

**ESMA Consultation on the review of EMIR Art. 26
with respect to clients accounts**
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AMAFI's contribution

The European Securities and Markets Authority published a consultation on 27 August 2015 on the review of Article 26 of Commission Delegated Regulation (EU) No 153/2013, supplementing the European Market Infrastructure Regulation with regard to the liquidation period that central counterparties (CCPs) apply to client accounts. The deadline for responding is 30 September 2015.

The consultation relates to ongoing negotiations in the USA and the European Union (EU) on the equivalence of legal and supervisory arrangement for CCPs, with a view to bringing Europe's system into line with America's.

In this regard AMAFI¹, which represents intermediaries and market infrastructures in France, wishes to alert the European authorities to a number of principles which it believes should govern negotiations between the two sides.

- The equivalence of the EU and US regimes, which should be maintained, is key to ensuring that European infrastructures and intermediaries remain competitive relative to their US counterparts.
- For European intermediaries, negotiations are vital since they are linked to the provisions of the Capital Requirements Regulation, stating that if a European credit institution clears trades with a qualifying CCP, a risk weight of 2% may apply to that institution's exposure. By contrast, if the institution is dealing with a non-qualifying CCP, it will be subject to dissuasive regulatory capital charges. At present, these charges are due to come into effect on 15 December 2015. It is thus urgent to find a solution which does not harm European competitiveness.
- Regarding the current negotiations, recognition of equivalence would only be meaningful if:
 - it takes into account the impact on CCPs' and clearing members' risk management;
 - it is not detrimental to the European financial industry.

¹ AMAFI is an industry association representing financial market professions based in France at the national, European and international levels. It serves credit institutions, investment firms, market infrastructures and providers of pre-trade and post-trade services, wherever they operate and regardless of where their clients and counterparties reside. AMAFI members operate, either on a proprietary basis or on behalf of clients, in different market segments, notably on organised or over-the-counter markets in equity, fixed-income and derivatives (including commodities derivatives). Approximately one third of the membership consists of subsidiaries or branches of non-French institutions.

- With these goals in mind, the current talks should focus on the issues most relevant to a decision on equivalence; they should not be confined to the technical issue dealt with in the consultation which deals with the liquidation period for client accounts. Even if this point deserves thorough examination, it should not conceal other key aspects in terms of risk management for which major differences exist between the EMIR rules and those in the Dodd Frank Act. These discrepancies include the 25% additional EMIR buffer, the "cover 2" calculation for sizing the default fund for all CCPs, and the new-product approval procedure.
- Accordingly, an equivalence solution should ensure that differences between US and EU regulations are not prejudicial either to European infrastructures or to European clearing members. Failing that, a convergence between the key provisions of the two regimes should be envisaged.
- What is at stake in this negotiation should be carefully pondered. For Europe, especially in derivatives whose global nature should be kept in mind, the question is whether it is possible to maintain a financial system that serves its economy and is regulated at the European level. Ultimately, this is a question of economic sovereignty.

