BANKING AND FINANCE

Public consultation on Regulation (EU) no 648/2012 on OTC derivatives, central counterparties and trade repositories

Fields marked with * are mandatory.

Important comment: this document is a working document of the Financial Stability, Financial Services and Capital Markets Union Directorate General of the European Commission for discussion and consultation purposes. It does not purport to represent or pre-judge any formal proposal of the Commission.

Introduction

The Regulation

On 4 July 2012 the Council and the European Parliament adopted Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR).

EMIR responded to the commitment by G-20 leaders in September 2009 that: "All standardised OTC derivatives contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at latest. OTC derivatives contracts should be reported to trade repositories".

The core requirements set out under EMIR are:

1. Clearing and risk mitigation obligations for OTC derivative contracts;
2. Reporting obligations for derivative contracts;
3. Requirements for Central Counterparties;
4. Requirements for Trade Repositories.

EMIR has been further supplemented by a number of delegated and implementing acts, some of which are adopting regulatory and implementing technical standards developed by the European Supervisory Authorities (ESAs) in accordance with their mandates under the Regulation. Unless otherwise specified, references to EMIR should therefore be considered to include both the primary Regulation (Regulation (EU) No 648/2012) and relevant delegated and implementing acts.

Report on the Regulation

In accordance with Article 85(1) of EMIR, the Commission is required to prepare a general report on EMIR which shall be submitted to the European Parliament and the Council, together with any appropriate proposals.

The Commission must in particular:

(a) Assess, in cooperation with the members of the ESCB (the European System of Central Banks), the need for any measure to facilitate the access of CCPs to central bank liquidity facilities;

(b) Assess, in coordination with ESMA and the relevant sectoral authorities, the systemic importance of the transactions of non-financial firms in OTC derivatives and, in particular, the impact of this Regulation on the use of OTC derivatives by non-financial firms;

(c) Assess, in the light of experience, the functioning of the supervisory framework for CCPs, including the effectiveness of supervisory colleges, the respective voting modalities laid down in Article 19(3), and the role of ESMA, in particular during the authorisation process for CCPs;

(d) Assess, in cooperation with ESMA and ESRB, the efficiency of margining requirements to limit procyclicality and the need to define additional intervention capacity in this area;

(e) Assess in cooperation with ESMA the evolution of CCP's policies on collateral margining and securing requirements and their adaptation to the specific activities and risk profiles of their users.

The Commission services will also take into account when preparing the report any other key issues that have been identified during the implementation of EMIR to date. In particular, the Commission services will take into account the findings of reports submitted by ESMA in accordance with Article 85(3) of EMIR.

Feedback

The purpose of this document is to consult all stakeholders on their views and experiences in the implementation of EMIR to date. Interested parties are invited to send their contributions by 13 August 2015 through the online questionnaire below. Only responses received through the online questionnaire will be included in the report summarising responses. The responses to this consultation will provide important guidance to the Commission services in preparing their final report.

Responses to this consultation should relate to the legislative text of EMIR. Responses are expected to be of most use where issues raised in response to the questions are supported with data or detailed narrative, and accompanied by specific suggestions for solutions to address them. Such suggestions may relate to either the primary Regulation or to relevant delegated and implementing acts. Supplementary questions providing for free text repsonses may appear depending on the response to a multiple choice question.

The Commission services recognise that certain core requirements and procedures provided for under EMIR are yet to be implemented or completed. In particular, at this stage clearing obligations and obligations to exchange collateral in respect of non-cleared OTC derivatives transactions are not yet in force. It is therefore envisaged that the report required under Article 85(1) will focus primarily on those aspects of EMIR which have been implemented.

Nonetheless, the Commission services welcome the views of stakeholders as to any identified issues with respect to the implementation of upcoming requirements. However, this consultation does not seek views on any regulatory technical standards that have not yet been adopted by the Commission. This includes the proposed regulatory technical standards on the mandatory clearing of certain interest rate products in accordance with Article 5 of EMIR, delivered to the Commission by ESMA on 3rd October 2014 and the joint draft regulatory technical standards of the ESAs on margin for uncleared OTC derivatives transactions mandated in accordance with Article 11(3) of EMIR.

Further, with respect to the regulatory and implementing technical standards on trade reporting adopted by the Commission in accordance with Article 9 of EMIR (Regulation No. 148/2013 and Regulation No. 1247/2012) the Commission services note that ESMA recently conducted its own consultation on amended versions of these standards. This consultation does therefore not seek any views with respect to the content of either Regulation No. 148/2013 and Regulation No. 1247/2012 nor the amended versions proposed by ESMA.

The Commission services will publish all responses received on the Commission website unless confidentiality is requested.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-c2@ec.europa.eu.

More information:

- on this consultation
- on the protection of personal data regime for this consultation

1. Information about you

*Are you replying as:

- ( ) a private individual
- (•) an organisation or a company
- ( ) a public authority or an international organisation

*Name of your organisation:

Association française de la Gestion Financière - AFG

Contact email address:

The information you provide here is for administrative purposes only and will not be published

e.sidot@afg.asso.fr

*Is your organisation included in the Transparency Register?

(If your organisation is not registered, we invite you to register here, although it is not compulsory to be registered to reply to this consultation. Why a transparency register?)

- (x) Yes
- ( ) No

*If so, please indicate your Register ID number:

5975679180-97

*Type of organisation:

- ( ) Academic institution
- ( ) Company, SME, micro-enterprise, sole trader
- ( ) Consultancy, law firm
- ( ) Consumer organisation
- ( ) Industry association
- ( ) Media
- (x) Non-governmental organisation
- ( ) Think tank
- ( ) Trade union
- ( ) Other

*Where are you based and/or where do you carry out your activity?

France

*Field of activity or sector (*if applicable*):

at least 1 choice(s)

- [ ] Banking
- [ ] Insurance
- [ ] Pension provision
- [x] Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- [ ] Market infrastructure operation (e.g. CCPs, Trade Repositories, CSDs, Stock exchanges)
- [ ] Trade Association
- [ ] Non-Financial / Corporate enterprise
- [ ] Governmental Organisation / Regulator
- [ ] Law firm / Consultancy
- [ ] Other
- [ ] Not applicable

Important notice on the publication of responses

*Contributions received are intended for publication on the Commission's website. Do you agree to your contribution being published?
(see specific privacy statement)

- (●) Yes, I agree to my response being published under the name I indicate (*name of your organisation/company/public authority or your name if your reply as an individual*)
- ( ) No, I do not want my response to be published

2. Your opinion

Part I - Questions on elements of EMIR to be reviewed according to Article 85(1)(a)-(e)

Question 1.1: CCP Liquidity

Article 85(1)(a) states that: "The Commission shall …… assess, in cooperation with the members of the ESCB, the need for any measure to facilitate the access of CCPs to central bank liquidity facilities".

