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OTC Derivatives Regulation and Extraterritoriality II

Comprehensive new EU and US measures to regulate over-the-counter (“OTC”) derivatives are progressing ever closer to full implementation. EMIR¹ entered into force in the EU on 16 August 2012, with the clearing obligation expected to take effect by the end of the year. In the US, the Dodd-Frank Act requirements are being implemented, with dealer registration and other requirements expected to begin in the third and fourth quarters of 2012. Both measures have some degree of extraterritorial application, and long-awaited CFTC guidance on Dodd-Frank’s extraterritorial scope has now been proposed. In the absence of agreement between the US and EU regulators, extraterritoriality has the potential to cause intractable and irreconcilable conflicts for the derivatives industry. This note sets out some of the situations in which extraterritoriality is likely to result in such conflicts.

Introduction

In the wake of the financial crisis, G20 leaders committed to the standardisation and clearing of all OTC derivatives contracts by the end of 2012. In the US, Part VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“**Dodd-Frank**”) and in the EU, the EU Regulation on OTC derivatives, central counterparties and trade repositories (“**EMIR**”) both seek to implement certain of these commitments. Some requirements and new CFTC regulations have already taken effect or are expected to take effect in Q3-4 of 2012. US regulators have yet to release final rules and regulations in a number of areas, however. EMIR entered into force on 16 August 2012.² Various provisions, including the clearing obligation, will only take effect once the relevant technical standards are adopted by the European Commission, which is not expected for the first batch of key technical standards until the end of 2012. The European Securities and Markets Authority (“**ESMA**”) is currently consulting on draft technical standards on an expedited basis to enable the G20 timeframe to be met.³ Unlike in the US, many aspects of OTC derivatives trading, advice and dealing are already regulated in Europe, so the focus of EMIR is on clearing. Certain EU reforms in relation to OTC derivatives,

¹ Regulation 648/2012.

² This note discusses current versions of rule proposals under Dodd-Frank and technical standards under EMIR. The final, definitive versions of the Dodd-Frank rules and EMIR technical standards, which will affect how the regimes eventually operate, may differ from the versions discussed in this note.

³ ESMA, [Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories](#), 25 June 2012.

including an exchange trading requirement for standardised OTC derivatives, will be implemented through amendments to the Markets in Financial Instruments Directive (Directive 2004/39/EC, “**MiFID**”), generally referred to as MiFID II, including a new regulation made under MiFID.⁴ Our memorandum on the MiFID II proposals is available [here](#).

Both Dodd-Frank and EMIR have some extraterritorial effect, as well as different approaches in certain other key areas which have the potential to give rise to conflicts.

Dodd-Frank

The Dodd-Frank requirements relating to regulated swaps regulated by the Commodity Futures Trading Commission (“**CFTC**”) will apply to activities outside the United States which either: (a) have a direct and significant connection with activities in, or effect on, commerce in the United States; or (b) contravene CFTC rules intended to prevent evasion of US requirements.⁵ Similarly, the requirements relating to security-based swaps regulated by the Securities and Exchange Commission (“**SEC**”) will apply to swaps entered into outside the US where these contravene SEC rules intended to prevent the evasion of US requirements.⁶ On 29 June 2012, the CFTC issued proposed interpretive guidance regarding the cross-border application of key requirements under Title VII of Dodd-Frank.⁷ Under the CFTC’s proposed approach, non-US institutions engaged in derivatives transactions with US persons (or in certain cases non-US customers guaranteed by US persons) will be subject to US registration and regulatory requirements, although, in some cases, the CFTC will permit “substituted compliance” with home country requirements in lieu of compliance with US rules.⁸ The CFTC’s guidance has been the subject of substantial comment from non-US and international institutions and governments. The SEC has not yet issued any further guidance as to the extraterritorial application of the security-based swap requirements under Dodd-Frank.

EMIR

The EMIR clearing obligation applies generally to transactions to which two EU entities are party. The clearing obligation also applies to transactions between a financial counterparty (or a non financial counterparty exceeding the clearing threshold) and a non-EU entity that would be subject to the clearing obligation if the counterparty were established in the EU. Finally, for transactions between two non-EU entities, the clearing obligations will apply “*provided that the contract has a direct, substantial and foreseeable effect within the EU or where such obligation is necessary or appropriate to prevent the evasion of any provisions of*” EMIR.⁹ The European Securities and Markets Authority (“**ESMA**”) is currently considering issuing guidance on this provision and is engaged in discussions with non-EU supervisors on its scope. It is expected that a separate consultation on regulatory technical standards addressing

⁴ The MiFID II legislative proposals were published on 20 October 2011.

