
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 : **3 January 2019**

CIRCULAR No : **C291**

SUBJECT : **Publication of CySEC’s Review of compliance with the reporting obligation under the Regulation on OTC Derivatives, Central Counterparties and Trade Repositories (‘EMIR’) [Regulation (EU) No 648/2012]**

The Cyprus Securities and Exchange Commission (‘CySEC’) recently carried out a review of the quality of data reported to Trade Repositories, under Article 9(1) of EMIR by Cyprus Investment Firms (‘CIFs’).

According to Article 9(1) of EMIR: *“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.”*

The purpose of the Review was to assess the quality and timeliness¹ of data reported by CIFs to Trade Repositories. The Review 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. Scope of the Review

¹ Whether reporting is performed within the timeframe provided in EMIR.

The Review assessed the quality and/ or timeliness of data reported by 29 CIFs to Trade Repositories.

CIFs with the largest number of low quality reports have been reviewed.

B. Areas of concern/ Observations identified

1. Portability of data between Trade Repositories and reported outstanding positions:

CySEC observed that a significant number of positions in derivatives reported to Trade Repositories was not updated in accordance with the technical standards on reporting that came into effect in November 2017² and were incorrectly recorded as outstanding. The Review showed that:

- i. CIFs were not updating positions as they were terminated;
- ii. No reconciliations were performed between the outstanding positions in CIFs' records and Trade Repositories' records, and therefore possible failures were not identified and corrected (e.g. sending modification reports in cases where there are incorrect outstanding positions reported in Trade Repositories);
- iii. Data reported prior to the existing technical standards was of poor quality and not in line with the existing standards under EMIR.

2. Rejected reports: CySEC observed that a significant number of reports submitted to Trade Repositories by CIFs were rejected. The most common reasons for this failure were:

- i. Inconsistent formats (i.e. inconsistent date format, inconsistent format of country ISO code);
- ii. Use of incompliant 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. Rejected reports were not subsequently resubmitted within two weeks from the rejection date.

3. Unpaired/unmatched trades: Based on the data reported, CySEC observed that:

- i. There were cases with unpaired trades. When both counterparties to a trade have an obligation to report, then two reports must be submitted to the Trade Repositories for each trade. Failure in pairing occurs when the two counterparties submit their reports using different Unique Trade Identifier ('UTI'), resulting in unpaired trades;

² [Commission Delegated Regulation \(EU\) 2017/104](#), which amended [Delegated Regulation \(EU\) 148/2013](#) and [Commission Implementing Regulation \(EU\) 2017/105](#) ('Regulation 2017/105'), which amended [Implementing Regulation \(EU\) 1247/2012](#) ('Regulation 1247/2012').

A common approach on the generation and communication of UTIs in accordance with Articles 3 and 4 of Regulation 1247/2012 as amended by Article 1 of Regulation 2017/105 was not followed/agreed at all times with reporting counterparties.

- ii. Even in cases of paired trades, not all associated reporting fields were matched. The most common reasons for the existence of unmatched trades relate to inconsistent formats or use of incompliant identifiers.
4. Monitoring: CySEC observed that CIFs did not adequately monitor their arrangements in order to ensure full compliance with EMIR reporting. In the event of failures³, CIFs did not take immediate action to rectify any issues and resubmit reports in a timely manner. Also, CIFs did not analyse the causes of failure to ensure that they identify and address any risks or issues so as to reduce failures to the minimum number possible.
5. Use of intermediaries – reporting/submitting firms: When CIFs were using an intermediary to report to Trade Repositories on their behalf (reporting/submitting firms), no proper communication between the two parties took place, and as a result, the failures were not corrected.

C. Next steps

The publication of the common deficiencies identified in CySEC's Review is designed to assist Regulated Entities in ensuring full compliance with the EMIR reporting obligation. With the Review's findings as a basis, all Regulated Entities are recommended to undertake a full review of their respective EMIR reporting policies and arrangements.

Also, Regulated Entities are advised to nominate a person within their firm, who will be responsible for the daily monitoring of EMIR reporting. Fulfilling the EMIR reporting obligation will require dedicated oversight to ensure any issues and/or failures are rectified appropriately.

Regulated Entities not complying with the above will encounter enforcement action.

Sincerely



Demetra Kalogerou
Chairman
Cyprus Securities and Exchange Commission

³ Examples of failures are provided in Part B above.