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## EMIR Clearing Thresholds post full Brexit

*Of particular interest to: Financial Counterparties trading in derivatives, including those firms e.g. AIFMs that report on behalf of such counterparties*

### In brief

A reminder that following the end of the Brexit transitional period there will be changes to the clearing threshold calculations process.

### Summary

In June 2019 we circulated an Alert which included a link to a briefing paper on changes to EMIR brought about by EMIR REFIT (see 'Useful Links'). One of the changes was the concept of a 'small financial counterparty' ('FC-') which would be exempt from the EMIR requirement to clear OTC contracts that have been determined to be subject to the "clearing obligation" (financial counterparties subject to the clearing obligation are categorised as 'FC+'). FCs are required to determine their **12-month** average aggregate group position of OTC derivatives in each asset class and compare that calculation against the following thresholds:

- EUR 1 billion in gross notional value for OTC credit derivative contracts
- EUR 1 billion in gross notional value for OTC equity derivative contracts
- EUR 3 billion in gross notional value for OTC interest rate derivative contracts
- EUR 3 billion in gross notional value for OTC foreign exchange derivative contracts
- EUR 3 billion in gross notional value for OTC commodity derivative contracts and other OTC derivative contracts not provided for under the above four bullets

Where an FC exceeds any one of the above thresholds (or has chosen not to calculate those positions) then it will be classified as an FC+ for **all** classes of OTC derivatives and, pre full Brexit, required a notification to be made to both ESMA and to the FCA (and establish clearing arrangements within 4 months of that date). However since the new year such notifications are only required to be made to the FCA – subject to one exception.

In the same way that a UK AIFM of an EU AIF will be subject to reporting a derivative trade under both EU EMIR (as the AIF is based in the EU) and to UK EMIR (as the AIFM is UK based) the same principle applies to such an AIFM concerning the notification of exceeding the clearing threshold i.e. separate

Although the need to notify the FCA instead of (or in addition to) ESMA is a major change to the process the end of the Brexit transitional has not altered the timing of when these calculation are to be performed (assuming that the FC has chosen to calculate its positions).

- For **most** FCs i.e. those that were trading in derivatives when EMIR REFIT first applied (17 June 2019) then the 12-month calculations will be linked to the date of **17 June annually**
- However for those FCs that were **not** trading in derivatives at that date e.g. because the counterparty or fund was not established then or because the investment strategy subsequently changed etc. then the calculations will need to be determined 12 months **after they start taking positions** in OTC derivative contracts.

FCs that may have previously submitted a clearing threshold notification to ESMA are required to also submit a notification to the FCA.

See 'Useful Links' for the notification process to the FCA (via Connect) and, where relevant, to ESMA.

#### Useful Links

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

[FCA: Clearing Thresholds](#)

[FCA: EMIR Notifications](#)

[Bank of England Register for the clearing obligation under EMIR](#)

[ESMA on Clearing Thresholds \(includes link to notification form\)](#)

[ESMA Register for the clearing obligation under EMIR](#)

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#### **Our mailing address is:**

Terminal House, 1st Floor, 52 Grosvenor Gardens, Belgravia, London SW1W 0AU