ANNEX III – Reporting of ~~REMIT~~energy derivatives contracts under REMIT and EMIR

Version history

Version	Effective Date
Annex III Version 1.0	07 January 2015
Annex III Version 2.0	06 October 2015

This Annex aims at clarifying further the reporting path of the ~~REMIT~~energy derivatives reported under REMIT and EMIR.

Following additional input received by the industry, the Agency has updated this guidance.

In order for a transaction/order in a derivative contract to be executed/placed on an organised market place, a chain of entities is involved. The Agency has developed this additional guidance in order to clarify further which entity (entities) in the chain is (are) considered to be "market participant(s)" under REMIT and therefore have to register with the national regulatory authority and on which party (parties) lie(s) the reporting obligation, what transactions have to be reported, what data have to be reported and who will do the actual reporting,.

The Agency's understanding of the reporting of energy derivatives contracts under REMIT is guided by the principle that uniform rules on the reporting of energy derivatives should not create unnecessary costs or administrative burdens for market participants and take account of reporting frameworks developed under EU financial market legislation. The scope of the reporting of energy derivatives under REMIT should therefore be aligned as much as possible with the scope of the reporting under EMIR and MiFID. The only exception to this is the reporting of matched and unmatched orders under REMIT to enable the Agency to fulfil its market monitoring task under REMIT.

Wholesales Energy Markets: physical vs financial markets [new]

Under REMIT, a market participant is any person who enters into transactions in one or more wholesale energy markets, where wholesale energy markets means any market within the Union on which wholesale energy products are traded. Wholesale energy products are contracts for the supply and transportation of gas and electricity in the EU and derivatives related to them irrespective of where and how they are traded.

In the Agency's view a *wholesale energy market* is a market where the energy *"commodity"* or the *"derivative"* related to the commodity is physically traded (i.e. it physically changes hands/ownership) and not necessarily the venue where the transaction is agreed. Therefore it is important to clarify that:

a. The energy exchanges, broker platforms and any other facilities where the commodity is negotiated (traded) are *Organised Market Places* in REMIT terms. These venues are used to arrange/negotiate the transactions (the contracts);

b. For contracts for the supply (and transportation) of gas or electricity in the EU (including futures for the physical delivery) the *wholesale energy market* is the place where the energy commodity changes ownership (it is traded) e.g. a defined gas hub/electricity network where the gas or electricity changes hands; and

c. For financial derivatives contracts related to EU wholesale gas and electricity products, the venue i.e. the organised market place that hosts that contract, with its clearing house and clearing members, is the *wholesale energy market*. In this case the *wholesale energy market* is the place where the derivative contract is traded, e.g. a specific venue with its own rules and arrangements (including clearing house and clearing members).

The Agency believes that any person entering into transactions in the physical markets of EU wholesale electricity or gas products, irrespective of where the transaction is agreed, that person is a REMIT market participant.

For derivatives related to EU wholesale gas or electricity products that are only for financial settlement, only the person entering into the transactions in the EU gas or electricity derivatives traded on venues, via its own trading membership, is the REMIT market participant for the purpose of reporting.

For example, a client of an exchange member that places orders to trade on the order book of the venue to trade EU gas or electricity derivatives for financial settlement or it is equivalent (e.g. trading on futures for the physical delivery without having arrangements to take or make the delivery of the commodity) should not be considered a market participant unless the client of the exchange member is itself a member of the exchange for the purpose of this trade.
However, if that person also enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets, e.g. enters on a physical trade (or its derivative) for the delivery (or transportation) of gas or electricity in the EU, that person is a market participant and has to report all the transactions on wholesale energy products including those trades that are only for financial settlement.

Market participants should bear in mind that the meaning of entering into transactions in EMIR is different than the meaning of entering into transaction in REMIT, where the latter refers to entering into transaction in “wholesale energy markets” and not to be counterparty to a contract, as CCPs or clearing members are.

Exchange Traded Derivatives (ETDs) [amended]

ETDs traded on Regulated Markets (RMs) supervised by European financial regulators are subject to financial regulations. They are currently considered financial instruments to be reported under EMIR and under MiFID II/MiFIR from 2016.

As far as the Agency is aware, there are two categories of derivatives falling under the scope of REMIT and that have to be reported under EMIR/MiFIR:

a. Exchange traded derivatives (ETDs) traded at Regulated Markets supervised by European financial regulators;

b. Derivatives traded outside Regulated Markets supervised by European financial regulators e.g. traded on MTFs, OTF and bilaterally.

~~ETDs traded on Regulated Markets (RMs) supervised by European financial regulators are subject to financial regulations. They are currently considered financial instruments to be reported under EMIR and under MiFID II/MiFIR from 2016.~~

The Agency ~~understands that ETDs transactions involve several parties: investment firms acting as executing broker and/or as clearing member, the investment firms' clients, clearing houses and the exchange that operates the market.~~

~~The Agency also~~ expects that market participants may enter into ~~transaction~~transactions by:

~~c.~~a. acting on their own account and on their own behalf (pure principal transaction – i.e. on the decision of the firm);

~~d.~~b. acting on their own account and on behalf of a client – i.e. on the order of other market participant; and/or

~~e.~~c. acting for the account of and on behalf of a market participant (pure agency transaction).

