



FOCUS

# EMIR REFIT

Updated in June 2020

### MAIN REGULATORY EVOLUTION

- 3 **Clearing obligation for FC:** financial counterparties (FC) are split into FC+ and FC- 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
- 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)
- 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

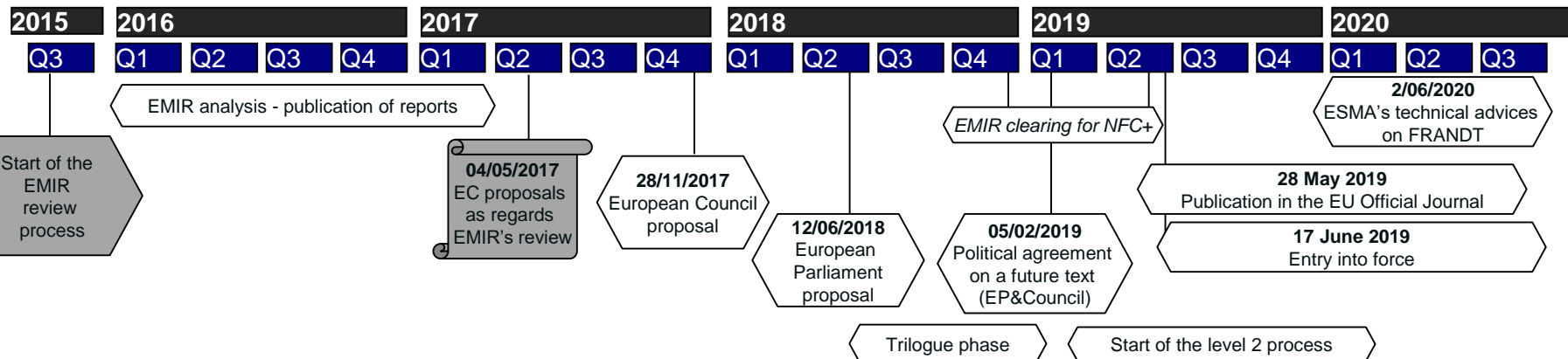
### CRITICAL POINTS

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.

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



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

Updated on the 12<sup>th</sup> of June 2020

- Cleared contracts
- Central Counterparties (CCPs)
- Non cleared contracts
- 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 be 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: ESMA has published its technical advice, now in the hands of the EC for a future delegated act
- ☐ Non cleared contracts: ESAs have published a second version of their draft amended text of the RTS; still to be adopted by the EC and non rejected by the EP and the Council including the new calendar (due to the Covid 19)
- ☐ Reporting: on the 18<sup>th</sup> of June 2020 FC to be required to report on behalf of NFC- counterparties, associations advocated for a postponement
- ☐ ESMA has launched on the 26<sup>th</sup> of March 2020 a consultation on technical standards on reporting, data quality, data access and registration of Trade Repositories under EMIR REFIT and a consultation on Post Trade Risk Reduction services and a potential exemption from the clearing obligation
- ☐ ESMA has launched on the 2<sup>nd</sup> of April 2020 a consultation on central clearing solutions for Pension Scheme Arrangements

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To know more please refer to:  
FicheEMIRREFIT-ToKnowMore

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