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EMIR REFIT – A Reminder

As will be known from our recent 'EMIR REFIT' paper (see 'Useful Links'), the **clearing obligation** for Category 3 firms applies from **21 June 2019**. However, one outcome of the amendments to EMIR is the introduction of the concept of a 'small Financial Counterparty' ("FC-"), under which a firm will be exempt from the clearing obligation.

Category 3 firms are required to determine the results of their threshold calculations on the day that the REFIT Regulation **comes into force**. The REFIT Regulation was published in the Official Journal of 28 May 2019 with the Regulation coming into force 20 days following publication i.e. it comes into force on **17 June 2019**.

Firms above the relevant thresholds, and firms that do not wish to undertake the calculations, will be subject to the clearing obligation. Such firms are required to "**immediately**" notify ESMA and the FCA that they are so subject on the day that the REFIT Regulation comes into force and to establish clearing arrangements **within four months** after the notification.

In practical terms this will mean that such firms will:

- not be regarded as FC- and so will be subject to the clearing obligation
- be required to **notify** both ESMA and the FCA on **17 June 2019**
- be required to establish clearing arrangements by **17 October 2019**

ESMA has produced a [Notification Form](#) for this purpose.

The FCA has also produced a [Notification Form](#). However as at the time of this 'Alert' this document is in **draft format**. The FCA [EMIR News webpage](#) ("last updated 29/05/2019") advises "Please note that these are draft forms only, are subject to change in particular depending on any future ESMA Q&As, and **cannot be used by firms at this point in time** to notify the FCA". We would therefore recommend that firms that need to notify the FCA for this purpose should revisit the EMIR News webpage at the appropriate time to ensure that the final version is available and for confirmation of the means of notification.

For the avoidance of doubt, there is no notification requirement for firms that qualify as a FC-.

Useful Links

[REFIT paper](#)

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