

Trading on Exchanges or Electronic Trading Platforms



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Issues with Centralized Cross-Border Trading:

- Fragmented liquidity
- “Footnote 88”—Non-US Trading Platforms
Denial of Access to US Persons
- Overlapping Mandatory Trading
Obligations



Notable Achievements:

- US – EU Trading Venue Recognition
- US – Singapore Trading Venue Recognition
- CFTC's Response to Brexit



April 2018

ISDA

A Practical Guide to Navigating Derivatives Trading on US/EU Recognized Trading Venues

The announcement in October 2017 that the European Commission (EC) and US Commodity Futures Trading Commission (CFTC) had reached agreement on the mutual recognition of derivatives trading venues marked a big step forward in achieving cross-border harmonization between the European Union (EU) and US.

However, the agreement has spawned a number of important questions about the practical implications of how cross-border trading will work. This guide attempts to answer those questions. In particular, it analyzes the effect of mutual recognition on the order flow of trades executed on these venues, highlighting benefits and pointing to areas where further alignment would be welcome. The guide is also intended to help market participants navigate the numerous regulatory requirements related to trading on recognized venues by providing answers to commonly asked questions.

ISDA's White Paper analyzes the effect of mutual recognition on the order flow of trades executed on these venues, highlighting benefits and pointing to areas where further alignment would be welcome.

MTF/OTF Execution Order Flow

US person (SD or not) OR
US person + investment firm (IF)¹

US person
(SD or not) OR
US person + IF

EU counterparty²

Disseminate
quote to all

Pro-trade transparency
obligations?

No, NCA waiver

Execution: MTF/OTF
Electronic
60 seconds for credit check
Non-electronic
10 mins for credit check

Client trade*

House trade

US person
clears via US
FCM model

EU entity
clears via
EU principal-
to-principal
model

Send to DCC/
exempt DCO
within 10
seconds after
execution

Send to DCC/
exempt DCO
within 10
seconds after
execution

May clear
directly⁵

Clearing: DCO/exempt DCO

Regulatory

Reporting**

Public

US

EU

Are you an IF?

Yes

No

MIFIR transaction
reporting to
NCA (T+1)

EMIR reporting
to TR³ (T+1)

EMIR reporting
to TR (T+1)

DCO reports
beta and
gamma swaps
to SDR

US person
reports (T+1)****

US person (not an SD)
vs. EU person (not an SD)

Non-US SD
reports (ASTP)

US person (not an SD)
vs. non-US SD

Counterparties
agree on who
reports (ASTP)

US SD
vs. non-US SD

Reporting
of alpha
swap to
SDR***

Real-time
reporting
rules***

US person (not an SD)
vs. EU person (not an SD)

US person (not an SD)
vs. non-US SD

US SD
vs. non-US SD

US person
likely reports⁴
(ASTP) ****

Non-US SD
reports (ASTP)

Counterparties
agree on who
reports (ASTP)

¹ Including all other
entities subject to MiFID II
requirements

² Not a US person
guaranteed or conduit
affiliate of a US person

³ Assuming you are a
clearing member

⁴ Counterparties agree on
who reports

⁵ If otherwise subject to
EMIR reporting

Compliance Issues

*No mutual recognition of US and EU clearing rules → two separate clearing models

