MAPLES GROUP

UPDATE

EMIR REFIT – Impact on Irish Investment Funds

What You Need to Know

- The EMIR framework is about to be updated again as new material reporting requirements come into effect from 29 April 2024.

- It is crucial for stakeholders in the Irish investment funds sector to understand the changes and prepare for their impact.

Background

The Regulation on over the counter ("OTC") derivative transactions, central counterparties and trade repositories ("TRs") (EU) 648/2012 ("EMIR") is relevant to all Irish funds trading in financial derivative instruments whether on an exchange or otherwise.

Regulation (EU) 2019/834 ("EMIR REFIT") modified EMIR to simplify some of the requirements and make them more proportionate. Most of it came into force on 17 June 2019.

EMIR REFIT

EMIR is a key piece of legislation that aims to enhance the transparency and stability of the EU derivatives market. EMIR imposes various obligations on counterparties to derivative contracts, including reporting, clearing and risk mitigation obligations.

Irish investment funds, including both UCITS and AIFs, are classified as 'financial counterparties' under EMIR and must comply with its requirements. This includes the requirement to report details of any derivative contracts (within the meaning of EMIR) entered into and any modification or termination of those contracts, to a registered or recognised TR by the end of the next working day.

EMIR REFIT amended EMIR to provide that, with effect from 18 June 2020, the reporting of OTC derivative contracts entered into on behalf of a fund to a TR became the responsibility of fund management companies ("FMCs"). Under Article 9 of EMIR, FMCs (i.e. the management company of a UCITS/AIFM of an AIF) is now responsible and liable for reporting the details of OTC derivative contracts to which that UCITS/AIF is a counterparty, as well as for ensuring the correctness of the details reported.

New Reporting Requirements

Further amendments to the EMIR REFIT framework were introduced through revised EMIR technical standards on TRs and the information to be reported to them. These European Commission delegated regulations which came into force on 27 October 2022 apply from 29 April 2024 are:

a) Commission Delegated Regulation (EU) 2022/1855 regarding regulatory technical standards specifying the minimum details of the data to be reported to trade repositories and the type of reports to be used;

b) Commission Implementing Regulation (EU) 2022/1860 with regard to the standards, formats, frequency and methods and arrangements for reporting; and

c) Commission Delegated Regulation (EU) 2022/1858 on regulatory technical standards specifying the procedures for the reconciliation of data between trade repositories.

In conjunction with related ESMA guidelines for reporting under EMIR issued in December 2022, these delegation regulations contain several significant changes including:

- The number of reportable data fields under EMIR reporting will be increased from 129 to 203 and a range of existing data fields will require review due to changes to the scope of data to be reported and the associated definitions. The extended data reporting requirements are intended to increase the market transparency of transactions.

- Compliance with the ISO 20022 XML format will be mandatory for the transmission of data to a TR. Counterparties will need to ensure that they or their reporting delegates can report under this format.

- Counterparties will be required to notify competent authorities of certain types of reporting errors.

- Counterparties will need to have in place arrangements to ensure that, where relevant, feedback received from TRs on reconciliation failures are taken into account.

On 9 February 2024 the Central Bank of Ireland ("Central Bank") updated their EMIR webpage to confirm that financial counterparties and non-financial-counterparties should engage with their report submitting entities and their TRs to ensure that they are in a position to report under the new reporting requirements as of 29 April 2024.

There will be a six-month transition period to update reports for outstanding derivatives trades to comply with the new requirements. The deadline for updating existing reports will therefore be 26 October 2024.

Impact on Irish Investment Funds and FMCs

These changes will require Irish investment funds and their FMCs to review and potentially update their internal processes, systems and documentation to ensure compliance with the new reporting requirements. They may also affect how these funds and their FMCs manage their EMIR reporting processes and relationships with counterparties and service providers.

Many Irish investment funds/FMCs delegate EMIR reporting to their counterparties. In a previous thematic review[1], the Central Bank was critical of the failure by delegating entities to take appropriate steps to ensure compliance with EMIR reporting requirements (which would involve, for example, oversight of the delegate and reconciliations of reported transactions).

This remains an area of regulatory focus and is likely to continue to be the case as the regime enters this new phase. It is therefore imperative that Irish investment funds and their FMCs take proactive measures to enhance their oversight and control mechanisms over delegated EMIR reporting. This includes establishing robust frameworks for the ongoing monitoring of delegates to ensure that reporting by counterparties is complete, accurate and timely.

Therefore, Irish Investment funds and FMCs should consider:

- Reviewing existing delegation agreements to ensure they are aligned with the new requirements.

[1] Central Bank letter to industry on EMIR dated 20 February 2019.

- Establishing a process for the regular reconciliation of reported trades with their delegates.
- Creating a robust policy and framework for complying with EMIR reporting requirements and, in particular, the processes to identify, manage and report any EMIR reporting breaches to the Central Bank.
- Ensuring senior management and the board of directors understand the importance of EMIR compliance and the need for effective oversight of delegated reporting.

How Can Maples Help?

The Maples Group provides ongoing advice and assistance to Irish investment funds and their FMCs in complying with their EMIR obligations.

This includes advising on the application of the technical requirements of EMIR, assessing the impact of the EMIR REFIT and reviewing and preparing oversight frameworks for EMIR compliance.

Further Information

For further information, please liaise with your usual Maples Group contact or any of the persons listed below.

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