

Risk.net Explores EMIR Refit With Carolyn Jackson

October 22, 2020

Financial Markets and Funds partner Carolyn Jackson spoke with *Risk.net* for two articles on the amended European Market Infrastructure Regulation (EMIR Refit). Both articles examine issues with reporting requirements not remedied by EMIR Refit. Corporations headquartered outside of the EU with EU affiliates that have sought an exemption from the reporting of intra-group derivatives under EMIR, have been denied relief by the applicable National Competent Authority. EU headquartered corporations, however, have been granted the exemption. Carolyn noted that it is not clear why regulators would need intra-group trade information from non-EU headquartered companies when they do not require the same information from EU headquartered corporates. She stated, "If anything, receiving reports from a subsidiary of a US parent is surely less helpful to ESMA than receiving the reports from an EU subsidiary of an EU parent company [which] gives them more of an understanding of the full picture of these transfers in Europe."

Additionally, EU companies continue to have to report trades undertaken with banks outside of the EU. Carolyn noted that the efforts of companies trying to have third-country dealers accept liability over reporting have not been successful. "There were some moves by corporates to try to get third-country dealers to change their pre-existing delegation agreements so that the third-country entity — that would be a financial counterparty if it was established in the EU — would accept the legal liability for reporting. [Non-EU dealers] obviously pushed back on that for good reason, because the EU non-financial counterparties (NFCs) are still responsible under the regulation." ("Non-EU corporates thwarted on Emir reporting relief," September 22, 2020; "Escape from Emir? Not so fast, swaps users," October 5, 2020)

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