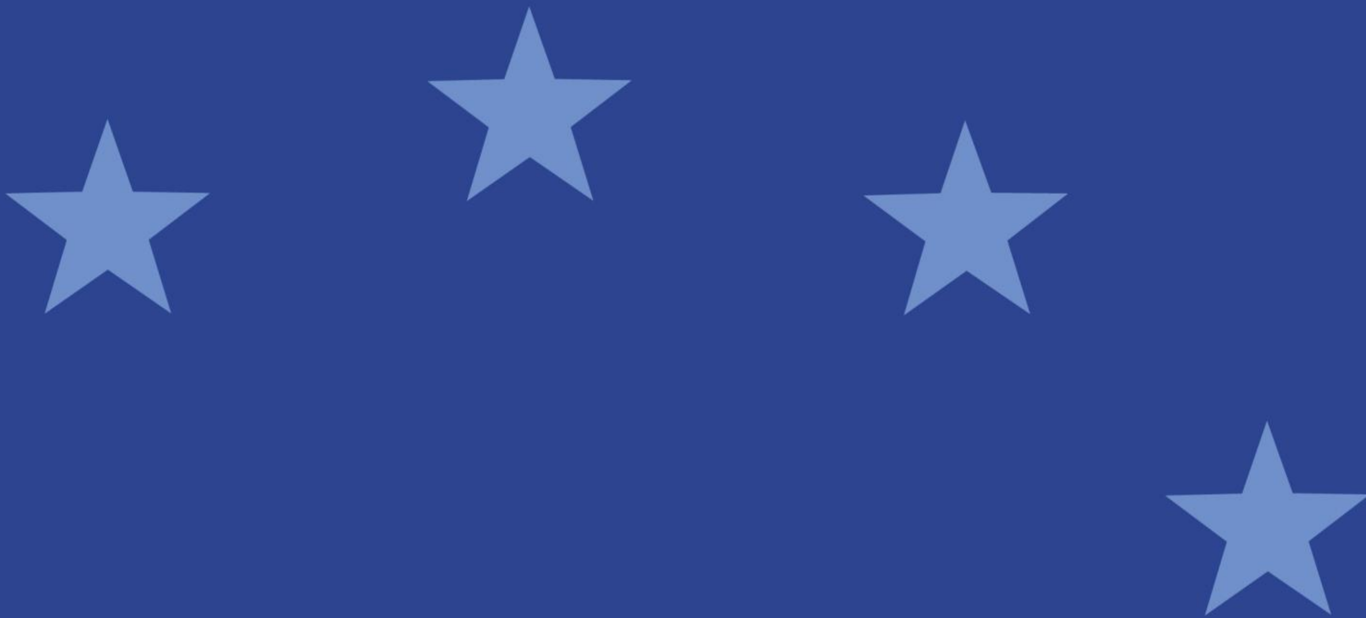
Final Report

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



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

This final report proposes 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 European Securities and Markets Authority (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).

In relation to the draft amended technical standards, ESMA consulted stakeholders on two occasions: the first consultation on a Discussion Paper (DP) was conducted from 27 August to 30 September 2015; the second, on the consultation paper (CP) including the proposed draft RTS was carried out from 14 December 2015 to 1st February 2016.

ESMA received a strong support from the respondents to the CP on the proposed amendment introducing the possibility for EU CCPs to margin on a one day gross basis for clients' accounts. The responses to the consultation confirm that a one day gross account structure provides a sufficient level of protection to the CCPs and to the clients.

On the proposed conditions linked to this type of account, the majority of the respondents are of the view that they are needed to ensure the safety of the CCPs. Some clarifications or slight amendments have been introduced following the comments received, in particular on intraday margins calls and on entities belonging to the same group as clearing members.

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. It summarizes the answers received following the publication of the consultation paper and it provides the explanations on whether and how the concerns expressed by stakeholders have been reflected in the final draft RTS.