~~Market participants should bear in mind~~The Agency understands that ETDs transactions involve several parties. Based on the ~~meaning of entering into~~input provided by the industry, the Agency understands that the following parties may be involved in a regular trade cycle for concluding a derivative transaction ~~in EMIR is different that the meaning~~:

- Exchange (Venue);
- Clearing House (CH);
- Exchange Members (EMs):
  - Executing Brokers (EBs) which have some discretion on the placing of orders to trade on the exchange; or
  - Firms providing Direct Market Access ("DMA") to their clients.
- Client (A) of ~~entering into~~the Executing Broker or of the firm that provide DMA, who is trading in its own discretion on behalf of itself or its clients;
- Investment Manager (IM) which has investment discretion and is solely trading as agent on the account of clients through the Executing Broker;
- Client (1) of the Investment Manager (IM) who is the beneficiary of the transaction ~~in REMIT, where the latter refers to entering into transaction in "wholesale energy markets" and not to be counterparty to a contract, as CCPs or~~executed by the (IM);
- Clearing Broker (CB) of the Executing Broker (a clearing ~~members do.~~member of the Clearing House who is temporary clearing trades that an Executing Brokers executes on Exchange); and

~~Under REMIT, a market participant is any person who enters into transactions in one or more wholesale energy markets, where wholesale energy markets means any market within the Union on which wholesale energy products are traded. Wholesale energy products are contracts for the supply and transportation of gas and electricity in the EU and derivatives related to them irrespective of where and how they are traded.~~

- Clearing Broker (CB) of the Client (a clearing member of the Clearing House providing clearing services to end-clients).

Please also see the exhibits at the end of this Annex.

A. The reporting of wholesales energy derivatives transactions from the Executing Brokers' prospective

The Agency understands that clearing brokers (CBs) and central counterparties (CCPs) are not considered "market participants" under REMIT as they do not enter into transactions in the meaning of REMIT ~~sense~~. The Agency believes that this is in line with the meaning of entering into transaction according to Article 5 of MiFID I where the meaning of entering into transaction does not include actions related to option exercise, settlement or clearing. For further information on life cycle events, please refer to point 3.2.10 of the ~~manual~~TRUM.

A far as the Agency understands, executing brokers may act as Principal before giving up the transaction for clearing and this seems to be the case for most of the transactions executed at Regulated Markets. As a consequence, executing brokers are considered as having ~~entered~~placed orders to trade and having entered into transactions and, thus, they are REMIT market participants.

However, from the investment firm ~~prospective~~perspective, there are several possible scenarios, including:

a. the investment firm is itself a counterparty trading on its own account on its own behalf;
b. the investment firm is itself a counterparty trading on its own account on its own behalf and it is also clearing member;
c. the investment firm is itself a counterparty trading on its own account on behalf of a client;
d. investment firm is itself counterparty trading on its own account on behalf of a client and it is also clearing member;
e. the investment firm is not itself a counterparty and is trading on the account of and on behalf of a client (*agency transactions);* and
f. the investment firm is not itself a counterparty and is trading on the account of and on behalf of a client (agency transactions), but it is also clearing member.

A graphical representation of the above scenarios can be found in exhibits 1.1 to 1.6 ~~below~~at the end of this Annex. A few scenarios to represent what the Agency expects to receive from Trade Repositories receiving transactions under EMIR are represented in case 1 and case 2 below.

For all transactions executed at organised market places, including Regulated Markets where ETDs are traded, a market participant cannot report directly to the Agency, but must report their transactions through the Organised Market Place ~~(OMP) or a third party service provider~~, trade matching or trade reporting system.

For illustration purposes, the Agency's understanding of the two most frequent trading scenarios on ETDs is as follows:

Case 1: Investment Firm (ABC) acts as executing broker on behalf of its Client (123) and gives up a trade for clearing to Investment Firm (XYZ) as clearing broker. The Agency understands that:

Under EMIR:

a. Firm ABC, acting as executing broker, does not have to report the transaction if the trade is given up to Firm XYZ within T+1 (and there has not been any change to the economic terms of the original trade);
b. Firm XYZ, acting as clearing broker, has to report the cleared transaction which includes the Client 123 identifier as counterparty to the contract and the Firm ABC identifier as executing broker; and
c. Client 123, as the originator of the order to trade and counterparty to the contract, has to report the cleared transaction which includes Firm XYZ identifier as counterparty to the contract and Firm ABC identifier as executing broker

The above representation is ~~available~~provided in ~~the~~ ESMA's Q&A on EMIR available ~~on ESMA's website at~~under http://www.esma.europa.eu/content/EMIR-QA. Please see Scenario 2 taken from the ESMA's Q&A and Exhibit ~~3~~(III.1) below for the Agency's understanding of the EMIR/REMIT overlap.

