

**TO** : **Regulated Entities**  
i. **Cyprus Investment Firms (CIFs)**  
ii. **UCITS Management Companies ('UCITS MC')**  
iii. **Alternative Investment Fund Managers (AIFMs)**

**FROM** : **Cyprus Securities and Exchange Commission**

**DATE** : **July 03, 2023**

**CIRCULAR No** : **C585**

**SUBJECT** : **ESMA Guidelines on further specifying the circumstances for temporary restrictions in the case of a significant non-default event in accordance with Article 45a of EMIR**

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1. The Cyprus Securities and Exchange Commission (the 'CySEC') wishes to remind the regulated entities that the European Securities and Markets Authority (ESMA) has published the Guidelines on further specifying the circumstances for temporary restrictions in the case of a significant non-default event in accordance with Article 45a of EMIR (the '[Guidelines](#)') on June 2, 2023, translated in all official languages of the EU.
2. These Guidelines apply to national competent authorities designated pursuant to Article 22 of EMIR<sup>1</sup>.
3. According to Article 45a of EMIR, in the case of a significant non-default event as defined in point (9) of Article 2 of CCPRRR2, CySEC may require the Central Counterparty (CCP) to refrain from undertaking any of the restricted actions for a period specified by CySEC, that cannot exceed five years. The actions the CCP shall refrain from undertaking are (a) making a dividend distribution or give an irrevocable commitment to make a dividend distribution, except for rights to dividends specifically referred to in CCPRRR as a form of compensation; (b) buy-

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<sup>1</sup> European Market Infrastructures Regulation – Regulation (EU) No 648/2012 of the European Parliament and Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories («EMIR»)

<sup>2</sup> Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010 (EU), (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 (CCPRRR)

back of ordinary shares; and (c) creating an obligation to pay variable remuneration as defined by the CCP's remuneration policy pursuant to Article 26(5) of EMIR, discretionary pension benefits or severance packages to senior management as defined in Article 2(29) of EMIR.

4. CySEC shall not restrict the CCP from undertaking any of the restricted actions, if the CCP is legally obliged to undertake that action.
5. The Guidelines provide CySEC with guidance on the circumstances under which it should consider requiring the CCP to refrain from undertaking certain restricted actions to protect their capital resources. The Guidelines therefore identify indicators and elaborate on the circumstances prompting the consideration of whether to require the CCP to refrain from undertaking these actions.
6. The indicators provided in these Guidelines do not oblige CySEC to require the CCP to refrain from undertaking any of the restricted actions nor do the Guidelines prevent CySEC from requiring the CCP to refrain from undertaking any restricted actions where the indicators are not met, but where CySEC has identified the necessity for a restriction to apply.
7. The Guidelines are applicable from 2<sup>nd</sup> of August 2023.
8. CySEC has adopted these Guidelines by incorporating them into its supervisory practices and regulatory approach.

Sincerely

Dr George Theocharides  
Chairman of the Cyprus Securities and Exchange Commission