Annexed to this final report are the legislative mandates related to the draft RTS (Annex I), the ESMA cost-benefit-analysis (Annex II) and the draft RTS (Annex III).

Next Steps

Following the submission of the amended draft RTS to the European Commission, it has three months to decide whether to endorse ESMA's draft RTS.

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 precise 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. 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 (i) 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, (ii) that those CCPs are subject to effective supervision and enforcement in that third country on an ongoing basis and (iii) 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. On 13 November 2015, the legal and supervisory regimes of Canada, Mexico, South Africa, Switzerland and Republic of Korea have been also recognised as equivalent to EMIR by the European Commission. On 10 February 2016 the European Commission and the CFTC announced a common approach regarding requirements for CCPs.

5. In the context of the discussions 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[1] 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 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 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 considering that under the common approach agreed between the European Commission and the CFTC, the US regulatory framework is considered equivalent to the European one, i.e. for clients' accounts one-day gross is considered

[1] In practice under the CFTC regime this is applicable only to exchange trade derivatives (mainly futures).

equivalent to two-days net. Therefore, once US CCPs are recognised under Article 25 of EMIR, they would be allowed to provide clearing services in Europe on a one-day gross basis. Therefore, ESMA is proposing to amend the RTS to allow European CCPs to offer services to clients on an equal footing with US CCPs. Under the proposed rules, European CCPs will have the option to offer both a two days net margin model or a one-day gross margin model, thus competing on a level playing field with recognised US 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.

8. ESMA publicly consulted on two occasions before finalising the proposal outlined in this paper. The first consultation on a DP was conducted from 27 August to 30 September 2015. The respondents outlined on the one hand the advantages and inconveniences linked to a gross omnibus account structure. It was agreed that a one-day gross account leads not only to a higher level of margins compared to a two-day net where the netting effect is efficient, but it also facilitates the porting of the clients' positions, it reduces the intermediary risks for clients toward the clearing members and it decreases the collateral costs. On the other hand, a one-day gross omnibus account leads to a lower level of margins in the overall financial chains, shortens the time to manage a default and brings more operational costs due to the identification of the clients at the level of the CCP and due to potentially more frequent intraday margin calls.

9. It should be noted however that although clients in a gross omnibus are better protected because margins are held at CCP level, it is also true that in an omnibus structure clients are commingled together and therefore it is more likely that they can only be ported in bloc. Higher margins at CCP level might make it more likely for a non-defaulting clearing member to take all these clients positions, but there is no guarantee that this would occur.

10. Under a one-day gross omnibus account, the identification of clients at CCP level and a gross margining system will facilitate the leapfrog payment. However, restrictions in national insolvency laws might render these leapfrog payments more complex.

11. It is worth noting that clearing members might lose incentives to offer client clearing services if they lose the benefit of netting efficiency that results from opposite positions of different clients. For the clearing members the benefit consists in the collateral that clients post to it and that it does not need to pass on to the CCP, given that the position at CCP level is net.

12. Finally, a shortened liquidation period might render it more complex for clearing members to liquidate client positions, in case of clients' defaults. However, if the CCP is able to liquidate omnibus segregated account (OSA) gross and individual

segregated account (ISA) positions within the same liquidation period, there is the expectation that the instruments are sufficiently liquid for the clearing member to also liquidate clients' positions within the same timeframe. Furthermore, clearing members can collect more margins from their clients than the one requested by the CCP, if they consider this more appropriate for the management of a potential client' default.

13. The second consultation, on the CP including the proposed draft RTS was carried out from 14 December 2015 to 1st February 2016. ESMA received 13 responses to the second consultation. Responses came from different types of stakeholders in particular from CCPs, clearing members and clients. The responses confirmed the outcome of the first consultation, in particular that under a one-day OSA gross account structure, CCPs collect more margins than under an OSA net in most of the cases.

14. In accordance with Article 41(5) of EMIR, ESMA has also consulted with the European Banking Authority (EBA) and the European System of Central Banks (ESCB) before finalising this draft.

