

Trade reporting of derivative transactions in Turkey becomes mandatory

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Turkish banks and intermediaries are for the first time required to report their over-the-counter and on exchange derivatives trades to a central data registry enabling Turkey to meet its commitments under the G20 regulatory rules.

Following its announcement in August 2018 covered in our [client alert](#), the Capital Markets Board of Turkey (“**CMB**”) has just introduced new rules for trade repositories, first of which has been designated as the Central Registry Agency (*Merkezi Kayıt Kuruluşu*) (“**CRA**”).

The CMB published a Regulation on Trade Repositories’ Operation, Working and Audit Principles (“**Regulation**”), which sets forth the requirements for institutions to qualify and operate as trade repositories in Turkey and defines the working principles, audit procedures and scope of activity of such trade repositories. Accordingly a joint stock company fulfilling the requirements of the CMB, including the qualifications for founders of intermediary institutions, can act as trade repository in Turkey, to centralize and aggregate the data received from the persons liable for reporting.

The CMB also published a Communiqué on Principles of Reporting to Trade Repositories (“**Communiqué**”), which constitutes a guideline setting out the principles of reporting to the relevant Trade Repository. The reporting standards under the Communiqué follow similar rules as in the US and Europe, such as the Dodd-Frank Act and European Market Infrastructure Regulation (EMIR). The Communiqué requires in particular the reporting of who trades what, where, when and at what price under a derivative contract entered into or facilitated by the Turkish counterparties. By passing this legislation, Turkey joins the efforts of countries decided to further implement transparency, monitor systemic risk and maintain stability in the derivatives markets in the wake of the 2008 global financial crisis.

Reporting obligation

The Communiqué’s reporting obligation applies to all derivative contracts outstanding on 30 November 2018 and those entered into on or after that date (i.e. exchange-traded and OTC derivatives). Derivative contracts that (i) are outstanding on 30 November 2018; or (ii) are entered into after 1 January 2018, and are settled or terminated as of 30 November 2018, have to be reported until 1 January 2019.

The party liable for the reporting obligations set forth in the Communiqué differs depending on the transactions and type of entities involved. As a general principle, derivative transactions should be reported in the form attached to the Communiqué on the following business day of the execution, amendment or termination of such derivative contract, without double counting, by the relevant counterparties or the central counterparty (*Takas Istanbul*) for certain derivative transactions.

Turkish banks, intermediary institutions or certain other institutions regulated by the CMB (“**Investment Firm**”) that entered into derivative transactions between themselves, or with their clients, or with counterparties on their clients’ behalf, or those institutions facilitating the trade of such transactions for their clients, are also liable for reporting such derivative transactions. In the event the settlement and clearance of the said transactions take place in Turkey through an organized market, the domestic central counterparty bears the reporting obligation. If the trade is settled and cleared abroad, the Investment Firm through which the trade is conducted is liable for the reporting obligation. The Turkish counterparties, other than Investments Firms (i.e. corporates), trading between themselves, or on foreign exchanges or through OTC transactions with foreign counterparties, without using an intermediary are also obliged to report their derivative transactions that (i) are outstanding on 1 January 2019; or (ii) are entered into after 1 January 2018, and are settled or terminated as of 1 January 2019, until 31 January 2019.

In addition, the Communiqué allows the delegation of the reporting liability to a third party or to the counterparty, to avoid double reporting and to ensure compliance with the reporting requirements.

Adapting the market

In light of the above, certain industry protocols or existing OTC documentation will need to be revised as appropriate, to reflect the reporting obligations of the relevant parties. Additional procedures may also be required to timely effect the trade confirmations for settlement.

In parallel with the regulatory guidance issued by ESMA, counterparties are also required to ensure that the details of data reported to the CRA reflects the agreement between themselves. In this regard, the Communiqué sets forth that trade repositories will announce procedures with respect to agreement of the relevant parties’ on the principles of data reporting. Such principles may have an impact on the negotiation and completion procedures of the derivative contracts.

We will continue to report on any principles and procedures as and when they are announced.

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