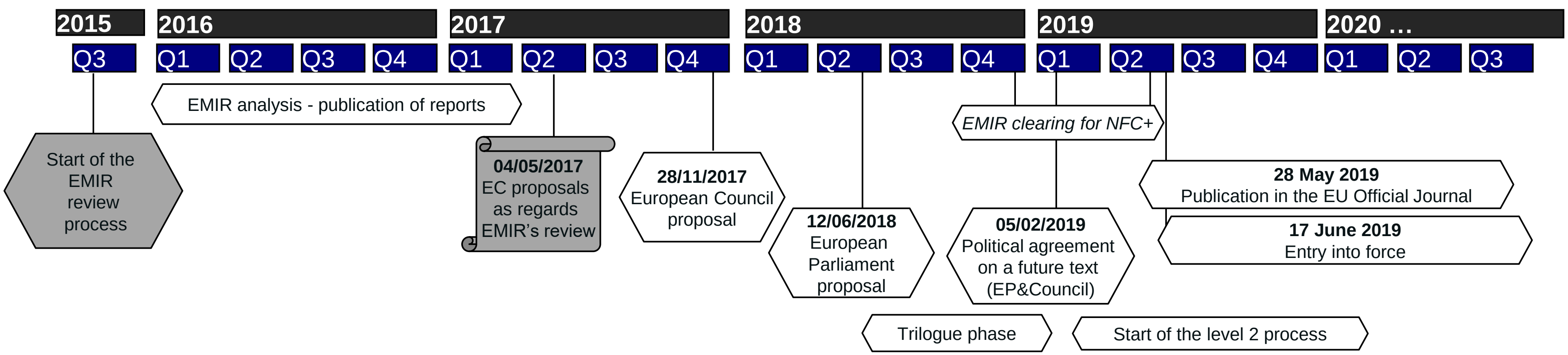
SOCIETE GENERALE
Securities Services

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 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).
❸ **FRAND**: 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 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

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Updated on the 18th of February 2020

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

STATEMENT

❑ Main topics covered by EMIR Refit:

- **FC**: 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**: ESMA has consulted on the criteria defining the FRANDT requirement
- **FX Forward, FX Swap**: the limitation of the mandatory exchange of variation margins to contracts between institutions ; the ESAs have proposed on amended version of the delegated act dedicated to uncleared contracts
- **Reporting**: The text institutes 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 the EC to align the MIFIR scope to the EMIR Refit’s one for both FC+ and NFC+

FOR YOUR CONSIDERATION

❑ FRANDT requirements apply only on OTC derivatives contracts (thus the cash equity is out of the scope)

❑ Non cleared contracts: ESAs have published their draft amended text of the RTS:

- Alignment to the new recommendations of the Basel Committee / IOSCO as regards the implementation phase for initial margins
- Physically settled FX forwards and Swaps: variation margins not required where one of the counterparties is not an institution
- Equities options and index options: the exemption is extended until the 3rd of January 2021
- Intragroup contracts involving a third country entity: bilateral margin requirement is deferred until December 2020 where no equivalence decision has been adopted

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To know more please refer to: FicheEMIRREFIT-ToKnowMore