



European Multilateral Clearing Facility N.V.

ESMA
Rue de Grenelle 103
75007 Paris
France

Amsterdam, 19 March 2012

Dear madam, dear sir,

Reference is made to the discussion paper dated 17 February 2012 on the draft technical standards for EMIR. We welcome this opportunity to give our comments in respect of the draft RTS and thank ESMA for providing this opportunity.

We support the detailed comments made in a separate submission prepared by the European Association of Clearing Houses (EACH) on this subject. We have actively participated in this process.

In addition please find below our replies to some of the questions raised in this document, as well as some other observations. Kindly note that we have concentrated on the sections pertaining to CCPs. If questions are not addressed by us, this means that we do not have a particular view on the topic in question.

Question 28/29: The wording means that we must translate all our rules and regulation in Dutch. We wish to point out that we feel this a considerable regulatory burden and that we must raise some doubts as to the immediate benefits of such a translation for our clients or the markets we serve. We are tempted to believe that the members of the general public wishing to study CCP rules will usually have a sufficient command of the language(s) commonly used in the financial sector. We would therefore welcome a motivation for this requirement. We also wonder whether it could be considered more suitable to arrange for the translation requirement on a member state level.

Question 30/31: We suggest to make more clear which records are expected to be available OL-RT and by which search criteria these must be accessible for a given period after production date versus more dormant record keeping for which perhaps less stringent search criteria and longer retrieval periods may be acceptable.

Question 34: We welcome the idea to set a minimum percentage for the confidence level in order to create/maintain a (more) level playing field with regards to risk management. However since measurement of the 99% confidence interval is not defined in the text, the playing field might not become any more level. We would therefore welcome clarity on the measurement of the confidence interval i.e. is it measured on a product basis, a portfolio basis or a day basis?



European Multilateral Clearing Facility N.V.

Question 35: Margins based on look-back periods of 10 year seem to imply that the company and its activities and risk profile, which form the basis for the price of the shares or other instruments issued by it, remain comparable over such a period. We wonder whether this implied statement can be supported by research in any way.

Question 37: If the required confidence level is not reached, this is an issue in light of paragraph 158 leading to a "mechanically forced" increase of margin requirements. This might lead to an unwanted procyclical effect on the overall margin requirements. When the confidence level is set far above the 99% level, this becomes more likely an issue.

Page 30: The statement in paragraph 109 seems not to agree with the gist of article 41A of EMIR. The latter article addresses diversification of funding sources (liability side), whilst the paragraph 109 uses the word "exposure", which then seems to include both liability side and asset side products. We wonder whether this section can be drafted with more precision.

Question 41: This question seems to be related to question 52. We believe that CCPs should make investments in accordance with investment policies, as prescribed. Such policies, as well as relative regulatory prudential requirements, must set (very low) limits on placing cash with commercial banks on an unsecured basis. Our answer to question 52 is then "most definitively, and quite low amounts". However, when securing or collateralizing cash balances, usually government bonds will be provided to the CCP. This means that a minimum amount of cash as intended in question 41 will mean the bonds must be returned to release the cash, or liquidated in case the commercial bank is unwilling or unable to repay the cash deposits.

Page 31: We believe that the requirement of skin in the game is linked to ownership and governance of a CCP. In case of user owned CCPs the question can be reduced to the question of denomination for bookkeeping purposes because the clearing fund and the capital and the (retained) earnings of the CCP are all in a sense comparable as they are all "sourced" from the same circle of owners/users, and as such have a mutual character by definition. This is not the same for CCPs which are not user owned. Setting the percentage could then function as a regulatory instrument to steer towards "preferred" governance.

Page 33: We feel that paragraph 120 should also deal in more detail with the way haircuts can interact with risk categorization of various forms of collateral. Higher risk can generally be countered by applying higher haircuts, and we feel this may be more emphasised.

Question 50: We are warmly supporting the view that a CCP must have the capability of demanding a certain percentage of collateral in cash (or other instruments prescribed by the CCP) and that a CCP must be able to use such resources for liquidity. Such procedures could address the concern which is at the heart of article 41A EMIR. The justly motivated use of the resources, for example to support central bank money settlement, should be employed to determine the percentage.



European Multilateral Clearing Facility N.V.

Question 57: The definition of back testing as given in paragraph 145 does not refer to the liquidation period stated in paragraph 92. We think it is important to back test the performance of the margin requirements versus the liquidation period rather than versus a not yet defined "specified period of time".

The definition of back testing does not state whether the positions are unchanged over the period of the back-test ("clean" back test) or can change during this period ("dirty" back test). As this is not further defined, can we assume that both approaches are deemed as valid by ESMA? We would welcome this approach as for cash products a clean back test might be preferable, whereas for derivatives positions a dirty back test might be preferable.

Question 59: In paragraph 151 two types of back tests are defined: in 151(a) the "standard" back test as defined in paragraph 145 and in 151(c) back tests to assess the working of the margin model. We wonder whether which types of back tests should be taken into account for the interpretation of the back testing of the margin models as stated in paragraph 158(a) and (b).

With kindest regards

European Multilateral Clearing Facility N.V.

Arnoud Siegmann
Risk Management

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Theo Houwink ten Cate
Legal & Compliance

A handwritten signature in blue ink, featuring a large, circular initial 'T' followed by a series of connected, flowing letters.