FOCUS

EMIR REFIT

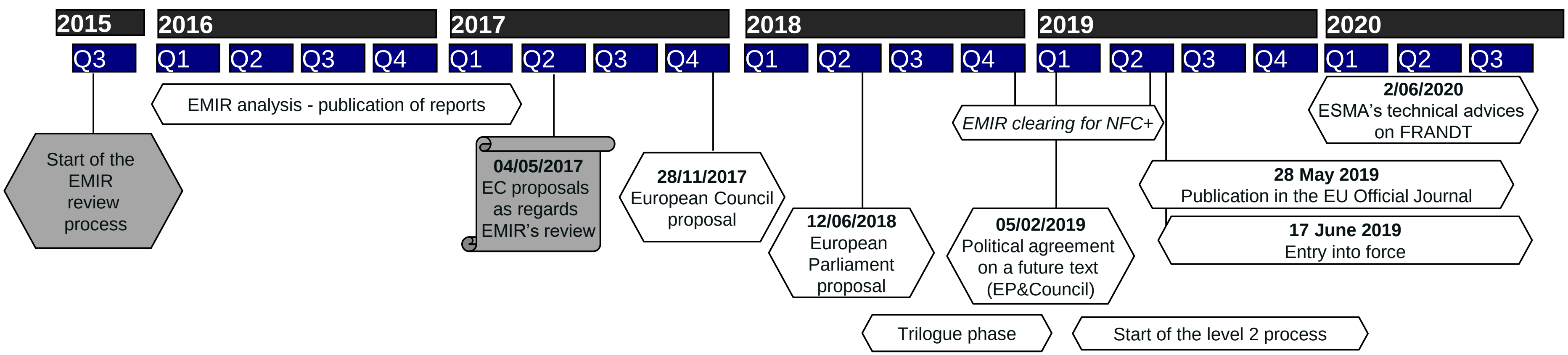
Updated in February 2021

SOCIETE GENERALE
Securities Services

EMIR REFIT

REVIEW OF EMIR (REGULATION ON OTC DERIVATIVES AND CCPS)

MAIN REGULATORY EVOLUTION	CRITICAL POINTS
3 **Clearing obligation for FC**: financial counterparties (FC) are split into FC+ and FC- FC- are no more submitted to the clearing obligation	The qualification is done using the same thresholds as for NFC (all the contracts have to be included in the calculation). The process is also the same (immediate notification to ESMA, start of the obligation 4 months after, ..). The clearing obligation for FC+ will cover all the asset classes even if not all the threshold have been exceeded. Future FC- should correspond to the current category 3.
3 **Clearing obligation for NFC+**: with EMIR Refit the clearing obligation for NFC+ will only apply to the asset class(es) for which the threshold has been exceeded	The way the clearing threshold is calculated is aligned with the one for FC (aggregate month-end average position for the months of March, April and May compared to the thresholds). OTC derivative contracts that "are not objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group" are included in the calculation.
2 **Reporting**: is lightened (exemption for intragroup transactions where one of the parties is a NFC, ETD transactions to be reported by the CCP, for transactions between a FC and a NFC-, the FC is responsible and legally liable for the reporting)	This remains a double side reporting not a single side as what is requested in the US (DFA).
3 **FRANDT**: the access to the clearing has proven difficult for certain categories of counterparties. Thus EMIR Refit requires clearing members and clients providing clearing services to do it under Fair, Reasonable And Non Discriminatory and Transparent commercial terms	The regulators should keep in mind that the provision of this service is submitted to conditions such as risk management that cannot be overridden



1 Risk mitigation techniques 2 Reporting 3 **Mandatory clearing** 4 Margins for non cleared contracts

EMIR REFIT

REVIEW OF EMIR (REGULATION ON OTC DERIVATIVES AND CCPS)

Updated on the 5th of February 2021

- Cleared contracts
- Non cleared contracts
- Central Counterparties (CCPs)
- Reporting

STATEMENT

- EMIR Refit creates two categories FC+ (submitted to clearing) FC- (not submitted); a counterparty is not required to determine its new situation, however, if not, then it will be considered a FC+ and required to notify ESMA and NCAs accordingly
- **FRANDT**: clearing offers shall be Fair ReAsonable Non-Discriminatory and Transparent
- **FX Forward, FX Swap**: the ESAs have proposed on amended version of the EMIR delegated act dedicated to uncleared contracts where the mandatory exchange of variation margins would be limited to contracts between institutions ;
- **Reporting**: for contracts with a NFC- a “double reporting” to be done by one side (the FC). Thus, it remains a double-side reporting with FC will being responsible for the reporting and NFC- responsible to provide the FC with the data needed (LEI and classification). Intragroup transactions involving at least one NFC will be exempted but only if the parent company is a not a financial counterparty. Reporting for listed derivatives, required both by EMIR and MIFIR, will have to be assessed by 18 months after the entry into force
- **Scope of FC**: IORPs are FC; on the contrary Securitisation Special Purposes Entities (SSPEs) as well as Employee Share Purchase Plans (ESPP) are not qualified FC
- **Clearing obligation and Trading obligation**: ESMA has proposed to align the MIFIR scope to the EMIR Refit’s one for both FC+ and NFC+

FOR YOUR CONSIDERATION

- **FRANDT** requirements: ESMA has published its technical advice, now in the hands of the EC for a future delegated act
- **Non cleared** contracts: EC has adopted the ESA December 2020 proposal; in addition to the May’s proposal, the exemption for equities and index options is now extended until the 4th of January 2024, the intragroup contracts exemption is now until the 30/06/2022 and a mechanism that will allow new contracts (the relocated ones) to benefit from the same exemptions as the original contracts (Brexit topic)
- **Cleared** contracts: ESMA proposes to amend the 3 delegated acts: the temporary clearing exemption for intra-group transactions is extended to the 30/06/2022 and a mechanism to be introduced that will allow new contracts (the post Brexit relocated ones) to benefit from the same exemptions as the original contracts
- **ESMA has issued** in December 2020 its final report following its consultation on reporting to Trade Repositories; its report on central clearing for Pension Scheme Arrangements requesting for an additional exemption (until Jun 2022); its report on Post Trade Risk Reduction services

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To know more please refer to: FicheEMIRREFIT-ToKnowMore