15. ESMA believes that where certain conditions as included in the amended draft RTS are respected, a one-day gross omnibus account structure ensures a sufficient level of protection to the CCPs and a better protection for clients. For this reason and in order to ensure an equivalent treatment between European and recognised third country CCPs, ESMA is submitting this final report. In the next sections the changes made to take into account the range of feedback received and a number of clarifications as suggested by stakeholders are outlined. The resulting draft RTS are included in Annex III.

3 Proposed regulatory technical standards

General feedback on the draft RTS (Question 1 of the CP)

16. Overall, ESMA received strong support from the respondents on the principle to introduce a one-day gross omnibus client account structure in Europe as proposed in the draft RTS. They outlined the necessity to provide for an efficient, secure and competitive European financial market. In that sense, it is recalled that a one-day gross omnibus account gives generally rise to a higher level of margins held by the CCPs, increases the probability of the portability of clients' positions in case of a clearing member default and enhances the clients' protection from the intermediation risks. The flexibly left to the CCP in setting up a third type of account structure based on a one-day gross omnibus account is also welcomed. Furthermore, in the views of the respondents, the proposal promotes the harmonization of the global derivative regulation and facilitates cross-border transactions.

17. On the draft RTS, the respondents asked for some clarification and mainly commented on the feasibility of the proposed conditions to be applied to a one-day gross account.

18. Some respondents suggested complementing the definition of “on a gross basis” to clearly distinguish it from a net account structure mentioning that the CCP calls an amount of initial margins corresponding to the sum of the separate margin requirements for each underlying client. In so doing, the three characteristics of a gross omnibus account are described in the RTS: Positions are handled for each client, the margins are calculated per client and the CCP collects the total of the margin requirements applicable to each client. ESMA took into account this proposal and added this clarification in Article 26(1)(c)(i).

19. On the requirement to identify the clients, some stakeholders are of the views that it is complex to implement it and it does not provide a significant benefit to the CCP. However, the majority of respondents strongly support it as a prerequisite to the introduction of a one-day gross account. According to them, the identification of the underlying clients is feasible and it is essential information in order to ease and hasten the porting procedure which would be carried out in a short period of time. ESMA agreed on the fact that the identification of the clients is important in order to increase the likelihood of the porting of the client positions or the return of the proceeds of the liquidation of clients’ positions directly to the clients. Therefore ESMA maintained its proposal.

20. Most of the respondents agreed on the fact that the positions of the affiliates should not be commingled with the clients’ positions. However, some underlined that the proposal as it was drafted impeded affiliates to provide indirect client clearing on a one-day gross basis. Therefore while all the respondents agreed that the proprietary business of affiliates should not be commingled with the business of other clients, for client business provided by affiliates the justification for excluding them from benefiting from a one-day gross model was not clear and would have limited their possibility to offer indirect client services. ESMA took on board this comment and changed the Article 26(1)(c)(iii) accordingly to exclude only the proprietary positions of an affiliate.

21. Regarding the condition related to intraday margin calls, one respondent noted that a one-day gross omnibus account leads in most of the cases to a higher level of margin than in a two-day net omnibus account and therefore stricter rules were not justified. However, most of the respondents agreed on the fact that intraday margin calls are necessary to not increase the risks that a short liquidation period could present to CCPs. Respondents from investment and alternative funds highlighted that intraday margin calls are not consistent with their specificities. This would result in a less efficient use of funds’ assets as it would be necessary to reserve additional assets to meet the intraday margin calls. Some respondents requested clarity on whether the intraday margin calls would be performed on a net or a gross basis. They mentioned

that as regards gross omnibus accounts the market is currently organised to collect net intraday margins because the clients' positions are only allocated at the end of the day. A change to a collection on a gross basis would create major and disproportionate operational complexity. ESMA is of the view that ideally transactions should be allocated as soon as they are executed for the gross omnibus account to provide the benefits in terms of client protection described above. However, ESMA recognises the market impact that an imposition of immediate recording of clients' positions might have.

