



Regulatory Roundup

29 August 2015

Issue 67



In Brief:

EMIR: Mandatory Clearing: ESMA determines which OTC derivatives should be subject to clearing obligation

EMIR and Frontloading: ESMA Review

AIFMD: Annex IV Reporting Issues: Problems meeting ANNEX IV reporting requirements sees FCA issue further set of Q&As

Improving Conduct: Tracey McDermott addresses Wholesale Market

Financial Advice Market Review: FCA and HM Treasury launch FAMR

In the Complyport Regulatory Roundup:

| | |
|---|---|
| <i>EMIR: Mandatory Clearing</i> | 2 |
| <i>EMIR and Frontloading</i> | 5 |
| <i>AIFMD: Annex IV Reporting Issues</i> | 6 |
| <i>Improving Conduct</i> | 7 |
| <i>Financial Advice Market Review</i> | 8 |

Follow us on Twitter



Join us on LinkedIn



If any of the topics discussed above raise questions or a need for guidance or support, please feel free to contact [Peter Carlisle](#).

EMIR: Mandatory Clearing



Useful links:

[Regulatory Roundup 57](#)

[Draft Delegated Regulation](#)

[Annex 1](#)

[ESMA Register of authorised CCPs](#)

[EMIR \(648/2012\)](#)

Article 4 of EMIR places a clearing obligation on all OTC derivative contracts which fulfil the conditions therein – but only once ESMA has determined which classes of OTC derivatives should be subject to the clearing obligation (Article 5(2)); see Regulatory Roundup 57 for further details,

On 6 August the European Commission adopted new rules, in the form of a Delegated Regulation, concerning the **mandatory clearing** of certain OTC derivative contracts through central counterparties (CCPs).

The rules capture the following contracts denominated in EUR, GBP, JPY and USD:

- Fixed-to-float interest rate swaps, known as ‘plain vanilla’ interest rate derivatives
- Float-to-float swaps, known as ‘basis swaps’
- Forward Rate Agreements
- Overnight Index Swaps

The classes of contracts can be found in **Annex 1** of the draft Delegated Regulation, although note the **exclusions** for contracts concluded with covered bond issuers or with cover pools for covered bonds that meet all of the conditions in Article 1(2).

Counterparties subject to the clearing obligation are divided into **four** categories which are **briefly** (but please see **Article 2** for the precise definitions):

- **Category 1** will include counterparties that are **clearing members** for at least one of the derivatives in Annex 1
- **Category 2** will capture counterparties not falling within the above and that are **financial counterparties** (or **AIFs** that are **non-financial counterparties**) whose aggregate **month-end average** of outstanding gross notional amount of non-centrally cleared derivatives is above €8bn
- **Category 3** will be **financial counterparties** (or **AIFs** that are **non-financial counterparties**) not belonging to Category 1 or Category 2



- **Category 4** will consist of non-financial counterparties that do not belong to any of the above three categories

Note that where the counterparties are **AIFs** or **UCITS** then the €8bn threshold applies individually at fund level. Reference to Article 3(2) should be made where one counterparty is established in a third country.

The Categories determine when the **clearing obligation takes effect** (months in brackets commence from the date of **entry into force** of the Regulation – see below) as follows:

- **Category 1** (6 months)
- **Category 2** (12 months)
- **Category 3** (18 months)
- **Category 4** (3 years)

Where a contract is concluded between two counterparties included in **different categories** then the clearing obligation takes effect from the **later** date.

Although having ascertained (a) which OTC derivatives fall within mandatory clearing and (b) when the clearing obligation takes effect there is a twist in EMIR Article 4(1)(b)(ii) in that certain contracts will have a **frontloading requirement** i.e. such contracts will be **subject to clearing before the date the clearing obligation takes effect**.

Contracts subject to the frontloading requirement will be those concluded between **18 March 2014** (being the date the first CCP was authorised – Nasdaq OMX) and the date on which the clearing obligation actually takes place **unless** they have a remaining maturity **lower than the minimum maturity** set out in **Article 4**. This minimum maturity ranges from 50 years down to 6 months and is dependent upon both the Category of the counterparties and the classes of contract in question. In practical terms, **Category 3** counterparties will **not** be subject to the frontloading requirement (nor, by their omission, will Category 4 counterparties).



EMIR: Mandatory Clearing (continued)



The Delegated Regulation still has to face the EU Parliament and EU Council and as is usual will **enter into force** on the twentieth day following its publication in the Official journal.

This is the first clearing obligation that has been proposed by ESMA and it is expected that it will propose obligations for other types of OTC derivative contracts in the near future.



EMIR and Frontloading



Useful links:

[EMIR Framework Review \(2015/1254\)](#)

Firms that will have to come to grips with the ‘frontloading requirement’ (see previous article) will be interested in the recent ESMA Review of the EMIR Framework (2015/1254). The content is being submitted to the European Commission to feed into the general report on EMIR that it will prepare and submit to the European Parliament and European Council.

Section 4 concerns the **clearing obligation** with a recommendation for greater flexibility such as the need for a mechanism at EU level to suspend (temporarily) the clearing obligation in response to market events such as the failure of a CCP. One other proposal is the possible **removal** of the frontloading requirement – “The EMIR review may consider weighing further the pros and cons of frontloading and decide whether this requirement should be kept at all” (page 12).



