Consultation Paper

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

14 December 2015 | ESMA/2015/1867

Responding to this paper

The European Securities and Markets Authority (ESMA) invites comments on all matters in this Consultation 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 'Reply 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:

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

ESMA will consider all comments received by **1st February 2016.**

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), the 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

CCP	Central Counterparty
CP	Consultation Paper
DP	Discussion Paper
EBA	European Banking Authority
EMIR	European Market Infrastructures Regulation – Regulation No 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories
ESCB	European System of Central Banks
ESMA	European Securities and Markets Authority
ETD	Exchange-Traded Derivatives
EU	European Union
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
USA/US	United States of America

1 Executive Summary

Reasons for publication

The European Securities and Markets Authority (ESMA) is seeking stakeholders' views on the proposed draft regulatory technical standards amending Article 26 of the Commission Delegated Regulation No 153/2013 with regard to regulatory technical standards (RTS) on requirements for central counterparties (CCP) on the time horizons for the liquidation period which ESMA has drafted under the Regulation (EU) No 648/2012 of the European Parliament and Council on Over-The-Counter (OTC) derivatives, central counterparties and trade repositories (EMIR).

This paper follows the publication of the discussion paper (DP) on 26 August 2015. The respondents to the DP outlined the advantages or the inconveniences linked to a gross omnibus account. ESMA believes that for many respondents it was not clear that ESMA suggests to introduce an additional option currently not available under the EMIR framework, but that could be made available to third country CCPs via equivalence. This additional option does not replace the existing account structures, therefore an OSA net (margined at two days) would still be available.

Overall, ESMA believes that the drawbacks do not outweigh the benefits to introduce such type of account structure in the European regulation to ensure a level playing field with other jurisdictions. Therefore, a draft of amended regulatory technical standards is proposed in this consultation paper. In addition, to limit the risks that a reduction of the liquidation period might have for CCPs, they should collect intraday margins. It is also proposed to facilitate the porting of the position that the client is known to the CCP and that the clearing member's affiliates' positions of should not be commingled with its clients' positions. However, following the strong objection by stakeholders to the requirement for a pre-existing arrangement with a back-up clearing member due to legal and operational obstacles and to the cost linked to additional capital requirements, ESMA is not introducing such a provision in the RTS.

This consultation paper (CP) seeks stakeholders' views on the draft RTS 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. The input from stakeholders will help ESMA in finalising the draft technical standards.

Contents

This paper provides explanations on the draft regulatory technical standards amending the Commission Delegated Regulation No 153/2013 with regard to RTS on requirements for CCP. This report explains the rationale and the scope of the review of Article 26 of RTS No 153/2013 carried out by ESMA, summarizes the answers received following the publication of the discussion paper and raises questions seeking all relevant stakeholders' view on the proposed amendments to Article 26 of RTS No 153/2013. The draft RTS is attached to the consultation paper in Annex 3.

Next Steps

As provided for by Regulation (EU) No 1095/2010 of the European Parliament and Council establishing ESMA, a public consultation is 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 on the procedure for developing and adopting draft technical standards and guidelines (ESMA/2011/BS/4a), 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. Therefore, following this consultation and on the basis of the relevant input received, ESMA might deliver a final report amending the draft RTS to the Commission and publish it in its website.

In addition, in line with the mandate to draft these regulatory technical standards, under Article 41(5) of EMIR, ESMA will consult European Banking Authority (EBA) and the European System of Central Banks (ESCB) before finalising its draft to be submitted to the European Commission.

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. The Commission delegated Regulation (EU) 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, 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 United States of America (USA or US) are continuing[1].

5. In the context of the debate on the equivalence between the legal and supervisory arrangements for CCPs in the USA and the European Union (EU), it emerged that a critical difference between the two regimes is that for US CCPs the minimum liquidation period (or margin period of risk – MPOR) 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. With one-day MPOR gross margins, CCPs generally have more margins at their disposal and clients post margins that are 41% lower than in the case of two-day MPOR and still are better protected because the margins are maintained at CCP level. Therefore under the current EU system, if not changed, clients of EU CCPs will always be required to post 41% more initial margins than what they would be required to post in a US CCP.

6. The discrepancy in EU and US standards gives rise to the risk of regulatory arbitrage especially if the US regulatory framework is considered equivalent to the European one. In such a case, the US CCPs would be recognised under Article 25 of EMIR and be allowed to provide clearing services in Europe. Therefore, the US CCPs would offer clearing services based on a one-day MPOR to the European clients whereas the European CCPs would be obliged to remain on a two-day MPOR. If the

[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).