22. It should be noted, however, that margining on a one-day basis non-allocated trades would mean margining these trades on a net basis intraday. ESMA considers that this is risky and might not ensure a sufficient protection of the CCP. For this reason, it has introduced additional requirements for CCPs that use this practice. In particular, ESMA establishes that these CCPs need to collect intra-day margins where the defined threshold is exceeded. Furthermore, ESMA specifies that trades that were previously allocated need to always be margined on a one-day gross basis. This means that ESMA does not expect CCPs to calculate the margins for all positions (including the one already allocated) on a net basis because of the uncertainty on the new positions. In other words, ESMA understands the difficulties in allocating new trades, but does not see any technical limitation in margining on a gross basis positions already allocated.

23. ESMA understands the concerns expressed by respondents on why more stringent intraday margin requirements were needed if one-day gross resulted in higher margins than two days net. For this reason it has limited the more stringent requirements on intraday margins to the case described in the previous paragraph.

24. One respondent believes that CCPs should demonstrate their practical ability to run the default management process in one day. Article 26(2) of the RTS currently requires CCPs to take into account the length of time needed to fully manage the default where it sets up the MPOR. Therefore, it is not proposed to amend this provision. This would mean that before authorising a one-day gross omnibus account structure, the competent authorities shall assess as to whether all the steps of the default management can be completed during the defined liquidation period.

25. Finally, some respondents suggested that the timing of the entry into force of the equivalence decision with the US should be aligned with the date of entry into force of the amended Article 26 of the RTS, if not postponed to give time to the European market to implement it otherwise US CCP would have a head start over the EU competitors. In this respect, it should be highlighted that the two processes are separate and not entirely in its control. ESMA is submitting this final report to the European Commission shortly after the conclusion of the consultation period. However, ESMA has no power to determine its entry into force.

Feedback on the setup of the threshold for intraday margin calls (Question 2 of the CP)

26. Concerning the setup of the threshold, some respondents advocate that the discretion on the thresholds should be left to the CCP. However, some others recognized that for the purpose of a one day gross account structure the threshold triggering intraday margin is needed and should be more stringent than the one proposed since it would still allow an erosion of the margins by 15%. Some respondent suggested lowering it to 110%. ESMA is of the opinion that a defined threshold is required to ensure the effectiveness of the intraday margin collection and considering a) the above mentioned application of the specific threshold only for the cases in which one-day gross results in lower margins than two-day net; b) the comments received during the consultation and c) existing practices by CCPs in establishing thresholds for intraday margin collection, ESMA amended Article 26(1)(c)(v) and set the threshold at 110%.

27. To avoid operational burden, ESMA has considered that if the outcome of the new margin requirements would lead to transferring to the CCP an insignificant amount of collateral which is under predefined thresholds set up by the CCP, the CCP should not be obliged to collect it. This was not completely understood by some stakeholders and therefore this provision has been clarified in the final draft RTS.

4 Annexes

4.2 Annex I

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.

4.3 Annex II

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:

https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-379_0.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 introduce a one-day gross omnibus account structure in Europe which ensures the robustness of the CCPs?

Specific objective	To introduce a new type of accounts structure with a sufficient level of protection of the CCPs and clients.
Policy option 1	The CCP should have the possibility to carry out its clearing activities under a 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 from a sufficient level of protection, it better protects the clients from the intermediary risk and it ensures 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.

(b) Impacts of the proposed policies:

Option 1	**Introduction of an OSA gross account structure in Europe**
	Qualitative description
Benefits	EU CCP will be enabled to use a new type of account structure which provides in general more margins held at the level of the CCP and therefore it is better protected as shown by data received in the course of the first consultation on the DP. 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. EU CCP will 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.
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. Clearing members and clients may face more frequent intraday margins calls.

Option 2	**Let the RTS unchanged**
	Qualitative description
Benefits	Stability of the European regulatory framework.
Costs to regulator	No incentive for a safer account structure.
Compliance costs	None
Indirect costs	Clients are not incentivised to choose a safer protection. This can generate an overall greater risk for the economy. 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.