There are no provisions under EMIR facilitating the access of CCPs authorised under EMIR to additional liquidity from central banks in stress or crisis situations, either from the perspective of the members of the ESCB or from the perspective of CCPs. However, it is recognised that in some member states, CCPs are required to obtain authorisation as credit institutions in accordance with Article 6 of Directive 2006/48/EC. Such authorisation creates access to central bank liquidity for those CCPs. On the other hand, other member states do not require CCPs to obtain such an authorisation.

Is there a need for measures to facilitate the access of CCPs to central bank liquidity facilities?

YES

If your answer is yes, what are the measures that should be considered and why?

- Access to central bank liquidity facilities would be extremely helpful to CCPs in dealing with potential stress events.
- Access to central bank liquidity facilities should not be mandatory under EMIR, and should not be a pre-requisite for authorization or recognition.
- It is the responsibility of local or European supervisors to make sure that CCPs present a very high level of financial and operational stability.
- AFG does not share ESMA's opinion (2015/ ESMA /880) that considers that there are 2 levels of counterparty risk for centrally cleared operations: one with the CCP the other one with the Clearing Member.

AFG considers that all the ESMA-recognised CCPs do not present a unique or similar risk profile. We make distinction between CCPs recognised by ESMA which have the bank status and the others. AFG sees a real advantage in CCPs that are registered as credit institutions or banks because they have a direct access to central bank liquidity. We believe that access to central bank liquidity facilities (which includes having access to investment accounts) would be extremely helpful to CCPs in dealing with potential stress events, and will further strengthen the ability of CCPs to manage their liquidity risks. That said, we believe that access to central bank liquidity facilities should not be mandatory under EMIR, and should not be a pre-requisite for authorisation or recognition. In particular, some jurisdictions may not grant access to central bank facilities, however this should not be seen as inconsistent with EMIR requirements for the purpose of equivalence. To the extent that access by CCP to central bank liquidity facilities is not

compulsory, it would be helpful for end-users when making their choice for CCP, and assessing related liquidity risks, to have this information: access by a CCP to central bank liquidity facilities should be publicly available.
Moreover, As an alternative to the evolution of banking regulation on assets as collateral, we suggest that asset managers be granted on behalf the funds and client mandates effective possibility to access to central banks for repo and cash deposits to secure management of cash for the purpose of collateralization of OTC derivatives without increasing systemic risk.
Furthermore, ESMA-recognised CCPs can have a higher size of capital and guarantee funds and also a stricter regulation on risks than the others CCPs.
Overall, AFG considers that CCPs recognized by ESMA present a very low counterparty risk even if some seem to be safer than others.
AFG’s analysis is that the move from bilateral relationship to central compensation for derivatives fostered by EMIR requires that CCPs present the highest level of robustness and financial strength. In that respect there is a heavy burden on regulators that authorize and supervise CCPs to conduct proper investigations on them. As a consequence of this indispensable strength no counterparty risk should apply to the relationships with CCPs. We do not share ESMA’s opinion (2015/ ESMA /880) that considers that there are 2 levels of counterparty risk for centrally cleared operations: one with the CCP the other one with the Clearing Member. Not discussing the calibration limits of these risks for UCITS, we agree that it will depend on the level of segregation implemented. We oppose the analysis of double risk that is a clear recognition that EMIR would increase risk instead of reducing it, as intended. AFG does not believe that EMIR is such a failure and has so important an unintended consequence.

Question 1.2: Non-Financial Firms

Article 85(1)(b) states that: “ The Commission shall…..assess, in coordination with ESMA and the relevant sectoral authorities, the systemic importance of the transactions of non-financial firms in OTC derivatives and, in particular, the impact of this Regulation on the use of OTC derivatives by non-financial firms;”

Non-financial counterparties are subject to certain requirements of EMIR. However, such counterparties will not be subject to the requirements to centrally clear or to exchange collateral on non-centrally cleared transactions provided that they are not in breach of predefined thresholds, in accordance with Article 10 of EMIR. Further, it is recognised that non-financial counterparties use OTC derivative contracts in order to cover themselves against commercial risks directly linked to their commercial or treasury financing activities. Such contracts are therefore excluded from the calculation of the clearing threshold.

(a) Are the clearing thresholds for non-hedging transactions (Article 11, Regulation (EU) No 149/2013) and the corresponding definition of contracts objectively measurable as reducing risks directly relating the commercial activity or treasury financing activity (Article 10, Regulation (EU) No 149/2013) adequately defined to capture those non-financial counterparties that should be deemed as systemically important?

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This question is less relevant for funds and asset managers
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If your answer is no, what alternative methodology or thresholds could be considered to ensure that only systemically important non-financial counterparties are captured by higher requirements under EMIR?

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NA
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(b) Please explain your views on any elements of EMIR that you believe have created unintended consequences for non-financial counterparties. How could these be addressed?

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NA
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(c) Has EMIR impacted the use of, or access to, OTC derivatives by non-financial firms? Please provide evidence or specific examples of observed changes if so.

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NA
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Question 1.3: CCP Colleges

Article 85(1)(c) states that: "The Commission shall….assess, in the light of experience, the functioning of the supervisory framework for CCPs, including the effectiveness of supervisory colleges, the respective voting modalities laid down in Article 19(3), and the role of ESMA, in particular during the authorisation process for CCPs."

In order for a CCP established in the Union to provide clearing services, it must obtain authorisation under Article 14 of EMIR. EMIR introduced a college system for the granting of such authorisation, which has, to date, been used for the process of authorisation of sixteen CCPs. The College comprises members from relevant competent authorities, relevant members of the European System of Central Banks and ESMA.

(a) What are your views on the functioning of supervisory colleges for CCPs?

AFG considers that the number of NCAs within the college must be large as many countries are concerned with the cross border activities of CCPs.

(b) What issues have you identified with respect to the college system during the authorisation process for EU CCPs, if any? How could these be addressed?

NA

Question 1.4: Procyclicality

Article 85(1)(d) states that: "The Commission shall….assess, in cooperation with ESMA and ESRB, the efficiency of margining requirements to limit procyclicality and the need to define additional intervention capacity in this area."

CCPs authorised in the Union must take into account potential procyclical effects when calculating their margin requirements. The specific factors that must be considered to avoid disruptive movements in margin calculations are provided for under Article 41 EMIR and Article 28 of Commission Delegated Regulation (EU) No 153/2013.

