

Deloitte regulatory news alert

EMIR ESMA Q&A clarifies UCITS & AIF status before the 11 August 2014 reporting deadline for valuation and collateral



On 21 May 2014, ESMA has published an updated Q&A on EMIR implementation. This Q&A includes important definition and confirmation about the counterparty status with regards to the funds classification and more particularly the Alternative Investment Funds (AIF).

Fund Counterparty to a derivative transaction

- The counterparty identification is derived as per the terms of the derivatives contract with the fund manager:
 - In case the derivatives contract is concluded at the sub fund level, the sub fund is considered as to be the counterparty and needs to have a Legal Entity Identifier “LEI” assigned,
 - Otherwise the counterparty is the umbrella fund and the sub-fund is identified as the beneficiary.
- The numbers of trades or threshold are assessed at the fund / sub fund and not at the fund manager level.
- The reporting should refer to the counterparty identification of the fund / sub fund and not to the counterparty identification of the fund manager or the management company.

Status of the counterparties covered by AIFMD

The status and the definition of counterparty of alternative funds in the framework of EMIR can be summarised as follows (*):

Counterparty	Manager	Counterparty's Status		Comments
		Financial counterparty	Non-Financial Counterparty	
AIF	EU authorised or registered	X		
	non-EU authorised	X		Subject to extension of the passport to the non-EU country as from 2015
EU	non-EU not authorised/registered		X	Considered as non-financial counterparty because AIF is marketed

				in the EU (without a passport) but not managed by an authorised or registered AIFM
non-EU	EU authorised		X	
	EU registered		X	
	non-EU authorised		X	Subject to extension of the passport to the non-EU country as from 2015
	non-EU not authorised/registered		X	AIF should be classified as third-country entities. EMIR rules apply unless AIF countries of incorporation is deemed equivalent.
Exempted AIF				
EU (closed-end type that do not make investment and has closed the subscription period before the entry into force of the AIFMD)	EU that manage only those type of AIF			X
	EU authorised or registered that manage also other type of AIF		X	
non-EU (closed-end type that do not make investment and has closed the subscription period before the entry into force of the AIFMD)	EU that manage only those type of AIF		X	AIF should be classified as third-country entities. EMIR rules apply unless AIF countries of incorporation is deemed equivalent.
Exempted entities referred in AIFMD				
Securitisation special purpose entities			X	AIFMD does not apply to those entities
SPVs hold at 100% AIFs			X	Provided SPV does not meet the definition of the Article 2 (8) of EMIR

(*) The chart provides key high level status and definition that need to be reviewed and assessed on a case by case basis.

New Reporting Requirement as from 11 August 2014

The trade reporting under EMIR has started on 12 February 2014 for all OTC asset classes and exchange traded derivatives, new requirements will come as from 11 August 2014. These new requirements are summarised as follows:

- Trade reporting under EMIR **started on 12 February 2014** for all OTC asset classes and exchange traded derivatives.
- This reporting start date is extended by 180 days for the reporting of information relating to exposures, as referred to in Article 3 of Regulation (EU) 148/2013. This means that the **reporting start date for valuations and collateral will be 11 August 2014**.
- Trade valuations (i.e. from fields 17 to 26 of the Counterparty Data of Regulation (EU) 148/2013) must be reported on a **daily basis as at the end of each day**.
- Under EMIR, the reporting **obligation on valuation fields lies with all financial counterparties and non-financial counterparties who exceed their clearing threshold** as referred to in Article 10(3).

- Non-financial counterparties not referred to in Article 10(3) do not have an obligation to report trade valuations or collateral.
- Derivative contracts still outstanding on 11 August 2014 must include information pertaining to collateral and valuation as from that date. Collateral and valuation information prior to that date need not be included.

Summer is nearly there – Be prepared

These new reporting requirements will impact the UCITS and alternative investment funds as defined and classified above. Previous reporting deadline of 12 February 2014 has demonstrated the complexity of the process and the needs of a good preparation and communication with all stakeholders involved in the derivatives transaction and reporting to the Trade Repository.

We trust this information is of assistance and remain at your disposal for any further questions. Deloitte experts in regulatory and reporting matters offer solutions ranging from the fully fledged outsource production to ad hoc assistance on specific areas such as impact assessment for your organisation, definition of tailored solution for efficient reporting production, assistance in set- up or “Go Live” phases.

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