Amundi's answer to the Consultation Paper on ESMA's Guidelines on CCPs conflicts of interest management

(August 24, 2017)

Amundi is the largest European asset manager by the size of assets under management (AuM) and ranks in the top 10 worldwide. Following the integration of Pioneer Investments, it now manages over 1.3 trillion euros of assets across six main investment hubs. Established in 37 countries, Amundi offers its clients in Europe, Asia-Pacific, the Middle-East and the Americas a wealth of market expertise and a full range of capabilities across the active, passive and real assets investment universes. Headquartered in Paris, and listed since November 2015, Amundi is the 1st asset manager in Europe by market capitalization and the 5th globally.

In Amundi's eyes EMIR largely participates to the construction of a fair, efficient and safe market for derivatives in the EU. We use derivatives to hedge or expose portfolios that we manage and consider that they are very effective tools to better serve the interest of our client investors and manage the risk of their portfolio according to the investment strategy they have chosen. The reinforcement of CCPs is a key part of EMIR regulation. From the start, Amundi stressed that CCPs would substitute to the individual counterparty risk that we had when negotiating bilateral trades a new type of risk resulting from the concentration in the hands of a few CCPs of systemic importance; we insisted that regulators should take all measures to ensure the safety of the CCPs. We see the production of the proposed guidelines as one of the means to achieve this objective of safe CCPs and are thankful for ESMA to offer an opportunity to express our view as a buy side actor.

Our key remarks can be summarized as follows:

- CCPs should consider all participants, be they clearing members, direct or indirect clients; we agree that the mapping of potential conflicts of interests be extended to all those who use the services of a CCP;
- Conflicts of interest rules should not prevent possibilities for end investors who are not clearing members but are known to the CCP to participate to the governance and be associated in some decision processes of CCPs through various committees (methodology and changes in margin calculations for example);
- Guidelines should leave room for proportionality in order to apply according to the spirit and not their letter of the regulation and adapt to specific situations; we recommend guidelines to avoid being too prescriptive;

- Keeping in mind that the supervision of CCPs is placed under the eyes of a College of supervisors, ESMA should not fear differences of interpretation; consequently the introduction of proportionality in the matter of CCPs should be much larger than it is in the proposed guidelines;
- More specifically, we notice that the definition of "relevant persons" is far too large to be workable and we ask for clarification and proportionality in it.

Please find below Amundi's response to the specific questions of the consultation paper.

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Q1. Do you agree with the definition and with the scope here above described?

§19 in the guidelines lists the persons with whom a CCP could have potential conflicts of interests. This list is considered as a minimum check list, but it is very large indeed. We would like to comment on the following points:

- Amundi is ready to participate to a CCP committee or Board and thinks that it is positive to get the view of investors in such groups; we do not want, however, to be in a position that would be disadvantageous as a result of rules of management of conflicts of interests; more precisely, we think that results of the discussions about margin calculation methodology and risk management of a CCP concern all clients and should be published, thus reducing the confidentiality obligations of participants to the Committee or Board; the current wording of the guidelines will probably lead CCPs to implement strict confidentiality rules that could be excessive and counterproductive;
- The definition of "relevant person" in §12 is too broad and goes too far against the right for privacy; furthermore, it is not sure that "second degree" has the same meaning in all EU Member States (knowing that in France it is different according to civil or canonic law); the list seems to include all staff, without differences according to their level of involvement in sensitive processes, plus their extensively defined family, domesticity as well as non-staff individuals who participate to committees or act as consultants; it needs clarification, proportionality and a drastic reduction of scope to be credible;
- The mention conflicts "between the CCP and a clearing member' client known to the CCP" and of conflicts "between clearing members, clients or between a clearing member and a client" are very important to us, as we act as client and, in the case of individual segregation, client known to the CCP; we expect that the rules for the management of such conflicts of interest may help with existing difficulties; for example, the fact for a Clearing member to refuse collateral that is eligible at the CCP evidences a conflict of interest between the CCP's CM and the CM's client where the CCP cannot be passive.