⁵ Dodd-Frank, section 722(d).

⁶ Dodd-Frank, section 772(c).

⁷ For more detail on the interpretive guidance approved by the CFTC, you may wish to refer to our client publication “Cross-Border Application of the Swaps Provisions of the Dodd-Frank Act” (18 July 2012).

⁸ As part of the interpretive guidance, the CFTC has proposed a broad definition of US person that would include some investment vehicles organized outside the United States (such as those that are majority owned (directly or indirectly) by US persons or that have a registered commodity pool operator).

⁹ EMIR, Article 4(a)(iv) and (v).

this issue will take place in the near future. The impact of the potentially wide scope of this definition is mitigated to some extent by a provision of EMIR intended to avoid duplicative or conflicting rules. Where one party to the transaction is established outside the EU and is subject to a regime declared “equivalent” to that under EMIR, the party will be deemed to comply with the EMIR clearing and reporting obligations.¹⁰ In addition, there is a mechanism for recognising third country central counterparties (“**CCPs**”) for purposes of satisfying the clearing obligation.

Whether branches of third-country entities would be considered to be “established” in the EU is key to defining the scope of the clearing obligation. It would be possible to interpret “established” as synonymous with either “incorporated” or “registered”. The more likely interpretation is that EU branches of non-EU entities would be considered “established” in the EU in addition to the jurisdiction where they operate, consistent with the territorial scope of other EU legislation such as MiFID.

The provisions of EMIR applicable to CCPs are silent as to territorial scope, but key to how new legislation affects all market participants given that the clearing obligation may only be satisfied through use of an approved CCP. In addition, non-EU CCPs are prohibited from providing clearing services to entities established in the EU unless they are recognised by ESMA. This raises the issue of whether non-EU CCPs can provide clearing services to non-EU branches of EU counterparties.¹¹ There is some limited grandfathering for national regimes in EMIR, such as the UK’s recognised overseas clearing house (“**ROCH**”) regime. It is to be hoped that the designation of acceptable non-EU CCPs can be swift given the present market uncertainties.

ESMA’s draft technical standards now provide some clarity on the initial level at which the EMIR clearing threshold for non-financial counterparties will be set, with a view to tailoring this further as more data becomes available. The current proposed thresholds are based on different notional amounts per asset class, with broadly defined asset classes: credit derivatives (EUR 1 billion), equity derivatives (EUR 1 billion), interest rate (EUR 3 billion), foreign exchange (EUR 3 billion) and commodity and other OTC derivatives not falling within any other category (EUR 3 billion). When one threshold is reached, the non-financial counterparty will become subject to the clearing obligation in respect of all asset classes.

Areas of Conflict

Dodd-Frank and EMIR are not fully aligned and differ in various respects. The application of the clearing obligation to non-financial institutions, registration requirements for dealers, rules on margin and collateral, registration requirements for clearing houses, exchange trading and reporting requirements are areas of potentially significant difference. The clearing obligation may potentially emerge as less of a concern because the majority of European clearing houses are already registered in the US as DCOs. Also, a number of US clearing houses have ROCH status in the UK and will benefit from limited grandfathering under EMIR. However, non-EU CCPs which are not ROCHs may face obstacles in providing clearing services to EU entities until they obtain ESMA recognition. EMIR’s provisions seeking to avoid duplicative or conflicting rules and the CFTC’s proposal for “substituted compliance” have been welcomed, but regulators on both sides of the Atlantic still need to take formal steps to avoid market fragmentation.

¹⁰ EMIR, Article 13.

¹¹ See further ISDA letter dated 30 July 2012 on concerns regarding the application of Article 25(1) EMIR Prohibition against non-EU CCPs providing clearing services in the EU.

This note is intended to alert our clients to practical issues that may arise from overlapping US and EU regulatory jurisdiction. Our accompanying client publication, "Alert: Actions required in light of Derivatives Reforms" summarises additional action points arising from these legislative reforms.