AIFMD: Annex IV Reporting Issues



Useful links:

[FCA AIFMD Q&As](#)

Problems encountered by firms in meeting the demanding Annex IV reporting requirements (SUP 16.18) has led the FCA to issue a further set of **Q&As** to assist firms and which:

- Highlight aspects of AIFMD reporting where questions have been **misinterpreted** by some AIFMS;
- Identify where AIFMs have provided **inconsistent responses** to connected questions; and
- Provided further information on the general use and functionality of GABRIEL

Q16 (page 10) may be of particular assistance as it concerns common errors or mistakes identified by the FCA.

HOW CAN WE HELP?

Responding to demand from our clients, Complyport recognises that the complexity of the data that firms will have to report either via GABRIEL or XML can be a challenge and that many firms are unprepared for this task. To complement its financial returns review service, Complyport also offers a standalone AIFMD Annex IV XML Reporting Service on a 'per submission' fee basis that covers:

- Advice on AIFMD Annex IV data sourcing;
- Advice on the reporting frequency;
- Customised Excel templates for data collection;
- Advice on data items and Excel template completion;
- Full data validation against XML rules;
- Help with the production of appropriate XML version return files from Excel data templates;
- Advice and assistance on direct submission to the FCA via GABRIEL or via XML; and
- Instruction and help on final submission procedures.

To find out more please contact us on 020 7399 4980 or email us at info@Complyport.co.uk.





Useful Links:

[Speech](#)

In July Tracey McDermott, director of supervision, at the FCA, delivered a speech at the British Bankers' Association Conference. Aimed at the **wholesale market**, the speech gives clues to the questions all firms should expect to be asked in the context of conduct risk.

- First, how do you identify the conduct risks inherent within your business? As with any risk, you cannot hope to mitigate something you don't know exists.
- Second, who is responsible for managing the conduct of your business? The FCA expects firms to be asking themselves how they are encouraging their employees to be and feel responsible for actually managing the conduct of their business.
- Third, what support mechanisms do you have to enable people to improve the conduct of their business or function?
- The fourth question is about how the board and executive committees gain oversight of the conduct of the organisation. At a basic level, this is about what information the board and executive see, and how they take it into account in their decision-making.

The fifth and final 'catch-all' question is, do firms have any perverse incentives or other activities that may undermine any strategies put in place to answer the first four questions?





Useful Links:

[FAMR Terms of Reference](#)

The FCA and HM Treasury has launched the **Financial Advice Market Review** (FAMR). The review will examine how financial advice could work better for consumers. The review will consult in Autumn 2015 and report ahead of the 2016 Budget.

The review will examine;

- the advice gap for those people who want to work hard, do the right thing and get on in life but do not have significant wealth;
- the regulatory or other barriers firms may face in giving advice and how to overcome them;
- how to give firms the regulatory clarity and create the right environment for them to innovate and grow;
- the opportunities and challenges presented by new and emerging technologies to provide cost effective, efficient and user friendly advice services; and
- how to encourage a healthy demand side for financial advice, including addressing barriers which put consumers off seeking advice.





Useful links:

[Past issues](#)

[Searchable archive](#)

Past issues of Complyport's Regulatory Roundup are available to view using the link provided.

You can access a searchable version of our Regulatory Roundup archive by clicking on the link.

The Regulatory Roundup archive allows search in three modes: by topic; by issue number; or by text search.

If you are using the text search for more than one word or a consecutive phrase the use of " " will help speed your search e.g. a search for "regulatory fees" will ensure that only articles that contain that term are found (rather than articles containing the words 'regulatory' and/or 'fees').

Please note that there is a small time-delay between the publication of the latest Regulatory Roundup and its availability in the searchable archive.





If any of the topics discussed above raise questions or a need for guidance or support, please feel free to contact

[Peter Carlisle](#)

Or for details of any other of Complyport's services, please contact us at info@complyport.co.uk

Complyport is always interested to receive feedback and general comments on either the Regulatory Roundup or the Complyport website. Comments can be sent to info@complyport.co.uk

The Complyport Regulatory Roundup is provided for information purposes only and represents a summary of the above subjects. It is not intended to offer a legal opinion, advice or recommendation as to future action and it is provided solely as a discussion document. ©Complyport Ltd

Complyport Limited ("Complyport"), Company Number: 04333584 is a Limited Company registered in England with Registered Office at Devonshire House, 1 Devonshire Street London. W1W 5DR.

This Regulatory Roundup is for the named person's use only. It serves purely for information purposes, and is not an offer or financial promotion. It may contain confidential, proprietary or legally privileged information. No confidentiality or privilege is waived or lost by any transmission errors. If you receive this Regulatory Roundup in error, please immediately delete it and all copies of it from your system, destroy any hard copies of it and notify the sender. You must not, directly or indirectly, use, disclose, distribute, print, or copy any part of this message if you are not the intended recipient. Transmission is not guaranteed to be secure. Any information contained herein is subject to Complyport's Standard Terms and Conditions of Business which are available upon request. Complyport and its affiliates do not assume any liability whatsoever for the content of this document, or make any representation or warranties, as to the accuracy or completeness of any information contained in this document.

