



treasurytoday

Exclusive Adam Smith Webinar



Andy Nash
SVP Treasurer
Ahold



Michelle Moran
Partner
Ropes & Gray LLP



Gavin Jones
VP Treasurer
Ahold



Kicky Reef
Legal Counsel
Ahold



Nadine Grevaz
Treasury Director, Controlling
and Project Management
Ahold



Eleanor Hill
Editorial Director
Treasury Today

Facilitator:

EMIR

Treasury Today – 11 February 2014

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& GRAY

About Ropes & Gray

- Ropes & Gray LLP is a leading law firm with offices in the United States, London, and Asia. We represent a broad range of industry leaders in matters that often have a transformative impact on their businesses.
- More than 1,000 lawyers collaborate across geographies to represent and protect clients' interests. We do not believe in a "one size fits all" approach, but instead work closely with our clients to create solutions that make sense for them—both operationally and culturally.
- Ropes & Gray has a market-leading global investment funds practice with approximately 150 lawyers, including more than 40 partners. We have thoughtfully constructed a bespoke London office offering, augmenting the firm's traditional core strengths, whilst retaining the flexibility to identify and capture future growth areas, and have already been recognised in the London market by Legal Business, which honoured our London office with the *2013 U.S. Law Firm of the Year* award.

Investment Management and Financial Services

Our Investment Management and Financial Services Practice advises registered fund, hedge fund and other private fund sponsors and advisers in all aspects of their businesses. We assist in the structuring, formation and distribution of regulated and unregulated investment management products. These include UCITS, investment trusts and regulated listed and unlisted closed-ended funds, hedge funds and single client managed accounts.

We advise on product design and distribution, regulatory, compliance, trading and investment issues. We assist on issues involving the administration and custody of assets, as well as negotiations with investors. We also advise on structuring over-the-counter and exchange-traded derivatives, together with associated regulations, prime brokerage and securities lending arrangements, registration requirements and exemptions.

Recent areas of focus have been compliance with EMIR, CRD and AIFMD. We also advise on investment management mergers and acquisitions, especially cross-border transactions, investment in regulated businesses, and the distribution (including registration) and private placement of UCITS and alternative investment funds and securities.

EMIR overview

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What is EMIR?

- EMIR is the European Market Infrastructure Regulation.
- Its aim is to make the European derivatives market (OTC and traded) safer and more transparent.
- For a derivatives user, new rules as to:
 - Clearing OTC derivatives.
 - Risk mitigation techniques for uncleared derivatives.
 - Reporting requirements for all derivatives.
- Note care on definition of OTC derivative – FCA position on commodity derivatives and FX forwards.
- **Crucially: corporates with large speculative OTC derivative positions will, in due course, be required to clear centrally or collateralise their OTC derivative contracts.**

EMIR - timing

- Came into force on 16 August 2012, but obligations have and will come into effect on a staggered basis.

Essentially:

- **Risk mitigation** rules: came into effect in March and September 2013.
- **Reporting**: comes into effect on 12 February 2014.
- **Clearing for OTC derivatives**: still prospective - 2015?

What does it mean for corporate users?

- EU corporates are “non-financial counterparties”.
- Distinguish systemically important NFCs (NFC+) and other NFCs (NFC-):
 - NFC+: enters into “non-hedging” derivatives above a certain amount (clearing threshold).
 - NFC-: enters into no (or an amount below the clearing threshold) derivatives other than “hedging” derivatives.
- Treatment of “mixed groups”.

What is an NFC- and an NFC+?

- NFC+: if rolling average of its gross notional positions over 30 working days in the following asset classes (at group level) exceeds the clearing thresholds:
 - EUR 1bn for credit and equity derivatives (individually)
 - EUR 3bn for interest rate and FX (individually)
 - EUR 3bn for commodities and others (combined)
- You exclude “hedging” derivatives. “Hedging” is “derivatives which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the NFC or its group”

Notification obligations

- From 15 March 2013, NFCs have been required to notify the FCA and ESMA if their gross notional position exceeds the clearing threshold.
- NFCs must also notify the FCA and ESMA if their rolling 30 day average position no longer exceeds the clearing threshold.

Reporting obligation

- From tomorrow, all EU counterparties to **all** derivatives contracts (OTC and traded) must report (post trade) contract details to a trade repository.
- NFCs+ must also report exposures:
 - Collateral value and basis of collateral calculation
 - Mark to market or model valuations
- Both sides must report each trade. Possible to delegate reporting to the dealer or third party.

Risk mitigation

- Applies only to OTC derivative contracts:
 - Timely confirmation (March 2013)
 - Portfolio compression (September 2013)
 - Dispute resolution (September 2013)
 - Reconciliation (September 2013)
- Additionally, for NFC+:
 - Daily mark-to-market valuation (March 2013)
 - Future, likely to be posting/receipt of initial and variation margin (exemption for intra-group transactions)

Clearing

- Clearing will only apply to standardised and liquid OTC derivative contracts.
- Clearing involves EU wide process for identifying contracts suitable for clearing. Depends on authorisation of clearing houses.
- 3 year phase-in for NFC+s.
- NFC+ may need to set up clearing arrangements with brokers.
- NFC+ will need to post daily collateral in cash if they clear contracts.
- Exemption for intra-group transactions.

