

OTC derivatives in the EU and the US: latest regulatory developments

Foreign Exchange Contact Group

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Highlights of the last months

- **EMIR:**
 - 9 technical standards adopted by the Commission on 19 December 2012, incl. effective date for reporting requirements and details of the data to be reported
- **MiFIR:**
 - amendments adopted by EP on 26 October 2012
 - Council: Presidency compromise of 3 December 2012
- **DFA:**
 - Treasury determination for FX swaps and forwards
 - first mandatory clearing determination became final
 - Exemptive order on cross-border effects of the DFA
 - no-action relief letters

EMIR: 9 delegated Regulations adopted

- **19 December 2012: technical standards adopted**
- **Commission endorsed the proposals from ESMA without modification (except one, not adopted)**
- **6 regulatory technical standards**
 - Capital requirements for CCPs
 - Requirements for CCPs
 - Clearing obligations/indirect clearing arrangements
 - Data reporting
 - TRs' registration
 - Publication of data by TRs
- **3 implementing technical standards**
(all 3 published in the OJ on 21.12.2012)

EMIR: effective date for reporting

- **Credit derivatives and interest rate derivatives**
 - By **1 July 2013** if TR registered before **1 April 2013**
 - **90 days** after registration of TR
 - By **1 July 2015** at the latest
- **Other derivative contracts**
 - By **1 January 2014** if TR registered before **1 October 2013**
 - **90 days** after registration of TR
 - By **1 July 2015** at the latest
- Trades entered into on or after **16 August 2012**, or that were outstanding on that date, must also be reported.

EMIR: details of the data to be reported

- **Information** to be provided to TR: **counterparty data** and **common (product) data** (format set out in Annex to Commission Implementing Regulation (EU) No 1247/2012)
- **Frequency** of reporting: mark to market or mark to model valuations of contracts reported to a TR shall be done **on a daily basis**.
Other reporting elements (e.g. modification or termination of a contract): as they occur

EMIR – equivalence assessments

- **Equivalence** of a **third country's CCPs and TRs** with EMIR requirements (Art. 25(6) and 75(1))
- **Equivalence** of a **third country's legal and supervisory arrangements** with EMIR clearing and reporting requirements (Art. 13(2))
- Determined by **Commission** in an **implementing act** following ESMA's technical advice
- **First countries to be assessed: USA and Japan** (CCPs, TRs, transaction requirements) – **scheduled for April 2013**
- See also **Joint press statement of G20** regulators on ways to minimise cross-border application of rules (4 December 2012)

MiFIR: state-of-play

- **European Parliament:** amendments to MiFIR adopted on 26 October 2012
- **Council:**
 - last Presidency compromise on MiFID II dated 3 December 2012
 - Progress report published on 13 December 2012
 - no general approach yet
- **Trilogue** between EP, Council and Commission scheduled to start in **March 2013**

DFA: Final Treasury's determination on FX

- **16 November 2012:** U.S. Treasury issued its final determination that **FX swaps and FX forwards should not be regulated as swaps under the CEA** (for most purposes, incl. registration, mandatory clearing and trade execution, margin, real-time reporting)
- FX swaps and FX forwards **narrowly defined** in the CEA:
 - **FX forward** means a transaction that **solely** involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed upon on the inception of the contract covering the exchange.
 - **FX swap** means a transaction that **solely** involves-
 - (A) an exchange of 2 different currencies on a specific date at a fixed rate that is agreed upon on the inception of the contract covering the exchange; and
 - (B) a reverse exchange of the 2 currencies described in subparagraph (A) at a later date and at a fixed rate that is agreed upon on the inception of the contract covering the exchange.

DFA: first final clearing determination

- 28 November 2012: CFTC issued **first clearing determination for certain CDS and IRS (6 classes)**
- As of that date, **four DCOs** clear CDS (but iTraxx) and IRS: **CME, ICE Clear Credit, ICE Clear Europe and LCH.Clearnet Ltd**
- **Effective dates** for mandatory clearing: **11 March 2013** for cat. 1 entities; **10 June 2013** for cat. 2 entities and **9 September 2013** for cat. 3 entities.
- Clearing requirement applies to **swaps entered into on or after the effective date** of mandatory clearing.

DFA: CFTC's Final Cross-Border Swap Exemptive Order

- **21 December 2012: CFTC approved exemptive order providing time-limited relief from certain cross-border applications of the DFA**
 - a **non-U.S. person** that registers with the CFTC as SD or MSP may delay compliance with certain **entity-level requirements** (i.e. all but SDR reporting and LTR requirements for swaps with U.S. counterparties);
 - non-U.S. SDs and MSPs and foreign branches of U.S. SDs and MSPs may delay compliance with certain **transaction-level requirements** (for transactions with non-U.S. counterparties, for which compliance with requirements of the local jurisdiction is sufficient);
 - non-U.S. person: level of swap dealing activity where counterparty is a non-U.S. person or a foreign branch of a U.S. person not to be taken into account for the purpose of registration as SD or MSP.
- Exemptive order **expires on 12 July 2013**

DFA: several no-action relief letters

- **2012: 65 no-action letters** issued by CFTC staff (24 in December 2012) to delay compliance with certain rules
 - **Letter No. 12-46:** No-Action Relief providing reporting parties under Parts 20, 45 and 46 of the CFTC's regulations with time-limited relief from requirements to report certain identifying information regarding their non-reporting counterparties. Expires on 30 June 2013.
 - **Letter No. 12-55:** No-Action Relief for SDs and MSPs from compliance with reporting obligations: time-limited relief from the obligation to report valuation data for cleared swaps. Expires on 30 June 2013.
 - **Letter No. 12-59:** No-Action Relief for SDs and MSPs from the reporting provisions of Part 45 for CDS clearing-related swaps. Expires on 30 June 2013.
 - **Letter No. 12-71:** No-Action Relief for certain U.S. banks wholly owned by non-U.S. SDs, for purposes of making calculations under the Swap Dealer definition.