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20 February 2019

RE: Article 9 of Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (as amended) ("EMIR")

Statutory Instrument (S.I.) No. 443 of 2014 European Union (European Markets Infrastructure) Regulations 2014 (as amended) ("the Regulations")

Dear Sir/Madam

The Central Bank of Ireland (the "Central Bank") is responsible for the supervision of compliance with EMIR by both Financial Counterparties ("FCs") and Non-Financial Counterparties ("NFCs"). Under EMIR, counterparties to derivative trades ("Counterparties") are required to provide Trade Repositories ("TRs") with information regarding these derivatives trades. This information is utilised by the Central Bank for supervisory purposes, and to manage and mitigate systemic and contagion risk.

During 2018, the Central Bank undertook a series of data quality checks on reported EMIR data for a cross-section of Counterparties. These reviews focused on the extent to which reporting complies with the requirements under EMIR, relevant implementing and technical regulations and the implementation guidance provided by ESMA in its EMIR Q&A<sup>1</sup>.

The purpose of this letter is to provide feedback to Counterparties on the main issues identified from these reviews so that appropriate action is taken to ensure complete, accurate and timely reporting. The Central Bank will, where relevant, follow-up with the individual Counterparties on specific matters where reporting fails to meet these standards.

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<sup>1</sup> [https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52\\_qa\\_on\\_emir\\_implementation.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_qa_on_emir_implementation.pdf)



Counterparties are reminded that failure to report details of a derivative contract to a trade repository by the end of the working day following the conclusion, modification or termination of the contract constitutes a prescribed contravention under the Regulations.

## **KEY FINDINGS**

The Central Bank identified a number of issues which raise particular concerns given their potential to hinder the objectives of EMIR namely, increased transparency, reduced counterparty risk and reduced operational risk. Given consideration to these findings, Counterparties should include compliance with EMIR Reporting as a standing agenda item for all Board meetings.

### **1. Delegated Reporting**

A significant number of Counterparties have delegated EMIR trade reporting either (i) to the other counterparty to the transaction or (ii) to a third party. The Central Bank has identified instances where Counterparties with delegated reporting arrangements do not take appropriate steps to ensure compliance with the reporting requirements.

A Counterparty to a derivative contract is legally responsible for discharging its obligations under EMIR. Each Counterparty must therefore take appropriate steps to ensure that all derivative contracts it has concluded are reported to a TR in a complete, accurate and timely manner. This requirement continues to apply to the Counterparty even where it has delegated reporting to the other Counterparty or to a third party.

### **Rejection Reports**

TRs reject submissions where the data provided does not comply with the reporting standards set out in the validation table published by ESMA<sup>2</sup>. TRs provide Rejection Reports to the entity submitting the data, detailing which fields are not adhering with reporting standards. The Central Bank has found instances of Counterparties that have delegated reporting and are not aware of such reports nor their content. Such Counterparties cannot therefore ensure that relevant remedial action is being taken to rectify the issues giving rise to rejections, and thus cannot verify that reporting obligations are being met.

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<sup>2</sup>[https://www.esma.europa.eu/sites/default/files/library/esma70-145-63\\_emir\\_validation\\_rules\\_for\\_revised\\_rts\\_its.xlsx](https://www.esma.europa.eu/sites/default/files/library/esma70-145-63_emir_validation_rules_for_revised_rts_its.xlsx)



**Recommendations:**

- A Counterparty availing of a delegated reporting service should ensure it receives regular reporting from the delegate, to include details of TR Rejection Reports. This requirement should be included in any delegated reporting agreement entered into by a Counterparty.
- Counterparties should reconcile data reported to the TR by its delegate with its own internal systems to ensure that all relevant trading has been reported.
- Counterparties should ensure that remedial action is undertaken to address shortfalls and non-compliance with EMIR requirements.
- Counterparties should regularly review TR Rejection Reports, to ensure that:
  - all trade submissions are successfully reported to a TR;
  - revised correct data submissions are made on a timely basis; and
  - remedial action is taken to eliminate rejected reports in the future.

## **2. Completeness and Accuracy of Trade Reporting**

The Central Bank has observed a number of recurring issues with respect to the completeness and accuracy of Trade Reporting. These issues are relevant for both trades and positions, and centre on valuations, collateral and outstanding and expired / matured contracts.

### **Valuations**

The Central Bank has identified instances where FCs and NFC+s<sup>3</sup> have failed to report daily valuation updates. FCs and NFC+s must, on a daily basis, report valuations for all outstanding trades and positions. Failure by FCs and NFC+s to report daily valuations for trades and positions constitutes a breach of EMIR.

### **Collateral**

The Central Bank has identified instances where FCs and NFC+s have failed to report collateral. FCs and NFC+s must report details on collateral received / posted with respect to their derivative trades.

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<sup>3</sup> Non-financial Counterparty above the clearing threshold, as referred to in Article 10 of EMIR.



