



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

ENFORCEMENT ACTION

CENTRAL BANK OF IRELAND

and

GLOBALREACH MULTI-STRATEGY ICAV

GlobalReach Multi-Strategy ICAV fined €192,500 and reprimanded by the Central Bank of Ireland for breach of its reporting obligation under EMIR.

On 28 November 2023, the Central Bank of Ireland (the **Central Bank**) reprimanded and fined the investment fund, GlobalReach Multi-Strategy ICAV (the **ICAV**), €192,500 pursuant to the European Union (European Markets Infrastructure) Regulations 2014, as amended (the **EMIR Regulations**), for breach of its reporting obligation under Article 9(1) of the European Markets Infrastructure Regulation (**EMIR**) which requires details of any derivative contracts¹ to be reported to a registered trade repository² no later than the working day following the conclusion of the contract.

The ICAV has admitted that it failed to report 200,640 derivative trades entered into between January 2018 and May 2020 by one of its sub-funds (the **Sub-Fund**) to a trade repository.

The Central Bank has determined the appropriate fine to be €275,000, which was reduced by 30% to €192,500 as allowed for by the settlement discount scheme provided for in the EMIR Regulations Settlement Scheme. This is the first monetary penalty imposed on an investment fund by the Central Bank to date.

Seána Cunningham, the Central Bank's Director of Enforcement and Anti-Money Laundering, has commented as follows:

"This case highlights the importance of timely and accurate data reporting. The reporting obligations under EMIR and other sectoral legislation increase transparency and enable the Central Bank to obtain

¹ A derivative is a financial contract (such as a future, option or warrant) whose value derives from, and is dependent on, the value of an underlying asset (such as a commodity, currency or security). Derivatives can trade on an exchange or over the counter (**OTC**), and the objective of the reporting obligation set out in EMIR is to improve the transparency of, and reduce the risks associated with, OTC derivatives markets.

² Trade repositories are commercial firms that centrally collect and maintain the records of derivative contracts and/or types of securities financing transactions (SFTs). SFTs allow investors and firms to use assets, such as the shares or bonds they own, to secure funding for their own activities. The registration of a trade repository with ESMA means that it can be used by counterparties to a derivative transaction and/or SFT to fulfil their trade reporting obligations under EMIR and/or the Securities Financing Transactions Regulation respectively.

a complete picture of each firm's operations, to fully understand the risks facing firms operating in securities markets, and thereby to address systemic risk. Incomplete or inaccurate data actively hinders market monitoring processes and activities.

Firms must have appropriate oversight of data reporting from Board level down, including where data reporting is delegated or outsourced. The delegation of reporting obligations must be appropriately managed in order to avoid confusion between the delegates as to their respective reporting responsibilities.

We have reiterated the importance of Data Quality and of EMIR reporting to industry over a number of years and in each Securities Markets Risk Outlook Report we have published since 2021. The gap in data reporting which gave rise to this investigation only became apparent to the ICAV upon a review of its EMIR reporting arrangements, prompted by the Central Bank's letter to industry in 2019 on this theme.

We also expect firms to bring material failures to our attention at the earliest opportunity and to act expediently to address identified issues. This investigation found that, despite the ICAV identifying in May 2020 that thousands of its derivative trades had not been reported to a trade repository in breach of its EMIR reporting obligation, the ICAV only notified the Central Bank of this failure following engagement initiated by the Central Bank.

Compliance by the industry with data reporting obligations will continue to be an area of focus for the Central Bank."

BACKGROUND

The ICAV is authorised by the Central Bank as a UCITS ICAV³ Fund. The ICAV does not have any employees but is managed by a board of directors (the "**Board**"). In April 2016, the Board of the ICAV appointed a management company (the **Management Company**) to act as its manager and, in so doing, the ICAV delegated its operational compliance with all applicable laws to the Management Company.

With the agreement of the ICAV, the Management Company in turn delegated responsibility for investment of the assets of the ICAV, including the ICAV's reporting obligation under Article 9(1) of EMIR, to an investment manager (the **Investment Manager**).

However, these delegations did not remove the ICAV's legal responsibility to comply with its regulatory obligations or the Board's ultimate responsibility for all activities of the ICAV.

There was no explicit EMIR reporting by the Management Company to the Board from April 2016 until August 2019. In February 2019, the Central Bank issued a letter to industry in respect of industry compliance with Article 9 of EMIR. In August 2019, following the Central Bank's letter to industry, the Board requested a review by the Management Company of all EMIR reporting on behalf of the sub-funds of the ICAV. Confirmation of compliance with the EMIR reporting requirement was provided by the Management Company to the ICAV in August 2019.

The Management Company confirmed to the ICAV that the ICAV was compliant with its EMIR reporting obligation at quarterly board meetings held on 2 December 2019, 13 February 2020 and 29 April 2020.

³ In Ireland, a collective investment scheme is usually established as either a UCITS or an AIF, each of which has its origins in EU legislation. An Irish Collective Asset-managed Vehicle or 'ICAV' is a legal structure for both UCITS and AIFs.

