

# CONFUSION REIGNS

**THE DEADLINE FOR MANDATORY REPORTING OF OTC DERIVATIVE TRADES IS 12 FEBRUARY 2014, BUT UNCERTAINTY REMAINS OVER HOW REGULATORY REQUIREMENTS SHOULD BE MET, SAY DANIEL CORRIGAN AND DANIEL JUDE**

In September 2009, in the wake of the financial crisis, the G20 leaders descended upon Pittsburgh in the US state of Pennsylvania, for the third instalment of talks on the state of the global economy. At this time, there was a general acceptance of the need to improve transparency, mitigate systemic risk and protect against market abuse in the OTC derivatives markets.

The summit resulted in a specific mandate: that all standardised OTC derivative contracts should be traded on exchanges or electronic trading platforms and, where appropriate, cleared through central counterparties. In addition, OTC derivative contracts should be reported to trade repositories. This instruction was implemented through the Dodd-Frank Act in the US, and in the European Market Infrastructure Regulation (EMIR) in Europe.

In the US, the new rules on derivatives were applied at the end of 2012, leading to the introduction of swap data repositories, centralised clearing and swap execution facilities in the OTC derivatives market. EMIR is set to come into effect in the EU in 2014, beginning on 12 February with the requirement to report information on all European derivative transactions to trade repositories. This will be followed by the requirement to clear all standard derivative

contracts through central counterparties halfway through the year.

All parties defined as participants in the OTC derivatives market in the EU will have to report relevant trades to registered or recognised trade repositories. But national regulators appear to have differing approaches as to which asset classes are mandated and which types of market participant need to report.

How market participants carry out their reporting, also known as 'delegation of reporting', is central to EMIR. A common misconception surrounding exchange-traded derivatives and centrally cleared OTC transactions is that the clearing houses or central counterparties are likely to report to trade repositories on behalf of their clearing members. While clearing members may report on behalf of their clients, it is currently far from clear which clearing members are willing to accept the delegation of reporting.

## Implications for treasurers

The impending EMIR legislation will have a number of implications for treasurers. All corporate entities, whether they are financial or non-financial, will have to report their relevant derivative contracts in commodities, credit, equities, FX and interest rates no later than

the trade date plus one day. Corporates must also report their outstanding transactions and new trades to an approved trade repository. Corporates need to start by applying for a legal entity identifier, then decide which trade repository they want to use.

Market participants should select a trade repository based on its coverage and technological capability, for example, whether it can leverage technologies that it uses for other services, such as trade execution and clearing. They also need to consider factors such as cost, ease of connectivity, regulatory efficiency and simplicity.

With the implementation deadline of 12 February 2014 fast approaching, Europe is scrambling to become compliant with the reporting requirements. Clients are asking trade repositories for advice on the options available to them in terms of delegation of reporting or self-reporting. Meanwhile, regulators are continuing to review and refine the reporting requirements. For example, in August the European Securities and Markets Authority published a final report containing a proposal for an amendment to Article 5 of the implementing technical

standards associated with EMIR that would postpone the reporting start date of exchange-traded derivatives by one year.

While the Dodd-Frank Act in the US and EMIR in Europe have both moved to adopt swap data repositories and trade repositories respectively, confusion exists as to how the landscape of reporting in a multi-jurisdictional world will look. In addition, there are still critical unanswered questions in regards to extraterritoriality and equivalence across jurisdictions. ↕

**For more information on trade repositories and reporting requirements in a multi-jurisdictional world, the ACT invites you to attend its special webinar on the subject on 21 November 2013 at 12.30pm. For more information, see [www.treasurers.org/events](http://www.treasurers.org/events)**



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