

ANNEX III – Reporting of REMIT derivatives contracts under EMIR

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

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:

- 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:

- c. acting on their own account and on their own behalf (pure principal transaction – i.e. on the decision of the firm);
- d. acting on their own account and on behalf of a client – i.e. on the order of other market participant; and/or
- e. acting for the account of and on behalf of a market participant (pure agency transaction).

Market participants should bear in mind that the meaning of entering into transaction in EMIR is different that 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 do.

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.

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 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 3.2.10 of the manual.

As 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 orders to trade and having entered into transactions and, thus, they are REMIT market participants.

However, from the investment firm prospective, 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 to 6 below. 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.

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 in the ESMA's Q&A on EMIR available on ESMA's website at <http://www.esma.europa.eu/content/EMIR-QA>. Please see Scenario 2 taken from the ESMA's Q&A and Exhibit 3.1 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 or third party service provider. Firm ABC does not have to submit any trade report.

Under this scenario, ACER 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:

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 <http://www.esma.europa.eu/content/EMIR-QA> and exhibit 3.2 below for the Agency's understanding of the EMIR/REMIT overlapping.

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 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.

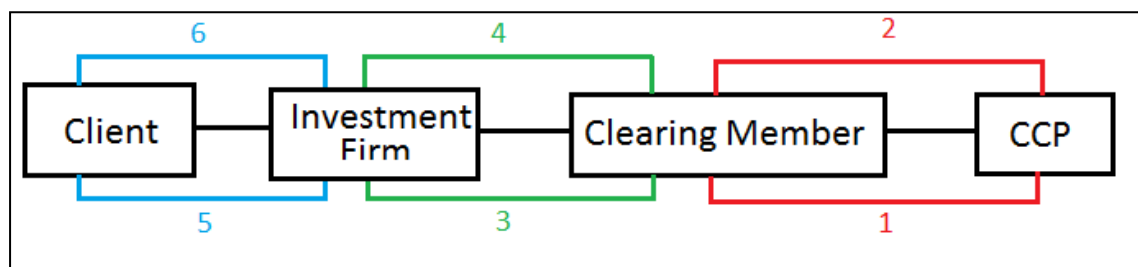
Market participants should report transactions under REMIT only if those transactions are not reported under EMIR. In fact, it is worth nothing that there may be some ETDs traded on EU venues by non-EU counterparties that are not reported under EMIR (e.g. U.S. counterparties reporting under the Dodd 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 or third parties with Table 1 of the Implementing Acts and according to this manual.

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

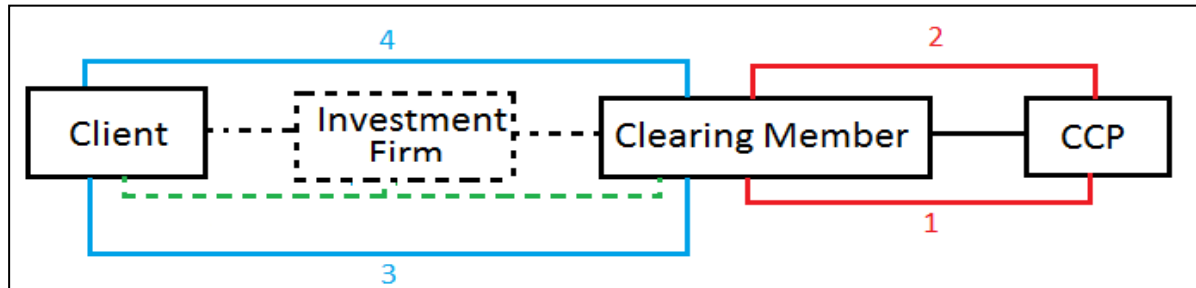
¹² This column was inserted to clarify reporting obligations; it is not part of the reportable fields under Article 1(1) of Commission Delegated regulation (EU) No 148/2013.

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:



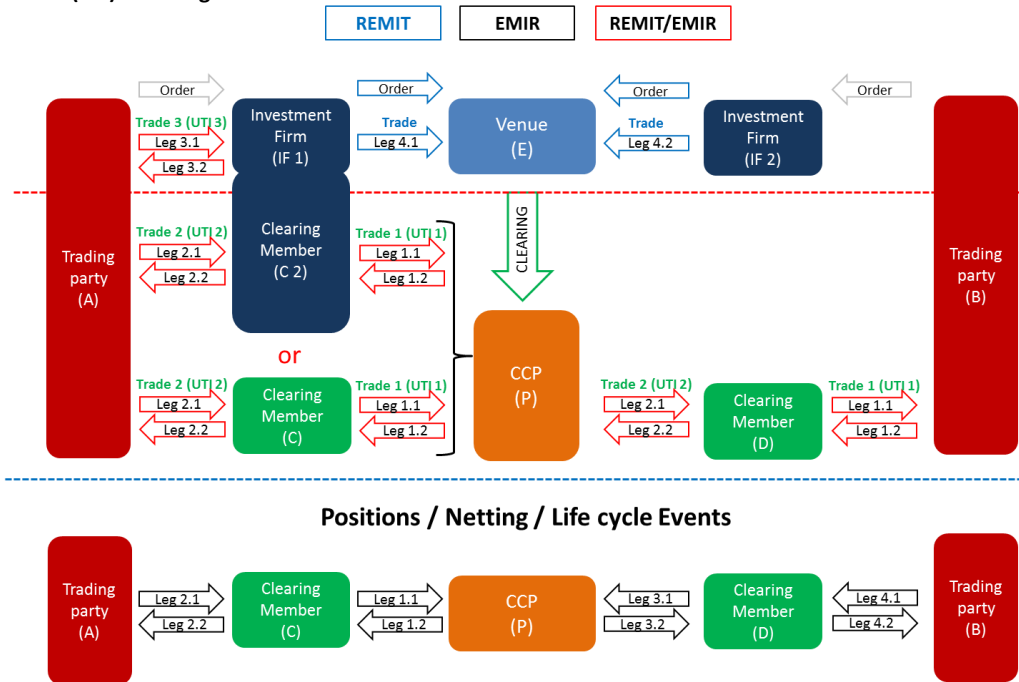
Report	Who has the reporting obligation? ¹⁵	UTI	Transaction reference number	Counterparty ID (2)	ID of the other counterparty (3)	Broker ID (8)	Clearing member ID (10)	Beneficiary ID (11)	Trading capacity (12) ¹⁶	Counterparty side (13)	Venue of execution	CCP ID
1	Clearing member	UTIo01	TRN1	Clearing member	CCP		Clearing member	Clearing member	'P'	'B'	MIC	CCP
2	CCP	UTIo01	TRN1	CCP	Clearing member		Clearing member	CCP	'P'	'S'	MIC	CCP
3	Client	UTIo02	TRN1	Client	Clearing member	Investment firm	Clearing member	Client	'P'	'B'	MIC	CCP
4	Clearing member	UTIo02	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): Exchange traded derivatives



