

EMIR Clearing Obligation and MiFIR Derivatives Trading Obligation – Final Reminder

The Optima Alerts on ‘**EMIR Refit**’ published in May and June of this year (see ‘Useful Links’) included commentary on the concept of a ‘small Financial Counterparty’ (“FC-“) – effectively a subset of a Category 3 Financial Counterparty – whereby such counterparties would not be subject to the EMIR clearing obligation.

In addition, and in keeping with the ESMA Public Statement of 12 July 2019, an FC- would not be subject to the derivatives trading obligation arising under Article 28 of MiFIR.

Those Category 3 Financial Counterparties that did not qualify as a small Financial Counterparty, or that decided not to undertake the calculations, (“FC+”) – remain subject to both the clearing obligation and the trading obligation.

This Alert acts as a final reminder that these obligations will apply to FC+ entities from **18 October 2019**.

For the record, the EMIR clearing obligation applies to those classes of OTC derivatives that appear in the relevant ESMA Public Register. As advised in the above mentioned ESMA Public Statement – being an extract from MiFIR regulatory technical standards – “Given the link between the clearing obligation and the trading obligation, the trading obligation for each category of counterparty should only take effect once the clearing obligation for that category has already taken effect”.

Useful Links

[ESMA Public Statement](#)

[ESMA Public Register for Clearing Obligation under EMIR](#)

[ESMA Public Register for the Trading Obligation under MiFIR](#)

[Alert - EMIR REFIT 28 May 2019](#)

[Alert - EMIR REFIT - A Reminder](#)