

Filters applied:

Legal act = European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012- MDP, Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

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ESMA_QA_2519

Submission Date

04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Subject Matter

Active Account Requirement

Question

Could non-EU entities, which are subject to the clearing obligation, be subject to the active account requirement?

ESMA Answer

10-07-2025

Original language

No. Article 7a of EMIR only applies to financial counterparties and non-financial counterparties, which are clearly defined under Article 2, points (8) and (9), of EMIR, respectively.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_2518

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04/04/2025

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Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Subject Matter

Active Account Requirement

Question

How should the calculation mentioned in the second sentence of Article 7a(4), fifth subparagraph, of EMIR, be done, in order for counterparties to establish whether

they can benefit from the derogation regarding the number of trades in each of the most relevant categories to fulfil the representativeness obligation?

ESMA Answer

10-07-2025

Original language

First, the counterparty shall determine the number of trades it should clear on an annual average basis in each of the most relevant subcategories per class of derivative contracts and per reference period defined in accordance with Article 7a(8) of EMIR.

Second, where, all subcategories taken together, the resulting number of trades to be cleared exceeds half of the total number of trades of that counterparty cleared over the preceding 12 months, the representativeness obligation referred to in Article 7a(3), point (d), of EMIR, shall be considered fulfilled where that counterparty clears at least one trade in each of the most relevant subcategories per class of derivative contracts per reference period.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

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Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_2517

Submission Date

04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Subject Matter

Active Account Requirement

Question

Should counterparties that clear more than 85% of the relevant derivatives contracts in the EU still comply with the representativeness obligation under Article

7a(3), point d, of EMIR and the related reporting obligation under Article 7b(1) of EMIR?

ESMA Answer

10-07-2025

Original language

Counterparties that already clear 85% of the relevant derivatives contracts in a CCP authorised under Article 14 of EMIR, are not exempted from the representativeness obligation under Article 7a(3), point (d), of EMIR.

In accordance with Article 7a(5) of EMIR, such counterparties are exempted from all of the following:

- the operational requirements referred to in Article 7a(3), points (a), (b) and (c), of EMIR;
- the stress-testing requirement referred to in Article 7a(4), fourth subparagraph, of EMIR;
- the reporting requirements referred to in Article 7b of EMIR.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

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clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_2516

Submission Date

04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Subject Matter

Active Account Requirement

Question

Could counterparties that are subject to the active account requirements (i.e. to hold an active account, clear at least a representative number of trades in this

active account and the subsequent reporting requirements) and that are part of a group subject to consolidated supervision in the Union, outsource these obligations to another entity of the group?

ESMA Answer

10-07-2025

Original language

Yes.

However, where an entity chooses to outsource the tasks related to the requirements to which it is subject to according to Article 7a of EMIR, that entity remains legally responsible for the performance of such tasks.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_2515

Submission Date

04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Subject Matter

Active Account Requirement

Question

Could counterparties that are subject to the active account requirements and that are part of a group, outsource the notification to the relevant competent authority

and ESMA, as mentioned in the second subparagraph of Article 7a(1) of EMIR, to another entity of the group subject to consolidated supervision in the Union that it belongs to ?

ESMA Answer

10-07-2025

Original language

Yes.

However, where an entity chooses to outsource the submission of the notification under Article 7a(1) of EMIR, that entity remains responsible for the timely submission as well as the accuracy of the information transmitted to the relevant competent authority and ESMA in such notification.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

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and national courts.

ESMA_QA_2514

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Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Subject Matter

Active Account Requirement

Question

Should the requirement to clear at least a representative number of trades in an active account held at an EU CCP be performed at individual level or group level for

the counterparties belonging to a group?

ESMA Answer

10-07-2025

Original language

As clarified in Recital 12 of Regulation (EU) 2024/2987, the representativeness requirement referred to in Article 7a(3), point (d), of EMIR applies at entity level and should be fulfilled by the entity that has been determined to be subject to the active account requirements in accordance with Article 7a(1) of EMIR.

As such, should the entity have outstanding contracts only for a subset of categories of derivatives referred to in Article 7a(6) of EMIR, that entity would be required to meet the representativeness requirement only for those contracts regardless of the activity of the other entities in the group. Relatedly, should the entity not have any outstanding derivative contracts belonging to the categories referred to in Article 7a(6) of EMIR, that entity would not be required to conclude such contracts or to meet any of the related requirements under Article 7a of EMIR.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

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Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_2513

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04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Subject Matter

Active Account Requirement

Question

Regarding the requirement to clear at least a representative number of trades, should the trades be representative of the activity of the group or of the activity of

the individual entities within the group?

ESMA Answer

10-07-2025

Original language

As clarified in Recital 12 of Regulation (EU) 2024/2987, the representativeness requirement referred to in Article 7a(3), point (d), of EMIR applies at entity level and should be fulfilled by the entity that has been determined to be subject to the active account requirements in accordance with Article 7a(1) of EMIR.

The overall activity of the group as referred to in Article 7a(2) should only be taken into account to determine whether the entity that is part of that group is subject to the obligations in relation to Article 7a(2) of EMIR. An entity subject to the representativeness requirement should determine the number of transactions it needs to clear – directly or indirectly, in an EU CCP on the basis of all its own activity in derivative contracts belonging to the categories referred to in Article 7a(6) of EMIR.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the

Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_2512

Submission Date

04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Subject Matter

Active Account Requirement

Question

Should the requirement to hold at least one active account at an EU CCP be performed at individual level or at group level?

ESMA Answer

10-07-2025

Original language

The requirement under Article 7a(1) of EMIR to establish clearing arrangements, whether directly or indirectly, at a CCP authorised under Article 14 of EMIR, should be performed at individual level, provided that such entity does have outstanding derivative contracts belonging to the categories referred to in Article 7a(6) of EMIR.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_2511

Submission Date

04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Subject Matter

Active Account Requirement

Question

Should the group level treatment mentioned in Article 7a(2) of EMIR apply to the calculation of the notional clearing volume outstanding mentioned in fourth

subparagraph of Article 7a(8) of EMIR?

ESMA Answer

10-07-2025

Original language

Yes. For the purpose of setting the duration of the reference period, which is also referred to in Article 7a(3), point (d), of EMIR, the calculation of the notional clearing volume outstanding mentioned in Article 7a(8), fourth subparagraph, of EMIR should apply the calculation method set out in Article 7a(2) of EMIR.

The representativeness obligation referred to in Article 7a(3), point (d), of EMIR nonetheless applies at entity level, as clarified in Recital 12 of Regulation (EU) 2024/2987.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_2510

Submission Date

04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Subject Matter

Active Account Requirement

Question

Should the group level treatment mentioned in Article 7a(2) of EMIR apply to the calculation of the notional clearing volume outstanding mentioned in the second

subparagraph of Article 7a(4) of EMIR ?

ESMA Answer

10-07-2025

Original language

Yes. The calculation of the notional clearing volume outstanding mentioned in the second subparagraph of Article 7a(4) of EMIR should apply the calculation method set out in Article 7a(2) of EMIR.

The representativeness obligation to which the second subparagraph of Article 7a(4) of EMIR refers to nonetheless applies at entity level, as clarified in Recital 12 of Regulation (EU) 2024/2987.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_2509

Submission Date

04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Subject Matter

Active Account Requirement

Question

Should the group level treatment mentioned in Article 7a(2) of EMIR apply to the calculation of both conditions mentioned in Article 7a(1)?

ESMA Answer

10-07-2025

Original language

The methodology to determine the fulfilment of the first condition of Article 7a(1) of EMIR, i.e. whether a counterparty is subject to the clearing obligation, is specified under Articles 4a and 10 of EMIR, respectively. There is therefore no need to perform a new calculation under Article 7a(2) of EMIR to establish whether that condition is met.

The group level calculation method set out in Article 7a(2) of EMIR shall apply to the second condition mentioned in Article 7a(1) of EMIR.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2508

Submission Date

04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Subject Matter

Active Account Requirement

Question

Does the group level treatment mentioned in Article 7a(2) of EMIR apply only to groups included in a consolidation in accordance with Directive 2013/36/EU (CRD

IV) or should it also include other groups, e.g. entities included in a consolidation in accordance with Directive 2013/34/EU ?

ESMA Answer

10-07-2025

Original language

The group level treatment referred to in Article 7a(2) of EMIR applies to any EU entity that is part of a group subject to consolidated supervision in the Union. This means that the group level treatment cannot be limited to groups included in a consolidation in accordance with Directive 2013/36/EU.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_2507

Submission Date

04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Subject Matter

Active Account Requirement

Question

How should the percentage of derivative contracts belonging to the categories of derivatives subject to the active account requirement be calculated for the purpose

of the exemption mentioned in Article 7a(5) of EMIR?

ESMA Answer

10-07-2025

Original language

A counterparty can benefit from the exemption mentioned in Article 7a(5) of EMIR at any point in time by demonstrating that it clears at least 85 % of its derivative contracts belonging to the categories referred to in Article 7a(6) of EMIR at a CCP authorised under Article 14 of EMIR.

In order to determine whether it is above or below the 85% threshold, the counterparty shall divide the gross outstanding notional of derivative contracts belonging to the categories referred to in Article 7a(6) of EMIR cleared at CCPs authorised under Article 14 of EMIR (numerator) by the total gross outstanding notional of derivative contracts belonging to the categories referred to in Article 7a(6) of EMIR cleared at any CCP, authorised under Article 14 of EMIR, recognised under Article 25 of EMIR or otherwise (denominator).

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the

Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_2506

Submission Date

04/04/2025

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Subject Matter

Active Account Requirement

Question

To check whether counterparties are subject to the active account requirement, how should the positions to be compared to the clearing thresholds be calculated?

ESMA Answer

10-07-2025

Original language

In order to determine whether they are subject to the active account requirements in accordance with Article 7a(1) of EMIR, counterparties should check whether they meet the two cumulative conditions:

1. they are subject to the clearing obligation in accordance with Articles 4a and 10 of EMIR; and
2. they exceed the clearing threshold in any of the categories of derivative contracts referred to in Article 7a(6) of EMIR, in an individual category listed in that paragraph or on aggregate across all categories listed in that paragraph.

The methodology to determine the fulfilment of the first condition is specified under Articles 4a and 10 of EMIR, respectively.

For the second condition, counterparties should follow the same methodology as for the first condition, but not with the same frequency (i.e. on a continuous basis rather than every 12 months as mentioned in Articles 4a and 10 of EMIR): once a counterparty is subject to the clearing obligation, it shall determine whether it is above the clearing thresholds in any of the categories of derivative contracts referred to in Article 7a(6) of EMIR, in an individual category or on aggregate across all categories, as the case may be, using the same methodology as described in Articles 4a and 10 of EMIR, on a continuous basis.

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competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_2442

Submission Date

17/02/2025

Status: Answer Published

Additional Information

Level 1 Regulation

European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012-MDP

Topic

* EMIR Art.9 reporting

Subject Matter

Reporting of Settlement Rate Options

Question

How should the Settlement Rate Option be reported for FX products, such as FX non-deliverable forwards or FX non-deliverable options?

ESMA Answer

14-02-2025

Original language

When reporting currency derivatives based on an underlying benchmark, both sets of reporting fields are applicable, depending on the terms of the contract being reported. Therefore, both the 'currency derivatives-related' fields and 'benchmark-related' fields should be reported as appropriate.

In addition to the relevant currency and benchmark fields, the following fields should be populated as outlined below to accurately identify the derivative. For example, in the case of NDFs based on an underlying benchmark:

- Field 2.11 'Asset Class' should be populated with the corresponding value for currency derivatives ('CURR').
- Field 2.13 'Underlying identification type' should be populated with 'X', indicating that the derivative relates to an Index.
- Field 2.14 'Underlying identification' should be populated with the ISIN of the underlying benchmark. If the benchmark does not have an associated ISIN, this field should be left blank.
- Field 2.16 'Name of underlying index' should be populated with the full name of the underlying index as assigned by the index provider.

ESMA_QA_2441

Submission Date

14/02/2025

Status: Answer Published

Additional Information

Level 1 Regulation

European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012-MDP

Topic

* EMIR Art.9 reporting

Subject Matter

Assessment of significance for the purpose of the Error and Omission Notifications

Question

(a) How should counterparties conduct the significance assessment referred to in Articles 9(1)(a) and 9(1)(c) of Commission Delegation Regulation (EU) 2022/1860

(ITS on reporting under EMIR REFIT)?

More specifically, how should the “NumOfAffReports” and the “Average Monthly Number of Submissions” referred to in the formula for significance in Paragraph 392 of the Guidelines on reporting under EMIR REFIT be calculated?

(b) Paragraph 392 of the Guidelines for reporting under EMIR REFIT states that the actual number of reports should be based on the previous 12 months. In the context of EMIR REFIT being applicable as of 29 April 2024, should data from before 29 April 2024 be included in the 12-month calculation?

ESMA Answer

14-02-2025

Original language

(a) For the purpose of the significance assessment, counterparties should calculate the “NumOfAffReports” and the “AverageMonthNum” separately for each category. For example, in Category 1, the calculation should be as follows:

$$\frac{\text{Number of affected records in Category 1}}{\text{Average Aggregate Number of Reports submitted (and accepted) to the TR under i.e., with AT='New', 'Modify', 'Correct', 'Terminate', 'Error', 'Revive' or 'Position Component'}}$$

(b) The calculation for the ‘Average Monthly Number of Submissions’ should cover data from the 12 months immediately preceding the notification. Where feasible and not overly burdensome, this calculation should also include data from before EMIR REFIT’s applicability (i.e., prior to 29 April 2024).

ESMA_QA_2203

Submission Date

27/05/2024

Status: Answer Published

Additional Information

Level 1 Regulation

European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012-MDP

Topic

* EMIR Reporting

Subject Matter

Reporting of price field at position level

Question

Should the price field at position level be amended following a change in the notional amount?

ESMA Answer

24-05-2024

Original language

No, counterparties should not update the price field at position level after it is reported initially (i.e., with action type 'new'). The price field at position level should reflect the price of the position when it is first reported.

In particular, in cases where the notional of the position varies (increase/decrease) overtime due to factors such as, the inclusion of new trades into the position or the termination of trades included in that position, the price field should not be updated.

Submission Date

27/05/2024

ESMA_QA_2202

Status: Answer Published

Additional Information

Level 1 Regulation

European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012-MDP

Topic

* EMIR Reporting

Subject Matter

Reporting of accumulator contracts

Question

(a) For the purpose of reporting under EMIR REFIT, how should OTC accumulator contracts – i.e., derivative contracts in which the buyer enters into an agreement to purchasing a predetermined number of underlying financial instruments at a predefined price, per day - over a specified 'accumulation' period, be classified?

(b) How should these contracts be reported under EMIR REFIT?

ESMA Answer

24-05-2024

Original language

(a) Under EMIR REFIT, accumulators shall be classified as either forwards or options, depending on the presence of option features within these contracts. An accumulator contract without any embedded option features should be reported as a forward ('forward accumulator'), whereas accumulator contracts embedding one or more option features, should be reported as options accordingly.