Q2. Do you think that the CCPs should implement such organisational arrangements to avoid an inappropriate use of confidential information?

If we agree with the "need to know" principle, we are very concerned that §23 will make it impossible for end clients to participate to the risk committee of a CCP, for example, where their voice should be heard. ESMA should add after the words "specific confidentiality agreement" a phrase such as " that would detail the level of confidentiality required for each type of item and decision" in order to introduce proportionality through levels.

Q3. Do you consider that the proposed rules of conduct as appropriate to limit the risks of conflicts of interest?

In § 26, we would recommend to determine a category of "concerned staff" and not apply blindly the same level of requirement for all employees. The proposed guidelines should be limited to this "concerned staff". The last point in the same § is not clear : does it cover the case of a future employment and, consequently, does it imply to introduce costly limitations in the possibility for a staff member to join a competing or potentially conflicting entity? If it only aims at preventing simultaneous dual employment we agree, if not we see an issue on the cost involved and the risk for future litigation.

Q4. Do you believe that the CCPs should apply such rules concerning the gifts?

We see 4.5.2.3 as standard practice and support the idea of a threshold that should be sufficiently high to allow usual rules of politeness.

Q5. Are you in favour that CCPs should adopt the above clear rules on the ownership of the financial instruments?

It is not appropriate to have one standard procedure for all members of the staff of a CCP. There must be a classification of staff and we suggest 3 levels:

- top management and staff having access to strategic decisions,
- staff with access to sensitive information concerning either the CCP or its partners, and ultimately
- a third category for employees that happen to work in a CCP but do not see anything of the positions of clients and do not participate to relevant decision making or supervisory activities.

Then we could read § 31 as a list of suggestions that would, or not, apply to one category or another. Actually, the proportionality principle is introduced in this § when addressing transactions on securities of entities in the CCP's group that obviously could only make sense for a limited category of staff. More generally, it is not for guidelines to be prescriptive in that field. Their objective should be to raise an issue and offer different examples of good practices. Good practices commented by ESMA is the way investment firms have built their own procedures on conflicts of interest or compensation, over time,

and it seems that ESMA has reached its ambition to have a sufficiently harmonized framework.

Q6. Do you consider that the CPP staff should be trained on the applicable law and policies concerning the conflicts of interest as above described?

We consider staff training as a standard practice in the management of conflicts of interests. We agree that the frequency for up-date should not be prescribed. Experience shows that an update on an annual is not appropriate and every 3 year would be a more adequate frequency.

Q7. Do you agree on the above-proposed rules?

This involvement of the Board seems standard practice that we consider as fit for CCPs.

Q8. Do you agree on the above specific organisational arrangements a CCP pertaining to a group should adopt to avoid and mitigate the risk of conflicts of interest?

Clearly, the fact to belong to a group increases the risks for conflicts of interests and requires a specific attention. However, guidelines should not be too prescriptive in that field as the structure and organization of groups differ. There is a need for flexibility and NCAs should be required to have a holistic view to assess the regulatory compliance. It is not a ticking of all the boxes that will prevent conflicts interests or ensure proper management. The guidelines should, as a consequence, provide examples of good practices and the word “should “ should be in most cases replaced by ”could consider” giving some possibility for the competent authority to adjust. Supervision of CCPs being in the hand of a College of supervisors, we can trust that the risk of diverging interpretations will be very limited.

Q9. Do you think that the above-described procedure is appropriate to investigate, to solve, to monitor and to record the conflicts of interest?

We read in §56 that the listed measures “should be envisaged” by the CCPs and we agree that they are good practices that could be relevant in some or many circumstances but which are not applicable in all cases. Under this reserve about proportionality, the proposed procedure seems to be standard practice that we consider as fit for CCPs.

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