

Regulatory Developments



EMIR – OTC DERIVATIVES, CCPS AND TRADE REPOSITORIES

- The European Market Infrastructure Regulation (EMIR – [Regulation \(EU\) No 648/2012](#)), adopted in 2012, forms part of the European regulatory response to the financial crisis, and specifically addresses the problems observed in the functioning of the ‘over-the counter’ (OTC) derivatives market during the 2007-2008 financial crisis. EMIR contains provisions for: the central clearing of standardised OTC derivative contracts; margin and operational risk mitigation requirements for OTC derivative contracts that are not centrally cleared; reporting obligations for derivative contracts; as well as specific requirements for central counterparties (CCPs) and trade repositories (TRs). The regulation is completed by several delegated acts and by equivalence decisions recognising third-country CCPs.
- Following an [impact assessment](#) of the Commission, the Commission [concluded](#) that certain areas should be simplified without fundamentally changing the nature of the core requirements of EMIR (see EMIR REFIT). However, on 13 June 2017, the EC followed up with a [proposal](#) on further amendments to EMIR, seeking to introduce an enhanced framework for the supervision of third country CCPs and an optional location policy for the clearing of derivatives denominated in European currencies (see EMIR II.2).



EMIR REFIT

- On 4 May 2017, the European Commission published its [proposal](#) amending and simplifying EMIR in the context of its Regulatory Fitness and Performance (REFIT) programme, to address disproportionate compliance costs, transparency issues and insufficient access to clearing for certain counterparties.
- In particular, the Commission proposed to: i) extend the transitional exemption beyond August 2018 for pension scheme arrangements (PSAs) to develop clearing solutions; ii) reduce the scope of the clearing obligation for non-financial counterparties (NFCs) through higher clearing threshold; and iii) provide a narrower definition of the category of small financial counterparties (SFCs) that are subject to the clearing obligation.
- The Commission further proposes to: i) eliminate the requirement to report historic trades; ii) exempt from the reporting obligation those intragroup transactions in which one of the counterparties is a NFC; iii) transfer the obligation to report exchange-traded derivative transactions from the counterparties to the CCPs; and iv) alleviate the burden of EMIR reporting for small NFCs.
- Lastly, the Commission introduced a more specific, reasonable and non-discriminatory' (FRANDT) principles provision for clearing members and clients that offer client and indirect client clearing and to expand the scope of the technical standards to be developed by ESMA to allow for the further harmonisation of the reporting rules and requirement.



MIFIR – CONSOLIDATED TAPE

- On 25 November 2021, as part of the CMU package, the Commission published the [legislative proposal](#) to review the Markets in Financial Instruments Regulation ([MiFIR](#)) as part of the Capital Markets Union package. As anticipated, the review as proposed is quite targeted and the most significant edits relate to the establishment of a consolidated tape.
- The Commission’s aim is to promote the emergence of one single consolidated tape provider (CTP), appointed by the European Securities and Markets Authority (ESMA), for each asset class (shares, exchange-traded funds (ETFs), bonds, and derivatives).
- Other amendments include transparency enhancement measures, and certain adjustments related to open access rules, non-equity post trade reporting, alignment with the European Market Infrastructure Regulation (EMIR), and double volume cap. The proposal also prohibits Systematic Internalisers (SIs) from offering payment for (retail) order flow (PFOF). The expectation is that, in the absence of PFOF, retail orders are sent to a pre-trade transparent market (regulated market or multilateral trading facility/MTF) for execution. Combined with the increased pre-trade quoting obligation for SIs, these entities would have to “earn” the retail flow by publishing competitive pre-trade quotes. Lastly, the Commission suggests to permanently remove the “open access” obligation for exchange-traded derivatives.
- The negotiating team was announced in December 2021. However, the work has not been initiated in the EP. In terms of timetable, a common position in the EP is expected by end of 2022.



