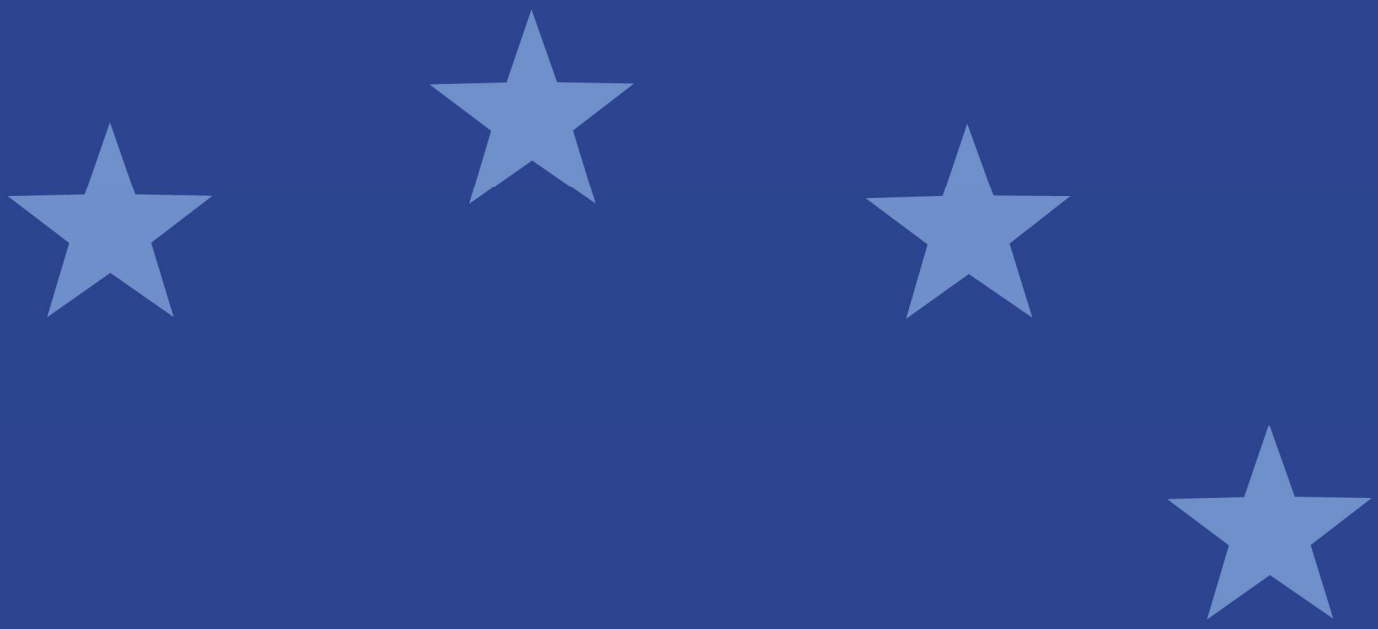
Consultation Paper

Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories



25 June 2012 | ESMA/2012/379

Date: 25 June 2012

ESMA/2012/379

Responding to this paper

ESMA invites comments on all matters in this paper. Comments are most helpful if they:

- contain a clear rationale;
- include quantitative elements to support any concern; and
- describe any alternatives ESMA should consider, including alternative drafts.

ESMA will consider all comments received by **5 August 2012**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Consultations'.

Publication of responses

All contributions received will be published following the close of the consultation period, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading 'Disclaimer'.

Who should read this paper

All interested stakeholders are invited to respond to this consultation paper. In particular, responses are sought from financial and non-financial counterparties of OTC derivatives transactions, central counterparties (CCPs) and trade repositories (TRs).

Table of Contents

Acronyms Used

ACER	Agency for the Cooperation of Energy Regulators
ARM	Approved Reporting Mechanism
BCBS	Basel Committee on Banking Supervision
BIS	Bank for International Settlements
CCPs	Central Counterparties
CPSS	Committee on Payment and Settlement Systems
DP	Discussion Paper
EMIR	European Market Infrastructures Regulation – Regulation of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories – also referred to as "the Regulation".
EBA	European Banking Authority
EIOPA	European Insurance and Occupational Pension Authority
ESAs	European Supervisory Authorities
ESCB	European System of Central Banks
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
FMIs	Financial Markets Infrastructures
FSB	Financial Stability Board
GAAP	Generally Accepted Accounting Principles
IFRS	International Financial Reporting Standards
IOSCO	International Organisation of Securities Commissions
ITS	Implementing Technical Standards
LEI	Legal Entity Identifier
MIFID	Markets in Financial Instruments Directive
ODRF	OTC Derivatives Regulators Forum

OTC	Over the Counter
RTS	Regulatory Technical Standards
TRs	Trade Repositories
UCITS	Undertakings for Collective Investments in Transferable Securities
UPI	Unique Product Identifier
UTI	Unique Trade Identifier

I. Executive Summary

Reasons for publication

This consultation paper seeks stakeholders' views on Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS) ESMA is required to draft under the Regulation of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories. Under Articles 10 and 15 of Regulation (EU) No 1095/2010 of the European Parliament and Council establishing ESMA (ESMA Regulation), ESMA needs to conduct a public consultation before submitting draft RTS or ITS to the Commission.

The input from stakeholders will help ESMA in finalising the relevant draft technical standards. As highlighted in the ESMA discussion paper on these draft technical standards (ESMA/2012/95 of 16 February 2012), one essential element in the development of draft technical standards is the analysis of the costs and benefits that these legal provisions will imply. The limited information available and collected in the course of the consultation on the discussion paper did not allow ESMA to produce for the purpose of this consultation paper a quantitative impact study. Respondents to this consultation are encouraged to provide the relevant data to support their arguments or proposals.

Contents

This consultation paper follows the structure of EMIR, with the first section focusing on OTC derivatives and in particular the clearing obligation, risk mitigation techniques for contracts not cleared by a CCP and exemptions to certain requirements. The second part focuses on CCP requirements, where a number of provisions need to be specified through technical standards. The third part deals with trade repositories and in particular the content and format of the information to be reported to trade repositories, the content of the application for registration to ESMA and the information to be made available to the relevant authorities. For each section a reference is made to the relevant Article in EMIR and to the relevant Annex in this consultation paper where the draft technical standards are included.

Next steps

ESMA is organising a second public hearing on 12 July 2012, to give an opportunity to interested stakeholders to express their preliminary views and to get early feed-back. On the basis of the responses to this consultation paper, ESMA will update the draft technical standards and the impact assessment and send the final report to the European Commission for endorsement.

II. Introduction

1. At the trilogue meeting of 9 February 2012, the European Parliament, the Council and the European Commission reached a political agreement on the Regulation of the European Parliament and the Council on OTC derivative transactions, central counterparties (CCPs) and trade repositories (TRs) (EMIR). The European Parliament adopted EMIR on 29 March 2012[1]. On 11 April 2012, on the basis of the text approved by the Parliament, the Council issued an updated version of EMIR[2]. The two texts are currently subject to the revision of the *jurist linguists* who are reconciling them. In the absence of a final adopted text of EMIR, this consultation paper is based on the two versions mentioned above.

2. The Regulation introduces provisions to improve transparency and reduce the risks associated with the OTC derivatives market and establishes common rules for CCPs and for TRs. It has been identified that common rules are required in the case of CCPs in view of the shift of risk management from a bilateral to a central process for OTC derivatives and in the case of TRs because of the increase in information that needs to be reported to them. The Regulation delegates or confers powers to the Commission to adopt regulatory technical standards (RTS) and implementing technical standards (ITS) on a number of areas (see Annex I for the legal mandate). This consultation paper (CP) covers the draft RTS and ITS which ESMA is expected to develop.

3. On the basis of the political agreement of 9 February, on 16 February ESMA released a discussion paper[3] (DP) presenting preliminary views and possible options for the development of the draft technical standards ESMA is required to developed under EMIR and submit to the European Commission by 30 September 2012 (see Annex I). The consultation period closed on 19 March and ESMA received 135 responses, 28 of which were confidential. On the 6 of March, ESMA also hosted a public hearing on the DP which was well attended with around 100 physically present participants and around 80 connected via conference call.

4. In the preliminary phase of development of the technical standards, and in addition to the DP and open hearing mentioned above, ESMA has also consulted the Post-Trading Consultative Working Group which was asked in September 2011 to respond to a call for input. The Post Trade Standing Committe (PTSC) has also conducted two surveys among competent authorities on existing arrangements for CCPs and informally consulted the relevant authorities listed in Article 81 of EMIR to get preliminary feed-back on the information needed from TRs for the exercise of their duties.

5. In addition to the draft technical standards listed in Annex I, ESMA together with European Banking Authority (EBA) and European Insurance and Occupational Pensions Authority (EIOPA) are required to issue joint regulatory technical standards on risk mitigation techniques for OTC derivatives that are not cleared by a CCP, notably on capital requirements and exchange of collateral (margins for bilateral transactions) to cover the exposures arising from those transactions and on operational processes for the exchange of collateral, minimum transfer amount and certain details on intra-group exemptions. Furthermore, ESMA is expected to issue guidelines or recommendations on interoperability between CCPs by 31 December 2012. These measures are not covered under this CP.

6. One essential element for the drafting of technical standards is the analysis of the cost and benefits that the proposed measures might entail. This CP includes an impact assessment in Annex VII. The limited amount of information available and collected on the basis of the responses to the DP did not allow ESMA to perform an in-depth quantitative cost-benefit analysis. In order to help ESMA to perform a

[1] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0106+0+DOC+XML+V0//EN#BKMD-11

[2] http://register.consilium.europa.eu/pdf/en/12/st06/st06399.en12.pdf

[3] http://www.esma.europa.eu/system/files/2012-95.pdf

quantitative based cost-benefit analysis and base it on objective figures, respondents to this CP are invited to accompany their responses with quantitative evidence supporting their arguments.

7. Another important element signalled by stakeholders in responding to the consultation on the DP is linked to the time needed for market participants to adapt to the new requirements. In this respect, it should be noted that for certain provisions the date of application will be determined by ESMA in draft technical standards (e.g. clearing and reporting obligation). With reference to requirements for CCPs, EMIR already allows for a 6 months period following the adoption of the technical standards for CCPs to comply and to re-apply under the new requirements. To facilitate the application process, ESMA considers that CCPs can apply for authorisation under EMIR on the basis of intended compliance. This would mean that CCPs can send the application to the competent authority before they implement all the changes required to comply with EMIR. However, they should include in their application the relevant information on the measures and procedures they intend to implement to comply with the new requirements. Authorisation will only be granted once these requirements are fulfilled. Finally, as for risk mitigation techniques for OTC derivatives not cleared by a CCP, ESMA is currently consulting the European Commission to verify whether an application date subsequent to the date of endorsement by the Commission could be included in the draft technical standards to allow sufficient time for market participants to adapt to the new requirements.

8. This paper contains a summary of responses to the DP received by ESMA. The rationale of those items covered already in the DP for which no relevant changes have been introduced, is not developed again in this CP and the related legal text can be found in the relevant sections of the annexes. ESMA recommends, therefore, to read this consultation together with the DP to have a complete vision of the rationale for the proposed measures.

9. ESMA fully recognises the extremely short time given for consulting on such a number of measures. However, it should be noted that this is the second consultation carried out by ESMA on draft technical standards under EMIR in less than five months. In view of the very short timeframe for ESMA to deliver the draft technical standards to the Commission (7 months between the political agreement and the final delivery date), it would not be possible for ESMA to extend the consultation period.

10. **Comments are welcome on all the sections and annexes of this CP**. Respondents are invited to clearly highlight the section and provisions to which their comments refer and provide supporting data whenever possible.

