2022-01-19

Response to ESMAs discussion paper regarding clearing thresholds under EMIR

The Swedish Securities Markers Association (SSMA) welcomes the opportunity to respond to ESMAs discussion paper regarding clearing thresholds under EMIR.

General comments

- In general, the rules under EMIR (including EMIR Refit) work quite well and there is no need to make amendments or make the regime stricter.
- From our perspective it is very important that the clearing thresholds are not lowered and there is also no reason why the EU should make further amendments to the hedging exemption for NFCs.

Specific questions

Question 1: Please explain if you see a need for further clarification on how to identify OTC contracts for the purpose of the calculation of the positions to be compared to the clearing thresholds.

Answer: No, we do not see a need for further clarification on how to identify OTC contracts for the purpose of the calculation of the positions to be compared to the clearing thresholds.

Question 2: Please explain if you see a need for further clarification to identify OTC contracts that can be considered as reducing risks directly relating to commercial activity or treasury financing activity. And please mention any additional aspects to be further considered with regards to the hedging exemption.

Answer: No, we do not see a need for further clarification to identify OTC contracts that can be considered as reducing risks directly relating to commercial activity or treasury financing activity.

As a general comment, it is important to keep the hedging exemption for NFCs. If the hedging exemption would be removed, there is a risk that NFCs would stop hedging risky exposures.

Question 3: Please provide information and examples on how counterparties count fungible ETDs and OTC derivatives for the purpose of the calculation of the clearing thresholds.

No comments.

Question 4: Please provide data and arguments to illustrate the potential impact of the lack of an equivalence decision under Article 2a of EMIR and what could be done to alleviate your concerns

(besides an equivalence decision)? Please specify the kind of transactions and activities that would be affected and the purpose of those, and whether there are alternatives.

No comments.

Question 5: Please describe the scenarios when transactions do not qualify as hedging transactions.

No comments.

Question 6: Please describe your views on how the EMIR framework works (also compared to other regimes) for the purpose of the clearing thresholds and the requirements triggered by those? Please provide examples and supporting data.

Answer: In general, the EMIR framework works quite well, and we do not see a need for any major overhauls as this would cause disturbances in the system.

Question 7: Considering the current coverage provided by the clearing thresholds in relation to credit derivatives and the different type of counterparties (FCs and NFCs); is there any aspect or issue you consider ESMA should look into or pay attention to? Please, in your answer, provide as granular details and any relevant data to illustrate your response.

Answer: Please consider introducing for FCs the same requirement as for NFCs when becoming subject to the clearing obligation, i.e. only of the asset class where the threshold is exceeded.

Today an FC trading in small volumes in IR or credit derivatives may be required to clear those small volumes, because of volumes in e.g. FX derivatives exceed the FX threshold.

Question 8: Considering the current coverage provided by the clearing thresholds in relation to interest rate derivatives and the different type of counterparties (FCs and NFCs); is there any aspect or issue you consider ESMA should look into or pay attention to? Please, in your answer, provide as granular details and any relevant data to illustrate your response.

Answer: See above.

Question 9: Considering the current coverage provided by the clearing thresholds in relation to commodity derivatives and the different type of counterparties (FCs and NFCs); is there any aspect or issue you consider ESMA should look into or pay attention to? Please, in your answer, provide as granular details and any relevant data to illustrate your response.

Answer: See above.

Question 10: Considering the current coverage provided by the clearing thresholds in relation to equity derivatives and the different type of counterparties (FCs and NFCs); is there any aspect or issue you consider ESMA should look into or pay attention to? Please, in your answer, provide as granular details and any relevant data to illustrate your response.

Answer: See above.

Question 11: Considering the current coverage provided by the clearing thresholds in relation to currency derivatives and the different type of counterparties (FCs and NFCs); is there any aspect or

issue you consider ESMA should look into or pay attention to? Please, in your answer, provide as granular details and any relevant data to illustrate your response.

Answer: See above.

Question 12: Beyond the different treatments between FCs and NFCs in the calculation, are there differences between the different types of counterparties that might justify a different calibration of the actual clearing thresholds? In addition, please consider if a different calibration of the current clearing thresholds by type of counterparty should apply in the same manner to all asset classes. Please provide any supporting data that might help illustrate your response.

Answer: Please consider introducing for FCs the same requirement as for NFCs when becoming subject to the clearing obligation, i.e. only of the asset class where the threshold is exceeded.

Today an FC trading in small volumes in IR or credit derivatives may be required to clear those small volumes, because of volumes in e.g. FX derivatives exceed the FX threshold.

Question 13: Looking at the simulations presented in the paper and at the impact they would have, do you have any views on the sensitivities of the thresholds?

Answer: We have a strong preference to keep the clearing thresholds as they are.

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