
TO : **Regulated Entities**
i. **Cyprus Investment Firms**
ii. **UCITS and Management Companies**
iii. **Alternative Investment Funds managed by AIFMs in the Republic**

FROM : **Cyprus Securities and Exchange Commission**

DATE : **15 February 2016**

CIRCULAR No : **C115**

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

Following the Circulars with numbers [CI144-2014-03](#) and [CI144-2014-07](#), relating to EMIR, the Cyprus Securities and Exchange Commission ('the CySEC') wishes, with this circular, to remind the Regulated Entities about their obligations emanated by EMIR and also to give an update on the latest developments in European Union ('EU') in this field.

A. Clearing obligation

1. The Regulated Entities must clear, through authorised/ recognised CCPs¹, all OTC derivative contracts pertaining to a class of OTC derivatives that has been declared subject to the clearing obligation [article 4(1) of EMIR].
2. Several CCPs have been authorised/ recognised² to clear classes of OTC derivatives. The European Securities and Markets Authority ('ESMA') maintains on its website a list of [European CCPs authorised](#) and a list of [third-country CCPs recognised](#) to offer clearing services in the EU.
3. According to article 5 of EMIR, ESMA must develop and submit to the European Commission ('EC') for endorsement draft regulatory technical standards specifying the classes of OTC derivatives that should be subject to the clearing obligation, as well as several details relating to them.

¹ Central Counterparties, as these are defined in Article 2(1) of EMIR.

² EU CCPs are authorised by the competent authorities of the Member States where they are established, whereas third countries CCPs are recognised by ESMA.

4. By now, only certain interest rate OTC derivatives classes are subject to clearing obligation. More specifically, an [RTS on interest rate OTC derivatives](#) ('the RTS') was published in the EU's Official Journal on 1st December 2015 and covers the following interest rate OTC derivatives classes, denominated in the G4 currencies (GBP, EUR, JPY and USD):

- i. Basis swaps classes.
- ii. Fixed-to-float interest rate swaps classes (known as 'plain vanilla' interest rate derivatives).
- iii. Forward rate agreement classes.
- iv. Overnight index swaps classes.

5. The RTS also specifies:

- i. The dates from which the clearing obligation takes effect in relation to the above interest rate OTC derivatives classes (article 3 of RTS).

This provision applies differently by counterparties depending on which of the four categories stated in RTS³, they fall under.

Counterparties	Dates from
Category 1	21 June 2016
Category 2	21 December 2016
Category 3	21 June 2017
Category 4	21 December 2017

- ii. The minimum remaining maturity of the OTC derivative contracts for purposes of applying article 4(1)(b)(ii) of EMIR (article 4 of RTS).

6. In addition to the RTS, ESMA developed and submitted to the EC for endorsement:

- i. On 1 October 2015, [draft RTS for the central clearing of certain types of Credit Default Swap \(CDS\)](#). More specifically, the draft RTS propose for mandatory clearing to apply to the following two iTraxx Index CDS:
 - Untranchet iTraxx Index CDS (Europe Main, 5 year tenor, series 17 onwards, with EUR as the settlement currency) and
 - Untranchet iTraxx Index CDS (Europe Crossover, 5 year tenor, series 17 onwards, with EUR as the settlement currency).

³ For more details on the categories please refer to article 2 of [RTS on interest rate OTC derivatives](#).

ii. On 10 November 2015, [draft RTS for the central clearing of Interest Rate OTC derivatives in additional currencies](#). These draft RTS cover the following derivatives:

- Fixed-to-float IRS denominated in Norwegian Krone (NOK), Polish Zloty (PLN) and Swedish Krona (SEK) and
- FRAs denominated in NOK, PLN and SEK.

The EC has three months to decide whether to endorse the draft RTS. Upon endorsement, the clearing obligation will enter into force subject to scrutiny by the European Parliament and Council of the EU.

7. As far as equity derivatives, contracts for differences and foreign exchange (non-deliverable forwards) contracts are concerned, no RTS are expected to be proposed at this stage.
8. ESMA has developed a [Public Register](#) in order to inform market participants on the clearing obligation. The [Public Register](#) includes the classes of OTC derivatives that CCPs are authorised to clear as well as the classes of OTC derivatives subject to the clearing obligation.

B. Reporting obligation

9. Regulated Entities must 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 of EMIR.
10. For ease of application, ESMA has set up on its website the [List of Registered Trade Repositories](#).

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

11. Regulated Entities that enter into an OTC derivative contract not cleared by a CCP must ensure, exercising due diligence, that appropriate procedures and arrangements are in place to measure, monitor and mitigate operational risk and counterparty credit risk, including at least:
- i. The timely confirmation of the terms of the relevant OTC derivative contract.
 - ii. Formalised processes which are robust, resilient and auditable in order to reconcile portfolio, to manage the associated risk, and to identify disputes

between parties early and resolve them, and to monitor the value of outstanding contracts. The value of outstanding contracts must be marked-to-market on a daily basis.

- 12.** In order to ensure consistent application of Article 11 of EMIR (risk mitigation techniques for OTC derivatives not cleared by a CCP), RTS [149/2013](#) and [285/2014](#) have been drafted and published. Another RTS is currently pending publication so as to complete the package relating to application of Article 11 of EMIR.

D. What should Regulated Entities do as a result of the new rules - EMIR

- 13.** 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 – consider time to onboard.
 - 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. Please note that the CySEC is in the process of preparing a notification/ application form for this purpose.
 - v. Cease immediately any cooperation for receiving clearing services from third country CCPs which have not applied to ESMA for recognition under article 25 of EMIR.
- 14.** For reporting obligation, Regulated Entities are advised to ensure that they have concluded an agreement with a registered/recognised Trade Repository and that the details of any derivative contracts they have concluded are reported to this Trade Repository.
- 15.** 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 to measure, monitor and mitigate operational risk and counterparty credit risk in accordance with article 11 of EMIR and RTS [149/2013](#) and [285/2014](#).

E. Information requested by the CySEC

16. In order to verify the extent of implementation of EMIR by the Regulated Entities, CySEC requires all Regulated Entities to fill in the form in **Appendix** and submit it to the electronic address supervision@cysec.gov.cy, **no later than Tuesday, March 8, 2016**, by giving to it the filename **{TRS username}_C115.xlsx**. The information below explains the naming convention:

TRS username for the file is the username of the TRS credentials (refer to Section 17 of this Circular on how to request this, in case you do not already have one) in capital letters.

17. TRS username: The login (TRS username) and password will be given to the Regulated Entity after requesting so, via email, to information.technology@cysec.gov.cy. The email subject must include the following: "TRS Credentials – {name of the Regulated Entity}_{TRS username*}"
18. The Form is available **only** in the English language. The Excel® used must be of 2007 version and onwards.

Sincerely,

Demetra Kalogerou
Chairman
Cyprus Securities and Exchange Commission