



European Securities and
Markets Authority

Reply form for the consultation paper on indirect clearing arrangements under EMIR and MiFIR



5 November 2015

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the questions listed in this Consultation Paper on Indirect clearing arrangements under EMIR and MiFIR, published on the ESMA website.

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA_QUESTION_RTS_INDIRECT_CLEARING_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

- if they respond to the question stated;
- contain a clear rationale, including on any related costs and benefits; and
- describe any alternatives that ESMA should consider

Naming protocol

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA_ RTS_INDIRECT_CLEARING_NAMEOFCOMPANY_NAMEOFDOCUMENT.

E.g. if the respondent were XXXX, the name of the reply form would be:

ESMA_RTS_ INDIRECT_CLEARING_XXXX_REPLYFORM or

ESMA_RTS_ INDIRECT_CLEARING_XXXX_ANNEX1

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

Deadline

Responses must reach ESMA by **17 December 2015**.



All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input/Consultations'.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading [Legal Notice](#).

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_RTS_INDIRECT_CLEARING_1>

Amundi is a leading asset manager ranking among the top ten firms in the world and first in Europe with assets under management above 950 billion € at the end of September 2015. In order to better serve its diversified clientele, extending, with a presence in 30 countries, from 100 million retail investors to large institutions such as pension and sovereign funds, Amundi is an active participant on derivative markets. In that regard we appreciate the common efforts of G20 towards financial stability and European decision to define a safer framework for derivatives through EMIR.

With a view to enhance investors protection, Amundi has from the start of the implementation of EMIR supported the move towards central clearing, provided that CCPs are strictly regulated financial infrastructures and under constant supervision in order to avoid any risk of default. We furthermore maintain that Individual Segregation Agreements (ISA) are best suited to protect investors. However, we know that we will have to face a hard decision to reach the proper balance between best protection, operational workability and cost, in the best interests of our clients. We are very attentive to the solutions on which CCPs are currently working upon and have hopes that they may conciliate our objectives.

Amundi plans to clear through large entities that will be member of the vast majority of the CCPs we will clear through. However there are instances where it will not be the case, especially for exchange traded derivatives in emerging markets. As a consequence we are happy to answer to ESMA's present consultation on indirect clearing arrangements, the more so because ESMA raises fundamental questions and gives answers we cannot agree with : we maintain that omnibus gross even with information transferred to CCPs is not equivalent to ISA and that ISA is the only way to implement an important objective of EMIR, i.e. portability.

<ESMA_COMMENT_RTS_INDIRECT_CLEARING_1>

Questions from the consultation paper

Q1. Do you agree with the proposed approach to require the choice between an omnibus indirect account and a gross omnibus indirect account with margin at the level of the CCP?

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_1>

[No. Amundi cannot follow ESMA's conclusion to modify the terms of the choice, as defined in article 39 of EMIR, to be offered by CCPs and Clearing Members to their clients between Omnibus (OSA) or segregated accounts (ISA). Article 39 further notes in §6 that excess margin are transferred to the CCP in case of ISA. As pointed out by ESMA in § 29 of the consultation document, clients demand more segregation for OTC derivatives than for ETD. We expected ESMA to take it as a clear indication that ISA has to be kept as the most adequate solution and should be mandatorily offered to clients (that is level 1 text) and indirect clients. In §30 ESMA takes into account the point that some respondents to the MIFIR consultations, which related to ETD, feared that segregation would bring excessive complexity and, hence, excessive cost. Facing this point we would suggest that ESMA, as the competent authority, take the view to find a solution that would favour the interest of investors protection and work on solutions to circumvent or reduce "factors that may limit the take up" of ISA especially for OTC transactions.

There are some points worthwhile mentioning:

- About complexity: we feel that when information is required to be transferred to CCP at the level of each individual end client the most efficient way to proceed is to segregate accounts and open individual accounts in the books of the CCP; reconciliation will be largely facilitated and the level of operational risk eventually reduced ;
- About risk : we see as a positive arbitrage the fact to open individual accounts at the CCP in order to identify the positions of each clients (which is claimed to be burdensome) and the advantage that results to the buy side in terms of transparency and efficiency of controls that eventually reduces the overall risk;
- About cost: we are very concerned that clearing members may consider as non-profitable the provision of clearing or indirect clearing services to clients; we think that most of its results from the heavier constraints imposed by the banking regulations currently under way and fear that they may reach unintended negative consequences; we do not see that, except for a marginal increase in setup cost, the running cost of ISA should be higher than OSA; conversely we do see advantage for the clearing member to use OSA and we feel that it is detrimental to investor protection and at the cost of a higher risk on financial stability.