(a) Are the requirements under Article 41 EMIR and Article 28 Regulation (EU) No 153/2013 adequate to limit procyclical effects on CCPs' financial resources?

NO

If your answer is no, how could they be improved?

- Clearing Members acting in a principle to principle relationship do not act as a pass through of CCPs and may generate procyclicality by imposing clients the following
without (or with limited) notice periods : additional collateral amounts, additional haircuts, additional restrictions on eligible collateral, rating triggers…
- Relationship between Clearing Members and clients should be regulated in order to avoid grey areas and agency model should be favored to ensure effective pass through of CCP requirements.
- CCPs should adopt reasonable notice periods before imposing initial margin increases to avoid procyclicality.

Collateral conditions required by clearing members of the CCP maintain procyclicality.

(b) Is there a need to define additional capacity for authorities to intervene in this area?

YES

If your answer is yes, what measures for intervention should be considered and why?

Indeed, clearing members refuse to be a pass through of the CCP and in particular on the collateral terms.
For example, clearing members require more restrictive type of collateral than the collateral accepted by the CCP, additional haircuts, specific rating triggers that make certain assets ineligible.
Moreover, clearing members refuse to negotiate prior notices when they modify the collateral terms agreed with clients: it means that clients may be forced to sell assets or to modify their financial management in order to have the collateral as modified by the clearer.
As stated above, Clearing members refuse to be a pass-through of the CCP conditions and as the relation between clearing members and end-users is not regulated / supervised but only based on contractual negotiations, Clearing Members insist heavily to include their terms of collateral that are clearly stricter than those accepted by the CCP.
This situation may be efficiently managed if the clearing obligation can be moved from a principal-to-principal model to an agency model: that would certainly alleviate some of the difficulties encountered to implement the clearing obligation between clearing members and end-users.
CCP initial margin requirement may fluctuate and induce procyclical effects. We believe however that imposing floor to IM requirements would be too constraining for clearing clients as it may impose margin levels well beyond what is effectively needed by the CCP. In addition, it would not prevent from the fact that IM requirement can increase and become variable above this floor.
We believe that procyclicality induced by variability of initial margin requirements is due to the incapacity for market participants to anticipate market regime changes and potential IM requirement increases.
Another important risk is that end-users might face significant problems to meet cash Variation Margin (VM) calls. Currently clearing members increase procyclicality by only accepting cash as variation margin (VM), which can induce forced sales. CCP and clearing members should be forced to accept high quality securities (e.g. ECB criteria) as Variation Margin.
Moreover, in order to enable clearing client reconstitute margins when collateral increase is needed in an appropriate manner and without market impacts (due to forced selling of ineligible assets and purchase of eligible assets), CCPs should adopt reasonable notice periods before imposing IM increases, change of valuation methodology …. e.g., in a prime brokerage environment, a 90 business days prior notice is accepted in order to enable stakeholders to implement the new parameters. Initial margin requirement should be appropriately calibrated by CCPs in order to take into account such notice periods.

Question 1.5: CCP Margins and Collateral

Article 85(1)(e) states that: "The Commission shall….assess, in cooperation with ESMA the evolution of CCP's policies on collateral margining and securing requirements and their adaptation to the specific activities and risk profiles of their users."

Collateral collected by way of initial and variation margin requirements is the primary source of financial resources available to a CCP. Title IV of EMIR and Commission Delegated Regulation (EU) No 153/2013 provide detailed requirements for the calculation of margin levels by CCPs as well as defining the assets that may be considered eligible as collateral.

(a) Have CCPs' policies on collateral and margin developed in a balanced and effective way?

NO

If your answer is no, for what reasons? How could they be improved?

- Clearing Members, acting in a principal to principal relationship and not as agent, refuse to act as a pass through of the CCPs on the collateral terms. They impose clients restrictions on eligible collateral, overcollateralization, additional haircuts, rating triggers…
- Clearing Members do not offer the full set of segregation models developed by CCPs which may give rise to concerns around protection of excess collateral posted to Clearing Members
- Current Basel Committee on Banking Supervision (BCBS) leverage ratio requirements are not appropriate for cleared client transactions as they ignore the risk mitigating impact of segregated margin.
- This may force clients to use cash for IM, which will either increase the use of repo to generate cash or the use of derivatives to generate synthetic exposures over cash buffers. In addition imposing cash IM will ultimately increase overall banking exposure as cash collateral can never be segregated and remains invested in bank deposits.
- ESMA's guidelines of December 2012 (ESMA /2014/937) should be revised or withdrawn as much as they seem no longer proportionate to the enhanced risk control on derivatives that results from EMIR and in particular the constraint imposed on funds not to re-use the cash received from a repo transaction as collateral for the cleared transactions.

(b) Is the spectrum of eligible collateral appropriate to strike the right balance between the liquidity needs of the CCP and its participants?

NO

If your answer is no, for what reasons? How could it be improved?

We insist on the fact that Clearing Members, acting in a principal to principal relationship and not as agent, refuse to act as a pass through of the CCP in particular on the collateral terms.

It means that the categories of collaterals accepted by the clearing members are more restrictive than those accepted by the CCPs leading to exclude funds that do not have eligible assets. Furthermore, there is an over-collateralization practice from the clearing members (additional haircuts, rating triggers on securities) that affect negatively the liquidity and the management of funds.
Currently, there are some difficulties for French asset managers to negotiate the collateral parameters with clearing members: in fact the clearing members impose their own rules.

AFG recommends that fund units have to be accepted as collateral and that the CCPs accept the same securities as those accepted by the ECB.
There is a lack of transparency in pricing offers from the clearing members and a lack of comparability of offers between clearing Members.
Moreover, when the price is available, the French asset managers consider that the individual client segregation offers are too expensive.

AFG reminds European Commission that Article 39 of EMIR obliges CCPs to offer individual client segregation (ISA) and omnibus client segregation (OSA) “on reasonable commercial terms”.

Currently, CCPs have developed more ad-hoc types of segregation and in particular in order to meet differences between end-users of their services (corporates, UCITs, pension funds, SPV …). For example, recently, LCH Clearnet has developed a new gross OSA model which provides an initial margin with a gross OSA solely for its underlying clients. This new model is called ‘ValueSegSelect’ and is clearly a solution for French asset managers that can open a single account at the CCP that will include all the funds/mandates and others types of accounts managed by the asset manager meaning that the mutualisation of the client risk will be limited to the funds/mandates or accounts managed by this asset managers and not commingled with other CM’s clients.
Unfortunately, as the relation between the CM and the Client is not regulated, CM have the commercial choice to not develop the same segregation models as those developed by CCPs. This is clearly a real brake in the implementation of EMIR for end-users regarding the protection of the collateral.

