

Response to the ESMA consultation paper

Draft Guidelines on the consistent application of the triggers for the use of Early Intervention Measures (Article 18(8) CCPRR)

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 the opportunity to comment on ESMA's 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 have any general comments on the draft Guidelines on triggers for the use of early intervention measures?

We agree with ESMA's proposals on early intervention triggers.

Q2 : Do you agree with the proposal on procedures as set out in Guideline 1? If not, please elaborate.

We do agree with the proposal on procedures as set out in Guideline 1

Q3 : Do you agree with the proposal on how to assess financial stability in the Union or in a Member State, as set out in Guideline 2? If not, please elaborate.

We support the proposal on how to assess financial stability in the European Union (EU) or in a Member State, as set out in Guideline 2.

However, we note that the analysis required for such an assessment is complex and propose that ESMA and competent authorities leverage some of the work on the analysis according to Article 25 (2c) of EMIR whether Tier-2 CCPs or some of their clearing services are of such substantial systemic importance that a CCP should not be recognised to provide certain clearing services or activities. Part of the methodology developed for this analysis will be also helpful for the analysis of the impact of an EU CCP on the EU or other EU Member States.

Q4 : Do you agree with the proposed Guideline 3 and in particular the proposed indicators to assess capital requirements? If not, please elaborate.

Yes, we agree with the proposed Guideline 3.

Q5 : Do you agree with the proposed Guideline 4 and in particular the proposed indicators to assess EMIR prudential requirements? If not, please elaborate.

We agree with the indicator to assess EMIR prudential requirements, despite there being a clear overlap with business-as-usual CCP supervision. In this respect, CCPRRR will provide the competent authority with additional powers in case a CCP does not comply with EMIR requirements.

On model review we would like to note that the aim of stress testing is mostly to test resources of the CCP. It is unlikely that stress testing (other than reverse stress testing) is suitable for model review or suitable to identify model shortcomings.

Q6 : Do you agree with the proposed Guidelines 5 to 9 and in particular the proposed indicators, to assess financial stability in the Union or in one or more of its Member States or to assess an emerging crisis situation that could affect the operations of the CCP? If not, please elaborate.

We agree in principle with guidelines 5 to 9. We have two comments on these guidelines:

The indicator/trigger identified in guideline 5 seems to overlap with guideline 4.

We consider guideline 8, looking at the CCP's financial viability as most important. This trigger will overlap with the trigger in guideline 3 on capital requirements.

Cost and Benefit Analysis Questions:

Q7 : Do you agree with the Option 2, 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.

Q8 : If you advocated for a different approach, how would it impact the cost and benefit assessment? Please provide details.

Not applicable.

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. Follow us on Twitter, LinkedIn, Facebook and YouTube.