Under REMIT:

- Firm ABC has to submit the order details only. This reporting must be done by delegation to the ~~OMP~~Organised Market Place or third party service provider. Firm ABC does not have to submit any trade report.

Under this scenario, ~~ACER~~the Agency will have access to:

a. Order(s) details reported by Firm ABC, the executing broker, under REMIT;
b. Contract details reported by Firm XYZ, the clearing broker, under EMIR; and
c. Contract details reported by Client 123, under EMIR.

Case 2: In the case where Firm ABC acts as both executing broker and clearing broker for a trade executed at the ~~organised market place:~~Organised Market Place:

Under EMIR:

- Firm ABC, acting as executing broker, does not have to report the contract because, under EMIR where an entity is fulfilling more than one of these roles (for example, where the investment firm is also the clearing member), then it does not have to report separately for each role and should submit one report identifying all the applicable roles in the relevant fields; and
- Firm ABC, acting as clearing broker, has to report the cleared transaction which includes the Client 123 identifier as counterparty to the contract and Firm ABC identifier as executing broker.

Please see ESMA's Q&A on EMIR available ~~on ESMA's website at~~under http://www.esma.europa.eu/content/EMIR-QA and exhibit ~~3~~(III.2) below for the Agency's understanding of the EMIR/REMIT ~~overlapping~~overlap.

Under REMIT:

- Firm ABC, acting as executing broker, does have to report for its role and must report order details via delegation to an OMP or third party service provider. Firm ABC does not have to report data related to the contract.
- Firm ABC, acting as clearing broker, does not have to report in its role because, in that capacity, it is not considered to have entered into a transaction;

Under this scenario, ACER will have access to:

- Order(s) details reported by Firm ABC as executing broker under REMIT;

- Transaction details reported by Firm ABC as clearing broker under EMIR; and
- Transaction details reported by Client 123, under EMIR.

Market participants that have to comply with EMIR should focus on EMIR requirements rather than on the REMIT ones. Parties involved in the execution of an ETD contract will have to report their transactions under EMIR. If they do so, they are complying with REMIT too. However, the obligation to report orders to trade to the Agency is still with the market participants.

There is no need for separate guidance on reporting of ~~ETDs~~ETD contracts and their life cycle events (such as exercise of an option or those actions that are not visible to the market) even though they are reportable under EMIR.

Market participants should report transactions under REMIT only if those transactions are not reported under EMIR. In fact, it is worth ~~nothing~~noting that there may be some ETDs traded on EU venues by non-EU counterparties that are not reported under EMIR (e.g. U.S. counterparties reporting under the Dodd Frank Act).

The Agency understands that these trades have to be reported under REMIT and, if not reported under EMIR, have to be reported through the ~~Exchanges~~Organised Market Places or third parties with Table 1 of the Implementing Acts and according to ~~this manual~~the TRUM.

B. The reporting of wholesales energy derivatives transactions from the venues' perspective

From the venues' perspective, the Agency considers a few scenarios which are also represented in exhibits (2.1) to (2.6) at the end of this Annex.

~~Market participants shall make sure that supply contracts and derivatives reportable solely under REMIT (e.g. energy derivatives not traded on Regulated Markets or MTFs) are reported to the Agency and not to EMIR Trade Repositories.~~

~~For example, if a market participant reports all its transactions to a Trade Repository, including spot and physical forward transactions not captured by EMIR, the market participant is not complying with REMIT unless the Trade Repository is a Registered Reporting Mechanism under REMIT and the market participant has given precise instructions to the Trade Repository to report its transaction to the Agency.~~

Please note

The Agency explains below its understanding of the arrangements between exchanges, exchange members, their clients and other market players on the basis of input received by the Agency's stakeholders. Although the Agency has put its best effort in representing possible cases/scenarios, it cannot guarantee that all cases are covered in this document.

There may be cases where arrangements between exchanges, exchange members, their clients and other market players are different than those presented below. If so, these should be assessed on a case by case basis to verify if those arrangements would make a market player to be a REMIT market participant.

Please contact transaction.reporting@acer.europa.eu if you have any questions.

In order to represent the possible scenarios (from the venues' perspective), there are a few points that it is worth clarifying and that are applicable to the cases illustrated below:

About Client (A):

a. Client (A) has its own membership of the exchange, but uses the trading systems of an Exchange Member (EM) to trade on the Central Limit Order Book (CLOB). In this particular case, the Agency believes that Client (A) is a market participant and has the obligation to report its transactions; and

b. Client (A) is NOT a member of the venue, but uses the trading systems of an Exchange Member (EM) to trade on the Central Limit Order Book (CLOB). In this particular case, the Agency believes that Client (A) is currently not considereda REMIT market participant entering into transactions which are required to be reported to the Agency in accordance with Article 8(1) of REMIT, unless it enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets (e.g. any other wholesale energy market). In this case the Exchange Member (EM) is the Market Participant and the (EM) shall report the transactions.