MIFID II

- The MiFID II legislative package consists of a **directive** (the Markets in Financial Instruments Directive – MiFID II) and a **regulation** (MiFIR). Together with delegated legislation, the package entered into force in 2014 and the bulk of provisions became applicable on 3 January 2017.
- MiFID II brings extensive changes in 5 broad areas: i) market structure, ii) transparency, iii) ESMA powers; iv) conduct of business, and v) third country market access. It is a key piece of European financial services regulation intended to create a level playing-field for firms to compete in the EU's financial markets and to ensure a consistent level of consumer protection across the EU.
- The Commission initiated the review process by issuing a **first consultation** covering part of the issues in February 2020. A legislative proposal was expected to follow in the Fall of 2020. However, due to the COVID19 health emergency, the Commission issued a securities quick fix proposal in July 2020 which was subsequently adopted in February/March 2021. A MiFIR review proposal was issued in November 2021 as part of the CMU package (see below) and a review of MiFID II is expected by end 2022.

CSDR – CENTRAL SECURITIES DEPOSITARIES REGULATION

- The [Central Securities Depositories Regulation](#) entered into force on 17 September 2014. It is one of the key regulations adopted in the aftermath of the financial crisis. It introduces new measures for the authorisation and supervision of EU CSDs and sets to create a common set of prudential, organisational, and conduct of business standards at EU level. A large part of CSDR is designed to support the achievement of the objectives of Target2securities (T2S) system by introducing a securities settlement discipline regime. CSDs also need to apply for authorisation from their NCAs.
- The CSDR review proposal is scheduled for 11 May 2022. The Commission issued a public [consultation](#) on 8 December 2020, including questions on the settlement discipline, CSD authorisation, cross-border provision of services, internalised settlement, technological innovation, banking-type ancillary services, and third-country CSDs. On 29 June 2021, the Commission released its [report](#) on the upcoming review.
- On 16 March 2022, the Commission presented its [proposal](#) for the review of the Central Securities Depositories Regulation (CSDR). The review consists of targeted amendments to five main areas of the Regulation, with the most sensitive being the settlement discipline regime. In particular with regards to the settlement discipline, the Commission opts to keep its options open on mandatory buy ins that could be imposed further down the line (as of 24 months after entry into force) to transactions on specific categories of financial instruments in case the cash penalties regime fails to reduce the amount of settlement fails. The rest of the review is also in line with the expectations and the takeaways from the Commission’s assessment report, whereby it acknowledged the need to streamline/clarify with regards to banking ancillary services and passporting and highlighted the need as well for a more comprehensive supervisory framework.



FTT – FINANCIAL TRANSACTION TAX

- The idea of a Financial Transaction Tax (FTT) gained significant support as a revenue raiser and as a punitive response to the 2008 financial crisis. In September 2011 the European Commission released a formal [proposal](#) for a pan-EU FTT but when it became clear this would never secure unanimous backing, 11 Member States (Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain) opted to pursue an FTT in their jurisdictions through the so-called ‘enhanced cooperation’ procedure.
- In February 2013, the Commission presented its updated [proposal](#) for a Directive on FTT to be adopted by these 11 Participating Member States. The proposal entails a 0.1% tax on share and bond transactions and a 0.01% tax on derivative transactions. The Commission in conjunction with the Council also came forward with high-level “building blocks” that would ensure against unintended effects from the tax such as double taxation, protection of real economy and protection of SMEs.
- The Commission has stated it will review the FTT Proposal in 2024, underlining the unlikelihood of a breakthrough in the near future.



