



Eurex Clearing

Response to

European Securities and Markets Authority
(ESMA)

Consultation Paper ESMA/2012/852

Frankfurt am Main, January 31, 2013

A. About Eurex Clearing

Eurex Clearing is a globally leading central counterparty (CCP). We offer fully automated and straight-through post trade services for derivatives, equities, repo, energy and fixed income transactions. As a central counterparty, our focus is to increase market integrity.

Eurex Clearing is a subsidiary of Deutsche Börse Group and acts as the central counterparty for Eurex Exchange, Eurex Bonds, Eurex Repo, European Energy Exchange (EEX) the FWB® Frankfurter Wertpapierbörse (the Frankfurt Stock Exchange) - both Xetra® and floor - and the Irish Stock Exchange.

Eurex Clearing AG is a company incorporated in Germany and licensed and regulated as a credit institution under supervision of the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht - BaFin) pursuant to the German Banking Act (Gesetz über das Kreditwesen). The Financial Services Authority (FSA) has granted Eurex Clearing status as a Recognised Overseas Clearing House (ROCH) in the United Kingdom.

The next part, section B, of the document contains general remarks we have on the consultation paper. Finally, section C of this document contains detailed remarks on the specific questions.

B. General remarks

Eurex Clearing appreciates the opportunity to respond to ESMA's consultation paper on ESMA's Guidelines for establishing consistent, efficient and effective assessments of interoperability. In general, Eurex Clearing supports a call for deliberate high standard interoperability arrangements in money market instruments and transferable securities.

Interoperability arrangements create exposures and interdependencies between CCPs, hence increase systemic risks and giving rise to regulatory concerns. Stipulating improved safety and soundness of the financial system as a priority such arrangements clearly require careful consideration and regulatory oversight to minimise or mitigate the inherent risks. Improperly managed interoperability arrangements will not decrease, but increase risks. This is especially true for interconnecting different CCPs with different risk management techniques.

In particular, high standard requirements for interoperability arrangements are essential as typically, such arrangements involve reciprocal recognition of the risk management framework that each CCP has in place. In addition, interoperable CCPs are not required to meet the same participation criteria as ordinary clearing members. As such, interoperable CCPs have a special status and cannot be considered the same as ordinary clearing participants. Instead, the CCPs involved in an interoperability arrangement have to set up a framework for the joint management of positions and the exchange of margins.

From Eurex Clearing's perspective the ESMA guidelines for assessing interoperability as presented in the consultation paper clearly will serve National Competent Authorities (NCAs) well to investigate such interoperability on a harmonized basis throughout Europe.

C. Detailed comments on the consultation paper's questions

Question 1:

Do you think that the draft guidelines adequately capture all the relevant considerations for an NCA when receiving an application from a CCP to establish an interoperability arrangement?

Eurex Clearing comments:

Eurex Clearing is of the opinion that the presented guidelines for assessing interoperability arrangements are fairly exhaustive. However, in light of REGULATION (EU) No 236/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 March 2012 on short selling and certain aspects of credit default swaps, Article 15, Eurex Clearing feels that it is materially important for NCAs to also establish that the CCPs entering into an interoperability arrangement have agreed a harmonized framework for the management of buy-ins for inter-CCP deliveries. This harmonized framework should include not only agreement on the timeframe for instigating the buy-in (specified in the regulation), but also the maximum price at which securities may be bought in, the point upon which cash settlement will take place (either wholly, or partially), and the level of fines to be imposed per day, after the intended settlement date.

Question 2:

Are there areas where it would be helpful to have more detail on the relevant considerations for an NCA when receiving an application from a CCP to establish an interoperability arrangement? If so, please specify what those details should be.

Eurex Clearing comments:

Guideline 1 on legal risk and Guideline 2 on open and fair access

- We fully support the requirement that the documentation governing the interoperability arrangement must not “unduly restrict the termination of the interoperability arrangement [...] on duly justified risk grounds” (guideline 2-2.ii) and welcome the emphasis given to clear definition and documentation of the dispute resolution mechanism and of the conditions and procedure for termination (guideline 1-2.a.vi & vii).