RTS is not amended to allow EU CCPs to operate under a one-day gross MPOR, there is a risk that European clients might chose to clear with US CCPs a pay less margins. Some EU and US CCPs already clear similar products and following recognition US CCPs might decide to expand their product offering and compete with other EU CCPs.

7. 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. 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, in accordance with its general mandate to review the RTS it has issued to ensure that their purpose is appropriately fulfilled, ESMA has launched a consultation on a discussion paper from 27 August to 30 September 2015 to investigate whether it would be appropriate to revise Article 26 of the current RTS 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, where margins are calculated on a gross basis. ESMA received 25 replies from different stakeholders such as clients, clearing members, CCPs and professional associations.

3 Proposed regulatory technical standards

<u>Omnibus gross model</u>

8. Respondents agreed on the fact that under a one-day OSA gross account structure the CCP collects more margins than an OSA net in any case or where the netting effect is efficient. Some stakeholders underlined that a gross margining methodology facilitates the porting of clients' positions and reduces the collateral costs.

9. Some drawbacks were identified by other respondents as regard OSA gross, such as the likely additional capital costs and commercial impacts for the clearing members.

10. Some stakeholders considered there are more margins in the overall system under an OSA net regime. However, it shall be noted that client margins may be paid in cash by the clients or may be re-used or re-hypothecated by the clearing members. Therefore as the full amount of the margins paid by the clients to the clearing member is not posted to the CCP, there is an intermediation risk in case of a default of the clearing member, so although there may be more margins in the systems, these take the form of free collateral for the clearing members and it is not protecting neither the clients posting them not the CCP managing the relevant exposures.

11. Finally, other stakeholders stressed the impossibility for them to post margins on a gross basis due to operational constraints. ESMA acknowledges these comments and wants to clarify that the proposal is to give clients an additional option. It is not expected that CCPs would stop offering two-day net omnibus and only offer a one-day gross omnibus, as there will continue to be demand for two-day net omnibus, as shown by the responses to the discussion paper. Therefore under the proposal,

clients would be able to choose between a net omnibus at two-days and, if they fulfil the relevant conditions detailed below, a gross omnibus at one-day. The proposal is not to replicate the US model to allow only a gross omnibus structure.

12. It should be noted, however, that should the US model of with one day gross omnibus be considered equivalent to the existing EU regulatory framework and the RTS not be changed, clients of European CCPs[3] would always be margined at two-days, even if they opt for a safer account structure, such as a gross omnibus structure. This would create an un-level playing field and would be detrimental for European CCPs.

Scope of the provision

13. The majority of respondents advocated a harmonised approach for all financial instruments concerned, i.e.: all financial instruments other than OTC derivative products. This would mean not restricting the provisions to ETD, but extend to e.g. cash instruments. ESMA welcomes these responses and drafted the attached RTS accordingly.

14. On the question on an extension of the MPOR for client accounts to OTC derivatives, the stakeholders' views were not conclusive. Some respondents were of the view that the same logic as the one for the ETD products should apply whereas other stakeholders answered that the type of account structure is not the key factor to define the MPOR. ESMA is of the opinion that a single MPOR should apply for OTC products in order to have a harmonized approach. No regulatory arbitrage is expected to materialise from different MPOR in OTC and introducing higher MPOR for certain type of client clearing accounts might negatively impact the availability of clearing members, which is essential, in particular considering the upcoming clearing obligation.

Individual segregated accounts

15. Stakeholders are generally of the opinion that a one-day MPOR to ISA account structures which offer higher protection to clients should be also allowed. ESMA agrees with this recommendation and although it understands that CCPs might face some challenge in liquidating individual client positions with a one-day MPOR, it considers that these challenges should be relatively limited.

Intraday margin calls

16. Regarding the conditions in order to ensure that margins are called intraday for one day gross account structure, most of the respondents recommended to introduce mandatory intraday margin calls. It is also suggested that these margin calls are based on a real time monitoring of the portfolios and intraday price updates. In addition, some stakeholders also pointed out to the operational burden and

[3] Clients access CCPs via clearing members.

complexity to post margins on an intraday basis and some to their inability to do so, given their investment policy.

