

PRESS RELEASE

ESMA calls for modification of UCITS Directive

The European Securities and Markets Authority (ESMA) has published an [Opinion](#) to the European Union (EU) institutions on the impact of EMIR on UCITS. In the opinion, ESMA calls for a modification of the UCITS Directive to take into account the clearing obligations for certain types of over-the-counter (OTC) financial derivative transactions under EMIR.

Indeed, under EMIR, certain OTC financial derivative transactions are subject to the clearing obligation. Therefore, the question arises as to how the limits on counterparty risk in OTC financial derivative transactions that are centrally cleared should be calculated by UCITS and whether UCITS should apply the same rules to both OTC financial derivative transactions that are centrally cleared and exchange-trade derivatives (ETDs).

ESMA believes that the UCITS Directive should no longer distinguish between OTC financial derivative transactions and ETDs. Instead, the distinction should be between cleared and non-cleared OTC financial derivative transactions. For OTC financial derivative transactions that are not centrally cleared, ESMA is of the view that there is no need to modify the UCITS Directive and the current counterparty risk limits of Article 52 of the UCITS Directive should continue to apply.

Steven Maijor, ESMA Chair, said:

“The clearing obligation under EMIR has a significant impact on the calculation of counterparty risk of cleared OTC financial derivative transactions by UCITS which cannot be appropriately resolved under the current UCITS Directive. ESMA therefore invites the EU institutions to consider amending the UCITS Directive to make it more compatible with the clearing obligation under EMIR.”

ESMA's Opinion

ESMA's opinion is that counterparty risk limits should be calibrated to the different types of segregation arrangements taking into account elements such as the portability of the position in the case of a default of the clearing member. In particular, ESMA believes that under individual segregation, UCITS should not apply counterparty risk limits to clearing members whereas under omnibus client segregation UCITS should apply some counterparty risk limits.

Moreover, ESMA believes that UCITS' counterparty risk limits to EU CCPs and some non-EU CCPs recognised by ESMA should take into account the relatively low counterparty risk of these entities.

Background information

In July 2014, ESMA published a discussion paper on the calculation of counterparty risk by UCITS for OTC financial derivative transactions subject to clearing obligations. That discussion paper distinguished between different clearing arrangements. For each of those clearing arrangements, ESMA analysed the impact of a default of the clearing member and the client for the calculation of the counterparty risk by UCITS. ESMA also published a [feedback statement](#) on the discussion paper.



Notes for editors

- [2015/880](#) ESMA Opinion to the European Union (EU) institutions on the impact of EMIR on UCITS
- [2015/881](#) Feedback statement on the discussion paper
- ESMA is an independent EU Authority that was established on 1 January 2011 and works closely with the other European Supervisory Authorities responsible for banking (EBA), and insurance and occupational pensions (EIOPA), and the European Systemic Risk Board (ESRB).
- ESMA's mission is to enhance the protection of investors and promote stable and well-functioning financial markets in the European Union (EU). As an independent institution, ESMA achieves this aim by building a single rule book for EU financial markets and ensuring its consistent application across the EU. ESMA contributes to the regulation of financial services firms with a pan-European reach, either through direct supervision or through the active co-ordination of national supervisory activity.

Further information:

Livia Vosman

Communications Officer

Tel: +33 (0)1 58 36 65 27

Mob: +33 6 78 38 12 56

Email: press@esma.europa.eu