Commission de Surveillance du Secteur Financier

PRESS RELEASE 19/49

COMMUNICATION REGARDING THE RESULTS OF THE 2018 EMIR IFM QUESTIONNAIRE

In August 2018, the CSSF addressed a questionnaire on the Regulation (EU) n°648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ("EMIR") to the investment fund managers ("IFM") under its prudential supervision.

The aim of this questionnaire was to collect a self-assessment from the IFM on the existence of adequate EMIR monitoring and oversight procedures to ensure that the IFM, and the funds under their management, comply with EMIR obligations.

Main conclusions drawn from the responses to the questionnaire

The review of the questionnaires revealed that generally, IFM need to improve the supervision and oversight of their EMIR obligations, with a small portion of IFM having potentially significant deficiencies.

The CSSF specifically notes the following points:

- A lack of formalization has been identified by the CSSF. The CSSF reminds that adequate written procedures and arrangements must be in place to cover the supervision of all EMIR obligations even when a specific obligation does not apply further to the IFM's assessment. IFM are required to document their assessments and to review on a regular basis the adequacy of their monitoring and oversight procedures.
- The absence of adequate oversight when EMIR obligations are delegated to another entity. The CSSF reminds that IFM remain responsible for ensuring that the funds under their management comply with their EMIR obligations even in case of delegation. To that effect, IFM must carry out initial and ongoing due diligence on the delegate to appropriately monitor their EMIR obligations. The arrangements concluded between the IFM and the delegate shall clearly establish the roles and responsibilities and ensure an adequate ongoing oversight by the IFM of the EMIR obligations which they have delegated.
- As already clarified by the CSSF in its press release 15/36, EMIR applies to derivative contracts concluded for investment purposes as well as for hedging purposes. Some IFM erroneously consider that derivative contracts concluded for hedging purposes are not subject to EMIR obligations.
- Some registered AIFM consider that they are not in scope of EMIR. The CSSF reminds registered AIFM that they are in scope of EMIR and as such, the CSSF is the competent authority to ensure that they comply with the provisions of EMIR.

The CSSF already contacted IFM with potentially significant deficiencies to improve their EMIR monitoring and oversight procedures by the end of the year. However, the CSSF noticed that in general, the current monitoring and oversight are not compliant with EMIR requirements as well as requirements of CSSF circular 18/698 on EMIR, where relevant.

Next step

Until now, the CSSF mainly focused on the EMIR monitoring and oversight procedures. In the near future, the CSSF will furthermore assess the compliance with EMIR requirements as well as act to improve the data quality of trades reported to trade repositories.

The CSSF also would like to remind all IFM that Regulation (EU) 2019/834 (hereafter "EMIR Refit") entered into force on 17 June 2019. In this context, IFM must take it into consideration and amend their procedures to comply with all the modifications introduced by EMIR Refit.

Luxembourg, 14 October 2019