Brochure European Market Infrastructure Regulation (EMIR)

What you should know about EMIR

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The information in this folder is intended to inform you about the European Market Infrastructure Regulation (EMIR). EMIR is European legislation that applies directly to all companies that enter into or have entered into derivative transactions.

Why these rules?

Following the 2008 financial crisis, G20 members agreed on a number of far-reaching measures to minimise the likelihood of such a financial crisis occurring again in the future. The G20 members have agreed to draw up new regulations at a national and/or international level for derivative transactions, with the aim of improving the safety and transparency of the financial markets.
Some of the G20 agreements that apply to Europe are enshrined in EMIR. EMIR has direct effect in the EU/EEA*.

What is EMIR?

EMIR is a European regulation that applies to all companies established in the EU/EEA that enter into or have entered into derivative transactions. EMIR mainly contains new rules for Over-The-Counter (OTC) derivatives transactions, but there are also some new rules for listed derivatives.

Not all rules apply to all types of companies. There are specific rules for financial institutions and for companies with very large OTC derivatives portfolios. For these parties, for example, it applies that they must settle their mutual OTC derivatives transactions ('clearing') via a neutral 'central counterparty'. This shifts their mutual risk to this central counterparty. Moreover, financial institutions and corporations with very large OTC derivatives portfolios must follow strict guidelines on the (pre)exchange of collateral for their mutual transactions.

This folder focuses on the rules and obligations that apply to firms that have a limited derivatives portfolio ('Non-Financial Counterparties') that are not centrally settled (NFC) by a central counterparty (CCP).

Main rules of EMIR

EMIR has several obligations for companies with a limited derivatives portfolio. These include central clearing, risk restrictions and transaction reporting. Below you can read more about the actions required under the various EMIR rules.

Timely confirmation: EMIR contains concrete guidelines for the - reciprocal - timely confirmation of new OTC derivatives transactions. Timelines for timely confirmation depend on the class of derivatives and the timing of the closing. FCs must have procedures in place to report the number of unconfirmed OTC derivatives transactions that are open for more than five business days to the designated competent authority on a monthly basis. For ABN AMRO this is De Nederlandsche Bank

Portfolio reconciliation Portfolio reconciliation is the process of comparing the different transaction characteristics of both parties in order to check whether the data match. The outcome of this reconciliation should be that both parties agree with the contents of the portfolio statement. This is called portfolio reconciliation. The frequency of this mandatory reconciliation depends on the number of OTC derivatives transactions between them.

Dispute resolution: financial institutions and/or firms entering into OTC derivatives transactions with each other should agree on procedures for:

a. the recording of disputes concerning the recognition or valuation of transactions;
b. the recording of disputes on the creation or exchange of collateral; and
c. the timely resolution of disputes, with a specific process for those disputes not resolved within five working days.

Reporting requirement: For both OTC derivatives and listed derivatives, EMIR establishes the obligation for companies that enter into or have entered into such transactions to report them to a trade repository. The purpose of this mandatory reporting is that supervisors gain more insight into the use of derivatives transactions in the financial markets, as well as into the individual derivatives portfolios of companies. The reporting obligation is discussed in more detail below. For transactions between a financial counterparty and a non-financial counterparty below the clearing thresholds, the financial counterparty is responsible for reporting on behalf of both parties. This means that ABN AMRO reports the transaction also on your behalf.

The EMIR rules are laid down in the Conditions of Foreign Exchange Derivatives Service Provision ABN AMRO through Franx ("CFEDSP"), which sets out, among other things, the rules with regard to timely confirmation, reconciliation, settlement of disputes and the reporting obligation. You can read these conditions at www.franx.com.

Reporting is necessary to obtain the desired transparency

Legal Entity Identifier (LEI): in order to report your derivative transactions correctly for you, your company needs to have about an active Legal Entity Identifier, also known as LEI. The LEI is a unique code with which your company can be identified. In this way, supervisors can monitor which parties are have entered into derivative transactions with each other. You should apply for an LEI yourself at the Chamber of Commerce. Franx cannot do this for you. Applying for and renewing an LEI involves costs. For the application procedure and the costs we refer to the website of the Chamber of Commerce (www.kvk.nl/lei).

Unique Trade Identifier (UTI): every new OTC derivatives transaction you conclude with Franx will have its own unique code (UTI). This reporting requirement applies to all derivatives transactions you have entered into, are open and/or have ended with ABN ARMO.

ABN AMRO will create the UTI. The UTI will be mentioned on every transaction confirmation you receive from Franx. You will also find these UTI(s) on the transaction overview that Franx provides to you. The UTI ensures a careful match between the reporting of both parties in the transaction.

What does Franx expect from you?

It is important that you are aware of your obligations under EMIR. This brochure will help you do so.
There is also a lot of information on EMIR available on the Internet, for example on the websites of various regulators.
You will find some useful links in this leaflet.

Your acceptance of the EMIR conditions

If your company enters into or has entered into OTC derivatives transactions with ABN AMRO, you must according to EMIR, agree on certain written procedures with ABN AMRO. You do this by signing the 'Foreign Exchange Derivatives Service Provision Agreement ABN AMRO through Franx'.

Your LEI

Franx would like to receive your LEI when you become a Franx customer. We need your LEI in order to process the OTC derivatives transactions that we have entered into with each other to be able to report to you properly and on your behalf. However, you must first apply for the LEI yourself at the Chamber of Commerce.

Where can you find more information on EMIR?

It is important that you inform yourself properly about EMIR.

Various national and European regulators and government agencies have published information on EMIR. You can for instance consult these websites:

- Website of the European Union: http://europa.eu
- Website European Securities and Markets Authority - ESMA: www.esma.europa.eu
- Website Authority for the Financial Markets - AFM: www.afm.nl

It is also possible to submit questions about EMIR to the AFM:

- E-mail address Netherlands Authority for the Financial Markets - AFM: EMIR@afm.nl
- Website of the Chamber of Commerce: www.kvk.nl/lei

Of course, you can also seek advice on your obligations from your own financial or legal adviser.

Disclaimer

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