(b) (i) Forward accumulators should be reported equivalently as forward contracts, as illustrated by the below example.

In the event that a knockout event is triggered, the counterparty should regard it as an early termination of the derivative. This scenario should be reported with Action Type 'Terminate' and Event Type 'Exercise'.

Example 1:

Underlying Share: ABC Limited

Tenor: 12 months

Shares per day: 5,000

Accumulation days: Assuming 20 trading days per month (total accumulation days = 240)

Settlement date: Monthly

Forward Price: EUR 10*

Maximum Notional Amount: EUR 12,000,000**

Price of Underlying Share: Month 1 - EUR 11 / Month 2 - EUR 9.50

Report at inception

Reporting of accumulator contracts

Table	Item	Field	Example
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2	9	Product Classification	JESXFC
2	10	Contract type	FORW
2	11	Asset Class	EQUI
2	41	Venue of execution	XXXX
2	43	Effective date	01/01/2024
2	44	Expiration Date	31/12/2024
2	46	Final contractual settlement date	03/01/2025
2	48	Price	10
2	49	Price Currency	EUR
2	55	Notional amount of leg 1	12,000,000
2	56	Notional currency 1	EUR

Fields 2.57 to 2.60 below, are repeatable depending on the number of scheduling periods.

2	57	Effective date of the notional amount of leg 1	01/01/2024
2	58	End date of the notional amount of leg 1	31/01/2024
2	59	Notional amount in effect on associated effective date of leg 1	1,000,000***
2	60	Total notional quantity of leg 1	12,000,000
2	151	Action type	NEWT
2	152	Event type	TRAD
2	154	Level	TCTN

* Initial forward price should be populated in Field 2.48

** Maximum Notional Amount = maximum number of shares x forward price

Maximum number of shares = shares per day x maximum number of accumulation days

Maximum number of accumulation days = trading days x number of months within tenor

*** On assumption of 20 trading days per month and 5,000 shares per accumulation day.

In this example, we assume a gearing ratio of 1, in the calculation of the maximum number of shares and notional amount.

Modification after 3rd month execution

Reporting of accumulator contracts

Table	Item	Field	Example
2	9	Product Classification	JESXFC
2	10	Contract type	FORW
2	11	Asset Class	EQUI
2	41	Venue of execution	XXXX
2	43	Effective date	01/01/2024
2	44	Expiration Date	31/12/2024

2	46	Final contractual settlement date	03/01/2025
2	48	Price	10
2	49	Price Currency	EUR
2	55	Notional amount of leg 1	12,000,000
2	56	Notional currency 1	EUR

Fields 2.57 to 2.60 below, are repeatable depending on the number of scheduling periods.

2	57	Effective date of the notional amount of leg 1	01/02/2024
2	58	End date of the notional amount of leg 1	29/02/2024
2	59	Notional amount in effect on associated effective date of leg 1	1,000,000***
2	60	Total notional quantity of leg 1	12,000,000
2	57	Effective date of the notional amount of leg 1	01/03/2024

2	58	End date of the notional amount of leg 1	31/03/2024
2	59	Notional amount in effect on associated effective date of leg 1	950,000
2	60	Total notional quantity of leg 1	12,000,000
...
...
2	151	Action type	MODI
2	152	Event type	TRAD
2	154	Level	TCTN

(ii) Option Accumulators should be reported as displayed below.

Example 2:

Underlying Share: XYZ Limited

Tenor: 6 months

Shares per month: 1,000

Settlement date: Monthly

Option 1: Strike Price: EUR 100 (Expiry in 2 month)

Option 2: Strike Price: EUR 105 (Expiry in 6 months)

Total Notional Amount: EUR 620,000

Month 1: Market price EUR 110. Buy 1,000 shares at strike – EUR 100 (option 1);

Month 2: Market price EUR 108. Buy 1,000 shares at strike – EUR 100 (option 1);

Month 3: Market Price EUR 106. Buy 1,000 shares at strike – EUR 105 (option 2);

And so forth, until expiry.

Report at inception

Reporting of accumulator contracts

Table	Item	Field	Example
2	9	Product Classification	OCESCS
2	10	Contract type	OPTN
2	11	Asset Class	EQUI
2	41	Venue of execution	XXXX
2	43	Effective date	01/01/2024
2	44	Expiration Date	28/06/2024
2	46	Final contractual settlement date	02/07/2024
2	55	Notional amount of leg 1	620,000
2	56	Notional currency 1	EUR
Fields 2.57 to 2.60 below, are repeatable depending on the number of scheduling periods.			
2	57	Effective date of the notional amount of leg 1	01/01/2024

2	58	End date of the notional amount of leg 1	31/01/2024
2	59	Notional amount in effect on associated effective date of leg 1	100,000
2	60	Total notional quantity of leg 1	1000
2	132	Option type	CALL
2	133	Option style	EURO
2	134	Strike price	100
2	135	Effective date of the strike price	01/01/2024
2	136	End date of the strike price	29/02/2024
2	137	Strike price in effect on associated effective date	100
2	138	Strike price currency/currency pair	EUR

2	151	Action type	NEWT
2	152	Event type	EXER
2	154	Level	TCTN

Modification after 3rd month exercise of the option

Reporting of accumulator contracts

Table	Item	Field	Example
2	9	Product Classification	OCESCS
2	10	Contract type	OPTN
2	11	Asset Class	EQUI
2	41	Venue of execution	XXXX

2	43	Effective date	01/01/2024
2	44	Expiration Date	28/06/2024
2	46	Final contractual settlement date	02/07/2024
2	55	Notional amount of leg 1	620,000
2	56	Notional currency 1	EUR

Fields 2.57 to 2.60 below, are repeatable depending on the number of scheduling periods.

2	57	Effective date of the notional amount of leg 1	01/01/2024
2	58	End date of the notional amount of leg 1	31/01/2024
2	59	Notional amount in effect on associated effective date of leg 1	100,000
2	60	Total notional quantity of leg 1	1000

2	57	Effective date of the notional amount of leg 1	01/02/2024
2	58	End date of the notional amount of leg 1	29/02/2024
2	59	Notional amount in effect on associated effective date of leg 1	100,000
2	60	Total notional quantity of leg 1	1000
2	57	Effective date of the notional amount of leg 1	01/03/2024
2	58	End date of the notional amount of leg 1	31/03/2024
2	59	Notional amount in effect on associated effective date of leg 1	105,000
2	60	Total notional quantity of leg 1	1000
2	132	Option type	CALL

2	133	Option style	EURO
2	134	Strike price	100
2	135	Effective date of the strike price	01/01/2024
2	136	End date of the strike price	29/02/2024
2	137	Strike price in effect on associated effective date	100
2	138	Strike price currency/currency pair	EUR
2	135	Effective date of the strike price	01/03/2024
2	136	End date of the strike price	28/06/2024
2	137	Strike price in effect on associated effective date	105
2	138	Strike price currency/currency pair	EUR

2	151	Action type	MODI
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2	152	Event type	EXER
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2	154	Level	TCTN
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ESMA_QA_2096

Submission Date

02/02/2024

Status: Question Published

Additional Information

Level 1 Regulation

European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012-MDP

Topic

* EMIR Reporting

Subject Matter

Subsidiaries

Question

Table 102 of the Guidelines specifies that GLEIF database should be used to determine the access rights of the relevant members of the ESCB, including the

ECB in carrying out its tasks within a single supervisory mechanism, when applying the filtering for the fields 2.144 'Reference entity', 1.4 'Counterparty 1 (Reporting counterparty)', 1.9 'Counterparty 2', 1.15 'Broker ID' and 1.16 'Clearing member'. Should the authorities in question have also access to the derivatives involving subsidiaries of the relevant entities and, if so, how the access rights should be determined?

ESMA_QA_2095

Submission Date

02/02/2024

Status: Question Published

Additional Information

Level 1 Regulation

European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012-MDP

Topic

* EMIR Reporting

Subject Matter

Portability of Schedules

Question

As clarified in the Guidelines on transfer of data between Trade Repositories under EMIR and SFTR , in the case of transfer of data requested by a TR participant the

TRs should transfer only the latest state of the outstanding derivatives ('Trade State Report', TSR). Are the TRs expected to follow this guideline with regards to the notional schedules, given that the TSR will not contain the full schedules (for the notional quantity, amount etc.) but only the currently applicable value?

ESMA_QA_2094

Submission Date

02/02/2024

Status: Question Published

Additional Information

Level 1 Regulation

European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012-MDP

Topic

* EMIR Reporting

Subject Matter

Reporting of a Counterparty falling within scope of Article 1(4)(a) and (b) of EMIR

Question

How should a counterparty falling within scope of Article 1(4)(a) and (b) of Regulation (EU) No 648/2012 be reported under Field 11 of Table 1 of the RTS on

reporting under EMIR REFIT, 'Nature of Counterparty 2'?

ESMA_QA_2093

Submission Date

02/02/2024

Status: Question Published

Additional Information

Level 1 Regulation

European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012-MDP

Topic

* EMIR Reporting

Subject Matter

Update of the client codes

Question

Are the reporting counterparties and entities responsible for reporting expected to update during the transition period any client codes not compliant with the

requirements set out under EMIR REFIT?

ESMA_QA_2092

Submission Date

02/02/2024

Status: Answer Published

Additional Information

Level 1 Regulation

European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012-MDP

Topic

* EMIR Reporting

Subject Matter

Reporting under STM/CTM model

Question

Guidelines on reporting under EMIR REFIT clarify that under Collateralise-to-Market model (CTM) the counterparties should report total variation margin and

total collateral, whereas under the Settle-to-Market model the counterparties should report the daily change in the variation margin and the collateral. In which field counterparties should report whether the portfolio of cleared derivatives is collateralised under CTM or STM model?

ESMA Answer

26-01-2024

Original language

There is no separate field to report which model has been used for a given portfolio. In order to ensure that data users can interpret correctly the reported values, the counterparties should indicate it as part of the collateral portfolio name by using prefix 'STM' where the Settle-to-Market model is used. For example, if currently a portfolio code reported for a given portfolio is 12345ABCDE, under EMIR REFIT the code could be updated to STM12345ABCDE.

ESMA_QA_2010

Submission Date

10/11/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Level 2 Regulation

COMMISSION DELEGATED REGULATION (EU) No 153/2013 Regulatory technical standards on requirements for central counterparties

Topic

EU-CCPs

Additional Legal Reference

Art 41 of EMIR 648/2012 and Art 24 of RTS 153/2013

Subject Matter

Calibration of confidence interval for CCP margin requirements

Question

We would appreciate to clarify the two issues referred below in the context of the calibration of the confidence interval for CCP margin requirements.

Q1. Article 24(1) of Commission Delegated Regulation (EU) No 153/2013 (RTS on CCP requirements) sets out the minimum confidence intervals for the calculation of the initial margins of a CCP to 99,5% for OTC derivatives and 99% for financial instruments other than OTC derivatives. Can a CCP rely on the back testing performance of its margin model as sole proof of compliance with Article 41 of EMIR and Article 24 of the RTS on CCP requirements?

Q2. If a margin model has several components, does each component need to be calibrated to the confidence interval set out under Article 24 of the RTS on CCP requirements?

ESMA Answer

03-01-2025

Original language

A1. No. Article 41 of EMIR, and the related Article 24 of the RTS on CCP requirements, contain several requirements on CCPs, including to impose, call and collect margins, to specify what the margin requirements shall cover, as well as to list what the adopted models and parameters shall capture.

Pursuant to Article 41 of EMIR and Article 24 of the RTS on CCP requirements, the

CCP must calculate forward-looking initial margin requirements using a margin model designed to anticipate potential future exposure ex-ante to meet at least the required confidence interval.

To note that Article 41 and the related Article 24 of the RTS on CCP requirements establish that a CCP shall calculate the initial margins to cover the potential exposures arising from market movements for each financial instrument that is collateralised on a product basis, over the time period defined in Article 25 of the RTS on CCP requirements and assuming a time horizon for the liquidation of the position as defined in Article 26, respecting at least the confidence intervals of 99,5% for OTC derivatives and 99 % for other financial instruments.

Furthermore, according to Article 47(1) of the RTS on CCP requirements, a CCP shall conduct a comprehensive validation of its models, methodologies and liquidity risk management framework. In the context of such comprehensive validation and in accordance with Article 47(3) of the RTS on CCP requirements, a CCP must ensure (inter alia) the conceptual soundness of its models. To do so, the CCP must ensure that the method applied for calibration is consistent with the model to which it is applied.

Hence, relying solely on back testing as sole proof of compliance with Article 41 of EMIR, and the related Articles of the RTS on CCP requirements (including in particular Article 24) would not be sufficient as the requirements are wider in scope and cover several aspects as noted above. In addition, and more importantly, the results/outcome of applying the back-testing model(s) is limited and does not provide assurance of the model's future performance. Therefore, it would not be sufficient to comply with Article 41 and the related Articles under the RTS of CCP requirements. In other words, there needs to be an overall sound and detailed explanation as to what the expected results/outcome of the application of the model would be and evidence how the model is envisaged to meet the requirements, including the required confidence interval in the future.

Example: Where a CCP relies on the computation of initial margins on a parametric distribution with very fat tails, calibrated to a 98% confidence interval, the model may generate initial margins levels higher than the 98% quantile of the empirical

distribution of observed returns, and may result in a 99% back test performance. However, such model could not be considered as sound where the outcome of the model is not consistent with the input parameters. In addition, such a model provides no indication of how future margin requirements will continue to meet the requirements under Article 41, including confidence intervals.

A2. Where the initial margin model consists of a number of components that need to be used together to capture the price movements of a cleared product, and where the results of the risks covered by these components of tradable risk factors cannot be isolated, then such individual components should not be calibrated separately to meet a confidence interval according to Article 24 of the RTS on CCP requirements. For the avoidance of doubt, the total assessed margin requirements shall meet the required confidence interval set out in Article 24 of the RTS of Requirements, as explained under Question 1.

However, where a margin model decomposes the computation of the initial margin in a way that isolates tradable risk factors using trading strategies, each tradable risk factor needs to be calibrated at the appropriate confidence interval.

Example: If a CCP decomposes interest rate risk in risk factors such as level and curve, and since such risk factors can be isolated respectively by an outright 5Y swap and a unit portfolio with long 5Y and short 10Y swaps, each of level and curve risk factor must be calibrated at 99.5%.

Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union

and national courts.

ESMA_QA_1973

Submission Date

03/10/2023

Status: Question Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Subject Matter

Sanctions regime of International Investment Bank

Question

Is there a legal basis for the measures taken by capital market participants (including Clearstream and Euroclear) to restrict any trading of International

Investment Bank - IIB issued bonds?

