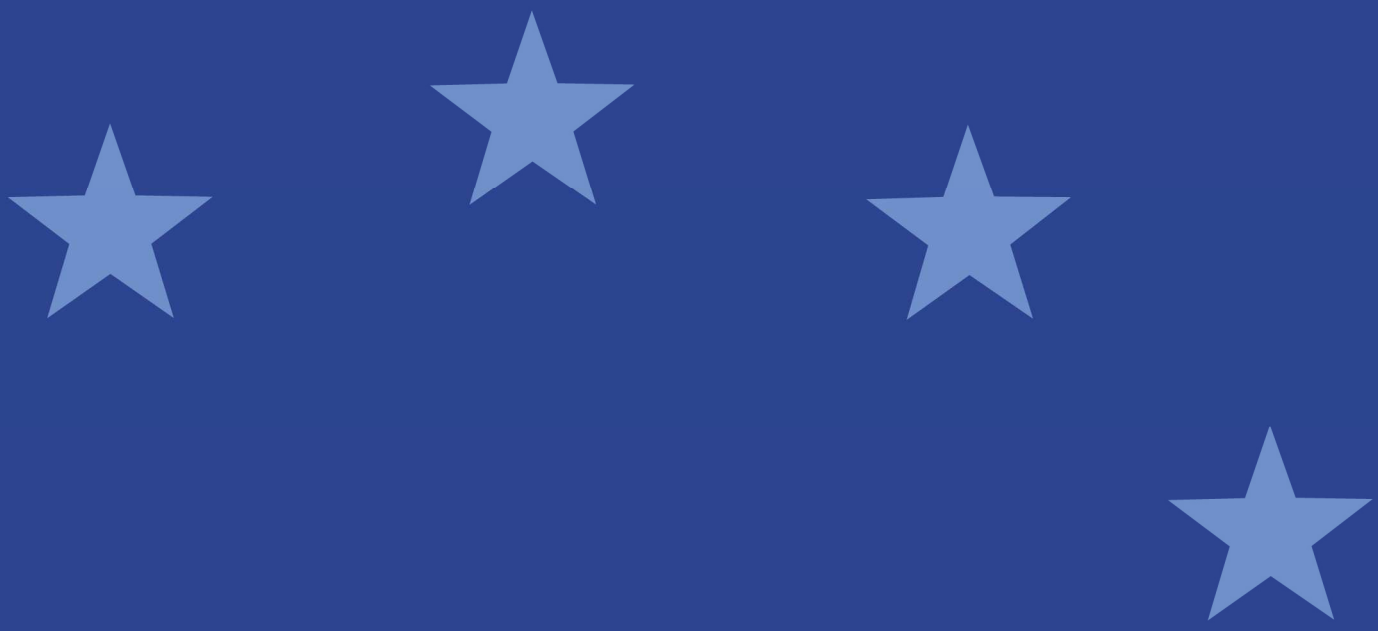
esma European Securities and Markets Authority

EMIR Review Report no.3

Review on the segregation and portability requirements



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Acronyms used

CCP	Central Counterparty
CRR	Capital Requirements Regulation
CSD	Central Securities Depository
EMIR	European Market Infrastructures Regulation (Regulation (EU) 648/2012)
ESMA	European Securities and Markets Authority
ETD	Exchange Traded Derivatives
FCM	Futures Commission Merchant
ISA	Individually Segregated Account
OSA	Omnibus Segregated Account
OTC	Over-the-counter
RTS	Regulatory Technical Standards
SSS	Securities Settlement System

1 Executive Summary

Reasons for publication

The European Market Infrastructures Regulation ("EMIR") entered into force in August 2012. EMIR constituted the main part of the European response to the commitment by G-20 leaders in September 2009 that: "All standardised OTC derivatives contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at latest. OTC derivatives contracts should be reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital requirements".

This report is issued in accordance to Article 85(3)(c) of EMIR, which requires ESMA to submit to the European Commission a report on the application of the segregation requirements laid down in Article 39 of EMIR. It also represents ESMA's input to the European Commission's assessment within its report on EMIR in accordance to Article 85(1)(e) with respect to the evolution of central counterparties' (CCP) policies on collateral margining and securing requirements and their adaptation to the specific activities and risk profiles of their users.

