

## Response to the ESMA consultation paper

### Draft Guidelines further specifying the circumstances for temporary restrictions in the case of a significant non-default event in accordance with Article 45a of EMIR

#### Introduction

The Futures Industry Association (FIA) and the International Swaps and Derivatives Association (ISDA), together the Associations, represent the largest number of global and national participants in clearing, banking and financial markets. The Associations appreciate this opportunity to comment on this consultation.

This consultation response covers the positions of our members that are clearing members and their clients. The paper does not reflect the views of many CCPs, and many of the CCPs are in disagreement with the views expressed herein.

#### Questions

*Q1 : Do you agree with the proposed indicators to trigger the obligation for a competent authority to assess if to apply the restrictions set out under Article 45a of EMIR. If not, please explain why.*

We welcome ESMA confirmation that “In a non-default event, the CCP is expected to rely primarily on its own capital to cover for the losses incurred, before resorting to recovery measures that may involve financial contributions from its clearing members.”

We therefore agree with the premise of the guidelines that the 110% notification threshold should serve as a reference point for those indicators.

We would however also add an additional trigger: The CCP allocating any cost of the non-default loss to clearing participants, either as part of a recovery plan or outside recovery, should also be an indicator for the temporary restrictions set out under Article 45a of EMIR.

We also agree with the indicator set out in guideline 2 that signal that a non-default event may adversely affect the CCP’s operational capacity to continue providing critical functions.

*Q2 : If you prefer other indicators, please describe them and why they would be more suitable.*

We agree with the proposed indicators, but propose an additional indicator:

The CCP allocating any cost of the non-default loss to clearing participants, either as part of a recovery plan or outside recovery, should also be an indicator for the temporary restrictions set out under Article 45a of EMIR.

*Q3 : Do you agree with the Option 2 of the cost-benefit analysis, if not please explain? Have you identified other benefits and costs not mentioned above associated to the proposed approach (Option 2)?*

We agree with option 2. As explained in our response to question 2, we propose an additional indicator. This additional indicator would however not change the cost-benefit analysis.

*Q4 : If you advocated for a different approach, how would it impact the cost and benefit assessment? Please provide details.*

As explained in our response to question 2, we propose an additional indicator. This additional indicator would however not change the cost-benefit analysis.

## **About FIA**

FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. Our membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers.

Our mission: To support open, transparent and competitive markets, protect and enhance the integrity of the financial system, and promote high standards of professional conduct.

## **About ISDA**

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 960 member institutions from 78 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: [www.isda.org](http://www.isda.org). Follow us on Twitter, LinkedIn, Facebook and YouTube.