This lack of segregation offers at CM’s level is also a problem for the monitoring of the counterpartie’s : it involves that end-users have only the choice between OSA and ISA and as stated above, ISA is still an expensive model for clients.

Finally, on the collateral protection, we strongly ask for a European harmonization of the regulatory regime's ability to deliver adequate protection of client's collateral. This is a critical component for a successful financial services industry. European regulators must sets out the requirements with which firms must comply when holding or controlling client assets because they help to ensure that clients' assets and money are safe in the event of firms failing and exiting the market. Weaknesses in firms' client asset systems and controls can cause serious financial detriment to customers and counterparties. Indeed, protection of excess collateral is a critical point under the OTC cleared regime as there are only 2 alternatives for clients in the actual framework: take an ISA as excess margin will be posted by the clearing member at the CCP and accordingly protected from the default of the clearing member or elects for an OSA and assume the risk that this excess margin is kept by the clearing member, pooled with its own assets and in case of default being a general creditor in the bankruptcy proceedings of the clearing member.

Having a harmonized regulatory regime's ability to deliver adequate protection of client assets may help to avoid this type of risk.
For listed derivatives, and even if client opts for OSA, excess margin is posted to the CCP. Conversely, it seems that for the OTC clearing, CCP are not able to accept this excess margin on behalf of CM's clients under an OSA. This is clearly a disadvantage for OTC clearing especially as CCP for clients using gross
We believe that capital levels should be proportionate to the level of risk of a given financial activity, in order to ensure that potential exposures arising from such activities are properly aligned and calibrated with the capital supporting them. However, as it stands the current Basel Committee on Banking Supervision (BCBS) leverage ratio requirements are not appropriate for cleared client transactions as they ignore the risk mitigating impact of segregated margin. This acts as a significant disincentive to central clearing. The rules will constrict the ability for smaller market participants to secure clearing arrangement, forcing some to stop using derivatives, thus increasing risk in the system and reducing liquidity in hedging instruments. Therefore, the leverage ratio should be amended to recognise the exposure reducing effect of segregated margin.

From a general perspective, AFG would strongly highlight that despite large diversification of eligible assets for collateral, banking regulation (Basel 3) favors use of cash collateral for Initial Margins (no netting recognized between expected current and future exposures for non-cash collateral IV and VM) which could increase systemic risks in the financial system.

By forcing counterparties to impose asset managers the use of cash collateral, the banking regulation would increase the use of repo by asset managers and will also increase the banking risk in funds and mandates as, except if the IM could be posted to Central Bank (although at a punitive remuneration rate), the investor keeps the risk of default on the bank where the cash is posted.

If not generated via repo, cash buffers mobilized for IM would penalize funds performances. To avoid such impact, asset managers may seek to gain synthetic exposure to assets via derivatives which would contribute to increase derivatives volumes and further increase the level of cash collateral and credit risk on banks. As an alternative to the evolution of banking regulation on assets as collateral, we require that asset managers be granted on behalf the funds and client mandates effective possibility to access to central banks for repo and cash deposits to secure management of cash for the purpose of collateralization of OTC derivatives without increasing systemic risk.

AFG considers that ESMA's guidelines of December 2012 (ESMA /2014/937) should be revised or withdrawn as much as they seem no longer proportionate to the enhanced risk control on derivatives that results from EMIR. If these guidelines continue to apply, there is no alternative but to enlarge the list of eligible collateral received by CCPs. Otherwise, the cumulative effect of these regulations will be to prevent most funds from acting on derivative markets, what would be highly detrimental to investor clients.

Moreover, considering that:
- CCPs accept only cash as variation margin; and
- The ESMA's Guidelines on ETFs and other UCITS issues (ESMA/2014/937, respectively former ESMA/2012/832, which has been implemented and extended to AIF in some member states) removed UCITS' ability to access liquidity required for cash collateral contributions via repurchase agreements (cf. para. 42 in combination with para. 43 j) of the said guidelines).

We deem extremely difficult for funds and asset managers to meet required margin calls.

For example, let us consider the case of an investment fund denominated in EUR that invests into corporate bonds denominated in USD. In order to hedge against a decreasing value of USD, the asset manager will typically enter into cash settled forward under which the fund is obliged to sell USD for EUR. As soon as the value of the USD increases, the fund is obliged to collateralize.
With the limited interest for corporate bond collateral and the constraints imposed on funds to the use of repos, the fund will then encounter severe difficulties for meeting its payment obligation due to the fund restricted access to sufficient liquidity.

Therefore, we urge the European Commission to:
- Amend the ESMA's guidelines for EMIR purposes; or
- Impose to CCPs the acceptance of a broad range of non-cash assets as variation margin;

Part II - General questions

Question 2.1: Definitions and Scope

Title I of the Regulation contains Articles 1-2.

Article 1 determines the primary scope of the Regulation, in particular with regard to public and private entities.

Article 2 provides definitions in use throughout the Regulation which further determine the scope of application of certain of its provisions.

Are there any provisions or definitions contained within Article 1 and 2 of EMIR that have created unintended consequences in terms of the scope of contracts or entities that are covered by the requirements?

NA

If your answer is yes, please provide evidence or specific examples. How could these be addressed?

NA

Question 2.2: Clearing Obligations

Under EMIR, OTC derivatives transactions that have been declared subject to a clearing obligation must be cleared centrally through a CCP authorised or recognised in the Union. ESMA has proposed a first set of mandatory clearing obligations for interest rate swaps which are yet to come into force. Counterparties are therefore in the process of preparing to meet the clearing obligation, to the extent that their OTC derivatives contracts are in scope of the requirements.

(a) With respect to access to clearing for counterparties that intend to clear directly or indirectly as clients; are there any unforeseen difficulties that have arisen with respect to establishing client clearing relationships in accordance with EMIR?

YES

If your answer is yes, please provide evidence or specific examples. How could these be addressed?

- There are unforeseen difficulties that have arisen with respect to establishing client clearing relationships in accordance with EMIR
- Standard legal documentation based on the ISDA / FOA addendum is clearly unbalanced
- The frontloading requirement should be removed for all classes of derivatives
- Establishment of an agency model instead of a principal to principal model would certainly alleviate some of the difficulties encountered to implement client clearing.
- Treatment of trades that result from systemically risk-reducing processes should be exempted from the clearing mandate and the rules governing the margining of non-cleared derivatives
- Granting ESMA the ability to terminate or suspend the clearing obligation as a matter of urgency
- The relation between CCPs and clearing members is regulated whereas the relation between end-users and clearing members is a pure contractual relation : this does not ease negotiations between these 2 actors and furthermore and encourages clearing members to be more strict in their requirements than the requirements requested by EMIR for the clearing obligation

(b) Are there any other significant ongoing impediments or unintended consequences with respect to preparing to meet clearing obligations generally in accordance with Article 4 of EMIR?

