



## EMIR Update – Central Bank issues Statement to address upcoming EMIR Refit implementation issues

### Central Bank Statement

The Central Bank issued a statement today in response to the European Securities and Markets Supervisory Authority (ESMA) statement on 31 January 2019 addressing EMIR Refit implementation (the “ESMA Statement”), see further below.

The Central Bank’s statement welcomes the [ESMA Statement](#) (link to full statement here) on EMIR Refit implementation regarding the clearing and trading obligations for small financial counterparties and the backloading requirement with respect to the reporting obligation.

The Central Bank’s statement confirms that, in accordance with the recommendation from ESMA and pending the entry into force of EMIR Refit, the Central Bank will apply its risk-based supervisory powers in the day-to-day enforcement of applicable legislation (i.e. EMIR’s reporting obligation, clearing obligation and MiFIR’s trading obligation) in a proportionate manner.

### ESMA Statement

On 31 January 2019 ESMA published a statement addressing EMIR Refit implementation issues. The ESMA Statement addresses issues around the clearing and trading obligations for small financial counterparties and the backloading requirement for reporting entities, ahead of upcoming deadlines, which would represent challenges for such entities in the context of the ongoing EMIR Refit negotiations. The ESMA Statement acknowledges the challenges that certain

For further information on any of the issues discussed in this article please contact:



**Grace O'Connor**  
DD:+ 353 (0)1 673 1730  
[grace.oconnor@dilloneustace.ie](mailto:grace.oconnor@dilloneustace.ie)

small financial counterparties would face to prepare for the 21 June 2019 deadline to start CCP clearing and trading on trading venues some of their OTC derivative contracts, as well as challenges that reporting counterparties would face regarding the backloading requirement by 12 February 2019. The requirements for reporting entities to report derivatives that were outstanding on or after 16 August 2012 and terminated before the EMIR reporting start date, 12 February 2014 is the process commonly referred to as “backloading”. ESMA had previously recommended that the backloading requirement should be waived due to its concern about the particularly high number of reconciliation failures concerning the derivatives subject to backloading and therefore the limited usefulness of such data. The Refit negotiations have not been finalised (therefore create timing gaps for affected entities) but include proposals to remove the backloading requirement from Article 9 of EMIR and to create a small financial counterparties category (whose derivative positions are below certain clearing thresholds) and to exempt the new category of counterparties from the clearing obligation.

If you require any further information in relation to the above or EMIR generally, please refer to your usual contact within Dillon Eustace.

**Dillon Eustace**  
**4 February 2019**

## DILLON EUSTACE

### **Dublin**

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

### **Cayman Islands**

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

### **New York**

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

### **Tokyo**

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

### **DISCLAIMER:**

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

### **Copyright Notice:**

© 2019 Dillon Eustace. All rights reserved.