

TO : Regulated Entities
i. Cyprus Investment Firms
ii. UCITS and Management Companies
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iv. Non-Financial Counterparties

FROM : Cyprus Securities and Exchange Commission

DATE : 12 January 2023

CIRCULAR No : C545

SUBJECT : Publication of CySEC’s reviews of compliance with the reporting obligation in accordance with article 9 of Regulation (EU) No 648/2012 on OTC Derivatives, Central Counterparties and Trade Repositories, as amended (‘EMIR’)

The Cyprus Securities and Exchange Commission (‘CySEC’) recently carried out a series of reviews on the quality of data reported to Trade Repositories, under Article 9(1) of EMIR by Regulated Entities (‘the Reviews’).

According to Article 9(1) of EMIR: *“Counterparties and CCPs shall ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported in accordance with paragraphs 1a to 1f of this Article to a trade repository registered in accordance with Article 55 or recognised in accordance with Article 77. The details shall be reported no later than the working day following the conclusion, modification or termination of the contract.”*

The purpose of the Reviews was to assess the quality and timeliness¹ of data reported by Regulated Entities to Trade Repositories. The Reviews identified areas of concern that CySEC wishes to highlight to all Regulated Entities, despite the fact that the Reviews covered only a sample of Regulated Entities. This circular sets out CySEC’s observations and asks all Regulated Entities to consider whether they comply with their EMIR reporting obligation.

A. Scope of the Reviews

¹ Whether reporting is performed within the timeframe provided in EMIR.

In total, 40 Reviews were carried out, during the period 2021 until August 2022, which assessed the reconciliation, completeness, accuracy and timeliness of data reported by Regulated Entities to Trade Repositories.

Regulated Entities with the highest number of low quality reports have been reviewed.

B. Areas of concern/ Observations identified

1. Misreporting of details of derivatives contracts

CySEC observed that a number of reports contained contradictory or erroneous details in relation to the derivative contracts that were reported. For example:

- i. Option contracts were reported as contracts for difference ('CFDs'),
- ii. CFD contracts were identified with an ISIN and that ISIN corresponded to the CFD's underlying asset,
- iii. Derivatives on e.g. currencies/rates were miss-declared (e.g. a rate derivative was declared as belonging to the equity asset class),
- iv. Forward contracts were reported as CFDs and vice versa.

2. Incorrect status of derivative contracts

CySEC observed that derivative contracts were not properly terminated with the Trade Repositories by Regulated Entities.

3. Collateralisation

Several Regulated Entities reported client (mostly retail client) trades as Partially Collateralised. Partial Collateralisation means that the collateral agreement between the counterparties stipulates that the Reporting Counterparty (i.e. the Regulated Entity) only posts regularly variation margins with respect to the derivative contract, in accordance with Article 3b of Regulation (EU) No 1247/2012 as amended.

4. Definition of "working day" for the purpose of determining the deadline for reporting

Several Regulated Entities use reporting intermediaries established outside Cyprus. CySEC observed that the said reporting intermediaries, when e.g. there was a bank/public holiday in their home country while in Cyprus it was a working day, did not submit the appropriate EMIR reports causing late reports.

It is noted that as regards the calendar, Regulated Entities should follow the relevant calendar of the Republic of Cyprus to determine whether a given day is a working day or holiday in accordance with the clarification provided in the ESMA Questions and Answers on Implementation of EMIR.

5. Rejections – Delegation of Reporting

A number of Regulated Entities were facing rejection of their reports from the TRs. In several cases, Regulated Entities responded to CySEC that the rejections were caused by an error in the systems of their reporting intermediaries.

It is noted that, as regards delegation of reporting, Regulated Entities should ensure that EMIR provisions are respected at all times (i.e. timely and accurate reporting, etc.) and the Regulated Entities remain liable for any misreporting by third entities they rely upon.

6. Reconciliation of reports

CySEC observed that some Regulated Entities were facing pairing and/ or matching issues between their reports and those of their reporting counterparties.

Regulated Entities should have in place procedures for timely agreement/ communication of Unique Trade Identifiers with their reporting counterparties. They should also have in place procedures for agreeing with their reporting counterparties the details reported in common fields of their reports.

7. Use of valid legal entity identifiers for counterparties that are legal entities

CySEC observed that some Regulated Entities were using internal client codes and not valid legal entity identifiers to identify counterparties that are legal entities, in accordance with Article 3 of Regulation (EU) No 1247/2012 as amended.

C. Next steps

8. Reporting of accurate and up-to-date details of derivatives contracts concluded, modified and/ or terminated, by Regulated Entities, is of outmost importance for CySEC. High quality data play an important role in enabling CySEC to discharge its supervisory responsibilities that include, but are not limited to, ensuring financial stability, market integrity and investor protection.
9. Regulated Entities are urged to regularly review the procedures established, implemented and maintained, in relation to EMIR reporting with the aim to ensure that the data reported to Trade Repositories are complete, accurate, consistent, timely and not duplicated.

Regulated Entities not complying with their EMIR reporting obligation will be subject to enforcement action.

Sincerely

Dr George Theocharides
Chairman of the Cyprus Securities and Exchange Commission