**No reporting recognition → need for additional compliance systems for US persons + IF, including:

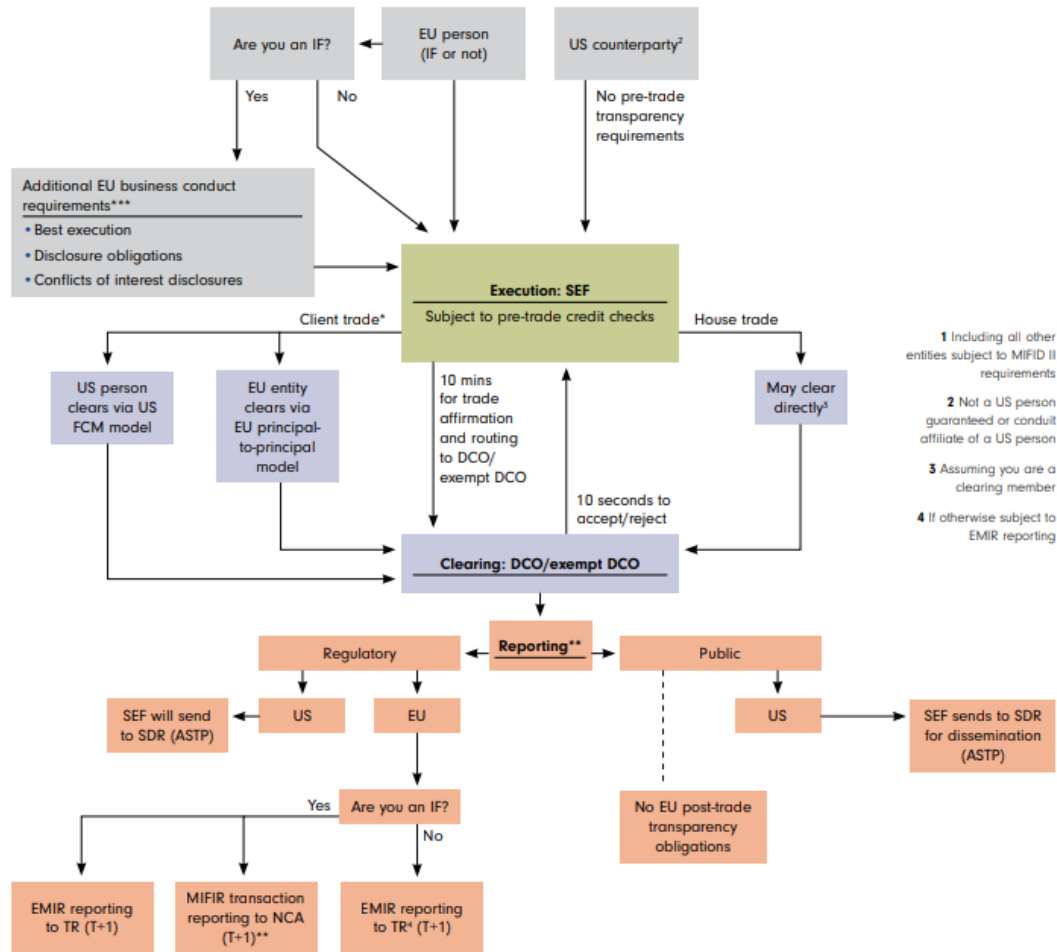
- US regulatory reporting to SDR (ASTP or T+1)
- EMIR regulatory reporting to EU registered or recognized TRs (T+1)
- MIFIR transaction reporting to NCA (T+1)
- US real-time reporting to SDR (ASTP)

***New obligations for US counterparties and non-US SDs to send their swaps executed on recognized MTFs/OTFs to SDRs for regulatory and real-time reporting

****Reporting requirements potentially now fall on US buy side (when facing EU person)

SEF Execution Order Flow

EU person (investment firm (IF)¹ or not)



Compliance Issues

*No mutual recognition of US and EU clearing rules → two separate clearing models

