



## **ESMA Consultation Paper on the report on post-trade risk reduction services with regard to the clearing obligation (Art. 85(3)(a) EMIR Regulation)**

**Link to the paper: Consultation paper on the report on post trade risk reduction services with regards to the clearing obligation (Art. 85(3)(a) EMIR Regulation).**

### **1.- Target audience (potential stakeholders)**

This consultation is addressed, in particular, to:

- Financial and non-financial counterparties of OTC derivative transactions.
- Entities providing post-trade risk reduction services.
- Central Counterparties (CCPs).
- Other market participants.
- Other stakeholders.

The CNMV would appreciate it if all the above-mentioned potential stakeholders were to send a copy of their responses to the consultation to the following email address:

[Documentosinternacional@cnmv.es](mailto:Documentosinternacional@cnmv.es)

### **2.- Information Note**

ESMA's paper submitted to consultation analyses whether trades resulting from the use of risk reduction services for derivative portfolios, not subject to centralised compensation, should be exempted from the central clearing obligation or not.

Article 85(3)(a) of Regulation 2019/834 (EMIR REFIT), amending Regulation 648/2012 (EMIR) as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories, requires ESMA to submit a report to the European Commission by 18 May 2020. Such report shall include, inter alia, the issues referred to in the various subparagraphs of Article 85(3)(a), and that provided for in its subparagraph (d), pursuant to which, ESMA, in corporation with the European Systemic Risk Board, shall assess whether trades directly resulting from post-trade risk reduction services, including portfolio compression, should be exempted from the clearing obligation referred to in Article 4(1) of the EMIR Regulation.

Pursuant to such provision, ESMA's report shall:

- i) investigate portfolio compression and other available post-trade risk reduction services, such as rebalancing transactions, which reduce non-market risks in portfolios, through the execution of new non-price forming transactions;
- ii) explain the purposes and functioning of such post-trade risk reduction services, the extent to which they mitigate risks, in particular counterparty credit risk and operational risk, and assess the need to clear such transactions, or to exempt them from clearing, in order to manage systemic risk; and
- iii) assess to what extent any exemption from the clearing obligation for such services discourages central clearing and may lead to counterparties circumventing the clearing obligation.

To fulfil this requirement, ESMA analyses in the paper submitted to public consultation the different types of post-trade risk reduction services, and their purpose, as well as the potential need for the new trades that these may generate to be exempted from the clearing obligation, and if such an exemption could lead to the risk of some counterparties circumventing the clearing obligation.

It should be noted that MiFIR specifically excludes transactions deriving from portfolio compression from best execution requirements and from the derivatives trading obligation.

The structure of the document is as follows:

- Section 2 provides an introduction to this consultation paper.
- Section 3 covers the types of post-trade risk reduction services: what they are, how they function, the risks that they intend to reduce and why market participants use them.
- Section 4 requests respondents to provide data on the current use of post-trade risk reduction services.
- Section 5 assesses how the current clearing obligation affects the use of post-trade risk reduction services and the need to clear or to exempt the new trades that may arise from these services from the clearing obligation.
- Section 6 assesses the risks that may arise from the exemption of the clearing obligation: it describes G20 Commitments and the global position, analyses the potential circumvention of the clearing obligation, the potential non-use of central clearing, and the potential reduction in the collateral.
- Section 7 considers how post-trade risk reduction services are regulated in other jurisdictions (United States, Canada, Hong Kong, Singapore, Australia).
- Section 8 considers some conditions or restrictions that may apply if an exemption to the clearing obligation were provided and whether providers of these services should be regulated/supervised.
- Section 9 contains a cost/benefit analysis.

- Annex 1 includes a list of the paper's questions. Annex 2 contains a table with exemptions for portfolio compression in other jurisdictions.

ESMA shall consider the feedback that it receives to this consultation and expects to publish a final report for the European Commission in mid-2020.

### **3.- Submission of comments**

The deadline for submitting comments is **15 June 2020**.

Respondents may send their comments through ESMA's website:

[www.esma.europa.eu](http://www.esma.europa.eu). The paper of this consultation (ESMA 70-151-2852) is available in the section [Your input-Consultation](#).

ESMA invites stakeholders, in particular, to reply to the 31 questions included in Annex 1.

Likewise, as mentioned above, the CNMV would appreciate it if stakeholders could send a copy of their responses to the consultation to the following address:

[Documentosinternacional@cnmv.es](mailto:Documentosinternacional@cnmv.es)

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