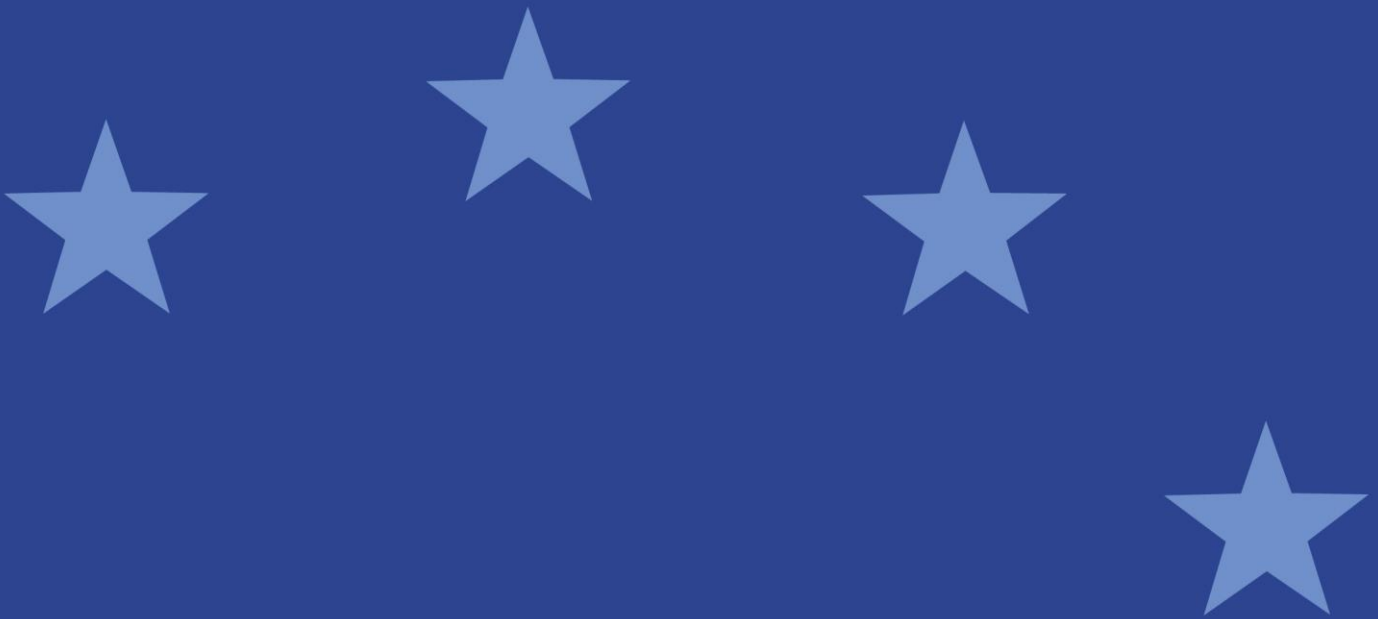




European Securities and
Markets Authority

Reply form for the consultation paper on indirect clearing arrangements under EMIR and MiFIR



5 November 2015

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the questions listed in this Consultation Paper on Indirect clearing arrangements under EMIR and MiFIR, published on the ESMA website.

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA_QUESTION_RTS_INDIRECT_CLEARING_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

- if they respond to the question stated;
- contain a clear rationale, including on any related costs and benefits; and
- describe any alternatives that ESMA should consider

Naming protocol

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA_ RTS_INDIRECT_CLEARING_NAMEOFCOMPANY_NAMEOFDOCUMENT.

E.g. if the respondent were XXXX, the name of the reply form would be:

ESMA_RTS_ INDIRECT_CLEARING_XXXX_REPLYFORM or

ESMA_RTS_ INDIRECT_CLEARING_XXXX_ANNEX1

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

Deadline

Responses must reach ESMA by **17 December 2015**.



All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input/Consultations'.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading [Legal Notice](#).



Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_RTS_INDIRECT_CLEARING_1>

<ESMA_COMMENT_RTS_INDIRECT_CLEARING_1>

Questions from the consultation paper

Q1. Do you agree with the proposed approach to require the choice between an omnibus indirect account and a gross omnibus indirect account with margin at the level of the CCP?

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_1>

[No. AFG cannot follow ESMA's conclusion to modify the terms of the choice, as defined in article 39 of EMIR, to be offered by CCPs and Clearing Members to their clients between Omnibus (OSA) or segregated accounts (ISA). Article 39 further notes in §6 that excess margin are transferred to the CCP in case of ISA. As pointed out by ESMA in § 29 of the consultation document, clients demand more segregation for OTC derivatives than for ETD. We expected ESMA to take it as a clear indication that ISA has to be kept as the most adequate solution and should be mandatorily offered to clients (that is level 1 text) and indirect clients. In §30 ESMA takes into account the point that some respondents to the MIFIR consultations, which related to ETD, feared that segregation would bring excessive complexity and, hence, excessive cost. Facing this point we would suggest that ESMA, as the competent authority, take the view to find a solution that would favour the interest of investors protection and work on solutions to circumvent or reduce "factors that may limit the take up" of ISA especially for OTC transactions.

