

Submission Date

27/04/2023

ESMA_QA_864

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

Subject Matter

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.