Svensk Värdepappersmarknad
Swedish Securities Markets Association

March 2023

The Swedish Securities Markets Association's views on the proposal for a Regulation amending EMIR, Regulation 575/2013 and 2017/1131 as regards measures to mitigate excessive exposures to third country CCPs

The Swedish Securities Markets Association (SSMA) was founded on 15th December 1908. The Association represents 24 Swedish, Nordic and global banks and investment firms active on the Swedish securities markets. The Association's overall mission is to work for sustainable and competitive Swedish securities markets. The Association's working groups discuss a wide range of topics including equity, derivatives and bond markets, investor protection issues and sustainable finance. The Association also owns SwedSec Licensiering AB which is responsible for licensing e.g. financial advisors in the Swedish market since 2001.

In this paper, the SSMA expresses its views on the proposal for amendments in EMIR published by the EU Commission on 7 December 2022.

General comments

- The effects of the proposal are unclear, much depends on level 2 regulation that ESMA would be given the mandate to develop.
- Market participants need early clarity on the extension of the equivalence decision for UK CCPs beyond June 2025.

Art. 7a – Active Account

The SSMA does not support the proposal on active accounts and thinks it is a forced relocation policy. The proposal is very disadvantageous for smaller firms that are not members of Eurex and will fragment markets and disadvantage European firms in comparison with global competitors. If implemented, the proposal will damage the derivatives market and will make EU clearing members and participants less competitive than their counterparts outside of the EU. There is also a risk that the concentration to a few larger clearing members will increase.

The effects of Art. 7(a) are unclear and much depends on the details in the regulatory technical standards that ESMA, according to the proposal, would be given the mandate to develop, e.g. the proportion of activity in each category of the derivative contracts that must be cleared at an authorized EU-CCP. The proportion of activity will be very difficult to define, and it is difficult to see how this will work in practice. A solution with quantitative targets is undesirable. Should the EU nevertheless choose to implement quantitative requirements, the active account requirement at EU CCPs should only apply to new transactions. It is also important that the "proportion of activity" is established on Level 1. If/when calibrating the level of activity (be it in Level 1 or 2), and subsequently estimating related concentration risk, it would make sense to look at more risk-sensitive measures such as Initial Margin or delta/DV01 on new trades rather than new notional registered/outstanding, measures that do not portray a correct picture of risk, and, hence, systematic risk.

For smaller market participants (FCs and NFCs), the requirement to hold an active account at an EU CCP will be very costly. Market making activities and client clearing services therefore need to be carved out. Regarding client clearing services the proposed requirements could potentially create conflicts of interest between the clearing members and their clients; if the clients request their trades to be cleared at a Tier 2 CCP this may exhaust the clearing members 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, this might lead to clearing members having to restrict the client clearing possibilities.

Art. 7(a) also needs to be amended so that only OTC derivatives that are subject to the clearing obligation are covered.

The proposal may furthermore have the unintended consequence of forcing market participants to cease trading and clearing derivatives transactions as the costs may be too high. Since the proposal will put EU market participants at a significant competitive disadvantage, a comprehensive cost benefit analysis and analysis of financial stability risks need to be made before it is implemented. From our perspective, the EU Commission is overstating the risks of clearing at Tier-2 CCPs.

The reporting requirement under Art. 7(a)(4) is very cumbersome and costly 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.

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

Art. 7b – Information on clearing services

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.

As mentioned above, the reporting requirement to supervisory authorities is operationally burdensome and costly 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.

Other proposals

Exemption for single stock equity options and index options.
The existing exemption from margin requirements for single stock equity options and index options should be made permanent to level the playing field with the US and other markets where there is a permanent exemption.

Transparency of CCP margin models (Art. 38).
The requirement that clearing members should inform their clients on how CCPs margin models work, including in stressed situations, and provide them with a simulation of the margin requirement that they may be subject to under different scenarios is demanding for clearing members. The proposal expects them to provide information to clients that they do not have (e.g. in relation to stress tests). Instead, transparency about margin models should come from the CCPs.

Streamlining of supervisory procedures (Title III).
The proposal to streamline supervisory procedures for launching new products/model changes for EU CCPs is welcome.

Clearing Threshold Methodology (Art. 4(a)(3))

In the proposal, the scope for the calculation of the clearing threshold for FCs and NFCs will be amended and as a result, when calculating the position towards the clearing thresholds, only those OTC derivative contracts that are not cleared at an authorised EU-CCP or recognized TC-CCP should be included in the calculation. This means that the scope of OTC derivatives that are included in the calculation is narrowed. It can be questioned whether the intention is to lower the clearing thresholds? From our perspective, this amendment is unfortunate as it will lead to increased complexities for smaller counterparties (SFCs and NFCs) to carry out the calculation if they exceed the clearing thresholds. It may also mean that exchange traded derivatives cleared at smaller CCPs that have not been recognized by ESMA shall be include in the calculations.

Review of hedging exemption (Recital 16)

In recital 16, it is stated that the European Parliament and the Council shall ensure that the criteria for which OTC derivative contracts that are objectively measurable as reducing risks continue to be appropriate in light of market developments. ESMA should review and clarify and propose amendments if necessary. The aim seems to be to lessen the scope of the hedging exemption (which is relevant for NFC calculations). If this is correct, the impact would be significant.

Risk mitigation techniques for non-cleared derivatives for NFCs (Recital 17)

In recital 17, it says that NFCs that have to exchange collateral for uncleared OTC derivatives should have sufficient time to negotiate and test the arrangements to exchange collateral (i.e. the ISDA Master Agreement and the VM CSA) and recital 18 states that ESMA should ensure uniform application of the Initial Margin documentation for FCs and NFCs. The intention seems to be to widen the scope of NFC+, which would be unfortunate.

If the intended effect of the review of the hedging exemption and clearing thresholds is to broaden the scope of counterparties that are subject to the clearing obligation and margin requirements, then this would be very unfortunate. In the end, this could lead to many smaller counterparties ceasing to hedge interest and currency derivatives as the complexities and costs that this would involve would be unproportionate and onerous.