



March 07, 2013

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European Securities and Markets Authority  
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Michel Barnier  
European Commissioner for Internal Market and Services  
BERL 10/034  
The European Commission  
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Dear Sirs,

The European Association of CCP Clearing Houses ("EACH") was established in 1992 and has currently twenty-three members. EACH has developed positions on proposed European and global regulatory initiatives since 1992. In order to reduce the risk and to enhance the safety, stability and efficiency of the markets, EACH works closely together with public authorities as well as the financial industry.

### **EMIR Margin Standards**

EACH would wish to alert you to a matter which will adversely affect the global implementation of consistent margin standards for regulated market futures and options and OTC contracts.

The principal issue is one of equivalence of cross border margin standards to be applied to existing cleared regulated market futures and options products and OTC cleared products post implementation of the supplementing Regulation (EU) No 153/2013 ("RTS").

### **Background**

Chapter VI (articles 24, 25, 26, 27 and 28 collectively) of the RTS on CCP requirements defines the required initial margin parameter requirements for centrally cleared derivatives. These articles expand on Article 41 of Regulation (EU) No 648/2012.

Recital (4), (5) and (6) set out in the RTS on CCP requirements require ESMA to assess third country CCPs equivalence to every provision of Regulation EU No 648/2012 and the RTS.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) and the Commodity Exchange Act (CEA), in part 39 collectively define similar rules for US Derivatives Clearing Organisations (DCO) as encompassed in Chapter VI of the RTS. Those rules do not, in our view, meet the equivalence test and will result in significantly less margin being required from clearing participants and end consumers.

The variance in the rules is most significant for existing centrally cleared exchange-traded products. Estimated margin for those products may increase by a factor in the range of 1.6 to 1.8 when compared to current minimum margin requirements and those which will remain permissible under the Dodd-Frank and CEA equivalent Rules.

The cleared markets performed well throughout the financial crises and there is no evidence of insufficient margin applicable to those products. Back tests of current margin methodologies during the most volatile historic periods further demonstrate the sufficiency of current margin regimes. The successful performance of the cleared markets was the genesis of both Dodd-Frank and EMIR which in response to the G20 were intended to address shortcomings in the uncleared OTC markets.

The RTS prima facie reflect the required margin framework as set out in principle 6 of the Principles for Financial Market Infrastructures (“PFMI”) published by the Committee on Payment and Settlement Systems and the Technical Committee of the Organization of Securities Commissions (CPSS-IOSCO) in 2012. Importantly, though, the RTS is far more prescriptive than the PFMI principles and will result in significantly higher margin requirements with no demonstrated need given the successful performance of existing cleared markets through many insolvencies, including Lehman Brothers, and the financial crises.

### **Our Concern**

The implementation of the RTS without international agreement to the appropriate calibration and therefore margin cost for specific products will result in margin arbitrage for identical products offered by systemically important CCPs which offer cross border services.

Our expectation is that for directly substitutable products the lower margin charge will result in a flow of business currently cleared in Europe to US based DCOs operated in compliance with the lower Commodity Exchange Act and Dodd-Frank margin requirements.

Further, the disparity in margin requirements for OTC products will also bias participants in those markets to establish clearing solutions in the US and in accordance with Dodd-Frank requirements.

The net result of a lack of harmonized international margin requirements will be to encourage the precise type of margin arbitrage that prudent regulators and clearing house operators have long and appropriately avoided.

The relocation of clearing from Europe to the United States may result in a lack of transparency for European supervisory authorities and prudential regulators which may become reliant on information sharing memoranda or agreements with the Securities

Exchange Commission (SEC), the Commodities Futures Trading Commission (CFTC) or the Federal Reserve (FED) for detailed exposure information for European financial institutions.

It is also possible the disparity will frustrate the implementation of the anticipated European Clearing mandate as the creation of European based clearing solutions will be uneconomic if the mobile liquidity in those products can locate on a preferential cost basis under the CEA or Dodd-Frank.

### **Proposed Solution**

We feel strongly that the implementation of Chapter VI of the RTS on CCP requirements should be deferred until international agreement on the applicable margin standards has been agreed and such standards are implemented concurrently. Until implementation of such standards, margin requirements of CCPs will continue to be governed by both Article 41 of Regulation No 648/2012 and the CPSS-IOSCO PFMIs.

EACH, on behalf of European CCPs would welcome the opportunity to meet jointly with European and US representatives of the principal regulatory and political authorities to support and articulate the importance of, and case for, consistent global standards.

EACH urges the regulators to carefully assess the above mentioned observations and implications and offers a meeting, in which these points can be further discussed.

Should you require further information, please do not hesitate to contact the undersigned.

Yours sincerely,



Marcus Zickwolff

EACH Chairman



## About EACH

European central counterparty clearing houses (henceforth CCPs) formed EACH in 1992. EACH's participants are senior executives specialising in clearing and risk management from European CCPs, both EU and non-EU. Increasingly, clearing activities are not restricted exclusively to exchange-traded business. EACH has an interest in ensuring that the evolving discussions on clearing and settlement in Europe and globally, are fully informed by the expertise and opinions of those responsible for providing central counterparty clearing services.

EACH has 23 members:

AthexClear S.A.	IRGiT S.A. (Warsaw Commodity Clearing House)
CC&G (Cassa di Compensazione e Garanzia S.p.A.)	KDPW_CCP S.A.
CCP Austria	KELER CCP Ltd
CME Clearing Europe	LCH.Clearnet Ltd
CSD and CH of Serbia	LCH.Clearnet SA
ECC (European Commodity Clearing AG)	MEFF
EMCF (European Multilateral Clearing Facility)	NASDAQOMX
Eurex Clearing AG	National Clearing Centre (NCC)
EuroCCP (European Central Counterparty Ltd)	NOS Clearing ASA
ICE Clear Europe	NYSE Liffe
	OMIClear
	Oslo Clearing ASA
	SIX x-clear AG

This document does not bind in any manner either the association or its members.

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