

European Market Infrastructure Regulation (EMIR)

Name	Number	Web address
EMIR: Regulation on central counterparties and trade repositories		http://ec.europa.eu/internal_market/financial-markets/derivatives/index_en.htm

Status

On 15 September 2010, the European Commission published its final proposal for a Regulation of the European Parliament and of the Council (also widely known as European Market Infrastructure Regulation – EMIR), which sets out to increase stability within OTC derivative markets. The Regulation introduces; a reporting obligation for OTC derivatives; a clearing obligation for eligible OTC derivatives; measures to reduce counterparty credit risk and operational risk for bilaterally cleared OTC derivatives; common rules for central counterparties (CCPs) and for trade repositories; and rules on the establishment of interoperability between CCPs. Negotiations on the proposal (between the EU Council and Parliament) are now at the trilogue stage.

The regulation follows, and facilitates within the EU, the commitment made by G-20 leaders in Pittsburgh, September 2009, that:

“All standardised OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest. OTC derivative contracts should be reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital requirements. We ask the FSB and its relevant members to assess regularly implementation and whether it is sufficient to improve transparency in the derivatives markets, mitigate systemic risk, and protect against market abuse.”

On a global level, work is being undertaken by CPSS and IOSCO (the Committee on Payment and Settlement Systems and International Organisation for Securities Commissions) to update and strengthen the existing standards for CCPs, CSDs, payments systems, collectively referred to as Financial Market Infrastructures (“FMI’s”) together with the treatment of trade repositories. To date the work of the group has been progressing well, where the revised Principles were published last year for public consultation and it is anticipated that they will be finalized later this year.

CPSS-IOSCO and the Basel Committee of Banking Supervisors (BCBS) have also been undertaking joint work to develop an appropriate methodology for developing a capital treatment for banks’ exposures to CCPs.

UK Implementation Details

The EU legislation takes the form of a regulation and therefore will not require implementation in UK law. It is envisaged that the regulation will come into force during 2012 and existing CCPs will have 2 years from that date to apply for recognition. TRs have to apply for recognition during 2012.

FSA aims and areas of interest

There are still a number of outstanding concerns with the proposal. The FSA, alongside colleagues from HMT and the Bank of England, will continue to engage with the EU Institutions, Danish Presidency, ESMA and Member States as the negotiations move forward.

Background

Problems in the OTC derivatives market were highlighted during the financial crisis by the near-collapse of Bear Stearns in March 2008, the default of Lehman Brothers on 15 September 2008 and the bail-out of AIG. In response there has been an international effort to increase stability in the financial market. G-20 Leaders agreed in September 2009 that:

All standardised OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest. OTC derivative contracts should be reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital requirements.

The Commission adopted two Communications, firstly in July 2009 and secondly in June 2010, which assessed

the derivatives market, looked at how identified risks could be reduced and proposed future policy actions. The final proposal, published in September, was reviewed by the European Council and Parliament who are currently negotiating in trilogues. After agreement the Regulation will come into force across Europe.

Purpose

The Regulation introduces a reporting obligation for OTC derivatives, a clearing obligation for eligible OTC derivatives, measures to reduce counterparty credit risk and operational risk for bilaterally cleared OTC derivatives, common rules for central counterparties (CCPs) and for trade repositories, and rules on the establishment of interoperability between CCPs.

Key provisions

High-level outline of the proposals:

Mandatory clearing - Title II Clearing, reporting and risk mitigation of OTC Derivatives

CCPs

- Authorisation and supervision - Title III Authorisation and supervision of CCPs, Chapter 1 Conditions and Procedures for the Authorisation of a CCP

Title IV Requirements for CCPs - Chapter 1 Organisational Requirements, Chapter 2 Conduct of Business Rules, Chapter 3 Prudential Requirements

- Segregation – Title IV Requirements for CCPs, Chapter 2 Conduct of Business Rules: Article 37 Segregation and portability

- Financial resources - Title IV Requirements for CCPs, Chapter 3 Prudential Requirements: Article 41 Other financial resources

- Interoperability - Title V Interoperability arrangements

Trade Repositories

Title VI Registration and surveillance of trade repositories - Chapter 1 Conditions and Procedures for Registration of a Trade Repository, Chapter 2 Relations with third countries

Technical Standards

- Technical standards in relation to the implementation of mandatory clearing, risk management and conduct of business by CCPs and Trade Repositories will be developed by ESMA.

Consultation

Consulting Institution	Consulting Details	Deadline

EU institution's meetings

EU institution	Details	Date
ESMA – PTSC	Discussion on technical standards	3rd February 2012
EMIR - ECOFIN	Discussion of proposed text	24th January 2012
CPSS-IOSCO Editorial Team	Discussion of draft Principles	24th January 2012

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Internal contacts		
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