ESMA_QA_1461

Submission Date

11/07/2023

Status: Question Published

Additional Information

Level 1 Regulation

European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012-MDP

Topic

* EMIR Reporting

Subject Matter

EMIR Q&As on Reporting of Corrections of Transactions with no Event Date

Question

Paragraph 558 of the Guidelines (p.289) clarifies that 'TRs should update the TSR based on the latest information for a given derivative as derived from the field

'Event date'. Use case 4 in the Guidelines (p. 291) further illustrates that in the case of late reporting of historic events, the relevant information should be updated in the TR's database only until the Event date of the subsequent event to avoid overwriting the information from more recent reports.

In this context, how should counterparties report historic corrections on outstanding derivatives that were not yet upgraded after EMIR Refit go-live (and thus no Event Date was previously reported for those derivatives)? How should trade repositories consider the sequencing of submissions to determine the validity of historic corrections?

ESMA_QA_924

Submission Date

15/05/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

Other issues (CCP)

Subject Matter

Mark-To-Market value reporting

Question

How should the mark-to-market value of contracts for difference that are not cleared by a CCP be reported in accordance with Regulation (EU) No 648/2012 and

standard 13 of the international financial reporting standards?

ESMA Answer

27-03-2025

Original language

Dear Sender,

Thank you for reaching out to ESMA. Please accept our apologies for the delayed response.

Regarding your question, as clarified in TR Question 3b of the Q&As on the implementation of EMIR, the mark-to-market (MtM) value should reflect the total value of the contract.

For Contracts for Difference (CFDs) that are not cleared by a Central Counterparty (CCP), the MtM value should be calculated as follows:

$$\text{MtM} = \text{Quantity} \times \text{End-of-Day Settlement Price}$$

This calculated value should be reported under Field 2.21 - "Valuation amount" in accordance with EMIR reporting requirements. The conditions and dependencies for reporting in Field 2.21 are further outlined in the EMIR validation rules.

We hope this addresses your query. Please feel free to reach out if you require further clarification.

Kind regards,

ESMA_QA_893

Submission Date

03/05/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Level 2 Regulation

COMMISSION DELEGATED REGULATION (EU) No 153/2013 Regulatory technical standards on requirements for central counterparties

Topic

EU-CCPs

Additional Legal Reference

Article 49 of EMIR - old CCP question 5 dated 20/03/2013

Subject Matter

Review of models, Stress-testing and back-testing (old CCP question 5 dated 20/03/2013)

Question

(a) Stress-testing, back-testing and sensitivity analysis for new entities: What parameters, data and methodologies, time horizons should a new entity that applies for authorisation as CCP use in order to perform stress-testing, back-testing or sensitivity analysis, if the respective entity has no clearing members yet?

(b) Model validation for authorisation purposes: Is it compulsory for a CCP to conduct a comprehensive validation of models, methodologies and risk management framework before getting authorisation, in accordance with to Article 47 Model Validation (of the Commission delegated Regulation (EU) No 153/2013 of 19.12.2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 with regard to regulatory technical standards developed by ESMA on requirements for central counterparties)?

ESMA Answer

20-03-2013

Original language

(a) In the case of a new entity which has not performed any clearing activities before, the stresstesting, back-testing programmes or sensitivity analysis would be performed on the basis of the estimated positions/portfolios across all financial products proposed to be cleared by the CCP. Estimates made should meet the requirements set out in Article 47(5) of Commission Delegated Regulation (EU) No

153/2013 (RTS on CCP requirements) and the time horizon and set of data to be used by the CCP should be agreed together with the competent authority.

(b) Article 47 of Commission Delegated Regulation (EU) No 153/2013 (RTS on CCP requirements) supplements Article 49(1) of EMIR, pursuant to which a CCP must regularly review its models and parameters to ensure their reliability and resilience. Where the CCP intends to adopt any significant change to its models and parameters then it must obtain an independent validation of such changes and the validation of its NCA and of ESMA. The college of the CCP also needs to arrive at a joint opinion approving such changes, in accordance with Article 19 of EMIR. This is all set out in Article 49(1) of EMIR.

Article 41(2) of EMIR is also relevant. It provides that the models and parameters of a CCP must have been validated by a competent authority and approved by a joint opinion of the College, to be reached in accordance with Article 19 of EMIR.

The authorisation process under EMIR will likely ensure that the Article 41(2) requirements are met. In particular, the college joint opinion on the NCA's risk assessment of the CCP could also incorporate the college joint opinion on the NCA's validation of the CCP's models and parameters. Of course the NCA would need to present to the college its assessment on which such joint opinion can be based.

ESMA_QA_892

Submission Date

03/05/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Subject Matter

Access model (old CCP question 23 dated 7/01/2020)

Question

(a) When setting up models to access its clearing services (e.g. sponsored models, direct clearing models), whatever the purpose of such an access (e.g. to facilitate

buy-side or small participant
access to CCPs, to allow for better capital treatment, or for other purposes)

1. can a CCP introduce a new category of entities which would have a direct contractual link with the CCP, mixing some of the clearing member and some of the client features;

2. who bears the responsibility to comply with the financial obligations vis-à-vis the CCP?

(b) Can a CCP set up a clearing model where a client (“the Client”) has the possibility to pay to the CCP the financial obligations corresponding to its positions in lieu of the clearing member?

(c) Can a CCP accept an individual as a clearing member?

ESMA Answer

07-01-2020

Original language

(a)(1) CCPs can establish clearing models for different categories of clearing members, clients and indirect clients, based on non-discriminatory, transparent and objective criteria, whatever the purpose of such models (e.g. to facilitate buy-side or small participant access to CCPs, to allow for better capital treatment, or for other purposes).

EMIR envisages clearing through 3 possibilities of access: via being a clearing member, via being a client or via clearing through indirect clearing arrangements. Those categories are distinct and EMIR does not contemplate mixing the status and features of a clearing member and a(n) (indirect) client.

As per Article 2 of EMIR, a clearing member is the undertaking which participates in the CCP, whereas a client does not participate in the CCP and thus is the undertaking which has a contractual relation with a clearing member (and indirect clients with a client) to be able to clear its transactions with a CCP.

(a)(2) EMIR requires that each clearing member bears the full responsibility to discharge with all the financial obligations vis-à-vis the CCP due to its participation, which include margin payment and default fund contributions. This does not mean that a third party cannot fulfil an obligation of a clearing member, but this should not transform the clearing member's liability vis-à-vis the CCP.

(b) In practice, the Client can directly pay to (and receive from) the CCP amounts corresponding to its positions instead of the clearing member. However, the CCP rules should be consistent with the following:

- the rules of the CCP foresee a possibility to refuse that the Client fulfils the payment obligations in lieu of its clearing member and the corresponding conditions for such a refusal;
- the clearing member remains responsible vis-à-vis the CCP for the discharge of the financial obligations stemming from its membership as referred to in Article 2(14) of EMIR, including any new financial obligations (e.g. fee payment, increase in default fund contribution) or an increase of the current obligations (e.g. because of market moves) due to its clearing membership, whether or not related to mutualised resources and including in relation to its clients positions;
- the payment by the Client does not entail that the Client becomes automatically a clearing member (unless it fulfils all participation requirements and has undertaken the corresponding procedure) or substitutes the clearing member;

- the CCP keeps the positions and assets of the Client segregated from the positions and assets of other clients as per Article 39(3) at a CCP and each obligation relating to individual client segregation under Article 39 of EMIR and Article 48 of EMIR remains applicable;
- given that according to Article 39(7) of EMIR, a CCP has to describe the main legal implication of each entity status and the corresponding segregation including the insolvency law applicable, the CCP may also need to perform this obligation in respect of client's insolvency law where a client performs some payments directly to the CCP;
- where the clearing member has defaulted, the CCP may, at any time after the porting window foreseen in Article 48 of EMIR with respect to the Client's assets and positions, decide to liquidate any of the clearing members house or client positions (including those of the Client) or execute any action foreseen in its rules in case of default for example because it assesses that prompt action is required to contain losses and liquidity pressures arising from the default.”

(c) EMIR does not prevent in Article 2 and more specifically in the definition of a clearing member an individual from becoming a clearing member. However, should an individual apply to become a clearing member, it will need to prove to the CCP, among other requirements, that, like any other clearing member:

- it fulfils the capital requirements applicable to clearing members;
- its financial accounts are audited;
- it has the operational capacity, in terms of staff, systems and processes to meet its obligations towards the CCP, including with respect to risk management;
- it is connected to the system managed by the CCP and, directly or indirectly, to the relevant payment and settlement systems; and
- it has sufficient banking and contingency arrangements in place.

A CCP's participation requirements and risk-management controls should take into account any additional risks that may arise from having individuals as participants

ESMA_QA_891

Submission Date

03/05/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Level 2 Regulation

COMMISSION DELEGATED REGULATION (EU) No 153/2013 Regulatory technical standards on requirements for central counterparties

Topic

EU-CCPs

Additional Legal Reference

Article 46 of EMIR and Article 37 of the RTS on CCP requirements - old CCP question 22 dated 2/10/2017

Subject Matter

Ongoing monitoring of collateral requirements (old CCP question 22 dated 2/10/2017)

Question

Article 46 of Regulation (EU) No 648/2012 requires CCPs to accept highly liquid collateral with minimal credit and market risk to cover its initial and ongoing exposure to its clearing members. Article 37 of Commission Delegated Regulation (EU) 153/2013 requires CCPs to monitor on a regular basis the adequacy of their collateral policies and procedures, as new market developments may require changes.

- a) What types of market developments should CCPs monitor?
- b) How can CCPs ensure the monitoring of these market developments is efficient?

ESMA Answer

02-10-2017

Original language

a) With respect to the adequacy of collateral policies and procedures, CCPs should monitor on an on-going basis liquidity, credit risk, and market risk. In order to perform this monitoring, CCPs should have at their disposal at least the following tools:

- i. tools to monitor liquidity, such as traded volumes, depth of the order book, bid-offers and central bank liquidity classes;

ii. tools to monitor credit risk, such as the credit monitoring of issuers, credit spreads and ratings; and

iii. tools to monitor market risk, such as price changes, back-tests of the collateral haircuts and implied or realised volatilities.

b) To ensure that the on-going monitoring of market developments is efficient, CCPs should ensure that:

i. they have developed indicators for liquidity, credit risk, and market risk;

ii. the coverage of the indicators is satisfying (e.g. it covers all securities including the least frequently traded, all trade sources, etc.);

iii. the frequency of the review and the timeliness of the information raised by these indicators is adequate;

iv. they have put in place operational processes and a governance process surrounding any review of acceptable collateral resulting from these indicators; and

v. any change of the above is reported to their national competent authority (NCA).

However, this does not mean that CCPs need to have all the possible indicators for each asset class. Instead, this means that the CCPs can demonstrate that the set of indicators in place covers liquidity, credit risk, and market risk.

ESMA_QA_890

Submission Date

03/05/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Level 3 Regulation

ESMA Guidelines on Interoperability (ESMA/2013/322)

Topic

EU-CCPs

Additional Legal Reference

Guideline and Recommendation 3(b)(v) - old CCP question 21 dated 21/05/2014

Subject Matter

Prudential Requirements (old CCP question 21 dated 21/05/2014)

Question

Pursuant to Guideline and Recommendation 3(b)(v) of the ESMA Guidelines and Recommendations for establishing consistent, efficient and effective assessments of interoperability arrangements, interoperable CCPs are not allowed to contribute to each other's default funds or other financial resources (as such are defined in Article 43 of EMIR). However, Guideline and Recommendation 3(b)(iii) provides that CCPs should assess, collect or have access to, the required inter-CCP resources necessary to cover credit and liquidity risk arising from the interoperable arrangement, including in extreme but plausible market conditions.

How should a CCP meet Guideline and Recommendation 3(b)(iii) in the absence of requiring the interoperable CCPs to contribute to its default fund or other financial resources given that a CCP's default fund and other financial resources (as opposed to the margins it collects) are the means through which the CCP ensures that its financial resources are sufficient to cover extreme but plausible market conditions?

ESMA Answer

21-05-2014

Original language

On the basis that interoperable CCPs are not allowed to contribute to each other's default funds or other financial resources, it is not necessary that a CCP will include its credit exposures to the interoperable CCPs when sizing the default fund and

other financial resources (i.e. the default fund of a CCP and the other financial resources are not required to enable the CCP to withstand the default of the interoperable CCPs under extreme but plausible market conditions where the CCP's exposures to those interoperable CCPs are greater than the CCP's exposures to the two clearing members to which it has the largest exposures in under extreme but plausible market conditions).

However, where the CCP does not include its credit exposures to the interoperable CCPs when sizing the default fund and other financial resources then it will need to have other arrangements (such as additional margin) in place in order to meet Guideline and Recommendation 3(b)(i) which requires that financial risks, including custody risks, arising from the interoperability arrangement are identified, monitored, assessed and mitigated with the same rigour as the CCP's exposures arising from its clearing members.

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Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Additional Legal Reference

Article 28 of EMIR - old CCP question 20 dated 21/05/2014

Subject Matter

Risk Committee (old CCP question 20 dated 21/05/2014)

Question

Pursuant to Article 28(1) of EMIR, a CCP shall establish a risk committee, which shall be composed of representatives of its clearing members, independent members of the board, and representatives of its clients. Employees of the CCP, external independent experts and employees of competent authorities may attend in a non-voting capacity. None of the groups of representatives shall have a majority in the risk committee.

- a) Is it possible for representatives of other interests (for example trading venues served by the CCP) to be members of the risk committee?
- b) How broadly must an individual represent the interests of the CCP's clients in order to qualify as a representative of such clients on the risk committee?

ESMA Answer

21-05-2014

Original language

a) The membership of the risk committee is prescribed in EMIR. An individual cannot be a member of the risk committee where they are neither a representative of the CCP's clearing members, an independent member of the board, or a representative of the CCP's clients. Such an individual might, however, be invited to attend risk committee meetings in a non-voting capacity.

b) It is recalled in Recital 61 of EMIR that clients need to be adequately represented on the risk committee as decisions taken by the CCP may have an impact on them. A CCP therefore needs to ensure that the individuals appointed to the risk committee to represent the CCP's clients are sufficiently representative of the interests of the clients of the CCP. For example, the CCP should have balanced client representation on its risk committee in respect of the activities or services for

which the CCP is authorised to provide or perform. Furthermore, the CCP should satisfy itself that the individuals appointed to the risk committee are not conflicted by other interests. For example, a CCP would need to take particular care where an individual appointed to the risk committee to represent the CCP's clients is from an entity which is in the same group as a clearing member of the CCP.

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Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Additional Legal Reference

Article 1 of EMIR - old CCP question 19 dated 11/02/2014

Subject Matter

Application of the exemptions to Title IV of EMIR (old CCP question 19 dated 11/02/2014)

Question

Do the obligations on CCPs and their clearing members under Title IV of EMIR apply in respect of clearing members which are exempt entities under Articles 1(4) and (5) of EMIR?

