



Comments of Deutscher Sparkassen- und Giroverband on ESMA's Consultation Paper on the clearing obligation for financial counterparties with a limited volume of activity

05 September 2016

Introductory Remarks

The German Savings Banks Association Deutscher Sparkassen- und Giroverband (DSGV) is grateful to be given the opportunity to participate in ESMA's consultation on the clearing obligation for financial counterparties with a limited volume of activity. The DSGV represents the Savings Banks Finance group, which includes, among others, 403 Savings Banks, 8 Landesbanken and the DekaBank.

Question 1: To which category of counterparties does your organisation belong: (1) in the context of the 1st Commission Delegated Regulation on the clearing obligation, and (2) in the context of the 2nd Commission Delegated Regulation on the clearing obligation?

Answer

Our member institutions belong to following categories:

- For the purpose of the clearing obligation for IRS according to RTS (EU) 2015/2205: categories 1 and 2
- For the purpose of the clearing obligation for CDS according to RTS (EU) 2016/592: category 2
- [For the purpose of the clearing obligation for IRS according to RTS (EU) 2016/1178: categories 1 and 2]

Question 2: If you offer clearing services, please provide evidence on the constraints that would prevent you from offering clearing services to a wider range of clients.

Answer

The main constraint that prevents banks in the EU from offering clearing services to a wider range of clients stems from the fact that the requirements set by the leverage ratio under Article 511 of the CRR disincentivise a broad offering of client clearing services. CCP Clearing in Europa is predominantly based on the principal-to-principal model which constitutes a back-to-back transaction between the clearing broker and its client. The clearing member establishes back-to-back transactions by entering into a derivative transaction with the CCP and a mirrored transaction of identical economic content with its client. Through this chain of transactions, the client gains access to the CCP and is enabled to comply with its clearing obligation under EMIR.

If, according to that, the clearing member would have to fully reflect these back-to-back transactions within the leverage ratio denominator without any deductions, the capital charges therefrom will act as a limiting factor for the offering of client clearing services. The leverage ratio's current approach to capturing the potential future exposure (PFE) of a (back-to-back) transaction with a client has to be regarded as excessive because collateral posted as initial margin (IM) by the client to the clearing member is not permitted to reduce the clearing member's PFE.

Owing to the large volume and high market value of derivative transactions originating in client clearing many banks in the EU that otherwise would have intended to offer client clearing services refrain from doing so due to the terms of the required leverage ratio.

In consequence, banks in the EU are withdrawing from client clearing, leaving this business to a small number of large market participants with a corresponding increase in systemic risk. Many small and medium-sized businesses that wish to enter into derivative transactions can no longer find a provider procuring them access to CCP clearing. This is likely to result in further concentration of the market for derivative transactions, along with a decline in hedging transactions despite their importance for the real economy.

It is therefore vital to exclude derivative transactions originated solely for the purpose of client CCP clearing from the calculation of the leverage ratio, e. g. by means of offsetting of a clearing member's PFE with the IM posted by clients on whose behalf it clears derivative transactions. Such a reduction is permitted under both the current exposure method (CEM) and the standardised approach for measuring counterparty credit risk exposures (SA-CCR) as applied for risk-based capital purposes.

Against this background, a differentiated approach towards the leverage ratio and the SA-CCR as discussed in the EBA Report pursuant to Article 511(3) of the CRR^{*} and the BCBS 365 consultation paper[†] that takes duly into account the risk mitigating effects of initial margin obtained by the clearing broker should be further pursued.

Upcoming legislative proposals for a revised Capital Requirements Regulation (CRR II) would therefore have to provide for a rule wherein a clearing member's exposure resulting from client transactions is granted a privileged treatment under the leverage ratio. Otherwise, the leverage ratio will continue to adversely impact the ability of clearing members to provide client clearing services, resulting in increased concentration in the availability of client clearing, which would counteract the G20 mandate to increase the use of central counterparties as a means to mitigate systemic risk in derivatives markets.

^{*} EBA Report on the Leverage ratio requirements under Article 511 of the CRR (EBA-Op-2016-13) as of 3 August 2016 p. 24.

[†] BCBS Consultative Document "Revisions to the Basel III leverage ratio framework" as of 25 April 2016 p. 8.

Question 3: Have you already established clearing arrangements (1) for interest rate swaps? (2) for credit default swaps? If not, please explain why (including the difficulties that you may be facing in establishing such arrangements) and provide an estimation of the time needed to finalize the arrangements.

Answer

Please cf. our answer to Question 2.

Question 4: Please provide information and data you may have that could complement this analysis on the level of experience and preparedness of financial counterparties with CCP clearing.

Answer

./.

Question 5: Do you agree with the proposal to keep the definitions of the categories of counterparties as they currently are and to postpone the date of application of the clearing obligation for Category 3? If not, which alternative would achieve a better outcome?

Answer

./.

Question 6: Do you agree with the proposal to modify the phase-in period applicable to Category 3, by adding two years to the current compliance deadlines?

Answer

./.

Question 7: Do you agree with the proposal to modify the three Commission Delegated Regulations on the clearing obligation at the same time?

Answer

./.