Contents

This report contains a summary of the provisions related to segregation and portability in EMIR and a recap of EU CCPs corresponding set-up and any evolution since their authorisation. In particular, it presents the issues identified during EMIR implementation (encompassing legal and regulatory, operational, technical and financial aspects) and suggests that clarifications and more granular requirements regarding segregation and portability could be introduced through regulatory technical standards. Finally, the report proposes to monitor the implementation of the different types of account models with the aim to assess and ensure that the expected benefits materialise and track undue constraints.

Next Steps

This report is being submitted to the European Commission and is expected to feed into the general report on EMIR that the European Commission shall prepare and submit to the European Parliament and the Council.

2 Introduction

1 According to Article 85(3)(c) of EMIR, ESMA should have submitted to the European Commission a report on the application of the segregation requirements laid down in Article 39 of EMIR by 30 September 2014.

2 In a letter to the European Commission dated 29 September 2014[1] ESMA underlined that the process for the authorisation of EU CCPs was not yet completed, and it would be thus premature, in ESMA's view, to submit this report while this process was still on-going. Therefore, ESMA had postponed the submission of the report (and others) in order to be able to reflect therein the experience gained throughout the authorisation process of EU CCPs.

3 Now that nearly all EU CCPs have been authorised, ESMA is in a position to issue its report. This report refers to the situation as of the date of its publication and is based on the public information and information ESMA has collected in the context of its participation in EU CCP colleges.

4 This report also represents ESMA's input to the European Commission's report on EMIR review under Article 85(1) with respect to (e) the evolution of CCP's policies on collateral margining and securing requirements and their adaptation to the specific activities and risk profiles of their users.

5 In a letter dated 23 March 2015, the European Commission requested ESMA to provide input in writing covering its views on these topics, based on ESMA's experience in the implementation of EMIR to date. In this respect, ESMA notes that the regulatory technical standards (RTS) on requirements for CCPs (153/2013) specified detailed standards for CCP margin and collateral policies and procedures (see articles 24-46 of RTS 153/2013), including detailed requirements on haircuts and concentration limits and conditions applicable to assets considered highly liquid collateral (see annex 1 to RTS 153/2013). In particular, Articles 44 and 45 of RTS 153/2013 prescribe highly secured arrangements for the deposit of financial instruments and cash, respectively including the requirement, where cash is maintained overnight, not to have less than 95 % of such cash, calculated over an average period of one calendar month, deposited through arrangements that ensure the collateralisation of the cash with highly liquid financial instruments, which provides further safety to the collateral provided to CCPs.

6 ESMA believes that the RTS 153/2013 provides sufficient granularity for requirements on collateral margining and securing requirements. Based on its experience so far in the implementation of EMIR, ESMA does not consider there is a need for a review of the EMIR provisions on these issues, although it does not exclude to review some of the provisions of the related RTS in the future.

7 Indeed, ESMA recognises that CCPs' margin and collateral policies and methodologies present in some cases wide differences in their approach towards specific aspects of margin and collateral policies and procedures (e.g. procyclicality, portfolio margining, collateral haircuts, etc...). Through its participation in CCP colleges, ESMA is monitoring developments in these policies while addressing differing views among national authorities on how to comply with specific RTS provisions, in the view to enhance supervisory convergence. ESMA intends to conduct further analysis around the emerging differences between CCPs' margin and collateral policies, including throughout peer review analysis under article 21(6)(a) of EMIR. Where necessary, ESMA would consider, as appropriate, to review the relevant RTS 153/2013 or to issue guidelines and

[1] Available at http://www.esma.europa.eu/system/files/esma_2014_1179_letter_to_commisison_on_esma_reports_per_art_85.pdf

recommendations or opinions to address any inconsistent application of the relevant requirements.

8 Against this background, ESMA considered that its input to the European Commission review report with respect to the issue referred to in Article 85(1)(e) would be represented by the current report on segregation and portability.