Positions / Netting / Life cycle Events

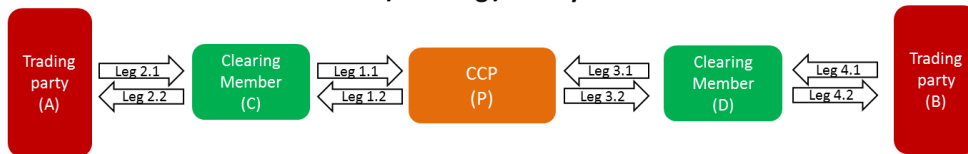


Exhibit (0.2): Exchange traded derivatives, simplified view

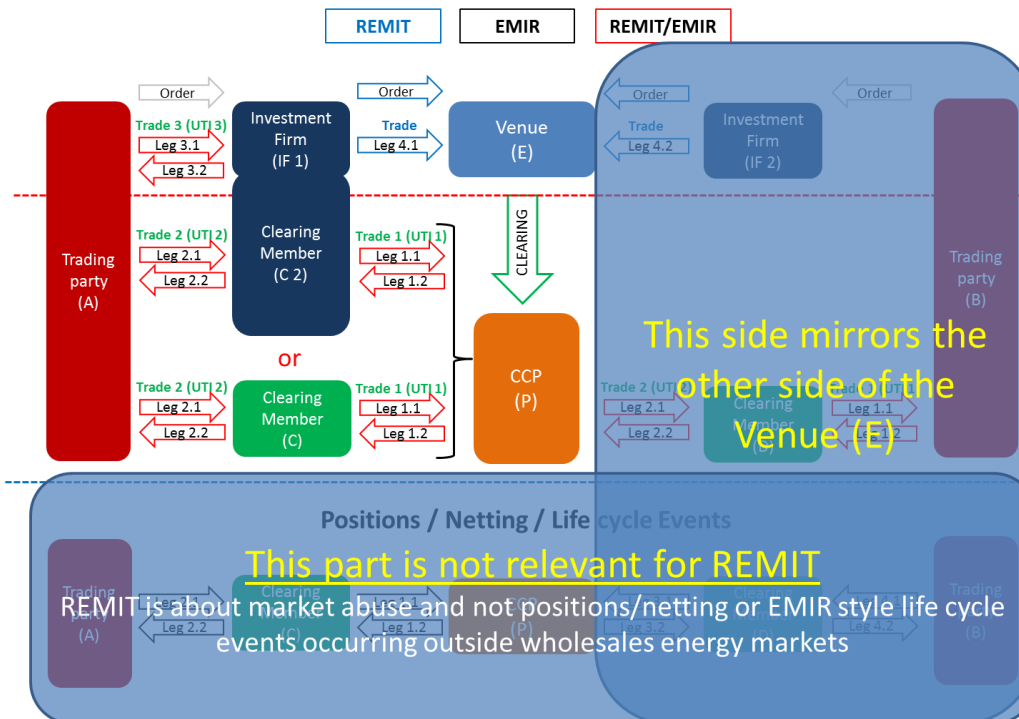
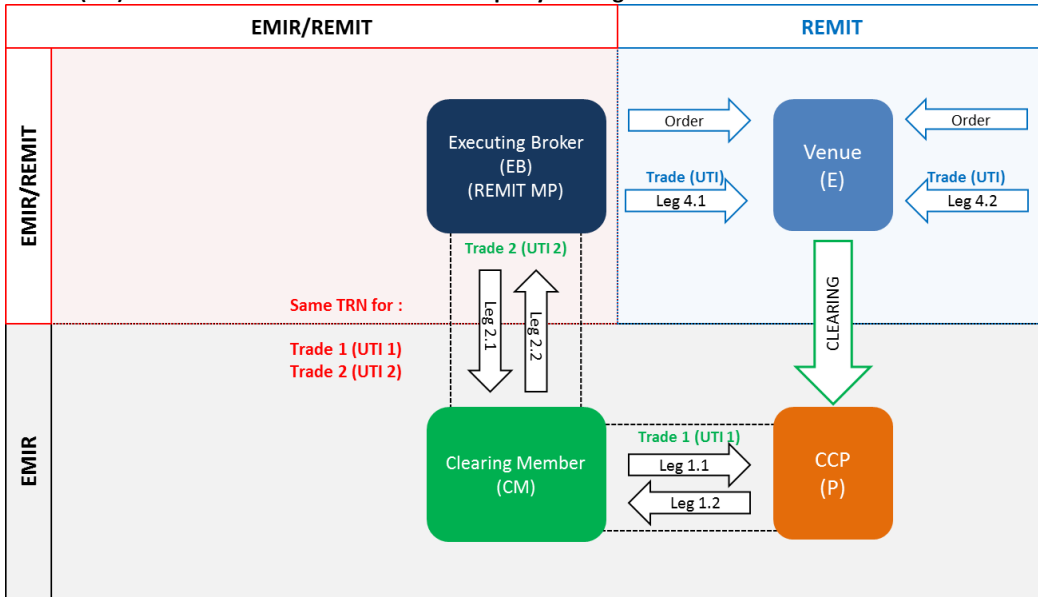


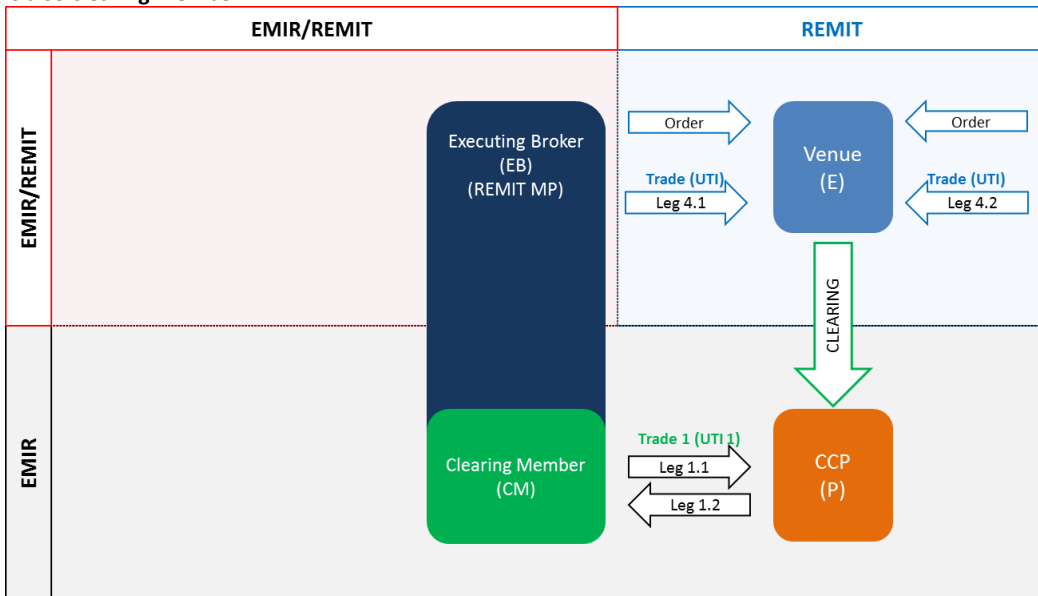
Exhibit (1.1): the investment firm is itself counterparty trading on its own account on its own behalf.