YES

If your answer is yes, please provide evidence or specific examples. How could these be addressed?

Yes, there are unforeseen difficulties that have arisen with respect to establishing client clearing relationships in accordance with EMIR.
The negotiations with clearing members are slow and difficult and we understand that some players are less and less keen to act as clearing member with the implementation of different new banking regulations. AFG fears that the number of possible clearing members will be very limited and that it will reintroduce systemic risk.
Standard legal documentation based on the ISDA / FOA addendum is clearly unbalanced and advantageous for the clearing members; this causes very tough negotiations for clients in order to have a more balanced documentation. For example, under this standard documentation, while the clearing member can use any type of default against the client to early terminate cleared transactions, the client has only 2 rights if he wants to terminate its relation with the clearing member : transfer (under

conditions) its cleared transactions to another clearing member or offset (under conditions) its cleared transactions. For these 2 rights, clearing members request additional conditions in order to postpone or to refuse the clients requests.
Moreover, clearing members argue that as the regulation is not stable and due to this moving area they need to anticipate any unpredictable situations in the agreement and accordingly include broad limitation of their responsibility, indemnity provision that covers any type of losses without cause ….;

The frontloading requirement should be removed for all classes of derivatives deemed subject to the clearing obligation: AFG believes that the frontloading requirement creates significant pricing and market risk management challenges, particularly where bilateral collateral terms differ from CCP collateral terms. It also creates significant challenges in evaluating eligibility, and a lack of clarity for pricing impact in the absence of complete static data especially when trading with non-European counterparties. Thus we believe that the obligation should be removed for all classes of derivatives declared subject to the clearing obligation without changing the timeline for the implementation of the clearing obligation.

Treatment of trades that result from systemically risk-reducing processes should be exempted from the clearing mandate and rules governing the margining non-cleared derivatives : new and amended trades that result from systemically risk-reducing processes such as multilateral portfolio compression cycles which result from original trades prior to the implementation of the rules governing the clearing obligation or the margining of non-cleared derivatives should be exempt from the clearing mandate and bilateral margining rules.

Granting ESMA the ability to terminate or suspend the clearing obligation as a matter of urgency: AFG believes that it is of great concern that ESMA does not have the ability to terminate or suspend as a matter of urgency (i.e. within a few days) the clearing obligation in respect of a specific class (or contracts within a class). Specifically, we believe it is critical that ESMA have the tools to dis-apply the clearing obligation in the event that (i) a CCP notifies ESMA that the liquidity of a class (or contracts within a class) as defined under Article 7(2) of Commission Delegated Regulation (EU) No 149/2013 has deteriorated to an extent that it may become difficult for the CCP to risk manage such derivative class and/or (ii) the liquidity of the class (or contracts within a class) becomes materially less than that on the basis of which ESMA originally determined to make the relevant class subject to mandatory clearing.

AFG alerts the European Commission that currently:
- Small and medium French asset managers cannot find clearing members and without clearing members they can no longer trade certain types of derivatives;
- The interoperability between CCPs and the ability to transfer

transactions of a clearing member do not seem feasible in practice;
- Some CCPs do not accept the unilateral termination of article 50(1)(g)(iii) of the UCITS Directive;
- The French funds cannot impose the partial cash settlement.
AFG urges regulators to ensure that:
- the ISA scheme will be effective as soon as possible at reasonable costs;
- There will be a sufficient number of motivated clearing members ready to take all types of clients (big and small players) on board;
- The clearing obligation under EMIR must be applied when 3 offers are available from clearing members;
- Clearing members and CCPs do not take a too restrictive view in terms of eligible collateral and stick to level 1 of EMIR;
- The conflict with article 50(1)(g)(iii) of the UCITS Directive about unilateral termination (see §§ 30 to 32 in 2015/ESMA/880 of May 22d,2015) and additionally the partial cash settlement issue are solved;
- ESMA's guidelines are withdrawn or amended to allow UCITS to centrally compensate with collateral (including cash) received from Efficient Portfolio Management;
- Regulation imposes clearing to be a pass-through of the CCP's requirements.

Question 2.3: Trade reporting

Mandatory reporting of all derivative transactions to trade repositories came into effect in February 2014. The Commission services are interested in understanding the experiences of reporting counterparties and trade repositories, as well as national competent authorities, in implementing these requirements. As noted above, ESMA recently conducted its own consultation on amended versions of these standards. This consultation does therefore not seek any views with respect to the content of either Regulation No. 148/2013 and Regulation No. 1247/2012 nor the proposed amended versions.

Are there any other significant ongoing impediments or unintended consequences with respect to meeting trade reporting obligations in accordance with Article 9 of EMIR?

YES

If your answer is yes, please provide evidence or specific examples. How could these be addressed?

- There are difficulties concerning the LEI
- There is no transparency for trade repositories
- A single-sided reporting obligation should be adopted. Recent experience has shown that the dual-sided reporting requirement has failed to meet these objectives: transparency, protect against market

abuse, improve data quality and mitigate systemic risk
- The article 9(1) of EMIR requires significant effort for firms to retrieve and source such data and it will be of little use as many trades will be unmatched (they will be reported without UTIs that were not used at the time of execution)

Concerning the LEI:
- The LEI must integrate other informations
- The obtaining a LEI is too late

There is no transparency for trade repositories (= black boxes). There reading gap / warnings / matches is unreadable (it lacks a synthesis mask taking the number of files sent to unresolved mismatch). Trade repositories must reject reporting only if key fields are not matching and not for any fields that do not match

AFG recommends to adopt the single-sided reporting obligation.

The primary objective of the EMIR reporting requirement is to provide regulators with increased transparency in OTC derivatives markets in order to better enable the monitoring and assessment of risks that pose a threat to the stability of the financial system. However, recent experience has shown that the EMIR dual-sided reporting (DSR) requirement has fallen well short of providing regulators with an accurate set of data that allows effective monitoring of systemic risk, thus undermining a key part of the G20 objectives for the reform of OTC derivatives markets. As a result of the operational complexity of the current regime, the on-going complications with implementation and the burden placed on less sophisticated counterparties, significant trade data gaps exist today.

