ISDA Letter to ESMA on Mandatory Delegated Reporting under EMIR Refit

Katten

Article By
Carolyn H. Jackson
Nathaniel W. Lalone
Neil Robson
Katten
Corporate and Financial Weekly Digest

- Financial Institutions & Banking
- Global
- European Union
- All International

Friday, May 1, 2020

On April 27, five industry trade associations, including the International Swaps and Derivatives Association, the Association for Financial Markets in Europe, the Asia Securities Industry and Financial Markets Association, the Global Financial Markets Association and the Securities Industry and Financial Markets Association published a joint letter (the Letter) to the European Securities and Markets Authority (ESMA) regarding the effective date for the commencement of the mandatory delegated reporting obligation for financial counterparties (FCs) under the EMIR Refit Regulation (EMIR Refit) in light of the COVID-19 pandemic. In particular, the Letter requests ESMA to make a statement to the European Union (EU) financial regulators not to prioritize enforcement authority on any FC unable to comply with the June 18 effective date and generally apply their risk-based supervisory powers in the day-to-day enforcement of this requirement in a proportionate matter until November 21.

EMIR Refit requires FC’s to be responsible and legally liable for reporting under EMIR for all non-financial counterparties not subject to the clearing obligation (NFC-s). The Letter notes that due to the COVID-19 pandemic, NFC-s are finding that they are unable to provide the data required by the applicable FC to be able to report, and such FCs have been unable to make the required preparations to support taking on this additional reporting obligation.
The Letter notes that were ESMA to take the suggested approach, it would not preclude market participants that have completed preparations and are ready to report from complying with the EMIR Refit mandatory delegated reporting requirement on June 18.

If an NFC has fulfilled its obligations of providing all relevant data to its FC counterparties before June 18, the NFC should no longer be responsible for reporting its trades. From June 18 onwards, the FCs should assume legal liability and responsibility for reporting over-the-counter (OTC) derivative trades on behalf of the NFC-, even if the FC is not yet in a position to report the NFC- trades.

Additionally, the Letter outlines the major challenges that market participants are facing as a result of the COVID-19 pandemic, including general challenges (such as working from home and illnesses), client outreach and system and delivery development.

The Letter concludes by noting that transparency to regulators should not be undermined by the regulatory flexibility proposed by the Letter.


©2020 Katten Muchin Rosenman LLP