MARKETS IN CRYPTO-ASSETS (MICA)

- On 24 September 2020, as part of the Digital Finance Package, the Commission proposed a legislative framework on crypto-assets to provide regulatory clarity and allow for innovation in a way that preserves financial stability and protects investors.
- Crypto-assets are digital representations of values or rights, which are transferred and stored electronically. They can serve as an access key to a service, could facilitate payments, or could be designed as financial instruments.
- The Commission differentiates between those crypto-assets already governed by EU legislation, and other crypto-assets. The former will remain subject to existing legislation (i.e. through a legislative change to MiFID to include financial instruments issued using DLT within scope), while the Commission also proposes a [pilot regime for DLT market infrastructures](#) that wish to try to trade and settle transactions in financial instruments in crypto-asset form.
- For previously unregulated crypto-assets, including asset-referenced crypto-assets (stablecoins), the Commission proposes a bespoke regime. The Markets in crypto-assets (MiCA) [proposed regulation](#) sets strict requirements for issuers of crypto-assets in Europe and crypto-asset service providers wishing to apply for an authorisation to provide their services in the single market.
- Safeguards include capital requirements, custody of assets, a mandatory complaint holder procedure available to investors, and rights of the investor against the issuer. Issuers of significant asset-backed crypto-assets would be subject to more stringent capital requirements, liquidity management and interoperability requirements.



PILOT REGIME FOR DLT MARKET INFRASTRUCTURES

- As part of the European Commission’s Digital Finance Package, on 24 September 2020 the Commission has proposed a [Regulation](#) for a Pilot Regime for DLT Market Infrastructures. To enable regulated institutions to develop DLT-based infrastructure for the trading, custody and settlement of securities.
- The proposed regime allows for operators to request exemptions from certain regulatory requirements that have previously been identified as obstacles to such development. The objectives of the proposal include: (i) development of secondary markets for ‘tokenised’ financial instruments, (ii) promote the uptake of DLT in the trading and post-trading area, and (iii) enable market participants and EU regulators to gain experience on new opportunities and issues raised by DLT.
- Under this proposal, DLT market infrastructures can request exemptions from specific requirements embedded in EU legislation (MiFID II, CSDR), to ensure a level playing field across the EU, the exemptions that can be requested are limited and conditions are attached to them.
- This regime is optional. After a five-year period (at the latest), ESMA will produce a detailed report on the pilot regime to the Commission. On the basis of this the Commission will decide whether the pilot regime should be maintained as is or amended; extended to new categories of financial instruments; or whether targeted amendments to EU legislation should be considered; and/or whether the pilot regime should be terminated.