9 This report contains a summary of the provisions related to segregation and portability in EMIR and a recap of EU CCPs corresponding set-up and any evolution since their authorisation. Then follows the analysis of issues identified during EMIR implementation. Finally it concludes on some suggestions for revision of EMIR regarding segregation and portability.

3 General regulatory framework for segregation and portability

3.1 EMIR provisions on segregation and portability

10 Segregation and to a lesser extent portability are mentioned several times throughout EMIR. This section will provide a quick overview of the relevant provisions of EMIR together with some explanation of the major principles underlying those provisions.

11 The notion of client is defined under Article 2 of EMIR dealing with definitions, it is described as "an undertaking with a contractual relationship with a clearing member of a CCP which enables that undertaking to clear its transactions with that CCP". In its Q&A[2] ESMA specified that an undertaking which has a contractual relationship with a participant of a trading venue which is also a clearing member where it executes trades on behalf of its clients and subsequently clears those trades with the relevant CCP should also be considered as a client under EMIR and not an indirect client and should benefit from the client protections established therein.

12 The core provisions on segregation and portability are contained in Article 39 of EMIR, the rationale underlying this article is briefly stated in Recital 64. Article 39 applies to any CCP, clearing member and client regardless of the type of asset cleared. The rationale behind the provisions on segregation and portability is to ensure some level of protection for clients of clearing member through specific records of positions and assets given as collateral (except for default fund contribution). The most protective scheme allows clients to be immune to their clearing member's default as much as possible through transfer of positions and assets to another clearing member or a separate liquidation of their positions and return of any proceeds.

13 Article 39 of EMIR sets out a minimum of three account types that CCPs and clearing members should cater for: house accounts, individually segregated client accounts (ISAs) and omnibus segregated client accounts (OSAs).

14 Article 48 of EMIR, especially in paragraphs 5 onwards, on default procedures describes the more operational details of what the CCP should do with the client assets and positions depending on the chosen level of protection. As mentioned in recital 64 those provisions could somehow interfere with insolvency law of a member state but it is foreseen that the former should prevail.

[2] See CCP Question 8(m) of the ESMA Q&A on the implementation of EMIR

15 Article 4 of EMIR refers to Articles 39 and 48 of EMIR in the context of mandatory clearing for OTC derivatives and the need to have indirect clients benefiting from the same level of protection as described in those Articles for clients. Articles 3 to 5 of corresponding RTS 149/2013 describe with the same level of details the obligations of CCPs, clearing members and clients regarding recording of assets and positions in the context of indirect clearing.

16 Whilst the principles of segregation and portability under EMIR are fairly straightforward their implementation has raised a number of important questions when CCPs were setting up their operational and contractual arrangements in the context of their (re) authorisation, arguably due to the lack of level 2 provisions. This generated a number of questions that were addressed through the ESMA Q&A[3] document, providing clarity on the relevant provisions and ensuring their consistent application.

3.2 Application of the segregation and portability requirements

17 As provided for in Article 39 of EMIR, all EU CCPs which have been authorised under EMIR offer at least three type of accounts: house account where the positions and assets of the clearing member itself are recorded, the OSA accounts where the positions and assets of several clients of the clearing member can be recorded and the ISA where the assets and positions of a single client of the clearing member can be recorded.

18 To widen their service offering (sometimes in response to some specific requests from clearing members or clients, due to the global nature of their activities and the interaction of these requirements with other segregation models or requirements from other jurisdictions), a number of EU CCPs have implemented other account types in the context of their (re)authorisation.

19 The most common addition to the EMIR segregation models has been to offer two types of OSAs, one usually called net OSA where the positions of all clients in the OSA are recorded on a net basis and the corresponding margins are calculated by the CCP on this net basis and the other one called gross OSA where positions of all clients in the OSA are recorded on a gross basis and the corresponding margins can be calculated by the CCP on each client position, and are thus individually identifiable even if they do not as such benefit from the ISA protection.

20 The OSA gross solution can be an element of the model that is applicable in the US for futures commission merchants (FCMs) so it has been implemented by CCPs to accommodate their clearing members which clear trades for US clients.