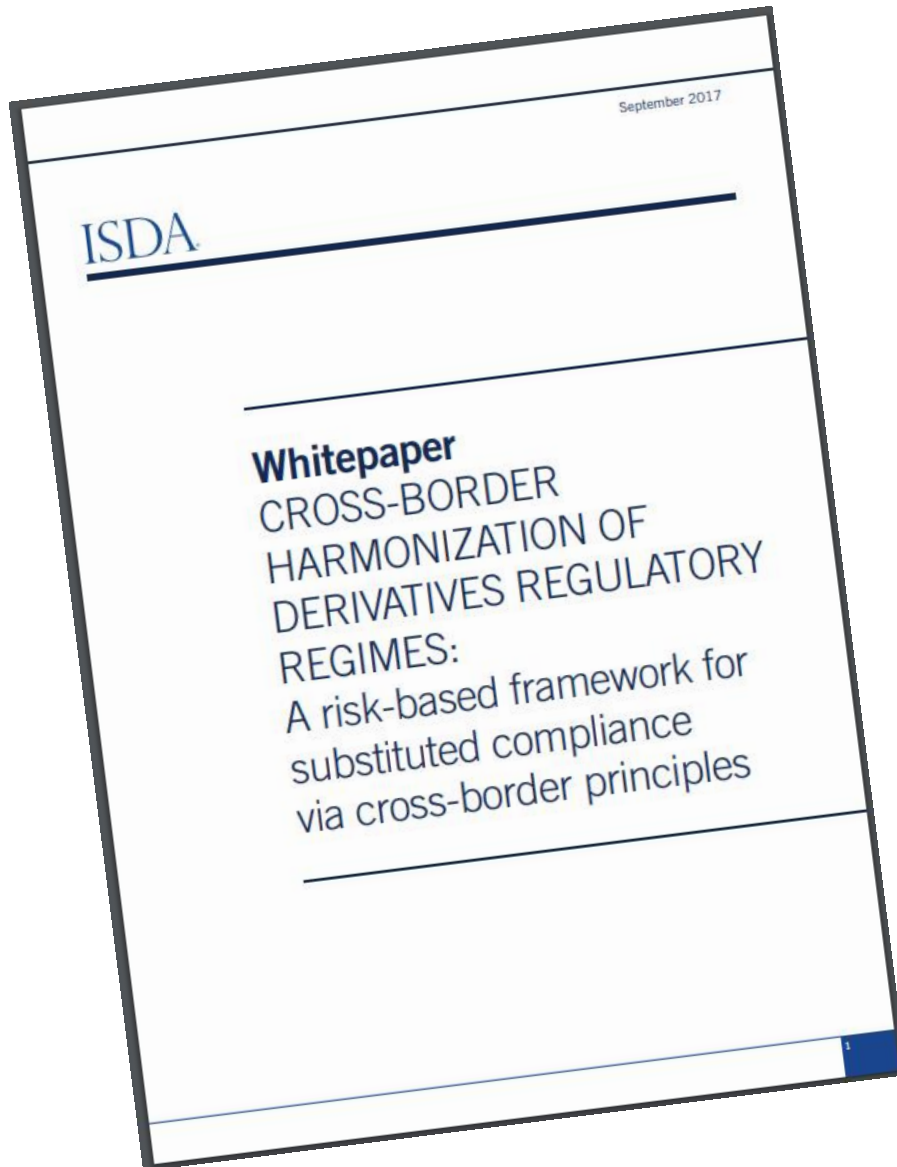
**MIFIR transaction reporting may be problematic for EU firms as they may not be set up to route their SEF trades falling within the regime to their relevant NCA

***EU best execution and business conduct rules may continue to apply

We found that:

- Trading Venue Recognition has had a positive effect on cross-border centralized trading.
- Granting recognition for certain rulesets but not others continues to introduce complexity to cross-border trading.

ISDA advocates for a risk-centered, outcomes-based approach in issuing comparability determinations.



ISDA recommends that, in assessing foreign derivatives regulatory regimes for comparability, the focus should be on RISK.

Regulators should look to whether foreign regulations sufficiently address or mitigate RISK concerns in their jurisdiction.

Recommendations:

- Adopt a holistic risk-centered, outcomes-based approach in issuing comparability determinations.
- Achieve trading venue recognition in other non-US jurisdictions.
- Allow *de minimis* trading activity in emerging market jurisdictions.

*****END*****