

EMIR is here...

MEMBER'S UPDATE

As keen readers of IACT briefings will be aware, the European Market Infrastructure Regulation ("**EMIR**") implements new rules around clearing, reporting and risk mitigation techniques applicable to over the counter ("**OTC**") derivative contracts. The basic framework of EMIR came into force on 16 August 2012 but much of the detail was to be fleshed out in separate technical standards. These initial technical standards have now been published in final form. As a consequence, certain EMIR obligations will apply to non-financial counterparties as early as 15 March 2013.

This note highlights the key implementation dates relevant to corporate treasurers, with an emphasis on the obligations which apply to non-financial counterparties which do not exceed the clearing thresholds indicated below.



Irish Association of
Corporate Treasurers

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Important dates for non-financial counterparties

15 March 2013	Non-financial counterparties must notify authorities if they exceed a clearing threshold
15 March 2013	Rules around having procedures for timely confirmation of trades come into force
1 July 2013 (at earliest)*	Counterparties to interest rate swaps and credit default swaps must report trades to a trade repository <i>*If no trade repository is authorised by 1 April 2013, the reporting obligation will apply 90 days after a trade repository is authorised</i>
1 January 2014 (at earliest)*	Counterparties to FX, equity, commodity and all other derivatives must report trades to a trade repository <i>*If no trade repository is authorised by 1 October 2013, the reporting obligation will apply 90 days after a trade repository is authorised</i>
15 September 2013	Portfolio reconciliation, portfolio compression and dispute resolution procedures requirements apply

Clearing thresholds for non-financial counterparties

With effect from 15 March 2013, EMIR requires non-financial counterparties to immediately notify ESMA and their local competent authority if they are in breach of one of the thresholds specified for a class of OTC derivatives:

Clearing thresholds

Class of Derivative	Threshold
OTC credit derivative contracts	EUR 1 billion in gross notional value
OTC equity derivative contracts	EUR 1 billion in gross notional value
OTC interest rate derivative contracts	EUR 3 billion in gross notional value
OTC foreign exchange derivative contracts	EUR 3 billion in gross notional value
Commodity derivative contracts and other OTC derivative contracts not provided for above	EUR 3 billion in gross notional value

The thresholds are calculated including the gross notional value of all OTC derivatives entered into by non-financial counterparties within the same group.

Importantly for non-financial counterparties, the value of hedging transactions may be excluded in calculating a threshold. As outlined in further detail in the relevant technical standards, OTC derivatives which are “objectively measurable as reducing risks directly relating to the commercial or treasury financing activity of the non-financial counterparty or of [its] group” are considered to be hedging transactions.

Timely confirmation of transactions

With effect from 15 March 2013, all counterparties to OTC derivative contracts which are not cleared must have procedures and arrangements in place to ensure that they are confirmed “as soon as possible” and, in the case of non-financial counterparties below the clearing thresholds, by the relevant deadline indicated in the table below. Where available, trades should be confirmed by electronic means.

Confirmation deadlines for non-financial counterparties below clearing threshold

Class of OTC Derivative	Deadline for contracts entered into from 15 March 2013 to and including 31 August 2013	Deadline for contracts entered into after 31 August 2013 to and including 31 August 2014	Deadline for contracts entered into after 31 August 2014
Interest rate swaps and credit derivatives contracts	5 business days after execution of trade	3 business days after execution of trade	2 business days after execution of trade
Equity, FX, commodity and all other types of OTC derivative contracts	7 business days after execution of trade	4 business days after execution of trade	2 business days after execution of trade

Reporting of derivative trades

The reporting obligation applies to any derivative contract which is outstanding on 16 August 2012, or which is entered into on or after 16 August 2012.

The start date for reporting of interest rate and credit derivative contracts is by 1 July 2013 (or, if later, by 90 days after a trade repository is authorised for a relevant class of contract). The start date for reporting of all other derivative contracts is by 1 January 2014 (or, if later, by 90 days after a trade repository is authorised for a relevant class of contract).

All counterparties, including non-financial counterparties below the thresholds, will be required to report their derivative contracts to a trade depository using a prescribed form.

Counterparties may delegate the reporting obligation to a third party, but they remain responsible for ensuring the report is made and is accurate.

With effect from the reporting start date for that class of derivative, any new contract (including an amendment to an existing contract) must be reported no later than the working day following its conclusion. Different reporting deadlines apply to a contract outstanding before the reporting start date, depending on when the contract was entered into and whether it is still outstanding on the relevant start date, as indicated in the table below:

Timing for reporting of trades

	Start Date for reporting for that class of derivatives	Contracts which must be reported “on the next working day”	Contracts which must be reported within 90 days of start date	Contracts which must be reported within 3 years of start date
Interest rate swaps and credit derivatives contracts	By 1 July 2013 (or, if later, 90 days after a trade repository is authorised)	All contracts concluded on or after the relevant start date	Those contracts outstanding on 16 August 2012 and which are still outstanding on the start date	Those contracts outstanding on 16 August 2012 or entered into after 16 August 2012 and which are not outstanding on or after the start date
Equity, FX, commodity and all other types of OTC derivative contracts	By 1 January 2014 (or, if later, 90 days after a trade repository is authorised)	All contracts concluded on or after the relevant start date	Those contracts outstanding on 16 August 2012 and which are still outstanding on the start date	Those contracts outstanding on 16 August 2012 or entered into after 16 August 2012 and which are not outstanding on or after the start date

Portfolio reconciliation, portfolio compression and dispute resolution procedures

The portfolio reconciliation, portfolio compression and dispute resolution procedures risk mitigation techniques will apply with effect from 15 September 2013

A non-financial counterparty will be required to agree with its counterparty the means by which they shall reconcile their portfolio of derivative contracts prior to entering into an OTC derivative contract. In the case of a non-financial counterparty which has 100 or more contracts outstanding between it and a counterparty, the portfolio reconciliation must be performed once per quarter and, if less than 100 contracts are outstanding between it and a counterparty, the reconciliation must be performed once a year.

The portfolio compression obligation will apply to a non-financial counterparty that has 500 or more OTC derivative contracts outstanding with a counterparty which are not cleared, and will require a relevant counterparty to have procedures in place to, at least twice a year, analyse the possibility of conducting a portfolio compression exercise to reduce counterparty credit risk.

The dispute resolution obligation will require counterparties to pre-agree detailed procedures and processes in relation to identification and monitoring of disputes relating to OTC derivative contracts entered into after 15 September 2013.

For further information please contact:

Adrian Farrell

Partner, Banking & Financial Services

TEL: +353-1-607 1312

EMAIL: adrian.farrell@mccannfitzgerald.ie

Judith Lawless

Partner, Banking & Financial Services

TEL: +353-1-607 1256

EMAIL: judith.lawless@mccannfitzgerald.ie

www.mccannfitzgerald.ie