EFET[1] response to EC consultation on FX financial instruments

EFET Market Supervision Committee **16 May 2014**

[1] The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent, liquid and sustainable wholesale markets, unhindered by national borders or other undue obstacles. EFET currently represents more than 100 energy trading companies, active in over 27 European countries. For more information: www.efet.org.

CONSULTATION RESPONSES

(1) Do you agree that a clarification of the definition of an FX spot contract is necessary?

We fully support any clarification on the delineation between FX spot and forward markets. There is need for a consistent interpretation of an FX spot contract as a contract for two business days, i.e. two joint business days of the counterparties in their respective countries.

Without any uniform European interpretation, MIFID (Markets in Financial Instruments Directive)/ EMIR (European Market Infrastructure Regulation) and other applicable financial regulations cannot be implemented consistently throughout Europe, disturbing the level-playing field between market participants.

(2) What are the main uses for and users of the FX spot market? How does use affect considerations of whether a contract should be considered a financial instrument?

Commodity firms Treasury departments use the FX spot market for the commercial purpose of buying a currency to meet transactional obligations to pay bills.

(3) What settlement period should be used to delineate between spots contracts? Is it better to use one single cut-off period or apply different periods for different currencies? If so, what should those settlement periods be and for which currencies?

We favour using the basic market practice of zero to two workings days settlement for spot transactions, regardless of the currency, and forward contracts constituting contracts beyond this maturity. It is always within two business days if bank holidays are taken into account.

We do not believe that one single-cut off period should be applied, as settlement dates are determined by requirements. Different periods should apply for different currencies, however settlement should take place within the business days of the counterparties to the transaction.

Without a harmonised standard between MIFID and IAS 39 (determining a.o. the applicability of other financial regulations such as EMIR), substantial operational impact is expected on front to back office systems, accounting procedures, IFRS valuations, etc. as well as related operational risks.

(4) Do you agree that non-deliverable forwards be considered financial instruments regardless of their settlement period?

Yes, we agree.

(5) What have been the main developments in the FX market since the implementation of MiFID?

No differences have been noticed. As a result, no changes or adjusts in the method of operation have been required.

(6) What other risks do FX instruments pose and how should this help determine the boundary of a spot contract?

No risks other than the ones already mentioned in the paper are posed by the FX instruments.

(7) Do you think a transition period is necessary for the implementation of harmonised standards?

No, as two business days is accepted market practice for the determination of an FX spot contract.

(8) What is the approach to this issue in other jurisdictions outside the EU? Where there are divergent approaches, what problems do these create?

N/A

(9) Are there additional implications to those set out above of the delineation of a spot FX contract for these and other applicable legislation?

Potentially, the Financial Transaction Tax Proposals.

(10) Are there any additional issues in relation to the definition of FX as financial instruments that should be considered?

FX transactions that are not entered into for investment purposes, but purely for commercial/hedging purposes, should not be considered as financial instruments. These transactions are entered for risk-reducing purposes and should not be governed by the same rules and requirements applied to trades entered into for speculative or investment purposes.