

Client Alert

December 2011

New EU Regulation on Transparency and Integrity in the Energy Market (“REMIT”) to Take Effect December 28, 2011

On December 28, 2011, the EU's regulation on wholesale energy market integrity and transparency (“REMIT”)¹ will take effect. The REMIT regulation will establish a new legal disclosure and reporting regime for energy markets, coupled with prohibitions similar to the insider trading rules for financial markets. The objective is to prevent market abuse and manipulation so as to achieve fair competition and fair pricing for the benefit of consumers and to restore confidence in energy markets.

REMIT puts into place a system of disclosure, registration and enforcement to be overseen by the European Agency for the Cooperation of Energy Regulators (“Agency”) with the collaboration of national regulatory agencies. It applies to transactions in wholesale energy products — supply, transportation and distribution of electricity and gas — both as actual contracts and as derivatives.

REMIT imposes several new, substantial obligations on traders in wholesale energy markets:

- Prohibition on Insider Trading: Anyone with inside information — that which is not publicly known but which could affect market prices — may not use or disclose that information or advise others on the basis of that information. Exceptions are made for performance of contracts predating the acquisition of the inside information, transactions necessary to cover immediate physical loss from unplanned outages and certain emergency situations. This prohibition enters into force on December 28, 2011.
- Public Disclosure: Traders in the wholesale energy markets must publish inside information relating to their companies or other enterprises with which they are concerned, including information about “the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities.” Delays in disclosure are permissible for good cause, but not if they constitute insider trading. Routine disclosures of inside information in the course of business must be accompanied by publication of that information. The public disclosure obligation takes effect on December 28, 2011.
- Prevention of Market Abuse and Manipulation: Effective December 28, 2011, all attempts to manipulate wholesale energy markets through artificially affecting the price of energy products, either directly or indirectly, are prohibited.
- Registration and Reporting: Traders in wholesale energy markets will be required to register in their home state pending the European Commission's enactment of implementation acts that precisely delineate the scope, format and timing of the reporting requirements, and the establishment of registries no more than three months later by national regulatory agencies. These national registries will form the basis of a European registry.

¹ EU Regulation No 1227/2011 on wholesale energy market integrity and transparency, OJ L 326 [December 8, 2011].

Once the technical reporting parameters have been established by the commission, traders will be obligated to report all wholesale energy product transaction data to the Agency, including but not limited to quantity, price, relevant dates and identities of the parties. This data will be shared with other interested government entities, such as financial and competition authorities.

The European Commission will retain the authority to adjust the technical definitions of insider information and market manipulation, as developments in the energy markets dictate.

Additionally, REMIT creates a market-monitoring scheme in which the Agency and national regulatory agencies will collaborate to prevent abuse or manipulation of wholesale energy markets. By June 29, 2013, Member States will set their own procedures and penalties for traders who engage in such conduct, but the Agency will have the authority to direct national regulatory agencies to commence investigations and enforcement actions or, in transnational contexts, to create investigation committees itself.

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