



European Securities and
Markets Authority

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Subject: Response to Technical Standards for the Regulation on OTC Derivatives,
CCP's and Trade Repositories

Dear Sir, Madam,

We write this letter to respond to the discussion paper by the European Securities and Markets Authority (ESMA) on the Draft Technical Standards for the Regulation on OTC Derivatives, CCP's and Trade repositories.

Holland Clearing House N.V. (HCH) is a central counterparty for derivatives and delivers CCP services for the derivatives Multilateral Trading Facility (MTF), TOM MTF. HCH is regulated and supervised by the Netherlands Authority for the Financial Markets (AFM) and De Nederlandsche Bank ((DNB), the Dutch Central Bank.

HCH supports in general the OTC regulatory reform and in particular a European regulatory framework for CCP's. Our comments are limited to the following questions:

*Q28 What are your views on the possible organisational requirements described above?
What are the potential costs involved for implementing such requirements.*

HCH believes that the information (including Rule Book, Regulations etc.) on a CCP's website should only be available in one language accepted by its clearing participants. HCH is not convinced of the necessity to have the information as well available in one of the official languages of the Member State where the CCP is established. The costs of bilingual information should be avoided if the clearing participants accept that the information is available in one language commonly used in the financial sector.

Q30 What are your views on the possible records CCP's might be required to maintain?

The records should be retained in a medium accessible and readable for future reference, for this purpose the contract records do not have to be searchable by every field as indicated in 78 (b). A more relaxed set of search criteria will avoid that recordkeeping becomes extraordinary expensive.

Q31 What are your views on the modality for maintaining and making available the above records? How does the modality of maintaining and making available the records impact the costs of record keeping?

HCH questions the necessity of a 10 years retention period. HCH is of the opinion that the retention period should be in line with the retention period of 5 years as mentioned in the Markets in Financial Instruments Directive.

Q32 What are your views on the possible requirements for the business continuity and disaster recovery plan and in particular on the requirements for the secondary site? Would it be appropriate to mandate the establishment of a third processing site, at least when the conditions described above apply? What are the potential costs and time necessary for the establishment of a third processing site and for immediate access to a secondary business site?

HCH believes that the benefits of a third processing site do not weigh out the costs and certainly not in the light of remote access working arrangements which are nowadays common practice within the financial industry.

Q34 Are the criteria outlined above appropriate to ensure that the adequate percentage above 99 per cent is applied in CCP's margin models? Should a criteria based approach be complemented by an approach based on fixed percentages? If so, which percentages should be mandated and for which instruments?

HCH thinks that it is not possible to answer this question without knowing which liquidation period will be applied. The confidence interval itself only has relevance if the population (look back period) and liquidation period is known.

As a general observation HCH would like to express its concerns about the lack of clarity with regards to the eligibility criteria for clearing participants. HCH is of the opinion that the admission criteria constitute the first line of defence for a CCP. Having a mandatory set of prudency admission criteria that ensure that only regulated and well capitalized high quality entities can become a clearing participant, is probably at least as important as determining a confidence interval.

Further to this; there is already a tendency to compete on margin requirements between the various CCP's. It's therefore often the case that General Clearing Members are more conservative than CCP's if it comes to margin requirements. By allowing non-financial institutions to become a Clearing Participants, this buffer of (often more conservative and better capitalized) General Clearing Participants, will disappear.

And also; if non-financial institutions are allowed to become Clearing Participants and connect directly to a CCP, this also creates a disconnect in the European level playing field concept. Banks will have to maintain additional capital under Basel III with regards to their exposure to a CCP whereas non-financial institutions do not seem to have similar capital requirements.

Q35 Taking into account both the avoidance of procyclicality effects and the need to ensure a balance distribution of the financial resources at the CCP disposal, what it is in your view the preferred option for the calculation of the look back period.

HCH believes that procyclicality cannot be totally avoided. However, as long as a minimum scanning array is applied (regardless of how low the current volatility is) the procyclicality can be avoided to a certain extent. This bottom scanning array has to be determined per product (class) and can be based on observations in the past. For instance, one could argue that for equity options the minimum scanning range of the underlying value is 15% at all times, but if the volatility of the underlying value gets above a certain threshold, the scanning array will increase accordingly. The 15% minimum will serve as a buffer in case an event causes a sudden change in volatility.

Q41 Should the CCP maintain a minimum amount of liquid assets in cash? If so, how this minimum should be calculated?

HCH thinks that it would be more prudent to have assets in high end government bonds that are readily convertible into cash by means of a repo. Unless the cash can reside at a central bank account, it will only introduce additional counterparty risk. In the opinion of HCH Member States should be obliged to offer CCP's direct access to central bank facilities, like holding its own cash and the cash deposited as collateral by its clearing participants with central banks and that central banks provide liquidity for settlements.

Q44 Do you consider that financial instruments which are highly liquid have been rightly identified? Should ESMA consider other elements in defining highly liquid collateral in respect of cash of financial instruments? Do you consider that the bank guarantees or gold which is highly liquid has been rightly identified? Should ESMA consider other elements in defining highly liquid collateral in respect of bank guarantees or gold?

HCH strongly believes that the regulator should be as flexible as possible if it comes to acceptable collateral. As long as the applicable haircut is in accordance with the liquidity and the volatility of the collateral, a wider range of instruments should be considered. This will help to minimize liquidity issues at clearing participants which in turn can avoid market disruptions. Blue chip equities for instance, could be regarded as good quality collateral as long as a conservative haircut is applied.

Q55 Do you consider that the elements outlined above would rightly outline the framework for determining the highly secured arrangements in respect of which financial instruments lodged by clearing members should be deposited? Should ESMA consider other elements? Please justify your answer.

HCH believes Member States should be obliged to offer CCP's direct access to settlement platforms and securities depositories, in order that CCP's don't have to use commercial banks as settlement agents and custodians which eliminate the exposure of CCP's to a default of such service providers.

We thank ESMA for the opportunity to comment on the Draft Technical Standards for the Regulation on OTC Derivatives, CCP's and Trade repositories.

Yours sincerely,
Holland Clearing House N.V.



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