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Derivatives Reform in Europe: European Market Infrastructure Regulation (EMIR) and the Regulatory Technical Standards (RTS)[i]

Update

On 19 December 2012 the European Commission adopted nine regulatory and implementing technical standards for the regulation of OTC derivatives, central clearing and trade repositories. These standards were adopted by the Commission without amendment. This marks the next step in the development of European regulatory reform for derivative contracts as the technical standards finalise requirements for mandatory clearing and reporting of transactions. This note highlights key changes that are to be implemented in Europe, many of which are due to come into effect during the course of 2013. For a more detailed review of the background and purpose of the legislation including a summary of the key provisions of EMIR and the Regulatory Technical Standards click here.

Executive Summary

EMIR is one of the most important post-financial crisis reforms and will revolutionise the way the OTC derivatives market operates. It introduces far-reaching requirements for market participants with respect to clearing and reporting OTC derivative trades. But there are still a number of questions surrounding the implementation of the legislation.

These concerns include:

- extraterritorial application and how EMIR will interact with other statutes such as the US Dodd-Frank Act and possible third country supervisory regulations, an issue which is still under negotiation between the regulators. While the US has generally been slightly ahead of Europe in implementing its derivative reform legislation, there have been concerns expressed by regulators and affected parties worldwide about the extraterritorial application of the US legislation and the need for the regulators to work together to ensure that different regulatory regimes work effectively alongside one another. This concern has been recognised by the US regulators as on 21 December 2012, the CFTC provided temporary relief to non-US swap dealers and non-US major swap participants from various Dodd Frank Title VII requirements until 12 July 2013[ii]. CFTC Chairman Gensler stated that such relief would

Additional Resources

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Contact a Team Member

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allow time for the CFTC to develop the substituted compliance program and to work with foreign regulators implementing comparable requirements. EMIR also has extensive extraterritorial application and the regulators will need to work together over the coming months to find a way for these different regulatory regimes to work effectively alongside one another;

- the costs of both preparing for and complying with EMIR (e.g. requirements to post higher collateral and more liquid forms of collateral which some counterparties may not have readily available) which come at a time when financial institutions are also becoming subject to more stringent capital requirements;

- ensuring that central counterparties ("**CCPs**") have in place robust risk management procedures so that risks of default by clearing members can be mitigated;

- the legal documentation to govern the relationship between CCP, Clearing Member and Client, which is not yet in a market standard form;

- ensuring that firms have in place appropriate checks and operational systems to ensure compliance with the extensive reporting requirements and risk management obligations which have now been specified in the Regulatory Technical Standards, many of which are scheduled to come into force during 2013. The reporting requirements include a backloading requirement to the reporting obligation which requires all transactions which were outstanding on 16 August 2012 to be reported, even if they have now ended, and risk management obligations include a requirement to provide confirmations within a set time period of a few days depending on the type of trade and in any event to report to the regulator any transactions which are not confirmed within 5 days; and

- understanding the time-frame for implementation of the obligations under EMIR, which in many cases is still unclear.

Now that the RTS have been adopted by the Commission, firms need to work out carefully which particular requirements they will have to meet and by when, by reference to the level and type of trading they do or intend to do and their status under the new legislation. As a number of the obligations are intended to come into force in 2013 it is important that this analysis is undertaken promptly. Regulatory bodies are encouraging firms to start planning for implementation now and consult with their professional advisors where appropriate to ensure that they will be in a position to comply. There are likely to be increased costs in implementing systems and procedures to deal with central clearing and reporting to trade repositories together with the increased capital requirements due to mandatory clearing.

Click here for more details of the legislation including a summary of the key provisions of EMIR and the Regulatory Technical Standards.

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[i] The information in this Practice Note is correct as at 22 January 2013.

[ii] Final Exemptive Order Regarding Compliance with Certain Swap Regulations, 78 Fed. Reg. 858 (7 January 2013).