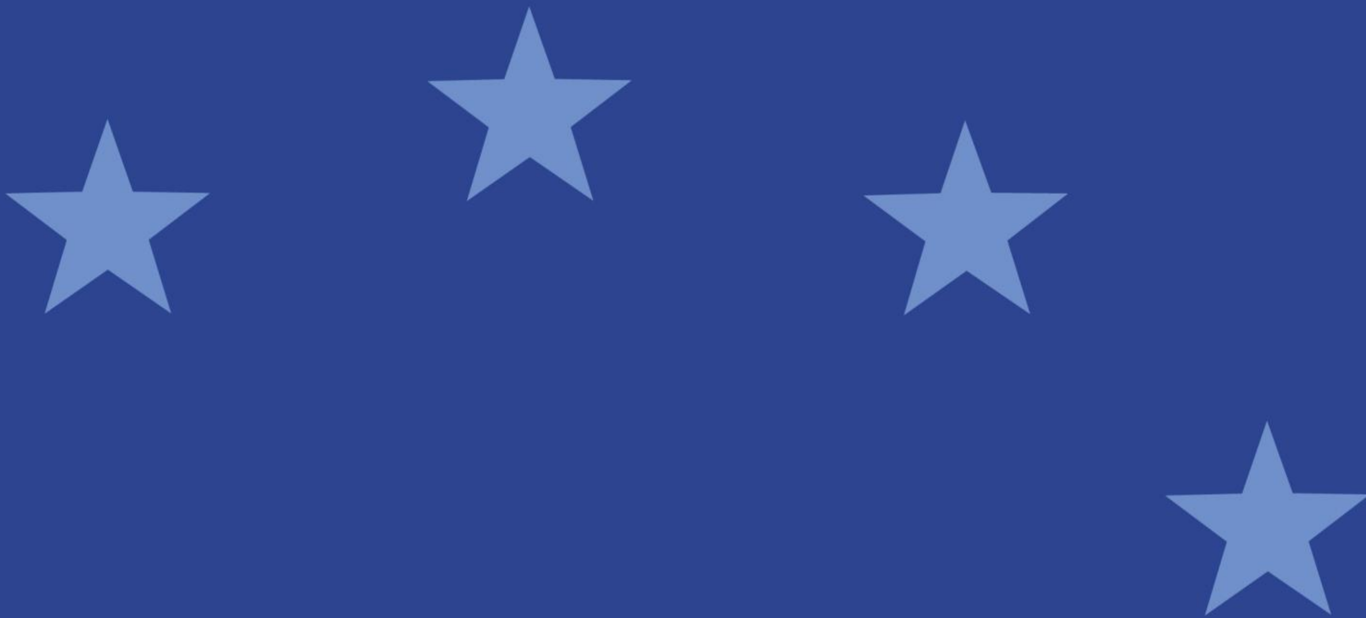
Discussion Paper

Review of Article 26 of RTS No 153/2013 with respect to client accounts



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esma European Securities and Markets Authority

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Responding to this paper

ESMA invites comments on all matters in this Discussion Paper on the Review of Article 26 of RTS No 153/2013 with respect to client accounts and in particular on the specific questions summarised in Annex 1.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Please follow the instructions given in the document 'response form' for the Discussion Paper on the Review of Article 26 of RTS No 153/2013 with respect to client accounts' also published on the ESMA website.

Comments are most helpful if they:

1. respond to the question stated;
2. indicate the specific question to which the comment relates;
3. contain a clear rationale; and
4. describe any alternatives ESMA should consider.

ESMA will consider all comments received by **30 September 2015.**

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading Legal Notice.

Who should read this paper

All interested stakeholders are invited to respond to this consultation paper. In particular, responses are sought from central counterparties (CCPs), their clearing members as well as the financial and non-financial counterparties accessing CCP services as clients of clearing members.