Consultation Paper

III. OTC Derivatives

11. In developing the draft technical standards on OTC Derivatives, ESMA has considered reports prepared by international bodies including the Recommendations of the FSB report on Implementing OTC Derivatives Market Reforms, the draft requirements for Mandatory Clearing of IOSCO, and the Supervisory Guidance for assessing bank's financial instrument fair value practices of the Basel Committee on Banking Supervision.

12. In addition, intensive bilateral and multilateral discussions took place with third country competent authorities in order to ensure to the extent possible, consistency in the approaches adopted with the objective of preserving the global nature of the OTC derivatives market.

13. These reports have provided a solid basis to ESMA which has conducted further analysis and work to develop draft technical standards aiming at ensuring the global compatibility of the EU requirements, thus permitting EU market participants active on OTC derivative markets to operate on a global basis.

14. Answers to the DP allowed ESMA to gather relevant information to further develop the draft RTS. ESMA has analysed answers received to the DP and revised the draft RTS taking into account the comments provided by stakeholders.

III.I Clearing obligation

Types of indirect clearing arrangements (Article 4 of EMIR)(Annex II, Chapter II, ICA)

15. In order to comply with the clearing obligation, a counterparty must become a clearing member, a client or establish indirect clearing arrangements. These indirect clearing arrangements cannot increase counterparty risk and have to ensure that the assets and positions of a counterparty entering into an indirect clearing arrangement benefit from protections with equivalent effect to those allowing segregation and portability for direct clients. According to the EMIR mandate, ESMA is required to draft RTS specifying the types of indirect contractual arrangements that meet the conditions mentioned above.

16. The reference to this technical standard has been added at a late stage in the EMIR negotiations and thus was not covered in any detail in the ESMA DP. Responses to the DP reveal some confusion over the precise definition of an indirect clearing arrangement, including whether it encompasses traditional client relationships with CCP clearing members. Nonetheless, some industry responses included views on how indirect clearing arrangements should be defined and structured.

17. These contributions have helped to inform the draft standards included in this CP. In particular, responses to the DP clarify that arrangements allowing for the clearing of transactions of indirect clients (i.e. the clients of clients of clearing members) are not uncommon in the EU and have been adopted by some smaller institutions e.g. in order to access third country CCPs. Many responses, thus, welcomed the inclusion of indirect clearing arrangements in EMIR.

18. A significant number of responses noted that indirect clearing is a relatively new concept and that market practices continue to evolve. They cautioned against specifying detailed standards that might inadvertently exclude desirable solutions. There was, however, broad consensus that the standards should establish minimum requirements for indirect clearing arrangements that adequately protect the assets and positions of indirect clients from default further up the transaction chain. A number of responses also note the importance of avoiding additional counterparty exposures.

19. At a more technical level, some respondents suggested that indirect clearing arrangements could be based on master agreements in order to achieve standardisation and facilitate the prompt establishment of such arrangements where necessary to meet EMIR deadlines. There was no consistent view on whether indirect clients' assets and positions should be held with the CCP or the clearing member, but most respondents noted the importance of ensuring that indirect clients have the option of individually segregated accounts, at least with the clearing member. A small number of respondents highlighted possible tensions between requirements on the portability of indirect clients' assets/positions and insolvency law. Finally, a number of responses highlight the importance of adequate disclosure.

20. On the basis of the above feed-back, ESMA considers that it is appropriate to clarify the concept of indirect clearing arrangements. In this respect, recital 33 of EMIR clearly suggests that the legislators consider this arrangement as being different from a clearing member to client relationship, thus implying that indirect clearing arrangements are client-to-client arrangements, i.e. the situation where

a client of a clearing member is providing clearing services to its clients. Therefore a direct client is considered a client that has an account with a clearing member, while an indirect client is considered a client of a client.

21. ESMA considers that to avoid increasing counterparty risk, the relationship between a direct client and the indirect clients to which it provides clearing services should satisfy CPSS-IOSCO Principle 19 on Financial Market Infrastructures (FMIs) on tiered participation arrangements. The draft RTS has, therefore, been drafted accordingly.

22. It should be noted that the fact that indirect clients should have an equivalent level of protection as direct clients does not necessarily mean that indirect clients should have exactly the same rights as direct clients and that the same structure and options for accounts held at a CCP level should be available to indirect clients. In ESMA's view, an 'equivalent' level of protection means that the indirect client should be protected from the default of the direct client providing clearing services and from any losses resulting from the default of other direct clients of the same clearing member, but it does not mean that the same structure envisaged for a CCP to clearing member to client relationship is available to indirect clients also. Instead, that structure should be replicated for indirect clients one step lower, i.e. at the level of the clearing member instead of at the level of the CCP.

23. Against this background, and to ensure that the positions of indirect clients are protected in an equivalent manner as direct clients, ESMA considers that an indirect client should have the possibility of requesting an individual client account with the clearing member, but not necessarily with the CCP. It is also considered that:

    a. The direct client providing clearing services should at least maintain an individual client account at the CCP level for the exclusive purpose of holding assets and positions of indirect clients. This means that for its proprietary positions the direct client will retain the right to choose between omnibus or individual segregated accounts, but for the indirect clients it will need to maintain at least one specific segregated account at CCP level. This will ensure that the indirect clients are not exposed to losses derived from the proprietary positions of the direct client and that indirect clients are not exposed to losses deriving from other clients of the clearing member.

    b. If the direct client defaults, the clearing member must have procedures that ensure the transfer of the indirect client positions to another client or commit to directly manage these positions. In order to ensure portability, the clearing member would need to know the identity of the indirect clients. However, this is considered commercially sensitive information for the direct client. For this purpose, appropriate Chinese walls should be established by the clearing member to ensure that the information provided by the direct client to the clearing member to enable the latter to properly manage the counterparty credit risk arising from indirect client arrangements is not used for commercial purposes. Furthermore, it is expected that all information held by a client in respect of its indirect clients will be made available to the clearing member following the default of the direct client.

ESMA also considers that there should be full transparency over the different types of account segregation available to indirect clients and the level of protection provided by each option.

III.II Clearing obligation procedure

24. Under the clearing obligation procedure, ESMA will analyse the characteristics of certain classes of OTC derivatives in order to assess the application of the clearing obligation. In order for ESMA to identify the relevant class of OTC derivatives, EMIR provides for a bottom up approach according to

which, when a competent authority authorises a CCP to clear a class of OTC derivatives, it will notify ESMA. For the determination of the classes of derivatives, ESMA will, in a first stage, use as a basis the classes of derivatives defined by the CCP and the competent authorities. Following the analysis of the notification received, ESMA may adopt a more granular approach within that class of derivatives. EMIR also provides for a top-down approach according to which ESMA has to identify the classes of derivatives that meet the same criteria specified below, but for which no CCP has received an authorisation. The purpose of this second approach is to ensure the development of clearing solutions for particular classes of derivatives. No CCP will be forced to clear contracts that it is not able to manage and the clearing obligation will actually enter into force following the bottom-up approach.

Notification from the competent authority to ESMA (Article 5.1 of EMIR) (Annex II, Chapter III, DET)

25. According to EMIR, a competent authority shall notify ESMA when it authorises a CCP to clear a class of OTC derivatives. This notification will include the information specified in this draft RTS. Although the information will flow from the competent authority of the CCP to ESMA, it is the CCP, having requested the authorisation that will initially provide the required information to the competent authorities, which may be then complemented as appropriate.

26. The DP included the details of the information that the notification should include for the purpose of assessing whether a class of derivatives should be subject to the clearing obligation, the date or dates from which the clearing obligation takes effect, including any phase-in and the categories of counterparties to which the clearing obligation applies, as well as the minimum remaining maturity of the OTC derivative contracts entered into after the notification but before the entry into force of the clearing obligation.

27. Most stakeholders welcomed the ESMA approach outlined in the DP and stressed the need for a clear and accurate definition of the classes of OTC derivatives subject to the clearing obligation as well as international convergence. They note the notification should be made public as soon as possible in order to allow market participants to prepare for a potential clearing obligation and that, more generally, readiness of parties should be taken into account. Some answers raise the fact that all information may not be available especially for new products. Different views were expressed regarding the period of time historical data should cover.

28. ESMA understands that market participants need to be informed of notifications submitted by competent authorities in order to make informed decisions and prepare for compliance with a potential clearing obligation. Indeed, the clearing obligation will affect contracts entered into as of the date of the notification and therefore market participants should be informed about the future potential effects of the clearing obligation on these contracts. Nevertheless, it should be noted that it is likely that only a part of the classes of OTC derivatives notified will meet the relevant criteria and that the RTS specifying the classes of derivatives subject to the clearing obligation will also specify date or dates as of which the obligation will take effect, thus giving market participants the necessary time for implementation. It is, therefore, ESMA's intention to adequately inform market participants about the notification received, in order to avoid any misunderstanding

29. ESMA also acknowledges that all information required may not always be available. This is especially the case for new products where specific historical data will not be available. This is reflected in a recital of the draft RTS (Annex II). Nonetheless, it is important that sufficient information be shared including estimates, projections, forecasts and assumptions used to develop them, which CCPs are expected to produce before the launch of a new product.

30. Regarding the review process following a negative assessment, stakeholders note that sufficient time should elapse between the two assessments in order to avoid a heavy workload on market participants, the competent authorities and ESMA. In this respect, ESMA considers that where, following a negative

assessment of the eligibility for the clearing obligation of a given class of OTC derivative contracts, the competent authority is informed that market conditions or any of the information provided above change, such competent authority should have the ability to submit another notification with updated information to ESMA. ESMA also considers that a reasonable and balanced approach is required in this respect in order to avoid an unnecessary heavy workload while assessing appropriateness of the clearing obligation when required.

31. Against this background, ESMA considers that no substantial changes were needed from the approach described in the DP and reflected in the draft RTS (Annex II).

Criteria to be assessed by ESMA under the clearing obligation procedure (Article 5.5 of EMIR) (Annex II, Chapter IV, CRI)

32. In developing the draft technical standards related to the class of derivatives that should be subject to the clearing obligation, ESMA shall take into consideration the criteria defined in Article 5.4:

a. the degree of standardisation of the contractual terms and operational processes for the relevant class of OTC derivatives;

b. the volume and the liquidity of the relevant contracts within the relevant class of OTC derivatives;

c. the availability of fair, reliable and generally accepted pricing information.

33. The above mentioned criteria shall be further specified through draft RTS. ESMA has developed its views in this respect and included them in the DP.

34. In assessing standardisation, ESMA would consider, for the contractual terms, the use of common legal documentation, including master netting agreements, definitions and confirmations which set forth contract specifications commonly used by counterparties and, for operational processes standardisation, the extent to which product trade processing and lifecycle events are managed in a common manner to a widely agreed-upon timetable.

35. In assessing liquidity, ESMA would consider whether the margins would be proportionate to the risk that the clearing obligation intends to mitigate, the historical stability of the liquidity through time and the likelihood that liquidity would remain sufficient in case of default of a clearing member. The reason for linking liquidity to the level of margins applied by the CCP is that a CCP can potentially clear highly illiquid products applying disproportionate margins. In such a situation, it would not be appropriate to apply a clearing obligation as it would not fulfil its overarching objective of reducing systemic risk.

36. Finally, ESMA would assess whether the relevant information to correctly price the contracts within the relevant class of OTC derivatives is easily accessible to counterparties on a reasonable commercial basis including once the clearing obligation is in force.

37. Stakeholders generally agreed with the approach ESMA proposed. Specifications related to legal and operational standardisation were welcomed and in particular the reference to master agreements. With respect to liquidity, respondents supported the distinction of volume and asked for clarification of the concept in the draft RTS. Some answers also suggested that pricing models should be publicly available.