Regulatory Reporting Developments



Derivatives Regulatory Reporting

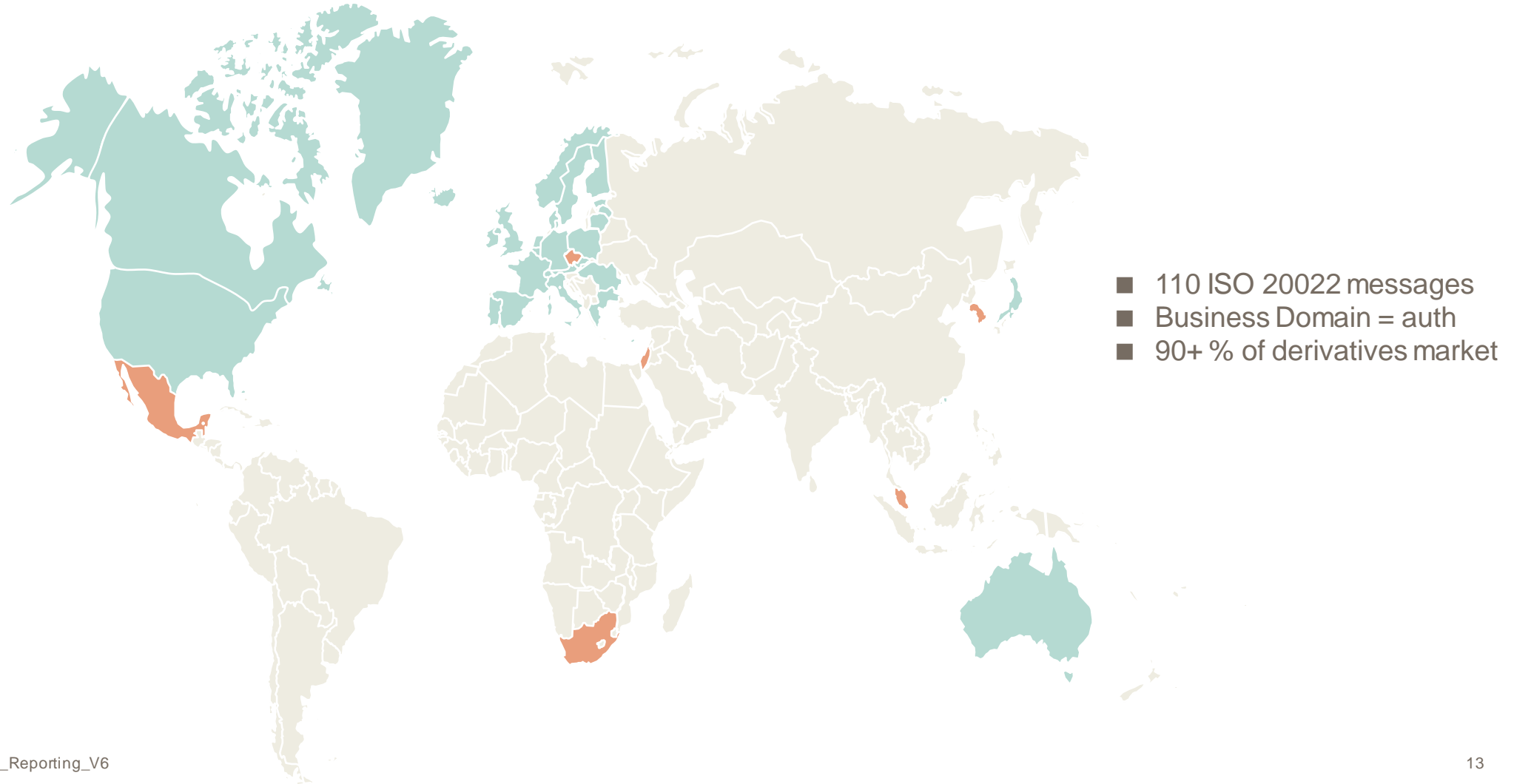
- **Regulatory reporting for derivatives goes back to the 2009 G20 Pittsburgh Summit where it was agreed that all derivatives should be reported to trade repositories and made available to regulators.**
- **Regulatory reporting went live in multiple jurisdictions in the following years starting in 2011 with Dodd Frank CFTC reporting.**
- **The first major overhaul of derivatives Regulatory Reporting is taking place now, it reflects years of work by regulators and industry under the auspices of CPMI-IOSCO to increase data standardization and improve the quality of reported data through the use of unique identifiers (UTI, LEI and UPI) and common data elements (CDE). In addition the new rules require the use of ISO 20022 as the format for all communication between reporting parties, trade repositories and regulators.**
- **The mandatory use of ISO 20022 messaging for regulatory reporting is a very important development, it introduces ISO 20022 to a large new constituency.**
- **Regulatory reporting has moved beyond derivatives and continues to expand**
 - Evolution on the derivatives side shows what can be expected in other regulations (more data, more data validation, stricter requirements,..)



