

Consultation Paper: “Draft Guidelines on common procedures and methodologies on supervisory review and evaluation process of CCPs under Article 21 of EMIR”

ISDA and FIA members welcome ESMA’s consultation on the “Draft Guidelines on common procedures and methodologies on supervisory review and evaluation process of CCPs under Article 21 of EMIR”.

We agree that more consistency in format, frequency and depth of supervisory reviews by national competent authorities (NCA) is a very important objective and welcome the aim for these reviews to be applied *“ensuring that higher supervisory standards are implemented across the EU”*.

Thorough reviews of the risk management frameworks of CCPs are crucial for these important nodes in financial markets. Many, but not all CCPs share detailed information about the respective risk management procedures with their clearing participants (clearing members and their clients). Other information like portfolio data or detailed stress testing results cannot be shared with clearing participants for confidentiality reasons. Therefore, clearing participants have to rely on supervision and reviews by the relevant supervisory authorities. Standardisation and potential improvement of these reviews is especially important and desirable in view of the recent defaults at EU CCPs, both of which required the use of mutualised resources to some degree or at least initially¹.

We understand that some CCPs are more relevant from a financial stability standpoint than others and agree that these reviews should be *“appropriate to the size, structure and internal organisation of CCPs, and the nature, scope and complexity of their activities”* as the consultation paper states. However, this should be achieved by additional scrutiny for systemically important CCPs rather than reduced levels of supervision for smaller CCPs.

We recommend that these reviews should not be restricted solely to the elements set out in the *“Core Review”* of Annex II of the consultation and should consider the overall aims of the EMIR provisions. Additional emphasis should be given to initial margin due to the critical role it plays in preventing default losses being transmitted to non-defaulting members. This is especially important as CCPs move from SPAN based models to new VaR models. For instance, a supervisor should not only take into consideration whether there is a concentration risk component in the margin model (we assume that such add-ons are part of the proposed review of margin requirements according to article 41), but verify that this concentration framework would be effective for each clearing member’s portfolio should

¹ Nasdaq Clearing: <https://www.nasdaq.com/solutions/nasdaq-clearing-risk-management>
Keler CCP: <https://english.kelerkszf.hu/kszfnews/?id=1000055> and
<https://english.kelerkszf.hu/kszfnews/?id=1000833>

this particular clearing member default. Supervisors should not only verify compliance with the rules, but also whether the risk management framework is fit for purpose.

With the above comments, we broadly agree with the guidelines with the following two comments:

- A new interoperability arrangement could introduce considerable risk into a CCP. Guideline 7 excludes a new interoperability arrangement with a CCP from ad-hoc reviews. We understand that this is because article 54 of EMIR requires a prior approval from the respective NCA and that such an approval would include a review under article 17 of EMIR. Should this assumption not be correct, we would ask for not excluding new interoperability arrangements from ad-hoc reviews.
- We also propose for ESMA to consider how summary information about supervisory activities could be shared with clearing participants.

We are happy to make ourselves and our members available for further discussion if deemed helpful.

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Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 925 member institutions from 75 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. Follow us on Twitter, LinkedIn, Facebook and YouTube.

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- protect and enhance the integrity of the financial system, and
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As the leading global trade association for the futures, options and centrally cleared derivatives markets, FIA represents all sectors of the industry, including clearing firms, exchanges, clearing houses, trading firms and commodities specialists from more than 48 countries, as well as technology vendors, lawyers and other professionals serving the industry.