– Consultation response –

Targeted consultation on the review of the Directive on financial collateral arrangements

Do you see the need to update the definitions of currently eligible collateral?

We see the need to update the definition of:

- cash
- financial instruments
- credit claims

We believe that including emission allowances into the definition of financial instruments in the FCD is an important step in the right direction. However, it will require a subsequent amendment of Section 1 of Annex 1 of the Commission Delegated Regulation (EU) No 153/201 on requirements for CCPs, to make full benefit of the advantages for market participants.

In addition, there is currently no mechanism (neither technically, nor reflected legally in the EU Registry Regulation) available within the Union Registry which would allow for registering a security interest.

Please explain why and how updating the definition of 'financial instruments' should be done:

We see benefit in adding the emission allowances to the definition of financial instruments in the FCD, making it also more closely aligned to the financial instruments definition in Annex 2 of Directive 2014/65/EU (MiFID II).

Europex observes a growing interest from market participants in using emission allowances as a financial collateral. The main reason for this is that these markets have seen a substantial increase in liquidity and participation in spot and derivatives trading. For example, the secondary market for EUA derivatives has evolved into the largest carbon market in the world. Accepting emission allowances as collateral would allow market participants to make more productive and economic use of their allowances. This could lead to substantial cost savings for market participants, especially for compliance users, by avoiding the costs of raising other collateral and freeing up capital for investments into their main business.

However today, possibilities for CCPs to accept emission allowances are limited mainly for legal reasons. Besides emission allowances not yet being added to the financial instruments definition of the FCD, we believe an additional obstacle is the limitation of collateral that can be accepted by the CCP to highly liquid financial instruments (Section 1 of Annex 1 of the Commission Delegated Regulation (EU) No 153/201 on requirements for CCPs). According to Art. 46 (1) EMIR, a CCP shall only accept highly liquid collateral with minimal credit and market risk to cover its initial and ongoing exposure to its clearing members. Without an assessment of including emission allowances as a type of eligible collateral in the context of EMIR, the benefits for market participants will remain limited.

Conversely, only if emission allowances would also become eligible collateral under the EMIR regime, the integration of emission allowances as eligible collateral under the FCD could have a substantial effect regarding the acceptance of emission allowances as collateral in the overall market.

Hence, we believe that including emission allowances into the definition of financial instruments in the FCD is an important step into the good direction. However, it might require a subsequent amendment of the Section 1 of Annex 1 of the Commission Delegated Regulation (EU) No 153/201 on requirements for CCPs, to see the full benefit of these advantages.

Should emission allowances be added to the definition of financial instruments in the FCD?

Yes, they are a commonly used financial collateral and should therefore be eligible as collateral under the FCD.

If there is any other legislation where provisions are not sufficiently clear in terms of their interaction with the FCD or the other way round, please specify which ones, explain why, and explain how this matter might be solved:

We believe that including emission allowances into the definition of financial instruments in the FCD is an important step in the right direction. However, it will require a subsequent amendment of the Section 1 of Annex 1 of the Commission Delegated Regulation (EU) No 153/201 on requirements for CCPs, to see the full benefit of the advantages for market participants.

In addition, there is currently no mechanism (neither technically, nor reflected legally in the EU Registry Regulation) available within the Union Registry which would allow for registering a security interest.

About

Europex is a not-for-profit association of European energy exchanges with 29 members. It represents the interests of exchange-based wholesale electricity, gas and environmental markets, focuses on developments of the European regulatory framework for wholesale energy trading and provides a discussion platform at European level.

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