Adopting ISO 2022 for Regulatory Reporting – beyond derivatives

| | Global Derivatives Transaction Reporting (EMIR; Dodd Frank,..) | Money Market (MMSR) | Money Market (SMMD) | MiFID II / MiFIR | SFTR |
|----------------------------|--|--|---|--|--|
| Scope | <ul style="list-style-type: none"> Financial and non-financial counterparties OTC and listed derivatives | <ul style="list-style-type: none"> 53 Euro banks (wave 1) Euro Money Market transactions | <ul style="list-style-type: none"> 12 GBP Banks GBP Money Market transactions | <ul style="list-style-type: none"> Investment firms Equity & equity-based | <ul style="list-style-type: none"> Investment firms & credit institutions CCPs, CSDs; FC, NFC Repos, SBL, buy-sell back, margin lending |
| Information to be reported | <ul style="list-style-type: none"> Transactions Positions valuation Collateral amounts | <ul style="list-style-type: none"> Transactions | <ul style="list-style-type: none"> Transactions | <ul style="list-style-type: none"> Transactions Reference data | <ul style="list-style-type: none"> Transactions Margin and collateral reports |
| Addressee | <ul style="list-style-type: none"> Trade Repository | <ul style="list-style-type: none"> ECB NCBs (DE/FR/IT/ES) | <ul style="list-style-type: none"> BOE | <ul style="list-style-type: none"> Approved Reporting Mechanism (ARM) National Competent Authority | <ul style="list-style-type: none"> Trade Repository |
| Format | <ul style="list-style-type: none"> 1.0: Proprietary format CFTC rewire/Emir Refit: ISO 2022 (2023 go live) | <ul style="list-style-type: none"> ISO 2022 | <ul style="list-style-type: none"> ISO 2022 | <ul style="list-style-type: none"> ISO 2022 | <ul style="list-style-type: none"> ISO 2022 |
| Frequency & Deadline | <ul style="list-style-type: none"> Daily D+1 at the latest | <ul style="list-style-type: none"> Daily D+1 07:00 at the latest | <ul style="list-style-type: none"> Daily D+1 07:00 at the latest | <ul style="list-style-type: none"> Daily D+1 at the latest | <ul style="list-style-type: none"> Daily D+1 at latest |

Regulatory Reporting landscape



The standards angle: ISO message development

For derivatives reporting, end 2023 is emerging as the key date when ISO 20022 messages need to be used for regulatory reporting in a number of jurisdictions.

- Note: while the current focus is on derivatives reporting, the use of ISO 20022 for regulatory reporting is broader than derivatives (e.g. SFTR reporting) and is expected to cover all or a large subset of securities market regulation.

Industry will need a sufficiently large implementation period (12 months?)

We do not want the ISO message development to be seen as delaying the process of regulatory reporting.

→ Agree, in collaboration with regulators and industry; and then communicate, a plan with clear milestones for ISO 20022 message development in 2022 and adoption support in 2023.



AUTH 30 Development

AUTH 30 V2

- Includes CDE datafields
- Includes ESMA changes and CFTC feedback
- Base message (will not be used by the regulators)

AUTH 30 V3

- CR submission Q2 2022
- SEG review Q3 2022
- Enrichment of V2 driven by CDIDE jurisdictions

AUTH 30 V4?

Auth 30 V3
CR request:
Q2

Auth 30 V3
SEG
review: Q3

Auth 30 V3
Publication:
Q4

2023 – Industry Implementation

| 2021 | | | | | | | | | | | | 2022 | | | | | | | | | | | | 2023 | | | | | | | | | | | | 2024 | | | | | | | | | | | | | | | | | |
|------|---|---|----|---|---|----|---|---|----|---|---|------|---|---|----|---|---|----|---|---|----|---|---|------|---|---|----|---|---|----|---|---|----|---|---|------|---|---|---|---|---|---|---|---|---|---|---|--|--|--|--|--|--|
| Q1 | | | Q2 | | | Q3 | | | Q4 | | | Q1 | | | Q2 | | | Q3 | | | Q4 | | | Q1 | | | Q2 | | | Q3 | | | Q4 | | | | | | | | | | | | | | | | | | | | |
| J | F | M | A | M | J | J | A | S | O | N | D | J | F | M | A | M | J | J | A | S | O | N | D | J | F | M | A | M | J | J | A | S | O | N | D | J | F | M | A | M | J | J | A | S | O | N | D | | | | | | |
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Start SEC reporting
use of existing formats for reporting

