

9 May 2014

European Banking Authority
Tower 42
25 Old Broad Street
London, EC2N 1HQ

Submitted via EBA website

Re: Draft regulatory technical standards on the margin periods of risk used for the treatment of clearing members' exposures to clients under Article 304(5) of Regulation (EU) No 575/2013

Dear Sir/Madam:

This letter contains the response of the International Swaps and Derivatives Association (ISDA) and the Association for Financial Markets in Europe (AFME) (together, the Associations)¹ to the European Banking Authority's Consultation Paper, *Draft regulatory technical standards on the margin periods of risk used for the treatment of clearing members' exposures to clients under Article 304(5) of Regulation (EU) 575/2013* ("Draft RTS") issued for comment on 28 February 2014.

As principle, the Associations consider that any regulatory imposed margin period of risk (MPOR) provision should focus primarily on the liquidation characteristics of the contract or product as informed by the characteristics of its respective market. As described in the industry's response to EBA's Survey on capital requirements for clearing members' exposures to clients,² the Associations believe that the prudentially supervised minimum liquidation period assumptions utilized by a qualifying central counterparty (QCCP) would serve as the best standard for the minimum MPOR provision. We therefore agree with the approach set out in the Consultation Paper, on the premise that it strikes an appropriate balance between risk sensitivity and is reasonably simplistic whilst preserving the flexibility for both CCPs and clearing members to adjust the MPOR (for purposes of either margin or capital) as determined necessary.

The Associations seek clarity over the application of certain text within the Draft RTS which are described in the sections that follow.

Liquidation period for clearing member exposure to clients

The Draft RTS refers to the liquidation period defined by a QCCP as the relevant MPOR for quantifying exposures to clients under Article 304 of Regulation (EU) No 575/2013 ("CRR"). When determining the MPOR for purposes of initial margin standard setting, a QCCP may define the *aggregate* MPOR for client cleared positions as the (a) liquidation period of a particular product and (b) an additional period of time to allow for the novation of client positions from a defaulted clearing member to a solvent clearing member.

For example, a product may have a liquidation period of five days and the QCCP may require an additional two day grace period to allow for position novation in the event of a clearing member default prior to position liquidation. In this instance, the QCCP would utilize an *aggregate* MPOR of seven days for purposes of initial

¹ A description of the Associations is set out in the Appendix

² See response to EBA Survey at:

<http://www2.isda.org/attachment/NjA0MA==/ISDA%20Response%20to%20EBA%20Survey%20re%20CRR%20Art%20304.pdf>

margin standard setting. Provided the description and reference to liquidation period in the Draft RTS, we expect that the five day liquidation period in this example is the appropriate MPOR for purposes of quantifying exposures to clients under Article 304 of CRR. We believe this is consistent with the Draft RTS's focus on exposure in the event of a client default, rather than in the event of a clearing member default. Therefore, we consider that the final RTS should be explicit that the appropriate MPOR for purposes of Article 304 of CRR is the liquidation period and not the QCCP's *aggregate* MPOR.

Liquidation period disclosure

Although many categories of cleared products may qualify for more standardized MPORs, there are certain products or scenarios in which the liquidation period assumptions will be adjusted individually or at a subtype of products to accommodate current market characteristics. Because this additional level of granularity may be outside the scope of disclosure that is required under Article 10(b)(vi) of Commission Delegated Regulation 153/2013 ("RTS on Requirements for CCPs"), the Associations would find it useful if the EBA could clarify the satisfactory level of detail for a QCCP's disclosure of the relevant liquidation periods. Consistent with the feedback at the EBA's March Public Hearing, the RTS should include confirmation that a QCCP's disclosure of the relevant liquidation period to clearing members is satisfactory for meeting the criteria of public disclosure under Article 10(b)(vi) of the RTS on Requirements for CCPs.

To ensure consistent application of the RTS, we seek clarity over what MPOR should apply in scenarios where the liquidation periods applied by the QCCP are not identifiable, that is a scenario where the relevant liquidation period is outside the scope of Article 10(b)(vi) of the RTS on Requirements for CCPs.

MPOR provisions described elsewhere in CRR

Article 304 of CRR sets out the treatment of clearing members' exposures to clients, describing that when acting as a clearing member the applicable MPOR is that which is prescribed in Articles 304(3) and 304(4). Therefore, it is our expectation that Article 304(3) and 304(4) would supersede the MPOR provisions described elsewhere in the CRR, specifically those detailed under 285(3) and 285(4). Although this understanding was confirmed during the EBA's March Public Hearing, it would be helpful if the EBA provided confirmation in the final RTS.

We are grateful for the opportunity to provide these comments. Should any further information be helpful, please do not hesitate to contact the undersigned.

Yours Sincerely,



Mark Gheerbrant
Head of Risk and Capital
ISDA



Dee Ray
Director, Prudential Regulation
AFME

Appendix: Description of the Associations

Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 64 countries. These members include a broad range of OTC 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 including exchanges, clearinghouses 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 web site: www.isda.org.

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society. For more information please visit the AFME website, www.afme.eu.