



## EMIR: Reporting - from 12 February 2014

From 12 February 2014 all counterparties need to report details of any derivative contract (over the counter or exchange-traded) they have concluded, or which they have modified or terminated, to a registered or recognised trade repository (**TR**) in accordance with the reporting requirements contained in the European Markets Infrastructure Regulation (**EMIR**).

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 that counterparties to derivatives contracts adhere to certain reporting and risk mitigation obligations and, in some cases, to centrally clear those derivatives transactions.

The obligations arising out of EMIR are being adopted in stages, with the first set of obligations (in relation to timely confirmation of trades and requiring non-financial counterparties to notify ESMA and the FCA, as competent authority in the UK, if they take financial positions which exceed the relevant "Clearing Threshold") having come into force on 15 March 2013. Since 15 March, certain other obligations have come into effect. More information on these other obligations is available on our Publications section.

### Reporting - timing

EMIR requires that all counterparties ensure that details of any derivative contract (whether over-the-counter or otherwise) they have concluded, and of any modification or termination of a derivative contract, are reported to a trade repository (**TR**).

By no later than the day on which a derivative contract is concluded details of that contract are required to be reported to a TR that has been registered for the purpose of EMIR. In addition, however, the reporting requirement also applies to the modification or termination of a derivative contract and applies to all such contracts that have been entered into since 16 August 2012 or that were entered into prior to 16 August 2012 and that were outstanding on that date (provided that if they have ceased to be outstanding on the relevant reporting start date (see below) they must be reported within 3 years of the relevant reporting start date).

The start date for the requirement to report is staggered, with the requirement having effect from 1 July 2013 with respect to credit and interest rate derivatives and from 1 January 2014 with respect

to all other derivatives. However, in each case that start date was subject to the availability of an appropriate registered TR.

In practice, the first registration of TRs was not effective until 14 November 2013 (i.e. after the relevant start dates) and because of that delay, in accordance with the terms of EMIR the reporting obligations will arise 90 days after 14 November 2013, so 12 February 2014 is the effective date.

### Reporting - details

Parties do not have to send copies of each derivative contract to the TR. The details sent to the TR should, however, encompass all elements related to the derivative trade that are relevant for regulatory purposes under EMIR, with particular emphasis on measurement and mitigation of systemic risk. The details to be reported are specified in regulatory technical standards adopted on 19 December 2012 and set out in the Commission Delegated Regulation (EU) No. 148/2013.

EMIR requires that details of the derivative contract must be reported without duplication. Accordingly, and because EMIR permits reporting to be delegated, we anticipate that many corporate counterparties will enter into arrangements with their bank counterparties such that reporting is conducted by the bank counterparty. It should be noted however that, notwithstanding any such delegation, the primary obligation to report remains with each counterparty.

### Legal Entity Identifier

The details to be provided to the TR include, amongst other things, the Legal Entity Identifier (**LEI**) of each counterparty or, if one is not available, an interim entity identifier.

In the UK, LEIs are able to be allocated by the London Stock Exchange. Details of the application procedure and costs involved are available on their website: <http://www.lseg.com/LEI>

*To ensure compliance with the regulations it will be essential that an LEI is obtained as soon as possible.*

### Record Keeping

In addition to the obligation to report details of any derivative contract upon its conclusion, modification or termination, EMIR also requires counterparties to keep a record of any derivative contract

that they have concluded or modified for at least five years following its termination.

No detail has been published or is available from ESMA or the FCA as to the information which must be maintained by a counterparty for this purpose nor to which derivatives contracts (in particular, in relation to when such contracts were concluded) this obligation applies.

## ISDA Protocol

To assist counterparties to comply with their reporting obligations, ISDA has published the ISDA 2013 Reporting Protocol. The effect

of the protocol is to ensure that each counterparty has consented to the disclosure of information to ensure that reporting of information under EMIR will not breach data protection requirements.

However, the protocol does not, for example, document a process by which information is reported or contain an agreement to delegate reporting to one counterparty. Similarly, the protocol will not assist to implement an appropriate record keeping system.

Accordingly, although execution of the protocol, or incorporation of its principals, will assist counterparties, it will not of itself be sufficient to satisfy the requirements of EMIR.

## 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:



**Graham Soar**  
Partner

+44 (0)117 902 6347  
graham.soar@burges-salmon.com



**Tom Dunn**  
Senior Associate

+44 (0)117 902 7796  
tom.dunn@burges-salmon.com



**Alistair Rattray**  
Associate

+44 (0)117 307 6962  
alistair.rattray@burges-salmon.com

---

Burges Salmon LLP, One Glass Wharf, Bristol BS2 0ZX Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400  
6 New Street Square, London EC4A 3BF Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7980 4966

[www.burges-salmon.com](http://www.burges-salmon.com)

Burges Salmon LLP is a Limited Liability Partnership registered in England and Wales (LLP number OC307212) and is authorised and regulated by the Solicitors Regulation Authority. A list of members, all of whom are solicitors, may be inspected at our registered office: One Glass Wharf, Bristol BS2 0ZX.

© Burges Salmon LLP 2014. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged. Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

Data Protection: Your details are processed and kept securely in accordance with the Data Protection Act 1998. We may use your personal information to send information to you about our products and services, newsletters and legal updates; to invite you to our training seminars and other events; and for analysis including generation of marketing reports. To help us keep our database up to date, please let us know if your contact details change or if you do not want to receive any further marketing material by contacting [marketing@burges-salmon.com](mailto:marketing@burges-salmon.com).