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**TO** : Regulated Entities  
i. Cyprus Investment Firms  
ii. UCITS<sup>1</sup> and, where relevant, their Management Companies  
iii. Alternative Investment Funds ('AIFs')<sup>2</sup> established or managed in Cyprus and where relevant, their Alternative Investment Fund Managers ('AIFMs')  
iv. Non-Financial Counterparties

**FROM** : Cyprus Securities and Exchange Commission

**DATE** : 20 Αυγούστου 2019

**CIRCULAR No** : C336

**SUBJECT** : Recent amendments to Regulation (EU) 648/2012 on OTC Derivatives, Central Counterparties and Trade Repositories ('EMIR')

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The Cyprus Securities and Exchange Commission ('CySEC') herein wishes to stress to the Regulated Entities the recent amendments made to the European Regulatory framework regarding EMIR. More specifically:

#### **A. Amended regulatory framework**

1. [Regulation \(EU\) 2019/834](#) amends EMIR as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories, and the requirements for trade repositories. This new regulation, which is known as both 'EMIR Refit' and 'EMIR 2.1', came into effect on 17 June 2019.
2. [ESMA Questions and Answers on EMIR](#) have also been amended in order to provide further guidance in relation to EMIR Refit.

#### **3. Analysis of main changes**

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<sup>1</sup> UCITS set up exclusively for the purpose of service one or more employee share purchase plans are out of scope.

<sup>2</sup> AIFs set up exclusively for the purpose of serving one or more employee share purchase plans, or AIFs which are securitisation special purpose entities as defined by Article 2(1) of the Alternative Investment Fund Managers Law of 2013 (Law 56(I)/2013 as amended) are out of scope.

i. Definition of Financial Counterparty ('FC')

The EMIR Refit expands the definition of an FC to include the following entities perceived to pose important systemic risk to the financial system:

- a. Every AIF established in the EU, or managed by an AIFM authorised or registered in the European Union ('EU') under Directive 2011/61/EU and where relevant its AIFM established in the EU. This amendment to the definition excludes AIFs set up exclusively for the purposes of serving one or more employee share purchase plans or AIFs that are 'securitisation special purpose entities' as referred to in point (g) of Article 2(3) of Directive 2011/61/EU.
- b. Central securities depositaries authorised in accordance with Regulation (EU) No 909/2014.

ii. Clearing requirement

- a. EMIR Refit establishes a new regime for determining when FCs and non-financial counterparties ('NFCs') are subject to the clearing requirement, depending on whether or not their positions exceed the clearing thresholds. More specifically:

- For FCs, it introduces the regime of 'small FCs', which should be exempted from the clearing obligation if they choose to calculate their positions every 12 months against the clearing thresholds and such positions do not exceed the clearing thresholds.

However, such FCs shall remain subject to the requirement to exchange collateral.

It is noted that for UCITS and AIFs, the positions referred to above shall be calculated at the level of the fund.

- For NFCs, the scope of the clearing obligation is narrowed if they choose to calculate their positions every 12 months against the clearing thresholds. Those NFCs are subject to the clearing obligation only with regard to the classes of OTC derivatives that exceed the clearing threshold.

However, NFCs remain subject to the requirement to exchange collateral where any of the clearing thresholds is exceeded. Also, NFCs that choose not to calculate their positions against the clearing thresholds, become subject to the clearing obligation for all classes of OTC derivatives.

- b. The requirement to clear certain OTC derivative contracts concluded before the clearing obligation takes effect has been removed.

### iii. Reporting requirement

- a. The requirement to report historical contracts, which were entered into before 12 February 2014 and were not outstanding on that date, has been removed.
- b. Transactions between counterparties within a group, where at least one of the counterparties is an NFC, are under certain conditions exempted from the reporting obligation - regardless of the place of establishment of the NFC.
- c. As of 18 June 2020:
  - The FC will be solely responsible and legally liable for reporting on behalf of both itself and NFCs that are not subject to the clearing obligation with regard to OTC derivative contracts entered into by those counterparties, as well as for ensuring the correctness of the details reported.<sup>3</sup>
  - In relation to UCITSs and AIFs, the management company of a UCITS and the AIFM, respectively, will be responsible and legally liable for reporting on behalf of that UCITS or AIF with regard to OTC derivative contracts, to which the UCITS or AIF is a counterparty, as well as for ensuring the correctness of the details reported.

### iv. Risk mitigation

EMIR Refit introduces an amendment requiring regulatory technical standards to be developed on risk management procedures relating to the exchange of collateral and specification of supervisory procedures to ensure initial and ongoing validation of these procedures.

## **B. What should Regulated Entities do as a result of the amended provisions**

4. Regulated Entities should review the implications of the amended provisions and take the necessary action in order to ensure compliance with EMIR. More specifically, Regulated Entities are advised to:
  - i. Evaluate the impact of EMIR Refit on the Regulated Entity or the group to which it belongs.
  - ii. In case they are subject to the clearing obligation, decide whether:

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<sup>3</sup> It shall be possible for NFCs to choose to report their OTC derivative contracts. In such cases, the NFC shall inform the FC accordingly and shall be responsible, and legally liable, for reporting that data and for ensuring their correctness.

- a. To calculate the OTC derivative positions on a periodic basis (in this case consider establishing a compliance process to calculate the clearing thresholds on a periodic basis), or,
  - b. To clear OTC derivatives subject to the clearing obligation.
- iii. Re-evaluate the status of counterparties and clients under EMIR Refit, in particular as to whether they are in compliance with the new rules and obligations.
  - iv. Consider changing agreements with corporate clients to incorporate EMIR Refit changes.

Sincerely

Demetra Kalogerou  
Chairman of the Cyprus Securities and Exchange Commission