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EU Derivatives Reporting Obligations Clarified as February 12 Deadline Approaches

The European Market Infrastructure Regulation (EMIR) requires EU-counterparties to all derivative contracts, whether traded on- or off-exchange, to report certain information and details relating to the trade to a registered trade repository (TR). You can find Skadden's prior alert on EU derivatives reporting [here](#).¹

Beginning February 12, 2014, EU entities must report to a TR any new derivatives contracts entered into on or after that date within one business day. Contrary to market expectation, the European Securities and Markets Authority (ESMA) has indicated that the deferred reporting deadlines do not apply to a derivatives contract entered into between August 16, 2012, and February 11, 2014 (inclusive), that remains outstanding on February 12, 2014. Unless ESMA can be persuaded otherwise, these derivatives contracts (highlighted in red in the table below) must be reported to a TR on or before February 12, 2014.

Date of Derivative Contract	Reporting Deadline
Derivative contracts entered into from February 12, 2014 (the Reporting Start Date)	Within one business day after the conclusion, modification or termination of any derivative contract
Derivative contracts which were entered into on or after August 16, 2012, and are outstanding on the Reporting Start Date	On or before February 12, 2014
Derivative contracts which were entered into before August 16, 2012, and remain outstanding on the Reporting Start Date	On or before May 12, 2014
Derivative contracts which were entered into on or after August 16, 2012, but are not outstanding on or after the Reporting Start Date	On or before February 12, 2017
Derivative contracts which were entered into before August 16, 2012, and remained outstanding on August 16, 2012, but are not outstanding on or after the Reporting Start Date	On or before February 12, 2017

Trade Repositories

There are six ESMA-registered TRs; however, only five will accept reports for all asset classes.

¹ See Skadden client alert "EU Derivatives Trade Reporting Obligations to Begin on February 12, 2014" available at <http://www.skadden.com/insights/eu-derivatives-trade-reporting-obligations-begin-february-12-2014>. See also Skadden *Insights* article "EMIR Regulations Continue to Impact Derivatives Markets in 2014," available at <http://insights.skadden.com/financial-regulation/emir-regulations-continue-impact-derivatives-markets-2014>.

Trade Repository	Accepted Asset Classes: Commodities, Credit, Equities, Foreign Exchange, Interest Rates
DTCC Derivatives Repository Ltd. (DDRL)	All Asset Classes
Krajowy Depozyt Papierów Wartościowych S.A. (KDPW)	All Asset Classes
Regis-TR S.A.	All Asset Classes
UnaVista Ltd.	All Asset Classes
CME Trade Repository Ltd. (CME TR) <i>Registered December 2013</i>	All Asset Classes
ICE Trade Vault Europe Ltd. (ICE TVEL) <i>Registered December 2013</i>	Commodities, Credit, Equities, Interest Rates

Delegation and Operational Issues

An EU entity is allowed to delegate reporting to another party, for example its counterparty or a central counterparty. However, a counterparty that is required to report its derivative transaction under EMIR will remain liable for any misreporting by its delegate(s).

Some sell-side firms have expressed an unwillingness to offer a reporting service, while others appear willing to submit report for certain derivatives contracts with buy-side counterparties. For those sell-side firms who agree to report, the scope of indemnification for losses arising from reporting errors can be expected to be a commercial point requiring negotiation. Similar issues arose during the implementation of the Dodd-Frank reporting requirements. With regard to EMIR, a consistent approach has yet to emerge.

EU-US equivalence?

The European Commission (Commission) has not made a determination that would permit EU counterparties to apply Dodd-Frank (instead of EMIR) reporting requirements to trades concluded with U.S. counterparties. Similarly, the U.S. Commodity Futures Trading Commission (CFTC) does not permit substituted compliance with the Dodd-Frank reporting requirements for off-exchange derivatives contracts (*i.e.*, swaps) entered into with U.S. persons. However, both the Commission and CFTC could grant relief for duplicative reporting requirements under EMIR and Dodd-Frank at a future date. You can find Skadden's analysis of the CFTC's Cross-Border Guidance [here](https://www.skadden.com/insights/cftc-issues-final-guidance-and-accompanying-exemptive-order-cross-border-application)² and the CFTC's Substituted Compliance Determination for EU derivatives regulatory requirements [here](http://www.skadden.com/insights/cftc-grants-substituted-swaps-compliance-six-foreign-jurisdictions).³

2 See Skadden client alert "CFTC Issues Final Guidance and Accompanying Exemptive Order on Cross-Border Application of Certain Swap Regulations" available at <https://www.skadden.com/insights/cftc-issues-final-guidance-and-accompanying-exemptive-order-cross-border-application>.

3 See Skadden client alert "CFTC Grants Substituted Swaps Compliance for Six Foreign Jurisdictions" available at <http://www.skadden.com/insights/cftc-grants-substituted-swaps-compliance-six-foreign-jurisdictions>.