21 Apart from a few cases where it was the historical model, the take up for ISA accounts is minimal and there was no straightforward explanation from the CCPs. The reasons for this could be a lack of interest, the absence of mandatory clearing obligation, the inadequacy of technical and operational solutions corresponding to the models, the cost of implementation (most probably indirect costs) and of ISA day to day management. On derivatives there are only a few ISAs being taken up by those few clients interested in the potential beneficial capital treatment, but the provisions of the Capital Requirements Regulation (CRR) on qualified CCPs have not come into force yet.

22 Technical and operational schemes needed to be ready at the time of authorisation, but were sometimes not advertised far ahead of it. This did not leave much time for the clients to choose and adapt to the more sophisticated solutions. The first authorisation happened in March 2014

[3] See CCP Question 8(m) of the ESMA Q&A on the implementation of EMIR

and one CCP still benefits from transitional provisions under Article 89 of EMIR so it can be argued that the current situation is still evolving.

23 From the different consultations that ESMA carried out, it appears that there is also a lack of clarity about what each account structure could achieve in terms of protection for clients, given the above-mentioned legal uncertainty toward national insolvency laws and given the current wording of EMIR that leaves it to the CCPs to ensure that certain measures for clients protection are ensured. This has probably resulted in a lack of clarity on the benefits associated with each choice of accounts. Therefore, some clients only saw higher costs, whereas the degree to which the different account structures effectively ensured higher protection remained uncertain to them.

4 Main issues encountered

24 As a preliminary remark it is worth mentioning that EMIR Level 1 does not foresee any RTS for segregation and portability core provision i.e. Article 39 of EMIR. Only Article 4 of EMIR envisages some Level 2 provisions.

25 The different issues which arose in the context of Article 39 of EMIR can be classified as legal and regulatory, operational, technical and financial.

4.1 Legal/regulatory issues

26 A general legal concern was raised by national competent authorities with regards to their own supervisory duties. Some provisions contained in Article 39 of EMIR impose obligations on CCPs however others do so on clearing members.

27 Their enforceability has raised some concerns, CCPs claimed their authorisation could not be refused or withdrawn because their clearing members, on which they do not have any power, would not meet the segregation and portability requirements. The national competent authorities had difficulties defining in which supervisory context the obligation under Article 39 of EMIR would fit. All the more since EMIR does not describe any specific sanction in case of breach.

28 Furthermore the definition of “client” in EMIR does not match what the industry calls “client” which in some cases would correspond to an “indirect client” under EMIR. This sometimes led to some misunderstanding and confusion on what level of granularity the CCPs and clearing members needed to go into.

29 Another term which had to be specified is the “assets” contained in Article 39(10). This article lacks details as to the nature of records that should be implemented by the CCP and clearing members and whether they should only be reflecting the nominal value of the asset when deposited or the precise description and characteristics of such assets.

30 The reference to assets “held to cover positions” could lead to the exclusion of “buffers” left by clients to clearing members and which can fulfil several purposes and cover different type of activities. As such, until they are allocated, the assets do not cover specific positions and would thus not benefit from the protection foreseen in Article 39 and 48 of EMIR. It was also unclear whether variation margin fell under the definition of assets.

31 According to article 39(5) of EMIR the client shall confirm its choice of model in writing, it does not provide for any default rule in case the client does not notify its choice even after the clearing member’s reasonable effort to this end.

32 Some points related to conflict of law arose as well. When requiring an external legal opinion to confirm that Article 39 of EMIR would be enforceable in case of a default of a clearing member some CCPs were notified of some discrepancies between some Member States insolvency laws and EMIR provisions. Given that national competent authorities or CCPs have no power over revision of national insolvency laws that are incompatible with EMIR, this incompatibility has not prevented the authorisation of CCPs, but the inconsistency is not fully resolved by recital 64 of EMIR.

33 Along the same lines, regarding indirect clearing services for OTC derivatives under EMIR (as well as in the context of the MiFIR consultation on the technical standards regarding indirect clearing services for ETDs), some concerns have been raised about the obligations placed on clearing members to attempt to port the positions and assets of the indirect client on the default of the client and/or to liquidate the indirect clients' positions and return any balance directly to indirect clients.