17. ESMA believes that allowing the reduction of the MPOR to one day without certainty on the actual collection of intraday margins would expose the CCP to significant risks and this is not desirable. ESMA also considers that the existing requirement, for CCP to collect intraday margins when certain thresholds predefined by the CCP are met, is too flexible and does not guarantee the effective collection of intraday margins when needed. Therefore, ESMA believes that to ensure that the CCP will always be covered with at least one-day gross margins, more stringent requirements need to be introduced on the calculation and collection of intraday margins. In particular, ESMA is of the view that the CCP shall compute its exposure frequently within the day on the basis on an updated portfolio and prices. However, if the result of the new margin call is not significant, imposing its collection would create undue operational burden and costs. Therefore, the CCP should define a materiality threshold for calling extra margins.

Porting

18. Stakeholders' views were asked on whether it would be relevant to require the set-up of a back-up clearing member to enhance the portability of the client position under a one-day gross account structure. There is a strong consensus on the fact that requiring a mandatory back-up clearing member is not feasible owing to the severe difficulties to implement it. According to them, back-up clearing members must always have the possibility to refuse the porting of a client's positions because they have no clarity on the scope and the size of the portfolio, and on the available collateral it may receive at the time of the default. In addition there would be additional legal and operational costs to set up back-up clearing relationships with no income from the client in the normal course of events to offset such charges. ESMA acknowledged these impediments and did not insert such obligation in the draft RTS.

19. To ease the porting of the client's portfolio, some respondent suggested that it should be imposed that the identity of the clients is known to the CCP. ESMA believes that this identification is of the essence of the OSA gross account structure and allows the CCP to return to the client any balance owed after the completion of the default management process as per Article 48(7) of EMIR. ESMA took into account these feedbacks in the proposed draft regulatory standards set out in Annex 3.

Question 1: Do you have any comment on the draft RTS in Annex 3?

Question 2: Do you agree that intraday margins should be called when the variation when the new margin requirement is higher than 120% of the updated available collateral, unless the margin call is not material on the basis of predefined thresholds defined by the CCP? Please provide quantitative data on the potential costs that this condition will imply and the reasons for those.

4 Annexes Annex 1

Legislative mandate to develop draft technical standards

Article 41(5) of Regulation (EU) No 648/2012

In order to ensure consistent application of this Article, ESMA shall, after consulting EBA and the ESCB, develop draft regulatory technical standards specifying the appropriate percentage and time horizons for the liquidation period and the calculation of historical volatility, as referred to in paragraph 1, to be considered for the different classes of financial instruments, taking into account the objective to limit procyclicality, and the conditions under which portfolio margining practices referred to in paragraph 4 can be implemented.

4.2 Annex 2

Cost and Cost-benefit analysis

It should be noted that this impact assessment only covers the technical options under the specific mandate of ESMA in respect of time horizons for the liquidation period, given that an impact assessment covering the general aspects of the RTS on initial margins has already been performed by the European Commission as part of the impact assessment of EMIR and may be found under the following link:

http://www.esma.europa.eu/system/files/2012-379.pdf

Therefore, this cost-benefit analysis only covers the technical options linked to an OSA gross account structure and is based on the evidence and feedback received in the course of this consultation process.

Policy options:

(a): What is the best approach to ensure that the EU CCP benefits from a level playing field with third-countries?

Specific objective	Ensuring a level playing field across Europe and the other jurisdictions.
Policy option 1	The CCP should have the possibility to carry out its clearing activities under an one-day account structure
How would achieving the objective alleviate/eliminate the problem?	In inserting a new type of structure account in the regulation margined at one-day MPOR
Policy option 2	Let the RTS unchanged
How would achieving the objective alleviate/eliminate the problem?	This option will not achieve the objective.
Which policy option is the preferred one? Explain briefly.	The first option is preferred as it enables the CCP to benefit to a level playing field with third countries.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned/needs to be informed or consulted?	EBA and the ESCB need to be consulted.

Impacts of the proposed policies:

Option 1	Introduction of an OSA gross account structure in Europe
Benefits	EU CCP will be enabled to compete on an equal footing with other jurisdictions which are under such a regime. This type of account structure is only and additional option for clients. The existing structures will still be allowed. Incentivise account structures that better protect clients. The risk of intermediation of the clearing member would be avoided as the full amount of the initial margins paid by the clients is posted to the CCP. Data also received in the course of the first consultation on the DP shows that in general more margins are held at the level of the CCP and then is better protected.
Costs to regulator	Competent authorities will need to assess if the conditions to allow a one-day gross account are fulfilled by the CCP. Slightly higher than in absence of this option.
Compliance costs	The CCP implementing this optional account structure shall establish internal procedures to comply with the regulatory requirements and make the necessary IT and operational developments to offer it.
Indirect costs	The clearing members might face high cost if the majority of the client opts for a gross or individual account structure, as they will no longer benefit from the extra collateral at their disposal due to netting effects. This might further impact on the availability of clearing member services, which already faced some shrinkage due to the impact of the leverage ratio.
Option 2	Let the RTS unchanged
Benefits	Stability of the European regulatory framework.
Costs to regulator	No incentive for a safer account structure.
Compliance costs	None
Indirect costs	EU CCP may face regulatory arbitrages and be place in a competitive disadvantage. A loss of market shares for EU CCP is to be feared. Clients are not incentivised to choose a safer protection. This can generate an overall greater risk for the economy.

4.3 Annex 3

Draft regulatory technical standards

Commission Delegated Regulation (EU) No …/…

of […]

amending the Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories([1]) and in particular Article 26 thereof,

Whereas:

1. Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012([2]) supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties sets the time horizons for the liquidation period. Given the need to keep these regulatory technical standards up to date with relevant regulatory developments, ESMA submitted a new draft to the European Commission amending Commission Delegated Regulation (EU) No 153/2013 via this Regulation.

2. Given the need to ensure a level playing field between European and third country CCPs and incentivise structures that better protect client assets, while preserving the safety of CCPs, for the clearing of financial instruments other than OTC derivatives, a one-day liquidation period should be introduced for client accounts structures that

[1] OJ L 201, 27.7.2012, p. 1.
[2] OJ L 52, 23.2.2013, p. 41.

envisage the collection of margins on a gross basis and meet the conditions established in this Regulation.

3. Individual segregated accounts ensure an even greater level of protection to clients than gross omnibus accounts, they should benefit from the same length of the liquidation period to calculate margins.

4. The reduction of the liquidation period from two days to one-day may expose the CCP to significant losses, in case of intraday price movements that do not trigger the call of intraday margins. Therefore, specific thresholds need to be set to ensure that CCPs call intraday margins and remain protected notwithstanding the reduction of the liquidation period.

5. This Regulation is based on draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

6. As per Article 41(5) of Regulation (EU) No 648/2012, ESMA has consulted the European Banking Authority (EBA) and the European System of Central Banks (ESCB) before submitting the draft technical standards on which this Regulation is based.

7. In accordance with Article 10 of Regulation (EU) No 1095/2010, of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)([3]), ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation (EU) No 1095/2010,

Article 1

Amendments to Commission Delegated Regulation (EU) No 153/2013

Commission Delegated Regulation (EU) No 153/2013 is hereby amended as follows:

1. Article 26 is replaced by the following:

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 characteristics of the type of account

[3] OJ L 331, 15.12.2010, p. 84.

involved, the market where it is traded, and the period for the calculation and collection of the margins.

2. The type of accounts referred to in paragraph 1 is the following:

(a) Property account of the clearing member;

(b) Omnibus account where margins are calculated on a net basis;

(c) Omnibus account where margins are calculated on a gross basis;

(d) Individual segregated account.

3. The liquidation periods referred to in paragraph 1 shall be at least:

(a) five business days for OTC derivatives positions held in accounts referred to in paragraph 2;

(b) two business days for financial instruments other than OTC derivatives held in accounts referred to in points (a) and (b) of paragraph 2 or in accounts referred to in points (c) and (d) not meeting the conditions referred to in point (c) of this paragraph;

(c) one business day for financial instruments other than OTC derivatives held in accounts referred to in point (c) and (d) of paragraph 2 if all following conditions are met:

i. the CCP is handling the positions and calculating the margin requirements per client on a gross basis;

ii. the identity of the client is known to the CCP;

iii. the client is not part of the same group as the clearing member;

iv. the CCP implements procedures to calculate for each account initial and variation margin requirements at least every one hour during the day using updated positions and prices and to collect the margins within one hour where the new margin requirement is higher than 120% of the updated available collateral in accordance with Chapter X, unless the margin call is not material on the basis of predefined thresholds defined by the CCP.

4. 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.

5. In evaluating the periods defined in paragraph 4, 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.

6. 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 3 in view of the specific features of the relevant OTC derivatives;

(b) such time horizon is at least two business days or one business day if the conditions under paragraph 3(c) are fulfilled.

Article 2

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, […]

[For the Commission]

[The President]

[On behalf of the President]