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Acronyms used

CCPs Central Counterparties

EMIR European Market Infrastructures Regulation – Regulation No 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories

ESMA European Securities and Markets Authority

ETD Exchange-Traded Derivatives

ISA Individual Segregated Accounts – according to Article 39(3) of EMIR

LSOC Legally Segregated but Operationally Comingled

MPOR Margin Period Of Risk

OSA Omnibus Segregated Accounts – according to Article 39(2) of EMIR

OTC Over-The-Counter

RTS Regulatory Technical Standards

1 Executive Summary

Reasons for publication

This discussion paper seeks stakeholders' views on Article 26 of the Commission Delegated Regulation No 153/2013 including a regulatory technical standard for CCPs on the time horizons for the liquidation period, which ESMA has drafted under the Regulation No 648/2012 of the European Parliament and Council on Over-The-Counter (OTC) derivatives, central counterparties (CCPs) and trade repositories (EMIR).

The input from stakeholders will help ESMA in the review of this technical standard with respect to client accounts and, if necessary, develop a revised draft to be submitted to the European Commission for endorsement in the form of a Commission Delegated Regulation, i.e. a legally binding instrument directly applicable in all Member States of the European Union. One essential element in the development of draft technical standards is the analysis of the costs and benefits that those legal provisions will imply. Input in this respect and any supportive data will be highly appreciated and kept confidential where required.

Contents

This report explains in Section 2 the rationale and the scope of the review of Article 26 of RTS No 153/2013 launched by ESMA. Section 3 raises questions seeking all relevant stakeholders' view on whether and how Article 26 of RTS No 153/2013 could be revised.

Next Steps

As provided for by Regulation No 1095/2010 of the European Parliament and Council establishing ESMA, a public consultation will be conducted on the draft technical standards before they are submitted to the European Commission for endorsement in the form of Commission Regulations. According to ESMA decision ESMA/2011/BS/4a on the procedure for developing and adopting draft technical standards and guidelines, the consultation paper will include the actual legal text of the provisions constituting the draft technical standards, an explanation of the measures adopted and a cost-benefit analysis. In addition, in line with the mandate to draft these regulatory technical standards, under Article 41(5) of EMIR, ESMA will consult EBA and the ESCB before finalising its draft to be submitted to the European Commission.

Therefore, following this discussion paper and on the basis of the relevant input received, ESMA might prepare a revised draft technical standard to be included in a consultation paper.

2 Introduction

1. EMIR introduced provisions to improve transparency and reduce the risks associated with the OTC derivatives market and established common rules for CCPs and for trade repositories. In particular, Title IV of EMIR introduced common requirements for CCPs and mandated ESMA to develop draft RTS on a number of areas, while delegating powers to the European Commission to adopt the RTS in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

2. Commission delegated Regulation No 153/2013 adopted the RTS on requirements for CCPs as developed by ESMA. Article 26 of RTS No 153/2013 established a regulatory technical standard for the definition of the time horizons for the liquidation period (see Box 1 below). The rationale for defining precisely time horizons for the liquidation is that within the liquidation period the CCP should be able to either transfer or liquidate the position of the defaulting clearing member and have sufficient margins to cover the exposures arising from the transfer or liquidation of the relevant positions. In developing its proposal for the Regulation No 153/2013, ESMA took a view that a two-day liquidation period was a prudent minimum for products other than OTC derivatives.

Article 26

Time horizons for the liquidation period

1. A CCP shall define the time horizons for the liquidation period taking into account the characteristics of the financial instrument cleared, the market where it is traded, and the period for the calculation and collection of the margins. These liquidation periods shall be at least:

(a) five business days for OTC derivatives;

(b) two business days for financial instruments other than OTC derivatives.

2. In all cases, for the determination of the adequate liquidation period, the CCP shall evaluate and sum at least the following:

(a) the longest possible period that may elapse from the last collection of margins up to the declaration of default by the CCP or activation of the default management process by the CCP;

(b) the estimated period needed to design and execute the strategy for the management of the default of a clearing member according to the particularities of each class of financial instrument, including its level of liquidity and the size and concentration of the positions, and the markets the CCP will use to close-out or hedge completely a clearing member position;

(c) where relevant, the period needed to cover the counterparty risk to which the CCP is exposed.