Today

Start CFTC/SEC "rewrite" reporting (2.0)
Could use Auth 30 V3

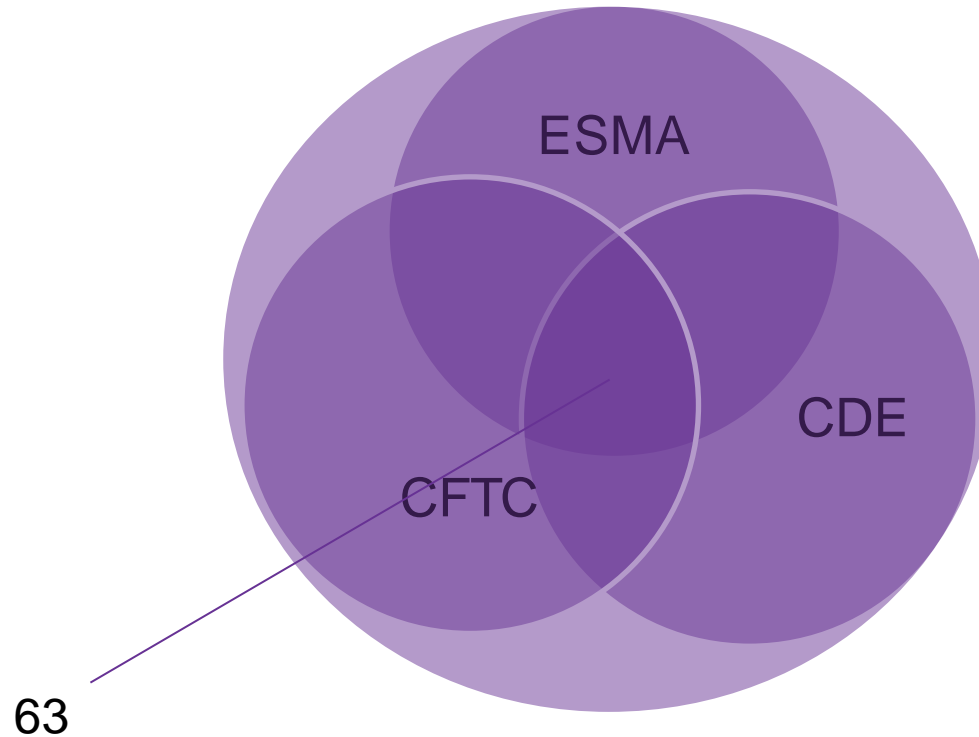
Start of ASIC reporting

Start of:
EMIR refit reporting
MAS reporting
CFTC use of ISO 20022
SEC use of ISO 20022
OSC, HKMA, JFSA?
FCA?



Harmonization: progress has been made; more work needs to be done

CDE: 114 fields
CFTC: 128 fields
ESMA: 192 fields



SWIFT MyStandards and SWIFT Translator

MyStandards:

- Consolidate all the regulatory reporting information in one place, updated directly by the source ie the regulators – it will sell itself to the marketplace.
- Link between MyStandards and Translator

Translator (as a service):

- Different input formats - one required output format: ISO 20022
- Cost effective: build the libraries once, all can leverage
- Expertise: SWIFT can maintain the mapping, provide 20022 expertise