About the reporting of Field (1) ID of the market participant or counterparty, and Field (10) Trading capacity of the market participant or counterparty in field (1):

i. If Client (A) has been set-up in the Venue's system (see point [a] above) , Field (1) should report the Client (A)'s ID and Field (8) should report "P" for Principal; and

ii. If Client (A) has NOT been set-up in the Venue's system (see point [b] above), Field (1) should report the Exchange Member (EM)'s ID and Field (8) should report "P" for Principal or "A" for Agent if the Exchange knows this is an Agent transaction.

About the reporting of Field (3), ID of the trader and / or of the market participant or counterparty as identified by the organised market place. This field should identify the user responsible for entering into the transaction that is reported:

i. If Client (A) has been set-up in the Venue's system (see point [a] above), client (A) is responsible for the trading and responsible for entering into the transaction, and Field (3) should report Client (A) trader's ID. This is most likely an electronic ID which identifies Client (A)'s account or a technical representation of that account. If populated from the perspective of the organised market place, this field shall represent how the market place identifies that ID.

ii. If Client (A) has NOT been set-up in the Venue's system (see point [b] above), Client (A) trader's ID may not be available to the Venue. However, since Client (A) is responsible for taking decisions or actions in executing or amending the transaction, where an identifier of the person or the group of persons responsible for taking decisions on behalf of Client (A) is available, this should be reported in Field (3): ID of the trader and/or of the market participant or counterparty as identified by the organised market place.

The Agency understands that there should be an ID (in some format) in the Venue's system that differentiates the orders to trade submitted by one (EM)'s Client from another (EM)'s Client, e.g. Client (A) and Client (B).

This is most likely an electronic ID which identifies Client (A)'s account or a technical representation of that account. If populated from the perspective of the organised market place, this field shall represent how the market place identifies that ID.

If such ID is not available, the Venue may report the Trader ID (or an account number) of the Exchange Member that provides DMA to Client (A).

For the purpose of REMIT reporting, the exchange will be able to report information about the orders to trade placed by the market participants (or information about the trades if not reported under EMIR) as follows:

Case (1) and (2): the Clearing Member (CM) and the Exchange Member (EM) are the same firm which also provides DMA to their clients.

Case 1: Client (A) holds a clearing account with Clearing Member (CM) which also provides (A) with DMA to the Exchange. Client (A) uses the trading systems of its Clearer (CM/EM) and is trading on a proprietary basis (with no clients). Client (A) is trading on the Central Limit Order Book (CLOB) of the Venue. Client (A) has its own membership of the exchange and it is a REMIT Market Participant.

Order report details		
Field	**Description**	**Examples**
1	ID of the market participant or counterparty	**Client(A)'s ACER code (or other code)**
2	Type of code used in field 1	ACE (or other type)
3	ID of the trader and / or of the market participant	**Client (A)'s Trader ID**
8	Beneficiary ID	
9	Type of code used in field 8	
10	Trading capacity of the market participant or counterparty in field 1	P (Principal)

Case 2: Client (A) holds a clearing account with Clearing Member (CM) which also provides (A) with DMA to the Exchange. Client (A) uses the trading systems of its Clearing Member (CM/EM) and is trading on a proprietary basis (with no clients). Client (A) is trading on the Central Limit Order Book (CLOB) of the Venue. Client (A) is not a member of the exchange and is currently not considered a REMIT market participant entering into transactions which are required to be reported to the Agency in accordance with Article 8(1) of REMIT, unless it enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets (e.g. somewhere else).

Order report details		
Field	**Description**	**Examples**
1	ID of the market participant or counterparty	**Exchange Member's ACER code (or other code)**
2	Type of code used in field 1	ACE (or other type)
3	ID of the trader and / or of the market participant or counterparty as identified by the organised market place	**Exchange Member's Trader ID** (or Client (A)'s Trader ID if available)
8	Beneficiary ID	
9	Type of code used in field 8	
10	Trading capacity of the market participant or counterparty in field 1	P (Principal)

Case (3) and (4): the Clearing Member (CB) and the Exchange Member (EM) are not the same firm. DMA is provided by the Exchange Member.

Case 3: Client (A) holds an account with the Exchange Member (EM) which provides (A) with DMA to the Exchange. Client (A) uses the trading systems of (EM) and is trading on a proprietary basis (with no clients). Client (A) is trading on the Central Limit Order Book (CLOB) of the Venue. Client (A) has its own membership of the exchange and it is a REMIT Market Participant.