There are some points worthwhile mentioning:

- About complexity: we feel that when information is required to be transferred to CCP at the level of each individual end client the most efficient way to proceed is to segregate accounts and open individual accounts in the books of the CCP; reconciliation will be largely facilitated and the level of operational risk eventually reduced ;
- About risk : we see as a positive arbitrage the fact to open individual accounts at the CCP in order to identify the positions of each clients (which is claimed to be burdensome) and the advantage that results to the buy side in terms of transparency and efficiency of controls that eventually reduces the overall risk;
- About cost: we are very concerned that clearing members may consider as non-profitable the provision of clearing or indirect clearing services to clients; we think that most of its results from the heavier constraints imposed by the banking regulations currently under way and fear that they may reach unintended negative consequences; we do not see that, except for a marginal increase in setup cost, the running cost of ISA should be higher than OSA; conversely we do see advantage for the clearing member to use OSA and we feel that it is detrimental to investor protection and at the cost of a higher risk on financial stability.

Hence, we urge regulators to be extremely attentive to the issue of ISA when implementing the central clearing obligation.

However, we agree with the approach of promoting a gross omnibus indirect account with new requirements to compensate for other protections of the indirect client that have been reduced by the change in the choice of account. The security of the indirect client having a gross omnibus account seems improved thanks to the information requirement on the positions of the indirect client to the CCP (i.e. a clear identification of position of indirect clients) and the requirement that each margin is calculated separately for each indirect client which will facilitate the safe return of the collateral to the indirect client in case of default.

We consider that there is a weakness of the gross omnibus indirect account because the excess margin is kept at the Client level subject to the terms of the indirect clearing arrangement, whereas in the individual segregation model, excess margin is to be transferred to the CCP pursuant to the terms of EMIR. Therefore, we consider that additional regulatory requirements should be enacted to ensure that excess margin will be as limited as possible.]

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_1>

Q2. Do you agree with the proposed approach for the requirements related to default management? Do you think there are alternative level 2 requirements (compatible with the relevant insolvency regime situations and the level 1 mandate) that would achieve better protections?

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_2>

[]

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_2>

Q3. Do you agree that the proposed approach adequately addresses counterparty risk throughout the longer chain by ensuring an appropriate level of protection to indirect clients? If not, are there alternative approaches compatible with Level 1?

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_3>

[We agree with the proposed approach when applied to ETDs.]

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_3>

Q4. For longer chains, what other details (liquidation trigger and steps, flow and content of information, other) should be taken into account or what additional requirements or clarification should be provided in order to avoid potential difficulties when handling the default of a client or an indirect client facilitating clearing services?

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_4>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_4>

Q5. Do you consider that the new provision assigning by default to the indirect client the choice of an omnibus indirect account following reasonable efforts from the client to receive an instruction is appropriate? If not, what other considerations should be taken into account?

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_5>

[Yes, AFG shares the view that timely clearing is of paramount importance and that a default option will help not to block transactions. We read that the default choice is Omnibus account and we understand it as meaning OSA Net. it should be specified. We are concerned that the clearing member or the direct client the indirect client clears through should have procedures providing for an explicit confirmation of the type of arrangement made by default and for a rapid and efficient way to change and switch to other arrangements if asked to.]

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_5>

Q6. Do you consider appropriate that the collateral provided on top of the amount of margin the indirect client is called for is treated in accordance with the contractual arrangements?

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_6>

[In the case of ISA , EMIR provides explicitly for the transfer of all margins, including excess margin, to the CCP and we suggest that possibility to be offered to indirect clients as well. We fear that the indirect client will not be in a position to negotiate at par with the clearing member and/or its direct client providing indirect clearing services. We believe that the regulation should help the end client and require different options to be offered, one of which would be ISA and CCP receiving all margins.]

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_6>

Q7. In view of the different amendments described above, do you consider that this set of requirements ensures a level of protection with equivalent effect as referred to in Articles 39 and 48 of EMIR for indirect clients?

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_7>

[No. AFG has expressed in its answer to question 1 above a clear view that the proposed approach is not satisfactory in the view of EMIR level 1 text.]

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_7>

Q8. Please indicate your answers to the cost-benefit survey?

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_8>

[Some AFG members do not anticipate using indirect clearing to a large extent. It should be a small percentage of their derivative transactions, most likely a low single digit figure. Nevertheless, they would be disappointed not to have the same type of arrangements for the same type of instrument simply because the clearing is indirect. Conversely, they will not appoint a new clearer to cover a very small part of their business.]

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_8>

Q9. Do you have any comments on the draft RTS under EMIR not already covered in the previous questions?

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_9>

[We consider that the discussion on the balance to be achieved in terms of efficiency between quick resolution and business continuity of CCPs is not yet decided. The RTS seems to take a view on that topic still under discussion.

Furthermore, the question of portability, which is an objective of EMIR level 1, is not properly addressed in the RTS.]

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_9>



Q10. Do you have any comments on the draft RTS under MiFIR not already covered in the previous questions?

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_10>

[TYPE YOUR TEXT HERE]

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