

ALERTS

EMIR REFIT: Investment Funds Are Required to Notify the FCA and ESMA If They Exceed the Clearing Threshold with Effect from 17 June 2019

13 June 2019

EMIR REFIT enters into force on Monday, 17 June 2019 (“Effective Date”).

Under EMIR REFIT, financial counterparties (“FCs”) are required to calculate their aggregate month-end average positions in derivatives for the previous 12 months to determine whether they exceed one or more of the clearing thresholds specified in EMIR. The definition of FC includes alternative investment funds (“AIFs”) and UCITS.

The clearing thresholds are: (1) OTC credit derivatives — €1 billion; (2) OTC equity derivatives — €1 billion; (3) OTC interest rate derivatives — €3 billion; (4) OTC foreign exchange derivatives — €3 billion; and (5) OTC commodity derivatives and other OTC derivatives — €3 billion. Fund managers must carry out the calculation on a fund-by-fund basis (rather than aggregating positions across all funds under management). In accordance with ESMA FAQ, FCs must determine whether they have exceeded these clearing thresholds by the Effective Date.

If an FC exceeds one or more of the clearing thresholds, it will be subject to the clearing obligation in respect of all in-scope OTC derivative products across all asset classes.

FCs that exceed one or more of the clearing thresholds are required to notify ESMA using the forms available [here](#), as well as their regulator. In the case of non-EU AIFs (e.g., Cayman funds) managed by UK AIFMs, the notification must be made to the FCA via [Connect](#).

FCs can choose not to conduct the calculation, in which case they will also need to notify their regulator and ESMA, as above. Electing not to make such a calculation will result in the FC automatically becoming subject to the clearing obligation for all in-scope OTC derivative products across all asset classes.

FCs whose OTC derivatives positions are below the clearing thresholds are exempt from the EMIR clearing obligation (but remain subject to the margin obligations for uncleared derivative transactions) and are not required to notify ESMA or their regulator.

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel.

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