38. In view of the above comments, the concept of liquidity specified in the RTS in order to assess the clearing obligation is further clarified in the proposed text of the draft RTS and the relevant recital.

It reflects that, in this context, the assessment processed by ESMA is based on different considerations than the assessment performed by the competent authority when authorising a CCP to clear a class of derivatives. The specification of the standardisation of operational process is also revised referring to automation of post-trade processing and management of lifecycle events in a common manner with a widely agreed time table.

39. Regarding pricing models, although ESMA understands the wish for them and favours transparency, it considers that it is not an absolute requirement that pricing models are available in order to assess whether fair, reliable and generally accepted pricing information is available for a relevant class of OTC derivatives. It is therefore not proposed to revise the proposed draft RTS in this respect.

III.III Public register

(Article 6 of EMIR) (Annex II, Chapter V, PR)

40. ESMA shall make available on its website a public register to identify the classes of OTC derivatives subject to the clearing obligation.

41. In the DP, ESMA presented its view that for the identification of the class of OTC derivatives subject to the clearing obligation, the public register referred to in Article 6 of EMIR should include the general class of OTC derivative contracts, the type of OTC derivative contracts, the underlying, with the indication on whether it is on a single financial instrument or issuer or on an index or portfolio, the currency, the range of maturities, the settlement conditions, the range of payment frequency, the calculation and business day convention and any other characteristic required to identify one contract in the relevant class of OTC derivatives from another.

42. For the identification of the CCPs authorised or recognised to clear the classes of OTC derivatives subject to the clearing obligation, ESMA considered that the public register should include an identification code (aligned with the relevant ITS on TRs), the full name, the country of establishment and the competent authority designated in accordance with Article 22 of EMIR.

43. Finally, ESMA also considered that the public register should include the date from which the clearing obligation takes effect, any possible phase-in by categories of counterparties, the reference of the Commission Regulation adopting draft ITS according to which the clearing obligation was established as well as any additional condition.

44. Generally, stakeholders welcomed the approach of ESMA regarding the details to be included in the public register. Some respondents asked that the notification from the competent authority to ESMA when it authorises a CCP to clear a class of OTC derivatives be included in the register as soon as possible. Others stressed the need to give considerations to the Unique Product Identifier (UPI) and Legal Entity Identifier (LEI) codes when referring to the class of OTC derivatives and the CCP authorised or recognised to clear the classes of OTC derivatives subject to the clearing obligation. On the classes of OTC derivatives, some answers point to the necessity to be accurate and precise on the definition of the classes of derivatives subject to the clearing obligation, especially for commodities, in order to prevent circumvention while not encompassing products that would not be subject to the clearing obligation. Some considered that the register would be too detailed and others thought it would not be sufficiently detailed.

45. In view of the above comments, ESMA considers that the level of detail to be included in the register depends on the relevance of the criteria for each class of OTC derivatives. Indeed, the level of details

in the register shall ensure proper identification of a class of OTC derivatives subject to the clearing obligation without encompassing products that are not included. Furthermore, ESMA proposes to introduce a specific reference to the product identifier of the relevant classes of OTC derivatives.

46. With reference to the use of the register to include the notifications received by ESMA, as described under the section above on notification, ESMA understands the need of stakeholders of being informed about possible future clearing obligations. Nevertheless, the register is dedicated to keep track of classes of OTC derivatives subject to the clearing obligation. It is, therefore, not considered the appropriate instrument for the purpose of including the notification on OTC derivatives not yet subject to the clearing obligation. In this respect, it is important to avoid any kind of confusion. Furthermore, ESMA will enter into a public consultation when preparing draft technical standards to subject a class of OTC derivatives to the clearing obligation. The date of effect of the clearing obligation is also in the scope of the consultation. As a result, stakeholders will be informed in advance and consulted when ESMA contemplates that a class of OTC derivatives should be subject to the clearing obligation.

III.IV Access to a trading venue

(Article 8 of EMIR) (Annex II, Chapter VI, LF)

47. According to Article 8 of EMIR, access to a trading venue by a CCP can only be granted if such access would not require interoperability or threaten the smooth and orderly functioning of markets in particular due to liquidity fragmentation. In this context, ESMA is required to specify through draft RTS the notion of liquidity fragmentation.

48. As the requirement to draft an RTS in this area was introduced at a late stage, the DP included only a general question on the concept of liquidity fragmentation. Some respondents emphasised the benefits, such as greater competition among CCPs and broader access to markets, of allowing broader access by CCPs to trading venues. Some found these benefits to be so significant that liquidity fragmentation could not be considered reasonable grounds for denying access. This would imply a need for a very narrow definition of liquidity fragmentation.

49. Other respondents, particularly CCPs and their representatives, highlighted the risks associated with liquidity fragmentation and with unfettered CCP access to venues more generally. These included the heightened operational risks implied by a larger set of relationships between CCPs and venues, the risk of a race to the bottom on risk management where CCPs compete for business and greater difficulty for market supervisors in dealing with trading spread across multiple venues.

50. Although this issue is not within the scope of this particular standard, a number of respondents also mentioned the issue that the clearing obligation could break up some netting sets to the extent that, within current netting sets, some contracts have to be cleared and others do not.

51. The draft RTS aims to balance these two points of view. In drafting the standard, ESMA considered several issues. A significant issue is whether it would be possible to specify a level of liquidity fragmentation which would be sufficient to threaten the smooth and orderly functioning of markets. ESMA decided not to pursue this approach on the basis that it would not be possible to specify a single threshold appropriate for all markets. Another question was whether the RTS should consider liquidity fragmentation between multiple venues or only within a single venue. ESMA's interpretation of the mandate is that, given that EMIR governs access to a single venue, the intention of the legislators is for the RTS to consider only liquidity fragmentation within a single venue.

52. Turning to the specifics of liquidity fragmentation, ESMA believes that the main route by which access of a new CCP to a venue could cause liquidity fragmentation would be if, after the CCP had gained access, there would be no single CCP to which all market participants had access. In a market with a clearing obligation in place, this would imply that transactions between some pairs of market participants would be impossible, therefore fragmenting liquidity in two or more buckets. The draft RTS sets out measures which would need to be in place to prevent such a situation from occurring. In particular, the draft RTS specifies that in order to prevent liquidity fragmentation, all participants in a trading venue have access to either: i) at least one common CCP; or ii) clearing arrangements established by the CCPs.

53. In view of the additional risks that interoperability arrangements might entail and given that under EMIR these arrangements are limited to cash instruments, EMIR specifies that access to a trading venue can be denied if it requires interoperability. However, this condition does not exclude that interoperability arrangements can be established among CCPs if the relevant risks arising from them are duly managed. Therefore ESMA believes that if the relevant CCPs and their competent authorities agree with an interoperable arrangement for the purpose of accessing a trading venue, this possibility should not be excluded.

III.V Non-financial counterparties

(Article 10 of EMIR) (Annex II, Chapter VII, NFC)

54. EMIR recognises that non-financial counterparties use OTC derivatives to protect themselves against commercial risks directly linked to their commercial activities or treasury financing activities. As a result, these OTC derivative contracts that protect the non-financials against risks directly related to their commercial activities and treasury financing activities as well as those that do not protect against such risk but do not exceed the clearing thresholds are not subject to the clearing obligation. At the point where the clearing thresholds would be exceeded, the clearing obligation would apply to all future OTC derivatives concluded by the non-financial counterparty after it has exceeded the clearing thresholds.

55. In order to calculate whether it exceeds the clearing thresholds, a non-financial counterparty does not include in its calculation the OTC derivative contracts which are objectively measurable as reducing risks directly related to its commercial activity or treasury financing activity or that of its group.

Criteria for establishing which derivative contracts are objectively measurable as reducing risk directly related to the commercial activity or treasury financing

56. ESMA considered that an OTC derivative contract entered into by a non-financial counterparty is deemed to be objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity of that non-financial counterparty or of that group, when, whether individually or in combination with other derivative contracts, its objective is to reduce the potential change in the value of assets, services, inputs, products, commodities, liabilities that it owns, produces, manufactures, processes, provides, purchases, merchandises, leases, sells or incurs in the ordinary course of its business, or the potential change in the value of assets, services, inputs, products, commodities or liabilities referred to above, resulting from fluctuation of interest rates, inflation or foreign exchange rates.

57. ESMA also considered in the DP that an OTC derivative contract entered into by a non-financial counterparty is deemed to be objectively measurable as reducing risks, when the accounting treatment of the derivative contract is that of a hedging contract pursuant to International Financial

Reporting Standards (IFRS) principles as referred to in International Accounting Standards (IAS) 39 paragraph 71-102 on hedge accounting as endorsed by the European Commission.

58. Nevertheless, ESMA considered in the discussion paper that an OTC derivative contract which is used for a purpose in the nature of speculation, investing, or trading should not be an OTC derivative contract objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity.

59. Some stakeholders commented that the proposed list of contracts that would be considered as hedging should not be exhaustive and should include other activities such as anticipatory hedging, sophisticated hedging techniques undertaken on a dynamic portfolio basis, proxy hedging or stock option plans. Some respondents required clarifications on the reference to the accounting rule, IFRS requirements and their articulation with the list of contracts that would constitute hedging. Some stakeholders required that local Generally Accepted Accounting Principles (GAAP) be used as a reference.

60. ESMA has revised the proposed draft technical standard in view of the comments received. It believes it is important to maintain a clear definition of such activities in order to provide legal certainty to counterparties. It proposes to extend the criteria of activities in the scope of the definition of OTC derivative contracts that would reduce commercial risks to include proxy hedging. Indeed, in some circumstances, it may not be possible to enter into an OTC derivative contract directly related to the exact risk to be covered but a closely correlated instrument may allow achieving the objective of risk reduction. On the contrary, ESMA does not consider that stock option plans can be considered directly related to the commercial or treasury financing activities.

61. As highlighted above, it is also important to stress that an OTC derivative contract entered into by a non-financial counterparty is deemed to be objectively measurable as reducing risks when it qualifies as a hedge under IFRS rules as endorsed by the European Commission. The reference to accounting rules is to IFRS rules as endorsed by the European Commission. It does not refer to local accounting rules as indeed such local rules could differ. Nevertheless, it is expected that most OTC derivative contracts that would qualify as a hedge under local GAAP, would be able to meet the proposed definition of an OTC derivative contract that would reduce risks directly related to the commercial or treasury activity of the non-financial counterparty or that of its group.

62. The above two criteria set in the technical standard are alternative and not cumulative. Therefore when one of the criteria is met, the OTC derivative contract is excluded from the computation of the clearing threshold.

Clearing Thresholds

63. In view of the definition of the OTC derivatives that do not enter into the calculation of the clearing threshold because they relate to the non-financial counterparty's activity directly reducing commercial risks or treasury financing activity, as contemplated in the DP, ESMA considered that the clearing thresholds should be set at a low level and be simple to implement by non-financials. As a result, for the purpose of setting the clearing thresholds, ESMA considered referring to the notional value of OTC derivative contracts subject to the clearing obligation.

64. Stakeholders supported an approach that would be simple to implement by non-financial counterparties and stressed the need to set the clearing thresholds at a level that would capture counterparties with an OTC derivative activity that could create significant risks.

65. In view of answers received from stakeholders and discussion taking place with third country regulators, ESMA proposes to set the clearing thresholds per asset class. For the purpose of the

clearing thresholds, 5 asset classes are considered i.e. credit derivatives, equity derivatives, interest rate, foreign exchange and, finally, commodity and others. In this respect, when one of the clearing thresholds for an asset class is reached as determined in EMIR, the counterparty is considered as exceeding the clearing thresholds and therefore is subject to the relevant EMIR requirement for all classes of OTC derivative contracts and not only for those pertaining to the class of OTC derivatives where the clearing threshold is exceeded. The clearing obligation would apply to all OTC derivatives contracts concluded after the clearing threshold was exceeded, irrespective of the asset class to which these OTC derivative contracts belong to.