AFG believes that these problems can in large part be addressed by the adoption of a single-sided reporting regime, which we believe will significantly improve the quality of data available to regulators by removing the requirement under the dual-sided reporting to match trades (both legal entity identifiers(LEIs) and unique trade identifiers (UTIs)), reduce the operational complexity of the current reporting framework, lower costs, and remove the reporting burden for less sophisticated derivatives users

The arguments that lead to adopt this solution are:
- The Data Quality

Under a dual-sided reporting regime, trades need to be linked/matched. This increases the number of trade records, which amplifies the challenges on aggregation, consistency and implementation costs for the industry. The matching process across counterparties and repositories, especially when a large number of transactions are executed on the same day, is extremely laborious and has proved extremely challenging and open to interpretation.

Meanwhile, many buy-side firms lack the ability to self-report and rely on the dealers community to report on their behalf - a process known as delegated reporting. However, inconsistent dealer delegated reporting contracts and offerings make it difficult for buy-side firms to reconcile across multiple sources, create a challenging operational environment and increases the data quality issues. Delegated reporting may in some cases lead to entities informally delegate ‘their

obligation' but fail to check the accuracy of their trade data. Under delegation the same trade is reported twice (flipped), therefore the end result is the same as single-sided reporting.
AFG believes that single-sided reporting would remove the dependency between counterparties to report the trade consistently to achieve match rates, and significantly lessen the operational burden for buy-side firms, which lack resources to reconcile across multiple sources.

- Dispute Resolution

AFG believes that while one of the aims of dual-sided reporting is to improve the quality of data between counterparties and serve as a form of dispute resolution, there already exist market mechanisms and EMIR requirements designed to improve data quality between counterparties and resolve disputes, and thus dual-sided reporting is in fact duplicative. For example, trade confirmation/affirmation (Article 11(1)), portfolio reconciliation (Article 11(1)), dispute resolution (Article 11(1)), and daily valuation (Article 11(2)).

- Other Regulation

The efficacy of single-sided reporting is being explored in other regulations, and reporting regimes for financial instruments across different sets of regulations should aligned. Given derivatives are reportable under different jurisdictions the reporting approach should be as consistent as possible to ensure harmonization across regimes. For example, the US CFTC has adopted a single-sided reporting obligation.
The approach could be :
I. Cleared trades: we believe that CCPs should be able to report cleared trades on behalf of users, and have all the necessary trade information to report on-going valuation and collateral data, and have visibility as to the end client of individual trades.

- A CCP is best placed to report the clearing member (CM)-CCP leg of trade.
- CMs would be responsible for reporting the CM-client leg of the trade.

II. Non-cleared trades: For all other non-cleared trades, the determination of which counterparty should report the trade should adhere to the following logic:

Step One: A determination must be made if one of the counterparties to the trade is a third country entity. If the answer is yes, the reporting obligation will fall on the EU counterparty. Thus either the EU counterparty should report the trade, or if it is a less sophisticated counterparty, it should retain the right to delegate the reporting of the trade to the non-EU entity or another third party.
Step Two: If both counterparties are EU entities, a determination need to be made as and the trade will be cleared. We, as asset managers, recommend that the OTC counterparty (important credit institutions with dedicated departments) makes the reporting;

Currently, the counterparties are delegating their obligations by way of

representation contracts (Mandats under French law).
According to French law, it’s mandatory for representatives (mandataires) to report regularly (art. 1993 French Civil Code).
At the very least, it should be assumed that the review of those reports sent by the delegated third party is sufficient to “ensure that the third-party to whom it has delegated the reporting of the derivative contract does so accurately” (FAQ 3. §2 – 10 July 2014).
As a consequence, the counterparties who delegate will remain legally responsible for the reporting (Art. 9(1) EMIR), so they will remain interested with it, but without being required to fill direct user form(s) with a (or several) repository.
ESMA should therefore establish the mandatory conditions (frequencies, entities ...) of an agency agreement that comply with the obligation to “ensure” that the reporting obligation has been made, without having to request direct access to the delegated counterparty trade repository.

AFG believes that the requirement to backload dead trades should be removed

According to Article 9(1) of EMIR, the reporting obligation extends to all trades that were both outstanding on or entered into after August 16, 2012. This means all trades that were outstanding, but that had expired before the reporting start date (RSD) of February 12, 2014, will have to be reported to a trade repository. According to implementing regulation EU 1247/2012, those derivative contracts which were entered into on or after 16 August 2012, that are not outstanding on or after the reporting start date shall be reported to a trade repository within 3 years of the RSD for a particular derivative class.

AFG believes that such a requirement requires significant effort for firms to retrieve and source such data and it will be of little use as many trades will be unmatched (they will be reported without UTIs that were not used at the time of execution). Moreover, many reports will be single-sided, as the counterparty to the trade may no longer exist (for example a fund that has closed down).

Question 2.4: Risk Mitigation Techniques

Risk mitigation techniques are provided for under Articles 11(1) and 11(2) of EMIR and further defined in Commission Delegated Regulation (EU) No 149/2013. Risk mitigation techniques began entering into force in March 2013 and apply to OTC derivative transactions that are not centrally cleared. They include obligations with respect to transaction confirmation, transaction valuation, portfolio reconciliation, portfolio compression and dispute resolution.

Are there any significant ongoing impediments or unintended consequences with respect to meeting risk mitigation obligations in accordance with Articles 11(1) and (2) of EMIR?

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YES
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If your answer is yes, please provide evidence or specific examples. How could these be addressed?

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When an OTC derivative contract, which is not cleared by a CCP, is
concluded between financial counterparties or non-financial
counterparties referred to in article 10 of Regulation n°648/2012 and
that is not confirmed via electronic means, the delay mentioned in the
article 12 of the Commission Delegated Regulation (EU) N° 149/2013 is
not respected.
AFG is concerned that although the Commission has confirmed via FAQs
that the rules are not hard deadlines to be complied with on a
case-by-case basis, hard deadlines remain in the RTS, and it is not
clear how firms can confidently deem themselves compliant.
We believe the rules should be amended such that trades that are not
electronically confirmed can be confirmed by T+5.
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Question 2.5: Exhange of Collateral

Article 11(3) of EMIR mandates the bilateral exchange of collateral for OTC derivative contracts that are not centrally cleared. Article 11(15) mandates the ESAs to further define this requirement, including the levels and type of collateral and segregation arrangements required. The ESAs consulted publically on their draft proposals in the summer of 2014.

The ESA are now in the process of finalising these draft Regulatory Technical Standards. It is therefore recognised that the final requirements are not fully certain at this stage. The Commission services are not seeking comment on the content on the proposed rules published by the ESAs. Nonetheless the Commission services welcome any views from stakeholders on implementation issues experienced to date.

