

**Eurex Clearing response
to the
EIOPA Consultation Paper
on
technical advice on standard formula capital
requirements for direct exposures to qualifying central
counterparties**

Frankfurt, 23 October 2024

General comments

Question 1. Do you have general comments on the consultation document?

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Yes

Eurex Clearing appreciates the opportunity to respond to EIOPA's consultation on the technical advice to adapt the capital treatment of insurers when facing CCPs directly.

The insurance industry, as one of the largest institutional investor groups in the EU, is extremely important to the deepening of the Capital Markets Union. We have therefore invested in direct and sponsored access and specifically designed them to address the needs of the buy-side including insurance companies with a view to facilitate access to central clearing by a broader range of market participants and support the diversification, stability, and liquidity of the EU's financial markets.

In particular, Eurex Clearing offers four clearing models through which (re-)insurances can directly access our cleared products. In all four clearing models the centrally cleared products' trade exposure for the (re-)insurance is vis-à-vis the CCP. This differs significantly from traditional client clearing models where the (re-)insurance would have trade exposure against the Clearing Broker for the centrally cleared transaction.

Equally, whilst in traditional client clearing, a (re-)insurance would have no legal obligation toward the CCP to pay margin, contribute to the default fund or participate in the CCP's default management process, the four direct access clearing models offer choice to (re-)insurances to what extent they would like to take on these obligations. It should be noted in this context that the financial liability associated with contributions to the default fund is always limited and typically only a small fraction of the margin requirement.

We can summarize the key differentiating features of the four direct clearing models available to (re-)insurances at Eurex Clearing as follows:

- Direct Clearing Member
 - Re-(insurance) liable for
 - Margin Requirement
 - Default Fund Contribution
 - Default Management Process Participation
- ISA Direct Clearing Member
 - Re-(insurance) liable for
 - Margin Requirement
 - Other obligations met by Clearing Agent (i.e. sponsor)
- ISA Direct Indemnified Clearing Member
 - Re-(insurance) liable for
 - Margin Requirement
 - Other obligations met by Clearing Agent (i.e. sponsor)
- ISA Direct Light License Holder
 - Re-(insurance) not liable for margin, default fund or participation in Default Management Process due to limitations in product, i.e. only reverse repo with full pledge back of securities collateral to Eurex Clearing

As alluded to by EIOPA, there are already several EEA (re-) insurance undertakings that use those models for clearing their derivatives and Securities Financing Transactions (SFTs/repo) transactions. We are also supporting (re-)insurance companies to become full clearing members. Eurex Clearing publishes its up-to-date member list on <https://www.eurex.com/ec-en/join/clearing-contacts>.

Key drivers for (re-)insurance undertakings to opt for a direct CCP membership is to benefit from increased clearing capacity, improved operational resilience and mitigation of counterparty credit risk in comparison to traditional client clearing models.

However, the benefits of the direct clearing memberships can only materialise for insurers (and their sponsors) if the sectoral regulations under which such firms operate reflect their existence and their specificities. Whilst the CRR has enshrined clear rules on the treatment of exposures towards the CCP in a traditional clearing relationship, Solvency II so far only addresses insurers' exposure to Clearing Members as the regulation at the time of its adoption did not anticipate insurers' growing demand to access central clearing directly and the possibility that CCPs would offer tailored solutions to insurers to do so. The lack of a dedicated treatment of direct exposure of insurance undertakings to CCPs currently results in a fallout of beneficial treatments for such firms when calculating counterparty default risk. As a result, an insurance firm may be economically better off under traditional client clearing compared to using CCPs directly or the innovative access models that CCPs have tailored to the needs of the buy-side. The regulatory framework therefore unintentionally disincentivizes such firms to make better use of the different membership models and centrally clear different types of financial instruments in the EU, notably SFTs and derivatives.

Against this background, we welcomed the European Commission's announcement in late 2022 in context of its EMIR 3.0 legislative package to revisit the Solvency II Delegated Regulation to ensure that insurance undertakings are not penalized from a capital perspective when accessing a CCP directly. We also strongly appreciate EIOPA's assessment and advice to implement policy option 3, i.e., to align the treatment of direct CCP derivatives exposure under Solvency II with the treatment under the CRR and indirect CCP exposure.

While we strongly support EIOPA's intention to afford insurance undertakings which engage in derivative transactions as direct clearing members preferential capital treatment in a manner that is consistent to banks who are clearing members of a QCCP, we believe Article 192a (1) cannot be extended to direct exposures to QCCPs as proposed in the draft technical advice. Therefore, we alternatively propose to capture direct members in a separate article by way of including a new Article 192b with regard to the exposure to QCCP for the purpose of Article 192(3) as outlined in detail in our response to Question 11 below. Accordingly, Article 192(3) could refer to the new article to reflect the treatment of direct members of a QCCP.