34 Broadening the picture and taking into account the fact that many clearing members have a global activity often including an activity in the US, it has been concluded that the US regime, under the Commodity Exchange Act as amended, and the rules promulgated by the Commodity Futures Trading Commission (CFTC), contain some inconsistencies with EMIR. The potential conflict of law between them can thus create issues for a clearing member of an EU CCP which would also be a US FCM. Again, in some cases, ESMA Q&As helped to limit this conflict of laws.

4.2 Operational issues

35 The potential need to precisely record at CCP level the assets covering positions of one client has proved operationally complex in some instances. When a client provides collateral to a clearing member who will clear the client's activity through several CCPs the split and allocation of collateral across CCPs is usually not prescribed in the contractual framework and is not addressed in the regulatory framework. It can also happen that the type of collateral provided by the client to the clearing member is not accepted by the CCP or that it is legally attributed to the clearing member without the possibility to change the beneficiary. In those cases the clearing member had to ensure some transformation of collateral to comply with EMIR.

36 In those cases the need for clearing members to directly post excess collateral with CCPs did not help the situation, not only for clearing members but also for the CCPs themselves.

37 The references to "accounts" and "assets" led to confusion as to the required level of segregation, whether at CCP or Central Securities Depository (CSD) level, and the corresponding number of settlement instructions to handle. ESMA through its Q&A confirmed that EMIR referred to accounts within a CCP and there was thus no need to reflect those accounts by separated accounts in the CSD or securities settlement system (SSS), nor was there any need to send individual settlement instructions per account.

38 EMIR seemed to forbid the possibility to use house assets to cover client positions, although this was used in practice and was favorable to clients. Here, the interpretation of EMIR is that if assets belonging to the clearing member are used to cover client positions, then once so allocated they are protected from any loss to the house assets or positions and are thus considered as client assets.

39 Another operational common practice has been that, in case of a client default, the clearing member "takes over" the positions and assets of that client to take appropriate actions (e.g. hedge positions, liquidate assets…). It was confirmed that contractual arrangements between a

clearing member and its client could provide for the positions and assets held for the account of the client to be transferred to the house or proprietary account of the clearing member in the event of a default of the client. Accordingly, there should be the ability for a CCP to transfer the positions and assets held for the account of a defaulted client into the house account of the clearing member on instruction of that clearing member, subject to that clearing member not being in default itself and in accordance with any applicable valuation and other rules and/or operating procedures of the CCP.

40 Market participants have reiterated the view that the transfer and portability of clients' positions and assets in case of the default of a clearing member seemed unrealistic considering the complexity to find a back-up clearing member for cash securities markets because the settlement of positions happens quickly. This was reflected in the CCPs rules which usually contain a very brief delay during which it commits to try and port client positions before they are liquidated. In case of liquidation, let alone in the case of some conflicting insolvency law as evoked in paragraph 32, the return foreseen in Article 48(7) of EMIR is very unlikely especially for OSA net as the CCP is unlikely to know the identity of the clearing member's clients nor their respective positions and assets.

41 Last but not least, if a transfer or a direct return is envisaged it seems that, from an operational aspect, this could require some type of segregation at payment / settlement system level or at least some prior communication of settlement account details, in order to automate the process and limit extra operational actions, hence risks for the CCP, which will already be in a period of intense operational activity. It can be noted that similar operational considerations also apply in the context of indirect clearing, but one level down, i.e. at the level of the clearing member.

4.3 Technical issues

42 The implementation of segregation and portability provisions contained in EMIR brought the same type of technical consequences as any other important projects implying technical changes. IT systems had to be updated significantly since the new rules did not correspond to a wide-spread model within CCPs and clearing members.

43 On top of the changes to the core IT systems and all related ones (risk management treasury, settlement…), all systems also had to be made scalable since the number of accounts and the data to be handled was going to increase significantly.

44 The number of questions which arose and the need to clarify the corresponding answers in a consistent EU-wide manner led to some last minutes changes which slowed down the implementation and testing of the system upgrades within CCPs and had to be passed on throughout the trading to settlement chain.