Are there any significant ongoing impediments or unintended consequences anticipated with respect to meeting obligations to exchange collateral in accordance with Article 11(3) under EMIR?

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YES
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If your answer is yes, please provide evidence or specific examples. How could these be addressed?

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-        It is common practice on the market to assess risk according to
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sensitivities to the applicable risk factors; this should remain the case for the determination of IM requirements.

- Diversification is remote from the initial risk and should be given appropriate level of importance. In particular, diversification rules should not apply to mandates, multi-delegated funds and for partial delegation concerning funds.
- Constituting IM in assets rather than cash ensures better protection of collateral and enables to reduce systemic risk.
- Basel 3 only allows for cash collateral to benefit from netting effects and capital relief. As a consequence, there shall be a strong incentive imposed by banking regulation to favor cash collateral for IM
- Banking regulation should evolve to allow for non-cash collateral netting benefits for IM.
- As an alternative to the evolution of banking regulation on assets as collateral, we suggest that asset managers be granted an effective possibility to access to central banks for repo and cash deposits for the purpose of collateralization of OTC derivatives without increasing systemic risk.

Collateral requirement models :

AFG considers that the common practice on the market is to assess risk according to sensitivities to the applicable risk factors; this should remain the case for the determination of IM requirements.

We recommend with the intention to reduce disputes and related settlement delays on collateral that asset managers be granted the possibility to negotiate, on a bilateral basis and to implement upon mutual agreement alternative methodology for the purpose of collecting collateral.

We recommend that revisions and modifications of internal models be announced and explained by counterparties ahead of time with a possibility to discuss them and get a fair account of the rationale and consequences of these changes in methodology or principles.

Collateral diversification requirements:

When the manager concludes an OTC derivative, he knows that there are 4 levels of risk :

- The risk of the underlying and its volatility which should eventually make the profit or loss of the position
- The counterparty risk that may jeopardize the expected profit if the counterparty cannot pay
- This CP risk is mitigated through collateral, be it variation margin calls or IM; the third level of risk relates to the accessibility to the collateral and its value and easiness to sell on the market (high quality and liquidity tests)
- This risk can be mitigated through appropriate haircuts and diversification but could not be completely eliminated.

The impact of the diversification is remote from the initial risk and it should be given its appropriate level of significance.

With regard to funds, it is not appropriate to refer any limit to a percentage of the collateral. The relevant amount is the asset under management which is the basis for risk taking and is far less volatile than the collateral. ESMA published in December 2012 guidelines on ETF and other UCITS issues where it asked for diversification of collateral and introduced the figure of 20% per issuer with reference to the total asset of the UICTS. The lack of threshold made this regulation burdensome and disputable in terms of financial stability but nevertheless it proved workable thanks to the reference to AUM to calculate the percentage.

Equity funds have only equities in their portfolios. The suggestion of latest RTS to limit the collateral that can be posted or collected to 40% in equities will make it very difficult for them to sign OTC derivative contracts. It is an unexpected and hopefully unintended consequence of latest issued RTS and we strongly oppose this view. The 40% limit is also a major issue also for funds of funds. This type of funds held shares of other funds that could not be UCITS. For that reason, funds of fund won't be able to comply with the diversification limit that will prevent them to enter into OTC derivatives. Funds of funds should be allowed to transfer share of non UCITS funds.

With regards to mandates and multi-delegated funds, AFG would highlight that it would not be feasible operationally for an asset management company to calculate group consolidated eligibility thresholds on behalf of its clients as we would not have access to the global investment portfolio. There is also to be mentioned the case of a mandate signed with several asset management companies.

AFG would also highlight that some investors could have to use derivatives only in specific country or monetary area and that the entity could hold only domestic assets for risk, accounting or regulatory constraints. In that case, to respect some diversification rules, the investor will have to monetize part of its assets through repo to post IM in cash and will so increase its leverage and the interconnectedness.

From a general perspective, AFG would strongly highlight that despite large diversification of eligible assets for collateral, banking regulation (Basel 3) favors use of cash collateral for Initial Margins (no netting recognized between expected current and future exposures for non-cash collateral IV and VM) which could increase systemic risks in the financial system.

By forcing counterparties to impose on asset managers the use of cash collateral, the banking regulation would increase the use of repo by asset managers and will also increase the banking risk in funds and mandates as, except if the IM could be posted to Central Bank (with appropriate segregation infrastructure at Central Bank level) at a punitive remuneration rate, the investor keep the risk of default on the bank where the cash is posted.

AFG insists on the necessity:
1. To suppress the limitation of 40% on the total of equities as it is a limitation of eligibility which is contrary to level one text more than a measure of diversification.
2. To suppress diversification rules for mandates, multi-delegated funds and for partial delegation concerning funds.

Cash collateral for IM and segregation issues:

AFG insists that when cash is posted as initial margin, the collector should maintain it with a view to protect the collateral poster to whom it should be returned at the end of the transaction. We consider that the collected cash should be re invested in low risk liquid instruments. We think that the segregation out of its trade is essential.

Still, we would like to draw attention to the fact that constituting IM in assets rather than cash ensures better protection of collateral and enables to reduce systemic risk. Use of cash collateral for IM could be a factor contributing to systemic risk : although re-use of cash to protect IM collateral is permitted, re-use shall essentially be achieved through low risk liquid investments, namely short term banking deposits which overall will increase exposure to banks and interconnectedness.

We believe banking regulation should allow for netting and capital relief for VM and IM posted in assets in order to avoid increasing requirements for cash deposits and increase use of repo for the purpose of collateral management which will ultimately increase systemic risk.

If not generated via repo, cash buffers mobilized for IM would penalize funds performances. To avoid such impact, asset managers may seek to gain synthetic exposure to assets via derivatives which would contribute to further increase derivatives volumes and the need for eligible collateral.

As an alternative to the evolution of banking regulation on assets as collateral, we suggest that asset managers be granted on behalf the funds and client mandates effective possibility to access to central banks for repo and cash deposits, with appropriate segregation infrastructure at Central Bank level, to secure management of cash for the purpose of collateralization of OTC derivatives without increasing systemic risk.

Scarcity of very high quality assets for collateral purposes:

Eventually we believe that the type of eligible assets should be sufficiently wide to ensure funds will hold sufficient eligible assets for collateral purposes. Cleared transactions will already mobilize very large amounts of very high quality assets (as scope of eligible assets at CCP levels remain limited to very high quality liquid assets). Scarcity of very high quality assets should be avoided as it may generate market volatility and price finding issues in the event where such collateral would have to be liquidated in large proportion. Enlarging collateral pool of eligible assets on non-cleared OTC derivatives, while maintaining appropriate haircuts, would enable maintaining overall liquidity on eligible collateral assets.

