FOCUS

EMIR REFIT

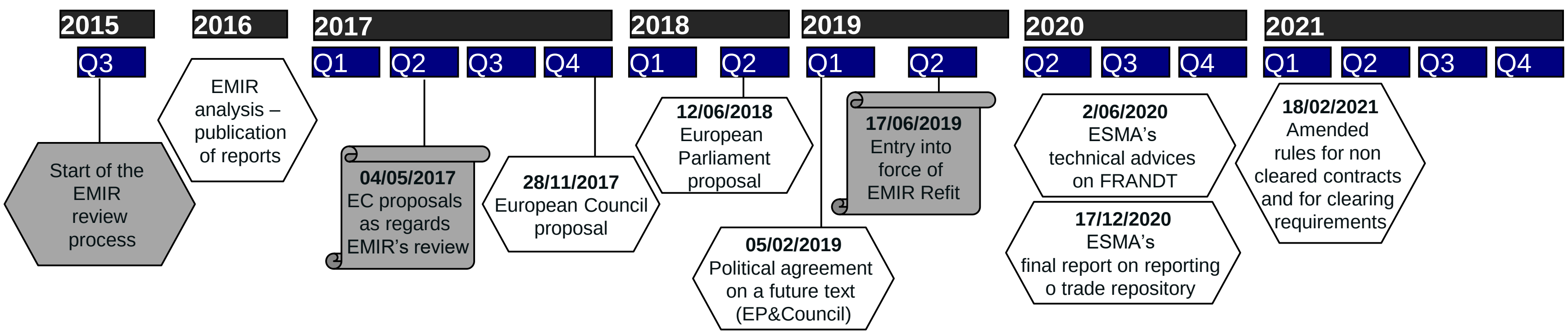
Updated in April 2021

SOCIETE GENERALE
Securities Services

EMIR REFIT

REVIEW OF EMIR (REGULATION ON OTC DERIVATIVES AND CCPS)

MAIN REGULATORY EVOLUTION	CRITICAL POINTS
❸ **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.
❸ **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.
❷ **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 an 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).
❸ **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



❶ Risk mitigation techniques ❷ Reporting ❸ **Mandatory clearing** ❹ Margins for non cleared contracts

EMIR REFIT

REVIEW OF EMIR (REGULATION ON OTC DERIVATIVES AND CCPS)

Updated on the 8th of March 2021

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

STATEMENT

- **FRANDT** requirements: ESMA has published its technical advice, now in the hands of the EC for a future delegated act
- **Reporting**: ESMA has issued in December 2020 its final report on reporting to Trade Repositories and its report on central clearing for Pension Scheme Arrangements requesting for an additional exemption (until Jun 2022); its report on Post Trade Risk Reduction was released in November 2020
- **Cleared and non-cleared contracts**: 2 delegated regulations (DR) amending the DR for non-cleared contracts (2016/2251) and the 3 DR relating to the clearing obligation have entered into force on the 18th of February 2021

FOR YOUR CONSIDERATION

- **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
- **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 being responsible for the reporting and NFC- responsible to provide the FC with the data. Intragroup transactions involving at least one NFC will be exempted but only if the parent company is a not a financial counterparty.
- **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+
- **Non cleared contracts**: alignment to the Basel Committee / IOSCO calendar; variation margins not required where one of the counterparties is not an institution (physically settled FX forwards and Swaps); exemption for equities options and index options now until the 4th of January 2024; intragroup contracts exemption until the 30th of June 2022; relocated contracts (due to Brexit) to benefit from the same exemptions as the original contracts
- **Cleared contracts**: clearing exemption for intra-group transactions until the 30th of June 2022: relocated contracts to benefit from the same exemptions as the original ones (Brexit)

Contact SGSS/CAO/REG: Sylvie Bonduelle sylvie.bonduelle@sgss.socgen.com

To know more please refer to: FicheEMIRREFIT-ToKnowMore