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## No-Deal Brexit: Emir Reporting Compliance Considerations

Article 9 of Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on over-the-counter derivatives (“OTC Derivatives”), central counterparties and trade repositories (as amended, “EMIR”) requires counterparties to derivatives trades to provide information regarding such trades to trade repositories registered with, or recognized by the European Securities and Markets Authority (“ESMA”). Counterparties subject to reporting obligations under EMIR must onboard their reporting legal entities to a qualifying trade repository to enable all relevant reporting, even if the reporting of trade details has been delegated. A “no-deal Brexit” would affect the registration status of European trade repositories currently used by market participants. This note considers steps to take in preparation for a “no-deal Brexit” in order to remain in compliance with the EMIR reporting requirements, should there be a no-deal Brexit.

### What Are the Effects of a No-Deal Brexit on Reporting?

Currently, European counterparties to OTC Derivatives frequently use the Depository Trust & Clearing Corporation’s (“DTCC”) Global Trade Repository (“GTR”) to meet their EMIR-mandated reporting obligations. DTCC’s authorized trade repository is DTCC Derivatives Repository Plc located in London (“DDRL”). In the event the United Kingdom leaves the European Union without a withdrawal agreement, reporting compliance is expected to be split between trade repositories authorized by the Financial Conduct Authority (“FCA”) in the United Kingdom and by ESMA for the European Union.

In a no-deal Brexit scenario, entities that trade OTC Derivatives and are domiciled in the European Union will need to report trades to an ESMA approved trade repository, while entities domiciled in the United Kingdom will need to report trades to an FCA approved trade repository. As a result of a no-deal Brexit, DDRL would lose its status as an authorized trade repository for ESMA reporting. In order to offer reporting services in each jurisdiction, DTCC has opened a second trade repository to be used for derivatives reporting in the European Union following a no-deal Brexit—the DTCC Data Repository (Ireland) Plc (“DDRIE”). ESMA registered DDRIE as a trade repository under EMIR effective March 1, 2019.<sup>1</sup> DDRL will cease to be registered with ESMA following the Article 50 deadline in a no-deal Brexit scenario and is expected to be authorized by the FCA for post-Brexit reporting.

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<sup>1</sup> See the ESMA press release dated March 1, 2019, available at: <https://www.esma.europa.eu/document/esma-registers-dtcc-data-repository-ireland-plc-trade-repository>.

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### **How Can We Ensure Regulatory Compliance Following a No-Deal Brexit?**

- Entities subject to reporting obligations to the FCA following a no-deal Brexit should be able to report through an account with DDRL. If you have an existing account with DDRL, no action should be required. DTCC expects to receive FCA approval for DDRL in advance of a no-deal Brexit, and existing accounts will be automatically activated for FCA reporting with account number and O-code remaining the same. New customers should be onboarded through the standard process.
- Entities subject to reporting obligations to ESMA following a no-deal Brexit may report through an account with DDRIE. If you currently have an account at DDRL, you can open an account at DDRIE by executing a new contract through DocuSign. If you will not require FCA reporting after Brexit, DTCC has stated that it requires that you terminate your contract with DDRL concurrently with a no-deal Brexit. New customers should be onboarded through the standard process.
- Entities subject to reporting obligations to both the FCA and ESMA following a no-deal Brexit may report through accounts with both DDRL and DDRIE. As noted above, existing DDRL accounts will remain active for FCA reporting, and existing DTCC customers can open DDRIE accounts through executing a new contract on DocuSign. New customers should be onboarded through the standard process.

New DTCC clients can contact DTCC at [gtr-emea@dtcc.com](mailto:gtr-emea@dtcc.com) to start the onboarding process. Existing DTCC clients can contact DTCC at [gtr-onboarding@dtcc.com](mailto:gtr-onboarding@dtcc.com) to open accounts for DDRL clients with DDRIE or to add accounts for new entities under existing customer contracts. More information can be found at: <http://www.dtcc.com/brexit>.

### **Are Delegated Reporting Agreements Affected?**

If you have entered into delegated reporting agreements, you should notify your trade counterparties of any new DTCC account details. Consult with your delegated reporting counterparties to determine if any amendments are needed for your delegated reporting agreements to account for any changes caused by a no-deal Brexit.

Following the Article 50 deadline in a no-deal Brexit scenario, relevant submissions to DDRL or DDRIE, as applicable, must contain “ESMA” and/or “FCA”, as applicable, in the reporting obligation field.

### **What Is the Timing?**

The United Kingdom voted on June 23, 2016 to leave the European Union and is scheduled to exit the European Union on March 29, 2019. Following the vote in the House of Commons on March 14, 2019 to request an extension of the Article 50 deadline, a postponement of the departure date appears likely. Even in the event the Article 50 deadline is extended, however, the risk of a no-deal Brexit will remain a possibility. In that case, the timing considerations are expected to be adjusted accordingly. Onboarding

to DDRIE is currently open. Entities subject to ESMA reporting obligations are encouraged to onboard to DDRIE prior to a potential no-deal Brexit taking effect to ensure continued compliance with EMIR reporting obligations.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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