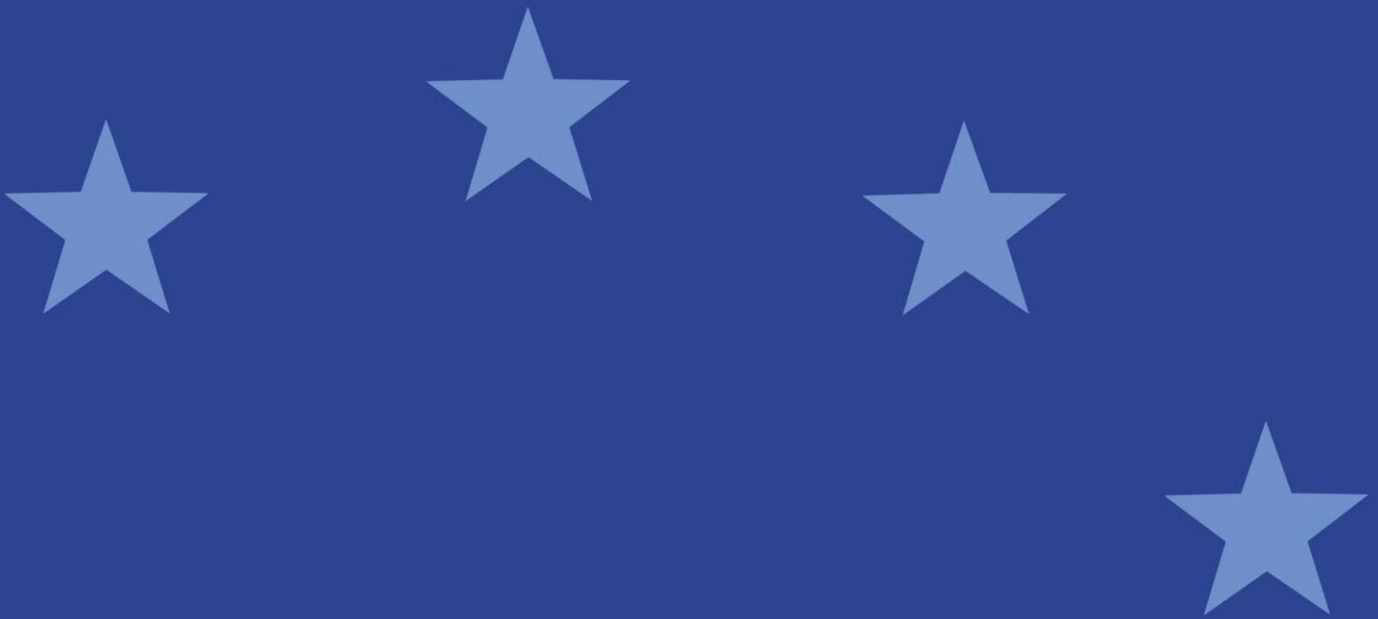




European Securities and
Markets Authority

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>

[The Federation of European Securities Exchanges (FESE) represents 36 exchanges in equities, bonds, derivatives and commodities through 19 Full Members from 30 countries, as well as 1 Affiliate Member and 1 Observer Member. FESE is registered in the European Union Transparency Register with number 71488206456-23.

FESE welcomes the opportunity to respond to the ESMA consultation on 'Indirect clearing arrangements under EMIR and MiFIR'.

Below you will find the responses to the questions of the public consultation paper that we believe are relevant and have an impact on trading venues.]

<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>

[FESE agrees with the overall objective of providing adequate protection to indirect clients, including those indirect clients that are part of longer chains. We very much appreciate that ESMA has taken into account the concerns raised by different stakeholders and has proposed a solution. We agree with the need for clients to be offered a choice of account types but support flexibility on the selection of an omnibus account structure, i.e. Net Omnibus Account Structure (NOSA) or a Gross Omnibus Account Structure (GOSA), but not both as mandatory. While we understand it is not a minimum requirement, we also believe that the direct client or clearing member should be offered a choice of individually segregated accounts subject to the agreement and request of the indirect client.]

<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>

[FESE agrees with the requirement that a Clearing Member shall commit to trigger the necessary procedures for transferring assets and positions held by the defaulting client for the account of the indirect client including procedures to allow for a prompt liquidation, when porting is not successful.]

<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>

[The definition of clients, under both EMIR and MiFIR, has been revised to include any indirect client in a chain of transactions (so going all levels down to any clients of indirect clients). We assume that this would not impact CCPs as they would proceed according to the instructions of the client, indifferent from the number of levels below it.

The chain of potential clearing arrangements implied by the ESMA Consultation Paper goes beyond the client/indirect client relationship including clients of indirect clients as well. As mentioned above the contractual arrangements of the CCP are with its clearing members and only certain direct clients. The legal and functional relationships are however key for prudent clearing arrangements and should be addressed in the final RTS also covering obligations of the layer beyond indirect clients.

]

<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>

[Please see response to question 3.]

<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>

[TYPE YOUR TEXT HERE]

<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>

[We would like to gain clarity around how the CCP is supposed to treat collateral excess received from the clearing member for the account of indirect clients. We do not believe that the CCP should be requested to allocate such excess to each indirect client in the account. It would be both costly and complex for the clearing members and the CCP to adopt a 'gross omnibus with excess model' as the clearing member would have to inform the CCP, at least daily, of the collateral value of each indirect client, for the CCP to be able to identify it in an omnibus structure. This model would imply additional links between the clearing member and the CCP which is not in the spirit of ESMA's new proposal to reduce the complexity and costs for indirect client clearing.]

<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>

[Please refer to our introductory comments and our answer to question 1.]

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_7>

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

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_8>

[TYPE YOUR TEXT HERE]

<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 would support the introduction of the requirement in article 4(3) in both the revised EMIR RTS and the draft MiFIR RTS under which the clearing member will need to provide the CCP with all the necessary information to identify the positions held for the account of each indirect client in a gross omnibus account. This is key to allow the CCP to calculate the level of margins for each indirect client on a gross basis.]

<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]

<ESMA_QUESTION_RTS_INDIRECT_CLEARING_10>