3. In evaluating the periods defined in paragraph 2, the CCP shall consider at least the factors indicated in Article 24(2) and the time period for the calculation of the historical volatility as defined in Article 25.

4. Where a CCP clears OTC derivatives that have the same risk characteristics as derivatives executed on regulated markets or an equivalent third country market, it may use a time horizon for the liquidation period different from the one specified in paragraph 1, provided that it can demonstrate to its competent authority that:

(a) such time horizon would be more appropriate than that specified in paragraph 1 in view of the specific features of the relevant OTC derivatives;

(b) such time horizon is at least two business days.

3. Moreover, Article 25 of EMIR on the recognition of third-countries CCP provides in paragraph 6 that the Commission may adopt an implementing act under Article 5 of Regulation (EU) No 182/2011, determining that the legal and supervisory arrangements of a third country ensure that CCPs authorised in that third country comply with legally binding requirements which are equivalent to the requirements laid down in Title IV of EMIR, that those CCPs are subject to effective supervision and enforcement in that third country on an ongoing basis and that the legal framework of that third country provides for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes. The adoption of such an implementing act is the first of four conditions for ESMA to recognise third-country CCPs.

4. The European Commission adopted in 2015 a first batch of implementing acts determining the equivalence of the legal and supervisory regimes for CCPs in Australia, Hong Kong, Japan, and Singapore. Furthermore, it has expressed an intention to adopt implementing acts with respect to further third countries, while noting discussions on the equivalence of the CCP regimes in the USA are continuing[1].

5. In the context of the debate on the equivalence between the legal and supervisory arrangements for CCPs in the United States of America (USA) and the EU, it emerged that a critical difference between the two regimes is that for US CCPs the minimum liquidation period for financial instruments other than OTC derivatives[2] is only one day, although applied for client accounts on a gross basis, whereas under EMIR the minimum liquidation period is two days, but margin may be provided on a net basis. Under gross margining clearing members must pass to the CCP enough margin to cover the sum of the separate margin requirements for each client's position, with no netting of exposures between clients; whereas under net margining the clearing members need only pass through sufficient margin to secure the net exposure across a set of clients whose positions are held in the same omnibus account, and so the clearing members may retain much of the client margins.

6. The difference in EU and US standards gives rise to the risk of regulatory arbitrage. In this context, the European Commission requested ESMA's views and recommendations on the corresponding provisions in RTS No 153/2013, including whether changes to the EU rules may be necessary. This was based on the fact, as further described in section 3 below, that on the basis of a restricted sample of one EU and one US CCP, a preliminary comparison of margin requirements calculated on US client accounts on a 1-day gross Omnibus Segregated Account (OSA) and EU client accounts with a 2-day net OSA seems to conclude that the former method typically (but not always) results in a higher level of margins held at the CCP. However, it should be noted that at the level of the overall system, EU requirements can be expected to result in higher margin levels being maintained at both CCP and clearing member level, since market practice suggests that EU clearing members

[1] http://europa.eu/rapid/press-release_STATEMENT-15-4944_en.htm?locale=en
[2] In practice under the CFTC regime this is applicable only to exchange trade derivatives (mainly futures).

tend to (and in some cases are required by the CCP's rules) in fact collect margin from clients on a two-day gross basis.

7. Consequently, and without prejudice to the outcome of the European Commission analysis on the equivalence of the legal and supervisory regimes for CCPs in the USA, ESMA has considered whether to launch a review of Article 26 of RTS No 153/2013 with respect to client accounts only. ESMA has a general mandate to review the technical standards it has issued to ensure their purpose is appropriately fulfilled. Therefore, ESMA is investigating whether it would be appropriate to revise the current regulatory standard in Article 26 with respect to client accounts in order to allow CCPs authorised under EMIR to apply a one-day liquidation period for financial instruments other than OTC derivatives, only where margins on client accounts are calculated on a gross basis.

8. The following section compares the two above-mentioned margin calculation methods and raises questions seeking all relevant stakeholders' views on whether and, if so, how Article 26 of RTS No 153/2013 ought to be revised.

