MFSA MALTA FINANCIAL SERVICES AUTHORITY

Circular

17 June 2019

Circular on Regulation (EU) No 2019/834 - the European Market Infrastructure Regulation ('EMIR') Regulatory Fitness Programme ('Refit')

This circular is being addressed to all market participants, particularly entities who enter into derivative[1] contracts which fall within the scope of EMIR, *inter alia* financial and non-financial counterparties as defined in Article 2 of EMIR.

This circular should be read in conjunction with Regulation (EU) Nº 648/2012 ('EMIR'), its Delegated Regulations and previous circulars issued by the Authority, particularly the latest circular issued by the Authority on 6 June 2019 (Link).

Implementation of the new EMIR Refit regime for the clearing obligation for Financial and Non-Financial Counterparties

EMIR Refit introduces a new regime to determine when financial counterparties ('FCs') and non-financial counterparties ('NFCs') are subject to the clearing obligation, depending on whether or not they exceed the clearing thresholds. The clearing thresholds which counterparties should not exceed in order to benefit from a clearing exemption under EMIR Refit are as follows:

- €1 billion in gross notional value for OTC credit derivatives contracts;
- €1 billion in gross notional value for OTC equity derivatives contracts;
- €3 billion in gross notional value for OTC interest rate derivative contracts;
- €3 billion in gross notional value for OTC foreign exchange derivative contracts;
- €3 billion in gross notional value for OTC commodity and other OTC derivative contracts.

[1] 'derivative' or 'derivative contract' means a financial instrument as set out in points (4) to (10) of Section C of Annex I to Directive 2014/65/EU;

The calculation which determines the categorisation of counterparties (the 'Calculation') is required to be conducted once a year, starting from the entry into force of EMIR REFIT, and will be based on the aggregate month-end average position of all OTC derivative contracts (speculative or hedging) entered into by the counterparty, for the preceding twelve months.

Accordingly, when financial and non-financial counterparties **(i) choose not to conduct the Calculation** or **(ii) when they carry out the Calculation and the result thereof exceeds any of the clearing thresholds specified above,** such counterparties shall:

a) Immediately notify ESMA and the MFSA, and where relevant indicate the period used for the Calculation;
b) Establish clearing arrangements within 4 months after the notification referred to in point (a); and
c) Become subject to the clearing obligation as required under either Article 4(a) or Article 10(1) as applicable.

Next Steps

The Authority would like to kindly remind counterparties that the first Calculation and subsequent notifications (where applicable) are required to be submitted to ESMA and the MFSA on the 17 June 2019, and every year thereafter.

No notification is required from FCs or NFCs which have conducted the Calculation and consequently established that they did not exceed the clearing threshold.

Please note that, all entities are required to have documents evidencing the Calculation which they have carried out on record. Such documents are required to be made readily available to the MFSA upon request.

Contacts

Should you have any queries on the above, please do not hesitate to contact Mr Nathan Fenech, Senior Manager, Securities and Markets Supervision (NFenech@mfsa.com.mt) or Mr Luca Caruana, Analyst, Securities and Markets Supervision (LCaruana@mfsa.com.mt) for any further clarifications.