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Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Additional Legal Reference
Articles 43(3) and 48(2) of EMIR - old CCP question 17 dated 11/02/2014

Subject Matter
Limited exposures of Clearing Members (old CCP question 17 dated 11/02/2014)

Question

Can a CCP have provisions in their rules under which non-defaulting clearing members can be called for additional funds in the event of a default of another clearing member where:

1. The size of the additional contribution is limited to a pre-defined monetary amount (e.g. an assessment of up to EUR XX million per clearing member)?
2. The size of the additional contribution is limited to an amount which is relative to the exposure that the clearing member brings to the CCP (e.g. an assessment of up to X times the clearing member's prefunded default fund contribution)?
3. There is no pre-defined monetary or relative limit on the size of the additional contribution?

ESMA Answer

11-02-2014

Original language

EMIR provides that a CCP may require non-defaulting clearing members to provide additional funds (in addition to their prefunded default fund contribution) in the event of a default of another clearing member. However, this provision is caveated by a requirement that the clearing members have limited exposures toward the CCP (Article 43(3) of EMIR). EMIR also provides that a CCP shall ensure that the closing out of any clearing member's positions does not expose the non-defaulting clearing members to losses that they cannot anticipate or control (Article 48(2) of EMIR).

1. It is compatible with EMIR for a CCP to have provisions in its rules under which non-defaulting clearing members can be called for additional funds in the event of the default of another clearing member and where the size of the additional contribution is limited to a pre-defined monetary amount. In particular the losses to which non-defaulting clearing members are exposed are predefined and such losses can be controlled to the extent that the clearing member can reduce the exposure that it has to the CCP. Such exposures are therefore limited on the basis that they can both be anticipated and controlled.

2. It is compatible with EMIR for a CCP to have provisions in its rules under which non-defaulting clearing members can be called for additional funds in the event of the default of another clearing member and where the size of the additional contribution is relative to the exposure that the clearing member brings to the CCP. In particular the losses to which non-defaulting clearing members are exposed can be calculated as they are a function of the aggregate positions cleared by those clearing members and such losses can be controlled to the extent that the clearing member can reduce the aggregate positions that it clears with the CCP. Such exposures are therefore limited on the basis that they can both be anticipated and controlled.

3. Where the exposures of the non-defaulting clearing members toward the CCP can be calculated by those clearing members in advance it would be compatible with EMIR for a CCP to have provisions in its rules under which non-defaulting clearing members can be called for additional funds in the event of the default of another clearing member even where there is no pre-defined monetary or relative limit on the size of the additional contribution.

This may be the case if clearing members can anticipate the potential size of the additional funds that they might be called for in the event of the default of another clearing member to the extent that the aggregate positions cleared by a CCP are able to be modelled with reasonable confidence and the clearing members can anticipate their proportional contribution to the aggregate positions cleared by the CCP based on their contribution to the default fund, as known to clearing members through the transparency provisions in EMIR.

In this case the losses to which non-defaulting clearing members are exposed can be calculated by those clearing members and such losses can be controlled to the extent that the clearing member can reduce the exposure that it brings to the CCP. Such exposures are therefore limited on the basis that they can both be anticipated and controlled.