

Regulatory News Alert

EMIR II – What does the future look like?

5 May 2017

Proposal of the European Commission for a Regulation amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivatives contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (EMIR).

Overview

Following the adoption by the Commission of a [Report on the review of EMIR](#) on November 2016, the Commission released on the 3rd of May its proposed draft update of the EMIR regulation (EMIR II).

The Commission, intends to improve the transparency of Over-the-Counter (OTC) derivatives positions and exposures as well as simplify and better balanced the clearing and reporting obligations for market participants.

Among the main updates of the proposed new regulations, we have the following aspects :

Definitions

Alternative Investment Funds (AIF) currently falling under national regimes and Special Purposes Vehicles (SPVs) in the EU will be considered as Financial Counterparties under EMIR.

In addition, UCIT management companies and AIF managers become responsible and will be liable for ensuring EMIR reporting is done for the funds they manage.

Regarding clearing obligation the most notable changes are the following:

- The calculation of the clearing thresholds for Non-Financial Counterparties (NFCs) is modified. The threshold will be based on the aggregate month-end average positions for the months March, April both for FCs and Non-Financial Counterparties (NFCs) ;
- For the clearing obligation, the new text introduces the concept of Small Financial Counterparties (SFC's), with the same thresholds as NFC regarding the clearing threshold ;
- For NFCs the clearing obligation will only concern the classes of derivatives which breach the clearing threshold ;
- The front loading obligation for new OTC contracts onto a clearing platform is removed, clearing will start at the live date of the first clearing ; and
- The pension schemes exemption from the clearing obligation is further extended by 3 years.

The commission also clarifies the status of assets held at clearing member level. Whether they are held in omnibus or segregated form, they must be held exclusively on behalf of the clients and shall not be part of the clearing member's pool of assets following its default.

The same rules apply at indirect clearing members' level.

Reporting Obligations

Several amendments are introduced to the EMIR reporting obligation:

- It will no longer be required to report the transactions that were not outstanding prior to 12 February 2014 (so called back loading) ;
- Intra-group transactions where at least one of the counterparties is a NFC will be exempted from the reporting obligation ;
- The Central Counterparty (CCP) becomes responsible and liable for reporting on behalf of both the trading parties for exchange-traded transactions (ETD) ; and
- The FCs are responsible and liable for reporting the transactions they perform with NFC not subject to the clearing obligation (NFC-).

The EMIR II proposal also contains dispositions on **the data reported to Trade Repositories (TR)**.

- The new EMIR requirements will force TR to have an appropriate procedure to verify the completeness and the accuracy of the data reported to them as well as a proper reconciliation of data process ; and
- TR will have to ensure the safe transfer of data to other TR at the customer demand.

Finally, it is also important to note that an article is introduced mandating another review by ESMA, within 3 years.

Next steps

The mandatory draft update of EMIR regulation is currently being reviewed by the European Parliament.

After validation by the parliament, we expect a quick publication of the text to ensure an effective application of the new rules.

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

Your contacts

Laurent Collet

Partner - Advisory & Consulting

Tel: +352 45145 2112

lacollet@deloitte.lu

Kevin Demeyer

Senior Manager - Advisory & Consulting

Tel: +352 45145 3808

kdemeyer@deloitte.lu

Deloitte Luxembourg

560, rue de Neudorf

L-2220 Luxembourg

Tel: +352 451 451

Fax: +352 451 452 401

www.deloitte.lu

Deloitte is a multidisciplinary service organisation which is subject to certain regulatory and professional restrictions on the types of services we can provide to our clients, particularly where an audit relationship exists, as independence issues and other conflicts of interest may arise. Any services we commit to deliver to you will comply fully with applicable restrictions.

Due to the constant changes and amendments to Luxembourg legislation, Deloitte cannot assume any liability for the content of this leaflet. It shall only serve as general information and shall not replace the need to consult your Deloitte advisor.

About Deloitte Touche Tohmatsu Limited:

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/lu/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Deloitte provides audit, tax, consulting and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and deep local expertise to help clients succeed wherever they operate. Deloitte has in the region of 200,000 professionals, all committed to becoming the standard of excellence.

© 2017 Deloitte General Services

Designed and produced by MarCom at Deloitte Luxembourg