



**IMPACT OF REGULATION**

In February, the ACT held its annual Cash Management Conference. The output from one of the electronic poll questions was particularly interesting. When asked what they thought would be the biggest treasury challenge in 2014, 37% said the impact of regulation. The remainder replied liquidity management, managing risk and becoming SEPA-compliant. For those who agree with the 37% group, an overview of European regulatory issues can be found in the International section below.



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{ IN DEPTH }

**EMIR REPORTING – THE POST-MORTEM**

Prior to 12 February, there were still many companies that had not got very far with their European Market Infrastructure Regulation (EMIR) reporting implementation. Based on the number of legal entity identifiers (LEIs) issued to UK companies, it was apparent that there were probably thousands of smaller and mid-sized companies that had done nothing, or very little, towards compliance. The website <http://openleis.com> shows the LEIs issued by country and has the ability to drill down to legal entity names and their respective LEIs. At the time of writing, the UK had 12,300 entities with LEIs, whereas Germany was doing better, with 28,200.

Companies that wanted to get an LEI in the week before 12 March were experiencing delays from the local operating units responsible for issuing them. There are instances in certain countries of backlogs, with some companies still waiting to receive their LEI.

Unique trade identifiers (UTIs) have been another area of confusion, but as processes bed down, the situation is rapidly improving. There were instances of corporates being confused as to which UTI to use when they encountered UTIs generated by both the trading platform and the bank. Apparently, some European banks are unwilling to use



UTIs from trading platforms and numerous corporates have reported UTIs arriving late, even after the reporting deadlines. Backloading of outstanding contracts had similar issues due to the need to allocate UTIs to old trades.

Companies that had already signed up with a trade repository (TR) were, in many cases, having technical difficulties in either logging in to their TR or in getting files accepted. These problems seemed to exist with many TRs for a number of days, but, ultimately, the problems with

data submission were being solved. Those companies that had decided to delegate their reporting revealed instances where some of their dealing counterparties (particularly non-EU banks) decided very late in the day not to offer delegated reporting.

While many companies are still working towards compliance, there is a general feeling that as long as they are working hard on implementation, then being late does not really matter. National regulators could be clearer on any forbearance

and specific grace periods, however. For example, the UK's Financial Conduct Authority (FCA) has given UK companies until 30 April to demonstrate their compliance with EMIR 'risk-mitigation' techniques such as trade confirmations with counterparties. While the confirmation obligation officially started in March 2013, its implementation across Europe remains haphazard.

Among those that are reporting, there does seem to be a problem with unmatched transactions, ie the bank report and the company report not matching. Information on what has caused the difference can be lacking.

Within the UK, FX forwards undertaken for commercial purposes are not treated as derivatives for EMIR and so they do not need to be reported. The FCA is clear on this, but companies often get different messages from their banks. The European Securities and Markets Authority (ESMA) is seeking clarification on this from the European Commission.

The next confusion now is on valuations. At the time of the annual reconciliation, there is uncertainty as to whether they have to be reconciled. The ESMA Q&A simply says NFCs "can rely on the valuations of their counterparties".

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{ INTERNATIONAL }

## THE LATEST ON EU REGULATION

Keeping track of relevant European regulatory developments is not easy. Below is a round-up of current progress on key dossiers:

### European Market Infrastructure Regulation (EMIR)

- ◆ Corporates are subject to derivative reporting, confirmation, reconciliation and dispute procedures.
- ◆ On 14 February, the European Securities and Markets Authority requested clarification from the European Commission on the definitions of derivatives within the scope of EMIR, covering FX, commodity forwards and spot.

### Money market funds (MMF) regulation

- ◆ Commission proposal includes a mandatory capital buffer for constant net asset value funds, a ban on external credit ratings and limitations to the instruments that MMFs can invest in.
- ◆ The European Parliament's Economic and Monetary Affairs Committee could not reach agreement and has left this file for the next parliament.
- ◆ The ACT has stressed the importance of ensuring the availability of MMFs and has argued against the ban on credit ratings.