Further, we would suggest amending Article 192a paragraph 1, point d) as well as adding a new sub-paragraph to that Article in order to align the wording related to client clearing in the Delegated Act for insurance undertakings with Article 305 of the CRR. Those changes would ensure legal certainty and consistency between the banking regulation and insurance legislation when it comes to client clearing.

In addition, we would also like to highlight that EIOPA's proposals to cover default fund contributions are not applicable to CCPs' current membership models. Nevertheless, the proposals

are very welcome should insurance undertakings choose (and/or are permitted by their status) in the future to take on all the obligations of direct memberships, rather than using the alternative models to access CCPs.

Importantly, as mentioned in our response to Question 12, we strongly support EIOPA's considerations to extend the proposed beneficial treatment for direct CCP derivatives exposure to repo transactions or respectively SFTs more generally, as insurance companies are already using the different models EU CCPs are offering for clearing their SFT transactions, too.

The proposed changes would not only ensure regulatory consistency within Solvency II as well as between insurance and banking legislation. It would also help facilitate insurers' use of the available access models and allow them to fully benefit from central clearing - notably in an environment where the provision of client clearing services has been getting more scarce and concentrated, and at a time when the EU is eager to foster the efficiency and liquidity of EU financial markets as well as deepen the EU clearing ecosystem.

We hope our comments are considered a useful contribution to EIOPA's technical advice and remain at the disposal of EIOPA and the Commission when revising the Delegated Regulation to provide further information, if needed.

No

1. Introduction

Question 2. Do you have comments on Section 1.1 'Call for advice'?

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Yes

No

Question 3. Do you have comments on Section 1.2 'Context'?

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Yes

No

Question 4. Do you have comments on Section 1.3 'Structure of the advice'?

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Yes

No

2. Draft advice

Question 5. Do you have comments on Section 2.1 'Extract from the call for advice'?

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Yes

No

Question 6. Do you have comments on Section 2.2 'Relevant legal provisions'?

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Yes

No

Question 7. Do you have comments on Section 2.3 'Previous EIOPA advice'?

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Yes

No

Question 8. Do you have comments on Section 2.4 'Other regulatory background'?

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Yes

No

Question 9. Do you have comments on Section 2.5 'Identification of the issue'?

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Eurex Clearing agrees with EIOPA's assessment. In addition to being clients of clearing members of QCCPs, it is also possible for (re-)insurance undertakings themselves to access CCPs via traditional and innovative access models. As alluded to by EIOPA and as highlighted in our response to Question 1, there are already several EEA (re-) insurance undertakings that use such models, notably sponsored models for managing their repo transactions. Further, we are also supporting insurance companies to become full members.

However, as highlighted in our response to Question 1, due to the absence of a dedicated treatment for insurers' direct exposure to the CCP within the regulatory framework, such market participants cannot benefit from a beneficial treatment when calculating counterparty default risk for centrally cleared derivatives and other instruments, such as SFTs. As a result, an insurance firm may be economically better off under traditional client clearing compared to using CCPs directly or the innovative access models that CCPs have in particular tailored to the needs of the buy-side, disincentivizing the use of such models and hindering the uptake of such models.

Yes

No

Question 10. Do you have comments on Section 2.6 'Analysis'?

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Yes

See our response to the previous question.

No

Question 11. Do you have comments on Section 2.7 'Draft advice'?

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Yes

As alluded to above, Eurex Clearing strongly supports EIOPA's intention to afford insurance undertakings which engage in derivative transactions as direct clearing members preferential capital treatment in a manner that is consistent to banks who are clearing members of a QCCP.

Notwithstanding our support, we would like to share our view that Article 192a (1) cannot be extended to direct exposures to QCCPs as proposed in the draft technical advice. This article sets out the criteria that needs to be satisfied for a client to receive preferential treatment under the regulation. In banking regulation, the preferential treatment is in terms of risk weights. In the insurance regulation, the preferential treatment is however in terms of LGD and PD. Direct members of QCCPs as opposed to clients should not need criteria to obtain preferential treatment. Rather, direct members should automatically obtain preferential treatment, by virtue of being direct members. For meeting the policy objectives of EIOPA to the full extent, we would therefore suggest the following targeted amendments to the Delegated Act (as marked in red below) and capture direct members in a separate article. Notably, we recommend adding a clarification by way of including a new Article 192b with regard to the exposure to QCCP for the purpose of Article 192(3):

"Exposure to a qualifying central counterparty"

1. Notwithstanding Article 192a, for the purposes of Article 192(3), a derivative or securities financing transaction falls within this paragraph if the insurance or reinsurance undertaking acts as a clearing member of a CCP for its own purposes on the derivative or securities financing transaction and the CCP is a qualifying central counterparty."