Order report details		
Field	**Description**	**Examples**
1	ID of the market participant or counterparty	**Client(A)'s ACER code (or other code)**
2	Type of code used in field 1	ACE (or other type)
3	ID of the trader and / or of the market participant or counterparty as identified by the organised market place	Client (A)'s Trader ID
8	Beneficiary ID	
9	Type of code used in field 8	
10	Trading capacity of the market participant or counterparty in field 1	P (Principal)

Case 4: Client (A) holds an account with the Exchange Member (EM) which provides (A) with DMA to the Exchange. Client (A) uses the trading systems of (EM) and is trading on a proprietary basis (with no clients). Client (A) is trading on the Central Limit Order Book (CLOB) of the Venue. Client (A) s not a member of the exchange and it is currently not considered a REMIT market participant entering into transactions which are required to be reported to the Agency in accordance with Article 8(1) of REMIT, unless it enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets.

Order report details		
Field	**Description**	**Examples**
1	ID of the market participant or counterparty	**Exchange Member's ACER code (or other code)**
2	Type of code used in field 1	ACE (or other type)
3	ID of the trader and / or of the market participant or counterparty as identified by the organised market place	**Exchange Member's Trader ID** (or Client (A)'s Trader ID if available)
8	Beneficiary ID	
9	Type of code used in field 8	
10	Trading capacity of the market participant or counterparty in field 1	P (Principal)

Case (5) and (6): the Clearing Member (CB) and the Exchange Member (EM) are not the same firm. DMA to the exchange is provide by the Exchange Member (EM) which only acts as Agent.

Case 5: Client (A) holds an account with the Exchange Member (EM) which provides (A) with DMA to the Exchange. Client (A) also holds an account with the Clearing Member (CM). Client (A) uses the trading systems of (EM) and is trading on a proprietary basis (with no clients). Client (A) is trading on the Central Limit Order Book (CLOB) of the Venue. Client (A) also has its own membership of the exchange and it is a REMIT Market Participant.

Order report details		
Field	**Description**	**Examples**
1	ID of the market participant or counterparty	**Client(A)'s ACER code (or other code)**
2	Type of code used in field 1	ACE (or other type)
3	ID of the trader and / or of the market participant or counterparty as identified by the organised market place	Client (A)'s Trader ID
8	Beneficiary ID	
9	Type of code used in field 8	
10	Trading capacity of the market participant or counterparty in field 1	P (Principal)

Case 6: Client (A) holds an account with the Exchange Member (EM) which provides (A) with DMA to the Exchange. Client (A) also holds an account with the Clearing Member (CM). Client (A) uses the trading systems of (EM) and is trading on a proprietary basis (with no clients). Client (A) is trading on the Central Limit Order Book (CLOB) of the Venue. Client (A) is not a member of the exchange and it is currently not considered a REMIT market participant entering into transactions which are required to be reported to the Agency in accordance with Article 8(1) of REMIT, unless it enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets.

Order report details		
Field	**Description**	**Examples**
1	ID of the market participant or counterparty	**Exchange Member's ACER code (or other code)**
2	Type of code used in field 1	ACE (or other type)
3	ID of the trader and / or of the market participant or counterparty as identified by the organised market place	**Exchange Member's Trader ID** (or Client (A)'s Trader ID if available)
8	Beneficiary ID	
9	Type of code used in field 8	
10	Trading capacity of the market participant or counterparty in field 1	P (Principal) or A (Agent)

C. The reporting of wholesales energy derivatives transactions from the Investment Manager and their Client's perspective [new]

From the Investment Manager and their Client's perspective, the Agency considers a few scenarios which are also represented in exhibits (3.1) to (3.4) and the end of this Annex.

Case 1: The Investment Manager (IM) has investment discretion with respect to the account of Client (1) and is acting solely as **agent** on **behalf and on** the account of its Client (1). The Investment Manager (IM) places an order to trade with the Executing Broker (EB), who trades on the Venue. Client (1) holds a clearing account with Clearing Member (CM). The Executing Broker (EB) and Clearing Member (CM) are the same legal entity. The Executing Broker gives up the trade to the Clearing Member. All parties involved are FCs/NFCs for purposes of EMIR.

The Agency believes that the Executing Broker (EB) is considered to be a "Market Participant" under REMIT. The Investment Manager (IM) is considered a market participant if it is itself a member of the exchange and Client (1) is currently not considered to be Market Participant unless Client (1) enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets. If Client (1) is a Market Participant and the trade is reported to a Trade Repository under EMIR, its REMIT reporting obligation will have been met.

Case 2: The Investment Manager (IM) has investment discretion with respect to the account of Client (1) and is acting solely as agent on behalf and on the account of its Client (1). Client (1) holds a clearing account with Clearing Member (CM). The Executing Broker (EB) and Clearing Member (CM) are not the same legal entity. The Executing Broker gives up the trade to Clearing Member (CM). All parties involved are FCs/NFCs for purposes of EMIR. If Client (1) is a Market Participant and the trade is reported to a Trade Repository under EMIR, its REMIT reporting obligation will have been met.

Same as for Case 1 above, The Agency believes that the Executing Broker (EB) is considered to be a "Market Participant" under REMIT. The Investment Manager (IM) is considered a market participant if it is itself a member of the exchange and Client (1) is currently not considered to be Market Participant unless Client (1) enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets.

