

PRESS RELEASE 14/11

REMINDER ON EMIR¹ – REPORTING OBLIGATION STARTS TODAY, 12 FEBRUARY 2014

The CSSF wishes to remind all concerned counterparties that as from 12 February 2014, they need to report details of any derivative contract (OTC or exchange traded) they have concluded, or which they have modified or terminated, to a registered or recognised Trade Repository (TR).

Who is concerned by the reporting obligation?

This obligation applies to financial and non-financial counterparties.

Financial counterparties² are banks, investment firms, collective investment undertakings with their management companies, pension funds and insurance undertakings.

Non-financial counterparties³ are very broadly defined as all undertakings other than CCPs and financial counterparties. Considering this definition of non-financial counterparties, securitisation undertakings are also covered.

To facilitate the reporting process, counterparties will however be permitted to delegate trade reporting requirements to third parties or their respective counterparties.

Who are the available Trade Repositories (TRs)?

Currently, there are six TRs registered with ESMA:

- Regis-TR S.A., based in Luxembourg
- CME Trade Repository Ltd. (CME TR), based in the United Kingdom
- DTCC Derivatives Repository Ltd. (DDRL), based in the United Kingdom
- ICE Trade Vault Europe Ltd. (ICE TVEL), based in the United Kingdom
- Krajowy Depozyt Papierów Wartościowych S.A. (KDPW), based in Poland
- UnaVista Ltd, based in the United Kingdom

Counterparties are free to choose whichever TR they want and are permitted to report different derivative contract (OTC or exchange traded) trades to different TRs.

¹ [Regulation \(EU\) No 648/2012](#) of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (“EMIR”)

² Article 2(8) of EMIR defines ‘financial counterparty’ as an *investment firm* authorised in accordance with Directive 2004/39/EC, a *credit institution* authorised in accordance with Directive 2006/48/EC, an *insurance undertaking* authorised in accordance with Directive 73/239/EEC, an *assurance undertaking* authorised in accordance with Directive 2002/83/EC, a *reinsurance undertaking* authorised in accordance with Directive 2005/68/EC, a *UCITS* and, where relevant, its *management company*, authorised in accordance with Directive 2009/65/EC, an *institution for occupational retirement provision* within the meaning of Article 6(a) of Directive 2003/41/EC and an *alternative investment fund managed by AIFMs* authorised or registered in accordance with Directive 2011/61/EU.

³ ‘Non-financial counterparty’ is defined in Article 2(9) of EMIR as an undertaking established in the Union other than a CCP and a financial counterparty.

What exactly should be reported?

The contracts as well as the details to be reported are set out in the Commission Delegated Regulation No 148/2013 with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories and the Commission Implementing Regulation No 1247/2012 with regard to the format and frequency of trade reports to trade repositories.

Those derivative contracts which were already outstanding on 16 August 2012 and are still outstanding on 12 February 2014 shall be reported to a TR within 90 days of the reporting start date, i.e. by 13 May 2014.

Those derivative contracts which are no longer outstanding on 12 February 2014, but which were either outstanding on 16 August 2012 or were entered into after 16 August 2012, shall be reported to a TR within 3 years of the reporting start date, i.e. by 12 February 2017.

The reporting start date is extended by 180 days, i.e. until 13 August 2014, for the reporting of exposures referred to in Article 3 of Commission Delegated Regulation No 148/2013 (both information on collateral and mark to market or mark to model valuations of the contracts)⁴.

Reporting of FX derivatives

Until clarification is provided on the definition of currency derivatives in relation to the frontier between spot and forward as well as to their conclusion for commercial purposes, and on the definition of commodity forwards that must be physically settled, the CSSF will not ensure the implementation of the relevant provisions of EMIR for forex derivatives up to 7 days, forex derivatives for commercial purposes, and physically settled commodity forwards, since those contracts are not clearly identified as derivatives contracts across the European Union.

ESMA and the European Commission may further communicate on this topic.

Use of the Legal Entity Identifiers for the purpose of the reporting obligation

Regarding the code to be used to identify counterparties, (LEI, interim LEI or BIC), the answer to TR Question 10 of the updated ESMA Q&A indicates that "A pre-LEI issued by any of the endorsed pre-LOUs (Local Operating Units) of the Global Legal Entity Identifier System should be used. The list of endorsed pre-LOUs is available at:

http://www.lei.org/publications/gls/lou_20131003_2.pdf."

In Luxembourg, the Banque Centrale du Luxembourg is sponsoring the establishment of a local pre-LOU, to be operated by LUXCSD S.A.. This pre-LOU is expected to be operational in a few months. There are currently more than 10 LOUs, such as DTCC (Global Markets Entity Identifier utility) that are recognised to grant pre-LEIs for the purpose of compliance with EMIR.

The CSSF draws the attention of financial and non-financial counterparties to the fact that reporting without a LEI is not in compliance with EMIR. However, the CSSF is aware of the difficulties many firms are facing in getting a LEI on time. Counterparties subject to the reporting obligation should rather report without a LEI than not report at all (for instance using the BIC in the meantime). The CSSF expects most trade repositories to be able to accept reports without LEIs. Before considering possible supervisory measures, the CSSF will assess whether the absence of LEIs is justified and is of a purely temporary nature.

⁴ Article 5.5 of the Commission Implementing Regulation (EU) No 1247/2012 and TR Answer 3b of the ESMA Q&A of 20 December 2013. http://www.esma.europa.eu/system/files/2013-1959_qa_on_emir_implementation.pdf.

Other EMIR obligations

For a summary of EMIR and the EMIR obligations, please refer to Circular CSSF 13/557 on Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

Circular CSSF 13/557, further information, as well as links to the relevant EU legislation (which includes the EMIR regulation and EMIR-related delegated regulations referred to in the present press release) are available on the CSSF's website under "EMIR".

Please refer also to the CSSF press release 13/26 "Reminder on EMIR" published on the CSSF's website on 24 June 2013.

In particular and further to the reporting requirements to a trade repository, the following requirements apply.

Financial counterparties are subject to the clearing obligation and the exchange of collateral imposed by EMIR. They also have to comply with risk management requirements for OTC derivatives contracts they enter into and which are not cleared by a CCP.

Non-financial counterparties have to apply the operational risk management requirements.

Those non-financial counterparties which are above the clearing threshold are, additionally, subject to the clearing obligation and the exchange of collateral, one of the risk mitigation techniques for outstanding OTC derivatives contracts.

Luxembourg, 12 February 2014

