

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 : **05 February, 2024**

CIRCULAR No. : **C619**

SUBJECT : **ESMA Guidelines on transfer of data between Trade Repositories under EMIR and SFTR (ESMA74-362-2351)**

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 transfer of data between Trade Repositories under EMIR and SFTR (the '[Guidelines](#)') on January 05, 2024, translated in all official languages of the EU.
2. The Guidelines will apply to trade repositories (TRs) registered or recognised by ESMA, to national competent authorities (NCAs), and to reporting counterparties or the entities reporting on their behalf.
3. The Guidelines will apply in relation to:
 - a. the reporting without duplication of details of derivatives by counterparties and CCPs under Article 9(1) of EMIR;
 - b. the procedures for portability under Article 78(9) of EMIR;
 - c. the transfer of derivatives between TRs at the request of the counterparties, or the entity reporting on their behalf, or in the situation where the registration of a TR has been withdrawn covered by Article 79(3) of EMIR;
 - d. the record-keeping of details of derivatives in accordance with Article 80(3) of EMIR;
 - e. and Article 21(2) of RTS on registration (EMIR)
4. The objectives of these guidelines are to establish consistent, efficient and effective supervisory practices within the ESFS and to ensure the common, uniform and consistent application of by providing clarification for TRs, reporting counterparties and ERR on how to ensure compliance at all time with the following EMIR provisions:

- a. Article 9(1) (e) of EMIR which provides that “Counterparties and CCPs that are required to report the details of derivative contracts shall ensure that such details are reported correctly and without duplication.”;
 - b. Article 80(3) of EMIR which provides that “A trade repository shall promptly record the information received under Article 9 and shall maintain it for at least 10 years following the termination of the relevant contracts. It shall employ timely and efficient record keeping procedures to document changes to recorded information.”;
 - c. Article 79(3) of EMIR which provides that “A trade repository from which registration has been withdrawn shall ensure orderly substitution including the transfer of data to other trade repositories and the redirection of reporting flows to other trade repositories.”; and
 - d. The procedures for portability under Article 78(9) of EMIR.
5. The Guidelines are based on Article 16(1) of ESMA Regulation, which provides that "The Authority shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law, issue guidelines addressed to all competent authorities or all financial market participants and issue recommendations to one or more competent authorities or to one or more financial market participants.”.
 6. The purpose of the amended Guidelines on transfer of data under EMIR is threefold: Remove portability obstacles from the competitive TR environment, and ensure that TR participants can benefit from the multi-TR environment; Ensure the quality of data available to authorities, including the aggregations carried out by TRs, even when the TR participant changes the TR to which it reports and irrespective of the reason for such a change; Ensure that there is a consistent, standardised and harmonised way to transfer records from one TR to another TR and support the continuity of reporting and reconciliation in all cases including the withdrawal of registration of a TR.
 7. The need to transfer data to another TR may arise for different reasons. The Guidelines therefore address separately the situations where (i) the transfer is due to withdrawal of registration of the TR from the cases in which (ii) the transfer is done on a voluntary basis and under normal market conditions. Guidelines 1 to 15 and Guidelines 33 and 34 apply to both situations; Guidelines 16 to 22 apply only to voluntary porting; and 11 Guidelines 23 to 32 apply only to withdrawal of registration of a TR. The incentives and motivations for the relevant parties in each of the two cases would be different and therefore there is a need for a specific approach in each particular situation.
 8. The Guidelines establish high-level principles that would need to be followed by the TR participants, e.g. RSE, counterparties and CCPs, on the one hand, and the TRs on the other. Those principles are complemented by specific procedures, set out to ensure the timely and robust transfer of details of derivatives. These Guidelines however do not cover situations that do not require transfer of data, such as reporting counterparties that have decided to report to two or more TRs at the same time.

9. The existing guidelines on data transfer under EMIR apply as of 16 October 2017. The amendments to these Guidelines apply as of 3 October 2022.
10. CySEC has adopted the Guidelines by incorporating them into its supervisory practices and regulatory approach.

Yours sincerely,

Dr. George Theocharides
Chairman, Cyprus Securities and Exchange Commission