

TO : **Regulated Entities**

- i. Cyprus Investment Firms**
- ii. UCITS and Management Companies**
- iii. Alternative Investment Funds managed by AIFMs**
- iv. Non-Financial Counterparties**

FROM : **Cyprus Securities and Exchange Commission**

DATE : **17 July 2019**

CIRCULAR No : **C329**

SUBJECT : **Publication of CySEC’s review of the procedures established, implemented and maintained relating to reporting obligations under the Regulation on OTC Derivatives, Central Counterparties and Trade Repositories (‘EMIR’) [Regulation (EU) No 648/2012]**

At the end of 2018, the Cyprus Securities and Exchange Commission (‘CySEC’) carried out a review of the procedures established, implemented and maintained by Cyprus Investment Firms (‘the CIFs’) for compliance purposes with article 9(1) of EMIR regarding the reporting of the details of derivative contracts concluded, modified or terminated, to Trade Repositories (‘the Review’).

The purpose of the Review was to assess the relevant procedures and ensure that the data reported to Trade Repositories by CIFs, are complete, accurate, consistent, timely and not duplicated.

The Review identified that all reviewed CIFs established, implemented and maintained such procedures but it also identified areas of concern that CySEC wishes to highlight to all Regulated Entities, despite the fact that the review covered a number of CIFs only. This circular sets out CySEC’s observations and asks all Regulated Entities to consider whether they comply with their EMIR reporting obligation.

A. Regulatory framework

1. The applicable regulatory framework with regards to the Review is:

- i. Article 9(1) of EMIR states that: *“Counterparties and CCPs shall ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported to a trade repository registered in accordance with Article 55 or recognised in accordance with Article 77. The*

details shall be reported no later than the working day following the conclusion, modification or termination of the contract ... Counterparties and CCPs shall ensure that the details of their derivative contracts are reported without duplication.”

- ii. Article 11 of EMIR states that: *“(2) Financial counterparties and non-financial counterparties ... shall mark-to-market on a daily basis the value of outstanding contracts. Where market conditions prevent marking-to-market, reliable and prudent marking-to model shall be used.”*

“(3) Financial counterparties shall have risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts that are entered into on or after 16 August 2012. Non-financial counterparties referred to in Article 10 shall have risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts that are entered into on or after the clearing threshold is exceeded.”

For the purposes of implementation of Article 9(1) of EMIR, the following Regulations are also relevant:

- iii. [Delegated Regulation \(EU\) No 148/2013](#) as amended by [Delegated Regulation \(EU\) No 2017/104](#) on the minimum details of the data to be reported to trade repositories ('Regulation 148/2013) and
- iv. [Implementing Regulation \(EU\) No 1247/2012](#) as amended by [Implementing Regulation \(EU\) 2017/105](#) with regard to the format and frequency of trade reports to trade repositories ('Regulation 1247/2012).

B. Scope of the Review

- 2. The Review took place during November and December 2018 and was a combination of on-site inspections and desk-based reviews. Fifteen (15) CIFs have been assessed.
- 3. The Review covered the following areas:
 - i. Existence of signed agreements with Report Submitting Entity¹/ Trade Repository where roles and responsibilities are clearly defined;
 - ii. The timely² reporting of derivative contracts concluded, modified or terminated;
 - iii. The marking-to-market or marking-to-model on a daily basis and the timely reporting of the value of outstanding derivative contracts;

¹ Report Submitting Entity is the entity to which a counterparty or a CCP which is subject to the reporting obligation delegates the reporting of the details of the derivative contracts it concludes, modifies or terminates.

² Whether reporting is performed within the timeframe provided in EMIR.

- iv. The timely reporting of collateral of outstanding derivative contracts;
- v. Record keeping of contracts concluded/modified for at least 5 years following their termination;
- vi. The process for unique trade identifier ('UTI') generation;
- vii. Timely communication of UTI to the other counterparty, in order for the latter to be able to meet its reporting obligation;
- viii. Monitoring of correctness of legal entity identifiers ('LEIs') reported for counterparties in order to identify cases of change of a LEI, i.e. due to a merger, acquisition or other event where the identifier of the counterparty has to be updated;
- ix. Monitoring of static data to avoid validation failures (i.e. timely configuration of new symbols or change in symbols in the system of the Report Submitting Entity);
- x. Content and format of reporting in accordance with Regulations 1247/2012 and 148/2013;
- xi. Immediate access to data reported to Trade Repositories;
- xii. Appointment of person responsible for handling of issues arising with EMIR Reporting;
- xiii. Handling of issues that arise during reporting in a timely manner;
- xiv. Monitoring of the complete, accurate, consistent, timely and not duplicated reporting by the Compliance Officer.