A Long(er) Term Perspective

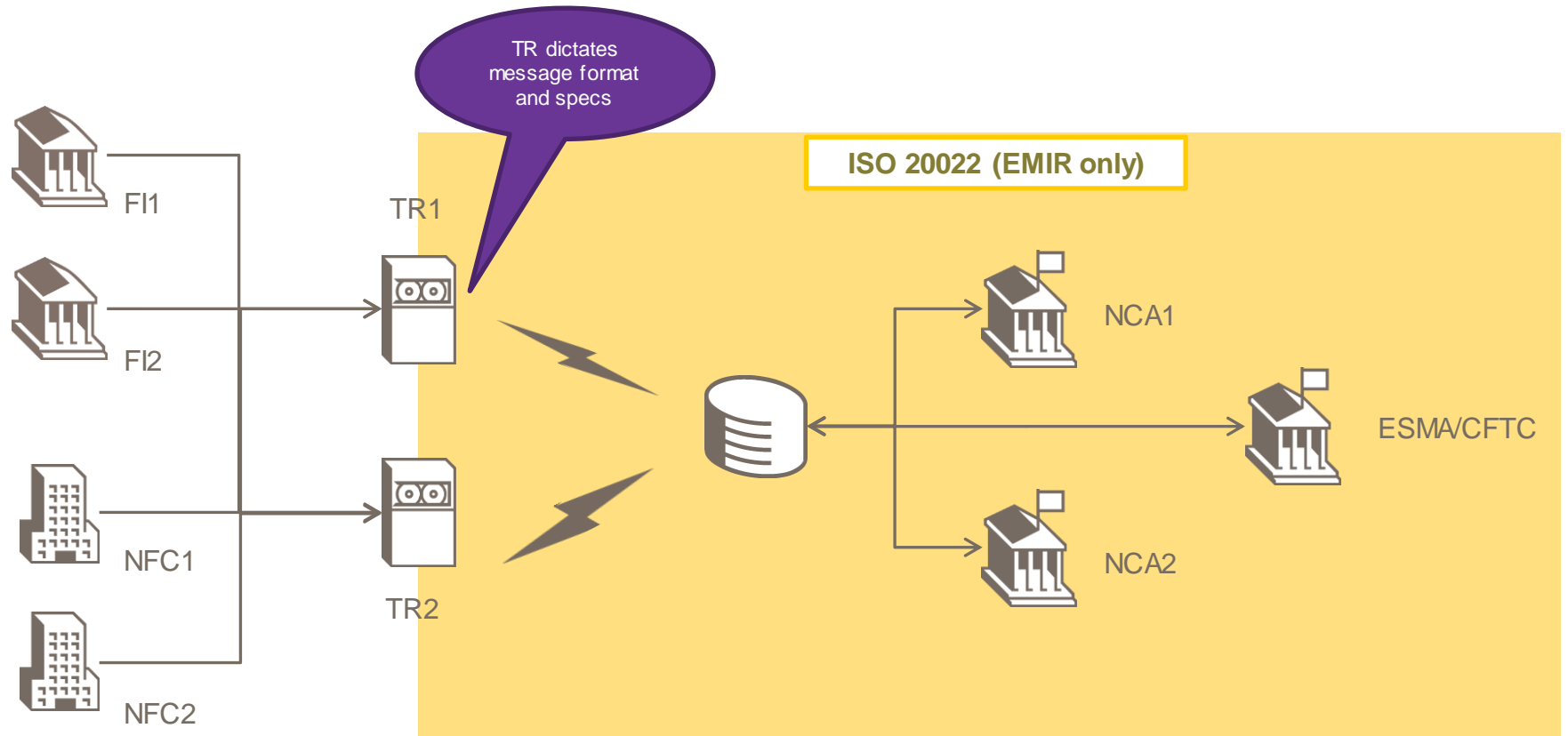
Growing volumes, expanding scope, changing infrastructure

Observations:

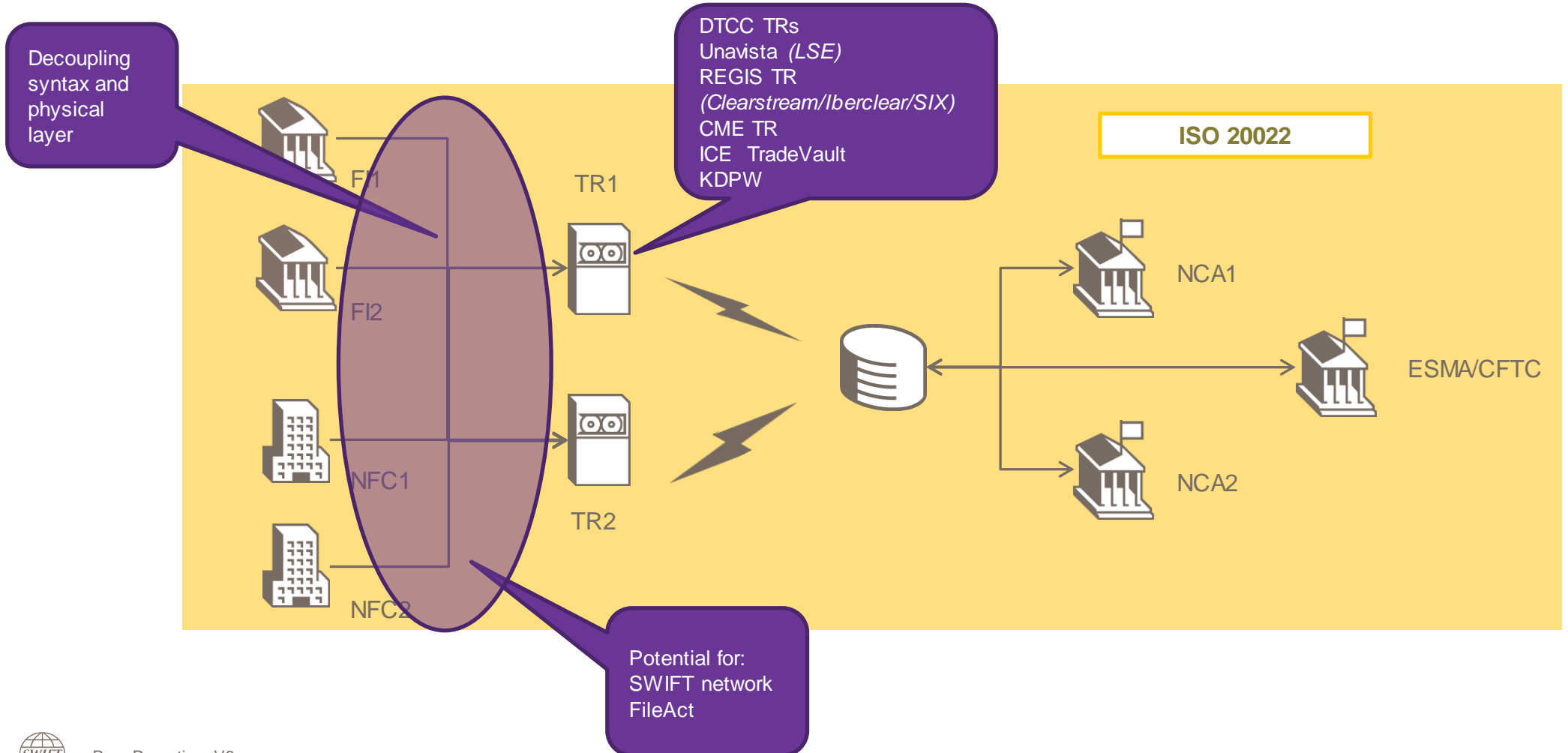
- DTCC derivatives reg reporting: **0.5 Bn trades; 15 Bn messages/year**
- Reg reporting is expanding beyond derivatives: MIFID, SFTR, ESG reporting (CSRD, SFDR)
- EC_EU supervisory data strategy
- ISO20022 is likely to be increasingly mandated for reporting regulations in the EU and beyond
 - US approach for domestic reporting is less clear
- “In a world that runs on data, good quality data is also the essential ingredient to effective risk analysis. Detailed reporting requirement now constitute a key component of financial sector legislation”...“It is vital that we continue to streamline data reporting and enhance our data capabilities”...“ESMA is therefore putting every effort into enhancing data-driven risk analysis, policy making and supervision in the EU” [Verena Ross – eurofi Feb 2022](#):
- Moving slowly – but steady: Derivatives reporting was mandated in 2009, started in 2011, first major revision goes live globally in 2023, SEC is looking at 2025



Transaction Reporting 1.0 (EU-EMIR; US-Dodd-Frank,...)



Transaction Reporting 2.0 (EU-EMIR; US-Dodd-Frank,...)





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