3 What liquidation period for client accounts?

9. Article 39 of EMIR introduces a requirement for CCPs on segregation and portability of clients' assets and positions, according to two types of client accounts. In particular, Article 39(2) establishes that a CCP shall offer to keep separate records and accounts enabling each clearing member to distinguish in accounts with the CCP the assets and positions of that clearing member from those held for the accounts of its clients ('omnibus client segregation'). Moreover, Article 39(3) establishes that a CCP shall offer to keep separate records and accounts enabling each clearing member to distinguish in accounts with the CCP the assets and positions held for the account of a client from those held for the account of other clients ('individual client segregation').[3]

10. Article 41 of EMIR introduces a requirement for CCPs on margin requirements, according to which a CCP shall impose, call and collect margins to limit its credit exposures from its clearing members and, where relevant, from CCPs with which it has interoperability arrangements. Such margins shall be sufficient to cover potential exposures that the CCP estimates will occur until the liquidation of the relevant positions.

11. In particular, Article 41(4) provides that a CCP shall call and collect margins that are adequate to cover the risk stemming from the positions registered in each account kept in accordance with Article 39 with respect to specific financial instruments. A

[3] According Article 39(7), the requirement to distinguish assets and positions with the CCP in accounts is satisfied where: (a) the assets and positions are recorded in separate accounts; (b) the netting of positions recorded on different accounts is prevented; and (c) the assets covering the positions recorded in an account are not exposed to losses connected to positions recorded in another account.

CCP may calculate margins with respect to a portfolio of financial instruments provided that the methodology used is prudent and robust.

12. Article 26 of RTS No 153/2013 further specifies that the liquidation period to be applied by CCPs for the calculation of margins shall be at least two business days for financial instruments other than OTC derivatives.

13. ESMA recognises that, whereas in the USA the CFTC rules mandate gross margining for all clients, Article 41 of EMIR allows CCPs to apply net margining to the positions of different clients held in net OSA at the level of the clearing member – gross margining still applies for Individual Segregated Accounts (ISA), for which by definition margin requirements are calculated at the level of each client. However, while in the EU (according to Article 26 of RTS No 153/2013) CCPs shall apply at least a two-day liquidation period for financial instruments other than OTC derivatives, in the USA CCPs may apply a one-day liquidation period (according to current CFTC rules) for exchange-traded derivatives (ETD).

14. From a CCP perspective, where ISAs are used, the margin requirements held at the CCP under the EU rules (gross margining with a two-day liquidation period) is structurally higher than the margin requirements held at the CCP under the US rules (gross margining with a one-day liquidation period).

15. At CCP level, when using gross margining, client margin is held entirely with the CCP, whereas under net margining part of the margins collected from clients are retained by the clearing members.

16. When margins are collected on a gross basis, this reduces the exposure of clients to their clearing member and increases the likelihood that the CCP will be able to port the client positions in the account to another clearing member in the event of the default of the primary clearing member – because the account should include sufficient margin to secure the position of each client, which would less likely be the case in a net margined account because part of the margin would probably remain with the defaulted clearing member. Using the gross margining method will only lead to a higher level of margin than the net method if clients' positions are not unidirectional.

17. It should be noted that house accounts, which are not covered by this consultation paper and for which no change is proposed, there is no difference between a gross and a net calculation, given that the house account only maintains the position of the clearing member, which are thus netted in practice. Therefore for house accounts the considerations made by ESMA when drafting RTS No 153/2013 are still valid and a minimum liquidation period of 2 days should apply to financial instruments other than OTC derivatives. A reduction of the liquidation period in the house account would mean allowing a one-day net margin level, which in ESMA's view would not allow CCPs to have a sufficient level of margins to manage a default, thus impacting the resources of the non-defaulting clearing members and the stability of the CCP.

