

ESMA consults on MiFIR alignment following the introduction of EMIR Refit

The European Securities and Markets Authority (ESMA), the EU's securities markets regulator, has today launched a [consultation](#) on possible amendments to the trading obligation under MiFIR following the introduction of EMIR Refit.

The recent changes introduced to EMIR via Refit modify the scope of counterparties subject to the clearing obligation – exemption for small financial counterparties and modified determination of non-financial counterparties. The introduction of EMIR Refit has not been accompanied by direct amendments to MiFIR, which currently leads to a misalignment between the scope of counterparties subject to the clearing obligation (CO) under EMIR and the derivatives trading obligation (DTO) under MiFIR. Instead, in light of the close interconnection between those two obligations, EMIR Refit mandates ESMA to assess whether the DTO under MiFIR should be aligned with changes to the CO introduced by EMIR Refit, and to submit its findings in a report to the Commission.

As a first step towards this report, ESMA developed a range of arguments on the necessity and appropriateness of aligning both obligations within this consultation paper (CP). ESMA's initial proposal in the CP would be to formulate a recommendation to the European Commission to align the scope of counterparties subject to the clearing and the trading obligation.

Next steps

ESMA will consider all comments received by 22 November 2019 and will develop the final report taking into consideration the feedback received to this consultation paper. ESMA intends to submit the final report to the European Commission (EC) in early 2020. The EC's report shall be submitted to the European Parliament and to the Council by 18 December 2020.