
STATUTORY INSTRUMENTS

2013 No. 504

**The Financial Services and Markets Act 2000 (Over
the Counter Derivatives, Central Counterparties
and Trade Repositories) Regulations 2013**

PART 7

Investigatory powers of ESMA with regard to trade repositories

Records of telephone and data traffic: Article 62(1)(e) of the EMIR regulation

16.—(1) ESMA must obtain authorisation from the High Court before any official of, or person authorised by, ESMA requests any records of telephone or data traffic under Article 62(1)(e) of the EMIR regulation from a person domiciled or established in the United Kingdom.

(2) The FCA must obtain authorisation from the High Court before requesting on behalf of ESMA any records of telephone or data traffic under Article 62(1)(e) of the EMIR regulation.

(3) The High Court may grant authorisation under paragraph (1) or (2) if satisfied, on an application made to the High Court in accordance with rules of court by ESMA or the FCA, that—

- (a) ESMA has initiated an investigation under Article 62(1) of the EMIR regulation; and
- (b) requiring the records of telephone or data traffic would be neither arbitrary nor excessive having regard to the subject matter of the investigation.

(4) The High Court must conduct the assessment referred to in paragraph (3) in accordance with Article 62(6) of the EMIR regulation, and may exercise the powers conferred by that paragraph for the purposes of making its assessment.