



EMIR: First obligations with effect from 15 March 2013

On 15 March 2013 the first in a number of obligations applicable to financial institutions and corporates trading in over-the-counter derivatives will come into effect.

The European Market Infrastructure Regulation (**EMIR**) is the name given to The Regulation on OTC derivative transactions, central counterparties and trade repositories (Regulation (EU) No. 648/2012) which was adopted by the European Parliament in response to perceived deficiencies in the over-the-counter (**OTC**) derivatives market. Eventually, EMIR will require counterparties to OTC derivatives to adhere to certain reporting and risk mitigation obligations and, in some cases, may require OTC derivatives to be centrally cleared.

EMIR is supplemented by a number of regulations which provide detailed obligations and which are due to be phased in. After an uncertain start to 2013, during which the European Parliament rejected and then later approved these regulations, the first of these obligations come into effect on 15 March 2013.

Timely confirmation of trades

These first obligations require all counterparties established in the EU to an OTC derivative to confirm, by electronic means if available, any OTC derivatives which they enter into within certain timeframes.

Depending upon the type of entity and type of trade, these time periods may be as short as 2 business days from the date of the trade ranging to 5 business days from the date of the trade. It is likely that any counterparty which is not a financial institution and which only trades in OTC derivatives for the purpose of “reducing risks directly relating to the commercial activity or treasury financing activity” (i.e. hedging) will be required to confirm within five business days.

Counterparties will also be required to have in place procedures to record and report on a monthly basis the number of unconfirmed OTC derivatives which have been outstanding for more than 5 business days.

Notification of breach of “Clearing Threshold”

From 15 March 2013, a counterparty which is established in the EU and which is not a financial institution will also be required to notify the FSA and the European Securities and Markets Authority (**ESMA**) if it takes positions in OTC derivatives contracts which, on a rolling 30-day average, exceed the “Clearing Threshold”.

The Clearing Threshold is set by reference to the types of derivative entered into (EUR 1 billion (based upon gross notional value) for credit and equity derivatives and EUR 3 billion (based upon gross notional value) for interest rate, foreign exchange, commodity and all other types of OTC derivative) and excludes all OTC derivatives entered into for hedging purposes.

More information

We will shortly be publishing a more detailed briefing on the background to, and impact of, EMIR. If you require any further information, or if there is anything you would like to discuss further, please contact your usual Burgess Salmon contact or one of our derivatives specialists:



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