ESMA Answer

11-02-2014

Original language

The exemption in Articles 1(4) and (5) of EMIR do not extend beyond the requirements which would otherwise be directly applicable to exempt entities, i.e. clearing, risk mitigation and reporting obligations under (4), and clearing and risk mitigation obligations under (5). In particular, the exemption does not extend to indirect requirements which are placed on exempt entities, or to requirements which apply directly to third party entities, for example the exemption does not suspend the risk management obligations imposed on CCPs under Title IV of EMIR where the CCP admits exempt entities as clearing members.

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Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Level 2 Regulation

COMMISSION DELEGATED REGULATION (EU) No 153/2013 Regulatory technical standards on requirements for central counterparties

Topic

EU-CCPs

Additional Legal Reference

Article 45(4) of EMIR - old CCP question 18 dated 11/02/2014

Subject Matter

Use of margins posted by non-defaulted Clearing Members (old CCP question 18 dated 11/02/2014)

Question

(a) Can a CCP have provisions in their rules under which the CCP can reduce pro-rata the amount of variation margin it is due to pay clearing members with a positive change in their positions in order to cover losses resulting from the default of another clearing member (variation margin haircutting) where:

1. The variation margin reduction is limited to a pre-defined monetary amount (e.g. an assessment of up to EUR XX million per clearing member)?
2. The variation margin reduction is limited to an amount which is relative to the exposure that the clearing member brings to the CCP (e.g. an assessment of up to X times the clearing member's prefunded default fund contribution)?
3. There is no pre-defined monetary or relative limit on the size of the variation margin reduction?

b) Can a CCP have provisions in their rules under which the CCP can use margins posted by a non-defaulting clearing member to cover a liquidity shortfall resulting from the default of a clearing member?

ESMA Answer

11-02-2014

Original language

a) EMIR provides that a CCP shall not use the margins posted by non-defaulting clearing members to cover losses resulting from the default of another clearing member (Article 45(4) of EMIR). However, while variation margin represents an amount of margin for the purpose of Article 39 of EMIR (i.e. it is required to be recorded in the separate records and accounts maintained for individually segregated clients as set out in CCP Question 8(2)(e)), such margin represents a payment flow between the counterparties of the original contract and does not represent margin posted by clearing members for the purpose of Article 45(4) of EMIR. Article 45(4) is therefore not applicable. It is compatible with EMIR for a CCP to reduce the amount of variation margin that it is due to pay clearing members with a positive change in their positions in order to cover losses resulting from the default of another clearing member.

EMIR also provides that the clearing members of a CCP shall have limited exposures toward the CCP (Article 43(3) of EMIR) and that a CCP shall ensure that the closing out of any clearing member's positions does not expose the non-defaulting clearing members to losses that they cannot anticipate or control (Article 48(2) of EMIR). Therefore, it is compatible with EMIR for a CCP to have provisions in its rules under which the CCP can reduce the amount of variation margin that it is due to pay clearing members with a positive change in their positions in order to cover losses resulting from the default of another clearing member and where:

1. the variation margin reduction is limited to a pre-defined monetary amount
2. the variation margin reduction is relative to the exposure that the clearing member brings to the CCP.
3. there is no pre-defined monetary or relative limit on the variation margin reduction.

In the first case, the losses to which non-defaulting clearing members are exposed are pre-defined and such losses can be controlled by the clearing member reducing the exposure that it has to the CCP. In the case of 2 and 3 above, the losses to

which non-defaulting clearing members are exposed can be calculated as they are a function of the aggregate positions cleared by those clearing members and such losses can be controlled by the clearing member reducing the aggregate positions that it clears with the CCP.

In the three cases above, the exposures are limited on the basis that they can both be anticipated and controlled.

b) EMIR provides that a CCP shall not use the margins posted by non-defaulting clearing members to cover losses resulting from the default of another clearing member (Article 45(4) of EMIR). However, the reuse of margins posted by a non-defaulting clearing member to cover a liquidity shortfall resulting from the default of a clearing member (e.g. the CCP using financial instruments posted as margins by non-defaulting clearing members as collateral for a repo transaction) is compatible with EMIR insofar as it does not represent the final application of such margins to extinguish the losses resulting from the default of another clearing member. This follows from Article 39(8) of EMIR which provides that a CCP shall have a right of use relating to margins or default fund contributions collected via a security financial collateral arrangement and Article 44(3) of Commission Delegated Regulation (EU) No 153/2013 which provides that a CCP may re-use financial instruments posted as margins, default fund contributions or contributions to other financial resources where the purpose of the re-use is for managing the default of a clearing member (among other possible uses and subject to other specified limitations). When extinguishing losses resulting from the default of a clearing member a CCP must follow the default waterfall prescribed in Article 45 of EMIR (and elaborated in Chapter IX of Commission Delegated Regulation (EU) No 153/2013. Therefore, if the total pool of assets held by the CCP is not reduced then transforming margins from one form to a more liquid form is compatible with EMIR.

ESMA_QA_886

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Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Additional Legal Reference

Articles 43(3) and 48(2) of EMIR - old CCP question 17 dated 11/02/2014

Subject Matter

Limited exposures of Clearing Members (old CCP question 17 dated 11/02/2014)

Question

Can a CCP have provisions in their rules under which non-defaulting clearing members can be called for additional funds in the event of a default of another clearing member where:

1. The size of the additional contribution is limited to a pre-defined monetary amount (e.g. an assessment of up to EUR XX million per clearing member)?
2. The size of the additional contribution is limited to an amount which is relative to the exposure that the clearing member brings to the CCP (e.g. an assessment of up to X times the clearing member's prefunded default fund contribution)?
3. There is no pre-defined monetary or relative limit on the size of the additional contribution?

ESMA Answer

11-02-2014

Original language

EMIR provides that a CCP may require non-defaulting clearing members to provide additional funds (in addition to their prefunded default fund contribution) in the event of a default of another clearing member. However, this provision is caveated by a requirement that the clearing members have limited exposures toward the CCP (Article 43(3) of EMIR). EMIR also provides that a CCP shall ensure that the closing out of any clearing member's positions does not expose the non-defaulting clearing members to losses that they cannot anticipate or control (Article 48(2) of EMIR).

1. It is compatible with EMIR for a CCP to have provisions in its rules under which non-defaulting clearing members can be called for additional funds in the event of the default of another clearing member and where the size of the additional

contribution is limited to a pre-defined monetary amount. In particular the losses to which non-defaulting clearing members are exposed are predefined and such losses can be controlled to the extent that the clearing member can reduce the exposure that it has to the CCP. Such exposures are therefore limited on the basis that they can both be anticipated and controlled.

2. It is compatible with EMIR for a CCP to have provisions in its rules under which non-defaulting clearing members can be called for additional funds in the event of the default of another clearing member and where the size of the additional contribution is relative to the exposure that the clearing member brings to the CCP. In particular the losses to which non-defaulting clearing members are exposed can be calculated as they are a function of the aggregate positions cleared by those clearing members and such losses can be controlled to the extent that the clearing member can reduce the aggregate positions that it clears with the CCP. Such exposures are therefore limited on the basis that they can both be anticipated and controlled.

3. Where the exposures of the non-defaulting clearing members toward the CCP can be calculated by those clearing members in advance it would be compatible with EMIR for a CCP to have provisions in its rules under which non-defaulting clearing members can be called for additional funds in the event of the default of another clearing member even where there is no pre-defined monetary or relative limit on the size of the additional contribution.

This may be the case if clearing members can anticipate the potential size of the additional funds that they might be called for in the event of the default of another clearing member to the extent that the aggregate positions cleared by a CCP are able to be modelled with reasonable confidence and the clearing members can anticipate their proportional contribution to the aggregate positions cleared by the

CCP based on their contribution to the default fund, as known to clearing members through the transparency provisions in EMIR.

In this case the losses to which non-defaulting clearing members are exposed can be calculated by those clearing members and such losses can be controlled to the extent that the clearing member can reduce the exposure that it brings to the CCP. Such exposures are therefore limited on the basis that they can both be anticipated and controlled.

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Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Additional Legal Reference

Article 38 of EMIR - old CCP question 16 dated 11/02/2014

Subject Matter

Transparency (old CCP question 16 dated 11/02/2014)

Question

(a) EMIR Article 38(3) states that “a CCP shall disclose to its clearing members and to its competent authority the price information used to calculate its end-of-day exposures to its clearing members”. In some cases, particularly for OTC products, the final prices used to value trades may be combined from different sources, for example quotes from different market participants. Should CCPs also disclose these intermediate price inputs?

(b) EMIR Article 38(1) states that “a CCP and its clearing members shall publicly disclose the prices and fees associated with the services provided”. What are the criteria for considering that the prices and fees are publicly disclosed?

(c) EMIR Article 38(5) states that “a CCP shall publicly disclose any breaches by clearing members of the criteria referred to in Article 37(1) and the requirements laid down in paragraph 1 of this Article” (i.e. Article 38 of EMIR). Through which tool should the CCP disclose this information?

(d) Article 38(1) of EMIR states that “a CCP and its clearing members shall publicly disclose the prices and fees associated with the services provided”. What information regarding prices and fees must CCPs and clearing members actually disclose in order to meet the requirement to “disclose fees and prices associated with the services provided”? In particular, do CCPs and clearing members need to publish a numerical figure or would a narrative or qualitative discussion of the factors that will drive prices and fees meet the requirement under Article 38(1) of EMIR? Furthermore, should the publicly disclosed prices and fees be those for a brand new client with no history, the average prices and fees across all clients or the lowest prices and fees charged to a client?

ESMA Answer

11-02-2014

Original language

(a) Yes, the CCP should disclose such intermediate price inputs to clearing members and competent authorities, as this is part of the relevant price information used to calculate end-of-day exposures. It does not need to disclose the identity of the firms providing the quotes if this is subject to restrictions on grounds of confidentiality.

(b) The prices and fees should be considered as publicly disclosed when they are published on the CCP's and the clearing members' respective websites. Public disclosure, including in accordance with articles 38(1) and 39(7) is expected to include publication on a firm's website in an easily identifiable location on a page without any access limitations.

(c) The CCP should publish on its website the breaches made by clearing members of the criteria referred to in Article 37(1) of EMIR, by identifying at least the relevant clearing member, except in the cases indicated in Article 38(5) of EMIR. The CCP should constantly monitor that its clearing members comply with the requirements laid down in Article 37(1) of EMIR.

(d) CCPs and clearing members need to publish numerical figures in order to meet the requirement to “disclose fees and prices associated with the services provided” as set out in Article 38(1) of EMIR. A narrative or qualitative discussion of the factors that will drive prices and fees is not enough. The numerical figures published should at least include those for a brand new client and accompanying this should be a list of the various discounts or rebates available to clients and the factors that would qualify a client to receive such discounts or rebates.

The text of Article 38(1) of EMIR provides that a CCP and its clearing members shall publicly disclose the ‘prices and fees of each service provided separately,

including discounts and rebates and the conditions to benefit from those reductions'. In order to meet this requirement the information publicly disclosed must enable potential clients to establish a reasonable estimate in a manner that enables them to compare the cost of clearing with different CCPs and clearing members – publishing a narrative or qualitative discussion of prices and fees would not satisfy this requirement. Similarly, publishing only the average prices and fees across all clients or the lowest prices and fees charged to a client would not satisfy this requirement

ESMA_QA_884

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Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Level 2 Regulation

COMMISSION DELEGATED REGULATION (EU) No 153/2013 Regulatory technical standards on requirements for central counterparties

Topic

EU-CCPs

Additional Legal Reference

Article 35 RTS on CCPs - old CCP question 15 dated 5/08/2013

Subject Matter

Allocation of additional resources (old CCP question 15 dated 5/08/2013)

Question

Where a CCP has established more than one default fund for the different classes of financial instruments it clears, is it compulsory under Article 35(3) of Commission Delegated Regulation No 153/2013 for the total amount of dedicated own resources referred to in Article 35(1) of Commission Delegated Regulation No 153/2013 to be allocated to each of the default funds in proportion to the size of each default fund, or just the minimum own resources required under Article 35(2) of Commission Delegated Regulation No 153/2013? In other words, can the CCP choose to allocate additional own resources above the minimum fungibly or must it allocate any additional own resources to specific default funds? If so, must it be allocated in the same proportion as it allocates the minimum amount?

ESMA Answer

05-08-2013

Original language

Article 35(3) of Commission Delegated Regulation No 153/2013 specifies that the minimum amount (as calculated according to Article 35(2) of Commission Delegated Regulation No 153/2013) of dedicated own resources referred to in Article 35(1) of Commission Delegated Regulation No 153/2013 must be allocated to each of the default funds in proportion to the size of each default fund. Article 35(3) of Commission Delegated Regulation No 153/2013 states that the amount allocated to a given default fund may be used only against defaults arising in the market segments to which that default fund refers, and not against defaults arising

in market segments to which other default funds refer. Any amount of dedicated own resources contributed to the default waterfall in excess of this minimum amount does not need to be allocated to a specific default fund and may be allocated across the different default funds and in a different proportion to the minimum amount.

ESMA_QA_883

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Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Additional Legal Reference

Article 2 of EMIR - old CCP question 14 dated 5/08/2013

Subject Matter

Definitions (old CCP question 14 dated 5/08/2013)

Question

Article 2(28) of EMIR provides that an “independent member” of the board means a member of the board who has no business, family or other relationship that raises a conflict of interests regarding the CCP concerned or its controlling shareholders, its management or its clearing members, and who has had no such relationship during the five years preceding his membership of the board. If a board member is considered independent in respect of the parent company of a CCP (according to the definition under Article 2(28) of EMIR), can this person also fulfil the requirements for being an independent board member of the CCP?

ESMA Answer

05-08-2013

Original language

An independent director of the parent company of a CCP might be considered to satisfy the criteria for appointment as an independent director of a CCP; however this is not automatic and should be analysed properly. In particular, it would need to be carefully considered as to whether the individual’s relationship with the parent company of the CCP raised a conflict of interest regarding the CCP. For example, the individual would likely owe duties to the parent company of the CCP and be required to act in the best interests of that company. These interests and duties might conflict with the interests of the CCP.

Article 3(4) of the RTS on CCPs also requires that “a CCP that is part of a group shall take into account any implications of the group for its own governance arrangements including whether it has the necessary level of independence to meet its regulatory obligations as a distinct legal person and whether its independence could be compromised by the group structure or by any board member also being a

member of the board of other entities of the same group..."

ESMA_QA_882

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Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Level 2 Regulation

COMMISSION DELEGATED REGULATION (EU) No 153/2013 Regulatory technical standards on requirements for central counterparties

Topic

EU-CCPs

Additional Legal Reference

Article 26 of EMIR - old CCP question 13 dated 21/05/2014

Subject Matter

Organisational requirements (old CCP question 13 dated 21/05/2014)

Question

a) Article 3(3) of Commission Delegated Regulation No 2013/153 requires a CCP to ensure that the functions of the chief risk officer, chief compliance officer and chief technology officer are carried out by different individuals and provides that these positions shall be held by employees of the CCP entrusted with the exclusive responsibility of performing these functions. Can these officers have other duties in addition to taking responsibility for the risk, compliance and technology functions respectively?

b) Pursuant to Article 3(2) of RTS 153/2013, a CCP shall not share its staff with other group entities, unless under the terms of an outsourcing arrangement in accordance with Article 35 of EMIR. Does the term “staff” extend to the senior management of the CCP (for example the chief executive officer of the CCP) or is it limited to those individuals with clerical or administrative roles

ESMA Answer

21-05-2014

Original language

(a) Recital 13 of Commission Delegated Regulation No 2013/153 explains that the rationale for requiring CCPs to have at least a chief risk, chief compliance and chief technology officer is to ensure that CCPs operate with the necessary level of human resources, are accountable for the performance of their activities, and provide competent authorities with relevant contact points.

