

# EMIR and Reporting Consent

H2 2023

This document contains the terms and conditions agreed between us in relation to EMIR and transactions in derivatives subject to EMIR, subject to any agreements or arrangements between us which we may enter into under any ISDA documentation such as the ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol.

The terms and conditions of any Product Agreements and any agreements that we enter into as a supplement to relevant Product Agreements shall prevail over this document to the extent of the inconsistency.

Any terms used but not defined in this document shall have the meaning set out in Westpac's Terms of Business for Professional Clients and Eligible Counterparties (the "Terms of Business").

## 1.1 Your responsibilities under EMIR

You acknowledge that compliance with EMIR is your own responsibility and that we shall not be responsible for your compliance with EMIR other than as expressly provided in this document.

## 1.2 Your classification under EMIR

Westpac is a "Financial Counterparty" ("FC") within the meaning of Article 2(8) EMIR. As a pre-requisite to trading with Westpac, you are required to:

- (a) provide your classification under EMIR via ISDA Amend or otherwise in writing to us; and
- (b) inform us if any derivatives transactions entered into by Westpac with you benefit from a guarantee provided by a guarantor that is established in the EU that is classified as an FC where the guarantee (i) covers liability for an aggregated notional amount of at least EUR 8 billion; and (ii) is equal to at least 5% of current exposures in OTC derivative contracts of the guarantor.

## 1.3 EMIR and other reporting obligations

- (a) You hereby consent to the disclosure of information for so long as the Terms of Business remain in place between us or until such consent is revoked in writing by you:
  - (i) to the extent required or permitted by any Applicable Law which mandates reporting and/or retention of transaction and similar information or to the extent required by any order or directive regarding reporting and/or retention of transaction and similar information issued by any authority or body or agency in accordance with which we are required or accustomed to act ("Reporting Requirements"); or
  - (ii) to and between our head office, branches or Affiliates, or any persons or entities who provide services to us or our head office, branches or Affiliates, in each case, in connection with such Reporting Requirements.
- (b) You acknowledge that:
  - (i) disclosures may include, without limitation, the disclosure of trade information including your identity (by name, address, corporate affiliation, identifier or otherwise) to any swap or trade data repository or one or more systems or services operated by any trade repository ("TR") and/or any relevant regulators to whom disclosures are required to be made (including without limitation, the Australian Securities and Investments Commission, the U.S. Commodity Futures Trading Commission or other U.S. regulators in the case of trade reporting under applicable U.S. laws, the European Securities and Markets Authority and national regulators in the E.U. under EMIR in the case of trade reporting under applicable E.U. laws and the Financial Conduct Authority under EMIR (each as it forms part of UK domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 (as amended from time to time) or in the case of trade reporting

under applicable UK laws) or any future regulators to which disclosures are required to be made, and that such disclosures could result in certain anonymous swap transaction and pricing data becoming available to the public;

- (ii) for the purposes of complying with regulatory reporting obligations, we may use a third-party service provider and/or a reporting agent to transfer trade information into a TR and that a TR may engage the services of a global TR regulated by one or more governmental regulators;
- (iii) disclosures may be made to recipients in a jurisdiction other than your own or a jurisdiction that may not necessarily provide an equivalent or adequate level of protection for personal data as your home jurisdiction. For the avoidance of doubt:
  - A. to the extent that applicable non-disclosure, confidentiality, bank secrecy, data privacy or other law imposes non-disclosure requirements on transaction and similar information required or permitted to be disclosed as contemplated herein but permits the waiver of such requirements by consent, the consent and acknowledgements provided herein shall be a consent by you for purposes of such law;
  - B. any agreement between us to maintain confidentiality of information contained in the Terms of Business or in any non-disclosure, confidentiality or other agreement shall continue to apply to the extent that such agreement is not inconsistent with the disclosure of information in connection with the Reporting Requirements as set out herein; and
  - C. nothing herein is intended to limit the scope of any other consent to disclosure separately given by you to us.
- (c) You represent and warrant that any third party to whom you owe a duty of confidence in respect of the information disclosed pursuant to this paragraph 1.3 has consented to the disclosure of that information.

## 1.4 Valuations

In certain circumstances, we are required to put in place procedures to mark-to-market on a daily basis the value of outstanding transactions which are not cleared by a central clearing counterparty. Where market conditions prevent marking-to-market, a reliable and prudent marking-to-model shall be used.

## 1.5 Portfolio compression

- (a) You shall put in place procedures to monitor the number of transactions entered into by you with each of your counterparties.
- (b) You shall, to the extent required of you pursuant to EMIR, consider on a regular basis (and at least twice per year) whether it is appropriate to conduct a portfolio compression exercise.
- (c) If you think this is appropriate you shall effect or procure to be effected such portfolio compression exercise.
- (d) If you consider this is not appropriate you shall document a reasonable and valid explanation which you may make available to the relevant competent authority.

## 1.6 Dispute resolution

- (a) In the event that you identify a dispute in relation to a Relevant Transaction with us you will need to notify us by contacting [RiskValuations@westpac.com.au](mailto:RiskValuations@westpac.com.au) in writing as soon as possible.

For the purposes of this document: a “**Relevant Transaction**” means any OTC derivative transaction which is subject to the portfolio reconciliation risk mitigation techniques and/or the dispute resolution risk mitigation techniques under EMIR.

- (b) We will use reasonable efforts to resolve such disputes within 5 Business Days.
- (c) If the dispute remains outstanding after that time we will refer the dispute to our compliance department who will take the necessary action to resolve the dispute.
- (d) If the dispute remains outstanding after 10 Business Days we will refer the dispute to our senior management.
- (e) Discrepancies that arise with a value below USD1,000,000 will not be treated as disputes under this document or under EMIR.

## 1.7 Portfolio reconciliation for EMIR

- (a) You acknowledge that we will reconcile portfolios for Relevant Transactions pursuant to the portfolio reconciliation risk mitigation techniques under EMIR.
- (b) Accordingly we will send you Portfolio Data of all outstanding Relevant Transactions between us by making this information available in our WIB Trade Information Portal ("DTIP") if you have elected to receive Portfolio Data, or by submitting it to TriResolve for reconciliation if you have elected to send Portfolio Data. The frequency of our providing you with Portfolio Data will depend on your classification for EMIR and the number of outstanding Relevant Transactions. For the purpose of this document, “**Portfolio Data**” means in respect of a party providing or required to provide such data, the key terms in relation to all outstanding Relevant Transactions between the parties in a form and standard that is capable of being reconciled, with a scope and level of detail determined by Westpac.
- (c) The Portfolio Data will be provided on the relevant portfolio reconciliation date as identified by us in accordance with EMIR.
- (d) Upon receipt of the Portfolio Data you must perform a data reconciliation by comparing the Portfolio Data we have provided against your own books and records of all outstanding Relevant Transactions between us and if there is any discrepancy in key terms or otherwise you must notify us immediately in writing.
- (e) If you do not notify us of any discrepancy in the Portfolio Data by 4pm on the fifth Business Day after the portfolio reconciliation date we will deem you to have affirmed the Portfolio Data.
- (f) If you identify a discrepancy which you determine, acting reasonably and in good faith, is material to our respective rights and obligations in respect of a Relevant Transaction you must notify us at [PortfolioData@westpac.com.au](mailto:PortfolioData@westpac.com.au) as soon as possible. We will work together to resolve the discrepancy in a timely manner.

