

EMIR REFIT “Have your say”

Initial comments

Finance Denmark fully supports development of the CMU to strengthen the EU and to secure the international competitiveness of EU located clearing members. The primary focus should be on creating an open financial EU framework, which does not restrict or penalise EU firms in competition with non-EU-firms. Ideally, this is achieved with a strong and competitive EU based clearing industry where not only EU firms, but also firms and market participants from other parts of the world, voluntarily find it attractive to conduct clearing at EU CCPs. In our view, more can be done to strengthen the EU clearing industry to reach this objective.

We strongly recommend that EMIR REFIT is forward-looking and focuses only on clearing of new transactions as it is both burdensome and risky to migrate existing transactions. If it is decided to include existing transactions, a potential issue would be that the migration of existing transactions would have to be effectuated via non-EU clearing members who can face both EU and non-EU CCPs (e.g., US banks), which would not be in line with the Commission's policy objectives.

We are supportive of the Active Account principle, but Danish banks and clearing members, and Nordic clearing members in general, enjoy significant netting benefits across interest rate risk in different currencies, with EUR being the main currency against which netting of risk occurs. If EUR denominated interest rate transactions, due to the Active Account principle, must be cleared on EU CCPs while interest rate transactions denominated in other currencies are cleared on non-EU CCPs, it will trigger adverse netting effects. These adverse netting effects may be substantially worse for Danish (and Nordic) banks, which are more active in non-EUR denominated interest rate transactions, than for banks mainly active in mainland Europe.

Depending on the implementation of the Active Account measures, such netting effects may be lost or reduced significantly. This may materialize in increased Initial margin and default fund contributions across EU and non-EU CCPs, and is not only a cost issue, but also a risk issue to the clearing members through the risk mutualisation mechanism, which is essential to central clearing. Any measure should balance cost and risk to the clearing members against the desired reduction in systemic risk.

We are not supportive of the CCP concentration risk tool (as amended in CRD article 104) as we cannot see how to design this tool without harming EU firms'



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competitiveness. Using pillar 2 tools, which could entail additional own funds requirements, is in our view not an appropriate tool to address concentration risks. If the tool is kept in the regulation, we strongly recommend that actual risk exposures (Trade Exposure, Deltas) rather than notional registered or notional outstanding is used as concentration measures. Additionally, concentration risk should be specified further and be limited to services of substantial systemic importance and not towards CCPs in general.

To fully assess the EMIR REFIT proposal and its impact requires an overview of the full legislative package, including level 2 and 3 texts. Considering the time needed for political negotiations and preparation of the level 2 texts, we see a need for an extension of the (temporary) recognition of third-country Tier-2 CCPs beyond June 2025 to facilitate orderly preparation and sufficient time for participants to analyse their portfolios and decide on needed relocations. In our view, the migration of new transactions needs to take place over a much longer time horizon, which would also be in line with the Commission's proposal as it allows EU firms to continue clearing part of their transactions outside EU and with the above recommended gradual build-up of EU clearing activity,

If relevant, we also see a need for significant lead times for migration of transactions, which must always be respected for all decisions related to

- o products of substantial systemic importance
- o calibrations of levels in active accounts, and
- o third-country recognitions

Specific comments

Intra-group transactions (art. 3): We welcome the simplified rules for intra-group transactions with entities in third countries.

Active account (art. 7a): If designed and calibrated properly, with a long implementation time and without placing excessive restrictions on EU entities, the Active Account principle can be a useful supplementary tool to gradually increase clearing activity in the EU. However, the build-up needs to happen in a controlled rather than forced manner and without hurting EU firms' international competitiveness.

We agree with the EC that the Active Account principle and reporting requirements (if kept in the regulation) should apply only to products with high systemic importance to the EU. But it must be ensured that the EU framework do not harm EU firms and pose a competitive disadvantage for EU firms compared to non-EU firms by effectively requiring EU firms to have active accounts at EU and non-EU

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CCPs in order to have access to markets with sufficient liquidity. Any such additional costs for EU firms must be expected to be passed on to clients, incl. pension funds.

The current proposal and suggested powers to ESMA are unclear and should be clarified to ensure:

- that the rule is transformed to an optional rather than mandatory requirement by way of being constructed as an obligation to have opened an account at an EU CCP but not to impose quantitative requirements on the use of the account
- ESMA must demonstrate clear systemic financial stability risks
- active account requirement should only be applicable for new transactions
- a sufficiently long implementation phase must be ensured
- market makers and client clearing should be excluded
- minimum proportion to be set using a risk-based approach (IM or default fund contribution) rather than looking at notional or number of transactions.

The limits of the active account requirement are still to be developed and should be clearly defined at level 1 and should be in line with e.g., total IM contributions to EU CCPs not to exceed a limit of set percentage of the relevant group's total IM contributions to all CCPs.

Finally, we would like to emphasize that IM and default contribution requirements for EU firms and reduction of netting effects are not compatible with systemic risk reduction, which is the purpose of the active account requirement.

Transparency on margin models for clients (art. 38): We support transparency of margin models towards clients, but this information should come directly from the CCP's by enhancing the existing art. 38(7). Concretely, we would be concerned that clearing members would not have the information on margin models they are expected to provide.

Other proposed changes

We suggest making necessary amendments to EMIR level 1 and 2 in order to make the exemption from margin requirements for single stock equity options and index permanent.

We support the ESMA conclusion in their report from 10 November 2020 (ESMA70-156-3351) to exempt certain non-price forming post trade risk reduction services from the clearing obligation and suggest that necessary amendments to EMIR level 1 and 2 are made.

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