

PRESS RELEASE

ESMA recommends changes to EMIR framework

The European Securities and Markets Authority (ESMA) has published four reports focused on how the European Markets Infrastructure Regulation (EMIR) framework has been functioning and providing input and recommendations to the European Commission's (EC) EMIR Review.

Three of the reports are required under Article 85 of EMIR, and cover non-financial counterparties (NFCs), pro-cyclicality and the segregation and portability for CCPs. The fourth report responds to the EC's Review including recommendations on amending EMIR in relation to the clearing obligation, the recognition of third country CCPs and the supervision and enforcement procedures for trade repositories.

Steven Maijor, ESMA Chair, said:

“EMIR is a key component of the EU's regulatory reform package in response to the financial crisis affecting many elements of OTC derivatives markets. While its implementation is still underway we recommend a number of changes, based on our experiences, to improve and streamline the regulatory and supervisory framework and to ensure that the objectives of stability and investor protection are met.”

ESMA's Response to European Commission EMIR Review

This report provides input to the EC's consultation on the EMIR review with recommendations to amend the EMIR framework in a number of areas including:

- **Clearing obligation** - in order to strengthen the EMIR framework and to better respond to changing market conditions, ESMA proposes amending EMIR in order to streamline the process for determining clearing obligations and to introduce tools allowing the suspension of the clearing obligation when certain market conditions arise. It also proposes removing the frontloading requirement;

- **Recognition of third country CCPs** - regarding the recognition of third-country CCPs, ESMA is proposing to rethink the entire equivalence and recognition process to increase its efficiency and effectiveness and to better respond to regulatory differences between third countries. ESMA proposes that the jurisdiction decision be governed by Regulatory Technical Standards (RTS) and that any recognition process should also include additional risk-based considerations allowing it to deny or suspend the recognition of a third country CCP; and
- **Trade Repositories (TRs)** – in order to improve the supervision of TRs, the report makes proposals for changes to ESMA's supervisory and enforcement powers and procedures including increases in fine levels, broadening the enforcement decisions available to ESMA, appropriate timeframes to consider applications in the registration process and clarifying TRs' obligations in relation to data quality and reconciliation and supervisory reporting.

ESMA's Reports under Article 85 of EMIR

- **Non-Financial counterparties (Report No.1)**

ESMA recommends removing the hedging criteria from EMIR and to use other measures to determine the systemic relevance of NFCs, as this would allow regulators to identify the few NFCs with the highest systemic importance while greatly simplifying the process and reduce the compliance costs for the majority of small and medium NFCs, which pose limited risks to the system overall.
- **Limiting Pro-cyclicality (Report No.2)**

ESMA recommends further specifying the rules for implementing the counter-cyclical tools adopted by CCPs for margins and collateral, including regular testing and transparency on the results to further improve their effectiveness.
- **Segregation and Portability (Report No.3)**

ESMA has identified some differences in CCP practices in the implementation of the relevant provisions. In order to promote convergent practices and achieve a level playing field, it recommends introducing clarifications and more detailed requirements by RTS along with incentives related to margin period of risk depending on the safety



of the chosen account structure. ESMA also proposes monitoring the take-up of the different types of account models to confirm adequacy and efficiency.

Notes for editors

1. [2015/1251 EMIR Review Report no.1 - Review on the use of OTC derivatives by non-financial counterparties](#);
[2015/1252 EMIR Review Report no.2 - Review on the efficiency of margining requirements to limit procyclicality](#);
[2015/1253 EMIR Review Report no.3 - Review on the segregation and portability requirements](#); and
[2015/1254 EMIR Review Report no.4 - ESMA input as part of the Commission consultation on the EMIR Review](#).
2. ESMA is an independent EU Authority that was established on 1 January 2011 and works closely with the other European Supervisory Authorities responsible for banking (EBA), and insurance and occupational pensions (EIOPA), and the European Systemic Risk Board (ESRB).
3. ESMA's mission is to enhance the protection of investors and promote stable and well-functioning financial markets in the European Union (EU). As an independent institution, ESMA achieves this aim by building a single rule book for EU financial markets and ensuring its consistent application across the EU. ESMA contributes to the regulation of financial services firms with a pan-European reach, either through direct supervision or through the active co-ordination of national supervisory activity.

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