The reference to “exclusive responsibility” in Article 3(3) of Commission Delegated Regulation No 2013/153 should be read in light of this recital. In particular, “exclusive responsibility” pertains to the fact that one single individual should have sole responsibility for the function of risk, another distinct individual should have sole responsibility for the function of compliance and a third distinct individual should have sole responsibility for the function of technology. “Exclusive responsibility” does not require that these individuals only undertake duties pertaining to their role as the chief risk, compliance or technology officer.

However, it should be carefully considered before these individuals take on any duties outside of the scope of the risk, compliance or technology functions to ensure that the individual is indeed appropriately dedicated to the function for which they are responsible.

b) In line with other European legislation, the term “staff” encompasses any person working for the CCP who is directly engaged in the services or activities which the CCP is authorised to provide or perform, and any natural person directly managing or supervising such persons. In particular, the Chief Executive Officer, although being a member of the board, is directly managing the CCP and therefore the provisions applicable to the staff should apply to the Chief Executive Officer.

Where a CCP maintains a two-tiered board system, the term “staff” does not encompass the members of the supervisory board.

ESMA_QA_880

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Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Level 2 Regulation

COMMISSION DELEGATED REGULATION (EU) No 153/2013 Regulatory technical standards on requirements for central counterparties

Topic

EU-CCPs

Additional Legal Reference

Article 42 of EMIR - old CCP question 12 dated 11/02/2014

Subject Matter

Default Fund (old CCP question 12 dated 11/02/2014)

Question

(a) Articles 42(2), 42(3) and 43(2) of EMIR require each CCP to hold financial resources including a default fund sufficient in size to cover losses arising from the default of the two largest members. However the CCP has the right in a default to transfer the positions of clients with porting arrangements to other clearing members. For the purposes of calculating the size of its default fund(s) and members' contributions, can a CCP exclude those client positions that are held in segregated and portable accounts?

(b) Article 30 of Commission Delegated Regulation (EU) No 153/2013 requires that "when implementing an internal policy framework for defining the types of extreme but plausible market conditions that could expose the CCP to greatest risk, a CCP shall specify (for each market to which a CCP is exposed in a clearing member default scenario) extreme but plausible conditions based at least on... (a) a range of historical scenarios... that would have exposed the CCP to greatest financial risk; and (b) a range of potential future scenarios... drawing on both quantitative and qualitative assessments of potential market conditions".

1. Is a CCP required to exactly replicate actual historical events in order to satisfy the requirement to use a range of historical scenarios or can a CCP use only quantitative and qualitative scenarios which are generated based on statistics derived from historical price changes?

2. When replicating actual historical events is a CCP required to exactly replicate actual historical price changes in all cleared instruments or can a CCP approximate prices moves based on similar instruments or market indices?

ESMA Answer

11-02-2014

(a) ESMA has considered the argument for not including certain client positions when calculating the size of the default fund to be that these client positions would not be impacted by the default of the clearing member because they are expected to be ported to another clearing member. However, these client positions might have an effect on the overall position of the clearing member, i.e. the default of one or more clients could increase the likelihood of default of the clearing member. Excluding these positions from the calculation of the size of the default fund could therefore expose the CCP to uncovered risks and this is contrary to the objectives of EMIR.

Furthermore, it is possible that client positions would not be ported but would be liquidated by the CCP and it is possible that some of the clients of one of the CCP's two largest clearing members would expect to port their positions to the other largest clearing member, which would not be possible where those two largest clearing members default concurrently.

Excluding client positions from the calculation of the size of the default fund could therefore expose the CCP to uncovered risks and is contrary to the objectives of EMIR.

(b.1) A CCP is required to specify extreme but plausible conditions based on a range of historical scenarios and additionally a range of potential future scenarios. The range of potential future scenarios is required to draw on quantitative and qualitative assessments of potential market conditions.

Both sets of scenarios must be developed and applied (historical scenarios and potential future scenarios drawing on quantitative and qualitative assessments). The use of statistics derived from historical price changes alone would not satisfy the requirement to use a range of historical scenarios.

When defining its potential future scenarios a CCP might include the use of statistics derived from historical price changes. However, the CCP would still need to include quantitative and qualitative assessments in the development of its potential future scenarios.

(b.2)A CCP might use similar instruments or market indices as a proxy for actual historical price changes so long as such proxies are carefully documented, validated and ensure that no relevant historical price changes have been excluded

ESMA_QA_876

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Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Level 2 Regulation

COMMISSION DELEGATED REGULATION (EU) No 153/2013 Regulatory technical standards on requirements for central counterparties

Topic

EU-CCPs

Additional Legal Reference

Article 47 of EMIR - old CCP question 11 dated 11/02/2014

Subject Matter

Investment Policy (old CCP question 11 dated 11/02/2014)

Question

(a) What is the possible duration of the “highly secured arrangements” to be used for maintaining cash other than with a central bank?

(b) Article 45 (1) of Commission Delegated Regulation (EU) No 153/2013 (‘Highly secured arrangements maintaining cash’) states that if cash is not deposited with a central bank then it must be deposited with “an authorised credit institution as defined under Directive 2006/48/EC...” or with “a third country financial that is subject to and complies with prudential rules considered by the competent authorities to be at least as stringent...”. Article 45(2) of Commission Delegated Regulation (EU) No 153/2013 states that “not less than 95% of such cash” shall be deposited through “arrangements that ensure the collateralisation of the cash with highly liquid financial instruments...”. Is the counterparty to such a collateralisation arrangement required to be an entity which meets the criteria under Article 45(1) of Commission Delegated Regulation (EU) No 153/2013?

(c) Is it permissible for a CCP to refuse to indemnify (or exclude liability to) clearing members or clients against losses incurred due to the default of a central bank, authorised credit institution or equivalent third country financial institutions (in the case of cash), or the operator of a securities settlement system or authorised financial institution (in the case of the financial instruments) holding clearing member or client assets (or other CCP assets representing the reinvestment of such assets by the CCP)?

ESMA Answer

11-02-2014

Original language

(a) Article 45(2) of Commission Delegated Regulation (EU) No 153/2013 (RTS on CCP requirements) provides that where cash is deposited other than with a central bank in accordance with Article 47(4), and is maintained overnight, then not less than 95% of such cash must be deposited through arrangements that ensure the collateralisation of the cash with highly liquid financial instruments meeting the requirements in Article 43 of the same Regulation, for example, through repo transactions.

There is no imposed limitation on the duration of such repo transactions, to the extent that the requirement under Article 32(3)(b) of Commission Delegated Regulation (EU) No 153/2013 is respected. CCPs can maintain cash under highly secured arrangements with a maturity longer than overnight. Nor are there limitations on the time-to-maturity of the financial instruments received as collateral for the cash, pursuant to Article 45(2) and Annex II of Commission Delegated Regulation (EU) No 153/2013. From a liquidity risk point of view, the use of a highly secured arrangement does not introduce any additional risk over and above the one that would be present if the CCP invested in the highly liquid financial instrument directly. Recital 46 of Commission Delegated Regulation (EU) No 153/2013 provides that in securing its cash, CCPs should always ensure that they are always adequately protected against liquidity risk. As provided for under Article 45(2) of the Commission Delegated Regulation (EU) No 153/2013, the financial instruments received as collateral should meet the same requirements as the one in which the CCP is allowed to invest. This includes the conditions for the deposit of these instruments (see Q&A CCP no. 4).

(b) No. The collateralisation arrangement should be concluded with an authorised financial institution pursuant to Article 47(4) of EMIR. Given that the cash will always be deposited with an entity meeting the criteria under Article 45(1) of Commission Delegated Regulation (EU) No 153/2013, and collateralised with financial instruments meeting the requirements under Article 44 of Commission Delegated

Regulation (EU) No 153/2013, then the CCP will not be exposed to principal risk with regards to the counterparty with which the CCP has collateralised its cash.

(c) Yes, EMIR does not require CCPs to indemnify clearing members or clients against such a loss. However, the extent of the CCP's responsibility should be clearly stated or disclosed by the CCP; for example, as required by Article 39(7) or 38(2) of EMIR or Article 10 of Commission Delegated Regulation (EU) No 153/2013.

ESMA_QA_865

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Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Level 2 Regulation

COMMISSION DELEGATED REGULATION (EU) No 153/2013 Regulatory technical standards on requirements for central counterparties

Topic

EU-CCPs

Additional Legal Reference

Article 14 of EMIR - old CCP question 10 dated 4/06/2013

Subject Matter

Outsourcing (old CCP question 10 dated 4/06/2013)

Question

According to Article 11(1) of Commission Delegated Regulation (EU) No 153/2013 'a CCP shall establish and maintain an internal audit function which is separate and independent from the other functions and activities ...'. Is it allowed by the CCP to outsource an internal audit function according to Article 35 of EMIR?

ESMA Answer

04-06-2013

Original language

A CCP might outsource its internal audit function where the requirements of Article 35 of EMIR are met. Internal Audit should be considered a “major activity linked to risk management” in the language of EMIR Article 35(1), so outsourcing this would require the specific approval of the competent authority. In addition, EMIR establishes a number of specific requirements for the internal audit function which would need to be met under any outsourcing arrangement. In particular, Article 7(6) of Regulation (EU) No. 153/2013, requires that a CCP have clear and direct reporting lines between the internal audit function and the board and senior management of the CCP. Article 11(3) of Regulation (EU) No. 153/2013 also requires a CCP's internal audit function have the necessary access to information in order to review all of the CCP's activities and operations, processes and systems, including outsourced activities. Both of these requirements would need to be carefully considered and respected where a CCP sought to outsource its internal

audit function.

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Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Level 2 Regulation

COMMISSION DELEGATED REGULATION (EU) No 153/2013 Regulatory technical standards on requirements for central counterparties

Topic

EU-CCPs

Additional Legal Reference

Article 41 of EMIR - old CCP question 9 dated 3/12/2018

Subject Matter

Margin requirements (old CCP question 9 dated 3/12/2018)

Question

(a) Under a cross-margining arrangement, two (or potentially more) CCPs set margin requirements on the basis of the portfolio of positions that a clearing member holds across the two CCPs. Is this approach consistent with the requirements of EMIR and the associated Commission Delegated Regulations?

(b) Article 24(1) of Commission Delegated Regulation (EU) No 153/2013 establishes the confidence intervals that a CCP shall at least respect in calculating the initial margins, over the time period defined in Article 25 of Commission Delegated Regulation (EU) No 153/2013 and assuming a time horizon for the liquidation of the position as defined in Article 26. Is the CCP obliged to respect the same confidence intervals if, for the purpose of margin calculations, it uses different time horizons, in addition to those prescribed in Articles 25 and 26 of Commission Delegated Regulation (EU) No 153/2013?

ESMA Answer

03-12-2018

Original language

(a) Although EMIR does not directly address cross-margining, there are a number of provisions in EMIR and Commission Delegated Regulation (EU) No 153/2013 (RTS on CCP requirements) applicable to CCPs that need to be considered for the feasibility of cross-margining arrangements. In this respect, Article 41 of EMIR is

particularly relevant to consideration of cross-margining arrangements: a CCP must secure exposures with margin and a claim on, or guarantee from, another CCP cannot substitute for that. Other relevant provisions within EMIR that would require consideration are Article 45 of EMIR (Default Waterfall) which provides that margins must be used to cover the losses of 'the CCP' – i.e. margins cannot be used to cover the losses of another CCP; Article 47 of EMIR (Investment Policy) which provides (in conjunction with Article 44 of the RTS on CCP requirements) for limited circumstances in which a CCP might not place collateral received as margin with the operator of a security settlement system (see CCP Question 4); Article 39 of EMIR (Segregation and Portability) which provides that clearing member and client positions and assets must be recorded in the accounts of 'the CCP' – i.e. they cannot be recorded in the accounts of another CCP as an alternative.

Where it is not margin but the CCP's own capital that is being used to provide the guarantee to another CCP under a cross-margining arrangement, then the CCP would likely need to capitalise that guarantee under the provisions of the RTS on CCP requirements (as an exposure not covered by financial resources under Articles 41 to 45 of EMIR).

(b) Article 24 of Commission Delegated Regulation (EU) No 153/2013 (RTS on CCP requirements) establishes that a CCP shall calculate the initial margins to cover the exposures arising from market movements for each financial instrument that is collateralised on a product basis, over the time period defined in Article 25 of the RTS on CCP requirements and assuming a time horizon for the liquidation of the position as defined in Article 26 of the RTS on CCP requirements, respecting at least the confidence intervals of 99,5% for OTC derivatives and 99% for other financial instruments.

Article 25 of the RTS on CCP requirements, establishing the minimum requirement on time horizon for the historical volatility, specifies that it should be calculated based on data covering at least the latest 12 months. Similarly, Article 26 of the

RTS on CCP requirements establishes the minimum requirement for the liquidation period, that being at least five business days for OTC derivatives and two business days for other financial instruments.

The CCP is expected to calculate the minimum amount of margin required by EMIR on the basis of these criteria, subject to Articles 26(4) and 25(2) of the RTS on CCP requirements which permit a CCP to use different time horizons, both for the calculation of historical volatility and the liquidation period, in certain circumstances.

In this case, the CCP is not obliged to apply the minimum confidence intervals defined in Article 24 of the RTS on CCP requirements, as they specifically apply to the requirements under Articles 25 and 26 of the RTS on CCP requirements.

Nevertheless, the CCP shall assure that, in any case, the resulting margin amount is equal or higher than the one calculated in accordance with all of the parameters defined in Articles 24 to 28 of the RTS on CCP requirements.

ESMA_QA_863

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Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Level 2 Regulation

COMMISSION DELEGATED REGULATION (EU) No 153/2013 Regulatory technical standards on requirements for central counterparties

Topic

Other issues (CCP)

Additional Legal Reference

Article 39 of EMIR - old CCP question 8 dated 31/03/2015

Subject Matter

Segregation and portability (old CCP question 8 dated 31/03/2015)

Question

Article 39(3) of EMIR states that: "A CCP shall offer to keep separate records and accounts enabling each clearing member to distinguish in accounts with the CCP the assets and positions held for the account of a client from those held for the account of other clients ('individual client segregation')". Article 39(10) of EMIR states that "Assets refer to collateral held to cover positions and include the right to the transfer of assets equivalent to that collateral or the proceeds of the realisation of any collateral...".