Also in this case, if Client (1) is a Market Participant and the trade is reported to a Trade Repository under EMIR, its REMIT reporting obligation will have been met.

Case 3: The Investment Manager (IM) has investment discretion with respect to the accounts of Client (1) and Client (2), and is acting solely as agent on behalf and on the account of its clients. Client (1) holds a clearing account with Clearing Member (CM1) and Client (2) holds a clearing account with Clearing Member (CM2). After executing the trade, the Executing Broker (EB) gives up part of the trade to Clearing Member (CM1) and the other part to Clearing Member (CM2). Each Clearing Member will establish a back-to-back trade vis-à-vis the initial trade with Client (1) and Client (2) respectively. All parties involved are FCs/NFCs for purposes of EMIR with the exception of Client (2).

Same as for Case 1 above, the (EB) is considered to be a "Market Participant" under REMIT. The Investment Manager (IM) is considered a market participant if it is itself a member of the exchange and Client (1) and Client (2) are currently not considered to be Market Participant unless Client (1) or (2) enter into transactions, including the placing of orders to trade, in one or more wholesale energy markets. If they are market participants, then they have to report the back to back transaction with the (CB).

Case 4: The Investment Manager has investment discretion with respect to the account of Client (1) and is solely trading as **agent** on behalf and on the account of its client. Client (1) is not an FC/NFC for EMIR purposes and holds a clearing account with a Clearing Broker (CB) who is also not an FC/NFC for EMIR purposes. The Executing Broker (EB) will give-up the trade to Clearing Member (CM) (who is an FC/NFC for EMIR purposes). Clearing Member (CM) establishes a trade between itself and the Clearing Broker (CB) who is clearing the trade vis-à-vis Client (1).

Market participants shall make sure that supply contracts and derivatives reportable solely under REMIT (e.g. energy derivatives not traded on Regulated Markets or MTFs) are reported to the Agency and not to EMIR Trade Repositories.

For example, if a market participant reports all its transactions to a Trade Repository, including spot and physical forward transactions not captured by EMIR, the market participant is not complying with REMIT unless the Trade Repository is a Registered Reporting Mechanism under REMIT and the market participant has given precise instructions to the Trade Repository to report its transaction to the Agency.

Scenario 1: the investment firm is itself a counterparty trading on its own account (either on its own behalf or on behalf of a client), the following reports should be submitted:

Report	Who has the reporting obligation[12]?	Trade ID[13]	Transaction reference number[13]	Counterparty ID (2)	ID of the other counterparty (3)	Broker ID (8)	Clearing member ID (10)	Beneficiary ID (11)	Trading capacity (12)[14]	Counterparty side (13)	Venue of execution	CCP
1	Clearing member	UTI001	TRN1	Clearing member	CCP		Clearing Member	Clearing member	'P'	'B'	MIC	CCP
2	CCP	UTI001	TRN1	CCP	Clearing member		Clearing member	CCP	'P'	'S'	MIC	CCP
3	Investment firm	UTI002	TRN1	Investment firm	Clearing member	Investment firm	Clearing member	Investment firm	'P'	'B'	MIC	CCP
4	Clearing member	UTI002	TRN1	Clearing member	Investment firm	Investment firm	Clearing member	Clearing member	'P'	'S'	MIC	CCP
5	Client	UTI003	TRN1	Client	Investment firm	Investment firm	Clearing member	Client	'P'	'B'	MIC	CCP
6	Investment firm	UTI003	TRN1	Investment firm	Client	Investment firm	Clearing member	Investment firm	'P'	'S'	MIC	CCP

12 This column was inserted to clarify reporting obligations; it is not part of the reportable fields under Article 1(1) of Commission Delegated regulation (EU) No 148/2013.
13 See ETD reporting question 5.
14 This field refers to the trading capacity of the counterparty with the reporting obligation.

Source ESMA's website available at http://www.esma.europa.eu/content/EMIR-QA

Scenario 2: the investment firm is not itself a counterparty and is trading on the account of and on behalf of a client, the following reports should be submitted:

Report	Who has the reporting obligation? [15]	UTI	Transaction reference number	Counterparty ID (2)	ID of the other counterparty (3)	Broker ID (8)	Clearing member ID (10)	Beneficiary ID (11)	Trading capacity (12) [16]	Counterparty side (13)	Venue of execution	CCP ID
1	Clearing member	UTI001	TRN1	Clearing member	CCP		Clearing member	Clearing member	'P'	'B'	MIC	CCP
2	CCP	UTI001	TRN1	CCP	Clearing member		Clearing member	CCP	'P'	'S'	MIC	CCP
3	Client	UTI002	TRN1	Client	Clearing member	Investment firm	Clearing member	Client	'P'	'B'	MIC	CCP
4	Clearing member	UTI002	TRN1	Clearing member	Client	Investment firm	Clearing member	Clearing member	'P'	'S'	MIC	CCP

[15] This column was inserted to clarify reporting obligations; it is not part of the reportable fields under Article 1(1) of Commission Delegated regulation (EU) No 148/2013.
[16] These fields refer to the trading capacity of the counterparty with the reporting obligation.

