

## Regulatory News Alert

### EMIR II starting blocks

18 June 2018

#### Background

Following the proposition of draft update of the EMIR regulation (EMIR II) published on 3 May 2017, the European Parliament voted in plenary session (12/06/2018) its preferred version of the draft review of the EMIR (EU) No 648/2012 REFIT. This vote paves the way to a trilogies phase at EU level that will hopefully deliver by year-end a rewrite of the EMIR regulation.

In May 2017, the European Commission proposed a regulation amending and simplifying the EMIR Regulation (EU) No 648/2012 dealing with clearing house and derivatives in the context of its Regulatory Fitness and Performance (REFIT) program.

Over the past three years, the Commission, with the help of reports drafted by the European Systemic Risk Board (ESRB), the European Central Bank (ECB) and the European Securities Markets Authority (ESMA), carried out an extensive assessment of EMIR to address disproportionate compliance costs, transparency issues, and insufficient access to clearing for certain counterparties.

#### Content of the amendments to the Regulation

The amendments to European Market Infrastructure Regulation (EMIR) focus on three points:

**1. Reducing the costs linked to compliance**, notably for small of non-financial entities by:

- Developing two distinct clearing thresholds per asset class
- Narrowing the scope of the clearing obligation for non-financial entities, so that those non-financial counterparties are subject to the clearing obligation only with regard to the asset class or asset classes that exceed the clearing threshold
- Removing requirements to clear certain OTC derivative contracts concluded before the clearing obligation takes effect

- Introducing a common Union standard of reporting to Trade Repositories
- Applying mandatory exchange of variation margins on physically settled foreign exchange forwards and physically settled foreign exchange swap derivatives only to transactions between the most systemic counterparties, namely credit institutions and investment firms.

## **2. Ensure transparency and sufficient access to clearing for certain counterparties by:**

- Suspending the clearing obligation where:
  - The criteria on the basis of which a specific class of OTC derivative has been made subject to the clearing obligation are no longer met
  - A CCP ceases to offer a clearing service for a specific class of OTC derivative or for a specific type of counterparty and other CCPs cannot step in fast enough to take over those clearing services
  - It is deemed necessary to avoid a serious threat to financial stability in the Union
- Exempting all transactions between affiliates within the group where at least one of the counterparties is a non-financial counterparty from the reporting obligation
- Reducing the burden of reporting for small non-financial counterparties not subject to the clearing obligation: the financial counterparty should therefore be solely responsible, and legally liable, for reporting a single data set with regard to OTC derivative contracts entered into with a non-financial counterparty that is not subject to the clearing obligation
- The extension for two years of the temporary derogation attached to Pension Scheme Arrangements due to the absence of suitable technological solution found yet

## **3. Increasing responsibility of actors by:**

- Requiring clearing members and clients of clearing members that provide clearing services to do so under fair, reasonable, non-discriminatory and transparent commercial terms
- Modifying definition of Financial Counterparties to include Alternative Investment Funds
- Imposing Alternative Investment Funds Managers (AIFM) and Management companies of Undertakings for Collective Investment in Transferable Securities (UCITS) as the sole responsible entities for reporting
- Increasing fines attached to infringements committed by Trade Repositories

This text, although important, is only a milestone in the regulatory process of EMIR Review, there remains the trilogue phase where the text of the EU Commission, the Council and the EP will have to be reconciled to form one single official version.



## How can Deloitte help you?

In this rapidly evolving crossroads between regulations, Deloitte can help you stay ahead of the game with our Kaleidoscope Regulatory Watch services, which monitors and analyzes upcoming changes.

Deloitte's advisory specialists and dedicated services will also help you design and implement your renewed business strategy in light of the future evolution of the AML/CFT framework.

### There every step of the way:

#### **1. Strategy definition and implementation**

Design and calibrate a strategy for collateral management and practical implementation throughout the organization.

#### **2. Regulatory health check**

A review of compliance with each requirement of the regulation, identifying any gaps with remediation actions.

#### **3. Transaction reporting**

A fully integrated reporting solution for transaction reporting.

#### **4. Model calibration and validation**

Design, calibrate, validate and document models created for the determination of credit quality, initial margin to be posted and collateral value (haircuts).

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