66. In view of the limited information and data provided by stakeholders in answer to the discussion paper, ESMA relies on data published by the Bank for International Settlements (BIS)[4] and provided by competent authorities, in order to set up the value of the clearing thresholds. The level of granularity and completeness of data available is nonetheless not sufficient to have a good view on the OTC derivative markets and the use of these instruments per asset class by non-financial counterparties. ESMA therefore proposes a phase-in approach where it will start by setting the clearing thresholds at a level that can be further tailor-made when more data is available. The clearing thresholds will be reviewed on a regular basis.

67. In this respect, stakeholders are invited to provide data in their answer to this CP in order to support views expressed on the clearing thresholds. Also, in the future, it is expected that TRs will allow gathering more granular and complete data allowing to fine-tune the approach in setting the clearing thresholds.

68. The value of the clearing thresholds are set by reference to the notional amount of the OTC derivative contracts. This reference is preferred as it is simple to use for non-financial counterparties that may not all have very sophisticated IT systems. The use of the notional amount as a reference explains the "high" value of the clearing thresholds. Indeed, contrary to a net exposure approach, the approach based on the notional amount adds up the nominal value of all outstanding OTC derivative contracts, irrespective of whether they are in or out of the money.

III.VI Risk mitigation for OTC derivative contracts not cleared by a CCP

(Article 11 of EMIR) (Annex II, Chapter VIII, RM)

69. Financial and non-financial counterparties that enter into OTC derivative contracts which are not subject to the clearing obligation shall mitigate risks by using different techniques. The risk mitigation techniques shall be further specified through technical standards to be developed for a part by ESMA and, for another part, jointly by ESMA, EBA and EIOPA. The RTS related to intragroup transactions is developed by ESMA for a part and jointly by the European Supervisory Authorities (ESAs) for another part.

70. This CP relates to the risk mitigation techniques to be specified through ESMA technical standards. Some other risk management techniques to be developed jointly by the three ESAs will be part of a consultation paper to be released at a future date.

Timely confirmation

71. In order to specify what would be a timely confirmation, ESMA proposed to make the distinction between on one hand financial counterparties and non-financial counterparties exceeding the

[4] Statistical release: OTC derivatives statistics at end-December 2011.

clearing thresholds and, on the other hand, non-financial counterparties below the clearing thresholds. ESMA proposed a timing for the confirmation ranging from a couple of minutes to the same business day for the first category and, for the second category of counterparties, within a set number of business days depending in both cases on the means of execution or processing of the transaction.

72. ESMA also considered that financial counterparties should report to the competent authority the number of unconfirmed OTC derivative transactions that have been outstanding for more than a given number of days.

73. Although some stakeholders supported the proposal, others raised concerns on a timing that they consider too demanding and argued that depending on circumstances more time should be granted. Also the differentiation between the categories of counterparties is considered problematic in some answers.

74. In view of the answers to the DP, ESMA stresses that it is important that the contract be confirmed as quickly as possible. Nevertheless, ESMA recognises that the proposal above would have entailed a modification of the current practice related to execution of transactions on the OTC derivative markets and proposes that financial counterparties and non-financials exceeding the clearing thresholds would confirm their OTC derivative contracts as soon as possible and at the latest by the end of the day when they entered into the contract.

75. Due regard would also be given to situations where the counterparty would be in a different time zone or when the trade would be agreed upon late in the day. In such cases, the contract would have to be confirmed as soon as possible and at the latest, by the end of the following business day for the relevant counterparty.

76. Non-financial counterparties would have to confirm their OTC derivative contracts as soon as possible and at the latest, by the second business day following the trade day.

77. ESMA considers that financial counterparties should report on a monthly basis their OTC derivative contracts that remain unconfirmed for more than 5 business days. The aim of this monthly reporting is to ensure a low level of unconfirmed trades and therefore a reduction in the risks of potential legal disputes. It should be noted that this requirement is not expected to apply to non-financial counterparties, in view of the fact that competent authorities are expected to receive the relevant information from their financial counterparties (which have already established reporting channels with competent authorities) and it is therefore not considered appropriate for non-financial counterparties to sustain additional costs of reporting that would not bring valuable additional information to the competent authorities.

<u>Reconciliation of non-cleared OTC derivative contracts</u>

78. In the DP, ESMA considered that financial and non-financial counterparties should agree in writing or in other equivalent electronic means with each of their counterparties on the terms of their portfolio reconciliation, which may be performed by a qualified third party duly mandated to this effect. The portfolio reconciliation should also cover key trade terms identifying a particular derivative transaction and be performed at least each business day when the counterparties have 300 or more OTC derivatives with each other, or at an appropriate time period based on the size and volatility of the OTC derivative portfolio of the counterparties with each other and at least quarterly or weekly depending on the size of the portfolio.

79. Some answers to the consultation asked clarification on the scope of the portfolio reconciliation and to specify fields to be reconciled. It was also stressed that when transactions are collateralised, any discrepancies would be identified in the valuation process and that this process should be taken into consideration in the definition of the scope of the portfolio reconciliation. Some concerns were also expressed regarding the size of the portfolio and the frequency of the reconciliation in view of the burden it may represent and the requirements that may apply to market participants that have a global activity.

80. Following the views expressed by the stakeholders, ESMA stresses the importance of portfolio reconciliation in order to quickly identify any disagreement, especially since portfolio reconciliation should relate to the material terms that identify each particular OTC derivative contract. In addition, although the scope of the portfolio reconciliation may be broader than valuation, it is recognised that the work performed in the valuation process can be leveraged in the framework of the portfolio reconciliation. Indeed, this approach would relieve counterparties of the burden of having to exchange all underlying trade terms and still be efficient as a discrepancy in valuation would be expected to show up on an underlying economic term.

81. Concerning the frequency of the reconciliation in view of the size of the portfolio that counterparties have with each other, and taking into consideration the views expressed by stakeholders and the approach of third countries, ESMA proposes to modify some aspects of its approach. It is proposed that portfolio reconciliation be performed at least each business day when the counterparties have 500 or more derivative contracts with each other, at least once per week for a portfolio between 300 and 500 derivative contracts with a counterparty and once per month for a portfolio of less than 300 derivative contracts with a counterparty, being understood that the timing should be appropriate based on the size and volatility of the OTC derivative portfolio between the counterparties. These modifications are reflected in the draft technical standards attached (Annex II) and developed in the relevant recitals for clarification.

82. In addition, ESMA considers that the necessary arrangements to timely resolve any discrepancy in a material term of a contract or in its valuation are included in the scope of such technical standard related to dispute resolution without the need to add a specific procedure as part of the portfolio reconciliation.

Portfolio compression

83. ESMA considered in the DP that portfolio compression was a risk-reducing exercise and contemplated that financial counterparties and non-financial counterparties with at least a set number of non-centrally-cleared derivative transactions should conduct at least twice a year a portfolio compression exercise for their full portfolio, or provide a reasonable and valid explanation for not doing so. Counterparties should terminate each of the fully offset derivative contracts no later than when the compression exercise is finalised.

84. Many responses were received regarding this topic. The majority of the responses were not supportive of mandating portfolio compression. These views were explained by giving examples of counterparties and products for which compression would not be technically viable. That would be the case for contracts entered into for hedging purposes for example. Some stakeholders stressed that compression is a viable solution within certain asset classes only, for standard products, and within a small group of participants.

85. Taking into account the views expressed by stakeholders in the consultation process and the evolution of the positions in third countries, ESMA modifies its proposal in order to maintain the use of portfolio compression and limit the requirement to a meaningful context i.e. allowing to

capture transactions for which compression would be feasible and appropriate as a risk mitigation tool.

86. ESMA proposes that counterparties, financial entities or non-financial entities, having a portfolio of at least 500 or more non- centrally cleared derivative transactions, should have procedures to regularly, and at least twice a year, analyse the possibility to conduct a portfolio compression exercise. The aim of the exercise is for counterparties to reduce their counterparty credit risk. The procedures should also provide for engaging in such portfolio compression exercise when it is considered appropriate. Counterparties should provide a reasonable and valid explanation to the relevant competent authority when concluding that such a portfolio compression exercise is not appropriate.

87. ESMA also proposes to maintain the provision whereby as a result of the portfolio compression exercise, the offset OTC derivative contracts should be terminated no later than the day following the execution of the fully offsetting derivative contract.

Dispute resolution

88. In the DP, ESMA contemplated that in order to identify and resolve any dispute, financial counterparties and non-financial counterparties should have detailed procedures and processes to deal with disputes. The procedures and processes would aim at identifying, recording, and monitoring disputes relating to the recognition, valuation of the contract or to the exchange of collateral, recording the length of time for which the dispute remains outstanding, the counterparty, and the amount which is disputed. They would also relate to the timely resolution of identified disputes and, for those that are not resolved within 5 business days, include a combination of legal settlement, third party arbitration and/or a market polling mechanism. Finally, ESMA contemplated that financial counterparties should report to the competent authority disputes outstanding for at least 15 business days and for an amount or a value higher than EUR 15m.

89. Concerning the procedures to be in place between counterparties, some stakeholders supported the approach adopted by ESMA while others had some reservations. Responses drew the attention of ESMA to the risk of duplicating and potentially conflicting with existing industry standards and contractual arrangements that already provide for a robust mechanism for dealing with disputes. Some respondents also stressed the need to allow flexibility to counterparties in dealing with disputes including on the timing to settle disputes.

90. There was support for mechanisms proposed by ESMA as examples of routes to resolve disputes while stressing that these are not the only mechanisms to manage a dispute between counterparties. Some stakeholders also stressed that the timing and threshold to report disputes to the competent authorities should not be too tight as it could have the inadvertent incentive to settle disputes too quickly and in an unbalanced way.

91. In view of comments received regarding the procedures and processes, ESMA stresses that the purpose of the draft technical standards is to ensure that counterparties do have them agreed upon when they enter into OTC derivative contracts. The draft technical standards specify matters and topics to be included in the procedures and processes but do not determine their details that are to be agreed upon by the counterparties: it is up to them to decide whether they want to set them up by reference to existing industry standards or to specific contractual arrangements.

92. ESMA acknowledges that some disputes may require more time than others in order to be resolved as they may be more complex. In order to avoid that disputes add up and result in increased risks, ESMA considers that for disputes outstanding for more than 5 business days, procedures and processes shall be agreed upon between counterparties and provide for some resolution mechanism.

The purpose of the provision is not to mandate resolution of a dispute within a given timing but to ensure appropriate procedures are in place to manage it. Also, in this respect ESMA agrees that legal settlement is not a resolution mechanism but a means for recording and implementing the agreement between the parties. It has therefore been deleted from the list of resolution mechanisms.

Marking-to-market and marking-to-model

93. ESMA is required to develop draft technical standards specifying the market conditions preventing marking-to-market and the criteria for using marking-to-model.

94. In the DP, ESMA proposed that market conditions would prevent marking-to-market of an OTC derivative when: a) the market is inactive, or b) the range of reasonable fair value estimates is significant and the probabilities of the various estimates cannot be reasonably assessed. In this respect, a market would be deemed inactive when quoted prices are not readily and regularly available and those prices do not represent actual and regularly occurring market transactions on an arm's length basis.

95. In situations where market conditions would prevent marking-to-market, financials and non-financials exceeding the clearing thresholds shall use reliable and prudent marking-to-model. ESMA proposed that the marking-to-model valuation technique should incorporate all factors that counterparties would consider in setting a price, be consistent with accepted economic methodologies for pricing financial instruments, be calibrated and tested for validity using prices from any observable current market transactions in the same financial instrument or based on any available observable market data, be validated and monitored by a unit independent from the risk taking unit, and be duly documented and approved by the board as frequently as necessary and at least annually.

