

European Commodity Clearing AG  
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## **Response to EBA Consultation Paper on “Draft Regulatory Technical Standards on Capital Requirements for CCPs” (EBA/CP/2012/08)**

ECC welcomes the possibility to respond to EBA's Consultation Paper on Draft Regulatory Technical Standards on Capital Requirements for CCPs (EBA/CP/2012/08) as part of the current consultation process.

With regard to the specific nature of ECCs business (clearing services for commodity spot- and derivatives markets) we have the following major concerns:

1. Under Article 16(2) of EMIR capital is required to cover market risk and credit risk arising from “non-covered activities” and operational risk arising from all activities of a CCP (including both, “covered activities” and “non-covered activities”). ECC clears derivatives and spot products. Derivatives are regulated under EMIR and clearing of derivatives is a “covered activity” according to the regulation drafts. Where a CCP clears spot products, using similar processes and procedures as for derivatives that should also be defined as “covered activity” to avoid that the CCP has to hold capital for these activities although they are covered with margins with the same level of confidence as derivatives cleared by the CCP.
2. According to Article 3, 1. (a) capital requirements should cover operational expenses over a time span sufficient to allow an orderly winding-down or restructuring of the CCPs activities. This capital requirement will be additional to the above mentioned capital for market, credit and operational risk. According to Article 6, 1. a twelve months floor is proposed for the winding-down or restructuring period. There is a difference in the complexity of winding down a large, systemically important CCP that operates in multiple jurisdictions and clears a large number of different asset classes compared to a small, not systemically important CCP that operates under one jurisdiction and clears a limited number different asset classes. This should be reflected in the regulation. We believe that for small CCPs a floor of six months for the winding-down or restructuring period is sufficient. This would also be consistent to CPSS-IOSCO principles for Financial Market Infrastructure, principle 15 (Key Consideration 3).
3. The current approach of calculating the operational expenses is based on a list of items (given in Article 6, 2.) that reflect the cost incurred by the CCP in the past. This approach does not take into account that during a winding-down the cost structure will change (no introduction of new products; reduced project load; layoffs, reduced variable cost components). We therefore propose to calculate the cost based on reasonable assumptions of the expected cost reductions during the winding-down.

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4. The EMIR regulation Art. 16 § 2 stipulates that the capital of the CCP should be sufficient to cover the winding-down and the credit, counterparty, market, operational, legal and business risk. ESMA has interpreted this in a way that requires CCPs that capital can only be used to cover either the winding-down cost or the other risks. The capital however would only be used for one of the two: In case of the CCPs insolvency the cost for the actual wind-down and in case of going concern to cover the other risks. The capital requirement should therefore be a “higher of” instead of a sum of both requirements.
5. The suggested capital requirement for covering operational expenses during winding-down or restructuring might result in higher capital requirements for CCPs which currently have a bank license. This obviously would require time for implementation. An adequate phase in time for the capital requirements of EMIR Art. 16 of one year should therefore be amended to allow CCPs to increase the capital basis.
6. According to Article 4 CCPs are required to report to the relevant competent authority if the financial resources fall below 125% of the required capital. The report should include short-term perspectives as well as a description of measures to be taken to ensure ongoing compliance with the capital requirements. As EMIR Article 16 (3) does not give a legal basis for defining a notification threshold Article 4 should be deleted. This would also reflect current regulatory practice for banks. In case the proposed deletion of the notification threshold is not taken into account the threshold should be reduced to 105% which would adequately reflect the low risk of CCPs.