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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.