

Case No: 82968
Document No: 1120640
Decision No: 023/20/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 20 March 2020

to approve the temporary opt-out by Nasdaq Oslo ASA¹ of the access provisions under Article 36 of Regulation (EU) No 600/2014

THE EFTA SURVEILLANCE AUTHORITY

Having regard to the Agreement on the European Economic Area² (the “EEA Agreement”), in particular Annex IX thereof,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice³ (the “SCA Agreement”) in particular its Article 25a and Protocol 8 thereof,

Having regard to the Act referred to at point 31i of Annex IX to the EEA Agreement,

Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC⁴ (“Regulation 1095/2010”) as amended and adapted to the EEA Agreement⁵

Having regard to the Act referred to at point 31baa of Annex IX to the EEA Agreement,

Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments⁶ (Regulation 600/2014), and in particular Article 36(5) thereof, as amended and adapted to the EEA Agreement⁷

Having regard to the Act referred to at point 31bax of Annex IX to the EEA Agreement,

Commission Delegated Regulation (EU) 2017/581 of 24 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on clearing access in respect of trading

¹ Nasdaq Oslo Asa, organisation number 965 662 952

² OJ L 1, 3.1.1994, p. 3.

³ OJ L 344, 31.1.1994, p. 3

⁴ OJ L 331, 15.12.2010, p. 84.

⁵ Joint Committee Decision No 201/2016 of 30 September 2016.

⁶ OJ L 173, 12.06.2014, p. 84.

⁷ Joint Committee Decision No 78/2019 of 29 March 2019.

venues and central counterparties (Delegated Regulation 2017/581)⁸, and in particular Article 20(3) thereof,
as amended and adapted to the EEA Agreement⁹

Whereas:

On 5 November 2019, Nasdaq Oslo ASA (“the trading venue”) notified the EFTA Surveillance Authority (the “Authority”) of its intention to opt out of the access provisions under Article 36 of Regulation 600/2014.

Pursuant to Article 36(5) of Regulation 600/2014 with regard to exchange-traded derivatives, a trading venue may notify the EFTA Surveillance Authority (“the Authority”) and its competent authority, that it does not wish to provide trade feeds upon request to central counterparties that wish to clear transactions concluded on that trading venue (“the opt-out”).

According to Article 36(5), a trading venue is eligible to opt out of the access provisions when the notional amount of exchange-traded derivatives concluded under its rules over a one year period falls below a threshold of EUR 1,000,000 million.

The initial opt-out may apply for a period of thirty months from the date of application of Regulation 600/2014, and it may be renewed by successive periods of thirty months thereafter, provided the relevant conditions continue to be met.

Pursuant to Article 20(3) of Delegated Regulation 2017/581, the Authority shall approve or reject the opt-out on the basis of a draft prepared by the European Securities and Markets Authority (“ESMA”) within three months after reception of all relevant information from the trading venue. The Authority’s Decision shall be based on the verification of the calculation of the volume of exchange-traded derivatives concluded under the rules of the trading venue.

On 11 and 19 December 2019, the Authority requested additional information from the trading venue following an assessment of the notification carried out in cooperation with ESMA. On 16 December 2019 and 14 January 2020, the trading venue submitted the requested information to the Authority.

On 24 January 2020, the Authority notified the trading venue that the notification contained all necessary information for the verification of the facts and figures on which the calculation relevant for the opt-out is based.

On the basis of the information provided by the trading venue as well as publicly available post-trade data and statistics, the Authority in cooperation with ESMA has performed the verification of the calculation of the notional amount of exchange-traded derivatives concluded under the rules of the trading venue. In particular, the Authority in cooperation with ESMA has verified that the annual notional amount of exchange-traded derivatives concluded under the rules of the trading venue has been estimated in accordance with the methodology specified in Article 19 of Delegated Regulation 2017/581 and that that notional amount falls below the relevant threshold.

On 26 February 2020, the Authority invited the Financial Supervisory Authorities of Norway, Iceland and Liechtenstein to provide technical expertise in accordance with Article 4 of Protocol 8 to the SCA Agreement. On 27 February 2020, 3 March 2020 and 4

⁸ OJ L 87, 31.03.2017, p. 212.

⁹ Joint Committee Decision No 85/2019 of 29 March 2019.

March 2020 respectively, the Financial Supervisory Authorities notified the Authority that they had no comments to the draft decision to approve the temporary opt-out.

In order to allow the trading venue to benefit from the temporary opt-out under the terms of Article 36(5) of Regulation 600/2014, this Decision should apply from the date of application of that Regulation in the EEA EFTA States.

Following the assessment of the information submitted by the trading venue and the publicly available information, the Authority concluded that the conditions to temporarily opt out of Article 36 of Regulation 600/2014 are met. Therefore, the Authority considers it appropriate to adopt a decision to approve the temporary opt-out.

HAS ADOPTED THIS DECISION:

Article 1

Nasdaq Oslo ASA shall not be bound by Article 36 of Regulation 600/2014 in respect of exchange-traded derivatives.

Article 2

This Decision shall apply from 3 December 2019 until 3 June 2022.

Article 3

This Decision is addressed to:
Nasdaq Oslo ASA
Karenslyst Allé 53
P.O. Box 443
0279 Oslo
Norway

Article 4

This decision is only drafted in English.

Done at Brussels on 20 March 2020.

For the EFTA Surveillance Authority,

Bente Angell-Hansen
President

Frank J. Büchel
Responsible College Member

Högni Kristjánsson
College Member

Carsten Zatschler
Countersigning as Director,
Legal and Executive Affairs

This document has been electronically authenticated by Bente Angell-Hansen, Carsten Zatschler.