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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 : **11 October 2017**

CIRCULAR No : **C243**

SUBJECT : **New amendments in the European regulatory framework governing the Over the Counter Derivatives, Central Counterparties and Trade Repositories – European Regulation (EU) No 648/2012 ('EMIR')**

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Following [Circular C115](#), relating to EMIR, the Cyprus Securities and Exchange Commission ('the CySEC') herein wishes to inform the Regulated Entities on the amendments made in the European regulatory framework regarding EMIR. More specifically:

#### **A. Clearing obligation**

1. A number of delegated regulations were published by European Commission ('Commission') in the past which determine the classes of over-the-counter (OTC) derivatives subject to clearing obligation as well as the dates from which the clearing obligation takes effect. Subsequently, a new delegated regulation, the [Commission Delegated Regulation \(EU\) 2017/751](#), has been published which amends some of these dates.

The applicable delegated regulations are laid down in points 2 – 4 below. The amended dates are marked as 'new'.

2. [Commission Delegated Regulation \(EU\) 2015/2205](#)
  - i. It provides for mandatory clearing of the following interest rate OTC derivatives classes, denominated in the G4 currencies (GBP, EUR, JPY and USD):
    - Basis swaps classes.

- Fixed-to-float interest rate swaps classes (known as 'plain vanilla' interest rate derivatives).
  - Forward rate agreement classes.
  - Overnight index swaps classes.
- ii. The dates from which the clearing obligation takes effect in relation to the above interest rate OTC derivatives classes differ depending on the category of counterparty<sup>1</sup>.

Counterparties	Dates from
Category 1	21 June 2016
Category 2	21 December 2016
Category 3	21 June 2019 (new)
Category 4	21 December 2018

### 3. [Commission Delegated Regulation \(EU\) 2016/592](#)

- i. It provides for mandatory clearing of the following two iTraxx Index credit default swaps ('CDS'):
- Untranchetted iTraxx Index CDS (Europe Main, 5 year tenor, series 17 onwards, with EUR as the settlement currency) and
  - Untranchetted iTraxx Index CDS (Europe Crossover, 5 year tenor, series 17 onwards, with EUR as the settlement currency).
- ii. The dates from which the clearing obligation takes effect in relation to the above CDS differ depending on the category of counterparty<sup>2</sup>.

Counterparties	Dates from
Category 1	9 February 2017
Category 2	9 August 2017
Category 3	21 June 2019 (new)
Category 4	9 May 2019

### 4. [Commission Delegated Regulation \(EU\) 2016/1178](#)

- i. It provides for mandatory clearing of the following interest rate OTC derivatives classes, denominated in non G4 currencies (NOK, PLN, SEK):
- Fixed-to-float IRS denominated in Norwegian Krone (NOK), Polish Zloty (PLN) and Swedish Krona (SEK) and
  - FRAs denominated in NOK, PLN and SEK.

<sup>1</sup> For more details on the categories please refer to article 2 of the Commission Delegated Regulation (EU) 2015/2205.

<sup>2</sup> For more details on the categories please refer to article 2 of the Commission Delegated Regulation (EU) 2016/592.

- ii. The dates from which the clearing obligation takes effect in relation to the above interest rate OTC derivatives classes differ depending on the category of counterparty<sup>3</sup>.

Counterparties	Dates from
Category 1	9 February 2017
Category 2	9 July 2017
Category 3	21 June 2019 (new)
Category 4	9 July 2019

## B. Reporting obligation

5. Several amendments have been made in the reporting requirements under EMIR<sup>4</sup>, which enter into force on 1<sup>st</sup> November 2017.

These amendments are laid down in the delegated regulations mentioned in points 6 to 7 below.

6. [Commission Delegated Regulation \(EU\) 2017/104](#) ('Regulation 2017/104')<sup>5</sup>

- i. Derivative contracts composed of a combination of derivative contracts ('complex product')

According to Article 1 of Regulation 2017/104, in case the fields in the report do not allow for the effective reporting of the complex product, the details and information of the complex product shall be reported in separate reports. The number of the reports shall be agreed by the counterparties.

- ii. Cleared trades

- According to Article 2(1) of Regulation 2017/104, existing contracts subsequently cleared by a CCP shall be reported as terminated and the new contract resulting from clearing shall be reported.
- According to Article 2(2) of Regulation 2017/104, where a contract is both concluded on a trading venue and cleared on the same day, only the contracts resulting from clearing shall be reported.