18. At clearing member level, a one day minimum liquidation period for gross OSA/ISA may reduce the amount of margin the clearing member collect from their clients and therefore less margins would be collected by the system as a whole. That is because clearing members will often apply the CCP's liquidation period in calling margin from their clients. Thus if a CCP applied a two-day liquidation period clearing members will tend to call margin from their clients on the basis of a two-day liquidation period, whereas if the CCP's liquidation period is one day they will tend to call from their clients on the basis of a one-day liquidation period. That could reduce the resilience of clearing members with respect to the default of a client. In extreme cases, this could increase the probability that a client default would cause a clearing member default, thereby increasing the exposure of the CCP to its clearing members. However it should be noted that this would not be the result of any regulatory requirement, as clearing members would be free to call additional margin from their clients if they thought that justified on risk grounds. Therefore, the focus of this discussion paper is the timing necessary for CCP and level of margins available at CCP level for it to transfer or liquidate the position of the clients of the defaulting clearing member.

19. As mentioned above, a preliminary comparison, on a restricted sample of one EU and one US CCP, has shown that the margins held at the CCP according to the gross margining method in combination with a one-day liquidation period are (typically, but not always) higher than margin requirements calculated according to the net margining method in combination with a two-day liquidation.

Q1: ESMA welcomes views on the assumption that client margins maintained at CCP level on a OSA gross margining with one-day liquidation period would generally be higher than margin held at the CCP under an OSA net with a two-day liquidation period. Please, provide quantitative analysis on the effect of the reduction of margin on the basis of 2 vs. 1 day margin periods of risk (MPOR) and of the net (between clients' positions) margining vs gross margining. Please also consider the potential impact of the case in which a one-day OSA gross is considered equivalent to the EU system and the RTS are not changed and the impact for the whole system if the MPOR at CCP level is reduced.

20. In case the RTS are reviewed to allow one-day gross, the following issues should be analysed:

A) OTC derivatives vs other financial instruments (including ETDs)

21. The reasons for ESMA to set a two-day liquidation period as a minimum for all financial instruments except OTC derivatives was due to the fact that ESMA considered that at a minimum the CCP would need two days to either port or liquidate client accounts for instruments other than OTC derivatives, which are generally more liquid and easier to be liquidated than OTC derivatives.

22. If the RTS are changed to allow a shorter liquidation period, which ought to create scenarios in which a CCP will have more margins to manage in a default, then the

focus moves from being based on timing required for the CCP to manage the default to the sufficiency of the resources which are available in that shorter period of time.

23. Should this logic be followed, the next question is whether different treatments should be applied between financial instruments belonging to the category “other than OTC derivatives” (including ETDs, cash instruments, etc.). In terms of the time required to liquidate them, ESMA originally considered that the same time was necessary for all non-OTC derivatives financial instruments. This suggests that should one-day gross be considered prudent for ETD, than other non-OTC derivatives financial instruments may be treated equally.

24. The original logic for ESMA was to distinguish between OTC derivatives and other financial instruments. If a new distinction is now being introduced which considers the type of account structure and of the level of margins collected therein, then the subsequent question would be whether the same logic should be extended to the liquidation period applicable to OTC derivatives.

25. For OTC derivatives the minimum standard is five days both in the EU and in the USA. Under the CFTC rules, this corresponds to five days gross under the LSOC account structure. This suggests that rather than lowering MPOR for gross margin account structure, ESMA should rather consider increasing the MPOR for OSA net. One solution would be to keep five days for gross OSA and ISA and raise it to seven days for OSAs net. The logic would be the same as discussed above: higher margins available at CCP level with a gross collection of margins and incentives for safer account structures for clients.

Q2: If the RTS were modified to allow one-day gross margin collection for ETDs, should this be extended to financial instruments other than OTC derivatives? What are the costs and benefits of either approach?

Q3: If a differentiation of MPOR is made for ETDs depending on the gross or net collection of margins, should this differentiation be made for OTC derivatives as well? Would seven days MPOR for OTC derivatives be appropriate for net OSA? Please, provide quantitative analyses in support of your answer.