A glossary of terms not previously defined is set out on page 7 below.

SCENARIO	APPLICABLE DODD-FRANK REQUIREMENTS	APPLICABLE EUROPEAN REQUIREMENTS	ASSOCIATED ISSUES
<p>A non-US bank with a branch in the US operates a global booking model (whereby all swaps or security-based swaps executed by the bank or its affiliates are entered into by the bank's home state entity).</p>	<p>The non-US bank may be required to register as a swap dealer or security-based swap dealer and thereby become subject to CFTC/SEC conduct of business regulation and prudential regulation, including capital and margin requirements.</p> <p>Under the CFTC's proposed cross-border guidance, if registration is required, substituted compliance based on comparable home country regulation might be permitted for certain Entity-Level Requirements (such as capital requirements). For other, Transaction-Level Requirements, the US rules would apply to transactions with US persons. These requirements (with the exception of the external business conduct requirements) would also apply to transactions with certain non-US persons, such as those that are guaranteed by a US person. In the case of transactions with such non-US persons however, substituted compliance with comparable home country rules may be permitted.</p>	<p>If the foreign bank is established in the EU, it is likely that it will be subject to licensing under the various EU financial services directives such as the MiFID or the Banking Consolidation Directive (Directive 2006/48/EC). These directives, together with the Capital Adequacy Directive (Directive 93/6/EEC, as amended by Directive 98/31/EEC), impose conduct of business and prudential rules and regulations on EU investment firms and banks.</p> <p>These rules will apply to the foreign bank's activities in the EU and may in some cases also apply to activities outside the EU (e.g. in the case of prudential rules).</p>	<p>If an EU bank has to register in the US, triggering US regulatory supervision over the foreign bank's activities in the EU, conflicts with EU competent authorities may arise. EU home state regulators are unlikely to defer to the assumption of jurisdiction by US regulators over activities to which conflicting local regulatory requirements apply.</p> <p>EU entities falling within the scope of Dodd-Frank capital requirements would also be subject to EU capital requirements. Duplicative calculation of capital could be required (unless reliance on home country capital requirements is allowed), even though the international standards agreed under Basel III are to be implemented in the EU (through CRD IV) and US</p> <p>To avoid duplication of regulation, a non-US entity might create a separate US subsidiary to handle US-based activity. The use of a subsidiary would require repapering of client agreements and transactions and require an intra-group business transfer; it could also increase inefficiencies and systemic risk, as US customers of foreign banks may have a more thinly capitalised subsidiary as their counterparty. This would be a particular concern if separate subsidiaries were used across multiple jurisdictions.</p> <p>Extraterritorial laws often give rise to jurisdictional problems and spark responses from legislators elsewhere to prevent the extraterritorial application of those laws.¹² Given the global nature of financial sector businesses, it is</p>

¹² For example, the extraterritorial application of US sanctions against Cuba so that any entity, wherever organised, that is owned or controlled by a US person is subject to such sanctions led to the EU adopting Regulation 2271/96 prohibiting EU entities from complying with certain extraterritorial US laws. No such measures exist in the financial regulatory sector, though this is possible in the future.