However, on 28 May 2020, the ICAV and the Management Company were informed by the Investment Manager that:

- The Investment Manager had entered into delegated EMIR reporting agreements with two parties in respect of the Sub-Fund, effective as of May 2020;
- Prior to these agreements, the Investment Manager's delegated reporting agreements in respect of the Sub-Fund were not comprehensive; and
- There had been a failure to report approximately 21,000 trades entered in to by the Sub-Fund to a relevant trade repository.

In February 2021, following an internal investigation and remediation steps, the Investment Manager notified the Management Company and the ICAV that the non-reported trades in respect of the Sub-Fund were in fact in excess of 200,000. It became clear that there had been confusion among the delegates regarding what reporting needed to be completed, was being completed, and which parties were handling the reporting.

In or around 26 February 2021 and as part of a backfill exercise undertaken by the Management Company and the Investment Manager to remediate the unreported trades, circa 194,000 late reports were submitted on behalf of the Sub-Fund to a trade repository registered in accordance with EMIR (the **Trade Repository**).

On 1 March 2021, the Central Bank queried the late reports and on 15 March 2021 the ICAV notified the Central Bank of the failure to report trades of the Sub-Fund in certain derivatives to any relevant trade repository.

By a letter dated 24 March 2021 to the Central Bank, the Management Company confirmed that 200,640 derivative trades entered into by the Sub-Fund between 16 January 2018 and 24 May 2020 had not been reported to a trade repository. In that letter, the Management Company also explained that the delay in notifying the Central Bank was because the Board had intended to notify the Central Bank as soon as all non-reported historic trades had been identified and the backfilling of these trades had been completed.

On 14 April 2021, the Management Company confirmed to the Central Bank that the non-reporting of trades in certain derivatives had been fully remediated.

THE PRESCRIBED CONTRAVENTION

The failure by the ICAV to report 200,640 of its Sub-Fund's derivative trades entered in to between 16 January 2018 and 24 May 2020 to a trade repository constituted a breach of Article 9(1) of EMIR.

Article 9(1) of EMIR provides that counterparties and CCPs⁴ should ensure that details of any derivative contract they enter into, modify or terminate are reported to a registered trade repository no later than the working day following the conclusion, modification or termination of the contract.

REMEDIATION

The Central Bank is satisfied that the ICAV has remediated the failing identified during this investigation. The Board of the ICAV has confirmed that the remediation was at no expense to the ICAV and/or its investors.

⁴ Central counterparty clearing houses

PENALTY DECISION FACTORS

In deciding the appropriate penalty to impose, the Central Bank considered the following relevant factors in this case:

- The contravention constitutes a significant departure from the standard required under legislation.
- The extent and duration of the contravention. There were 200,640 affected derivative trades between January 2018 and May 2020. Remediation was not completed until April 2021.

AGGRAVATING FACTOR – FAILURE TO REPORT

- While the ICAV knew about the failure to report from 28 May 2020, it failed to report the contravention until 15 March 2021, after engagement initiated by the Central Bank.

OTHER CONSIDERATIONS

- The ICAV's financial position and the need to impose a proportionate level of penalty on an investment fund taking into account the nature and seriousness of the contravention and the size of the ICAV's operations.
- The ICAV provided the expected level of cooperation.

COMMITMENT FROM THE BOARD

The Central Bank notes the commitment from the Board of the ICAV to ensure that investors are not financially disadvantaged by the financial penalty.

APPOINTMENT OF ASSESSOR

On 3 October 2023, the Central Bank appointed an assessor to conduct an assessment of the ICAV in respect of this matter pursuant to the EMIR Regulations. The Central Bank confirms that this enforcement action, including the assessment of the ICAV, is now concluded.

-End-

NOTES

1. The fine imposed by the Central Bank was imposed under Regulation 32 of the EMIR Regulations. The maximum penalty under Regulation 32 is €2,500,000.
2. This is the Central Bank's first enforcement case under the EMIR Regulations, and the 155th enforcement outcome to date, bringing the total fines imposed by the Central Bank to over €404.7 million.
3. Funds collected from penalties are included in the Central Bank's Surplus Income, which is payable directly to the Exchequer, following approval of the Statement of Accounts. The penalties are not included in general Central Bank revenue.
4. The fine reflects the application of a settlement discount of 30%.
5. As at 31 August 2023, over €3.8 trillion in assets is managed within 8,714 Irish authorised investment funds. Of these, €3 trillion is managed within 5,316 UCITS investment funds.
6. In February 2019, the Central Bank issued a letter to industry in respect of industry compliance with Article 9 of EMIR, available [here](#). Since 2021, the Central Bank has published a [Securities Markets Risk Outlook Report](#) on an annual basis, detailing key conduct risks to securities markets and setting out actions firms should take in order to identify, mitigate and manage those risks.
7. OTC derivative contracts lack transparency as they are privately negotiated contracts and any information concerning them is usually only available to the contracting parties. They create a complex web of interdependence which can make it difficult to identify the nature and level of risks involved. The financial crisis demonstrated that such characteristics increase uncertainty in time of market stress and, accordingly, pose risks to financial stability. EMIR was put in place to mitigate those risks, enhance market transparency, and ensure regulatory oversight of derivative trades.
8. Responsibility under EMIR for reporting the details of all OTC derivative contracts entered into from 18 June 2020 by a fund lies with its UCITS management company or with its AIFM. This is one of several amendments to EMIR introduced by Regulation (EU) 2019/834 (the **EMIR Refit**).