Hence, we urge regulators to be extremely attentive to the issue of ISA when implementing the central clearing obligation.]

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_1>

Q2. Do you agree with the proposed approach for the requirements related to default management? Do you think there are alternative level 2 requirements (compatible with the relevant insolvency regime situations and the level 1 mandate) that would achieve better protections?

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_2>

[We do not read the proposed approach as very helpful. Amundi has a strong view that the key to default management is portability; it can only be achieved in case of effective segregation through ISA and when a back-up procedure is available. We feel that the proposed analysis on OSA gross is not convincing and insist on the benefits of the immediate transfer of positions that ISA allows, especially on OTC markets. We encourage ESMA to work on the possibility to establish leapfrog payment in all member states and to take that point in consideration when assessing the “equivalence” of a third country CCP.]

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_2>

Q3. Do you agree that the proposed approach adequately addresses counterparty risk throughout the longer chain by ensuring an appropriate level of protection to indirect clients? If not, are there alternative approaches compatible with Level 1?

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_3>

[We agree with the proposed approach when applied to ETDs.]

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_3>

Q4. For longer chains, what other details (liquidation trigger and steps, flow and content of information, other) should be taken into account or what additional requirements or clarification should be provided in order to avoid potential difficulties when handling the default of a client or an indirect client facilitating clearing services?

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_4>

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<ESMA_QUESTION_RTS_INDIRECT_CLEARING_4>

Q5. Do you consider that the new provision assigning by default to the indirect client the choice of an omnibus indirect account following reasonable efforts from the client to receive an instruction is appropriate? If not, what other considerations should be taken into account?

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_5>

[Yes, Amundi shares the view that timely clearing is of paramount importance and that a default option will help not to block transactions. We read that the default choice is Omnibus account and we understand it as meaning OSA Net. it should be specified. We are concerned that the clearing member or the direct client the indirect client clears through should have procedures providing for an explicit confirmation of the type of arrangement made by default and for a rapid and efficient way to change and switch to other arrangements if asked to.]

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_5>

Q6. Do you consider appropriate that the collateral provided on top of the amount of margin the indirect client is called for is treated in accordance with the contractual arrangements?

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_6>

[In the case of ISA , EMIR provides explicitly for the transfer of all margins, including excess margin, to the CCP and we suggest that possibility to be offered to indirect clients as well. We fear that the indirect client will not be in a position to negotiate at par with the clearing member and/or its direct client providing indirect clearing services. We believe that the regulation should help the end client and require different options to be offered, one of which would be ISA and CCP receiving all margins.]

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_6>

Q7. In view of the different amendments described above, do you consider that this set of requirements ensures a level of protection with equivalent effect as referred to in Articles 39 and 48 of EMIR for indirect clients?

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_7>

[No. Amundi has expressed in its answer to question 1 above a clear view that the proposed approach is not satisfactory in the view of EMIR level 1 text.]

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_7>

Q8. Please indicate your answers to the cost-benefit survey?

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_8>

[As mentioned, Amundi does not anticipate to use indirect clearing to a large extent. It should be a small percentage of our derivative transactions, most likely a low single digit figure. Nevertheless, we would be disappointed not to have the same type of arrangements for the same type of instrument simply because the clearing is indirect. Conversely, we will not appoint a new clearer to cover a very small part of our business.]

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_8>

Q9. Do you have any comments on the draft RTS under EMIR not already covered in the previous questions?

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_9>

[We consider that the discussion on the balance to be achieved in terms of efficiency between quick resolution and recovery of CCPs is not yet decided. The RTS seems to take a view on that topic still under discussion.

Furthermore, the question of portability, which is an objective of EMIR level 1, is not properly addressed in the RTS.]

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_9>

Q10. Do you have any comments on the draft RTS under MiFIR not already covered in the previous questions?

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_10>

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<ESMA_QUESTION_RTS_INDIRECT_CLEARING_10>