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<p>Non-US branch of a US entity engages in a swap or security-based swap with a non-US entity.</p>	<p>US entities may be required to register as swap dealers or security-based swap dealers for all swaps or security-based swaps activities, respectively, and may be subjected to US regulation regardless of where they are carried out.¹³</p> <p>Under the CFTC's proposed cross-border guidance, activities of foreign branches of US entities with non-US persons would be subject to the Dodd-Frank Entity-Level and Transaction Level Requirements (other than external business conduct). However, with respect to the Transaction-Level Requirements, substituted compliance with comparable host country rules would be permitted.</p> <p>In terms of margin requirements, the PR Rules provide that transactions between a foreign dealer or MSP and a foreign counterparty are exempt from the requirement to post margin. However, foreign branches, offices, or subsidiaries of US persons (and counterparties receiving a guarantee from US affiliates) would not fall within the exclusion. Margin requirements apply to transactions between US bank dealers/MSPs and their counterparties regardless of location.</p> <p>Under the proposed margin rules, initial margin would need to be segregated¹⁴ with an independent third-party custodian based in a jurisdiction applying the same insolvency regime as the posting (under PR Rules) or receiving (under CFTC Rules) swap</p>	<p>Derivatives transactions between an EU person and a foreign branch of a US entity may be subject to EMIR. As noted above, the EU clearing obligation applies to a transaction between a financial counterparty (or a non financial counterparty exceeding the clearing threshold) and a non-EU entity that would be subject to the clearing obligation if it were established in the EU. It also applies to transactions between two non-EU entities <i>"provided that the contract has a direct, substantial and foreseeable effect within the EU or where such obligation is necessary or appropriate to prevent the evasion of any provisions of EMIR</i>. Where one party to the transaction is established outside the EU and is subject to a regime declared equivalent to EMIR, it will be deemed to comply with the EMIR clearing and reporting obligations. The MiFID II proposal for a mandatory exchange-trading requirement for clearing-eligible and sufficiently liquid derivatives may also apply to contracts with non-EU persons where they are subject to the EMIR clearing obligation.</p> <p>The EMIR risk mitigation provisions for OTC transactions not cleared by a CCP include a requirement for financial counterparties (or non financial counterparties meeting the clearing threshold) to <i>"require the timely, accurate and appropriate exchange of collateral with respect to OTC derivatives contracts"</i>. If requested by the other party to the</p>	<p>possible that the EU could take measures in response to the extraterritoriality of US regulations (or <i>vice versa</i>), which could be counterproductive.</p> <p>Foreign branches of US entities may be subject to local regulation in the EU as well as US regulation of the overall entity. Local competent authorities are unlikely to defer to US regulators' jurisdiction over the affairs of branches in the EU, especially as regards conduct of business matters. Under MiFID II, a mechanism for harmonising access to EU markets for non-EU entities is proposed, subject to a strict equivalence regime.</p> <p>If a transaction is subject to both the EMIR mandatory clearing requirements and the Dodd-Frank clearing requirements (for example, if the US regime for CCPs was not declared equivalent to EMIR by the European Commission), it may be difficult for parties to comply with both sets of requirements. If a swap is required to be executed under Dodd-Frank on a swap execution facility and on an EU-regulated trading platform under EU legislation, the platform would have to be approved under both pieces of legislation. Similar issues with conflicting local requirements could also arise for non-US persons incorporated outside the EU.</p> <p>It is usually possible to comply with differing requirements in relation to levels and acceptable forms of margin, but it may be difficult or impracticable for non-US entities to comply with aspects of the Dodd-Frank margin requirements, particularly in relation to segregation and appropriate</p>

¹³ Under Dodd-Frank, section 722(c) and (d).

¹⁴ Under the CFTC Rules this would be at the option of the counterparty.

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	<p>participant. For example, initial margin posted by a US swap participant to a swap dealer must be segregated with a US custodian.</p>	<p>transaction, the collateral must be segregated (separate recording in accounts is deemed sufficient) from the entity's own assets. These requirements will apply to non-EU entities on the same basis as the revised clearing obligation described above.</p> <p>Outside the EU, other local requirements will apply. In Japan, for example, certain OTC derivatives transactions must be cleared by a licensed domestic CCP.</p>	<p>custodians. The US segregation requirement may conflict with the EU practice of title transfer collateral arrangements. The potential for the ESMA technical standards to impose conflicting requirements could make matters more problematic.</p> <p>Non-US entities may have to avoid entering into transactions with branches of US entities in order to avoid becoming subject to Dodd-Frank requirements.</p>
<p>Foreign branch of a US entity engages in a swap with a non-US sovereign.</p>	<p>The proposed margin rules classify non-US sovereigns as financial end-users, and therefore would be subject to the margin requirement. Since that time, the CFTC has taken the position that non-US sovereigns would not be subject to the mandatory clearing requirement (although this position would not apply to sovereign wealth funds, as opposed to the sovereign itself).</p>	<p>The EMIR requirements (including clearing and reporting requirements) will not apply to:</p> <p>(1) members of the European System of Central Banks (i.e. the Eurozone countries), other EU national bodies performing similar functions and other EU public bodies charged with or intervening in the management of the public debt; and</p> <p>(2) the Bank for International Settlements.</p> <p>The EMIR requirements (save for the reporting requirement) will not apply to:</p> <p>(1) multilateral development banks;</p> <p>(2) public sector entities owned and expressly guaranteed by central governments; and</p> <p>(3) the European Financial Stability Facility and the European Stability Mechanism.</p>	<p>Non-US sovereigns may be reluctant to enter into derivatives transactions with US banks if this obliges them to post collateral.</p>
<p>Non-US entity deals in swaps with a US person.</p>	<p>The foreign entity may, depending on the scope of its activities, be subject to the Dodd-Frank requirements, either through the requirement to register as a swap dealer or security-based swap dealer, or classification as an MSP.</p> <p>Under the CFTC's proposed cross-border guidance, if registration is required, substituted compliance based on comparable home country regulation might be permitted for certain Entity-Level Requirements (such as capital requirements). For other, Transaction-Level Requirements, the US rules would apply to transactions with US persons.</p>	<p>An EU financial counterparty is likely to be subject to regulation in its home state as a bank or investment firm.</p>	<p>There is a clear imbalance where foreign entities are subject to US registration requirements, but US persons may not be subject to equivalent requirements in the jurisdictions of those foreign entities. This is likely to impose onerous burdens on non-US entities and may deter them from transacting with US persons. The jurisdictions of those foreign entities may respond with retaliatory measures.</p>