B) ISA vs OSA

26. The arguments above assumed that a gross margin collection provides more margin held at and available to the CCP and therefore treats gross OSA and ISA equally. However, there is an argument for making a distinction between the two. In particular, the following should be considered:

    a. CCP perspective

27. On the one hand, although ISA and OSA gross provide overall the same amount of margins if collected with the same MPOR, in a default scenario, in an OSA gross structure the CCP should be able to rely on all the margins collected and available in the omnibus account, whereas in an ISA structure the CCP can only rely on the gross

margins collected in the single ISA account. To draw a parallel with the USA, in a futures gross account structure (the one applicable to ETD), the CCP collects gross, but when dealing with a default, all clients are equally exposed to the default of other clients or of the clearing member. This is not the case in a LSOC structure, for which a similar logic as for ISA apply, i.e. clients are legally protected from the default of other clients although the margins are still collected on a single account and the CCP can only rely on the margins of the relevant clients[4].

28. On the other hand, an ISA structure will allow a quicker identification of the clients, its exposures and its assets, thus shortening the time for portability. Therefore the lower margins available to liquidate the positions, would arguably be compensated to some extent by a greater probability of prompt porting. Given that a CCP does not need to liquidate positions that are successfully ported, its need for collateral in default management may be reduced to the extent that ISAs do provide for more successful porting in practice.

b. Client perspective

29. Differentiating the MPOR between ISA and gross OSA (i.e. allowing one-day only for gross OSA), may make ISA significantly less attractive. Currently in most of the EU countries the take up for ISA is quite limited. If it is not provided with any advantage compared to gross OSA, the ISA model would hardly be chosen. In addition, incentivising account structures that are less safe from clients is counter-intuitive.

30. However it is not clear that the cost of providing additional margin is the key consideration in whether clients select an ISA, since clients who select an ISA do so because of the greater protection it offers and so may not be primarily concerned with cost, whether operational cost or otherwise.

c. Clearing member perspective

31. Differentiating the MPOR between ISA and gross OSA (i.e. allowing one-day only for gross OSA) would be for the most part a neutral operational change to clearing members which will call on one or two days depending on the MPOR applied by the CCP and which will need to post margins on a gross basis, i.e. they will post to the CCP what they receive from their clients.

32. Margin held in client accounts at the CCP serves also to protect the clearing member against the default of its clients, since agreements between the clearing member and clients typically provide for the former to use the client collateral at the CCP in the event of the client's default. As such, following any reduction in the MPOR employed by CCPs, clearing members would need to consider whether the lower margin requirement is still sufficient to cover their own exposures to their clients. This decision may be somewhat complicated if different margin requirements are applied to ISA and gross OSA.

[4] Commodity Futures Trading Commission; 17 CFR Parts 22 and 190.

33. Based on the above analysis, ESMA would welcome views on whether ISA and gross OSA should be treated equally in terms of MPOR.

Q4: Should ISA and gross OSA be treated equally in terms of MPOR? Please provide quantitative evidence to support your arguments.

C) Intraday margining

34. It should be noted that EMIR currently requires the CCP collect margins at least on a daily basis and on intraday basis when predefined thresholds are exceeded. Therefore the current regime is not particularly specific and prescriptive in terms of intraday margins. This might lead to a situation in which margins are only called and collected once during the day in the morning based on the positions of the day before. In case the clearing member does not pay them, the default will be declared. Such default will thus be on the day after the last collection of margin and thus a one-day liquidation period might not be sufficient to cover the price fluctuations between the last margin collection and the default.

35. This suggests that if the MPOR is lowered to one-day, specific conditions should be considered in terms of intraday margin collection, such as determining minimum thresholds in terms of price fluctuations triggering the intraday collection or mandating the collection of initial margins throughout the day, with a minimum number of times in which the collection should take place, especially a final collection at the end of the day.

Q5: Do you consider that specific conditions should apply in order to ensure that margins are called intraday in case the MPOR is reduced to 1-day under a gross client margins collection?

D) Group entities

36. In the USA, house and affiliates accounts' margins are posted together in a house account. In the EU affiliate accounts are margined as clients. There are pros and cons to both structures and the purpose of this paper is not to discuss the house account structure, for which the analysis to date demonstrates that it would be imprudent to lower the MPOR below two-days.

