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01 April 2019

EMIR Refit: central clearing obligation rules are changing

The central clearing obligation, a key provision of the EMIR Regulation on OTC derivatives, has been implemented gradually since 21 June 2016. With the technical review of the European text (EMIR Refit), the scope of this obligation is changing. The AMF encourages all financial and non-financial counterparties to familiarise themselves with the steps to follow when the EMIR Refit enters into force.

EMIR Refit is expected to be adopted by the European Parliament on 18 April and enter into force in spring 2019. This legislative text will change certain technical aspects of EMIR and in particular the rules relating to the central clearing obligation.

Two major changes are being made to the current system:

- a new categorisation of counterparties will allow financial counterparties whose OTC derivative positions do not exceed any of the clearing thresholds (Small Financial Counterparties, SFCs) to be exempt from the clearing obligation;
- non-financial counterparties whose positions exceed at least one of the clearing thresholds (Non-Financial Counterparties+, NFC+) will be subject to the clearing obligation only for the derivatives belonging to the asset class for which the clearing threshold has been exceeded.

EMIR Refit does not foresee any phase-in period for the implementation of these new rules. Therefore, as soon as the text enters into force, financial and non-financial counterparties must be able to perform the necessary position calculations and notify the AMF and ESMA if their positions exceed one of the clearing thresholds or if they do not perform this calculation.

Which counterparties are affected by the calculation of positions?

All financial and non-financial counterparties may calculate their positions in order to verify whether they benefit from the exemption from the clearing obligation. Counterparties that do not calculate their positions will be deemed to be subject to the clearing obligation.

When and how are the positions calculated?

Financial and non-financial counterparties may calculate, every 12 months, their aggregate month-end average position for the previous 12 months. These positions must be aggregated at the level of the group to which they belong. This average position must be compared with the following clearing thresholds:

Asset Class	Threshold in notional value
Credit derivatives	€1 billion
Equity derivatives	€1 billion
Interest rate derivatives	€3 billion
Foreign exchange derivatives	€3 billion
Commodity and other derivatives	€3 billion

The first calculation must be made as soon as the EMIR Refit comes into force and once a year thereafter.

Calculations for UCITS and AIFs will have to be performed at the fund level.

Which counterparties must notify the AMF and ESMA and when?

All counterparties, both financial and non-financial, whose average position exceeds at least one of the clearing thresholds must notify the AMF and ESMA as soon as EMIR Refit enters into force. This also applies to financial counterparties already subject to the clearing obligation before the entry into force of EMIR Refit. Counterparties that do not calculate their positions must also notify the AMF and ESMA.

The form to be completed for this notification will be available soon through the AMF's website.

Read more

ESMA statement on the implementation of the new EMIR Refit clearing obligation rules - 28/03/2019

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