Commission Implementing Regulation (EU) 2017/105 of 26 October 2016 amending Implementing Regulation (EU) No 1247/2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (Text with EEA relevance)

[[X1]COMMISSION IMPLEMENTING REGULATION (EU) 2017/105

of 26 October 2016

amending Implementing Regulation (EU) No 1247/2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories**]**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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[(1)] and in particular Article 9(6) thereof,

Whereas:

(1) Commission Implementing Regulation (EU) No 1247/2012[(2)] provides for the use of interim entity identifiers where a legal entity identifier is not available. An infrastructure enabling the attribution of legal entity identifiers to entities has recently become available, and market participants have become familiar with the use of such legal entity identifiers. Therefore, legal entity identifiers should now be the only means allowed for the purpose of identification of legal entities.

(2) Determining whether the reporting counterparty is a buyer or a seller in a contract is particularly complex in the case of swap derivative contracts as such contracts involve the exchange of financial instruments between the parties. Therefore, specific rules should be established in order to ensure the accurate and consistent determination of who are the buyers and who are the sellers in swap derivative contracts.

(3) In order to determine the real exposures of counterparties, competent authorities require complete and accurate information on the collateral exchanged between those counterparties. Accordingly, specific rules ensuring a consistent approach with regard to the reporting of collateralisation for a given derivative contract or portfolio should be determined.

(4) The accurate classification and precise identification of derivatives is essential for the efficient use of data and for the meaningful aggregation of data across trade repositories, and therefore contributes to the objectives of the Financial Stability Board set out in

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2017/105. (See end of Document for details)*

the Feasibility Study on Aggregation of OTC Derivatives Trade Repository Data[3] published on 19 September 2014. Reporting requirements relating to the classification and identification of derivatives should therefore be amended so that this information is available in its entirety to competent authorities.

(5) In order to accommodate for the reporting of new types of derivatives contracts which have become available and are traded on a frequent basis by virtue of financial innovation, swaptions and spreadbets should be added to the list of classes of derivative contracts. More broadly, in view of ongoing financial innovation giving rise to new types of derivative contracts, it is important to ensure that any new types of derivatives contracts that do not fall within an existing classification can nevertheless be reported. Therefore, it is appropriate to maintain the category 'other' in the classification of types of derivatives contracts.

(6) Where two counterparties cannot agree on which of them should generate a unique trade identifier within the reporting timeline provided, the correct identification and association of the two reports pertaining to the same transaction may not be possible. It is therefore necessary to establish criteria for the generation of unique trade identifiers so as to avoid counting the same transaction twice.

(7) Counterparties may face significant difficulty in obtaining all of the relevant information with regard to trades that were terminated before the commencement date for reporting. Given the resulting complexity of reporting terminated trades and the fact that such trades do not increase systemic risk, the period for reporting terminated trades should be extended from 3 years to 5 years from the commencement date for reporting.

(8) In order to ensure full harmonisation of the data reported to trade repositories and therefore enable its consistent interpretation and aggregation, the standards and formats to be used in trade reports should be clarified. It is also appropriate to amend the reporting requirements with respect to data formats. Counterparties and trade repositories should therefore be granted sufficient time to take all necessary action to comply with the amended requirements.

(9) Implementing Regulation (EU) No 1247/2012 should therefore be amended accordingly.

(10) This Regulation is based on draft implementing technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(11) In accordance with Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[4], ESMA has conducted open public consultations on such draft implementing technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group referred to in Article 37 of that Regulation,

HAS ADOPTED THIS REGULATION:

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2017/105. (See end of Document for details)*

Editorial Information

X1 Substituted by Corrigendum to Commission Implementing Regulation (EU) 2017/105 of 19 October 2016 amending Implementing Regulation (EU) No 1247/2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (Official Journal of the European Union L 17 of 21 January 2017).

Article 1

Implementing Regulation (EU) No 1247/2012 is amended as follows:

(1) Article 3 is replaced by the following:

Article 3

Identification of counterparties and other entities

A report shall use a legal entity identifier to identify:

(a) a beneficiary which is a legal entity;

(b) a broking entity;

(c) a CCP;

(d) a clearing member;

(e) a counterparty which is a legal entity;

(f) a submitting entity.;

(2) the following Articles 3a and 3b are inserted:

Article 3a

Counterparty side

1 The counterparty side to the derivative contract referred to in field 14 of Table 1 of the Annex shall be determined in accordance with paragraphs 2 to 10.

