

2022-03-15

## **SSMAs comments to the Commission's targeted consultation on the review of the central clearing framework in the EU**

Swedish Securities Markets Association (SSMA)<sup>1</sup> has today submitted an online response to the European Commission's targeted consultation on the review of the central clearing framework in the EU.

### General comments:

The SSMA has a couple of general comments on clearing that the Commission should consider when analyzing the responses to the consultation:

- There are many advantages for a clearing member to use one CCP, including netting of exposures and collateral which leads to lower capital requirements and that the collateral pool can be used more efficiently and thereby lower the costs.
- It is important that the CCP has good liquidity and instrument coverage to be able to clear all relevant instruments for the clearing member.
- It is very difficult to move cleared trades from one CCP to another CCP, since this means that the trades need to be closed out at the CCP and a new trade must be entered at the new CCP. This is both practically difficult and will potentially also have large economic effects/costs since the new trade will be entered into under new and different business conditions.

### Specific proposals:

As regards, the specific proposals in the consultation paper, the SSMA's key positions can be summarized as follows:

- SSMA understands the policy objective which the Commission seeks to address with the various proposals, i.e., to reduce EU participants' reliance on Tier 2 third country CCPs but is of the view that it is important to take a cautious approach.
- Mandatory requirements which in different ways aim at forcing clearing to take place at EU CCPs could have unintended negative consequences. In particular, we are concerned with the risks of creating an un-level playing field that will put EU firms and EU CCPs at a

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<sup>1</sup> The SSMA is a trade association representing the interests of investment firms conducting business on securities markets in Sweden.

competitive disadvantage which, contrary to the policy objective, will steer clearing to third countries. For instance, we question the proposals to [extend the clearing obligation, impose segregated default funds or introduce additional requirements on clearing services (e.g. FRANDT). ] Instead, we support “positive incentives” that would make clearing at EU CCPs more attractive for firms such as lowering the capital and margin requirements or introducing lower fees and rebates.

- The SSMA welcomes measures that would increase the liquidity pool at EU CCPs but at the same time we recognize that the existing exemptions have fulfilled a function. In our view, PSA-entities, private entities and public entities are better placed than a sell-side organization like ourselves to provide comments on the detailed proposals, including from a cost/benefit perspective. However, factors such as risks to other clearing members and stability and robustness of the system should be taken into consideration.
- From a general point of view, the SSMA is concerned with the fact that over the last decade, constantly ongoing changes to the EU rulebook, including EMIR, have created a lot of implementation challenges for investment firms and their clients (e.g., IT-development, internal procedures, and staff training). We therefore want to underline that thorough impact assessments and cost/benefit analysis are very important before proposing any additional amendments to EMIR the EU market does not need an EMIR 3.0! For example, we question the added value of increased data collection from clearing members, considering that CCPs already provide significant amount of data to NCAs.
- As regards the increased supervision at the EU-level, the SSMA takes the position that the rationale for centralizing powers should always be that ESMA can solve something that NCAs cannot solve or that ESMA can solve it more efficiently or in a more coordinated and consistent manner than the NCAs. Principles of subsidiarity and proportionality must be upheld. The SSMA does not see that there is a need for any changes to the current supervisory system as regards the 38 areas indicated in the consultation paper.
- The SSMA agrees that ESMA has an important role to play in ensuring supervisory convergence in relation to the legislation in the securities area. We are however concerned with the large number of different types of non-binding legal tools which ESMA uses in order to foster supervisory convergence (e.g., guidelines, recommendations, opinions, Q&A, supervisory statements, good and bad practices, supervisory briefings, public speeches, and letters to the Commission) which we think leads to a fragmented rulebook and creates operational risks as well as legal uncertainty.
- One supervisory tool which it would be beneficial to include in ESMA’s toolbox is “No Action letters”. The ability to use No Action letters help ESMA and NCAs to ensure an orderly implementation e.g., in situations where the timetable of level 1 and level 2 rules are not coordinated and the market are not able to comply with the rules on the day of application.

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