37. It should be noted however that should the house account be kept at two-day MPOR and the clients gross accounts allowed to be margined at one-day MPOR, clearing members would have an incentive to re-structure their business and may use affiliates to benefit from a lower MPOR in a gross margin collection structure.

38. ESMA considers that this practice should not be allowed and therefore house accounts and accounts of entities in the same group of the clearing members should continue to be margined with the same MPOR, i.e. two-days.

Q6: Do you agree that entities of the same group as clearing members should not be allowed to benefit from a lower MPOR even if they chose an OSA gross or ISA account? What are the costs and benefits of either approach?

E) Portability

39. As mentioned above, ISAs currently facilitate portability. Given that one of the primary objectives in revising the RTS would be to incentivise safer account structures. ESMA is considering that the lowering of the MPOR to a one-day may be contingent upon certain criteria being satisfied. Specifically that a client ought to have greater security in relation to porting, with a view to mitigating the risks of losses on the default of its clearing member. For instance, it could be considered that each client must have an existing arrangement with a secondary clearing member whereby the latter irrevocably agreed that the client's assets and positions are ported to it from the client's primary clearing member in case of the latter's default, and that the CCP has all the operational arrangements in place to transfer the positions and the assets within a day.

Q7: Do you consider that specific conditions (e.g. compulsory pre-existing arrangement with a back-up clearing member) should apply in order to enhance the portability of client positions in order to benefit for the gross margining with one-day liquidation period? What conditions in your view would enhance the portability of client accounts? What are the costs and benefits of the suggested condition? Is it feasible that each client in an OSA would nominate a back-up clearing member or could this be a practical impediment to the establishment of gross margining? Is it feasible to expect an alternative clearing member to guarantee to accept porting of a client's positions in the event of the primary clearing member's default?

Q8: Is there any other aspect or concern that ESMA should consider when reviewing Article 26 with respect to client accounts?

Annex 1

Summary of questions

Q1: ESMA welcomes views on the assumption that client margins maintained at CCP level on a OSA gross margining with one-day liquidation period would generally be higher than margin held at the CCP under an OSA net with a two-day liquidation period. Please, provide quantitative analysis on the effect of the reduction of margin on the basis of 2 vs. 1 day MPOR and of the net (between clients' positions) margining vs gross margining. Please also consider the potential impact of the case in which a one-day OSA gross is considered equivalent to the EU system and the RTS are not changed and the impact for the whole system if the MPOR at CCP level is reduced.

Q2: If the RTS were modified to allow one-day gross margin collection for ETDs, should this be extended to financial instruments other than OTC derivatives? What are the costs and benefits of either approach?

Q3: If a differentiation of MPOR is made for ETDs depending on the gross or net collection of margins, should this differentiation be made for OTC derivatives as well? Would seven days MPOR for OTC derivatives be appropriate for net OSA? Please, provide quantitative analyses in support of your answer.

Q4: Should ISA and gross OSA be treated equally in terms of MPOR? Please provide quantitative evidence to support your arguments.

Q5: Do you consider that specific conditions should apply in order to ensure that margins are called intraday in case the MPOR is reduced to 1-day under a gross client margins collection?

Q6: Do you agree that entities of the same group as clearing members should not be allowed to benefit from a lower MPOR even if they chose an OSA gross or ISA account? What are the costs and benefits of either approach?

Q7: Do you consider that specific conditions (e.g. compulsory pre-existing arrangement with a back-up clearing member) should apply in order to enhance the portability of client positions in order to benefit for the gross margining with one-day liquidation period? What conditions in your view would enhance the portability of client accounts? What are the costs and benefits of the suggested condition? Is it feasible that each client in an OSA would nominate a back-up clearing member or could this be a practical impediment to the establishment of gross margining? Is it feasible to expect an alternative clearing member to guarantee to accept porting of a client's positions in the event of the primary clearing member's default?

Q8: Is there any other aspect or concern that ESMA should consider when reviewing Article 26 with respect to client accounts?