Source ESMA's website available at http://www.esma.europa.eu/content/EMIR-QA

Exhibit (~~0.1~~A): Exchange traded derivatives

Exhibit (~~0.2~~B): Exchange traded derivatives, simplified view

Exhibit (1.1): the investment firm is itself counterparty trading on its own account on its own behalf.

Reported under EMIR:

- Venue of execution, to Identify Venue (E)
- Broker ID to identify the Executing Broker (IF), REMIT market participant
- Trade ID (or UTI) to identify the trade
- Transaction Reference Number (TRF) to identify the trade flow

Reported under EMIR:

- Venue of execution, to Identify Venue (E)
- Broker ID to identify the Executing Broker (IF), REMIT market participant
- Trade ID (or UTI) to identify the trade
- Transaction Reference Number (TRF) to identify the trade flow

Exhibit (1.2): the investment firm is itself counterparty trading on its own account on its own behalf and it is also clearing member.

Reported under EMIR:

- Venue of execution, to Identify Venue (E)
- Broker ID to identify the Executing Broker (IF), REMIT market participant
- Trade ID (or UTI) to identify the trade
- Transaction Reference Number (TRF) to identify the trade flow

Reported under EMIR:

- Venue of execution, to Identify Venue (E)
- Broker ID to identify the Executing Broker (IF), REMIT market participant
- Trade ID (or UTI) to identify the trade
- Transaction Reference Number (TRF) to identify the trade flow

Exhibit (~~2~~.1.3): the investment firm is itself counterparty trading on its own account on behalf of a client.

Reported EMIR:

- Venue of execution, to Identify Venue (E)
- Counterparty ID (LEI) to identify (A), REMIT market participant
- Broker ID to identify the Executing Broker (IF), REMIT market participant
- Trade ID (or UTI 2) to identify the trade

Reported EMIR:

- Venue of execution, to Identify Venue (E)
- Counterparty ID (LEI) to identify (A), REMIT market participant
- Broker ID to identify the Executing Broker (IF), REMIT market participant
- Trade ID (or UTI 2) to identify the trade

Exhibit (1.4): investment firm is itself counterparty trading on its own account on behalf of a client and it is also clearing member

Reported under EMIR:

- Counterparty ID (LEI) to identify (A), REMIT market participant
- Venue of execution, to Identify Venue (E)
- Broker ID to identify the Executing Broker (IF), REMIT market participant
- Trade ID (or UTI) to identify the trade
- Transaction Reference Number (TRF) to identify the trade flow

Exhibit (1.5): the investment firm is not itself counterparty and is trading on the account of and on behalf of a client (agency transactions). This case also applies when the investment firm gives up the trade for clearing to the clearing broker.

Reported under EMIR:

- Counterparty ID (LEI) to identify (A), REMIT market participant
- Venue of execution, to Identify Venue (E)
- Broker ID to identify the Executing Broker (IF), REMIT market participant
- Trade ID (or UTI) to identify the trade
- Transaction Reference Number (TRF) to identify the trade flow

Exhibit (~~2.2):~~1.6): the investment firm is not itself a counterparty and is trading on ~~its own~~the account of and on behalf of a client ~~and~~ (agency transactions and trades given up for clearing), but it is also clearing member.

Reported under EMIR:

- Counterparty ID (LEI) to identify (A), REMIT market participant
- Venue of execution, to Identify Venue (E)
- Broker ID to identify the Executing Broker (EB), REMIT market participant
- Trade ID (or UTI) to identify the trade
- Transaction Reference Number (TRF) to identify the trade flow

Reported under EMIR:

- Counterparty ID (LEI) to identify (A), REMIT market participant
- Venue of execution, to Identify Venue (E)
- Broker ID to identify the Executing Broker (IF), REMIT market participant
- Trade ID (or UTI) to identify the trade
- Transaction Reference Number (TRF) to identify the trade flow

~~Exhibit (3.1): the investment firm is not itself counterparty and is trading on the account of and on behalf of a client (agency transactions). This case also applies when the investment firm gives up the trade for clearing to the clearing broker.~~**Exhibit (2.1):** Client (A) holds a clearing account with Clearing Member (CM) which also provides (A) with DMA to the Exchange. Client (A) uses the trading systems of its Clearer (CM/EM) and is trading on a proprietary basis (with no clients). Client (A) is trading on the Central Limit Order Book (CLOB) of the Venue. Client (A) has its own membership of the exchange and it is a REMIT Market Participant.

