



### **EMIR: Portfolio reconciliation and compression and dispute resolution**

Following the adoption of EMIR on 4 July 2012 and publication of prescriptive regulations on 23 February 2013, the second of a series of sets of provisions will come into effect on 15 September 2013.

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 is intended to require counterparties to over-the-counter (**OTC**) derivatives to adhere to certain reporting and risk mitigation obligations and, in some cases, to ensure that their derivatives transactions are centrally cleared.

The first set of obligations arising out of EMIR came into effect on 15 March 2013 and required all counterparties to OTC derivatives to confirm any OTC derivatives which they enter into within specified timeframes (of between 2 and 5 business days from the date of the trade) and to notify the FSA (now the FCA) and the European Securities and Markets Authority (**ESMA**) if they take positions in OTC derivatives contracts which exceed the "Clearing Threshold".

With effect from 15 September 2013, counterparties will have additional EMIR requirements.

#### **Portfolio reconciliation**

From 15 September, all counterparties to OTC derivatives who are established in the EU must have in place arrangements with each of their counterparties for the reconciliation of their portfolio of OTC derivatives.

Parties must reconcile all key terms (including mark-to-market valuation) at certain intervals depending upon the nature of the counterparty and the number of OTC derivatives comprised within the portfolio ranging from daily to annually. It is likely that any counterparty which is not a financial institution and which only trades in OTC derivatives for the purpose of hedging will be required to reconcile transactions with a counterparty quarterly (if they have more than 100 OTC derivatives with that other counterparty) or otherwise annually.

#### **Portfolio compression**

Financial counterparties and non-financial counterparties who are established in the EU which have 500 or more OTC derivatives, which are not cleared centrally, outstanding with any other

counterparty must have in place procedures to regularly, and at least twice annually, analyse the portfolio and, where appropriate, undertake a "compression" exercise.

#### **Dispute resolution**

Beginning on 15 September, when concluding an OTC derivative, counterparties who are established in the EU must have procedures and processes agreed with each other in relation to the identification, recording and monitoring of disputes relating to the recognition or valuation of OTC derivatives or the exchange of collateral and for the resolution of disputes within a timely manner (including specific processes for those not resolved within five business days).

#### **ISDA Protocol**

To assist counterparties in adopting the processes required for portfolio reconciliation and dispute resolution, ISDA has published the ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol (the Protocol). Where each counterparty to an OTC derivative has adhered to the Protocol, their underlying ISDA agreements are deemed to have been amended to incorporate the provisions set out in the protocol in respect of portfolio reconciliation and dispute resolution.

For many counterparties the Protocol will represent an efficient and appropriate means of meeting the documentary requirements of the EMIR requirements coming into effect on 15 September. However, additional considerations may be relevant.

#### **More information**

If you require any further information, or if there is anything you would like to discuss further, please contact one of our senior derivatives specialists:

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