

17 February 2021

## Circular on Regulation N<sup>o</sup> 648/2012 – The European Markets Infrastructure Regulation ('EMIR'/the 'Regulation')

### - Compliance Requirements

This Circular is being addressed to all market participants, particularly entities who enter into derivative contracts and which fall within the scope of EMIR, namely, financial ('FC') and non-financial counterparties ('NFC') as defined under EMIR (jointly hereinafter referred to as 'Counterparties').

This Circular should be read in conjunction with [EMIR](#), its Delegated Regulations and previous circulars issued by the Authority, as the case may be.

#### Main Requirements under EMIR

Counterparties are required to comply with the Regulation, including *inter alia* requirements relating to:

- o The clearing obligation for certain OTC derivatives

[EMIR Refit](#) provides for a new regime to determine when counterparties are subject to the clearing obligation. In the case that a Counterparty does not calculate its positions against the clearing thresholds, it will become subject to the clearing obligation for all OTC derivative contracts pertaining to any class of OTC derivatives for which the clearing obligation is applicable. In the case that a FC calculates its positions and the result of that calculation exceeds the clearing threshold, the FC will become subject to the clearing obligation for all OTC derivative contracts pertaining to any class of OTC derivatives for which the clearing obligation is applicable. In the case that a NFC calculates its positions and the result of that calculation exceeds the clearing thresholds, the NFC will become subject to the clearing obligation only for the OTC derivative contracts in asset classes for which the result of the calculation exceeds the clearing thresholds.

- o The reporting obligation of derivative transactions to Trade Repositories

Counterparties are responsible to report the details of the transactions by not later than the working day following the conclusion, modification or termination of the contract. EMIR Refit has introduced new requirements when determining which counterparty will be responsible for reporting the derivative transactions.

Further information on the clearing obligation and the reporting requirements can be found in previous Circulars issued by the Authority, specifically, the Circulars issued on [06 June 2019](#) and [17 June 2019](#) respectively.

- o The Risk Mitigation Techniques for non-cleared OTC derivatives

EMIR's risk mitigation requirements apply to all non-centrally cleared OTC derivative transactions. Those techniques include timely confirmation, portfolio reconciliation and compression, dispute resolution procedures and the exchange of collateral.

#### MFSA expectations

In view of the fact that the Regulation has been into force since 2012, and taking into consideration substantial exchange of bilateral correspondence between the MFSA and Counterparties regarding their reporting obligations, as well as a number of compliance inspections held with several Counterparties and the various MFSA Circulars issued to the industry, the Authority expects Counterparties to be fully compliant with the applicable requirements contained under EMIR.

Specifically, but not exclusively, the MFSA expects Counterparties to be fully compliant with the requirements of Article 9 of EMIR, thus ensuring timely and complete reporting of the details of any derivative contract concluded and of any modification or termination of the contract to a registered trade repository.

Failure to submit timely and complete derivative transaction reports is in breach of Article 9 of EMIR, which could in turn warrant regulatory action in terms of article 11 of Subsidiary Legislation 345.17 (Financial Markets Act, (OTC Derivatives, Central Counterparties and Trade Repositories) Regulations).

Please be guided accordingly.

Should you have any queries in relation to the above, please do not hesitate to contact the Authority on [EMIR@mfsa.mt](mailto:EMIR@mfsa.mt).