In addition, we would like to propose an explicit reference to the new Article 192b in Article 192(3) to reflect the treatment of direct members of a QCCP: "3. The loss-given-default on a derivative **or securities financing transaction** falling within Article 192a(1) **or Article 192b** shall be equal to the following:"

Further, we would suggest amending Article 192a paragraph 1, point d) as well as adding a new sub-paragraph to that Article in order to align the wording related to client clearing in the Delegated Act for insurance undertakings with Article 305 of the CRR. Those changes would ensure legal certainty and consistency of the banking regulation and insurance legislation.

"(d) the insurance or reinsurance undertaking has conducted a sufficiently thorough legal review, which it has kept up to date, that substantiates that the arrangements that ensure that the condition set out in point (c) is met are legal, valid, binding and enforceable under the relevant laws of the relevant jurisdiction or jurisdictions; ~~available an independent, written and reasoned legal opinion that concludes that, in the event of legal challenge, the relevant courts and administrative~~

~~authorities would find that the client would bear no losses on account of the insolvency of the clearing member or of any the clients of that clearing member under any of the following laws:~~
~~(i) the laws of the jurisdiction of the insurance or reinsurance undertaking, its clearing member or the CCP;~~
~~(ii) the law governing the transaction;~~
~~(iii) the law governing the collateral;~~
~~(iv) the law governing any contract or agreement necessary to meet the requirement set out in point (b);~~
(e) the CCP is a qualifying central counterparty.

~~When assessing its compliance with the condition set out in point (c) of the first subparagraph, an insurance or reinsurance undertaking may take into account any clear precedents of transfers of client positions and of corresponding collateral at a CCP, and any industry intent to continue with that practice.”~~

For the sake of completeness and legal certainty, we would suggest adding the definition of ‘qualifying central counterparty’ as defined in Article 4 (88) of Regulation (EU) No 575/2013 to the Delegated Regulation as well.

We would also like to highlight that EIOPA’s proposals to cover default fund contributions are not applicable to CCPs’ current membership models. Nevertheless, the proposals are very welcome should insurance undertakings choose (and/or are permitted by their status) in the future to take on all the obligations of direct memberships, rather than using the alternative models to access CCPs.

Last but not least, as mentioned in our response to Question 12, we would also support EIOPA’s considerations to extend the preferential treatment of CCP exposures to securities financing transactions (SFTs) such as repos. Hence, a reference to the definition of SFTs in accordance with Article 4 paragraph 139 of Regulation (EU) No. 575/2013 should be added to the Delegated Regulation, and Articles 192, paragraphs 1, 3, 3a, and 3d as well as Article 192a paragraphs 1 and 2 should be amended by referring to SFTs next to derivatives transactions.

No

3. Questions to stakeholders

Question 12. EIOPA is exploring to extend the proposed approach for derivatives to repurchase transactions and possibly other securities. Would you consider such an extension appropriate?

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Yes

As alluded to above, some insurers are already using the access models by CCPs to centrally clear not only their derivatives transactions but also their repo business. We would therefore welcome if the proposed treatment of centrally cleared derivatives transactions would be expanded to centrally cleared repos or respectively to SFTs more generally. Such an extension would ensure consistency in the regulatory framework for insurers and incentivize the further uptake of the respective clearing models, in particular, in an environment where client clearing services by clearing members are getting more scarce and concentrated due to the capital impact for the respective service providers and at a time when the EU is eager to deepen the EU clearing ecosystem.

To this end, the definition of SFTs in accordance with Article 4 (139) of Regulation (EU) No 575/2013 should be added to the Delegated Act and Articles 192, paragraphs 1, 3, 3a, and 3d as well as Article 192a paragraphs 1 and 2 should be amended by referring explicitly to SFTs next to derivatives transactions.

No

If yes, should exposures to QCCPs for repurchase transactions and other securities be treated in the same way as exposures to QCCPs for derivatives?

Do these exposures have specificities that need to be considered?

No, see previous response.

Question 13. Do you have comments on the current treatment of direct exposures to QCCPs in Solvency II?

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Yes

See responses to Questions 1, 9, 11 and 12.

No

Question 14. Do you have comments on the treatment of liquidity risk faced by insurance and reinsurance undertakings when they are members of a QCCP?

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Yes

No

Any other comments

Question 15. Do you have any other comments?

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Yes

No