
July 2013

New Swedish Act Supplementing EMIR

The EU Regulation (648/2012) of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories – commonly referred to as the European Market Infrastructure Regulation (EMIR) – entered into force on 16 August 2012. It is directly applicable in all EU Member States.

The purpose of EMIR is to reduce the risks in the OTC derivatives markets. The regulation contains, *inter alia*, rules that provides for mandatory clearing of standardized OTC derivatives contracts through central counterparties (CCPs), reporting of derivatives contracts to trade repositories, authorisation and supervision of CCPs and registration of trade repositories. It also gives national authorities and the European Market Infrastructure Authority (ESMA) power to take certain measures.

To adjust Swedish law to EMIR, the Swedish Parliament has adopted a new act (Swedish EMIR Act)¹ and has amended the Swedish Securities Market Act and the Public Access to Information and Secrecy Act. The Swedish EMIR Act supplements EMIR and entered into force on 1 June 2013.

Background

The absence of a regulatory framework for the OTC derivatives markets is believed to have contributed to the financial crisis in 2008. The leaders of the G20 agreed in September 2009 that, by the end of 2012, all standardized OTC derivatives contracts should, where appropriate, be traded on exchanges or electronic trading platforms and be cleared through CCPs. They also agreed that OTC derivatives contracts should be reported to trade repositories and that non-centrally cleared contracts should be subject to higher capital requirements.

Under EMIR, each Member State shall designate at least one competent authority responsible for the authorisation and supervision of CCPs established in its territory as well as the supervision of the counterparties that are covered by EMIR. Each Member State shall ensure that the competent authority has the supervisory and investigatory powers necessary to exercise its functions. It shall also ensure that that appropriate administrative measures can be taken or imposed against the natural or legal persons responsible for non-compliance with EMIR in conformity with national law.

The Swedish Financial Supervisory Authority

The Swedish Financial Supervisory Authority (Sw. *Finansinspektionen*) (SFSA) is designated as the competent authority under the Swedish EMIR Act (2013:287). The SFSA is granted certain powers relating to its supervisory activities. It may impose fines on a counterparty that is in breach of the following articles of EMIR; the clearing obligation (Article 4), the reporting obligation (Article 9), the notification obligation when exceeding the clearing

¹ Lag (2013:287) med kompletterande bestämmelser till EU:s förordning om OTC-derivat, centrala motparter och transaktionsregister.

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threshold (Article 10) and the obligation to have appropriate procedures and arrangements in place to measure, monitor and mitigate operational risk and counterparty credit risk (Article 11).

A fine imposed by the SFSA can be in the range of SEK 5 000 – 50 000 000. Should the breach be considered minor, the fine can be remitted.

In case of a breach of any of the provisions of EMIR, the SFSA may require that such breach is remedied or that the activities resulting in the breach are terminated. The SFSA may also require a natural or legal person to provide information or documentation to the authority or even to attend an interrogation. Such demands may be combined with a penalty if not duly obeyed.

The Swedish EMIR Act also includes provisions regarding how to collect fines imposed by the SFSA, the right for the SFSA to charge certain fees and the procedure for appealing against a decision made by the SFSA.

Enforcement

The Swedish EMIR Act further includes a provision stipulating that fines and periodic penalty payments imposed pursuant to EMIR shall be enforced in accordance with the Swedish Enforcement Code (Sw. *utsökningsbalken (1981:774)*). The Swedish Enforcement Authority (Sw. *Kronofogdemyndigheten*) has been designated as the responsible authority for verification of the authenticity of the order for enforcement in accordance with Article 68 of EMIR.

Other Amendments

Amendments have also been made to the Swedish Securities Market Act (Sw. *lag (2007:528) om värdepappersmarknaden*) and the Public Access to Information and Secrecy Act (Sw. *offenlighets- och sekretesslagen (2009:400)*). The provisions relating to the activities of central counterparties in the Swedish Securities Market Act that are covered by EMIR have been revoked. Through the amendments made to the Public Access to Information and Secrecy Act, the secrecy provisions in the Act have been extended to also cover information relating to an individual that the SFSA have obtained when conducting its supervisory activities under the Swedish EMIR Act.



Erica Johansson/ Partner / Advokat
Phone: +46 8 677 54 24
Mobile: +46 709 25 25 49
erica.johansson@delphi.se



Olof Hagberg/ Associate
Phone: +46 8 677 55 01
Mobile: +46 767 72 00 01
olof.hagberg@delphi.se