European Commission Consultation on FX Financial Instruments

Reply of NASDAQ OMX

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In view of its activities and the importance of foreign currency (FX) to the global economy, NASDAQ OMX welcomes the opportunity to comment on the Consultation Document of the European Commission on FX Financial Instruments.

In particular, NASDAQ OMX would in this context like to highlight the importance of promoting global coordination on this matter due to the nature and importance of the FX market.

Background

EU Legal Framework & Definitions

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

Answer 1: Agree.

Issues For Discussion

A. Foreign Exchange Market
Question 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?

Answer 2:

B. **Settlement And Delivery**

Question 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?

Answer 3:

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

Answer 4:

C. **FX Market Developments**

Question 5: What have been the main developments in the FX market since the implementation of MiFID?

Answer 5:

D. **FX Risks**

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

Answer 6:

E. **Transition Periods And International Aspects**

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

Answer 7:

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

Answer 8:

F. **Regulatory Implications Of Classification As A Financial Instrument**
Question 9: Are there additional implications to those set out above of the delineation of a spot FX contract for these and other applicable legislation?

Answer 9:

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

Answer 10: Regulatory harmonization is an important principle in terms of regulating global financial markets as it is a defense against regulatory arbitrage – companies moving to countries with the weakest regulations. In view of the importance of FX to the global economy, NASDAQ OMX would like to emphasize the importance of global coordination on this matter. Different approaches to the regulation of FX may create obstacles not only on a European level. Moreover, lack of regulatory harmonization can in practice result in significant technology implications that impact cost and efficiency for the market participants.