(a) Under Article 39(6) of EMIR, what is the definition of client requirement and excess margin? Will clearing members be obliged to post this margin directly at the CCP? Additionally, how should a clearing member allocate excess margin over various CCPs it is linked to?

(b) Does EMIR allow CCPs to offer unsegregated accounts in which the assets and positions of clearing members are not segregated from those held for the accounts of the clearing member's clients?

(c) At what time do clearing members have to comply with requirements on segregation and portability under Article 39 of EMIR?

(d) May a CCP meet the requirements of Article 39(3) of EMIR by identifying only the value of collateral due to a client; or is it necessary to identify the specific assets due to a client?

(e) Under Article 39(3) of EMIR, the requirement for individual segregation is a requirement that the CCP offer to keep separate records and accounts enabling each clearing member to distinguish in accounts with the CCP, the assets and positions held for the account of a client from those held for the account of other clients. Does individual client segregation require:

1. That assets be segregated at the level of the security settlement system (for financial instruments) or at the level of the central bank (for cash) or at the level of the authorised financial institution (where alternative highly secured arrangements are permitted)?

2. That payments associated with the positions of an individually segregated client (i.e. variation margin payments, premium payments, etc.) be recorded in the separate records and accounts maintained for the individually segregated client at the CCP?

(f) Article 39.9(c) of EMIR provides that assets covering the positions recorded in an account shall not be exposed to losses connected to positions recorded in another account.

1. Can a CCP apply surpluses in a clearing member's house account to an omnibus client account or an individually segregated client account?

2. Can a CCP, with a clearing member's permission, use the clearing member's own assets (i.e. assets that were not posted by a client of the clearing member) to support the registration of client trades?

(g) Are CCPs expected to allow each clearing member to operate more than one house or omnibus client account under Article 39 of EMIR?

(h) Are CCPs required to provide segregated accounts for indirect clients?

(i) Are non-EU clearing members of EU CCPs providing services to clients subject to the segregation requirements in Article 39?

(j) Are EU clearing members of non-EU CCPs required to comply with Article 39 when offering client clearing on non-EU CCPs?

(k) Under Article 39(6) of EMIR, are clearing members obliged to post excess margin directly at the CCP if the collateral provided by the client is not eligible at the CCP? What if the margins collected by clients are in the form of a bank guarantee in favour of the clearing member?

(l) Can a CCP have a provision in its rules and/or operating procedures under which the CCP can, if so requested by a clearing member, transfer the positions and assets held for the account of a defaulted client of that clearing member from the segregated account holding those positions and assets into the house account of the clearing member to facilitate the management of the client default by the clearing member?

(m) Can a participant of a trading venue which is also a clearing member of the relevant CCP deny its clients the protections established under Article 39 of EMIR where it executes trades on behalf of its clients and subsequently clears those trades with the relevant CCP?

(n) If a CCP automatically pays variation margins in respect of an individually segregated client account to the clearing member each day (auto repay), is the clearing member required to return the collateral to the client?

ESMA Answer

31-03-2015

Original language

(a) The terms ‘client requirement’ and ‘excess margin’ are not defined in EMIR. However, Article 39(6) of EMIR is clear that for individually segregated clients, any margin called from a client, which is over and above the amount called by the CCP to cover the positions of that client, must be posted to the CCP. The current practice of clearing members calling excess margin and retaining it is not permitted under EMIR for clients opting for individual segregation. Where a clearing member has collected additional margin in respect of particular client positions that has opted for individual client segregation, the excess margin should be passed to the CCP that clears those positions.

In the case where the relevant positions are with multiple CCPs, clearing members should ensure that the approach taken is made transparent to clients and where the clients opted for individual segregation, they will need to agree on the allocation of the excess margins to the different CCPs.

In the case where an individually segregated client has provided some assets to the clearing member that are not related to clearing activities at the CCP, then those assets do not have to be posted to the CCP if:

- the clearing member and the client have contractually agreed so in advance, and
- the assets are not dedicated to cover the current positions with the CCP and are clearly identified as such.

The two conditions above should be supported by appropriate documentation.

(b) No, EMIR does not allow the use of unsegregated accounts. Article 39(2) and 39(3) of EMIR provide that CCPs must offer both 'individual client segregation' and 'omnibus client segregation' (these terms being defined in Articles 39(2) and 39(3) of EMIR). While CCPs might offer other levels of protection in addition to individual client segregation and omnibus client segregation (e.g. an omnibus gross margin client model), omnibus client segregation is the minimum level of client protection that can be used under EMIR.

This is because Article 39(4) of EMIR requires that a clearing member distinguish, in accounts with the CCP, the clearing member's own assets and positions from those assets and positions held for the accounts of the clearing member's clients. Article 39(9) of EMIR includes further criteria which must be met by the accounts held by a clearing member with a CCP. These provisions are not compatible with the use of unsegregated accounts.

(c) The requirements on clearing members that are established in EMIR (e.g. those in Articles 38 and 39 of EMIR) apply to clearing members of all CCPs established in the European Union. These obligations therefore come into force at and should be met by the time that the CCP is authorised under EMIR.

(d) In the case of a default of a clearing member, Article 48(6) of EMIR requires that a CCP's model of individual segregation provides for the transfer of the assets and positions held for the account of an individually segregated client to another clearing member or provides for the CCP to actively manage its risks in relation to those positions, including liquidating the assets and positions. Where the transfer of the assets and positions held for the account of an individually segregated client to another clearing member does not take place then, pursuant to Article 39(9) of EMIR, the CCP's model of individual segregation should ensure that the assets recorded in the individually segregated account are not exposed to losses connected to positions recorded in another account. Accordingly it is not sufficient that the account at the CCP identifies only the value due to the account of the client. It must identify the specific assets (e.g. the particular or equivalent securities) due to the account of the client.

Alternative approaches to segregation that identify only the value due to the accounts of the clients (while recording the assets provided for the account overall) may be offered in addition, provided they meet the relevant requirements of Article 39 of EMIR, but they do not meet the requirement to offer individual client segregation.

(e)(1) Individual segregation within the meaning of Article 39(3) of EMIR applies to assets and positions held at CCP level. Hence, individual segregation does not have to be necessarily reflected at the level of the security settlement system, central bank or alternative highly secured arrangements with authorised financial institutions. However, it should be noted that Article 47(5) requires that assets belonging to the CCP should be distinguished from assets belonging to clearing members when deposited with a third party.

(e)(2) Article 14(3) of Commission Delegated Regulation (EU) No 153/2013 (RTS on CCPs) requires that a CCP shall make, and keep updated, a record of the amounts of margins called by the CCP and the corresponding amount actually posted by the clearing member with respect to each individually segregated client account. Variation margin payments, representing amounts of margins called by the CCP are therefore required to be recorded in the separate records and accounts maintained for the individually segregated client at the CCP. However, this requirement does not imply that payment instructions must be made for every individually segregated account separately. CCPs may therefore issue one payment instruction for multiple accounts at the same time, so long as they issue separate margin calls for each account (house, omnibus client, individually segregated client account) and correctly record these margin calls, and the payments which correspond to them, in the records of each account.

(f)(1) The objective of the provisions in Article 39 of EMIR is to ensure that clients of clearing members are granted a high level of protection (see Recital 64 of EMIR) . Furthermore, Article 45 of EMIR provides that a CCP shall use the margins posted by a defaulting clearing member prior to other financial resources when covering losses.

CCPs are therefore permitted to have rules and procedures which facilitate the use of surplus margin on a defaulted clearing member's house account (that would otherwise have been payable by the CCP to the estate of the clearing member) to meet any obligation of the clearing member in respect of losses on a client account of that clearing member.

For the avoidance of doubt, surplus margin on a client account of a defaulted clearing member cannot be used to meet any losses on the defaulted clearing member's house account(s).

(f)(2) Articles 39(4) and 39(9)(a) of EMIR require that clearing members distinguish their own assets in separate accounts at the CCP from those assets held for the account of their clients.

Where a clearing member desires to use its own assets (i.e. assets that were not posted by a client of the clearing member) to fulfil the margin requirements of the client account, then such assets could be recorded in a client account at a CCP, however in doing so the assets would be treated as assets held for the account of clients of the clearing member. This would mean that upon a default of the clearing member, the assets would be exposed to losses connected to the client account in which the assets were recorded and could no longer be used to meet any losses on the defaulted clearing member's house account(s).

(g) Article 39(2) of EMIR requires CCPs to offer to keep separate records and accounts (in the plural) enabling each clearing member to distinguish in accounts (in the plural) with the CCP the assets and positions of the clearing member from those held for the account of its clients ('omnibus client segregation'). Article 39(3) of EMIR requires that upon request CCPs shall offer clearing members the possibility to open more accounts in their own name or for the account of their clients. CCPs are therefore expected to offer clearing members the possibility to open more than one omnibus client account, when requested to do so.

(h) Article 3(1) of RTS 149/2013 (RTS on OTC derivatives) requires a CCP to set up, on the request of a clearing member, accounts to enable the assets and positions of the client to be recorded separately from the assets and positions of the indirect clients of the client. Accordingly, at the request of a clearing member, the CCP must, at a minimum, set up an omnibus segregated account in which only the positions and assets of the indirect clients of a client may be recorded. The CCP may also, at the request of a clearing member, set up individually segregated

accounts in which the positions and assets of indirect clients of a client may be recorded, but there is no obligation to do so.

(i) Under Article 39(5), clearing members must offer their clients, at least, the choice between omnibus client segregation and individual client segregation and inform them of the costs and level of protection associated with each option. The references to clearing members in Article 39 are not limited to EU clearing members, so all clearing members of EU CCPs are required to comply. Similarly, the references to clients in Article 39 are not limited to EU clients. CCPs are expected to require all clearing members to comply with the relevant EMIR provisions through their rules.

In the case that a third country insolvency regime applicable to a clearing member could interfere with the provision of omnibus client segregation or individual client segregation, including intrinsic client protections, in the manner set out in Articles 39 and 48, the clearing member should offer its clients alternative possibilities that ensure those clients receive, at least, the choice of omnibus client segregation and individual client segregation. Alternative possibilities may include clearing solutions provided by an affiliate or other clearing member of the CCP.

When, notwithstanding the alternatives offered, the client chooses to use the third country clearing member and risks remain due to the third country insolvency regime, the clearing member must disclose those risks in full to the client at the outset of the relationship, in accordance with both Articles 39(5) and 39(7)).

(j) No but EU clearing members will only be allowed to be a clearing members of a non-EU CCP which has been recognised as meeting equivalent requirements to EMIR under the process set out in Article 25. This will include an assessment of the CCP's segregation arrangements.

(k) Where a client that has opted for individual client segregation provides a clearing member with additional margin which is not eligible collateral at the CCP, then the clearing member does not have an obligation to transform such additional margin into eligible collateral. The CCP has no obligation to accommodate this collateral however the clearing member should pass such additional margin to the CCP if the latter has the operational and technical means to receive it. However, under no circumstances would such additional margin be eligible to meet margin calls made by the CCP.

Where the collateral provided by the client is a bank guarantee in favour of the clearing member then the clearing member is not required to post to the CCP an amount of eligible collateral equal to the value of the bank guarantee that exceeds the margin called from the client by the clearing member.

(l) It is the responsibility of the clearing member to inform the CCP of the account to which positions and assets held by the clearing member should be allocated. The contractual arrangement between a clearing member and its client may provide for the positions and assets held for the account of the client to be transferred to the house or proprietary account of the clearing member in the event of a default of the client. Accordingly, there should be no restriction on the ability of a CCP to transfer the positions and assets held for the account of a defaulted client into the house account of the clearing member on instruction of that clearing member, subject to that clearing member not being in default itself and in accordance with any applicable valuation and other rules and/or operating procedures of the CCP. This existence of such a process should be clearly disclosed by CCPs and clearing members; for example, as required by Article 39(7) of EMIR and would need to be compatible with the applicable insolvency law.

(m) No, even if the client does not have an explicit contractual relationship covering the clearing of these trades. Article 2(1)(15) of EMIR provides that a 'client' is "an undertaking with a contractual relationship with a clearing member of a CCP which enables that undertaking to clear its transactions with that CCP". Given that the trade is cleared by a CCP, then the contractual relationship entered into by the client enables the clearing of the transaction with the CCP. Therefore, even if the contractual arrangement governing the provision of trading services does not explicitly cover the provision of clearing services by the firm executing the trade on behalf of its client, the latter should be considered a client under EMIR and should benefit from the client protections established therein.

(n) According to article 39(6) of EMIR, when a client opts for individual segregation any margin in excess of the client's requirement shall be posted to the CCP. As such, any excess collateral allocated to an individually segregated account must either be maintained at the CCP in accordance with article 39(6) or returned to the client. CCPs should offer clearing members the possibility of holding excess margin allocated to an individually segregated account at the CCP in that account (i.e. switching off auto repay), provided that the CCP can hold the currency in which the cash variation margin is denominated overnight in compliance with the CCP's investment policy.

When variation margins are denominated in currencies that the CCP cannot hold overnight (e.g. because it has no overnight investment facilities for such currencies - typically, currencies not accepted for initial margins), consistent with CCP answer 8k, the CCP has no obligation to accommodate these currencies and the clearing member is required to return the collateral to the client, unless the latter, via a documented request, instructed the clearing member to hold the client's repaid variation margins in a non-clearing account meeting the conditions in answer 8a.

ESMA_QA_862

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Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Level 2 Regulation

COMMISSION DELEGATED REGULATION (EU) No 152/2013 Regulatory technical standards on capital requirements for central counterparties

Topic

EU-CCPs

Additional Legal Reference

Article 16 of EMIR - old CCP question 7 dated 4/06/2013

Subject Matter

Capital (old CCP question 7 dated 4/06/2013)

Question

Does a CCP have to hold capital for market risk on their investments?

In particular, market risk is required to be calculated on a CRD basis under Commission Delegated Regulation (EU) No 152/2013, and under that approach, assets may be treated as being held for the banking book rather than the trading book. For banking book assets, CRD only requires CCPs to hold capital against credit risk and not market risk.

ESMA Answer

04-06-2013

Original language

Under CRD, the classification of an investment asset under the banking or trading book depends on whether the bank has a trading intent with reference to that asset; positions held with a trading intent are those held intentionally for short-term resale and/or with the intention of benefiting from actual expected short-term price differences between buying and selling prices or from other price or interest rate variations.

In the case of a CCP the investments stemming from cash assets posted to the CCP as margins, default fund contributions, contributions to other financial resources or the portion of the CCP's own resources dedicated to the default

waterfall in accordance with Article 45(4) of EMIR are not intended to be held with a trading intent to maturity; however, given that it is always the intention of a CCP that such assets would be liquidated in the event of a clearing member default, it is appropriate that these investments are capitalised against market risk.

With respect to the CCP's own capital (i.e. what it holds to meet its regulatory requirements under Article 16 of EMIR), instead, these investments might be held akin to the banking book of a CRD firm and therefore exempt from capitalisation for market risk.

