



EBA Consultation Paper on
Draft Regulatory Technical Standards on the capital requirements for CCPs
(EBA/CP/2012/08)
OMIClear contribution [26.July.2012]

Dear Sirs,

We want to thank EBA for giving us the opportunity to comment the guidelines concerning the Regulatory Technical Standards on the capital requirements for CCPs.

Our comments are organized according to the sequence of questions.

For any question or clarification please feel free to use one of the following contacts:

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Question	Comment
Q1-Q3	<p>In global terms, we have the opinion that solutions drawn on the Consultation Paper (CP) are overly burdensome for the CCPs, especially if we take into consideration:</p> <ul style="list-style-type: none">• The set of requirements that will affect the CCPs under the EMIR, which, although it is outside the scope of the EBA, can't be ignored for reasons of efficiency and effectiveness;• The extremely effective way as the CCPs have been managed, over the years, the failures of its members. <p>Our opinion is based in the following findings:</p> <ul style="list-style-type: none">• Even though they are outside the direct scope of this RTS, it should be taken into consideration the extremely demanding regulations which will be in place at the level of the designated clearing risk and investment policy of the CCPs;• The fact that the equity of the CCP intended for its Default Fund have awarded, implicitly, a 100% capital consumption. Something that seems exaggerated, particularly if we consider all safeguards referred to in the previous topic;• The same treatment for contributions to the Default Funds of other CCPs, something that doesn't happen with the clearing members of these same CCPs;• The simple non-consideration of the application of resources that do not comply with the investment requirements established in the EMIR, which extrapolates clearly the requirement applicable to credit institutions;• The cumulative character, now assumed in relation to the Discussion Paper (DP), of capital requirements for "non-covered" risks and those due to the winding down period; our understanding is that this cumulative approach is not required in the Level 1 text (EMIR) and will represent a relevant cost for the services provided by CCPs;

- The increase of the notification threshold (NT) to levels much higher than those proposed in the DP;
- The low incentive of the use of sophisticated risk assessment methodologies. More than its applicability, in particular for small CCPs, as is our case, we must highlight the principle;
- Finally, it is not, under any circumstances, assured an approach consistent with what is laid down in Art. 16 (2) of the EMIR, which determines: "*Capital, including retained earnings and reserves, of the CCP shall be proportional to the risk stemming from the activities of the CCP.*". The spirit of this provision does not point, certainly, for the simple use of ratios; otherwise the principle would not be needed. Everything points to the prediction of different mechanisms in accordance with the CCP's risk, in line with what happens in respect of credit institutions. This is particularly important if we consider that, with high probability, some CCPs will exclusively clear products which are not recognized to be systemically relevant.

OMIClear opinion is that depending on the dimension and systemic risk posed by CCPs, different approaches for calculating capital requirements should be addressed.

The criteria for segmenting the CCPs could be by business volume or by the fact of managing (or not) "systemic risk" products that are subject to the EMIR clearing obligation.

In the case of small CCPs, managing limited systemic risk, we consider that the capital requirements should be set only considering the criteria of a minimum period of 3-6 months of expenses. Each CCP should demonstrate its winding down period. This is in line with the CRR approach for smaller credit institutions and investment firms.

With regards to the other CCPs, that manage more relevant systemic risk, OMIClear agrees with the global approach proposed by EBA, subject to some changes already highlighted in the previous topics and detailed in the next answers.

Q8-Q9

We suggest a few adjustments to the notification threshold (NT) regime.

The NT is not laid down in art. 16 of EMIR, we assume it for informational purposes only. It should not become a capital requirement in itself, namely considering that it will play a leverage effect, since CCP own resources (EMIR art. 43(1) and art. 45(3)) will be indexed to EBA requirements.

In this line, we propose:

- To reduce the NT to about 105%, in order to be properly considered as an alert. We do not expect high volatility of the CCPs' operational risk, so we admit stable capital ratios. A NT in the range of 125% would prevent its use as an alert since it would be rational, for reasons of efficiency, to operate a CCP below this level.
- Eliminate the information requirements expressed in Art. 4 (2), if the NT does not come close to a level of 105%. The proposal seems exaggerated to high levels of NT, since it does not differ much from the requirements in Art. 3.

