Derivatives Overview

Principles and scope of EMIR

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The European regulation known as EMIR (European Market Infrastructure Regulation) imposes new requirements on the various entities active on derivatives markets: financial and non-financial counterparties trading on those markets, and central counterparties. It also introduces new players – trade repositories – tasked with recording all derivative contracts entered into between two counterparties.

Why EMIR?

European regulation 648/2012 on over-the-counter derivatives, central counterparties and trade repositories (EMIR), which was published in the Official Journal of the European Union on 27 July 2012 and entered into force on 16 August 2012, is the translation into European law of commitments made by the G20 at the Pittsburgh summit (September 2009) concerning derivatives markets, which it aims to make safer and more transparent. It has been supplemented by technical standards, which were published in the Official Journal of the European Union on 23 February 2013 and entered into force on 15 March 2013.

What does EMIR consist of?

EMIR is based on the following principles:
• An obligation for all over-the-counter (OTC) derivatives considered by ESMA as being sufficiently liquid and standardised to be centrally cleared. This means that counterparty risk will be transferred in full to central counterparties (CCPs).
• A harmonised European legal framework to ensure that CCPs comply with strict requirements in terms of capital, organisation and a code of conduct.
• The use of a set of techniques to mitigate operational and counterparty risk where contracts are not cleared.
• An obligation to report all transactions in derivatives to trade repositories.

To whom does EMIR apply?

EMIR applies to all counterparties, whether financial (credit institutions, investment firms, insurers, portfolio management companies, etc.) or non-financial, trading in derivatives. Exemptions are available for certain categories of entities and transactions, where these take place between entities belonging to the same group, provided that certain criteria are met. These exemptions are set out in the “Notification and exemptions” section.
EMIR covers the following products:

- as regards the clearing obligation and risk mitigation techniques: all OTC derivatives (i.e. all derivative financial instruments within the meaning of MiFID where traded other than on a regulated market);
- as regards provisions applicable to CCPs: all financial instruments;
- as regards reporting to trade repositories: all derivative contracts, including both OTC derivatives and those traded on regulated markets.

Read more

- Regulation (EU) No 648/2012 EMIR
- EMIR forms: Notification form for non-financial counterparties exceeding the clearing threshold, Notification form for non-financial counterparties not exceeding the clearing threshold any longer
- The AMF draws your attention to the timetable for applying the obligation to report derivatives transactions

Also

- The AMF highlights the entry into force of certain provisions of the “EMIR” regulation with effect from 15 March 2013
- Dedicated EMIR page on ESMA's website
- ESMA Q&A - Implementation of EMIR - 6 June 2016

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