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<p>EU entity deals in swaps with US persons, or US entity transacts with an EU entity, in circumstances where the swap is subject to the EMIR clearing obligation.</p>	<p>The swap may also be subject to the US mandatory clearing obligation as well as reporting requirements. The CFTC would not permit substituted compliance for the clearing, trade-execution and real-time public reporting requirements, or for the large trader reporting requirements otherwise applicable to non-US persons. However, the CFTC would allow substituted compliance with respect to swap data repository reporting and recordkeeping requirements for transactions subject to them, provided that the CFTC has direct access to the swap data for these transactions that is stored at the foreign trade repository.</p>	<p>The EMIR mandatory clearing and reporting obligations apply to the transaction where the non-EU entity would be subject to the clearing obligation if incorporated in the EU (subject to equivalence determination).</p> <p>EMIR contains an exemption for intra-group transactions. The definition of “intra-group” differs for financial versus non-financial counterparties, but in both cases a transaction will only be intra-group if the counterparty is established either in the EU or in a jurisdiction declared equivalent by the European Commission.</p>	<p>If the swap must be cleared both by a registered EU CCP and by a US clearing house, the CCP would need to be both registered with ESMA and have DCO and/or SEC clearing agency status (or an exemption from registration). However, where one party to the transaction is established outside the EU and is subject to a regime declared equivalent to EMIR, it will be deemed to comply with the EMIR clearing and reporting obligations. If a swap is required to be executed under Dodd-Frank at a swap execution facility and on an EU-regulated trading platform under EU legislation, dual regulation for the execution venue would be required.</p> <p>EMIR contains mechanisms for recognising third country CCPs (e.g. US CCPs) and for grandfathering existing UK recognised overseas clearing houses pending the outcome of applications to ESMA for authorisation. CCPs and platforms are presently facing considerable challenges in complying with conflicting US and EU regulatory requirements and supervisory processes.</p> <p>Under EMIR, a swap must be reported to an ESMA-registered trade repository, and under Dodd-Frank to a registered swap data repository with certain exceptions where substituted compliance may be acceptable. The parties may therefore need to report separately, leading to duplicative data submissions. Some repositories may consider providing a “one-stop shop” for reporting and holding data through different legal entities in both jurisdictions.</p>
<p>Foreign dealer deals in swaps with a non-US person, but the transaction has some US connection.</p>	<p>A transaction may be deemed to have a “<i>direct and significant connection with activities in, or effect on,</i>” commerce of the United States. Under the CFTC’s proposed cross-border guidance, in general US requirements would not apply to transactions entered into between two non-US persons outside the United States where neither person is a swap dealer or MSP. However, the proposed</p>	<p>If the swap is transacted between EU entities, it is likely to be subject to EMIR and MiFID II requirements.</p>	<p>See the conflicts noted above in relation to complying with both regimes. Applying the requirements of Dodd-Frank to US persons involved in ancillary activities related to a swap could result in entities moving back-office or other operations away from the US or no longer locating administrative or support personnel in the US. Similarly, US professional fiduciaries may be</p>