We also suggest the following operational clarifications:

- To set a trigger for the NT in function of the violation of the limit during a period of 10 consecutive days or 20 non consecutive days in a moving 60 days period.

- The NT should only be activated when the capital is previously above the limit, so as to avoid unnecessary daily notifications when the capital remains under the limits (this applicable for high values of the NT)

Finally, we do not agree that any restriction measures, other than informational, should be imposed to the CCP as long as the capital is maintained at an equal or higher level than 100% of the requisites.

Q14 Considering that there are CCPs which are also banks we admit that the banking framework may be the most suitable for the time being, but it should be taken as a first step.

Definitely, the structure of the CRR is dedicated to an adjacent sector, not fitting totally with CCPs, which perform a very specific activity. We consider, therefore, desirable that, in a second phase, these particularities should be incorporated as part of a review of the CRR.

For example, it is desirable that specific business lines for CCPs are considered in the CRD framework in order to allow the full application of the Standardized Approach.

Q15 – Q16 In conceptual terms, the Basic Indicator Approach (BIA) seems to us to be appropriate.

Nevertheless we propose a 12% multiplier, taking into consideration:

- that credit institutions and investment firms are using the threshold of 15%;
- the demanding regulation and standards that CCPs will be obliged to meet under EMIR, with regards to corporate governance, reporting, counterparties, collateral, payment systems, etc;
- that CCPs are closely monitored by securities and/or banking supervisors;
- that the CCP business assumes clearly a B2B profile, typically with highly solvent counterparties, most of them acting under the banking environment;
- that CCP uses STP and highly tested solutions without notice of any significant fail.

Q18 Despite admitting that only a few CCPs will use it, we see no justification for not allowing the use of an internal model.

Although we are not going to use it, the 80% limit defined in Art. 7 (7) for the Advanced Measurement Approach (AMA), raises several reservations:

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- It seems to us a clear disincentive to the use of more sophisticated methodologies and, to that extent, a disincentive to a more perfect operational risk monitoring.
- It becomes uncommon to calibrate/restrict a more sophisticated method by a simpler one.

Q19 As a consequence of the sudden change of the CCPs regulation paradigm, it has not been possible to incorporate their particularities across the existing regulatory structure.

The capital requirements arising from operational risk are a good example of

this. The adaptation of the rules of the banking system has limitations that do not allow a gradual use of the several available methodologies.

Knowing the requirements of the AMA, the CCPs will, in practice, be limited to the use of the BIA. To ensure efficiency in the coverage of the risk, we must stress the need to adapt the rules, namely adapting or creating specific business lines for CCPs in the CRD framework in order to allow the full application of the Standardized Approach.

Q21 Assuming in the explanatory text that:

"EBA considers that such risk exposures stemming from non-covered activities should be calculated using some approaches set out for banks by the CRR. Investment activities expose the CCPs at least to the same kind of credit risks that is typically faced by credit institutions. As the risk does not depend on the nature of the institutions but on the activities performed, it seems appropriate to refer to the prudential framework for banks (...)"

We see no reason to restrict the usage of any of the available methods. This is applicable not only to the internal models, but also to the others, namely OEM and FCSM.

Q23 We support the methodology employed.

But we do not agree with the following explanatory comment in the DP:
"it seems appropriate to refer to the prudential framework for banks but to take into account the concentration of risks stemming from derivatives that CCPs are exposed to."

It makes sense to comment on it because it lays down a general principle, which, from our point of view, is inaccurate.

The CCPs are not exposed to derivatives risks in the same way that credit institutions and investment firms, taking into account all risk management mechanisms that they have at their disposal, in particular the mutualisation of some of that risk. In addition, all these activities are already subject to regulatory intervention – which can be designated by covered activities.

The non-covered activities, in particular related to derivatives usage, subject to capital requirements, are employed in a much smaller degree than in the banking sector, and could even be subject to specific rules, so that the phrase does not seem totally correct.

Q27 Same as Q21

Q28 The proposed methodologies seem appropriate.
