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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 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.

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[1] OJ L 52, 23.2.2013, p. 41–74

[2] OJ L 173, 12.6.2014, p. 349–496