

Memo

21-03-2023

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Nordic Securities Association (NSA) position on the European Commission's proposal on a revision of EMIR (EMIR Review)

The NSA¹ welcomes the proposal from the European Commission on a revised European Market Infrastructure Regulation (EMIR Review). The proposal does not fundamentally alter the role of central counterparties (CCPs) in reducing contagion risk in the derivative markets, but rather aims to encourage further use of EU based clearing houses by allowing them greater freedom in their operations and products, enhance agility in the supervisory framework by easing requirements for authorisation and models, and to safeguard European financial stability and strategic autonomy. Thereby Commission intends to enable EU CCPs to grow business, with an aim of ensuring that clearing between EU entities takes place on EU CCPs under the auspices of EU authorities.

General comments

The NSA strongly **supports the continued development of the Capital Market Union**, including actively developing the frameworks for the market infrastructure of which CCPs are a key part. Likewise, the NSA supports the proposed measures intended to secure the international competitiveness of EU located clearing members but emphasises the key notion that the EU framework should be open and competitive rather than restricting or penalising the use of non-EU CCPs, and that it should avoid incurring transition risk.

To achieve this aim, it is **crucial that the proposals are forward looking**, in so far that **existing trades should be unaffected** to avoid forcing moving contracts across CCPs which may be costly and will be risky. Thereby, the regulation should only apply to the **clearing of new transactions**.

The NSA **does not support the proposal on Active accounts** and thinks it is a forced relocation policy. If the Active account principle is pursued, it is crucial that it becomes voluntary. Besides the disadvantage for in particularly smaller firms, it risks forcing a disconnect in EUR clearing from clearing in other currencies, which banks from

¹ The Nordic Securities Association (NSA) is a Nordic cooperation that works to promote a sound securities market primarily in the Nordic region. The NSA is formed by Capital Market Denmark (Kapitalmarked Danmark), Finance Finland (Finanssiala), the Norwegian Securities Dealers Association (Verdipapirforetakenes Forbund) and the Swedish Securities Markets Association (Svensk Värdepappersmarknad), [NSA - Nordic Securities Association \(nsa-securities.eu\)](https://www.nsa-securities.eu). Nordic Securities Association's public ID number in the Transparency Register is: 622921012417-15

smaller currency-zones such as the Nordics are very much dependent on. This would lead to reduced possibility to reduce risk and cost through netting.

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For the same reason, **we cannot support the contemplated CCP concentration tool**, as it in its very nature undermines the value proposition for banks and non-banks of using EU based central clearing by de facto applying higher prices on CCPs where efficient netting is accessible. For this reason, any concentration measure must be based on actual risk exposure, to avoid penalising making the right choices from a risk perspective. Likewise, the concept of concentration should be delimited to systemically important CCP activities only, rather than reflecting on all CCP activities.

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In view of the above considerations and the complexity of the proposal incl. level 2 and 3 mandates, the NSA considers it **necessary to extend the (temporary) recognition of third-country Tier-2 CCPs** beyond June 2025 (grandfathering of open transactions).

Specific comments

Forward looking

We strongly **recommend** that EMIR Review is forward-looking and focuses only on clearing of new transactions as it is both burdensome and risky to migrate existing transactions. If it is decided to include existing transactions, a potential issue would be that the migration of existing transactions would have to be effectuated via non-EU clearing members that can face both EU and non-EU CCPs (e.g., US banks), which would not be in line with the Commission's policy objectives.

Intragroup transactions (art. 3)

We welcome the simplified rules for intra-group transactions with entities in third countries in art. 3.

Active Account (art. 7a) – proportion of activity

As noted previously, we are **not supportive** of the Active Account principle. The actual impact of Art 7(a) is very difficult to predict and fundamentally depends on the details in the regulatory technical standards that the ESAs would be given the mandate to develop, in particular the proportion of activity in each category of the derivative contracts that must be cleared at an authorized EU-CCP.

If the requirement for active account is maintained, NSA considers it important that the metric used is based on new transactions only to avoid a cliff from existing trades, and that it is risk sensitive and takes into account e.g. margin or delta-risk, rather than notional amounts, to properly incentivise netting and active risk management.