96. ESMA received general support from some stakeholders on the proposed approach. Nevertheless, some stakeholders asked that an inactive market be further defined in order to ensure a common understanding. Other stakeholders stressed that the model for marking-to-model should not be approved by the board as the models are by nature very technical and complex and are being dealt with by senior management or delegated committees. Concerning marking-to-model, answers also stressed that criteria applicable to such model should not be too prescriptive and allow for some flexibility, and that they should incorporate as much as possible information available from the market to ensure they take into consideration any relevant information that is available.

97. In view of comments received from stakeholders, ESMA further explains the notion of an inactive market in the recitals of the proposed draft technical standards (Annex II) recognising that it may be caused by several reasons and providing for the example where there are no, or only a restricted number of similar contracts leading to the absence of, or to a restrictive number of transactions.

98. Although ESMA thinks it is important that the model used for marking-to-model be duly understood and approved at the highest level in the company, ESMA also understands that the board may not always be directly and deeply involved in the development of the model designed for marking-to-model. It is therefore proposed that the validation and monitoring of the model be managed by a unit different from the risk taking unit, to stress in a recital of the draft RTS (Annex II) that senior management should be involved in the development of such model and to recognise that the board may delegate the approval of the model for marking-to-model to a committee.

99. Regarding the criteria that the model used for marking-to-model shall meet, and in view of comments shared by stakeholders, ESMA specifies further what it means by the incorporation of all factors that counterparties should consider in setting a price, and refers explicitly to the inclusion, as much as possible, of marking-to-market information. ESMA also believes that the criteria

proposed are balanced between the need to ensure strong, efficient and reliable models and the need for flexibility to adapt to markets and financial instruments.

Intra-group exemptions

100. For the application of the intragroup exemption, two sets of draft technical standards are required:

a. in relation to criteria to assess the applicability of the exemption and in particular practical and legal impediments to the prompt transfer of own funds or repayment of liabilities between counterparties;

b. in relation to the details of the intragroup OTC derivatives to be included in the notifications to the competent authority and the details of the information on the exemption to be publicly disclosed by the counterparty of the exempted intragroup transaction.

101. The draft technical standards under letter a. are expected to be developed jointly by EBA, EIOPA and ESMA and related considerations will be included in the joint CP to be published at a later stage. Views and concerns raised by stakeholders on these joint RTS are not in the scope of this CP and will be part of the joint CP . Draft technical standards under letter b. are under ESMA's sole responsibility and are therefore in the scope of this CP.

102. These draft RTS were added at a late stage in the EMIR negotiations, which did not allow to propose detailed views in the DP. Stakeholders provided general views with respect to both aspects.

103. On the information to be included in the notification to the competent authorities, stakeholders provided views on the information related to counterparties, the OTC derivative contracts and the risk mitigation techniques. Some responses stressed that the notification should relate to the intragroup OTC derivative transactions as a whole and should not be required for each individual transaction. Some respondents suggested that the notification should only be submitted to the home competent authority which would liaise with the other relevant authorities. Other responses also stressed that aggregated volumes of OTC derivative contracts should be included with a split by asset class.

104. Regarding the content of what should be disclosed by the counterparty benefiting from the intragroup exemption, stakeholders stressed that the disclosure should not provide sensitive confidential information such as revealing the risk allocation strategy of the counterparty. Some responses suggested that the disclosure should be the responsibility of the parent company and be done through the annual report.

105. ESMA proposes that the information to be disclosed publicly should contain a mix of qualitative and quantitative information. The quantitative information would be limited and relate to aggregated data. It would not contain commercially sensitive information. Disclosure could be made through the annual accounts or the website of the counterparty on a yearly basis.

106. The proposed draft RTS defines what should be the content of the notification to the competent authority as well as supporting documents that should be provided. It is also proposed to set the timing for the counterparty to submit the notification and the details of the communication from the competent authority to the counterparty.

Contracts having a direct, substantial and foreseeable effect within the EU and non-evasion

107. Pursuant to EMIR, counterparties to contracts that have been concluded between third country entities that would be subject to the clearing obligation or risk mitigation techniques if they were established in the EU, shall clear or apply risk mitigation techniques to those OTC derivative contracts that have a direct, substantial and foreseeable effect within the EU, or where such obligation is necessary or appropriate to prevent the evasion of any provision of EMIR.

108. The development of this technical standard was added at a late stage in the EMIR negotiations, and therefore ESMA did not have the time to conduct an analysis and propose an approach in the discussion paper. Stakeholders were invited to share their views on how ESMA should specify contracts that are considered to have a direct, substantial and foreseeable effect within the EU and cases where it is necessary or appropriate to prevent the evasion of any provision of EMIR for contracts entered into between counterparties located in a third country.

109. Stakeholders recognise that the approach on this technical standard is not straightforward and stress the importance of international regulatory cooperation in this respect. Also, the need to avoid overlaps which would create burdens and difficulties for the market participants but also gaps that would open the door to potential evasion was pointed out.

110. Clarity on the determination of what would constitute direct, substantial and foreseeable effect is necessary to prevent legal risks and decisions that could be detrimental to the efficiency of markets. Some responses suggested considering only OTC derivative contracts above a certain level, others to take into account obligations applicable in third countries. Stakeholders also note that evasion should not be presumed as many companies enter into transactions with third country entities or branches in third countries for legitimate business reasons.

111. The scope of application of EMIR to non-European legal entities has significant implications on the global nature of the OTC derivatives market and on the way counterparties structure their business models to carry out their activity in this market.

112. A good regulatory outcome would need to ensure that counterparties could carry out their business in the most safe and efficient way, allowing them to properly manage the risks they face. It would also need to prevent any possibility to leverage potential loopholes in any jurisdiction and any possibility of circumventions of European requirements.

113. ESMA is currently discussing with third country supervisors the most appropriate way to ensure that possible overlaps on the scope of application of EMIR and other third country legislations do not result in a disruption of the global nature of the OTC derivatives market or in the impossibility for certain counterparties to enter into OTC derivatives transactions with each other.

114. ESMA believes that in order to achieve such good regulatory outcome, international consistency and the preservation of the global nature of the OTC derivatives market, negotiations with other international partners should continue to avoid duplications and conflicting requirements.

115. Against this background, ESMA considers that further work is required on this topic and it is not consulting now on specific draft regulatory technical standards. A separate CP, including draft regulatory technical standards, will be released in the near future to address the issue of the possible scope of application of EMIR to transactions between non-European counterparties that have a direct, substantial and foreseeable effect within the EU or to prevent avoidance of EMIR provisions.

IV. CCP Requirements

116. In developing the draft technical standards on CCP Requirements, ESMA has placed emphasis on the CPSS-IOSCO Principles for Financial Market Infrastructure (FMI), which serve as a global benchmark for CCPs standards. Additionally relevant parts of the global regulatory standard on bank capital adequacy and liquidity as agreed by the members of the Basel Committee on Banking Supervision (BCBS) have been considered in defining those regulatory technical standards which address the risk management of a CCP.

117. However, in many cases, these global standards are not specific enough for the level of granularity that draft technical standards are expected to take. In such circumstances, ESMA will need to introduce more detailed requirements that will still be compatible with the high level principles agreed at international level, thus ensuring the global compatibility of the EU requirements and permitting EU CCPs to operate on a global basis.

118. While drafting the RTS and ITS on CCP requirements, ESMA has duly consulted members of the ESCB who have been actively involved in the development of these standards.

119. In line with recital 68 of EMIR, CPSS-IOSCO draft principles and CGFS recommendations[5], it should also be noted that in developing draft technical standards on CCP requirements and in particular on margins and collateral, due regard has been given to the procyclical[6] effects that these requirements could have. This issue also raises particular macro-prudential concerns and needs to be duly addressed in the definition of the standards, to avoid continuous adjustments in a crisis situation that could further aggravate the crisis.

IV.I College

(Article 18 of EMIR) (Annex III, Chapter II, CG)

120. Under Article 18 of EMIR, ESMA is required to draft regulatory technical standards specifying:

a. the conditions under which Union currencies should be considered as the most relevant for the participation of central banks of issue in the colleges;

b. the practical arrangements for the establishment and functioning of the colleges.

121. The DP did not include any reference to these draft RTS. The reasons for this was that on the one hand the draft technical standards were included at a later phase of the negotiation and ESMA did not have time to develop its policy choices, on the other hand ESMA considered that input in respect of these points would be better gathered from the relevant authorities currently participating in supervisory or oversight colleges or expected to participate in the CCP colleges and from central banks of issue. For these reasons, although the legislative mandate does not require ESMA to consult the members of the European System of Central Banks (ESCB) on these draft RTS, ESMA developed the relevant draft RTS in close cooperation with the members of the ESCB.

---

[5] Committee of Global Financial System. The role of margins requirements and haircut in procyclicality. https://www.bis.org/publ/cgfs36.pdf.

[6] Procyclicality refers to changes in risk management practices that are positively correlated with business or credit cycle fluctuations and that may cause or exacerbate financial instability.

122. As for the most relevant currencies, ESMA considered whether the relevance should be determined as a proportion of the activity in that currency against the overall activity of the CCP or as an absolute value, i.e. considering that if a certain threshold is reached, then the currency would be considered relevant. Considering the EMIR mandate, the structure of the college and considering that for authorities other than central banks of issue, participation in a college is determined on the basis of the relative materiality of the CCPs activity, ESMA has decided that participation should also be determined by reference to the percentage of the overall activity of the CCP undertaken in the relevant currency. A minimum requirement of 10 per cent will be applied with a maximum of three central banks of issue eligible to participate in a college. It is, however, expected that such limitation will hardly ever be reached.

123. As for the practical arrangements for the establishment of the colleges, the requirements included in Annex III are based on existing guidelines for the Operational Functioning of Colleges as published by the Committee of European Banking Supervisors (now EBA) and Good Practice Principles on Supervisory Colleges as published by the BCBS. It is, however, important to maintain the right degree of balance and flexibility considering the different legal nature of guidelines and technical standards. Against this background, the draft RTS have been drafted so as to ensure that the criteria and conditions established will ensure a consistent application and a coherent functioning of colleges across the Union, however maintaining the appropriate degree of flexibility to ensure that experiences can be incorporated as the colleges are established.

IV.II Recognition of a CCP

(Article 25 of EMIR) (Annex III, Chapter III, 3C)

124. Under Article 25 of EMIR, ESMA is required to draft regulatory technical standards specifying the information that an applicant CCP needs to provide to ESMA in its application for recognition. Also in this case the proposal for a draft RTS was included at a later stage of the EMIR negotiation and the DP could not include any possible requirement in that respect. Given that at the time of the DP ESMA was analysing current practices in the EU and in third countries for the recognition of third country counterparties, no specific question was included in the DP and no comment was made in respect of this draft RTS.

125. Under the recognition regime as established in EMIR, ESMA may recognise a CCP established in a third country if certain conditions are met. The main condition for the purpose of these technical standards is to assess whether the CCP is "*authorised in the relevant third country and is subject to effective supervision and enforcement ensuring a full compliance with the prudential requirements applicable in that third country*". The other criteria are more general with respect to the jurisdiction: 1) it has passed a Commission equivalence assessment and 2) the relevant third country competent authority has agreed adequate supervisory co-operation arrangements with ESMA.

126. ESMA believes that these three conditions together will ensure that recognised third country CCPs should not disrupt the orderly functioning of European markets, should not have a competitive advantage compared with authorised CCPs and should guarantee adequate investor protection.

