

ALIGNMENT OF MIFIR WITH THE CHANGES INTRODUCED BY EMIR REFIT

1. Introduction

The Nordic Securities Association (**NSA**) welcomes the opportunity to respond to ESMA's consultation on the alignment of MiFIR with the changes introduced by EMIR Refit (**Consultation Paper**). The NSA is in general positive to aligning the trading obligation for derivatives under MiFIR with the changes made under EMIR Refit with respect to the scope of the entities that are subject to the clearing obligation. In relation to Brexit and the case of a no-deal scenario, we encourage the Commission to make a temporary equivalence decision in order to avoid that there will be a disruptive impact on market participants due to overlapping and contradictory derivatives trading obligations (**DTO**) in the EU and the United Kingdom.

2. Questions

Q1 : Do you have any comment on the analysis of the amendments in relation to financial counterparties?

We agree that the scope of the DTO under MiFIR should be aligned with the changes made under EMIR Refit with respect to the clearing obligation for financial counterparties.

Q2 Do you have any comment on the analysis of the amendments in relation to non-financial counterparties?

We agree that the scope of the DTO under MiFIR should be aligned with the changes made under EMIR Refit with respect to non-financial counterparties.

Q3 : What is your view on the possible development of on-venue trading for contracts not cleared with a CCP? What are the challenges for the trading venues? What are the challenges for the counterparties exempted from the CO and subject to the DTO?

[We agree that it needs to be clear what the objective of forcing the execution of a contract on a trading venue is while allowing for the contract not to be cleared by a CCP.

It would be unfortunate if derivatives concluded on a multilateral trading facility (MTF) or an organised trading facility (OTF) would have to be cleared by a CCP. As ESMA points out in section 38 of the Consultation Paper, should MTFs and OTFs find it impossible to accommodate different post-trade mechanisms for exempted counterparties, the existence of a standalone DTO could in practice create a quasi-obligation to clear for counterparties exempted therefrom under EMIR Refit, which would contradict the objective of EMIR Refit.]

Q4 : What is your view on the arguments exposed above, supporting the status quo i.e. a misalignment between the scope of counterparties subject to the CO and the DTO (G20 objectives, compliance with the DTO less burdensome than with the CO)? Can you identify other arguments?

Memo

Date
29 October 2019

Please see answer under Q5 below.

Q5 : What is your view on the arguments exposed above, supporting the alignment between the scope of counterparties subject to the CO and the DTO (initial policy intention, potential de-facto clearing obligation, limitation of operation burden)? Can you identify other arguments?

Page 2

As mentioned above, we support the proposal of aligning the DTO with the changes made to the clearing obligation under EMIR Refit. We agree that the objective of reducing the administrative and regulatory burden for counterparties is valid for both the DTO and the clearing obligation. Also, even if an exemption from the DTO would have a limited impact on the volumes traded on venues, there needs to be a clear objective why the DTO should not be aligned with the clearing obligation under EMIR.

Q6 : What is your view on ESMA's proposal to suggest an alignment in the scope of counterparties between the clearing and trading obligations?

Please see answers above.

Q7 : What is your view on the necessity to introduce a standalone suspension of the DTO in MiFIR? If you consider it is appropriate, do you have views on how it should be framed?

Our members are supportive of introducing a standalone suspension of the DTO in MiFIR. We agree that the mechanism in Art 32(5) is not flexible enough and leave it to ESMA and the Commission to determine how it should be framed.

Q8 : Have you identified other aspects of the DTO under MiFIR that should be aligned with amendments introduced by EMIR Refit? If so, please explain the amendments to MiFIR that could be introduced.

At the moment we do not have any other proposals for amendments in MiFIR that relates to the amendments introduced by EMIR Refit.