### Financial transaction tax (FTT)

- ◆ The proposal to tax equity, bond and derivative transactions in 11 EU member states has received widespread criticism. The ACT strongly opposes the FTT, but it is still on the European political agenda.

### Financial benchmark regulation

- ◆ Regulation is proposed for the administration of, and contribution to, financial benchmarks.
- ◆ The ACT continues to stress the importance of contract continuity.

### Bank structural separation (Liikanen rule)

- ◆ In January, the European Commission adopted a proposal to ban proprietary trading and to allow for the possibility of separating the biggest banks on a case-by-case basis if bank supervisors decide that is appropriate.



The ACT responds to Lambert Banking Standards Review

**The ACT responds to FRED 51 Draft Amendments to FRS 102, The Financial Reporting Standard applicable in the UK and Republic of Ireland, Hedge Accounting**

ACT past webinar: Money market fund reform in Europe

**ACT past webinar: EMIR and beyond – where now?**



Sir Richard Lambert

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## RAISING STANDARDS

The Banking Standards Review, led by Sir Richard Lambert, is working on proposals to raise professional standards of competence of banks in the UK through setting up a new professional body. The wider-ranging Parliamentary Commission on Banking Standards, an entirely different group, said it would welcome the creation of such a new body to complement its regulatory

proposals. The hope is that the new body will change the culture and practices of the banking industry, enable institutions to learn from each other and reinforce best practices.

The new body would recognise company codes of practice, and training schemes and qualifications issued by other bodies. It would benchmark or validate these against its own

minimum standards, particularly ethical standards.

The ACT, which had previously met privately with the review group, has now welcomed the public proposals set out in the Lambert Review consultation paper as a useful step towards restoring confidence and trust in the banking industry.

**For more on the Banking Standards Review, see Colin Tyler's comment, on page 15**

{ TECHNICAL ROUND-UP }

## CROWDFUNDING, COMPANY POLICIES AND ESMA CONSULTATION

The International Organization of Securities Commissions has published a report that provides a global overview of the crowdfunding industry. Its report analyses peer-to-peer lending and equity crowdfunding. The report concludes that financial return crowdfunding does not currently present a systemic risk to the financial system, but this could change with future rapid growth. For more, visit [www.iosco.org/research/pdf/swp/Crowd-funding-An-Infant-Industry-Growing-Fast.pdf](http://www.iosco.org/research/pdf/swp/Crowd-funding-An-Infant-Industry-Growing-Fast.pdf)

**Large companies, with more than 500 employees within the EU**, will be required to disclose information on policies, risks and results with regard to environmental matters and social information in their management reports. In order to become law, the European Commission's proposals need to be adopted by the European Parliament (which is expected in April) and the EU member states in the Council. These amendments will supplement Directive 2013/34/EU and aim to provide consistency across the EU.

The European Securities and Markets Authority (ESMA) has launched a consultation on guidelines on alternative performance measures (APMs). The proposed guidelines aim to improve the transparency and comparability of financial information published by issuers, ensuring that APMs are used and presented in a coherent fashion across the EU. The closing date for responses is 14 May and ESMA expects to publish the final guidelines in Q4 2014. For more, visit [www.esma.europa.eu/content/ESMA-Guidelines-Alternative-Performance-Measures](http://www.esma.europa.eu/content/ESMA-Guidelines-Alternative-Performance-Measures)

The House of Lords EU Sub-Committee on Economic and Financial Affairs has published a report looking at EU proposals for rescuing failing banks. The report, entitled *Genuine Economic and Monetary Union*, recommends establishing the European Central Bank as a single supervisory body. But it assesses the proposed resolution mechanism for dealing with failing banks as deeply flawed, with the bailout mechanism as underfunded and too cumbersome to react speedily enough to a crisis. For more, visit <http://tinyurl.com/ouspw7q>