Changes to legislation: *There are outstanding changes not yet made to Commission Implementing Regulation (EU) No 1247/2012. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2012 No. 1247 may be subject to amendment by EU Exit Instruments made by both the Financial Conduct Authority and the Bank of England under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 5. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

Commission Implementing Regulation (EU) No 1247/2012 of 19 December 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)

COMMISSION IMPLEMENTING REGULATION (EU) No 1247/2012

of 19 December 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 the opinion of the European Central Bank[(1)],

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[(2)] and in particular Article 9(6) thereof,

Whereas:

(1) To avoid inconsistencies, all data sent to trade repositories under Article 9 of Regulation (EU) No 648/2012 should follow the same rules, standards and formats for all trade repositories, all counterparties and all types of derivatives. A unique data set should therefore be used for describing a derivatives trade.

(2) Since OTC derivatives are typically neither uniquely identifiable by existing codes which are widely used in financial markets, such as the International Securities Identification Numbers (ISIN), nor describable by using the ISO Classification of Financial Instruments (CFI) code, a new and universal method of identification has to be developed. If a unique product identifier is available and follows the principles of uniqueness, neutrality, reliability, open source, scalability, accessibility, has a reasonable cost basis, is offered under an appropriate governance framework and is adopted for use in the Union, it should be used. If a unique product identifier meeting these requirements is not available, an interim taxonomy should be used.

(3) The underlying should be identified by using a single identifier, however there is currently no market wide standardised code to identify the underlying within a basket. Counterparties should therefore be required to indicate at least that the underlying is a basket and use ISINs for standardised indices where possible.

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(4) To ensure consistency, all parties to a derivatives contract should be identified by a unique code. A global legal entity identifier or an interim entity identifier, to be defined under a governance framework which is compatible with the FSB recommendations on data requirements and is adopted for use in the Union, should be used to identify all financial and non-financial counterparties, brokers, central counterparties, and beneficiaries once available, in particular to ensure consistency with the Committee on Payment and Settlement Systems (CPSS) and International Organisation of Securities Commissions (IOSCO) report on OTC Derivatives Data Reporting and Aggregation Requirements that describes legal entity identifiers as a tool for data aggregation. In the case of agency trades, the beneficiaries should be identified as the individual or entity on whose behalf the contract was concluded.

(5) The approach used in third countries and also taken by trade repositories themselves as they start their businesses should be taken into account. Therefore, to ensure a cost-effective solution for counterparties and to mitigate operational risk for trade repositories, the reporting start date should include phase-in dates for different derivative classes, beginning with the most standardised classes and subsequently extending to the other classes. The derivative contracts which were entered into before, on or after the date of entry into force of Regulation (EU) No 648/2012, that are not outstanding on or after the reporting start date, are not of major relevance for regulatory purposes. They must however be reported under Article 9(1)(a) of Regulation (EU) No 648/2012. To ensure an efficient and proportionate reporting regime in those cases and taking into account the difficulties in reconstructing data of terminated contracts, a longer deadline should be provided for such reporting.

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

(7) In accordance with Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)[3] 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 ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Format of derivative contract reports

The information contained in a report under Article 9 of Regulation (EU) No 648/2012 shall be provided in the format specified in the Annex to this Regulation.

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Article 2

Frequency of derivative contract reports

Where provided for in Article 11(2) of Regulation (EU) No 648/2012, mark to market or mark to model valuations of contracts reported to a trade repository shall be done on a daily basis. Any other reporting elements as provided for in the Annex to this Regulation and the Annex to the delegated act with regard to regulatory technical standards specifying the minimum details of the data to be reported to trade repositories pursuant to Article 9(5) of Regulation (EU) No 648/2012 shall be reported as they occur and taking into account the time limit foreseen under Article 9 of Regulation (EU) No 648/2012, notably as regards the conclusion, modification or termination of a contract.

[[F1]*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.**]**

Textual Amendments

F1 Substituted by 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 (Text with EEA relevance).

[[F2]*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.

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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.

Textual Amendments

F2 Inserted by 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 (Text with EEA relevance).

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

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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.**]**

Textual Amendments

F2 Inserted by 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 (Text with EEA relevance).

[F1 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;