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	<p>definition of US person is broad, and questions as to the possible application of Dodd-Frank requirements may arise in a variety of cross-border situations, including where:</p> <p>a) US persons are involved in activity related to a swap (potentially including sales, marketing, operations, back-office or similar functions) even if the party to the swap is not a US person; or</p> <p>b) A non-US person contacts a US-domiciled professional fiduciary that acts for a counterparty located outside the US</p> <p>Where such a connection is identified, the Dodd-Frank registration, mandatory clearing/execution, and trade reporting requirements could apply.</p>		<p>placed at a competitive disadvantage if the requirements were applied in the circumstances outlined in column 1 point (b).</p>

Glossary

The following definitions are for ease of reference only and are not intended to provide a complete definition of the relevant concepts.

US	CFTC	Commodity Futures Trading Commission.
	CFTC Rules	Rules proposed by the CFTC under Dodd-Frank, including sections 731 and 764 (Margin Requirements for Non-bank Swap Dealers and Major Swap Participants).
	DCO	Derivatives Clearing Organization, as defined in the Commodity Exchange Act.
	Entity-Level Requirements	Apply to a swap dealer or MSP as a whole and encompass requirements as to capital, chief compliance officer, risk management, swap data recordkeeping and reporting and large trader reporting.
	Financial End-User	An end-user (as opposed to a dealer) that is a financial entity.
	Major Security-Based Swap Participant	A person other than a security-based swap dealer who maintains a substantial position in security-based swaps (as defined in Dodd-Frank, section 721, subject to further definition by the SEC and CFTC).
	MSP	Major Swap Participant: a person other than a swap dealer who maintains a substantial position in swaps (as defined in Dodd-Frank, section 721, subject to further definition by the SEC and CFTC).
	PR Rules	Rules proposed by the Prudential Regulators under Dodd-Frank, sections 731 and 764, applicable to swap dealers, security-based swap dealers, major swap participants and major security-based swap participants that are banks and bank holding companies (Margin and Capital Requirements for Covered Swap Entities, 12 April 2011).
	SEC	Securities and Exchange Commission.
	Security-Based Swap	A swap based on an index that is a narrow-based security index, a single security or loan or on the occurrence, non-occurrence or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index (as defined in Dodd-Frank, section 721, subject to further definition by the SEC and CFTC).
	Security-Based Swap Dealer	A person which holds itself out as a dealer in security-based swaps, makes a market in security-based swaps, regularly enters into security-based swaps with counterparties for its own account in the ordinary course of business or is commonly known as a dealer or market maker in security-based swaps (as defined in Dodd-Frank, section 721, subject to further definition by the SEC and CFTC).
	Swap	A non-security based derivatives transaction (including interest rate, currency and commodity derivatives) as well as derivatives on broad-based security indices (such as index based credit default swaps) (as defined in Dodd-Frank, section 721, subject to further definition by the SEC and CFTC).
	Swap Data Repository	A centralised recordkeeping facility for swaps (as defined in Dodd-Frank, section 721).
	Swap Dealer	A person which holds itself out as a dealer in swaps, makes a market in swaps, regularly enters into swaps with counterparties for its own account in the ordinary course of business or is commonly known as a dealer or market maker in security-based swaps (as defined in Dodd-Frank, section 721, subject to further definition by the SEC and CFTC).
	Swap Execution Facility	A trading system/platform that facilitates the execution of swaps (as defined in Dodd-Frank, section 721).

	Transaction-Level Requirements	Encompass mandatory clearing and swap processing, margin for uncleared swaps, trade execution requirements, relationship documentation, portfolio reconciliation and compression, real-time public reporting, trade confirmation, daily trading records and external business conduct standards.
EU	ESMA	European Securities and Markets Authority.
	CRD IV	Capital Requirements Directive IV.
	Financial Counterparty	As defined in EMIR, article 2 (includes banks, investment firms, credit institutions, insurers, registered UCITS funds, pension funds and alternative investment fund managers).
	Non-Financial Counterparty	As defined in EMIR, article 2, an entity established in the EU other than a financial counterparty.
	Trade Repository	As defined in EMIR, article 2, a legal entity that centrally collects and maintains the records of OTC derivatives.
Miscellaneous	CCP	A central counterparty (also defined in EMIR, article 2).

This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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