

TO : i. **Cyprus Investment Firms**
ii. **UCITS Management Companies**

FROM : **Cyprus Securities and Exchange Commission**

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SUBJECT : **EMIR - European Regulation (EU) No 648/2012 on Over the Counter Derivatives, Central Counterparties and Trade Repositories – Latest developments**

The Cyprus Securities and Exchange Commission ('the Commission') wishes, with this circular, to inform the Cyprus Investment Firms and UCITS Management Companies ('the Regulated Entities') about the following:

1. Classification of financial instruments as derivatives

It is observed that due to different transposition of European Directive 2004/39/EC (MiFID) across Member States, there is no single, commonly adopted definition of derivative or derivative contract in the European Union, thus preventing the convergent application of EMIR. This is particularly true in the case of foreign exchange (FX) forwards and physically settled commodity forwards.

In order to avoid the inconsistent application of EMIR across the EU, the European Securities and Markets Authority ('ESMA', in which the Commission is a member) sent, on February 14, 2014, a [letter](#) to the European Commission, in order to clarify the treatment of certain categories of contracts. Until then, the relevant provisions of EMIR will not be implemented for contracts that are not clearly identified as derivatives contracts across the Union, in particular for:

- FX forwards with a settlement date up to seven days.
- FX forwards concluded for commercial purposes.
- Physically settled commodity forwards.

2. Reporting to Trade Repositories – LEI

As it is previously mentioned, Regulated Entities would need a unique code which would identify the reporting counterparty. The LEI¹ satisfied this requirement.

Reporting without a LEI is not in compliance with EMIR. However, the Commission is aware of the difficulties that several Regulated Entities are facing in getting a LEI on time. Nevertheless, if a Regulated Entity has to report and does not have a LEI, it is preferable to report, on a temporary basis, without the LEI than not to report at all. The Commission expects most Trade Repositories to be able to accept reports without LEIs.

3. Individuals - Amendment of ESMA Questions & Answers on EMIR

ESMA published on 11 February 2014 amended Questions and Answers on the implementation of EMIR, which can be viewed here ([Questions & Answers on EMIR](#)).

One of the amendments refers to the transaction scenarios, on Part IV of the Questions and Answers, according to which only individuals that are not carrying out an economic activity and who are consequently not considered as undertakings (see [European Commission FAQs](#) no. 14), are not subject to the reporting obligation (and not all individuals as it was the case before the amendment).

Given the above amendment, the paragraphs 16(i), 17(ii) and 18(i) of the [Guide to EMIR](#) will be amended accordingly, in due time.

Sincerely,

Demetra Kalogerou
Chairman
Cyprus Securities and Exchange Commission

¹ LEI = Legal Entity Identifier is a 20-digit, alpha-numeric code that connects to key reference information that enables clear and unique identification of companies participating in global financial markets.