Question 2.6: Cross-Border Activity in the OTC derivatives markets

OTC derivatives markets are global in nature, with many transactions involving Union counterparties undertaken on a cross-border basis or using third country infrastructures. EMIR provides a framework to enable cross-border activity to continue whilst ensuring, on the one hand, that the objectives of EMIR are safeguarded and on the other hand that duplicative and conflicting requirements are minimised.

(a) With respect to activities involving counterparties established in third country jurisdictions; are there any provisions or definitions within EMIR that pose challenges for EU entities when transacting on a cross-border basis?

YES

If your answer is yes, please provide evidence or specific examples. How could these be addressed?

Positive equivalence determinations under Article 13 are crucial for the purposes of avoiding duplicative or conflicting requirements for clearing (EMIR Article 4), reporting (EMIR Article 9), the treatment of non-financial counterparties (NFCs) (EMIR Article 10), and risk mitigation techniques for non-cleared trades, including, in due course, margin requirements (EMIR Article 11). The absence of equivalence decisions, particularly for the purposes of clearing and margin requirements, could put the international operations of many firms at a competitive disadvantage by requiring, for example, that margin be posted and collected multiple times. Such an outcome would harm not only European banks but their clients too, many of which are major European corporates that make significant contributions to outbound and inbound trade and investment flows from Europe to non-EU markets
Therefore, AFG believes that it is essential the Commission work closely with other regulators in third countries to develop plans for equivalence including reciprocity and further clarify the practical application mechanics of equivalence.

(b) Are there any provisions within EMIR that create a disadvantage for EU counterparties over non-EU entities?

NA

If your answer is yes, please provide evidence or specific examples. How could these be addressed?

5000 character(s) maximum

NA

Question 2.7: Transparency

The overarching objective of the trade reporting requirement under EMIR is to ensure that national competent authorities and other regulatory bodies have data available to fulfil their regulatory mandates by monitoring activity in the derivatives markets.

Have any significant ongoing impediments arisen to ensuring that national competent authorities, international regulators and the public have the envisaged access to data reported to trade repositories?

5000 character(s) maximum

AFG believes that authorities have not been yet in a position to fully monitor and analyse the TR reporting. The quantity of information is much higher than previous capacities (partly because of the inclusion of reporting on exchange traded derivatives) and the quality, which was very poor at the beginning, is probably not excellent yet. It is in our view too early to judge. More generally, despite the fragmentation of markets and the diversity of TRs, AFG expects that aggregated data will be made accessible and will offer to the public a global and consolidated view of the market.

If your answer is yes, please provide evidence or specific examples. How could these be addressed?

NA

Question 2.8: Requirements for CCPs

Titles IV and V of EMIR set out detailed and uniform prudential and business conduct requirements for all CCPs operating in the Union. CCPs operating prior to EMIR's entry into force are required to obtain authorisation in accordance with the new requirements of EMIR, through the EU supervisory college process.

(a) With respect to access to clearing for counterparties that intend to clear directly or indirectly as clients; are there any unforeseen difficulties that have arisen with respect to establishing client clearing relationships in accordance with EMIR?

According to article 39(7) of EMIR, CCPs and clearing members shall publicly disclose the levels of protection and the costs associated with the different levels of segregation that they provide and shall offer those services on reasonable commercial terms. Details of the different levels of segregation shall include a description of the main legal implications of the respective levels of segregation offered including information on the insolvency law applicable in the relevant jurisdictions.
However, these information are not standardized and it is difficult to make a clear comparison of what each CCP offers.
Even if is clear that each end-user has to make its own analysis of the full rule sets of the CCPs, it could be useful to have a standardized document in order to ease the comparison.

(a) Are there any significant ongoing impediments or unintended consequences with respect to CCPs’ ability to meet requirements in accordance with Titles IV and V of EMIR?

NA

If your answer is yes, please provide evidence or specific examples. How could these be addressed?

NA

(b) Are the requirements of Titles IV and V sufficiently robust to ensure appropriate levels of risk management and client asset protection with respect to EU CCPs and their participants?

NA

If your answer is no, for what reasons? How could they be improved?

NA

(c) Are there any requirements for CCPs which would benefit from further precision in order to achieve a more consistent application by authorities across the Union?

5000 character(s) maximum

NA

If your answer is yes, which requirements and how could they be better defined?

NA

Question 2.9: Requirements for Trade Repositories

Titles VI and VII of EMIR set out detailed and uniform requirements for all trade repositories operating in the Union. Trade repositories operating prior to EMIR's entry into force are required to obtain authorisation by ESMA in accordance with the requirements of EMIR. To date, ESMA has authorised six trade repositories. ESMA is the primary supervisor for Union trade repositories and has the power to issue fines for non-compliance with the requirements of EMIR.

Are there any significant ongoing impediments or unintended consequences with respect to requirements for trade repositories that have arisen during implementation of Titles VI and VII of EMIR, including Annex II?

YES

If your answer is yes, please provide evidence or specific examples. How could these be addressed?

Concerning the obligation for TRs to provide access to end users to the reporting made on their behalf by delegates. AFG members experienced difficulties in that respect and consider it should be part of the minimum requirements of a TR.
Moreover, when the reporting obligation was introducde, the Trades Repositories were not ready and the required fields were not completely defined. There was no assistance, the LEI providers were overworked.

Question 2.10: Additional Stakeholder Feedback

In addition to the questions set out above, the Commission services welcome feedback from stakeholders on any additional issues or unintended consequences that have arisen during the implementation of EMIR which are not covered by those questions.

Are there any significant ongoing impediments or unintended consequences with respect to any requirements or provisions under EMIR and not referenced in the preceding questions that have arisen during implementation?

NA

If your answer is yes, please provide evidence or specific examples. How could these be addressed?

NA

3. Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

- **b0b8859f-5c5c-4346-a503-db909408a619/AFG's answer quater bis.docx**
- **ec5807d4-0d81-405d-aef0-a160c5cf1e9e/AFG's definitive answer.docx**

Useful links

Consultation details (http://ec.europa.eu/finance/consultations/2015/emir-revision/index_en.htm)

Consultation document (http://ec.europa.eu/finance/consultations/2015/emir-revision/docs/consultation-document_en.pdf)

Specific privacy statement (http://ec.europa.eu/finance/consultations/2015/emir-revision/docs/privacy-statement_en.pdf)

More on the Transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

Contact

✉ fisma-c2@ec.europa.eu