



European Multilateral Clearing Facility N.V.

Via e-mail  
European Banking Authority  
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Amsterdam, 31 July 2012

EMCF thanks the EBA for the opportunity to respond to the Consultation Paper on Draft Regulatory Technical Standards on the Capital Requirements for CCPs pursuant to EMIR article 16 (3) .

EMCF is a member of EACH, the European Association of Central Counterparty Clearing Houses, and supports the contribution to the consultation submitted by the association. In addition we wish to highlight our comments on the proposed Regulatory Technical Standards as follows:

EMCF supports the objectives of EMIR, in particular as they relate to the authorization and supervision of CCPs, which contributes to the creation of a level playing field for CCP services in Europe.

#### 1. Notification threshold

The notification threshold comes under Article 4 of the Draft Commission Delegated Regulation.

The notification threshold provision may become quite complex in practice in view of the requirement expressed in Article 3 (2) sub C to deduct from the capital any resources not invested in accordance Article 47 (1) for which RTS are currently being drafted by ESMA. The scope of the word "resources" will be decisive for the compliance. If "resources" is to include for example cash held by a CCP awaiting delivery of financial instruments or cash held in the framework of collateral for interoperability arrangements, it would be difficult to ensure compliance.

Furthermore, we wonder whether the EMIR legislative mandate for the RTS is sufficient to allow for Article 3 (2) sub C as it proposes capital deductions exceeding those contemplated in EMIR Article 47 (2). We would therefore appreciate a clarification in respect of the practical aspects and the mandate for Article 3 (2) sub C

Lastly, should you decide to maintain the provision we wonder whether it would be advisable to replace the wording "turns out to be" in Article 4 (1) by "is". The wording now used suggests an ex post discovery process, which might not agree with the immediate notification demand. From a drafting perspective, we would prefer the word "is".

#### 2. Operational expenses for winding-down or restructuring

The operational expenses come under Article 6 of the Draft Commission Delegated Regulation.



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We feel that the floor of 12 months to be applied to the estimation of the winding-down or restructuring period is not necessary, provided that the estimation provided by the CCP to the competent authority is sufficiently reliable. A floor should only be applied in case a CCP fails to provide the necessary level of comfort that the estimate is realistic. In this way, the floor acts as incentive.

In case -contrary to the above- a floor must be kept, we would then be in favour of a tiered floor based on objective features of the CCPs and the markets served, such as the product range (e.g. cash equities vs. long term derivatives) and other features (e.g. interoperability, resolution procedures, segregation and portability possibilities).

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#### *About European Multilateral Clearing Facility*

EMCF provides competitive central counterparty clearing services for the Multilateral Trading Facility (MTF) market and Regulated Exchanges. Established in March 2007, EMCF provides CCP services for BATS Chi-X Europe, Burgundy, CATS, QUOTE MTF, TOM, NASDAQ OMX Nordic as well as NASDAQ OMX First North. EMCF is the most competitive European CCP, providing tangible savings for the industry. EMCF offers clearing participants a transparent fee schedule, charging the lowest fee across European markets with participants having access to the lowest fees in the world. In 2011, clearing volumes average 4 million transactions per day, representing nearly 40% of total European equity volumes, ranking it Europe's top cash equities CCP. EMCF cleared over 1 billion transactions in 2011, with a gross value in excess of EUR 6 trillion.