Reported under EMIR:

- Counterparty ID (LEI) to identify (A), REMIT market participant
- Venue of execution, to Identify Venue (E)
- Broker ID to identify the Executing Broker (IF), REMIT market participant
- Trade ID (or UTI) to identify the trade
- Transaction Reference Number (TRF) to identify the trade flow

~~Exhibit (3.2): the investment firm is not itself a counterparty and is trading on the account of and on behalf of a client (agency transactions and trades given up for clearing), but it is also clearing member.~~**Exhibit (2.2):** Client (A) holds a clearing account with Clearing Member (CM) which also provides (A) with DMA to the Exchange. Client (A) uses the trading systems of its Clearing Member (CM/EM) and is trading on a proprietary basis (with no clients). Client (A) is trading on the Central Limit Order Book (CLOB) of the Venue. Client (A) is not a member of the exchange and is currently not considered a REMIT market participant entering into transactions which are required to be reported to the Agency in accordance with Article

8(1) of REMIT, unless it enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets (e.g. somewhere else).

Reported under EMIR:

- Counterparty ID (LEI) to identify (A), REMIT market participant
- Venue of execution, to Identify Venue (E)
- Broker ID to identify the Executing Broker (EB), REMIT market participant
- Trade ID (or UTI) to identify the trade
- Transaction Reference Number (TRF) to identify the trade flow

Exhibit (2.3): Client (A) holds an account with the Exchange Member (EM) which provides (A) with DMA to the Exchange. Client (A) uses the trading systems of (EM) and is trading on a proprietary basis (with no clients). Client (A) is trading on the Central Limit Order Book (CLOB) of the Venue. Client (A) has its own membership of the exchange and it is a REMIT Market Participant.

Exhibit (2.4): Client (A) holds an account with the Exchange Member (EM) which provides (A) with DMA to the Exchange. Client (A) uses the trading systems of (EM) and is trading on a proprietary basis (with no clients). Client (A) is trading on the Central Limit Order Book (CLOB) of the Venue. Client (A) s not a member of the exchange and it is currently not considered a REMIT market participant entering into transactions which are required to be reported to the Agency in accordance with Article 8(1) of REMIT, unless it enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets.

Exhibit (2.5): Client (A) holds an account with the Exchange Member (EM) which provides (A) with DMA to the Exchange. Client (A) also holds an account with the Clearing Member (CM). Client (A) uses the trading systems of (EM) and is trading on a proprietary basis (with no clients). Client (A) is trading on the Central Limit Order Book (CLOB) of the Venue. Client (A) also has its own membership of the exchange and it is a REMIT Market Participant.

Exhibit (2.6): Client (A) holds an account with the Exchange Member (EM) which provides (A) with DMA to the Exchange. Client (A) also holds an account with the Clearing Member (CM). Client (A) uses the trading systems of (EM) and is trading on a proprietary basis (with no clients). Client (A) is trading on the Central Limit Order Book (CLOB) of the Venue. Client (A) is not a member of the exchange and it is currently not considered a REMIT market participant entering into transactions which are required to be reported to the Agency in accordance with Article 8(1) of REMIT, unless it enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets.

Exhibit (3.1): The Investment Manager (IM) has investment discretion with respect to the account of Client (1) and is acting solely as agent on behalf and on the account of its Client (1). The Investment Manager (IM) places an order to trade with the Executing Broker (EB), who trades on the Venue. Client (1) holds a clearing account with Clearing Member (CM). The Executing Broker (EB) and Clearing Member (CM) are the same legal entity. The Executing Broker gives up the trade to the Clearing Member. All parties involved are FCs/NFCs for purposes of EMIR.

Exhibit (3.2): The Investment Manager (IM) has investment discretion with respect to the account of Client (1) and is acting solely as agent on behalf and on the account of its Client (1). Client (1) holds a clearing account with Clearing Member (CM). The Executing Broker (EB) and Clearing Member (CM) are not the same legal entity. The Executing Broker gives up the trade to Clearing Member (CM). All parties involved are FCs/NFCs for purposes of EMIR.

Exhibit (3.3): The Investment Manager (IM) has investment discretion with respect to the accounts of Client (1) and Client (2), and is acting solely as agent on behalf and on the account of its clients. Client (1) holds a clearing account with Clearing Member (CM1) and Client (2) holds a clearing account with Clearing Member (CM2). After executing the trade, the Executing Broker (EB) gives up part of the trade to Clearing Member (CM1) and the other part to Clearing Member (CM2). Each Clearing Member will establish a back-to-back trade vis-à-vis the initial trade with Client (1) and Client (2) respectively. All parties involved are FCs/NFCs for purposes of EMIR with the exception of Client (2).

Exhibit (3.4): The Investment Manager has investment discretion with respect to the account of Client (1) and is solely trading as agent on behalf and on the account of its client. Client (1) is not an FC/NFC for EMIR purposes and holds a clearing account with a Clearing Broker (CB) who is also not an FC/NFC for EMIR purposes. The Executing Broker (EB) will give-up the trade to Clearing Member (CM) (who is an FC/NFC for EMIR purposes). Clearing Member (CM) establishes a trade between itself and the Clearing Broker (CB) who is clearing the trade vis-à-vis Client (1).