4.4 Financial issues

45 The corresponding development of, or the changes to, IT systems, legal documentation, operational processes etc… implied significant costs to clearing members and CCPs, whereas the service had to be provided under reasonable conditions (including fees). There was no clear view as to the take-up of the different types of account especially since some details on the functioning came very late in the process. Setting a price for each option has proved complex and the costs incurred may be difficult to recoup.

46 Besides, the split between house and client positions or within client positions implied some "de-netting" effect, thus the scheme detailed in Article 39 of EMIR has often implied increases in margins called by CCPs from clearing members and by clearing members from their clients, triggering the need to finance those increases.

5 Suggestions for EMIR review

5.1 New EMIR Level 1 and Level 2 provisions

47 In section 4 we have seen that issues arose mainly due to the lack of practical and operational description, or at least to the lack of a more granular level of requirements. To avoid the corresponding uncertainty and ensure regulatory convergence, more information should be provided on segregation and portability in the form of binding EU regulation. Whilst the majority of the missing features are relevant for level 2 a few are related to the definition and principles.

48 Article 39 of EMIR would need to be adapted to foresee the possibility to develop RTSs. Such review of Level 1 could be an opportunity to insert definitions:

- For "assets" referring to the nature of asset on top of the nominal value and including a more flexible idea of collateral that is covering or intended to cover positions.
- For "accounts" specifying that this relates to accounting within the CCP and clearing members but exclude the accounts at security settlement system or at the level of the central bank or at the level of the authorised financial institution (where alternative highly secured arrangements are permitted) where the financial instruments or cash are actually held in custody.

49 Besides, the provisions of Article 39 of EMIR should be specific on the effects for the different accounts following the clearing member default, i.e. if assets shall be ported or proceeds directly returned to clients, the Article should specify that this is the case and that the insolvency administrator of a clearing member shall not prevent this from happening. This would clearly state the supremacy of an EU Regulation over national insolvency laws, rather than a simple reference in a recital.

50 Article 39 of EMIR could also provide for a default regime in case the (indirect) client has not provided any feedback even though the clearing member (or the client in the case of indirect clients) has taken reasonable steps to ask which type of account it elected.

51 To ensure portability can be achieved, Article 48(5) and (6) of EMIR could be modified to impose an obligation on the CCP to port positions and collateral depending on the chosen account structure, in the case there is a pre-existing back-up clearing member arrangement.

52 Level 2 RTSs could then be created to specify operational details of the principles stated in Article 39 of EMIR. Based on the issues raised and the different models created on top of the minimal set, ESMA would suggest defining in the proposed RTSs with more granularity the possible account types as well as the corresponding protection and benefits, and more specifically the possibility to have Individually segregated accounts (ISA), Omnibus gross accounts (OSA gross) and omnibus net accounts (OSA net) with different and clearly spelled out rights attached to each account structure.

53 The type of segregation regime defines the conditions and the likelihood of transfer or liquidation, and more generally the level of protection for the clients and where relevant indirect clients. The main aspects of such protection are the posting of surplus collateral directly with the CCP, the portability and the direct return of assets. ESMA considers that the current framework does not allow the clear exploitation of this right for clients. For example the porting of (indirect) clients positions and assets could be hindered by some operational, cost or risk related issues.

54 The wording of EMIR relies on contractual commitments by CCPs to exercise certain rights, which per se cannot supersede national insolvency laws. ESMA therefore considers that in a revision of EMIR the wording of the different provisions and the right attached to the different account structures should be clearly spelled out, in order to avoid uncertainties on the superiority of an EU Regulation over national laws. In addition, EMIR should be clear on when the client is known to the CCP. In particular, in the case of ISA, the client must be known and the direct return of asset after liquidation always possible.

55 One could argue that, because it ring-fences a client's activity, ISA is not only a protection for the client but also for the CCP itself. The use of ISA could thus be made compulsory in some cases for example when a client's cleared position at a given CCP exceeds a pre-determined size or for entities of the same group as the clearing member.

56 The possible de-correlation between the assets provided by the client to the clearing member and those provided by the clearing member to the CCP to cover the clients positions should also be covered and precisely circumscribed to the cases faced in practice i.e. collateral not acceptable at CCP level or legal device not adapted and confirm the consequences in case of default of the client or of the clearing member.