Guideline 3 on identification, monitoring and management of risks

- We welcome the explicit confirmation that a CCP must not contribute to the default fund of the other CCPs (our understanding of guideline 3 -2.b.v on prudential requirements stating “That the resources exchanged between interoperable CCPs do not include contributions to the respective default funds or other financial resources as defined in Article 43 of the Regulation”).

This provision is consistent with EMIR (Art. 52.1.c) stipulating that a default of a member of one CCP should not affect the other interoperating CCP(s) and is in full accordance with the concern that setting up an interoperability arrangement should not introduce systemic risk that can be avoided or properly managed. While we strongly support the requirement for a CCP to “put in place arrangements, that are transparent to its clearing members, to meet exposures arising from the interoperability arrangement, including in extreme but plausible market conditions” as stated by guideline 3-2.f.ii, we note that ESMA, in order to make different options possible, did not explicitly clarify whether or not members’ contributions to default funds could be used upon the default of an interoperating CCP.

We are of the opinion that default fund contributions should in principle be used to this end. In case that for an interoperability arrangement, these contributions would not be used, then this must be reflected when determining the appropriate level of resources a CCP must have through e.g. margins to cover the default of an interoperating CCP. Such resources must be sized to cover market moves that include “extreme but plausible market conditions”. As a result, this means in real terms that in the absence of any form of risk mutualization, inter-CCP margins should be calibrated to cover the tail-risk.

- We equally support the requirements related to a clear process for informing and agreeing on any changes to the rules of one interoperating CCP, when these changes may adversely affect the soundness and the safety of an interoperability

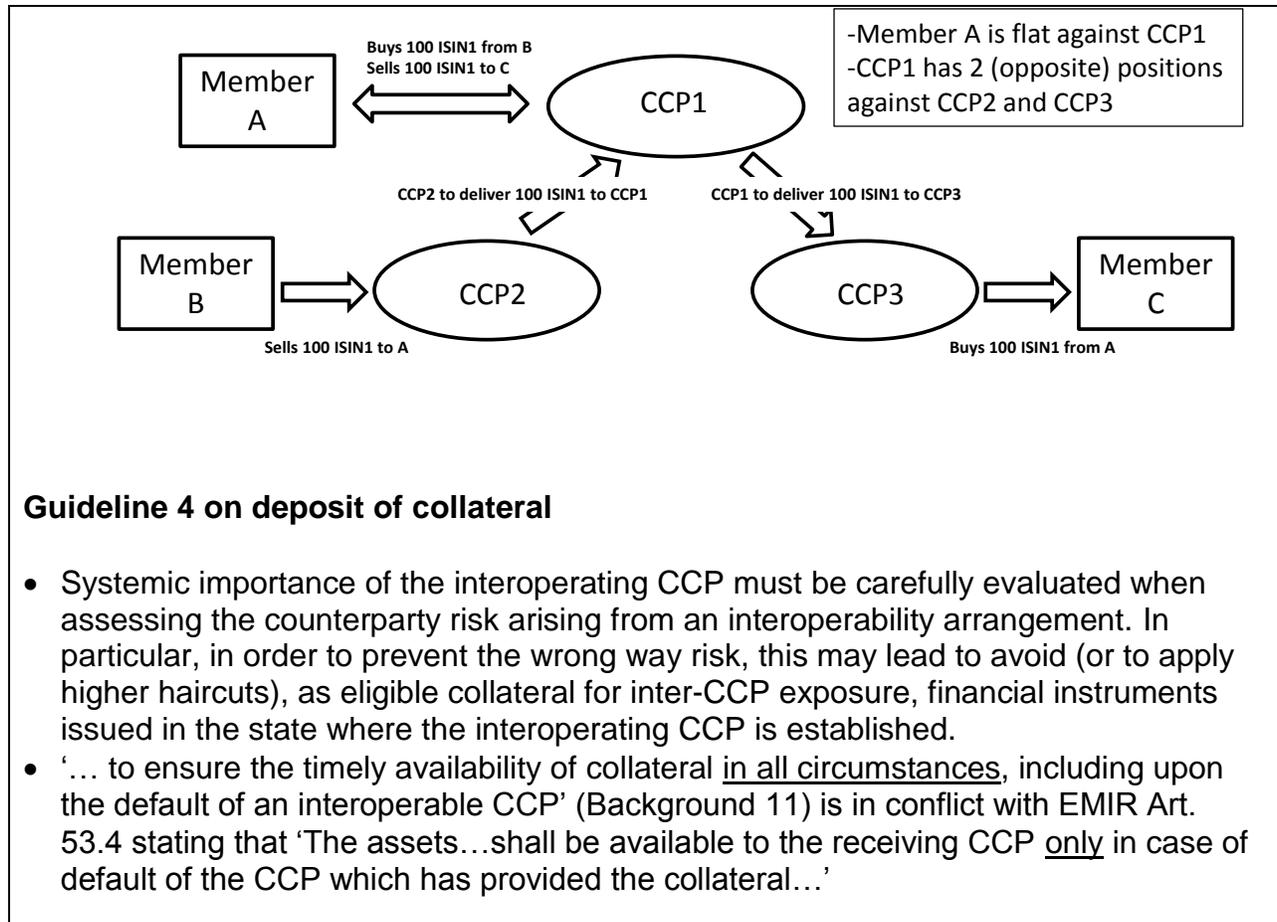
arrangement (guideline 3-2.a.v).

