



European Securities and
Markets Authority

Reply form for the consultation paper on Review of Article 26 of RTS No 153/2013 with respect to MPOR for client



14 December 2015

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the questions listed in this Consultation Paper on Review of Article 26 of RTS No 153/2013 with respect to MPOR for client accounts, published on the ESMA website.

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA_QUESTION_REVIEW_OF_MPOR_1> - i.e.: the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

- if they respond to the question stated;
- contain a clear rationale, including on any related costs and benefits; and
- describe any alternatives that ESMA should consider.

Naming protocol

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA_REVIEW_OF_MPOR_NAMEOFCOMPANY_NAMEOFDOCUMENT.

E.g. if the respondent were XXXX, the name of the reply form would be:

ESMA_REVIEW_OF_MPOR_XXXX_REPLYFORM or

ESMA_REVIEW_OF_MPOR_XXXX_ANNEX1

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

Deadline

Responses must reach ESMA by **1st February 2015**.

All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input/Consultations’.



Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading [Legal Notice](#).



Introduction

What is the category you belong to?

<ESMA_COMMENT_REVIEW_OF_MPOR_1>

CCP:

Clearing member:

Client of a clearing member:

Other: , please specify: TRADE ASSOCIATION

<ESMA_COMMENT_REVIEW_OF_MPOR_1>

Please make your introductory comments below, if any:

<ESMA_COMMENT_REVIEW_OF_MPOR_2>

FIA¹ and the International Swaps and Derivatives Association Inc. (ISDA)² (together, the “Trade Associations”) welcome this opportunity to respond to the Consultation Paper reviewing Article 26 of RTS No 153/2013 with respect to the margin period of risk (“**MPOR**”) for client accounts (the “**Consultation Paper**”) and in particular on the specific questions summarized in Annex 1 of the Consultation Paper.

As previously indicated in our September 2015 response to ESMA’s Discussion Paper reviewing Article 26 of RTS No 153/2013 with respect to client accounts, our members believe that, consistent with certain of the *Principles for financial market infrastructures* (“**PFMIs**”), the regulatory framework for the calculation of margin should not prescribe one particular standard applicable to each element of a CCP’s margin calculation methodology. Rather, the calculation of appropriate margin levels for client accounts at CCPs must take into account several factors in order to ensure that the amount of margin the CCP collects is consistent with its default management objectives, and commensurate with the risk and particular attributes of each product, asset class, portfolio and market it serves, viewed in light of the legal, regulatory and contractual framework in which it operates. The factors referenced included each of the (i) relevant MPOR and (ii) calculation of margin requirements on a net or gross basis across clients of a single clearing member, as well as those factors listed in Paragraph 2 of Article 24 of Regulation (EU) No 153/2013.³

CCP-driven determination of appropriate margin requirements

¹ FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in London, Singapore and Washington, D.C. FIA’s membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from more than 48 countries as well as technology vendors, lawyers and other professionals serving the industry. FIA’s mission is to support open, transparent and competitive markets, protect and enhance the integrity of the financial system, and promote high standards of professional conduct. As the principal members of derivatives clearinghouses worldwide, FIA’s member firms play a critical role in the reduction of systemic risk in global financial markets.

² Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 850 member institutions from 67 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association’s website: www.isda.org.

³ Such factors include, (i) the complexities and level of pricing uncertainties of the product class that limit the validation of the calculation of margin, (ii) the risk characteristics of the product class, (iii) the degree to which other risk controls do not adequately limit credit exposures and (iv) the inherent leverage of the product class, including volatility, concentration among market participants and ability to close out.

In connection with the foregoing and coupled with ESMA's inclusion of the draft RTS in the Consultation Paper, we believe that if permitted, it is solely the decision of the CCP to offer a one-day gross omnibus account to clients, based on an analysis of the CCPs' risk and default management objectives. The Introduction to the Consultation Paper specifies in Paragraph 11 that the purpose of ESMA's proposal to permit a one-day gross omnibus account within the framework of EMIR is to provide clients with an additional option regarding account type, and that if implemented, clients would be able to choose between a net omnibus account with a two-day MPOR and a gross omnibus account with a one-day MPOR, provided certain enumerated conditions are satisfied. We believe it necessary to confirm that such choice is solely that of the CCP and subsequently its clearing members, so as to ensure that any account structure options offered are in line with such CCP's risk management policies. Clients will only be capable of choosing a one-day gross omnibus account after the relevant CCP has determined to offer such account structure for specific products, provided such client's clearing member has decided to offer the same account structure option.

Holistic approach to margin methodology on a CCP-by-CCP basis

Consistent with this approach, our members believe that although certain conditions should be applied in the event a CCP chooses to offer a one-day gross omnibus account to its clients, if such requirements are overly prescriptive and not principles-based, they may unnecessarily limit the risk management independence of the CCPs. It should also be noted that any such conditions, especially an intraday margin requirement, should not be viewed as a substitute for the CCP collecting sufficient margin generally. As previously noted, the regulatory framework for the calculation of margin should focus on ensuring that a CCP implements a robust margin framework based on a set of risk criteria that ensures it can collect enough margin to manage its default management processes while taking into account the practical realities of its ability to port and, if necessary, liquidate client positions and collateral.

