



FOCUS

EMIR Refit

Updated in March 2024

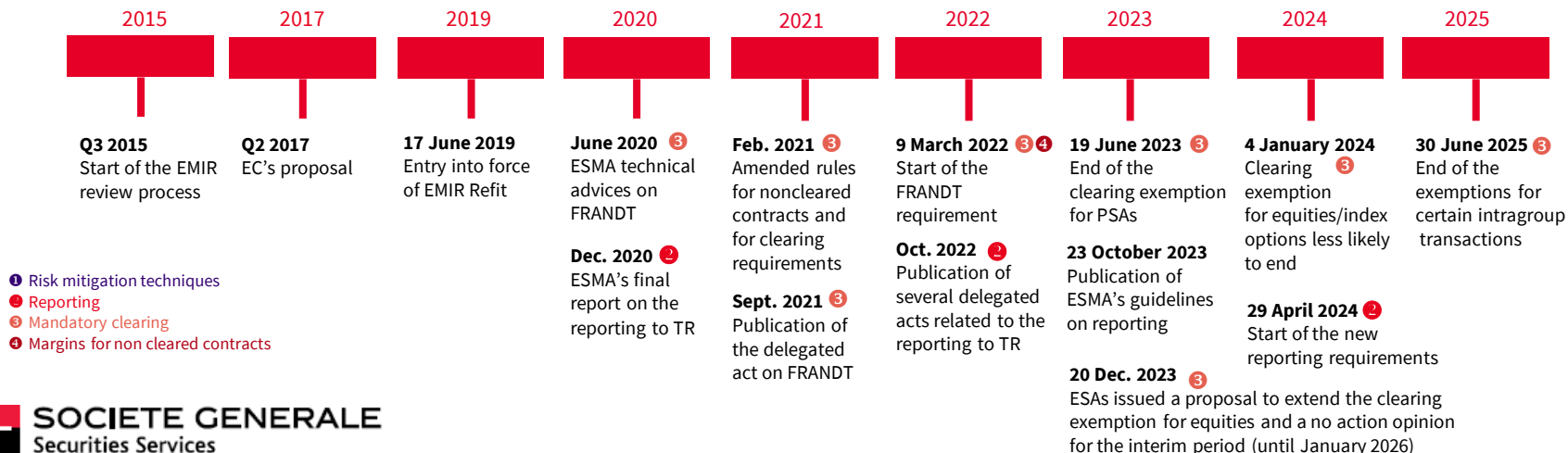
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REGULATORY EVOLUTION

- **Clearing obligation for FC:** financial counterparties (FC) are split into FC+ and FC- are no more submitted to the clearing obligation 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 ③
- **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) ②
- **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 ③

FOCAL POINTS

- The qualification is done using the same thresholds as for NFC (all the contracts 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 thresholds have been exceeded. The FC- category can be compared to the EMIR category 3
- 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
- This remains a double side reporting not a single side as what is requested in the US (DFA)
- The regulators should keep in mind that the provision of this service is submitted to conditions such as risk management that cannot be overridden



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STATEMENT

- FRANDT : the delegated regulation (2021/1456) is entered into force on the 9th of September 2021 for an application on the 9th March 2022
- Reporting: EC has adopted 6 delegated acts based on ESMA's 2020 final report; the new requirements will apply on the 29th of April 2024
- The threshold for commodities is now 4 billions
- 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
- Intragroup transactions: the temporary exemptions (cleared / non cleared) now run until the 30th of June 2025 (3 more years)
- The ESAs have proposed to extend the margin exemption for equities and index options until the 04/01/2026 and issued both an amendment of the delegated act and a no action opinion to apply from the 04/01/2024 until a decision is taken by the EC

FOR YOUR CONSIDERATION

- EMIR Refit creates two categories FC+ (submitted to clearing) FC- (not submitted)
- FRANDT: applies to OTC derivatives contract subject to the clearing obligation (clearing service provided in the Union)
- Reporting: The reporting to TR is amended with numerous additional data and new requirements
- 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:
 - Variation margins not required where one of the counterparties is not an institution (for physically settled FX forwards and Swaps)
 - New contracts (due to Brexit) to benefit from the same exemptions as the original contracts
- Cleared contracts:
 - Relocated contracts to benefit from the same exemptions as the original ones (Brexit)
 - Impacts of the Benchmark Regulation

sylvie.bonduelle@sgss.socgen.comIf you want to know more, refer to
Fiche To Know More

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