### Outstanding and Expired / Matured Trades and Positions

The Central Bank continues to observe a significant number of expired derivative trades / positions on TR Trade State reports<sup>4</sup>. A failure to reflect that these trades / positions are no longer outstanding results in the contracts remaining outstanding indefinitely with a TR. This is a particular concern given the impact on the Central Bank's understanding of risk exposures and often leads to unnecessary supervisory engagements. It is essential that Counterparties successfully close all trades / positions that are no longer outstanding or that have expired / matured.

### Recommendations:

- Counterparties should regularly review the completeness and accuracy of their reports to TRs, to ensure that all trade submissions to TRs are complete and accurate.
- FCs and NFC+s should submit daily valuations for all outstanding trades / positions;
- FCs and NFC+s should submit collateral data for all outstanding trades / positions;
- Counterparties should pay particular attention to ensure that:
  - where a trade / position has a maturity date the 'Maturity Date' field is populated;
  - where a trade / position is terminated early, the Counterparties should submit an early termination message to the TR;
  - where a Trade is compressed, the relevant compression message should be submitted to the TR;
  - where a derivative contract does not have a maturity date due to the nature of the derivative, and the maturity date field cannot be populated, *the Counterparty sends the relevant message to the TR closing the derivative contract immediately when the contract is closed out*. The Central Bank draws your attention to TR Question 34 (Contracts with no maturity) of the EMIR Q&A in this regard.

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<sup>4</sup> A Trade State Report shows all outstanding trades / positions at a point in time.





### 3. Legal Entity Identifier ("LEI")<sup>5</sup>

As per the revised implementing and regulatory technical standards, a report shall include an LEI to identify a Counterparty which is a legal entity<sup>6</sup>. The Counterparty LEI is a key field used in the identification of relevant Counterparties involved in a derivative transaction.

#### Recommendations:

- Counterparties should share details of their LEI with any entity with which it trades or to which it has delegated reporting.
- All reviews carried out by the Counterparty or its reporting delegate of TR data should confirm that the Counterparty is correctly identified with its LEI.
- Counterparties should renew LEIs annually. Lapsed LEIs are invalid for reporting purposes. Entities offering delegated reporting services are recommended to monitor the renewal date for a clients' LEIs and to notify the client accordingly.

### 4. Unique Trade Identifier ("UTI")

Counterparties must agree on the contents of a trade report before submitting the report to a TR. In particular, Table 2 Field 12 of the validation table published by ESMA states; *"Until a global UTI is available, a Unique Trade ID agreed with the other counterparty"* shall be reported. If there is no unique trade ID in place, a unique code should be generated and agreed with the other Counterparty. This UTI may be up to 52 alphanumerical characters and should be known to and used by all relevant parties.

Where Counterparties fail to agree on the entity responsible for generating the UTI to be assigned to the report, they shall determine the entity responsible for generating the UTI in accordance with Article 4a of the revised implementing technical standards<sup>7</sup>. The Counterparty generating the UTI shall communicate that UTI to the other Counterparty in a timely manner so that the latter is able to meet its reporting obligation.

<sup>5</sup> An LEI is a 20 character alphanumeric code that is used to uniquely identify parties to a financial transaction. An LEI is available from LEI issuers accredited by the Global LEI Foundation (GLEIF). A list of all LEI issuers, also referred to as Local Operating Units (LOUs) can be found on the [GLEIF website](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0105&from=EN). The GLEIF has also introduced the concept of a [registration agent](https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:052:0001:0010:EN:PDF) to streamline the issuance of LEIs. Registration agents help legal entities to access the network of LEI issuing organisations.

<sup>6</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0105&from=EN>  
<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:052:0001:0010:EN:PDF>

<sup>7</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0105&from=EN>



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**Recommendations:**

- Counterparties should ensure that a UTI, communicated to all relevant parties in advance of the trade being reported to a TR, is applied to individual trades. A Counterparty must be in a position to explain how it ensures the UTI is unique.
- Where responsibility for UTI generation is delegated to another entity, the delegating Counterparty must ensure that it is advised of the UTI in a timely manner. The Counterparty must be aware of how it can be deemed unique.

While the Central Bank recognises that the quality of data reported to TRs is improving, a number of significant issues remain. These issues can be substantially addressed by applying the Recommendations outlined in this letter. The Central Bank will continue to monitor the quality of data submitted to TRs. In doing so the Central Bank will have regard to the Recommendations provided herein and the guidance provided by ESMA.

We remind you that failure to comply with the requirements of EMIR constitutes a prescribed contravention for the purposes of the Regulations and may result in such supervisory or enforcement action that the Central Bank considers necessary. Powers available to the Central Bank include:

- (i) the issuance of a direction to an FC or NFC including a prohibition on entering into derivative contracts;
- (ii) the issuance of a contravention notice to an NFC;
- (iii) the appointment of an assessor for the purposes of carrying out an investigation into a suspected prescribed contravention; and
- (iv) the imposition of sanctions including administrative fines.

Yours faithfully,

A handwritten signature in black ink, reading 'Patricia Dunne'.

Patricia Dunne  
Head of Division  
Securities and Markets Supervision