ESMA_QA_861

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Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Level 2 Regulation

COMMISSION DELEGATED REGULATION (EU) No 153/2013 Regulatory technical standards on requirements for central counterparties

Topic

EU-CCPs

Additional Legal Reference

Article 14 of EMIR - old CCP question 6 dated 31/03/2015

Subject Matter

Authorisation of a CCP (old CCP question 6 dated 31/03/2015)

Question

- (a) What constitutes an activity or service covered by the initial authorisation of a CCP as referred to in Article 15(1) of EMIR?
- (b) By when must a CCP be fully compliant with EMIR?
- (c) Can the clock be stopped on application deadlines when an NCA is waiting for further information from the CCP? Can the CCP continue operating under the national regime until a final decision has been made on its authorisation under EMIR?
- (d) What services and activities can a CCP be authorised under EMIR to provide or perform?
- (e) Is a CCP required to comply with all of the requirements laid down in EMIR for all of the services that it provides and activities that it performs?
- (f) Can a CCP be authorised to provide a service that prevents its clearing members to clear contracts between each other?

ESMA Answer

31-03-2015

Original language

(a) Article 14(3) of EMIR provides that an authorisation shall specify the services or activities which the CCP is authorised to provide or perform including the classes of financial instruments covered by such authorisation. 'Classes of derivatives' is a defined term in EMIR and reference to 'classes of financial instrument' provides a guide as to granularity at which the services or activities authorised will be granted. Applying this definition to activities and services suggests that authorisation should be granted on the basis of activities or services which share a common risk profile. Therefore, an extension of authorisation would be needed where the CCP intends to undertake additional activities or services which expose the CCP to new or increased risks, e.g. on classes of financial instruments with a different risk profile or that have material differences from the CCP's existing product set.

As a practical example, a CCP might be authorised to clear single-name Credit Default Swaps contracts where the reference entities are corporate entities. In this example, the CCP would need to apply for an extension of authorisation where it intends to clear single-name Credit Default Swaps contracts where the reference entities are sovereigns or Credit Default Swaps contracts where the reference is an index.

(b) In order to continue to offer clearing services in the EU, CCPs must submit an application for authorisation to their NCA by 15 September 2013. The CCP is not required to be compliant with EMIR at this stage. However, its application must demonstrate clearly how it will become compliant before it receives authorisation. The NCA has thirty working days from the submission of the application to deem it complete or incomplete. If the NCA deems an application incomplete, it shall set a deadline by which the applicant CCP must provide the additional information. Once the NCA has deemed the application complete it has four months in which to submit a report to the college including an opinion on whether the CCP complies with EMIR. The opinion of the NCA and of the college could include conditions that the CCP needs to respect before the authorisation is granted.

(c) Until a decision is made on the authorisation of a CCP under EMIR, the respective national rules shall continue to apply, pursuant to Article 89(4) of EMIR. If the NCA deems an application incomplete, it shall set a deadline by which the applicant CCP must provide the additional information. The relevant deadlines pertaining to the review of a CCP's application for authorisation under EMIR (six months for a final decision, including one month for the establishment of a college and four months for a risk report to the college) do not begin until the CCP has submitted an application which the NCA deems complete, i.e. the 'clock' does not start until the application is considered to be complete. However, once the NCA has deemed an application complete, this constitutes confirmation that it has the information necessary to assess the CCP's compliance. As such, there is no possibility for it to 'stop the clock' once an application has been deemed complete.

Nevertheless, if an applicant CCP sought to prolong the transitional period indefinitely by failing to submit the required information, the NCA may conclude that this provides sufficient evidence to support a recommendation for refusal of the application for authorisation.

(d) Article 14(3) of EMIR provides that an authorisation decision under Article 14(1) shall specify the services or activities which a CCP is authorised to provide or perform. Article 14(3) also provides that an authorisation decision under Article 14(1) shall be granted only for activities linked to clearing. Article 2(3) of EMIR defines 'clearing' as the process of establishing positions (including the calculation of net obligations) and ensuring that financial instruments, cash, or both, are available to secure the exposures arising from those positions.

Therefore in order for an authorisation decision under Article 14(1) of EMIR to include the performance of a particular activity, that activity would need to present an objective link with the definition of "clearing" under Article 2(3) of EMIR.

It follows that under EMIR CCPs will not be able to provide services or perform activities which are not linked to clearing (such as auctioneer activities related to EU emission allowances).

This is without prejudice to Article 14(5) of EMIR which provides that an authorisation decision under Article 14(1) of EMIR shall not prevent Member States from adopting or continuing to apply, in respect of CCPs established in their territory, additional requirements including certain requirements for authorisation under Directive 2006/48/EC.

(e) Article 17(4) of EMIR provides that the competent authority shall grant authorisation only where it is fully satisfied that the applicant CCP complies with all of the requirements laid down in EMIR. This applies in respect of all of the services provided by a CCP and all of the activities performed by the CCP, including those which are considered as being linked to clearing.

Article 4(3) of Commission Delegated Regulation (EU) No 153/2013 provides that if a CCP provides services linked to clearing that present a distinct risk profile from its functions and potentially pose significant risks to it, the CCP shall manage those additional risks adequately. This is an additional requirement to that provided for in Article 17(4) of EMIR. Therefore where a CCP provides services or performs activities, which are considered as being linked to clearing and which present a distinct risk profile from its functions and potentially pose significant risks to the CCP, then the CCP is required to comply with all of the requirements laid down in EMIR (Article 17(4) of EMIR) and to ensure that it manages those additional risks adequately.

It follows that under EMIR CCPs will not be able to provide some of their services or perform some of their activities to standards which are below the minimum requirements established by Title IV of EMIR (such as guaranteeing the performance of market participants without collecting margins and/or without

maintaining a default fund and dedicated own financial resources).

(f) No. CCPs cannot be authorised to offer services preventing the interposition of the CCP between clearing members, i.e. preventing clearing members to clear contracts with other clearing members

ESMA_QA_852

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Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Level 2 Regulation

COMMISSION DELEGATED REGULATION (EU) No 153/2013 Regulatory technical standards on requirements for central counterparties

Topic

EU-CCPs

Additional Legal Reference

Article 47 of EMIR - old CCP question 4 dated 5/08/2013

Subject Matter

Article 47 of EMIR – Deposit of financial instruments

Question

Article 47(3) of EMIR states that financial instruments posted as margins or as default fund contributions, shall, where available, be deposited with operators of securities settlement systems that ensure the full protection of those financial instruments. Alternatively, other highly secure arrangements with authorised financial institutions may be used.

- (a) Can a CCP deposit all financial instruments posted as margins or as default fund contributions in an account with a CSD through a custodian? The financial instruments would be deposited with a custodian who then registers them at the CSD in the name of a nominee of the custodian. Is this practice compatible with EMIR provisions?
- (b) When can a security settlement system be considered unavailable for the purpose of Article 47(3) of EMIR?
- (c) Can the term 'where available' be construed such that a securities settlement system would not be considered available where it does not offer to keep separate records and accounts enabling a CCP to distinguish, in accounts with the operators of the securities settlement system, the assets and positions held for the account of a client?
- (d) Are the requirements of Article 47(3) of EMIR fulfilled where a CCP deposits financial instruments with CSDs (including ICSDs) that in turn deposit the instruments with other institutions via CSD links?
- (e) Can a CCP outsource certain operational aspects of the accounts that the CCP holds (in its own name) at a securities settlement system?
- (f) Do the requirements of Article 47(3) of EMIR apply only to financial instruments posted as margins or, default fund contributions, or also to financial instruments in which the CCP has invested, i.e. where margin or default fund contributions posted to the CCP in the form of cash are reinvested by the CCP in financial instruments?

ESMA Answer

05-08-2013

Original language

(a) The operators of a securities settlement system are those notified under the Settlement Finality Directive (98/26/EC). Custodian banks are not generally operators of securities settlement systems. It should be noted that EMIR entered into force before the CSD Regulation and the term CSD is currently not defined in EU legislation.

Depositing financial instruments with an operator of a securities settlement system via a custodian does not constitute a deposit with an operator of a securities settlement system for the purposes of Article 47(3) of EMIR. Such a structure would instead amount to a deposit with an authorised financial institution for the purposes of Article 47(3) of EMIR (assuming the custodian used is an authorised financial institution under Article 44 of Commission Delegated Regulation (EU) No 153/2013 (RTS on CCP requirements) and that the conditions defined in the same Article are respected to ensure that highly secured arrangements for the deposit of financial instruments are adopted).

(b) If a CCP is able to demonstrate that it cannot access a security settlement system that ensures the full protection of financial instruments, i.e. the protection of the CCP from custody risk (in a manner equivalent to the protection under the Settlement Finality Directive) and the protection of its clearing members and their clients from the default of the CCP or the protection of their clients from the default of their clearing members, then the CCP can deposit financial instruments through highly secured arrangements with authorised financial institutions subject to the

provisions in Article 45(1) of Commission Delegated Regulation (EU) No 153/2013 (RTS on CCP requirements).

(c) Under Article 39 of EMIR, the requirement for individual segregation is a requirement that the CCP offer to keep separate records and accounts enabling a clearing member to distinguish in accounts with the CCP, the assets and positions held for the account of one or more clients.

Individual segregation within the meaning of Article 39(3) of EMIR applies to assets and positions held at CCP level. Hence, individual segregation does not have to be necessarily reflected at the level of the security settlement system or alternative highly secured arrangements with authorised financial institutions.

Therefore, a security settlement system that ensures the full protection of the financial instruments cannot be considered unavailable only because it does not offer individual segregation of client assets.

(d) Yes, provided that the CCP demonstrates to its competent authority that the arrangements do not prevent compliance with Article 47(3) of EMIR, namely that the CSD and the linked CSD ensure the full protection of the financial instruments.

(e) While the deposit of financial instruments under an arrangement whereby the account at the securities settlement system is held in the name of an authorised financial institution does not constitute a deposit with a securities settlement system for the purposes of Article 47(3) of EMIR, it is ESMA's understanding that third party service providers (such as custodian banks) may sometimes be used by CCPs to manage certain operational aspects of accounts that the CCP holds (in its own name) at a securities settlement system. CCP Answer 4(a) should not be read as

preventing the continued use of such outsourcing arrangements.

EMIR explicitly contemplates that a CCP might outsource certain aspects of its operational functions, services or activities. Outsourcing of the operation of accounts that a CCP holds with a securities settlement system would be no different to the outsourcing of any other activity. Such outsourcing arrangements would of course be subject to the requirements for outsourcing which are prescribed in Article 35 of EMIR and subject to the restriction discussed above such that title to the account at the securities settlement system must be in the name of the CCP (this would entail the contractual relationship being between the securities settlement system and the CCP with the custodian acting as agent).

(f) The reference in Article 44(1) of Commission Delegated Regulation (EU) No 153/2013 (RTS on CCPs) to Article 45 of the same RTS should be a reference to Article 43 of that Commission Delegated Regulation. Article 43 refers to Article 47(1) of EMIR, i.e. investment of the CCP's financial resources. This means that the requirement to deposit financial instruments with operators of security settlement systems where available, or with certain other institutions where not, applies to investments by the CCP that represent the reinvestment of margin and default fund contributions posted to the CCP in the form of cash.

ESMA_QA_851

Submission Date

27/04/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Additional Legal Reference

Article 48 of EMIR - old CCP question 3 dated 4/02/2016

Subject Matter

Default management (old CCP question 3 dated 4/02/2016)

Question

(a) What is the requirement on a CCP for portability of client assets in a member default scenario –for both individual and omnibus accounts?

1. Port the “required collateral” only, less outstanding variation margin payments i.e. the value of assets used to cover liabilities; or
2. Port the assigned value of the assets, less outstanding variation margin payments (post-haircut); or
3. Port the proceeds from liquidation of assets, less outstanding variation margin payments; or
4. Port the assets themselves, less outstanding variation margin payments?

(b) Articles 48(5) and 48(6) of EMIR provide that, if a clearing member defaults, “the CCP shall, at least, contractually commit itself to trigger the procedures for the transfer of the assets and positions... to another clearing member designated by [the client or clients]...”. They further provide that if porting of client positions “has not taken place for any reason within a predefined transfer period specified in its operating rules, the CCP may take all steps permitted by its rules to actively manage its risk in relation to those positions, including liquidating the assets and positions held by the defaulting clearing member for the account of its clients”.

How long should the predefined transfer period be, and can a CCP liquidate the client(s) position(s) and assets before the end of the predefined transfer period if it deems that necessary for risk management purposes?

(c) Can a CCP require the client(s) to designate a back-up clearing member prior to the default of its primary clearing member as a precondition for triggering the procedure for porting in the event of the default of the primary clearing member?

(d) Article 48 of EMIR permits a CCP to liquidate the house positions of a defaulting clearing member and any client positions of that defaulting clearing member that the CCP has not been able to transfer to another clearing member.

i) Is it permissible for the CCP to actively manage its risk in relation to the positions held in more than one account by one or more transactions, rather than being required to execute transactions to manage the risks of the positions held in each account separately?

ii) If it is acceptable for the CCP to execute one or more transactions to manage its risks across more than one account, how should the costs of the transactions be

allocated between the affected accounts?

ESMA Answer

04-02-2016

Original language

(a) Article 48 of EMIR establishes the circumstances and parameters under which a CCP must transfer the assets and positions of the clients of defaulted clearing members or may liquidate such assets and positions.

Following a member default, a CCP is required to transfer the assets and positions recorded as being held for the account of the clients of the defaulted clearing member if the conditions defined in Article 48 are met. Otherwise, the CCP may try to transfer the assets and positions, on a best effort basis, but ultimately has the right to liquidate the assets and positions. If the assets of a client of the defaulted clearing members are only partially liquidated then the non-liquidated portion of the assets will be returned to the clients when they are known to the CCP or, if they are not, to the clearing member for the account of its clients.

Article 39(10) of EMIR provides that assets (in respect of segregation and portability) refers to collateral held to cover positions and includes the right to transfer assets equivalent to that collateral or the proceeds of the realisation of any collateral.

(b) Although EMIR does not specify a minimum (or maximum) for the predefined transfer period, it should be of sufficient length to enable the client(s) to make a request for porting, and for the CCP to trigger the porting as contemplated in Articles 48(5) & (6) of EMIR, within that period. Under Article 48(2) of EMIR a CCP “shall take prompt action to contain losses and liquidity pressures resulting from defaults and shall ensure that the closing out of any clearing member’s positions does not disrupt its operations or expose the non-defaulting clearing members to losses they cannot anticipate or control”. Furthermore, EMIR Recitals 49, 65 and 67 emphasise the importance of a CCP having robust risk management arrangements. Accordingly, a CCP can opt for a short pre-defined period if it judges that such would be necessary to liquidate client(s’) position(s) and assets shortly after a clearing member default has occurred in order to contain losses or liquidity pressures. A CCP may extend the transfer period, however the legislator has indicated that liquidation should only take place following the end of a CCP’s predefined transfer period and a CCP cannot liquidate client(s’) position(s) and assets prior to the end of the predefined transfer period.