We believe this means that the regulatory framework for the calculation of client margin with respect to gross omnibus accounts with a one-day MPOR should:

- (a) permit each CCP to undertake its own analysis in light of its default management objectives, via its pre-defined governance process, and determine whether it is appropriate for the CCP to offer clients a one-day gross omnibus account, and if so, for which product; and
- (b) require that certain conditions be satisfied by each CCP in order to offer clients a one-day gross omnibus account, but such conditions should not be prescriptive, one-size fits all quantitative or timing requirements across all CCPs regardless of the risk profile of the CCP's members and the relevant products cleared, as proposed in Article 26(3)(c)(iv) of the draft RTS.

<ESMA_COMMENT_REVIEW_OF_MPOR_2>

Questions from the consultation paper

Q1. Do you have any comment on the draft RTS in Annex 3?

<ESMA_QUESTION_REVIEW_OF_MPOR_1>

Currently, those U.S. and EU CCPs that offer gross omnibus accounts calculate intraday margin requirements on a **net** basis across all clients in the gross omnibus account of each clearing member and make a call if such net amount is above certain pre-defined thresholds. This is a necessity, as intraday files identifying individual client positions are not currently provided by clearing members to such CCPs. As a consequence, the Trade Associations believe that any change to a gross intraday margin requirement in the EU will inevitably cause major and disproportionate operational complexities and additional technological difficulties, requiring increased investment on the part of industry participants. In addition, mandating that clearing members provide individual client position information on an hourly/intraday basis would be inconsistent with the application of similar rules in the U.S. where intraday margin would continue to be calculated and collected on a net basis for gross accounts. Requiring a gross intraday margin requirement in the EU could re-introduce the potential regulatory arbitrage situation that this amended RTS is specifically targeted to resolve. To that end, we would recommend that the proposed RTS clarify that the obligation to calculate and call intraday margin permits such action to be undertaken on a net basis.

Generally, with respect to Paragraph 3(c) of the draft RTS, we request that the listed requisite conditions be clarified as follows:

- the requirement to provide the CCP with the identity of each client applies at the end of the trading day for use with margin calculations at the start of the next trading day (Paragraph 3(c)(ii) of the draft RTS);
- the calculation of client margin requirements on a gross basis should be based on individual client-level data, with respect to end-of-day/overnight collections, but need not be calculated on a per client basis with respect to intraday margin calls (Paragraph 3(c)(i) of the draft RTS);
- the requirement to calculate and collect intraday margin hourly (if the threshold is surpassed) is on a net basis, across all clients of each clearing member in a gross omnibus account; and
- Paragraph 3(c)(iii) should be redrafted so that the reference to “same group as the clearing member” expressly excludes positions of unaffiliated clients in affiliate accounts and only includes the proprietary positions of clearing members’ affiliates. If a clearing member separately identifies and segregates the unaffiliated client positions of its affiliates, such clients should be able to make use of one-day gross omnibus accounts.

In addition, U.S. and EU CCPs currently monitor their risk exposures to clearing members at various times throughout the trading day, which must be viewed holistically, incorporating the multitude of different factors which influence a CCP’s margin methodology. As noted above, the regulatory framework for the calculation of margin should focus on ensuring that a CCP implements a robust margin framework based on numerous factors that ensure it can collect enough margin to manage its default management processes. Furthermore, moving to a one-day gross omnibus account means that less client margin may rest with the clearing member than with a two-day net omnibus account; currently this margin is available to meet intraday margin calls. Under a one-day gross omnibus account the cost to clearing members of funding intraday margin calls may need to be passed on to clients who may see a consequential increase in clearing costs. Overall, we believe

that any intraday margin procedure details continue to form part of the CCP's risk management policies and are subject to committee and Board oversight with full disclosure to, and immediate access by, all clearing members, clients and regulators.⁴

<ESMA_QUESTION_REVIEW_OF_MPOR_1>

Q2. Do you agree that intraday margins should be called when the variation when the new margin requirement is higher than 120% of the updated available collateral, unless the margin call is not material on the basis of predefined thresholds defined by the CCP? Please provide quantitative data on the potential costs that this condition will imply and the reasons for those.

<ESMA_QUESTION_REVIEW_OF_MPOR_2>

We do not believe that a one-size fits all percentage threshold should be applied across all CCPs. A 120% materiality threshold for the collection of intraday margin seems arbitrary, especially in light of the varying credit risks posed by a CCP's clearing members and the different risk profiles of each product a CCP clears. Instead, the materiality threshold requirement should be flexible and permit CCPs to apply product-specific percentage thresholds to individual clearing members based on a multitude of risk-sensitive factors, including such members' creditworthiness.

In addition, and as noted above, we expect that any materiality threshold would apply on a net basis with respect to the margin amount calculated across all clients of a clearing member as compared to the previous hours' intraday margin calculation.

Finally, our members would like to note their desire for the harmonized implementation, and subsequent marketplace benefits, of one-day gross omnibus accounts via consistent application across the EU.

We note that although we are not providing specific quantitative analysis in this response, we believe some of the CCPs may do so, and, in any event, they are likely to be best placed to provide this analysis to you given the timeframe for the response and a CCP's more comprehensive data.

<ESMA_QUESTION_REVIEW_OF_MPOR_2>

⁴ See EMIR Article 39(7) which imposes a risk disclosure obligation on CCPs and clearing members.