127. Under EMIR, the assessment of the equivalence of European and third country rules is reserved to the Europeam Commission and it is clear from EMIR that third country CCPs will not be subject to EMIR requirements, but to the equivalent requirements in their third country.

128. Against this background, adequate information from third country CCPs is necessary to facilitate an assessment on how these equivalent rules are implemented in practice. ESMA will also need to assess

the effectiveness of the supervisory and enforcement framework. ESMA considers that such information should come from the relevant third country competent authority rather than from the CCP.

129. Finally it should be noted that EMIR gives ESMA a certain degree of discretion in the recognition process given that ESMA "may" recognise a third country CCP that meets the three conditions mentioned above. ESMA considers that such discretion has been given to avoid a strict legal interpretation of the three conditions that may prevent the fulfilment of the overall objective of ensuring no market disruption, no competitive advantage and adequate investor protection.

IV.III Organisational requirements

(Article 26) (Annex III, Chapter IV, ORG)

130. Under Article 26 of EMIR, ESMA is required to draft regulatory technical standards specifying details on:

a. governance arrangements;

b. compliance policy and procedures;

c. information technology systems;

d. reporting lines;

e. remuneration policy;

f. disclosure of rules and governance arrangements and admission criteria;

g. audits.

In Article 26 reference is also made to business continuity. However, ESMA considers that given that a specific requirement and technical standard is already envisaged under Article 34, it would be better treated consistently under such article.

131. The DP contained a number of detailed rules which ESMA is considering under this RTS. In general, there were very few negative responses to the description of the organisational requirements as stated in the DP.

132. With reference to the governance arrangements, some respondents indicated a need for the RTS to avoid being too descriptive or granular, especially as regards individual roles (e.g. risk/compliance officers). Many respondents suggested that the requirement to appoint chief risk, technology and compliance officers be removed from the RTS. A strong need for stakeholder input on governance was indicated (in particular, by involving clearing members as well as – in some cases – "end users" in decisions relating to structure and management). On the contrary, other respondents proposed that no stakeholder arrangement should be included in the RTS. Some respondents indicated the need to ensure distinct staff for a CCP operating as a part of a larger group. An interesting suggestion was also to have an additional reporting line from the chief risk officer to an independent member of the board. One respondent indicated that the RTS should allow for a chief technology officer and a chief compliance officer to act at the level of a parent company.

133. After analysing the suggestions for ensuring dedicated staff for CCPs being a part of larger organisations, ESMA has reached the conclusion that there should be a requirement for a CCP to maintain its own human resources for all of the CCP's functions. This will enable the CCP and the competent authority to fully rely on the dedicated resource, to assess the time dedicated to the CCP activity and to prevent possible conflicts of interest. CCPs would retain the possibility to outsource certain functions (under the EMIR requirements for outsourcing). However, under an outsourcing arrangement the CCP will need to retain full control over the outsourced function and will need to manage conflicts of interest. This is expected to be less likely where staff is shared among group entities. With reference to the dedicated chief officers, ESMA considers that appointing a chief officer is a suitable solution, as it ensures proper governance. Hence, such officers should also be a part of a CCP's dedicated staff.

134. With respect to the issue of stakeholders' involvement, ESMA considers that: 1) certain arrangements are already established in EMIR, e.g. with the establishment of a risk committee; and 2) stakeholders arrangements should not be a mandatory element of governance arrangements as this would go beyond the mandate assigned to ESMA under EMIR. However, processes for ensuring accountability to stakeholders should be established as it is essential for sound corporate governance.

135. The other suggestions on governance arrangements have also been analysed. However, ESMA considers that no additional changes in this regard are needed, as many of the issues are already covered either by EMIR or the relevant draft RTS (see Annex III).

136. With reference to conflicts of interest, the responses to the DP suggested that the RTS provide for, amongst others: full disclosure of governance rules at the CCP, risk based decisions on the admission of new clearing members, more principle-based approaches instead of a detailed definition of organisational structure, clarity of CCPs pricing policy, more specific provisions for managing conflicts in the case of outsourcing arrangements, mandatory notification of any conflicts of interest to the competent authorities as well as mandatory establishment of CCPs risk tolerance statements. It was also indicated that there is a need for a less detailed wording of the RTS pertaining to the conflicts of interest. Nevertheless, many responses suggested generally a broader and more holistic approach to identifying and addressing conflicts of interest.

137. ESMA has considered all suggestions concerning possible conflicts of interest. Nonetheless, in the opinion of ESMA no changes are needed, as most of the related issues are already sufficiently treated by EMIR or the draft RTS (e.g. full disclosure of governance rules, notification of conflicts of interest to competent authority).

138. As for the reporting lines, the majority of respondents expressed support for the solutions proposed in the DP. Many responses included, however, some suggestions on the following:

a) No need for the RTS to contain provisions on risk management and audit;

b) The need to ensure a certain level of flexibility;

c) The need to implement strong monitoring and reporting of risks.

139. ESMA considers that most of the proposed solutions are already ensured either by EMIR or the draft RTS. In particular, ESMA agrees that the RTS should enable certain flexibility and is of the opinion that introducing overly specific provisions in the RTS would not be reasonable. For that reason, ESMA generally does not see the need to depart from the requirements proposed in the DP.

140. However, regarding the reporting lines, ESMA judges that the compliance and internal audit function should report directly to the board in order to strengthen their independence. In response to the doubts

expressed by many respondents, ESMA would like to clarify that, according to its interpretation, the notion of "independent audit" will encompass both internal and external audit.

141. With reference to remuneration, many respondents gave positive comments supporting the solutions proposed in the RTS. In spite of this, the answers underlined, amongst other things, that:

a) The responsibility for remuneration policy development should be shifted to the Board;
b) Requirements regarding the disclosure of remuneration policy are redundant;
c) There should be some specific provisions in the RTS specifying e.g. a delineation between core and variable pay;
d) It should be clarified that the revision of appropriate independence of the CCP's remuneration policy from CCPs business performance shall constitute the main purpose of the audit;
e) Remuneration policy should take into account arrangements where the CCP forms part of a larger organisation and should be coordinated between jurisdictions.

142. ESMA considers that the provisions described in the DP do not need substantial changes given that EMIR gives a clear mandate to ESMA to develop a draft RTS for remuneration policy which promotes sound and effective risk management and which does not create incentives to relax risk standards. According to our assessment, the current draft RTS pertaining to remuneration policy is adequate to fulfil such mandate.

143. In addition, the majority of respondents did not question the structure described in the DP with respect to disclosure. There were various responses on the scope of the information to be disclosed by CCPs and on the issue of to whom access should be provided. Some respondents indicated that the information should be disclosed only to the clearing members. In particular, respondents proposed that the following information might be excluded from disclosure:

a) information on whether and how the CCP meets its legal and regulatory obligations on governance arrangements, remuneration policy and strategic objectives;
b) information that would be commercially sensitive;
c) information that would lead to a competitive disadvantage or compromise the CCP's security;
d) detailed description of price sources, risk management models, timing of price sourcing and volatility calculations for margin setting, etc.;
e) information on the CCP organisational structure;
f) already publicly disclosed information on remuneration policy.

144. It is ESMA's view that the draft RTS would not require the disclosure of commercially sensitive information or information that would lead CCPs to competitive disadvantages. However, in order to ensure an adequate level of transparency as required under EMIR and to ensure international consistency, a number of elements will need to be disclosed.

145. After the analysis of the responses, ESMA has decided to amend the principle of information disclosure to ensure that that all relevant information on CCP functioning should be disclosed to clients, when they are known to the CCP, and for all other clients, it shall be passed to them upon request through their clearing member. In addition, ESMA has decided that:

a) the disclosure of clearing offerings should not include "prospective clearing offerings";
b) the draft RTS should ensure that the "investment policy" is added to the list of information disclosed to clearing members (as it is in CPSS-IOSCO Principles).

146. After the analysis of the responses, ESMA also decided to amend the language requirement of the information to be published. ESMA decided that the draft RTS should state that information should be available in "at least a language commonly used in the sphere of international finance".

147. Finally, ESMA considered that a few minor changes were needed to the draft RTS in order to ensure consistency with the CPSS-IOSCO Principles. These modifications concern mainly the general objectives of CCPs and the issue of reporting lines.

IV.IV Record keeping

(Article 29 of EMIR) (Annex III, Chapter V, RK)

148. Under Article 29 of EMIR, ESMA is required to draft RTS specifying the details of the records and information to be retained by CCPs and implementing technical standards specifying the format of these records and information.

149. Record keeping is an essential element for assessing CCP compliance with the relevant regulations and a useful tool to monitor clearing members and, where relevant, clients activities and behaviours. Having considered the responses to the DP, ESMA has made a number of changes to the draft RTS as set out below.

150. Some respondents argued it might be difficult to tackle the issue of record manipulation and alteration and therefore the draft RTS should require that there are procedures and controls in place relating to the preservation of the records and the authorisation and logging of any alterations. ESMA considered these comments and introduced the relevant provisions in the draft ITS on record keeping.

151. Some respondents argued that with reference to transaction records it was considered particularly difficult to indicate the date and time of interposition of the CCP in the contract especially if there is an open offer mechanism instead of novation (and even with novation, there is no practice for indicating such date and time). ESMA considers that this is essential information to be retained by the CCP and the latter should be able to indicate the exact date and time when it takes on exposures toward its clearing members. In addition, ESMA decided to delete the reference to "the contract", in order to facilitate the recognition of the timing of interposition.

152. Many respondents argued that the requirement of 10 years as a records retention period is too burdensome. The text of EMIR does not leave room for a different approach in terms of the length of the record keeping. However, ESMA has considered the industry concerns and evaluated that the burden of this requirement depends significantly on the method of storage and accessibility of the information. In this respect the draft ITS distinguishes between more recent (6 months old) and older records and establishes different timings for making information available to competent authorities.

153. Some respondents were of the opinion that more relaxed search criteria would help to avoid record keeping becoming too expensive, proposing for instance, that it is not necessary that each transaction and position record is searchable separately by every field. ESMA considered that such proposal was reasonable and has, therefore, amended the searching criteria for transaction and position records with a minimum requirement to include at least all fields concerning CCP, clearing member, client (if known to the CCP), and financial instrument.

154. Some respondents argued against the identification of the position as "long and short" because other terms may be applicable, depending on the type of derivatives. In this respect, the relevant field has been renamed as "the sign of the position".

155. There were some comments proposing the deletion of the reference to default funds within the position fields, since they are calculated periodically and do not refer to any particular positions. Other respondents argued that "non-prefunded" resources are by their nature not called by the CCP, so they cannot be recorded. Default contributions are called but typically do not relate to clearing member accounts in the same way as margin, nor vary as frequently. With respect to these issues, ESMA agreed to delete the reference to the distinction between pre-funded and non-prefunded, in order to avoid misunderstandings.

156. Some respondents proposed to add, within the business records fields, the relevant documents regarding new business initiative processes. This proposal was incorporated.

157. Finally, there were some respondents arguing that the requirement to explain the content of the records "without delay" is unrealistic. In this respect, ESMA modified the wording in order to keep it coherent with the draft ITS.

IV.V Business continuity

(Article 34 or EMIR) (Annex III, Chapter VI, BC)

158. Under business continuity, ESMA is required to develop technical standards indicating the minimum content and requirements of the business continuity policy and disaster recovery plan and the requirements that should be specified.

159. The general framework for the development of this draft RTS was presented in the DP. In general the responses were supportive of the approach described in the DP. With reference to the requirement for a secondary site, the general view of respondents was that the requirement is proportionate for systemically relevant FMIs. Given that CCPs are considered systemically relevant infrastructure, ESMA considers keeping such requirement, which is also expected not to lead to disproportionate costs in view of the responses received. The DP paper also requested views on the need for a third site and ESMA has concluded that a third site is not necessary, unless the risk profile of the two sites is not distinct enough.