4.4 Annex III

Draft regulatory technical standards

Commission Delegated Regulation (EU) …/…

of […]

amending Delegated Regulation (EU) No 153/2013 as regards the time horizons for the liquidation period to be considered for the different classes of financial instruments

(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 41(5) thereof,

Whereas:

1. Commission Delegated Regulation (EU) No 153/2013([2]) lays down regulatory technical standards on requirements for central counterparties (CCPs) regarding the time horizons for the liquidation period to be considered for the different classes of financial instruments. It is necessary to keep those regulatory technical standards up to date with relevant regulatory developments.

2. For the purposes of calculating margin requirements necessary to cover a CCP's exposure to market risk, certain account structures based on a minimum of a one-day liquidation period calculated on a gross basis provide a sufficient level of coverage to the CCPs and better protect clients and mitigate systemic risks. That minimum liquidation period should therefore be permitted for the clearing of clients' positions on

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

financial instruments other than over-the-counter (OTC) derivatives where certain conditions are met.

3. Considering that individual segregated accounts ensure an even greater level of protection to clients than gross omnibus accounts, individual segregated accounts should benefit from a minimum liquidation period for calculating margins of the same length as gross omnibus accounts.

4. For CCPs that during the day do not allocate the trades to each client, the reduction of the minimum liquidation period from two days to one day might imply that for new trades cleared during the day and not allocated to individual clients the CCP is margining them on a one-day net basis. This may expose the CCP to significant losses in case of intraday price movements that do not trigger the call of intraday margins. Therefore, a specific threshold needs to be set to ensure that CCPs call intraday margins and remain sufficiently protected notwithstanding the reduction of the liquidation period.

5. Delegated Regulation (EU) No 153/2013 should therefore be amended accordingly.

6. This Regulation is based on draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission following consultation of the European Banking Authority and the European System of Central Banks.

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

HAS ADOPTED THIS REGULATION:

Article 1

1. Article 26 of Delegated Regulation (EU) No 153/2013 is amended as follows:

[3] 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), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

(1) paragraphs 1 and 2 are replaced by the following:

"1. For the purposes of Article 41 of Regulation (EU) No 648/2012, a CCP shall determine the appropriate time horizons for the liquidation period taking into account the characteristics of the financial instrument cleared, of the type of account in which the financial instrument is held, of the market where the financial instrument is traded, and the following minimum time horizons for the liquidation period:

(a) five business days for OTC derivatives;

(b) two business days for financial instruments other than OTC derivatives held in accounts not meeting the conditions laid down in point (c);

(c) one business day for financial instruments other than OTC derivatives held in omnibus client accounts or in individual client accounts provided that the following conditions are met:

(i) the CCP keeps separate records of the positions of each client at least at the end of each day, calculates the margins in respect of each client, and collects the sum of the margin requirements applicable to each client on a gross basis;

(ii) the identity of all the clients is known to the CCP;

(iii) the positions held in the account are not proprietary positions of undertakings of the same group as the clearing member;

(iv) the CCP measures the exposures and calculates for each account initial and variation margin requirements on a near to real-time basis and at least every one hour during the day using updated positions and prices;

(v) where the CCP does not allocate new trades to each client during the day, the CCP collects the margins within one hour where the margin requirements calculated in accordance with point (iv) are higher than 110% of the updated available collateral in accordance with Chapter X, unless the amount of the intraday margins to be paid to the CCP is not material on the basis of predefined amount defined by the CCP and agreed by the competent authority, and to the extent that trades previously allocated to clients are margined separately from trades that are not allocated during the day.

2. In all cases, for determining the appropriate time horizons for the 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.”;

(2) paragraph 4, point (b) is replaced by the following:

“(b) such time horizon is at least two business days, or one business day where the conditions laid down in paragraph 1(c) are met.”.

Article 2

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]