ALERTS

Derivatives Update: ESMA Announces the Approval of Trade Repositories and Central Reporting Obligation Date

13 November 2013

In a European Securities and Markets Authority ("ESMA") press release dated 7 November 2013,[1] the pan-European regulator announced that it had approved the first trade repositories. Trade repositories are firms that collect and maintain the records of derivatives contracts. The registrations will take effect on 14 November 2013, with the reporting obligation beginning 90 calendar days after the official registration date on 12 February 2014. The obligation to report impacts all EU counterparties, counterparties trading with an EU counterparty and central counterparties.[2]

The Regulation on Derivatives Transactions, Central Counterparties and Trade Repositories (also known as "EMIR")[3] sets out framework requirements in relation to: (i) central clearing; (ii) reporting of derivative trades to trade repositories; and (iii) risk mitigation obligations. Certain obligations are expanded upon and given effect by regulatory technical standards ("RTS") published by the European Commission. The reporting obligation may be met by reporting to any ESMA-approved trade repository.

The trade repositories approved by ESMA are:

- DTCC Derivatives Repository Ltd. (DDRL), based in the United Kingdom;
- Krajowy Depozyt Papierów Wartosciowych S.A. (KDPW), based in Poland;

- Regis-TR S.A., based in Luxembourg; and
- UnaVista Ltd, based in the United Kingdom.

ESMA stated in its press release that it is currently processing further applications from trade repositories.

EMIR's reporting requirement applies to all derivative trades, whether they are entered bilaterally (OTC) or are exchange traded derivatives. Trade details must be reported no later than the working day (T+1) following the conclusion, modification or termination of the trade. Transactions between non-EU counterparties (also called "third-country entities") will be reported when entered into with an EU counterparty. EMIR permits counterparties to delegate the reporting of the trade to their counterparties or third parties however, it should be noted that the delegating party, such as an alternative investment fund, remains responsible for its own regulatory obligation under EMIR.

Alternative investment managers should consider engaging with trade repositories with a view of establishing a reporting environment or engage with their service providers now to discuss the delegation of the reporting to such service provider for this purpose.

The reporting obligation applies to any trades which were outstanding on the date EMIR came into force (16 August 2012) and are still outstanding on 12 February 2014. There is a three-year deferral to 12 February 2017 for trades (i) that were entered into prior to 16 August 2012 and were outstanding on 16 August 2012and (ii) trades that were entered into on or after 16 August 2012, but in each case that are not outstanding on 12 February 2014, the date EMIR's reporting obligation begins.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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[1] http://www.esma.europa.eu/news/PRESS-RELEASE-ESMA-registers-DDRL-KDPW-Regis-TR-and-UnaVista-trade-repositories.

[2] Title II, Article 9(1) of EMIR.

[3] Regulation (EU) No 648/2012 is also known as the European Market Infrastructure Regulation (EMIR).

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