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

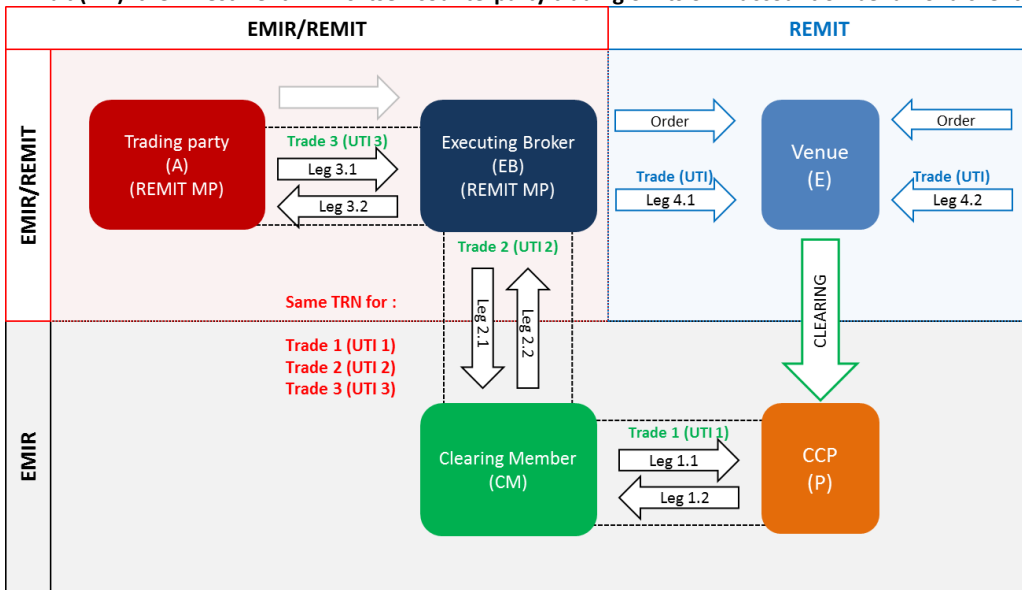
Exhibit (1.2): the investment firm is itself counterparty trading on its own account on its own behalf and it is also clearing member.



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

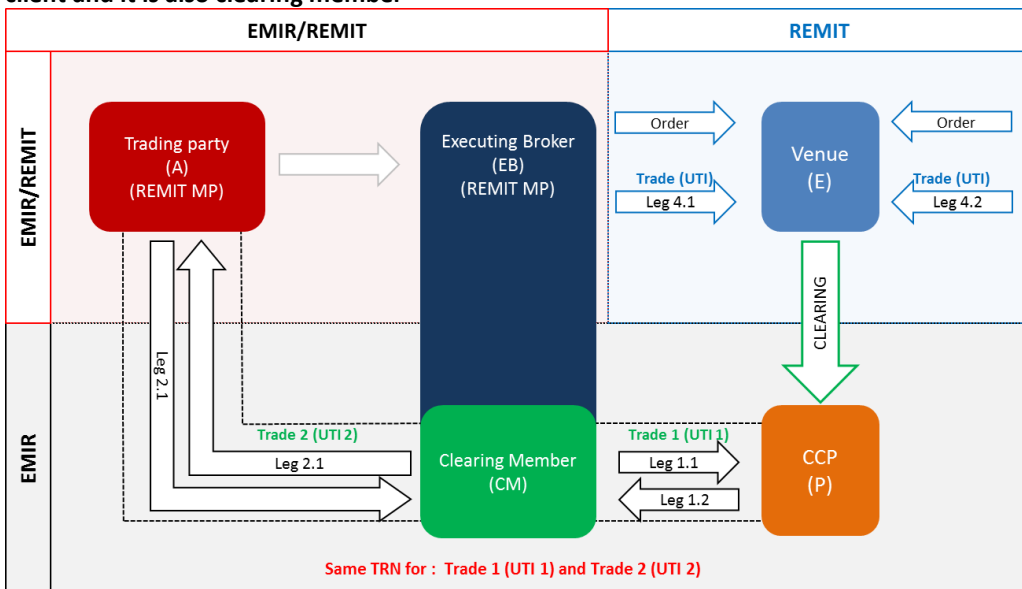
Exhibit (2.1): the investment firm is itself counterparty trading on its own account on behalf of a client.