160. Another point that was highlighted in the DP was whether 2 hours maximum recovery time was a proportionate requirement. The general opinion is that a recovery time of 2 hours is feasible and desirable for systemically important FMIs.

161. The above requirements were also confirmed from the survey carried out by ESMA among existing arrangements for CCPs. ESMA, therefore, considered that the draft RTS did not need substantial changes from the framework described in the DP. However, a consistency check with the CPSS-IOSCO Principles for FMIs has been carried out.

IV.VI Margins

(Article 41 of EMIR) (Annex III, Chapter VII, MAR)

162. Under the RTS for margins, ESMA is required to define: a) the appropriate percentage above the minimum 99 percent confidence interval that margins are required to cover; b) the time horizon for the liquidation period; and c) the time horizon for the lookback period, i.e. the period over which the appropriate percentage should be covered, which is necessary to properly calibrate the model. These

three elements should be considered for the different classes of financial instruments cleared by the CCP and take into account the objective to limit procyclicality. Finally ESMA is required to define the conditions under which portfolio margining practices can be implemented.

163. As highlighted in the DP, in defining the appropriate percentage above 99 percent, ESMA has considered the pros and cons of a higher confidence level, as follows:

Pros

- Procyclicality. Setting margins in a conservative manner will help the CCP to maintain a sufficient buffer in a stressed period, thus avoiding continuous adjustments via margins calls that can exacerbate difficult market conditions;

- Moral hazard. Setting higher confidence intervals would result in a lower use of default fund contribution, thus limiting recourse to the latter and the moral hazard issue connected to it.

- Better capital treatment. Margins are expected to get a more favourable capital treatment than default fund contributions, thus if the amount required by the CCP to the clearing members is equal, then clearing members would likely have a preference to provide it in the form of margins.

- Portability. If the overall risk that the CCP needs to cover is managed via a larger recourse to margins, this would facilitate the portability of client positions. This is due to the fact that for a CCP it will be easier to find a surviving clearing member if the positions that the latter should take are almost entirely covered by margins. The same will not be true if the surviving clearing member would be asked to pay a substantial contribution to the default fund in view of the client position it is taking.

- Short history. If the product the CCP intends to clear has a short series of historical data on which the CCP can calibrate its model, the CCP would be justified to apply a higher confidence interval.

Cons

- Lower trading activity. Too high margins as a consequence of the higher confidence interval might disincentivise trading in particular products, thus reducing their liquidity.

- Management of a default. If a CCP can rely mostly on margins, the management of a default would be inhibited. For a given level of overall risk coverage, the higher the margin requirements, the lower the default fund contributions. Although the total financial resources of a CCP should always be able to cover the default of the two largest participants, in the event of one or multiple defaults the CCP might only have access to the margins of the defaulting participants and the mutualised resources (default fund and other resources). If there is a predominant weight on margins then the limited mutualised resources would translate into lower total resources available to manage a default.

- Lower incentive for the clearing members to scrutinise the CCP's activity. In case of a very limited mutualisation of losses, the clearing members risk less if the CCP is not properly managing the risks it faces, given that they risk only the money they post to cover their exposures and this money is not at risk in the case of other clearing members defaults.

164. Responses to the DP on whether a criteria based approach or an approach based on fix percentages were split:

a. CCPs are generally against a prescriptive approach to defining specific confidence levels for specific classes of financial instruments. They argued that the specific risk profile is defined on a product basis. Therefore, they generally prefer a criteria based approach. They also consider that prescribing a common confidence level would result in different margin levels depending on the model used. Some CCPs argued that a higher confidence level has a higher likelihood of being procyclical (although it was recognised that procyclicality could be limited with adequate lookback periods). If the required confidence level is not reached, then this might lead to an automatic increase of margins. They also stressed the risk of disincentivising clearing in European CCPs, given that the international standard is fixed at 99 percent. However, one CCP supported the introduction of a 99.7 percent confidence interval.

b. End users are generally against higher percentages than 99 percent. They highlighted among the cons of a higher confidence interval the higher cost for them that central clearing would imply. It should be noted however, that a higher confidence interval would imply a higher weight on margins than on mutualised resources, therefore it is more likely that clearing members would be willing to provide clearing services to end users if a higher weight of financial resources is placed on margins. Mixed views were presented among asset managers on a criteria-based versus a prescriptive approach per class of financial instruments.

c. Dealers are generally in favour of a criteria based approach and in favour of an approach that would weight towards the "defaulter pays" principle rather than the mutualisation of losses. They, therefore, prefer that margin requirements be calculated on the basis of higher confidence intervals.

165. Against this background, ESMA considered two options for the definition of the appropriate confidence interval: a) defining a list of financial instruments whose characteristics necessitate a specific percentage above 99 percent single tail interval coverage and applying a criteria based approach for the other financial instruments not explicitly considered; b) applying a criteria based approach for all financial instruments.

166. Given the pros and cons of both approaches, ESMA is proposing to adopt a mixed approach. In particular, the characteristics of OTC products seem to require a confidence level interval higher than 99%. Indeed, the OTC derivatives segment is characterised by specific risk characteristics, e.g. potentially limited liquidity, the difficulty to obtain prices, the absence of a regulated market to liquidate positions, a restricted number of participants with potentially high concentrations.

167. ESMA is, therefore, proposing that the confidence interval for OTC derivatives should be at least 99.5% and at least 99% for other classes of financial products. For both classes of financial instruments the criteria based approach should always apply. In addition to the pros and cons highlighted above, ESMA considered several issues before adopting such approach, amongst others:

a. The EMIR mandate clearly requires ESMA to differentiate the percentages for the different classes of financial instruments.

b. Setting a minimum percentage of 99.5 for OTC derivative is still consistent with CPSS-IOSCO Principles for FMIs which require at least a confidence interval of 99 percent. In addition, CPSS-IOSCO takes OTC derivatives as an example of products requiring more conservative margining.

c. Such percentage is consistent with the objective to increase the robustness and safety of CCPs which will clear increased volumes of OTC derivatives with the implementation of the clearing obligation.

d. It should be noted that requiring a confidence interval of 99.5 percent on OTC derivatives does not impact on end clients, since they are already required to post higher margins to direct clearing members.

e. Given that certain end clients will be subject to the clearing obligation, their access to CCPs should be facilitated. Such higher percentage will help moving the weight to the "defaulter pays" principles, thus facilitating clearing members' willingness to accept clients.

f. Setting the minimum percentage at 99.5 might be seen as a balanced position between two groups of stakeholders.

168. The above percentages for OTC derivatives and other financial instruments should be increased by each CCP if needed, based on a criteria based approach taking into account, inter alia:

a. The complexities and level of pricing uncertainties the class of financial instruments have that may limit the validation of the calculation of the initial and variation margin calculation.

b. The risk characteristics of the class of financial instruments, which can include, but are not limited to, volatility, duration, liquidity, non-linear price characteristics, jump to default risk and wrong way risk.

c. The degree to which other risk controls do not adequately limit credit exposures.

d. The inherent leverage of the class of financial instruments, including whether the class of financial instrument is significantly volatile, is highly concentrated among few participants or may be difficult to close out.

e. Whether positions held are of a significant size.

f. The exposures generated by clearing participants that are significant compared to their underlying financial strength.

g. The risk of failures for the physically settled financial instruments.

169. With reference to the lookback period, ESMA has considered three possible options:

Option 1: Initial margins are calculated taking into account only the most recent margin conditions and therefore the historical lookback period is a fixed time period of one/two years.

Option 2: Initial margins are calculated taking into account a relatively long time period, e.g. 10 years. This approach would be more likely to include stressed market conditions, although would not necessarily weight these conditions appropriately if they occurred long ago.

Option 3: Initial margins are calculated on the basis of both stable and stressed market conditions, but both are equally weighted.

170. The vast majority of the responses favoured option 3 for the lookback period: a combination of short and long lookback periods including stressed conditions. Whilst the inclusion of stressed market conditions on the historical lookback period seems to be accepted by several markets participants, it was questioned by a narrower set of respondents who indicated that such approach will not reflect current market conditions, will increase the amount of margin which might affect the demand of liquid assets or that there should be some differentiation for different classes of financial instruments.

171. ESMA is, therefore, proposing to adopt option 3, which would calculate the lookback period by equally weighting:

a. The latest 6 months;

b. The 6 months reflecting the most stressed historical market conditions during the last 30 years or as long as reliable price data have been available.

172. ESMA is also proposing to specify that CCPs have to use other historical periods when, according to their stress and back testing results the historical period does not properly contain the necessary information to assure that margins protect the CCP with the required degree of coverage. Thus a different calculation of the lookback period would be allowed only if it results in more conservative margin requirements.

173. With reference to the liquidation period, some dealers favoured a prescriptive approach with fixed liquidation periods. However, in general, answers regarding the time period for close out/ liquidation of the positions reflect a preference for a criteria based approach and for letting CCPs decide on this issue.

174. Also in this case and for similar reasons as described above, a mixed approach is proposed. For less liquid products, such as OTC derivatives, the period for the management of the exposures of a CCP should be, at a minimum, equal to 5 business days. For other financial instruments, the period for the management of exposures of a CCP should be, at a minimum, 2 business days. For the determination of the adequate liquidation period, the CCP shall be responsible for defining the period for which the CCP is exposed after a default taking into consideration the characteristics of the financial instrument cleared, the market where it is traded, and the period for the calculation and collection of margins. Therefore, even in this case a criteria based approach should also apply in addition to the fixed periods for certain classes of financial instruments.

175. With reference to portfolio margining, the DP did not include any specific questions and the comments received were of a very general nature. ESMA has, therefore, analysed the current practices among European CCPs and on the basis of that developed the requirements included in Annex III.

IV.VII Default fund

(Article 42 of EMIR) (Annex III, Chapter VIII, DF)

176. Under the RTS on default fund, ESMA is required to specify the framework for the definition of the extreme but plausible conditions the default fund and the other financial resources should withstand.

177. The respondents to the consultation on the DP broadly welcomed the framework for defining 'extreme but plausible' market conditions outlined, but articulated a range of different views on what the RTS should seek to achieve. A common theme was the need to see extreme but plausible market conditions as a dynamic concept that cannot be defined precisely. A significant number of responses consequently noted that the risk factors and trigger events listed in the standard should be considered illustrative rather than exhaustive. Some respondents questioned whether it was necessary for the framework to identify trigger events, noting that it is the realisation of extreme but plausible market conditions that matters for CCP risk management. There was broad consensus that the framework should capture the particular risk profile of the CCP and the correlation between products cleared by the same CCP. The emergence of simultaneous pressures in asset and funding markets was further identified as a relevant

consideration. A handful of responses suggested that extreme but plausible market conditions would include the failure of the CCP itself.

178. ESMA has restructured the standard in order to sharpen the requirements placed on CCPs. The RTS does not aim at setting out in detail how CCPs should identify extreme but plausible market conditions, but rather to describe as generically as possible the key elements of a framework identifying the market environment that is most likely to stretch the financial resources of a CCP in a member default scenario.

179. ESMA believes that, as part of this exercise, CCPs should review historical episodes of market disruption over the past 30 years, but recognises that in some cases reliable price data may only be available for a shorter period. The revised standard further highlights that a CCP should identify all the markets to which it could be exposed following a member default and consider carefully the potential for correlated shocks to these markets.

IV.VIII Liquidity risk controls

(Article 44 of EMIR) (Annex III, Chapter IX, LIQ)

180. With reference to liquidity risk controls requirements, ESMA is required to develop technical standards specifying the framework for managing liquidity risk.