Collectively, the uncertainty around the actual impact of the entire active account proposal necessitates that, should there be a calibration of "proportion of activity", this should be established on Level 1.

Active Account (art. 7a) – impact on smaller participants

For smaller market participants (FCs and NFCs), the requirement to hold an active account at an EU CCP will be very costly. Clearing members should not be penalized for supporting a functioning clearing market, hence client clearing services should be carved out from any requirements on proportion of activity. Otherwise, the proposed requirements could create conflicts of interest between clearing members and clear-

ing clients; if the clients request their trades to be cleared at a Tier 2 CCP this may exhaust the clearing member's capacity, limiting the possibility to clear its own trades on Tier 2 CCPs and perhaps forcing the clearing member to clear additional trades at EU CCPs to meet the quantitative targets. Unless client clearing services are carved out from the proposed requirements, clearing members might have to restrict the client clearing possibilities, which would effectively run counter to the intention of EMIR.

Active Account (art. 7a) – scope

Art 7(a) should reflect that only OTC derivatives that are subject to the clearing obligation are covered.

Active Account (art. 7a) – scope

The reporting requirement under Art 7(a)(4) is cumbersome and costly, especially for smaller market participants. It should be sufficient with the reporting that marketing participants and CCPs do to Trade Repositories and supervisory authorities in accordance with EMIR.

Active Account (art. 7a) – Definition of STIR

The term Short-Term Interest Rate Derivatives (STIR) in Art 7a.2.c needs to be defined.

Information on Clearing Services (art. 7b) – information requirement

The information requirement under Art 7(b)(1) is administratively demanding and not very practical as the clearing process to a large extent is automatic and takes place within seconds from the submission of a transaction to the CCP. Art 7(b)(1) should therefore be amended so that there is a general disclosure requirement on clearing members to inform their clients about the possibility of clearing at an EU CCP and not a requirement to inform clients on a transaction-by-transaction basis.

Information on Clearing Services (art. 7b) – scope

As mentioned above, the reporting requirement to supervisory authorities is operationally burdensome and costly, especially for smaller market participants. It should be sufficient with the existing reporting requirements that market participants and CCPs do to Trade Repositories and supervisory authorities in accordance with EMIR.

CCP Concentration tool (CRD art. 104)

We are **not supportive** of the CCP concentration risk tool (as amended in CRD article 104) as we cannot see how to design this tool without harming EU firms' competitiveness. Using pillar 2 tools, which could entail additional own funds requirements, is in our view not an appropriate way to address concentration risks. If the tool is kept in the regulation, we strongly recommend that actual risk exposures (Trade Exposure, Deltas) rather than notional registered or notional outstanding is used as concentration measures. Additionally, concentration risk should be specified further and be limited to services of substantial systemic importance and not towards CCPs in general.

Extension of temporary recognition of Tier-2 CCPs

To fully assess the EMIR Review proposal and its impact requires an overview of the full legislative package, including level 2 and 3 texts. Considering the time needed for political negotiations and preparation of the level 2 texts, we see a need for an extension of the (temporary) recognition of third-country Tier-2 CCPs beyond June 2025 to facilitate orderly preparation and sufficient time for participants to analyse their portfolios and decide on needed relocations. In our view, the migration of new transactions needs to take place over a much longer time horizon, which would also be in line

with the Commission's proposal as it allows EU firms to continue clearing part of their transactions outside EU and with the above recommended gradual build-up of EU clearing activity,

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If relevant, we also see a need for significant lead times for migration of transactions, which must always be respected for all decisions related to

- products of substantial systemic importance
- calibrations of levels in active accounts, and
- third-country recognitions

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Transparency (art. 38) - margin models

We **support** transparency of margin models towards clients (art. 38), but this information should come directly from the CCPs by enhancing the existing art. 38(7). Concretely, we would be concerned that clearing members would not have the information on margin models they are expected to provide.

Exemption for single stock equity options

We suggest making necessary amendments to EMIR level 1 and 2 in order to make the exemption from margin requirements for single stock equity options and index permanent.

Exemption of certain services

Finally, we support the ESMA conclusion in their report from 10 November 2020 (ES-MA70-156-3351) to exempt certain non-price forming post trade risk reduction services from the clearing obligation and suggest that necessary amendments to EMIR level 1 and 2 are made.