

Regulatory News Alert

Non-financial firms under the EMIR spotlight

15 May 2017

Communication of the Commission de Surveillance du Secteur Financier (CSSF) on its measures and priorities, regarding the obligations of non-financial counterparties to derivative contracts under the Regulation (EU) No 648/2012 (EMIR).

Overview

Pursuant to the [law of the 15 March 2016 on Over-The-Counter \(OTC\) Derivatives, Central Counterparts, and Trade Repositories](#), the CSSF has to ensure that non-financial counterparties (NFCs) to derivative contracts comply with EMIR requirements.

The CSSF issued a [communication to remind NFCs of their obligations toward EMIR](#), and specifically, to remind the NFCs that are not prudentially supervised by the CSSF that they fall in scope of the obligations introduced by EMIR as soon as they conclude derivative transactions.

NFC obligations

The purpose of this communication is not to introduce any further obligations with respect to the existing regulatory framework, but rather to ensure that NFCs understand the extent of their duties during a derivative transaction.

NFC obligations under EMIR are triggered by exceeding a clearing threshold.

Above this threshold, NFCs have an obligation to:

- Clear their derivatives transaction with a Central Counterparts (CCPs)
- Apply risk mitigation techniques to non-centrally cleared OTC derivative contracts
- Report all the concluded derivative contracts to a Trade Repository (TR)
- Notify ESMA and CSSF when they exceed a clearing threshold

CSSF Supervision

The CSSF has set three priorities for 2017, in order to strengthen its supervision of NFCs active in the derivative regulated and OTC market.

- **Priority 1:** Ensure the quality of the data reported to the TRs (review and controls)
- **Priority 2:** Facilitate the monitoring of derivative transactions entered into for hedging purposes (possibility to collect the monitoring policies)
- **Priority 3:** Facilitate the monitoring of risk mitigation techniques (possibility to collect the policies)

Therefore, the CSSF recommends NFCs to implement the following internal policies:

- Formalize a process to systematically check the quality of the reporting made to a TR
- Designate a person or a business unit to be in charge of EMIR compliance
- Define which activities must be set up internally in order to comply with the EMIR requirements

Further review – Toward EMIR II

At the European level, the Commission released its proposal for the EMIR II framework.¹

The EMIR II regulation will induce some change to the obligations of NFCs under EMIR.

Notably:

- Alternative Investment Funds (AIF) and Special Purposes Vehicles (SPVs) in the EU will be considered Financial Counterparties (FCs)
- The calculation of the clearing thresholds for NFCs will be based on the aggregate month-end average positions for the months March, April and May
- NFCs' clearing obligations will only concern the classes of derivatives that breach the clearing threshold

¹ Please refer to the Deloitte Alert "EMIR II – What does the future look like?" of the 5th of May 2017.

How can Deloitte help you?

Every step of the way

1. Strategy definition and implementation
Design and calibrate a strategy for clearing obligation with practical implementation throughout the organization.
2. Regulatory and agreement health check
Assessment of the internal setup toward regulatory requirements as well as documentation/agreement scan for compliance with each requirement of each commission delegated regulation, identifying any gaps and advising on remediation actions.
3. Transaction regulatory reporting
Deloitte can provide a fully-integrated transaction reporting service from the collection, management, and dissemination of data required to the competent authority and Trade Repository with minimum impact for clients.
4. Collateral management
Strategic definition and operational efficiency of collateral and cash management process. Support in defining target operational structure and account segregation model. Review and update collateral agreements and related service arrangements.

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