- We have noted with concern the process to assess the need for harmonization of CCPs respective risk framework (guideline 3-2.a.vii): “There should also be a process for the interoperable CCPs to assess the need for harmonization of their respective risk management frameworks. Such processes should be approved by the boards of the CCPs.”

We understand that it is not ESMA intention to force interoperating CCPs to harmonize their respective risk frameworks. Technical Standards for CCPs already provide the framework of the minimum standards any European CCP will have to comply with, and set out prescriptive requirements that should prevent from a possible ‘race to the bottom’ by CCPs. Therefore, it is important that within such a framework, CCPs may still have the ability to develop new and innovative solutions to reduce their overall risks and costs.

- We understand that portability of positions is not a requirement when it comes to the default of an interoperating CCP (guideline 3-2.c.i.b); it must be clear that this cannot be granted in interoperability arrangements where e.g. inter-CCP positions are risk netted and where accordingly portability of positions can only be done on a best effort basis, provided that the risk situation of the surviving CCP makes it possible.
- We strongly support the transparency requirement ensuring that risks introduced by the interoperability arrangement must be disclosed to the clearing members (guideline 3-2.c.i.c). It is equally important that when assessing the risk profile of an interoperating CCP, access be given to all the existing interoperability arrangements. We are of the opinion that the information obligation covered by the final guidelines (notably guideline 2.a.ii ‘comprehensive information on the operations of the interoperating CCPs’) should mention explicitly such disclosure obligation as it may raise some commercial issues.
- Interoperability arrangement involving more than two interoperating CCPs: as part of the risks arising from the collective arrangements (guideline 3-2.a.vi), it should be explicitly mentioned potential additional legal issues and the need to assess the impacts on default procedures: due to the absence of multilateral netting across the interoperating CCPs, coordination measures in default procedures followed by the surviving CCPs may significantly reduce the positions to be closed-out on the market, and hence may avoid systemic market disruption – where the defaulting CCP has a large portfolio but balanced across the surviving CCPs.

Example below depicts a simple configuration where this situation may occur (in case of a default of CCP1)



Question 3:

Is it appropriate to consider an assessment by CCPs of the membership criteria of interoperable CCPs?

Eurex Clearing comments:

We agree that assessment of membership criteria is integral part of the analysis of the risk profile of the interoperating CCPs. In addition, this assessment should not be restricted to the clearing membership criteria relating to the interoperable trading venue(s) only but instead should encompass the clearing membership criteria relating to all the trading venues for which the CCPs provide clearing services regardless of financial instruments traded on these venues.

Question 4:

Do you have additional comments on the draft guidelines?

Eurex Clearing comments:

None

We trust you would have found these comments useful and remain at your disposal for further discussion. Should you have any questions please do not hesitate to contact:

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