2 In the case of options and swaptions, the counterparty that holds the right to exercise the option shall be identified as the buyer and the counterparty that sells the option and receives a premium shall be identified as the seller.

3 In the case of futures and forwards other than futures and forwards relating to currencies, the counterparty buying the instrument shall be identified as the buyer and the counterparty selling the instrument shall be identified as the seller.

4 In the case of swaps related to securities, the counterparty that bears the risk of price movement of the underlying security and receives the security amount shall be identified as the buyer and the counterparty that pays the security amount shall be identified as the seller.

5 In the case of swaps related to interest rates or inflation indices, the counterparty paying the fixed rate shall be identified as the buyer and the counterparty receiving the fixed rate shall be identified as the seller. In the case of basis swaps, the counterparty that pays the spread shall be identified as the buyer and the counterparty that receives the spread shall be identified as the seller.

6 In the case of cross-currency swaps and swaps and forwards related to currencies, the counterparty receiving the currency which appears first when sorted alphabetically by International Organization for Standardization (ISO 4217) standard shall be identified as the buyer and the counterparty delivering that currency shall be identified as the seller.

7 In the case of swaps related to dividends, the counterparty receiving the equivalent actual dividend payments shall be identified as the buyer and the counterparty paying the dividend and receiving the fixed rate shall be identified as the seller.

8 With the exception of options and swaptions, in the case of derivative instruments for the transfer of credit risk, the counterparty buying the protection shall be identified as the buyer and the counterparty selling the protection shall be identified as the seller.

9 In the case of derivative contracts relating to commodities, the counterparty that receives the commodity specified in the report shall be identified as the buyer and the counterparty that delivers the commodity shall be identified as the seller.

10 In the case of forward-rate agreements, the counterparty paying the fixed rate shall be identified as the buyer and the counterparty receiving the fixed rate shall be identified as the seller.

Article 3b

Collateralisation

1 The type of collateralisation of the derivative contract referred to in Field 21 of Table 1 of the Annex shall be identified by the reporting counterparty in accordance with paragraphs 2 to 5.

2 Where no collateral agreement exists between the counterparties or where the collateral agreement between the counterparties stipulates that the reporting counterparty does not post neither initial margin nor variation margin with respect to the derivative contract, the type of collateralisation of the derivative contract shall be identified as uncollateralised;

3 Where the collateral agreement between the counterparties stipulates that the reporting counterparty only posts regularly variation margins with respect to the derivative contract, the type of collateralisation of the derivative contract shall be identified as partially collateralised;

4 Where the collateral agreement between the counterparties stipulates that the reporting counterparty posts the initial margin and regularly posts variation margins and that the other counterparty either posts only variation margins or does not post any margins with respect to the derivative contract, the type of collateralisation of the derivative contract shall be identified as one-way collateralised;

5 Where the collateral agreement between the counterparties stipulates that both counterparties post initial margin and regularly post variation margins with respect to the derivative contract, the type of collateralisation of the derivative contract shall be identified as fully collateralised;

(3) Article 4 is replaced by the following:

Article 4

Specification, identification, and classification of derivatives

1 A report shall specify a derivative on the basis of contract type and asset class in accordance with paragraphs 2 and 3.

2 The derivative shall be specified in Field 1 of Table 2 of the Annex as one of the following contract types:

a financial contract for difference;
b forward rate agreement;
c forward;
d future;
e option;
f spreadbet;
g swap;
h swaption;
i other.

3 The derivative shall be specified in Field 2 of Table 2 of the Annex as one of the following asset classes:

a commodities and emission allowances;
b credit;
c currency;
d equity;
e interest rate.

4 Where derivatives do not fall within one of the asset classes specified in paragraph 3, the counterparties shall specify in the report the asset class most closely resembling the derivative. Both counterparties shall specify the same asset class.

5 The derivative shall be identified in Field 6 of Table 2 of the Annex using the following, where available:

a an ISO 6166 International Securities Identification Number (ISIN) code or an Alternative Instrument Identifier code (AII), as applicable, until the date of application of the delegated act adopted by the Commission pursuant to Article 27(3) of Regulation (EU) No 600/2014 of the European Parliament and of the Council[(5)];
b an ISIN from the date of application of the delegated act adopted by the Commission pursuant to Article 27(3) of Regulation (EU) No 600/2014.

Where an AII code is used, the complete AII code shall be used.