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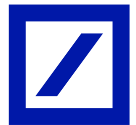

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Consultation on the margin period of risk for client accounts under EMIR

Dear Sir or Madam,

Deutsche Bank welcomes the opportunity to provide comments on ESMA's consultation on the margin period of risk for client accounts under the European Market Infrastructure Regulation (EMIR).

Overall, we agree that EMIR should be modified so that CCPs from equivalent jurisdictions are able to continue to offer clearing services on a cross-border basis. On this basis we support ESMA's proposed changes to EMIR to give EU CCPs the choice to offer clients clearing exchange traded derivatives a gross omnibus account with a one-day margin period of risk.

We acknowledge ESMA's efforts to make these changes to EMIR without increasing the risks that a reduced liquidation period could present to CCPs. However, as drafted, the RTS may require changes to intraday margin collection that would be unnecessary for the purposes of effective risk management, and could place onerous operational demands on CCPs and clearing members.

In particular, the following issues should be taken into consideration regarding the intraday collection of margin:

- Many CCPs in both the US and EU that currently offer gross omnibus accounts collect intraday margin on a net basis, and it is likely that this market practice will continue. This allows CCPs to collect sufficient financial resources to cover position liquidation periods intraday. In addition to being unnecessary from a risk management perspective, it would be operationally complex for clearing members to share changing client position data throughout the day for the purposes of CCPs calling intraday margin on a gross basis.

- It is not necessary to introduce a 120% materiality threshold at which point CCPs must collect intraday margin. The proposed threshold is arbitrary and does not reflect CCPs' existing risk management practices and policies. Furthermore, the draft RTS acknowledge that CCPs are able to define their own materiality thresholds. As a consequence CCPs should continue to define their own materiality thresholds.

- The requirement to calculate margin "at least every one hour" is feasible and appropriate if collected on a net basis and on the basis of CCPs' own definitions of what constitutes a material difference between previous and updated margin requirements.

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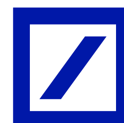
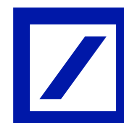


We hope our comments and suggestions are helpful. Please let us know if you have any questions on the issues raised, or if you would like to discuss any points further.

Yours Sincerely,

Daniel Trinder
Global Head of Regulatory Policy



Question 1: **Do you have any comment on the draft RTS in Annex 3?**

We support ESMA's proposal to amend the EMIR Regulatory Technical Standards in order to enable CCPs from equivalent jurisdictions to offer services on a cross-border basis. It is therefore appropriate that EU CCPs have the ability to offer gross omnibus accounts with a one-day MPOR to clients clearing exchange-traded derivatives. However, it is important that – as part of these changes – intraday margin collection by EU CCPs does not place unnecessary or onerous demands on CCPs or clearing members that could increase operational complexity and disrupt existing approaches to risk management.

Article 3(c)(iv) of the draft RTS requires that a CCP "*implements procedures to calculate for each account initial and variation margin requirements at least every one hour during the day and to collect the margins within one hour where the new margin requirement is higher than 120% of the updated available collateral*'.

The current market practice for many CCPs domiciled in both the US and EU that offer gross omnibus accounts is to calculate intraday initial and intraday variation margin on a net basis, and then collect that margin frequently on a net basis, i.e., when it is above CCP risk thresholds.

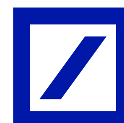
While Article 3 of the draft RTS does not specify whether the calculation and subsequent collection of intraday margin is to be undertaken by a CCP on a gross or net basis, it is likely that – in line with current market practice – CCPs will continue to collect intraday margin from clearing members on a net basis.

Calling intraday margin on a net basis allows CCPs to collect sufficient financial resources to cover position liquidation periods as both market conditions and counterparties' positions change throughout the day. Current market practice is that clearing members post additional margin for their clients to the CCP on a net basis if they are called upon by the CCP to do so. Clearing members then provide CCPs with an end-of-day position file which identifies clients' positions for the purposes of calculating margin requirements on a gross basis for the next trading day. This system of net intraday margin collection coupled with gross end-of-day position reports protects CCPs against exposures that change during the day while being operationally practical for CCPs, clearing members, and their clients to implement. It is not necessary to alter the current intraday margin collection practices that have been adopted by many US and EU CCPs' risk committees under the existing regulatory frameworks for those CCPs, and that are calibrated to ensure CCPs collect enough margin to manage the risks they face intraday.

Collecting gross intraday margin is therefore unnecessary from a risk management perspective. Furthermore, moving towards a gross intraday margin collection process would be technically and operationally complex. It would require that CCPs, clearing members, and clients develop costly new systems and processes in order to share data relating to clients' changing positions throughout the day. It is important to understand that the proposed changes to the EU margin rules will require that CCPs and clearing members revisit and change their risk management policies, and that these changes could increase clearing members' credit and liquidity risks. If these changes are to be reasonably and safely implemented, it is important that the rules for intraday margin collection are not too complex. However, if intraday margin is collected gross on an hourly basis and subject to thresholds that arbitrarily increase the frequency of margin collection (see our response to Q2), then it would become more difficult and resource-intensive for CCPs and clearing members to continually calibrate their risk models and exposures.

With regards to the frequency of intraday margin collection, US and EU CCPs already calculate and collect margin on a frequent basis throughout the day, and often do so more frequently than hourly. This means that the requirement to calculate net margin "at least every one hour" as specified by the draft RTS is already being observed in the market, in many instances. So long as intraday margin is collected on a net basis and on the basis of CCPs' own definitions of what constitutes a material difference between previous and updated margin requirements (see our response to Q2), an hourly minimum frequency for CCP intraday margin calls is both appropriate and feasible.

Question 2: **Do you agree that intraday margins should be called when the variation when the new margin requirement is higher than 120% of the updated available collateral, unless the margin call**



is not material on the basis of predefined thresholds defined by the CCP? Please provide quantitative data on the potential costs that this condition will imply and the reasons for those.

We do not agree. The 120% threshold should be removed and CCPs should be left to define their own materiality thresholds. This is an arbitrary and one-size-fits-all threshold that is not appropriate in all instances and does not reflect CCPs' existing risk policies.

CCPs maintain risk management policies that are approved by their risk committees. Furthermore, CCPs that are authorised to offer clearing services under EMIR already meet the prudential and governance requirements specified in that regulation, and the risk management standards and policies that they set are therefore consistent with their requirements under EMIR. These CCP policies include thresholds that determine when the collection of intraday margin is required. The thresholds that CCPs set are appropriate to the specific products they clear, and they are also reflective of the particular credit and risk profiles of their members, from which CCPs already collect margin intraday.

Conversely, the prescribed 120% threshold is a blunt instrument that does not reflect the specific conditions and levels at which CCPs currently call intraday margin from their members. It is important to acknowledge that CCPs are capable of assessing and calling intraday margin on the basis of their own definitions of the materiality of a margin shortfall.

The existing capacity of CCPs to effectively manage changing intraday conditions and call margin accordingly is acknowledged in the draft RTS. Article 3(c)(iv) in the draft RTS states that 120% threshold must be observed "*unless the margin call is not material on the basis of predefined thresholds defined by the CCP*." Similarly, paragraph 17 of the consultation paper notes that "*if the result of the new margin call is not significant, imposing its collection would create undue operational burden and costs. Therefore, the CCP should define a materiality threshold for calling extra margin.*"

As a consequence, CCPs should be left to a) determine their own materiality thresholds, and b) collect intraday margin when the difference between the previous and new requirements is material per those thresholds.