



EMIR REFIT

Updated on April 2019

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 **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

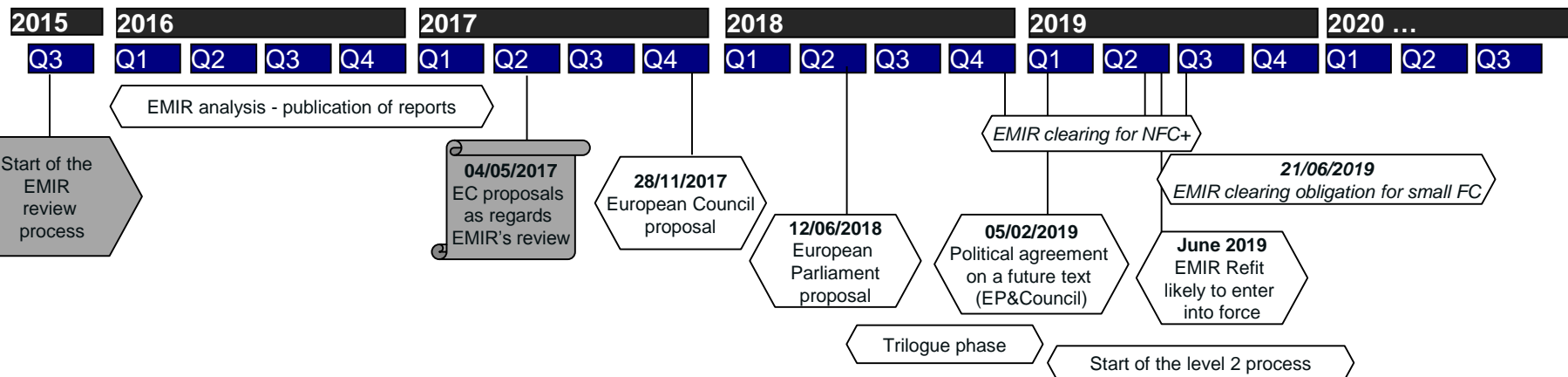
CRITICAL POINTS

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 2/04/2019

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

STATEMENT

- ❑ A political agreement has been reached; the publication in the EU Official Journal is expected in May leading to an entry into force in June 2019
- ❑ About the main topics that were under discussion :
 - **FRAND**: the Council position has been retained; this requirement shall not be understood as an obligation to contract clearing
 - **FX Forward, FX Swap**: the limitation of the mandatory exchange of variation margins to contracts between institutions (ie investment firms or credit institutions) will apply on both FX Forwards and FX Swaps
 - **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

FOR YOUR CONSIDERATION

- ❑ Date of entry into force of EMIR Refit and current EMIR phase-in:
 - ESMA has issued several statements requiring competent authorities to not focus their supervisory task on certain EMIR obligations that were to be removed or lightened due to EMIR Refit (for example the clearing and trading obligations for small financial counterparties as of the 21/06/2019)
 - Requirements like the classification of FC and NFC will enter immediately (on the 20th day following the publication at the EU JO) whereas others like FRANDT will enter into force later.
- ❑ ESMA has issued end of March 2019 a paper recalling the rules with regards to the qualification of FC and NFC. FC that might become FC- according to EMIR Refit shall have made the calculation before the entry into force; FC that will be FC+ (including those in current categories 1 and 2) as well as current NFC+ are required to notify their qualification to the authorities.

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To know more please refer to:
FicheEMIRREFIT-ToKnowMore

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