57 A clarification should be provided that the need for a strict segregation between client accounts and house accounts does not prevent the clearing member to use client assets in the context of a default of the client in order to allow for the clearing member to better handle the default and liquidate the positions, if necessary to contain the associated risk and avoid contagion.

58 Conditions under which the house assets can be used to cover client positions should also be inserted with the description of the consequence in case of default of the clearing member.

59 Finally, to properly incentivise the take up of more secured account structures and considering the higher level of margins that the CCP will collect in an ISA and OSA gross structure, different margin period of risks (Margin Period of Risk or liquidation period) might be considered for ISA and OSA gross, respectively, versus OSA net. However, further analysis on what the overall results with regard to total margin requirements would be is necessary since no quantitative data have been analysed on the effects of reducing the liquidation period on the one hand and the transition from a net to a gross account structure on the other hand.

5.2 Work on insolvency conflict of law within the EU

60 Currently only a recital states that EMIR overcomes national insolvency laws. In addition, Article 48 indicates that the CCP "shall, at least contractually commit itself to trigger the procedure for the transfer" leaving some doubts as to the actual possibility of such transfer.

61 As described in paragraph 32 when assessing the enforceability of their rules on default management procedures, as foreseen in Article 48(5) of EMIR onwards, some CCPs had received legal advice that some EU laws would hardly allow the full application of the objectives envisaged in EMIR: for example some local provisions would not allow assets to be directly given back to the clients. EMIR text needs to be reviewed in light of the existing insolvency laws so the appropriate measures can be decided.

62 In any case, EMIR should clearly specify what a CCP shall do, rather than contractually commit to do. In particular, there should be an article stating that the assets maintained in an ISA or an OSA are maintained on behalf of the client and are not part of the clearing member pool of assets following the default of the clearing member and thus cannot be used by the administrator/liquidator of the clearing member. Any conflicting EU national insolvency law would thus automatically be overruled.

63 The level of complexity is increased when considering indirect clearing arrangements. First of all, indirect clearing includes a further layer and thus this potentially raises the number of jurisdictions involved in the insolvency procedure. Secondly, in the case of indirect clearing arrangements, this increased complexity is also due to the fact that the obligations are shifted one level compared to client clearing. Specifically, this means that the clearing member is to provide protections to the indirect client (in the case of indirect clearing arrangements) in a similar way as the CCP does to direct clients (in the case of client clearing). However, clearing members and CCPs are not subject to the same legislation and their actions may be perceived differently from the challenge of an insolvency practitioner.

5.3 Monitoring of OSA/ISA implementation and the possible hindrances

64 The implementation of the different types of models needs to be monitored to assess and ensure that the expected benefits materialise and to track any undue constraints. Changes to the operational and technical models usually take time so this monitoring could be done on a yearly or even bi-yearly basis. Apart from the countries where it corresponds to the historical framework it could be interesting to pay particular attention to the evolution of the take-up of ISAs within each CCP.

65 The aim would be to ensure that there are no more impediments for ISAs to be chosen and evaluate if the corresponding potential operational burden and risks need specific attention.

66 The actual roll-out and onboarding of these different account and segregation models could be monitored from when the technical standards on the clearing obligation are finalised and during the implementation of the clearing obligation (current proposal in the draft RTS is for 4 phases of up to three years depending on the types of counterparties).

67 Assuming the issue has not been solved through the discussion on EU and US equivalence or in another context, the monitoring of the use of the different types of accounts will be an opportunity

to check to which extent the inconsistency between the EU and US segregation regimes has influenced the choice of market participants.

6 Conclusion

68 While setting the principles and the rationale for client protection and the corresponding segregation and portability regime, EMIR lacks the granular details and would need significant improvements to reach the aims that the legislator contemplated at the time of its drafting.

69 After the suggested changes are implemented, the monitoring mentioned in Section 5.3 will be the opportunity to reflect further and potentially confirm the need for new provisions to improve client protection whilst securing risk management.

70 On top of default procedures and insolvency law, segregation and portability touches on another topic outside of EMIR remits but which is also currently being discussed in European and international fora which is “recovery and resolution”, where the Commission is currently working on a legislative proposal.