

ESMA addresses derivatives trading obligation concerns following entry into force of EMIR Refit

Following the entry into force of EMIR Refit on 17 June 2019, some counterparties are exempted from the clearing obligation while still being subject to the trading obligation. ESMA's statement addresses the possible implementation challenges that this misalignment creates for counterparties exempted from the CO. In addition, ESMA clarifies the application date of the trading obligation for those counterparties impacted by the modified application date of the clearing obligation under EMIR Refit.

ESMA's statement addresses two areas:

- Clearing and trading obligations for small financial counterparties and non-financial counterparties; and,
- Date of application of the trading obligation for financial counterparties (FC) which are in Category 3 and subject to the CO.

The statement advises National Competent Authorities (NCAs) not to prioritise their supervisory actions in relation to the DTO towards counterparties exempted from the CO following the entry into force of EMIR Refit.

Additionally, for financial counterparties (FC) in Category 3 which are subject to the CO, the date of application of the DTO should be the same as the new date of application of the CO as amended by EMIR Refit. This date of application should hence be four months following the notification from FC to ESMA and NCA as required under EMIR Refit, rather than 21 June 2019.