Michelle Moran

Partner

Michelle Moran is an investment management partner in Ropes & Gray's London office.

Michelle focuses on advising European and U.S. clients on the establishment, authorisation and management of all types of retail and institutional investment funds domiciled in the UK, Ireland, Luxembourg and Jersey including UCITS, ICVCs, investment trusts, hedge funds, real estate funds and segregated institutional portfolios. She has experience advising on a wide variety of transactions relating to investment managers, brokers, custodians, fund service providers and operating platforms. Recent areas of focus have been on AIFMD, EMIR and CRD IV.

Michelle has participated on EU Commission Working Groups responsible for putting together proposals for change to UCITS legislation playing a leading role in the introduction of the Key Investor Information Document as part of the suite of UCITS IV reforms.

She was a Panel Member of the Expert Liaison Group and the Investment Bank Advisory Panel both formed by HM Treasury to advise on desired policy and legislative change prompted by the financial crisis. These groups focused principally on the drafting of the Banking Act 2009, related secondary legislation and client asset law and regulation.

Representative Clients and Matters

- Acting for **Goldman Sachs Mutual Funds** on the global roll out of the Key Investor Information Documentation for its Irish and Luxembourg UCITS fund range.
- Acting as fund counsel to **Calamos Global Funds**, advising on regulatory and product related issues, as well as the distribution of those funds across Europe and Asia.
- Acting for **Cohen & Steers** in relation to its Irish UCITS fund and advising on European cross border issues.



T +44 20 3122 1148

F +44 20 3122 1348

Michelle.Moran@ropesgray.com

Education

- LPC, 1995, The College of Law, London
- LLB, 1993, University of London

Bar Admissions

- England and Wales, Solicitor, 2000
- Ireland, Solicitor, 2010

Michelle Moran (contd.)

- Advising **Baillie Gifford** on the distribution of its Irish UCITS range in Europe and Asia.
- Advising large sovereign wealth institutions and pension funds on high value and complex cross border segregated mandates and investments in regulated European retail and institutional funds.
- Advising promoters, funds and service providers on the impact of MiFID, UCITS IV and AIFMD with particular focus on challenging areas such as cross border mergers and remuneration.
- Advising buy side and sell side regulated financial institutions on UK and Irish regulatory issues which has included detailed examinations of practices and procedures and managing regulatory relationships with the Financial Conduct Authority, the UK Listing Authority, AIM, the Takeover Panel, the Central Bank of Ireland and other regulators around the world.

EMIR

AHOLD'S APPROACH

Treasury and Legal working
closely together

Who we are



Andy Nash
SVP Treasury
Geneva Office



Gavin Jones
VP Treasury
Geneva Office



Nadine Grevaz
Director Controlling and Project Management
Geneva Office



Kicky Reef
Legal Counsel
Zaandam Office

Ahold

An international retailing group, with strong local consumer brands in Europe and the United States; at the start of 2013...

3,074 stores

225,000 employees

Net sales **€32.8** billion

Underlying operating income **€1.4** billion

Underlying operating margin **4.3%**

Our banners in 2013

	Ahold USA	Ahold Europe
Stores	<p>765 stores (2014: +4)</p> 	<p>The Netherlands 2,050 stores (2014: +57)</p> 
Online	<p>125 pick-up points (2014: +130)</p> 	<p>The Netherlands 10 pick-up points (2014: +28)</p> 

Ahold's derivative positions

- Group Treasury centralized, internal banks for all Operating Companies
- Derivatives only deployed to hedge underlying exposure
- Limited interest rate derivatives – 2 CCRIS and 1 IRS
- Around 100 third party trades, approximately EUR 100 mln NPV outstanding at any time
- 700 intra group trades
- 9 different entities involved in intra group trade, across 4 countries
- 8 different bank counterparties - US, UK, European, Japanese

Challenges - by Nadine Grevaz

- Ambitious timeline (given the uncertainties under EMIR)
- Ahold's project
- Limited proactive approach of banks, one or two were very good
- EMIR's scope and national regulators view i.e. MiFid derivative definition
- Treasury Management Systems were not up to speed
- Trade Repositories longtime unknown (only Regis-TR at that time)
and of course...
- Trying to understand what exactly will the regulator do with information on intercompany derivatives

Reporting - by Nadine Grevaz

- Selection of a Trade Repository
- Experiences with banks on reporting & reconciliation

And over to Kicky for some legal considerations...

EMIR in practice - by Kicky Reef

- Ahold's qualification under EMIR
- Bilateral agreements with banks vs. adherence ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol
- Communication with banks
- Practical side to reporting
- Communication with Operating Companies
- Obtaining a LEI

Next steps and the future - by Andy Nash & Gavin Jones

- Go live tomorrow - wouldn't want to be a TR or ESMA employee!
- H2 14 - review existing process looking to simplify and automate more

We hope

- ESMA will review and remove the intra group derivatives reporting
- ESMA will learn from their process which they should admit was not planned well and has been painful in implementation

We fear

- Accountancy firms may be asked to audit EMIR reporting
- ESMA will increase the reporting requirements not scale them back

Thank you



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Question Time




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