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

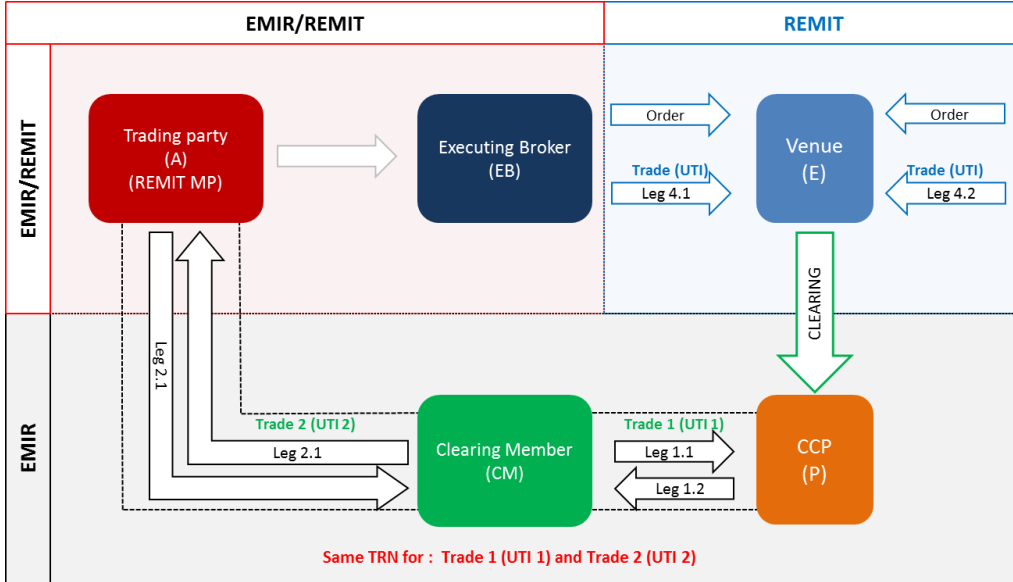
Exhibit (2.2): investment firm is itself counterparty trading on its own account on behalf of a client and it is also clearing member



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

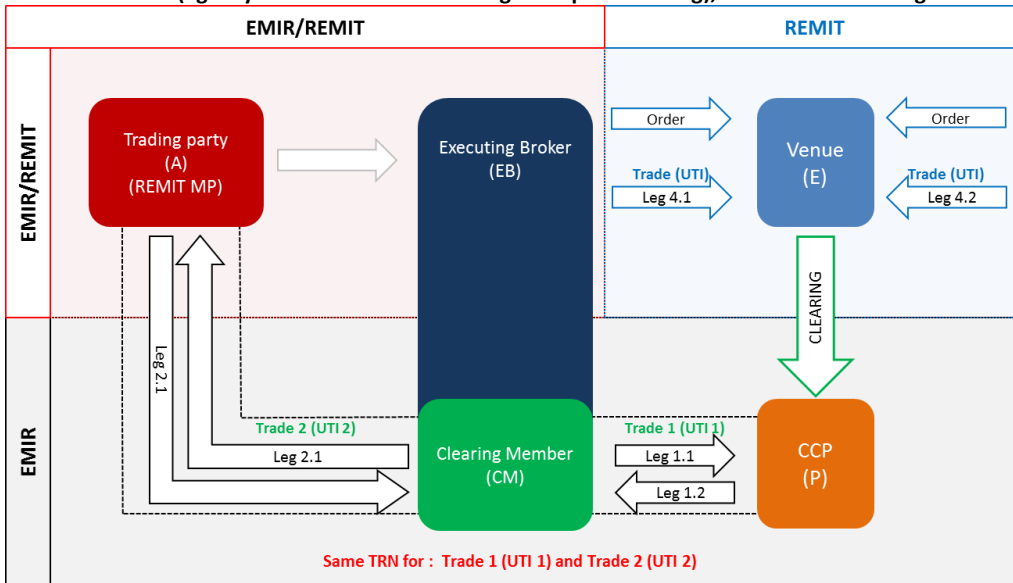
Exhibit (3.1): the investment firm is not itself counterparty and is trading on the account of and on behalf of a client (agency transactions). This case also applies when the investment firm gives up the trade for clearing to the clearing broker.



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.



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