C. Observations identified

4. The Review identified that all reviewed CIFs had established, implemented and maintained procedures in relation to the reporting of the details of derivative contracts concluded, modified or terminated, to Trade Repositories, in accordance with Article 9(1) of EMIR. However, in certain cases, those procedures were not adequate and sufficient to ensure that the data reported to Trade Repositories are complete, accurate, consistent, timely and not duplicated.

The areas of concern identified are further analysed in points 5 – 14 below.

5. Existence of signed agreements with Report Submitting Entities/Trade Repositories

The Review showed that all reviewed CIFs signed agreements with Report Submitting Entities or Trade Repositories where roles and responsibilities were clearly defined. However, in some cases those agreements were supporting the reporting of derivative contracts concluded with retail clients but not the reporting of derivative contracts concluded with other counterparties (such as liquidity providers).

6. Timely reporting of derivative contracts concluded, modified or terminated

The Review showed that some CIFs did not report in a timely manner all the derivative contracts that they concluded, modified or terminated (such as contracts with liquidity providers).

7. Incomplete reporting of details of derivatives contracts

There were some cases in which:

- i. Certain details of derivative contracts were not reported to Trade Repositories, such as information on collateral received by clients.
- ii. The information reported was not in accordance with the EMIR requirements, such as the information reported for valuation updates. More specifically, the valuation updates reported were wrongly representing the daily change in the valuation of the outstanding contracts and not the total value of the contracts.

8. Timely communication of UTI

- i. In one case the CIF was not receiving the UTI from its counterparty in a timely manner in order to ensure the timely reporting of its trades with the correct UTI.
- ii. In another case the CIF was not timely communicating the UTIs to its reporting counterparties in order for the latter to be able to meet its reporting obligations.

9. Monitoring of correctness of LEIs

- i. In one case, a CIF was in the process of updating its procedures in order to ensure the reporting of correct LEIs for its counterparties.
- ii. In another case, a CIF did not have in place procedures for review of correctness of the LEIs of its clients.

10. Monitoring of static data

There were certain cases where the procedures in place for updating static data were not adequate and sufficient in order to avoid validation failures and ensure timely reporting.

11. Handling of issues

In some cases there were no adequate and sufficient procedures in place, in order to ensure timely handling of issues that were arising.

12. Content and format of reporting in accordance with Regulations 1247/2012 and 148/2013

In relation to the content and format of reporting the Review identified the following:

- i. Inconsistent formats (i.e. inconsistent date format, inconsistent format of country ISO code, inconsistent format of variation margin received);
- ii. Use of non-compliant identifiers (i.e. invalid ID of the other counterparty, invalid LEI);

- iii. Missing information from mandatory fields (i.e. the ID of the other counterparty or the country code of the country of the other counterparty was not populated);
- iv. Invalid static data (i.e. static data falling out of date and needing to be updated to allow correct reports to be made, new instruments not timely configured in the system i.e. when ISIN for underlying derivatives contract changes between months or when new instruments are introduced for trading).

13. Immediate access to data reported to Trade Repositories

CySEC observed that in some cases there was no direct and immediate access to all the data reported to Trade Repositories. More specifically, it was observed that some CIFs had direct and immediate access to the data relating to the reporting of new trades. However, regarding all other action types - such as modifications, errors, early terminations etc - the CIFs had to request access to such data from their Report Submitting Entities.

14. Monitoring of the complete, accurate, consistent, timely and not duplicated reporting of data by the Compliance Officer

CySEC observed that in many cases the Compliance Officer was not monitoring on a continuous and ongoing basis the complete, accurate, consistent, timely and not duplicated reporting of the data reported to Trade Repositories.

D. Next steps

- 15. The quality of EMIR data and the adequacy and sufficiency of the procedures relevant with the EMIR reporting obligation is a fundamental condition to effective functioning and supervision of the securities market. Fulfilling the EMIR reporting obligation will require dedicated oversight by all Regulated Entities to ensure any issues and/or failures are rectified appropriately.
- 16. The publication of the common deficiencies identified in CySEC's Review is designed to assist Regulated Entities in prioritising their efforts towards reviewing the procedures established, implemented and maintained, in relation to EMIR reporting with the aim to ensure that the data reported to Trade Repositories are complete, accurate, consistent, timely and not duplicated.

Regulated Entities not complying with their EMIR reporting obligation will be subject to enforcement action.

Sincerely

Demetra Kalogerou
Chairman of the Cyprus Securities and Exchange Commission