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<sup>3</sup> For more details on the categories please refer to article 2 of the Commission Delegated Regulation (EU) 2016/1178.

<sup>4</sup> Under the existing framework, the reporting requirements are provided for in Article 9 of [EMIR](#), in Commission Delegated Regulation (EU) No 148/2013 and in Commission Implementing Regulation (EU) No 1247/2012.

<sup>5</sup> It amends the [Delegated Regulation \(EU\) No 148/2013](#).

iii. Reporting of exposure

According to Article 3 of Regulation 2017/104:

- Detailed information on collateral shall be reported.
- Not only posted but also received collateral shall be reported.

iv. Credit default swaps ('CDS')

A new class of derivatives is introduced, the CDS, with several reporting fields (Section 2j of Table 2 of the Annex of Regulation 2017/104).

7. Commission Implementing Regulation (EU) 2017/105 ('Regulation 2017/105')<sup>6</sup>

i. Identification of counterparties and other entities

According to Article 1(1) of Regulation 2017/105, legal entity identifiers ('LEIs') shall be the only means allowed for the purpose of identification of legal entities.

ii. Counterparty side

According to Article 1(2) of Regulation 2017/105, the counterparty side to the derivative contract shall be determined depending on the different asset classes.

iii. Specification, identification and classification of derivatives

According to Article 1(3) of Regulation 2017/105, derivatives shall be specified on the basis of contract type and asset class. They shall be identified by ISIN or ALL. The OTC derivative contracts will be identified by their types. Two new contract types are added, spreadbets and swaptions.

In view of ongoing financial innovation giving rise to new types of derivatives contracts, it is important to ensure that any new types of derivative contracts that do not fall within an existing classification can nevertheless be reported, in the category 'other' in the classification of types of derivatives contracts (Field 1, Section 2a of Table 2 of the Annex of Regulation 2017/105).

iv. Unique trade identifiers ('UTIs')

According to Article 1(4) of Regulation 2017/105, criteria are established for the generation of UTIs so as to avoid counting the same transaction twice.

v. Venue of execution

According to Article 1(4) of Regulation 2017/105, clear rules are set for identifying the venue of execution.

vi. Backloading

According to Article 1(5) of Regulation 2017/105 and given the resulting complexity of reporting terminated trades and the fact that such trades do not increase systemic risk, the period for reporting terminated trades shall be

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<sup>6</sup> It amends the [Implementing Regulation \(EU\) No 1247/2012](#).

extended from 3 years to 5 years from the commencement date for reporting (i.e. from 12 February 2017 to 12 February 2019).

**C. Risk mitigation techniques for OTC derivatives contracts not cleared by a CCP (non-centrally cleared OTC derivatives)**

8. A new delegated regulation has been published, the [Commission Delegated Regulation \(EU\) 2017/323](#), which amends the [Commission Delegated Regulation \(EU\) 2016/2251](#). The amendments are referred to the timely, accurate and appropriately segregated exchange of collateral for OTC derivatives not cleared by a CCP and entered into force on 4 January 2017.

**D. What should Regulated Entities do as a result of the new provisions**

9. With respect to the clearing obligation, Regulated Entities are advised to:
- i. Consider the products used to identify which of them are (or will be) subject to clearing obligation.
  - ii. Put in place relevant clearing arrangements as soon as possible.
  - iii. Determine their counterparty category and identify which of their counterparties will also be within scope.
  - iv. If wishing to use an exemption from the clearing obligation in accordance with article 4(2) of EMIR, assess compliance with conditions and consider notification/application process.
10. For reporting obligation, Regulated Entities are advised to:
- i. Amend their systems and procedures in order to report transactions in accordance with the amended reporting requirements.
  - ii. Obtain LEIs if they do not already have and ensure that all their clients, which are legal entities, have also obtained LEIs.
11. For risk-mitigation techniques for OTC derivative contracts not cleared by a CCP, Regulated entities are advised to ensure that appropriate procedures and arrangements are in place for the timely, accurate and appropriately segregated exchange of collateral.

Sincerely,

Demetra Kalogerou  
Chairman  
Cyprus Securities and Exchange Commission