



EACH response to the ESMA consultation paper 'Review of Art 26 RTS No 153/2013 with respect to MPOR for client accounts'

February 2016

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1. Introduction

The European Association of CCP Clearing Houses (EACH) represents the interests of CCPs in Europe since 1992. EACH currently has 20 members from 16 different European countries. EACH is registered in the European Union Transparency Register with number 3689701131196.

EACH welcomes the opportunity to respond to the ESMA consultation on ‘Review of Art 26 RTS No 153/2013 with respect to MPOR for client accounts’.

Below you will find the responses to the questions included in this consultation.

2. EACH responses to specific questions

Q1: Do you have any comment on the draft RTS in Annex 3?

EACH welcomes the efforts made by ESMA and other public institutions to resolve the equivalence debate between the European Union (EU) and the USA. We also appreciate ESMA’s pragmatic approach with the proposal of this draft RTS, and appreciate the contribution this will make to finding a workable solution to the ongoing debate on appropriate minimum liquidation periods or margin periods of risk (MPOR). We believe that a solution to this debate is crucial to achieving a level playing field across global jurisdictions and to avoid the risk of regulatory arbitrage, which is particularly sensitive in the context of the risk management activities performed by CCPs. It is EACH’s view that in order to ensure a level playing field for CCPs in the EU and the USA, CCPs in both jurisdictions should be able to offer services in the EU and the USA under equivalent rules, following an approval process that when completed would allow the third-country CCP to offer services based on the rules of its home jurisdiction.

EACH members welcome the optionality of the proposal made by ESMA. While aligning with the standards of the USA, EU legislation should also allow CCPs to use their current MPOR structures if they consider it adequate. We therefore welcome the proposal to allow CCPs to *choose*, amongst others, between an MPOR of two days applied to a net omnibus client account structure or a one-day MPOR applied to a gross omnibus client account structure.

Q2: Do you agree that intraday margins should be called when the variation when the new margin requirement is higher than 120% of the updated available collateral, unless the margin call is not material on the basis of predefined thresholds defined by the CCP? Please provide quantitative data on the potential costs that this condition will imply and the reasons for those.

Without commenting specifically on the 120% threshold proposed in the RTS, **EACH would like to stress the need for regulators to carefully consider the implications of proposing prescriptive and granular provisions.**

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This is particularly important for European CCPs which, despite their common goal of offering risk management benefits and efficiency gains to the market as a whole, are very diverse in nature, as they clear a wide range of products in different markets and serve different clients.

We also note that intraday margin provisions are already included in the EMIR framework legislation (Article 41(3)) as well as in the EMIR RTS 153/2013 (Articles 14(3) and 56(1)).

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