(c) Articles 48(5) and 48(6) of EMIR require that clients be able to designate another back-up clearing member upon request. It is not compatible with EMIR for a CCP to require that such designation has been made prior to the default of the client’s primary clearing member as a precondition for the CCP triggering the procedure for porting. However if a client has not designated a back-up clearing member prior to the default of the client’s primary clearing member and has not agreed that the CCP may choose a back-up clearing member for the client, then that may mean that porting is less likely to occur. Such a risk should be clearly disclosed by CCPs and clearing members; for example, as required by Article 39(7) of EMIR.

(d) In the event of the default of a clearing member, a CCP may liquidate (i) any house positions of the defaulting clearing members and (ii) any client positions of

the defaulting clearing member that the CCP has been unable to transfer to a new clearing member within the predefined transfer period specified in the CCP's operating rules . To minimise its market risk, the CCP may hedge or replace such positions. Article 39(9) of EMIR requires that positions recorded in different accounts are not netted against each other and that assets covering the positions in one account are not exposed to losses connected to positions held in a different account.

i) In the event the CCP elects to hedge or liquidate positions that are recorded in more than one account (which may include client accounts), the CCP may assess that executing one or more transactions across accounts would be likely to result in a quicker or more efficient reduction in market and operational risk compared to hedging or liquidating the positions held in each account separately.

For example, it may be more operationally effective for the CCP to include all positions to be hedged or liquidated in an auction for which participating clearing members are requested to provide a single auction price covering all instruments and positions being auctioned. This reduction in risk will benefit both the CCP and the affected clients.

Accordingly, a CCP's operating rules may permit it to manage the risks present in more than one account through one or more transactions.

For the avoidance of doubt, this does not preclude the CCP from hedging or liquidating the positions held in each account separately, where this is provided for in its operating rules. In some circumstances, the CCP may assess this is likely to be a more effective way of managing the default.

ii) Where the CCP elects to hedge or liquidate positions across accounts through one or more transactions, it should allocate the costs of hedging or liquidation of the positions on the basis of the market value of the positions held in each account at the point the transaction or transactions were executed.

Any extra cost or gain which remains unallocated following this initial allocation process based on market value may be allocated pro rata on the basis of the risks presented to the CCP by each account that was subject to hedging or liquidation.

The methodology a CCP implements to allocate costs to each account in the event of the default of a clearing member should be publicly disclosed in accordance with Article 39(7) of EMIR.

ESMA_QA_850

Submission Date

27/04/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Additional Legal Reference

Article 48 of EMIR - old CCP question 3 dated 4/02/2016

Subject Matter

Default management (old CCP question 3 dated 4/02/2016)

Question

(a) What is the requirement on a CCP for portability of client assets in a member default scenario –for both individual and omnibus accounts?

1. Port the “required collateral” only, less outstanding variation margin payments i.e. the value of assets used to cover liabilities; or
2. Port the assigned value of the assets, less outstanding variation margin payments (post-haircut); or
3. Port the proceeds from liquidation of assets, less outstanding variation margin payments; or
4. Port the assets themselves, less outstanding variation margin payments?

(b) Articles 48(5) and 48(6) of EMIR provide that, if a clearing member defaults, “the CCP shall, at least, contractually commit itself to trigger the procedures for the transfer of the assets and positions... to another clearing member designated by [the client or clients]...”. They further provide that if porting of client positions “has not taken place for any reason within a predefined transfer period specified in its operating rules, the CCP may take all steps permitted by its rules to actively manage its risk in relation to those positions, including liquidating the assets and positions held by the defaulting clearing member for the account of its clients”.

How long should the predefined transfer period be, and can a CCP liquidate the client(s) position(s) and assets before the end of the predefined transfer period if it deems that necessary for risk management purposes?

(c) Can a CCP require the client(s) to designate a back-up clearing member prior to the default of its primary clearing member as a precondition for triggering the procedure for porting in the event of the default of the primary clearing member?

(d) Article 48 of EMIR permits a CCP to liquidate the house positions of a defaulting clearing member and any client positions of that defaulting clearing member that the CCP has not been able to transfer to another clearing member.

i) Is it permissible for the CCP to actively manage its risk in relation to the positions held in more than one account by one or more transactions, rather than being required to execute transactions to manage the risks of the positions held in each account separately?

ii) If it is acceptable for the CCP to execute one or more transactions to manage its risks across more than one account, how should the costs of the transactions be

allocated between the affected accounts?

ESMA Answer

04-02-2016

Original language

(a) Article 48 of EMIR establishes the circumstances and parameters under which a CCP must transfer the assets and positions of the clients of defaulted clearing members or may liquidate such assets and positions.

Following a member default, a CCP is required to transfer the assets and positions recorded as being held for the account of the clients of the defaulted clearing member if the conditions defined in Article 48 are met. Otherwise, the CCP may try to transfer the assets and positions, on a best effort basis, but ultimately has the right to liquidate the assets and positions. If the assets of a client of the defaulted clearing members are only partially liquidated then the non-liquidated portion of the assets will be returned to the clients when they are known to the CCP or, if they are not, to the clearing member for the account of its clients.

Article 39(10) of EMIR provides that assets (in respect of segregation and portability) refers to collateral held to cover positions and includes the right to transfer assets equivalent to that collateral or the proceeds of the realisation of any collateral.

(b) Although EMIR does not specify a minimum (or maximum) for the predefined transfer period, it should be of sufficient length to enable the client(s) to make a request for porting, and for the CCP to trigger the porting as contemplated in Articles 48(5) & (6) of EMIR, within that period. Under Article 48(2) of EMIR a CCP “shall take prompt action to contain losses and liquidity pressures resulting from defaults and shall ensure that the closing out of any clearing member’s positions does not disrupt its operations or expose the non-defaulting clearing members to losses they cannot anticipate or control”. Furthermore, EMIR Recitals 49, 65 and 67 emphasise the importance of a CCP having robust risk management arrangements. Accordingly, a CCP can opt for a short pre-defined period if it judges that such would be necessary to liquidate client(s’) position(s) and assets shortly after a clearing member default has occurred in order to contain losses or liquidity pressures. A CCP may extend the transfer period, however the legislator has indicated that liquidation should only take place following the end of a CCP’s predefined transfer period and a CCP cannot liquidate client(s’) position(s) and assets prior to the end of the predefined transfer period.

(c) Articles 48(5) and 48(6) of EMIR require that clients be able to designate another back-up clearing member upon request. It is not compatible with EMIR for a CCP to require that such designation has been made prior to the default of the client’s primary clearing member as a precondition for the CCP triggering the procedure for porting. However if a client has not designated a back-up clearing member prior to the default of the client’s primary clearing member and has not agreed that the CCP may choose a back-up clearing member for the client, then that may mean that porting is less likely to occur. Such a risk should be clearly disclosed by CCPs and clearing members; for example, as required by Article 39(7) of EMIR.

(d) In the event of the default of a clearing member, a CCP may liquidate (i) any house positions of the defaulting clearing members and (ii) any client positions of

the defaulting clearing member that the CCP has been unable to transfer to a new clearing member within the predefined transfer period specified in the CCP's operating rules . To minimise its market risk, the CCP may hedge or replace such positions. Article 39(9) of EMIR requires that positions recorded in different accounts are not netted against each other and that assets covering the positions in one account are not exposed to losses connected to positions held in a different account.

i) In the event the CCP elects to hedge or liquidate positions that are recorded in more than one account (which may include client accounts), the CCP may assess that executing one or more transactions across accounts would be likely to result in a quicker or more efficient reduction in market and operational risk compared to hedging or liquidating the positions held in each account separately.

For example, it may be more operationally effective for the CCP to include all positions to be hedged or liquidated in an auction for which participating clearing members are requested to provide a single auction price covering all instruments and positions being auctioned. This reduction in risk will benefit both the CCP and the affected clients.

Accordingly, a CCP's operating rules may permit it to manage the risks present in more than one account through one or more transactions.

For the avoidance of doubt, this does not preclude the CCP from hedging or liquidating the positions held in each account separately, where this is provided for in its operating rules. In some circumstances, the CCP may assess this is likely to be a more effective way of managing the default.

ii) Where the CCP elects to hedge or liquidate positions across accounts through one or more transactions, it should allocate the costs of hedging or liquidation of the positions on the basis of the market value of the positions held in each account at the point the transaction or transactions were executed.

Any extra cost or gain which remains unallocated following this initial allocation process based on market value may be allocated pro rata on the basis of the risks presented to the CCP by each account that was subject to hedging or liquidation.

The methodology a CCP implements to allocate costs to each account in the event of the default of a clearing member should be publicly disclosed in accordance with Article 39(7) of EMIR.

ESMA_QA_849

Submission Date

27/04/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Historic Question Reference

old CCP question 1 dated 20/03/2013

Additional Legal Reference

Article 18 of EMIR - old CCP question 1 dated 20/03/2013

Subject Matter

Most relevant currencies for the determination of participation in a college (old CCP question 2 dated 20/03/2013)

Question

Which are the criteria to be used by a new entity that applies for authorisation as a CCP, if the respective entity has not performed any clearing activities before?

ESMA Answer

20-03-2013

Original language

In the case of a new entity which has not performed any clearing activities before, the determination of the most relevant currencies for the purpose of membership of the CCP college would be performed on the basis of the relative share of each currency in the estimated volumes across all financial products proposed to be cleared by the CCP.

A similar determination would also be made for CCPs which have performed clearing activities for less than one year.

ESMA_QA_848

Submission Date

27/04/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic

EU-CCPs

Historic Question Reference

old CCP question 1 dated 20/03/2013

Additional Legal Reference

Article 18 of EMIR - old CCP question 1 dated 20/03/2013

Subject Matter

Most relevant currencies for the determination of participation in a college

Question

Which are the criteria to be used by a new entity that applies for authorisation as a CCP, if the respective entity has not performed any clearing activities before?

ESMA Answer

20-03-2013

Original language

In the case of a new entity which has not performed any clearing activities before, the determination of the most relevant currencies for the purpose of membership of the CCP college would be performed on the basis of the relative share of each currency in the estimated volumes across all financial products proposed to be cleared by the CCP.

A similar determination would also be made for CCPs which have performed clearing activities for less than one year.

ESMA_QA_661

Submission Date

13/01/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Level 2 Regulation

COMMISSION DELEGATED REGULATION (EU) No 153/2013 Regulatory technical standards on requirements for central counterparties

Topic

EU-CCPs

Additional Legal Reference

Article 46 of EMIR - old CCP question 2 dated 20/03/2013

Subject Matter

Collateral requirements and recording of client assets (old CCP question 2 dated 20/03/2013)

Question

What is the requirement on a CCP for the recording of financial instruments posted to it as margins, default fund contributions or contributions to other financial resources? Is it possible for a CCP to record the value assigned to financial instruments post-haircut?

ESMA Answer

Original language

Article 46(1) of EMIR sets out the purpose of haircuts by making reference to the 'potential' for the value of the assets posted as collateral to decline. In order to adequately apply haircut requirements set-out in Article 46(1), a CCP needs to have procedures enabling the record of the pre-haircut value of financial instruments actually posted to the CCP by clearing members for their own account or the account of their clients. This is consistent with recording requirements set out in Article 14(3) of Commission Delegated Regulation No 2013/153. This concept is therefore not compatible with a situation where the CCP would have procedures providing for just the record of this post-haircut value and where it would routinely impose such a decline in full in respect of every financial instrument that is posted to the CCP at the expense of clients.

ESMA_QA_604

Submission Date

12/10/2022

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Level 2 Regulation

COMMISSION DELEGATED REGULATION (EU) No 153/2013 Regulatory technical standards on requirements for central counterparties

Topic

EU-CCPs

Additional Legal Reference

Article 46 - EMIR

Subject Matter

CCP collateral requirements

Question

Are bonds and commercial papers eligible collateral by EU CCPs under Article 46 of EMIR, and if so, under which conditions?

ESMA Answer

Original language

Article 46(1) of EMIR requires that a CCP only accepts highly liquid collateral with minimal credit and market risks to cover its exposures to its clearing members. The type of collateral that could be considered highly liquid is further specified in the Commission Delegated Regulation (EU) No 153/2013^[1] (the “Delegated Regulation”). In particular, Article 39 of the Delegated Regulation provides that for the purposes of Article 46(1) of EMIR, financial instruments, bank guarantees and gold that meet the conditions set out in Annex I of the Delegated Regulation shall be considered as, highly liquid collateral. For financial instruments to be eligible as collateral, Section 1 of Annex I of the Delegated Regulation requires that such instruments either meet the conditions provided for in paragraph 1 of Annex II or the conditions applicable to transferable securities and money-market instruments provided for in Section 1 of Annex I. Among them, the CCP has to be able to demonstrate to its national competent authority that it is able to manage the credit and market risks of these instruments based on an adequate internal assessment, as well as the underlying currency risk. In addition, the financial instrument has to

be freely transferable, highly tradable, benefit from reliable price data, cannot be issued by the clearing member, the CCP or any critical third-party provider (or the same group) and is not subject to significant wrong-way risk.

Bonds qualify as transferable securities in accordance with Article 4(1)(44) of Directive 2014/65/EU^[2] and, therefore, any bond can be used by a CCP as eligible collateral for the purpose of Article 46(1) of EMIR, as long as the conditions set out in Section 1 of Annex I of the Delegated Regulation are met. Furthermore, debt instruments that meet the conditions set out in paragraph 1 of Annex II of the Delegated Regulation can also be used by a CCP as eligible collateral for the purpose of Article 46(1) of EMIR.

Commercial papers qualify as money market instruments in accordance with Article 4(1)(17) of Directive 2014/65/EU, and, therefore, can be used by a CCP as eligible collateral for the purpose of Article 46(1) of EMIR, as long as the conditions set out in Section 1 of Annex I of the Delegated Regulation are met.

In applying the relevant EMIR requirements, as further specified in the Delegated Regulation, the CCP would also be expected to determine the appropriate limits and haircuts based on the specificities of their markets and own risk management.

[1] OJ L 52, 23.2.2013, p. 41–74

[2] OJ L 173, 12.6.2014, p. 349–496

ESMA_QA_414

Submission Date

18/01/2022

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

European Market Infrastructure Regulation (EMIR) Regulation (EU) No 648/2012-MDP

Topic

ESMA70-1861941480-52 Questions and Answers Implementation of the Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR)

Additional Legal Reference

EU Regulation No. 152/2013 Article 4 (4)

Subject Matter

counterparty credit risk exposure for the assets posted as individual collateral at another, non-interoperable EMIR licensed central counterparty

Question

May an EMIR licensed central counterparty attribute an exposure value of zero to the counterparty credit risk for the assets posted as individual collateral at another, non-interoperable EMIR licensed central counterparty as its general clearing member?

No hay parametros en la URL.