitly permit an OMP to report on their behalf then the service will block that OMP from reporting on behalf of the MP, as the requisite permission has not been provided by the MP. In the case that an OMP establishes a new EU OTF (see below) and adds the OTF to the service Equias will, <u>at the OMPs request</u>, copy all current settings within the eRR service for the OMP to the newly added OTF, including all 'whitelist' settings for both the OMP and the MPs on whose behalf they are reporting. This means that if an MP is currently using a UK broker (OMP) to report on their behalf, the EU OTF established by that UK broker will inherit the same settings and also be able to report on behalf of that MP without the need for the MP to provide additional explicit permission over and above the permission already afforded to the UK broker (OMP) by that MP.

Technical Guidance Organised Market Places (OMP) – eRR REMIT

In specific reference to OMP, where a UK based OMP establishes a new EU legal entity (OTF) and wishes to offer REMIT reporting services to clients of the new venue, the guidance (with the exception of novations) set out above applies: i.e. that the OMP must on board the new entity to the CMS as a new internal entity of the existing CMS Organisation Group. A new

“Broker (OTF) Code” will be issued, relevant for the eCM process (see below). Reporting by the new EU OMP (OTF) entity can commence on completion of the on boarding process which can be prior to BREXIT.

Technically the eRR service will continue to accept REMIT reports from both the EU and UK OMPs, ensuring flexibility around the cutover process, although it may be expected that at some point ACER will reject reports submitted by an unrecognised (UK) OMP. Centralised filtering of reports from an OMP for a UK delivery point permits OMPs to continue to report without further changes to their backend processes. Reports containing UK delivery points submitted by an OMP will not be delivered to ACER; in such cases a response “NO REPORT” will be returned to the sender.

eRR requires each OMP using the services to explicitly request permission from each MP to report on their behalf through the eRR service. OMPs enter and maintain these settings using the user configurable ‘whitelist’ functionality within the service. If an MP does not explicitly permit an OMP to report on their behalf then the service will block the OMP from reporting on behalf of that MP, as the requisite permission has not been provided by the MP. In the case that an OMP establishes a new EU OTF and adds the OTF to the service Equias will, at the OMPs request, copy all current settings within the eRR service for the OMP to the newly added OTF, including all ‘whitelist’ settings for both the OMP and the MPs on whose behalf they are reporting. This means that if an MP is currently using a UK broker (OMP) to report on their behalf, the EU OTF established by that UK broker will inherit the same settings and also be able to report on behalf of that MP without the need for the MP to provide additional explicit permission over and above the permission already afforded to the UK broker (OMP) by that MP.

Electronic Confirmation Matching (eCM)

eCM will continue largely unaffected by BREXIT, however users MUST BE AWARE that any new EU broker/OTF venues set up in response to BREXIT become NEW BROKER venues with respect to the eCM process. This means that where a new EU broker/OTF has been set up and is on boarding clients to that EU OTF and when a client is moving its business to that new EU OTF, both broker and client must set up the new ‘Broker (OTF) Code” in their back office systems so that the eCM confirmation documents identify the correct execution venue for matching purposes both between counterparties and between client and broker. Failure to fully configure the new EU OTF venue into either broker and/or client back office systems will lead to matching failures in the eCM process as the process will identify discrepancies where counterparties and/or brokers fail to identify the venue of the trade correctly. Furthermore, when any a new (EU) legal entity, either MP or OMP is being on boarded to the CMS it should be enrolled for eCM as well as for eRR, (since the new entity is in the same CMS Organisation Group there will be no impact of fees). This is because the new legal entity will become the counterparty to the confirmed trade, in the case of a new MP, or in the case of a new EU OTF venue, the ‘broker’ of the trade being confirmed. Finally, when a new MP EU legal entity is being on boarded to the CMS a new EIC code must be provided both to Equias as part of the on-boarding process, but also to all counterparties and eCM brokers, as the EIC is used to identify traders within the eCM process, without an EIC code to identify a counterparty the eCM process cannot be used.

eCM requires each MP to maintain broker restrictions related to the 'broker match' aspect of the eCM process. The 'broker match' is the matching event that takes place between the trader's confirmation and the broker's confirmation and is an additional match to the principle match that the eCM process performs between two traders (counterparties) to a confirmed trade. The eCM process will by default attempt to perform a 'broker match' for every confirmation document submitted by a trader to the service. If you (as a trader in the eCM process) do not want to perform a 'broker match' for a brokered trade, then you must explicitly submit your broker restrictions by uploading your broker restriction file that you maintain locally. In the event that a UK broker establishes a new EU OTF and adds that OTF to the eCM process and traders using that OTF wish to confirm trades executed with counterparties over that OTF but DO NOT WANT TO BROKER MATCH with that OTF then they must upload their broker restrictions for that OTF to the eCM process using the broker restriction file upload functionality. If no restrictions are uploaded then the eCM service will by default attempt to perform a broker match for every confirmation submitted by the trader for a trade executed on that OTF. Equias cannot copy over the broker restriction settings for the UK broker to the OTF as this information is maintained outside the service.

Conclusions

The approaches set out in this document aim to mitigate the impact of BREXIT on operations and IT. In particular:

- eRR - EMIR
  - eRR will provide connectivity to the new EU/UK Trade Repositories provided by Una Vista, DTCC and Regis-TR
  - eRR will accept current CpML input documents for both EU and UK 'flavours' of EMIR
  - eRR will automatically split dual sided reports, if necessary and route each report to the appropriate EU/UK trade repository
  - eRR will continue to enrich ISINs published by UK exchanges whilst this continues
- eRR - REMIT
  - eRR will permit users to maintain both EU ACER and UK OFGEM Codes (including historic UK ACER Codes previously issued by OFGEM)
  - eRR will continue to accept reports with UK issued ACER codes (should they be required for maintaining pre-BREXIT open trade lifecycle events)
  - eRR will continue to accept but centrally filter out and store reports for UK delivery points (so eRR users do not need to add or amend local logic)
  - eRR may be able map pre-BREXIT UK ACER Codes to post-BREXIT EU27 ACER Codes where appropriate
- eCM
  - Equias will issue new "Broker (OTF) Codes" to new OTFs established by UK broker in the EU27
  - Brokers and clients of the new OTFs must configure the new "Broker (OTF) Codes" into their back office/confirmation systems before trades executed on the new venue(s) can be successfully confirmed

For further advice or information please contact the Service Team at support@equias.org +44 (0)1372 366760.