

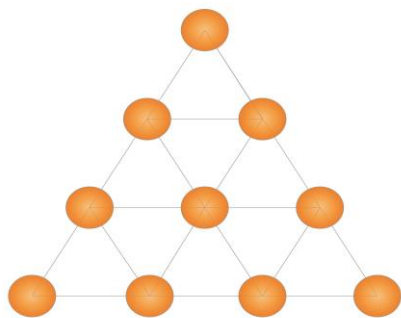
TTRACTYS PARTNERS

BRIEFING NOTE

EMIR – THE CLOCK IS TICKING

BRIEFING 05, JANUARY 2014

The information contained in this briefing note is provided for general guidance purposes only. It is not, nor should it be considered to be, legal or investment advice. While all reasonable steps have been taken to ensure the accuracy of the information contained in this briefing, Ttractys Partners LLP makes no warranty as to the accuracy or completeness of the information contained herein. Recipients act on the contents of this information at their own risk. Ttractys Partners LLP is registered in England with registration OC385519 and VAT registration number 172 1943 11, at 123 Pall Mall, London, SW1Y 5EA.



Ttractys Partners LLP

INTRODUCTION

As of 2 February 2014, there will be a mere 10 days until the first provisions of the European Market Infrastructure Regulation (**EMIR**) come into force concerning trade reporting. This period also encompasses school half term in the UK, potentially reducing availability of key staff during the transition. This note examines what the immediate concerns of firms should be ahead of the implementation of the reporting obligation.

The implementation of EMIR presents a number of particular challenges to firms individually and the market as a whole as it is anticipated that there will be one hundred thousand legal entities reporting a total of perhaps five million trades a day, with the majority of firms not yet registered with trade repositories.

Aside from the legal issues and the need to register with trade repositories for reporting, there are several potentially complex practical logistical issues facing firms that will require time, resource and co-ordination to resolve.

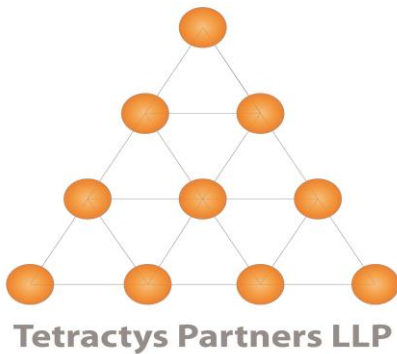
More worryingly, there is a real concern that liquidity in certain sectors might be reduced, as participants who realise they can't comply with some of the requirements and decide to cease participating in those markets until they are compliant.

ESMA has indicated it does not expect reporting of Exchange Traded Derivatives (**ETDs**) to function well in the early stages. The FCA has also indicated that there might be some regulatory forbearance in the early days due to the late issuance of formal guidance, but this should not be used as an excuse by firms not to face the implementation issues presented by EMIR.

EMIR REQUIREMENTS

EMIR applies to any EU regulated entity that trades in any form of derivative, Over the Counter or Exchange Traded. While the first stage is intended to ensure that all future and relevant historic trades are reported accurately to the competent authorities, future stages are designed to ensure that all transactions are cleared through central counterparties so that there is not only price transparency, but also a degree of certainty around the conclusion of the trade.

KEY MESSAGES AND NEXT STEPS



Contact Us

Tetractys Partners LLP
123 Pall Mall
London
SW1Y 5EA
+44 (0)20 7101 0664
+44 (0)7795 830 636

Firms that have not assessed the extent of EMIR's impact upon them, or addressed the requirements of EMIR that impact them in any substantive way, should not delay in carrying out these assessments and implementing any required changes. EMIR has been "on the radar" for some time but regulatory uncertainty and delays in issuing guidance mean that many firms have put off decisions on how they will comply until these later stages of implementation. On a practical level this means that there are a lot of firms trying to compress a lot of work into a short space of time with the consequent potential for error that this creates.

In particular firms should focus on the following key issues:

- Have you identified the trading activities and entities in your Group that will be affected by EMIR and the reporting requirement? Have you identified whether you will be transacting with counterparties who will be required to report, even if you are not subject to the reporting requirement?
- Have you identified the most appropriate trade repository(ies) with whom your firm should register? Have you conducted appropriate due diligence and is the application process underway with your Legal and Compliance teams involved?
- Liaison with counterparties regarding LEIs should commence so that reporting is as error free as possible in the early stages;
- Managers who manage a proportion of money for a pension fund alongside other managers need to understand how LEIs and associated protocols are being managed between the various managers of the pension

fund;

- Ensuring that legal agreements have been thoroughly reviewed and that any ISDA changes or supplements have been agreed and put in place;
- Understand who will be responsible for the reporting of the trades. While many managers might rely on brokers to do this in their behalf, there is no obligation on the brokers and firms should ensure they have checked what is happening with all their brokers. Firms that conduct intra-group trades which do not involve a broker will also need to identify how they are going to ensure that appropriate reports are made for these transactions, which prime brokers might not be willing to report, having not executed the trades. It might mean firms need to implement their own reporting mechanisms and controls;
- Think about the steps being taken to prevent double reporting of the same transaction. While both sides of the transaction must report, firms are obliged to make sure that they do not "double report" (e.g. by reporting the transaction themselves **and** via their broker);
- Firms need to ensure that, where they rely on another to make the reports, they have the ability to monitor the accuracy of the reports being made on their behalf. This would generally mean ensuring that the trade repository grants them access to read the records of transactions related to them. We understand that some providers are making this available free or for a nominal charge. Firms should also think about who is going to be responsible for the oversight of this outsourced function and how this oversight will be demonstrated;
- Ensure you understand the population of current and historic transactions that will need to be uploaded into the system and you are in a position to upload the relevant information before the applicable deadlines;
- Where both the reporting requirements of Dodd-Frank and EMIR apply, have you worked out how these will interact and any workarounds necessary? Remember, the Dodd-Frank and EMIR requirements are not considered as equivalent regulations (EMIR requires all derivatives to be reported by both counterparties, while Dodd-Frank only applies to OTC SWAPS); and

- Above all – make sure your staff responsible for managing this process day to day get some proper training and proper documented processes to support them.

When selecting a trade repository, firms will need to demonstrate they have considered the following:

- Security (especially firewalls, resilience etc)
- Experience in reporting
- Technology – how fast do they react to changes or problems?
- Ease of use
- Fees
- Customer service (most of the repositories re less than a year old) – what are their arrangements for handling glitches and issues?
- Data – what do they do with it? While EMIR places a number of restrictions around the use of data by the trade repository, some parts of the data may be processed and sold externally and this might be a concern to a number of firms or their clients.

Hedge Fund Managers should take special care to understand how EMIR will apply to their particular fund structures as obligations will vary depending on the domicile of the Fund or the Manager. Specific advice should be sought.

HOW TTRACTYS CAN HELP YOU

Ttractys can conduct an independent review of readiness for EMIR and advise on the steps that need to be taken. For a no-obligation discussion, please call Gary Pitts on 07795 830 636 or email gary.pitts@ttractyspartners.com.