EBA Discussion Paper on
Draft Regulatory Technical Standards on the capital requirements for CCPs under the draft Regulation on OTC derivatives, CCPs and Trade Repositories (EBA/DP/2012/1)

OMIClear contribution [02.April.2012]

Dear Sirs,

First of all we would to thank EBA for the way it is conducting the process, providing market players and particularly CCPs the opportunity to comment its first ideas concerning the Regulatory Technical Standards on the capital requirements for CCPs.

Our comments are organised 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 & Q2	OMIClear opinion is that depending on the dimension and systemic risk posed by the CCP two different approaches for calculating capital requirements should be addressed. In the case of small dimension CCPs, with limited systemic risk, we consider that the capital requirements should be set only considering the criteria of a minimum period of X months of expenses. This is in line with the CRR approach for smaller institutions. CRR considers 3 months of fixed overheads which could be exported also to the timing and expenses concept in the new RTS framework. With regards to the CCP's that pose a more relevant systemic risk, OMIClear agrees with the approach proposed by EBA.
Q3	The criteria to be taken into account for estimating the appropriate time span for the orderly winding down of the CCPs activities depend on several factors such as the level of open positions, market liquidity and the existence of other CCPs that clear the same products.
Q5	Yes we do consider that a clarification would be useful. The expenses to be included should be mainly those which are fixed and the variable expenses expressly needed during the winding down period.
Q7	Even though there might be a more appropriate method for estimating operational risk for CCPs, currently we have no other proposal. Moreover, considering that there are CCPs which are also banks we admit that the banking framework may be the most suitable for the time being.

Q10	OMIClear considers that the Basic Indicator Approach (BIA) was designed for the banking sector and may not take into account the specificities of the CCP activities. Nevertheless, since we have no other approach to propose, we agree to use BIA but limiting the “relevant indicator” to 12%. As a matter of fact, taking into account: • that banks are using the threshold of 15% • the demanding regulation and standards that CPPs 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. We consider the “relevant indicator” imposed to CCPS must be lower than that of banks and a 12% threshold would be the appropriate value.
Q11	OMIClear opinion is that the business lines considered under the standardised approach are designed for the banking sector and are not adequate for the CCPs. Though in terms of wording the classes may appear similar to banks, namely “payment and settlement”, from an operational standpoint they are different. Concerning “settlement”, usually CCPs are located centrally in the process, relationships are governed by clear and approved rules, and, compared to banks, CCPs counterparts are large and few. With regards to payments CCPs role is less risky than that performed by others, namely those involved in corporate actions management. Our recommendation, then, would be to develop, in the medium term, a specific approach, identifying and including relevant business lines for CCPs. During this transitory period we would suggest to use the BIA and a criteria base approach, duly justified, for those CCPs that intend to explore the Standardised Approach. These first attempts in the transitory phase would naturally be a valuable input to the final solution.
Q12	Yes.
Q15	Yes, but Credit Risk Mitigation forms should be assumed with regards to Credit and Counterparty risk of CCPs.
Q17	OMIClear agrees with the Standardised Approach. However we would like to point out that the 8% risk weight foreseeable increase should also impact the threshold referred to in CRR art.87 (4b) and Art 90 (2b). Accordingly risk weighted assets (RWA) should be computed by multiplying the total capital requirements with the appropriate factor and not 12.5.
Q18	The type of CPP business should not impact or restrict the capital requirements method it intends to follow.
Q19	In our opinion the assets used by CCPs are already subject to very strict requirements and as such we see no need in imposing additional ones.

Q21 & Q22	We consider that a threshold of 105% is adequate to trigger a notification to the authorities. In case such limit is breached we understand that it would imply a more frequent reporting to the relevant authorities. Nevertheless, we do not agree that any restriction measures, other than informational, should be imposed to the CCP as along as the threshold is maintained at an equal or higher level than 100%.