

CORPORATE REGULATORY SERVICES

EMIR – assurance for EU entities with headquarters in and outside the EU

Legal entities in the EU are subject to mandatory and random audits by authorities



KPMG's Corporate Regulatory Services assists you in closing EMIR compliance gaps prior to an audit and achieving clearing exemption acceptance.

The challenge

Between 2012 and 2014 the European Market Infrastructure Regulation (EMIR) was implemented to comply with G20's demand for central clearing, comprehensive reporting on derivatives transactions and advanced risk mitigation techniques in the EU.

Every legal entity based in Europe that is counterparty to one or more derivatives is subject to EMIR. Intragroup and external derivatives traded over-the-counter (OTC) or executed on an exchange (ETD) are also affected.

Authorities in the EU member states have introduced penalties and sanctions for entities and their management in the absence of full EMIR compliance. In order to verify EMIR compliance, authorities have set up a monitoring system: in Germany, the legislator has stipulated a mandatory EMIR audit starting in 2014. In the UK, the competent authority FCA is conducting random audits, and other jurisdictions can be expected to decisively increase their regulatory vigilance to exercise their supervisory role in the upcoming years.

Groups headquartered in Europe should seek regulatory assurance prior to being subject to an audit to lower the risk of penalties, sanctions and bad press.

EU entities of groups headquartered outside the EU must also be EMIR-compliant. They face the challenge of having NFC- status analysed on a group level. Groups need—for their global derivative portfolio—documented hedging evidence and, for non-hedging derivatives, a daily calculation of the clearing threshold. The recent ESMA Review Report (ESMA/2015/1251) explicitly stated that the monitoring of the hedge qualification for OTC derivatives by corporates has not been implemented in an adequate manner. It is therefore expected that the European competent authorities will escalate monitoring of NFC- classification of corporates.

Our scope of services for corporates

To help firms pass EMIR audits and avoid penalties and sanctions, we provide assurance services combined with action plans to close any detected gaps to EMIR compliance.

EMIR compliance review and assurance

The review focuses on processes, workflows, documentation and systems implemented by European entities and on a group level. Three areas are addressed:

NFC- status

- Review of group MiFID derivative portfolio identification (definition under MiFID is different from the accounting definition of derivatives)
- Documented proof of hedging purpose to exempt deals from the threshold calculation
- If no proof of hedging purpose is available, the regular calculations of the clearing thresholds will be reviewed

Reporting process

- T+1 trade reporting of all OTC and ETD derivatives with a counterparty in the EU (external and intragroup)
- Processes, responsibilities and controls to ensure correct reporting. Internal processes and controls are required in cases of delegation

Risk mitigation techniques

- Risk mitigation techniques such as timely confirmation, portfolio reconciliation, dispute resolution and portfolio compression within each entity as well as external and internal bilateral agreements.

We will provide leading market practice solutions upon identifying any gaps. Once all gaps are closed and EMIR compliance is assured, we will provide an EMIR statement according to international standards. Management can subsequently prove having exercised best efforts to meet its regulatory requirements.

NFC- status assurance for global groups

It is a huge challenge to adequately document the NFC- status on a global level. All fully consolidated entities must be included and the European regulator has set strict rules and defined documentation requirements regarding use of the NFC- exemption. A classification as NFC+ would have severe consequences, as the entire group would be forced to clear all their OTC derivatives and face stricter reporting obligations (e.g. daily reporting of mark-to-market valuations) and risk mitigation requirements. The NFC- status assurance consists of the following key steps:

- Identification of the group-wide OTC derivative portfolio
- Review of the categorization of all OTC derivatives into hedging and non-hedging and putting the required documentation, hedging policies, hedging strategies and controls in place to justify this classification
- Support in setting up audit-proof documentation for hedging derivatives

Implementing our recommendations will reduce group management's risk of the refusal by authorities to accept NFC- status. An incorrect classification can be very expensive and might cause bad press. In addition, we are able to provide an EMIR statement for distribution to the EU entities.

Positioned to serve you best

The KPMG's Corporate Regulatory Services team has conducted EMIR assurance and EMIR implementation projects for more than 150 corporate clients throughout Europe. We are in frequent consultation with competent authorities and have benchmark and leading market practice knowledge to develop solutions and documentation.

Apart from our in-depth expertise in Corporate Regulation, our team includes experienced Corporate Treasury and Commodity Risk Management experts.

Learn more about Finance and Treasury Management and financial market regulation: www.kpmg-corporate-treasury.de

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