181. The DP included the elements of a possible framework to be adopted by CCPs to manage liquidity risk and requested feedback on whether the elements were rightly described. Quite a few respondents did not actually answer the question posed. There were a number of respondents who stated that CCPs should have access to central bank liquidity. Some CCPs suggested that the CCP liquid resources should include non-defaulting clearing member's additional liquidity provisions.

182. Other respondents stressed that the 25 percent concentration limit would pose problems in smaller markets or for new CCPs' starting up business. Others stressed that the same-day requirement for liquid resources was considered too restrictive as CCPs' obligations in the case of default do not all arise immediately. There were suggestions concerning the need for a cash flow plan of maturity buckets or other considerations corresponding to the timed occurrence of liquidity needs depending on the type of cleared product. Some responses also expressed concern about the feasibility of daily liquidity planning.

183. With respect to money market funds and time deposits, the views were split. Most respondents, which could be categorised as clearing members, agreed that time deposits should not be added, however many respondents (from the category of clients) were in favour of including money market funds provided that they are accessible on the same day and are not subject to redemption caps. A number of respondents found the definition too narrow, and suggested an approach where matching maturities and a flow concept should be applied.

184. Finally, the majority of the respondents did not see a need to require maintenance of a minimum amount of cash. Some also mentioned that cash not held in a central bank would entail counterparty risk.

185. ESMA has revised the framework for managing liquidity risk along the following lines:

a. The 25 percent concentration limit was not included, considering that this might be seen as going beyond EMIR.

b. Both money market funds and time deposits are not considered liquid financial resources.

c. The requirements related to stress testing have been moved to the draft RTS on stress testing, as the scope of the mandate does not fit well with inclusion in the draft RTS on liquidity risk controls.

d. The requirement to maintain a minimum amount of cash has been deleted, as this should be an unnecessary requirement as the CCPs are required to hold sufficient liquid assets and stress test them. Additionally, cash does involve counterparty risk, unless held at a central bank, so requiring the holding of a low return asset with counterparty risk would be inappropriate.

IV.IX Default waterfall

(Article 45 of EMIR) (Annex III, Chapter X, DW)

186. Under the draft RTS on the default waterfall, ESMA is required to specify the methodology for calculation and maintenance of a CCPs' own resources to be used in a default situation before the resources of the non-defaulting clearing members can be mutualised, i.e. so called "skin in the game".

187. As highlighted in the DP, ESMA has considered the following two options:

a) [X percent] of the average amount of the margins and default fund contributions collected by the CCP over a one year period (excluding margins posted by interoperable CCPs);

b) [X percent] of the CCP's total capital resources as requested in accordance to Article 12 of EMIR, whose details would need to be specified through RTS to be developed by EBA.

188. Option a) would have the following advantages: i) it is agnostic as to the weight that the CCP risk model puts on margins vs. default fund contributions; ii) it is based on the actual risk the CCP faces while performing clearing activities, although it presents some procyclical disadvantages given that as margins and default fund contributions rise in stressed market conditions, then the resources that the CCP needs to finance the skin in the game would also rise. Another important argument that has been raised against this calculation method is that it would disincentivise CCPs that adopt more conservative margins and default fund calculations. However, this issue could be solved basing the calculation on the minimum margins and default fund requirements.

189. Option b) has the following advantages: i) generally more stable over time, yet still commensurate to the size of the CCP; ii) would give greater confidence that existing CCPs could meet the standard without having to raise new capital; and iii) would avoid the confused incentives implied by requiring a CCP to hold more capital if it made its default fund or margin calculations more conservative. It would not however, be related to counterparty credit risk, which is what participation by the CCP in the default waterfall is intended to address.

190. Responses were diverse but can be grouped as follows:

a. The majority of the CCPs expressed a strong opposition to the skin in the game linked to the margins on the basis that this would lead to an unstable and disproportionate requirement. However, one CCP supported option a, with a minimum level at least equal to the minimum contribution of a clearing member to the default fund.

b. Dealers and clients strongly supported the concept of the "skin in the game" and although they believed that the measure should be linked to the exposures the CCP faces, they also believed that these additional dedicated CCP resources should be proportionate to the total amount of CCP own resources. Some highlighted the need to preserve the possibility for newcomers to access the market. Many suggested not to include the initial margins in the calculation.

191. Generally respondents supporting option a) argued that this option could result in sounder market outcomes in terms of CCP accountability and risk minimisation; being more aligned to counterparty credit risk, respondents felt that it could offer a more risk-sensitive solution vis-à-vis option b) and thus a more effective mechanism for promoting CCP accountability.

192. On the other hand, respondents supportive of option b) insisted on the stability over time of such an approach and on the fact that it does not require continuous re-assessments and adjustments of the calculation; from a conceptual standpoint these respondents argued that linking the skin in the game to the CCP's capital avoids to use market volatility as a parameter to determine the CCPs financial involvement in the default waterfall.

193. Respondents not supporting either a) or b) argued that the requirement of skin in the game is linked to ownership and governance of a CCP. In the case of a user-owned CCP, the clearing fund, capital and retained earnings are comparable as they all come from the same circle of owners/users, and as such have a mutual character by definition. However no actual suggestion was made for CCPs that are not user-owned.

194. Respondents supportive of a combination of the two options argued that considering at the same time the capital of a CCP and the financial resources it handles for risk-management purposes can be more effective over time than considering only one of the two.

195. With reference to the appropriate frequency for the calculation and adaptation of the skin in the game, responses were even more diversified with, however, some common elements. Users were more favourable to a higher frequency, ranging from a daily calculation to a monthly one. CCPs were more favourable to a longer revaluation period, with most respondents suggesting a 1 year interval. Finally, most of respondents considered that capital requirements should be re-examined anytime there is a relevant change in the size of the resources.

196. After having considered all the elements above and the current practices of CCPs, ESMA concluded that the most appropriate way for calculating the "skin in the game" is to base such calculation on the capital of the CCP. It should, however, be considered that:

a. The minimum capital requirements need to be specified in the draft technical standards to be drafted by EBA, on which ESMA will need to be consulted;

b. For the incentive to be effective, the percentage of capital dedicated to the skin in the game should be substantial. For this reason ESMA is considering 50 percent of the minimum capital requirements to be the appropriate percentage for the "skin in the game".

IV.X Collateral requirements

(Article 46 of EMIR) (Annex III, Chapter XI, COL)

197. Under the RTS for collateral, ESMA is required to define the type of collateral that can be considered highly liquid. Under the Collateral RTS, ESMA is also required to define the conditions under which commercial bank guarantees may be accepted as collateral.

198. The DP contained detailed elements under which the RTS could be drafted and included a number of specific questions on the approach considered by ESMA. With reference to the identification of highly liquid financial instruments, responses generally favoured a criteria-based approach to determining collateral eligibility. Several CCPs requested the option to adopt a more conservative approach, based on the principle that they should be entitled but not obligated to accept collateral that satisfies the requirements in the draft RTS. Some larger clearing members (on the sell-side) are sceptical of the suitability of commercial bank guarantees as collateral and questioned whether they can be considered "highly liquid" in stressed market conditions. By contrast, buy-side clients generally supported expanding the set of eligible collateral to include, for example, listed equities in order to avoid a "collateral squeeze" that would disrupt the market. A handful of responses suggested that assets accepted in regular central bank operations should be considered eligible for CCPs.

199. ESMA is content that the criteria-based approach described in the DP strikes an appropriate balance between ensuring the robustness of the CCP and ensuring that adequate collateral is available. Article 46 of EMIR explicitly refers to commercial bank guarantees as highly liquid collateral. However, it restricts its use to non-financial counterparties. In accordance with ESMA's mandate, certain restrictions on the use of bank guarantees should be applied in view of the need to ensure full consistency with the CPSS-IOSCO Principles for FMIs. The revised draft of the RTS makes clear that accepting as collateral assets other than (local currency) cash should be at the discretion of the CCP, providing space for a more conservative approach than required by the standard where appropriate.

200. Respondents expressed different views on the restriction for a CCP to accept as collateral financial instruments issued by the clearing member seeking to provide such collateral. A significant number of responses cautioned against CCPs accepting clearing members' own name covered bonds as collateral, citing the potential for wrong-way risk. Others suggested that CCPs should not accept any type of security issued by a clearing member in order to guard against cross-collateralisation. Others, mainly from the buy-side generally favoured a more liberal approach that would permit clearing members to post own name covered bonds to CCPs.

201. In light of the diversity of responses, ESMA intends to retain the broad approach outlined in the DP, with own name covered bonds permitted as collateral subject to certain conditions that will be aligned with the CPSS-IOSCO Principles. In particular, the collateral underlying a covered bond should be eligible in its own right and fully segregated from the default of the issuer. All other securities issued by the clearing member seeking to provide the collateral will not be accepted.

202. With reference to the currency of cash, financial instruments or bank guarantees, most responses were broadly content with the approach proposed by ESMA. Some CCPs highlighted that the capacity to manage foreign exchange risks was more important than the currency of the collateral, but also generally favoured a relatively restrictive list, e.g. the G7 currencies. Some respondents noted the importance of aligning policies on the currency-denomination of collateral with the products cleared by the CCP, not least to facilitate payments of variation margins.

203. ESMA considers that a more restrictive list would potentially discriminate between Member States. In order to avoid such discrimination, which is not permissible in a Union regulation, ESMA has retained the basic approach outlined in the DP, but revised the language to avoid any unintentional discrimination between Union currencies.

204. On the framework for determining the haircuts and assessing their adequacy, respondents were broadly supportive of the approach described in the DP, although some CCPs noted a general

preference to retain discretion over the look-back period used to determine the price volatility of collateral. For some respondents, this is important to balance the responsiveness of haircuts to market developments against the risk of procyclical effects. The responses reveal a general preference for criteria that allow CCPs themselves to determine prudent haircuts, rather than prescriptive rules.

205. ESMA has retained the same framework for determining haircuts, noting that a CCP should ensure its approach to setting haircuts minimises procyclicality as far as possible without undermining the robustness of the CCP. The intention is to employ a criteria-based approach within which CCPs have discretion to define appropriately conservative haircuts.

206. As for concentration risk, respondents generally recognised the rationale for concentration limits and supported the approach proposed in the DP. But views differed on how such limits should be applied. While some favoured application at CCP or clearing member level, others (mostly clearing members) preferred a client-by-client approach. A small number of responses questioned whether concentration limits are necessary for collateral traded in deep, liquid markets.

207. ESMA is content that the approach described in the DP was considered appropriate and proportionate and it has, therefore, left it unchanged. Since clearing members are required to guarantee their clients' obligations to the CCP, ESMA does not believe it is necessary to apply concentration limits at client level.

208. With reference to the provision of collateral in the form of cash, the responses were divided on whether CCPs should collect a minimum proportion of margin and default fund contributions in cash. Several respondents viewed a minimum cash requirement as a blunt tool that may have unintended consequences, but did not exclude the possibility that individual CCPs would want to impose minimum cash requirements in certain circumstances. There was no consensus on the appropriate level for such a requirement, with a large majority of responses favouring a discretionary approach that balances liquidity considerations with ensuring adequate availability of collateral, particularly for buy-side clients. Reponses that support a minimum cash requirement generally favour specifying a relatively low percentage of total collateral held by the CCP.

209. ESMA accepts that specifying a minimum cash requirement that is suitable for all authorised CCPs is unlikely to be practical. No formal requirements are included in the collateral draft RTS in this respect. In line with the approach described above for liquidity risk controls, it is for the CCP to ensure that liquidity risk is adequately managed and that it has the necessary liquid resources, but this does not imply forcing the CCP to collect or maintain a certain amount of cash.

IV.XI Investment policy

(Article 47 of EMIR) (Annex III, Chapter XII, INV)

210. Under the RTS for Investment Policy, ESMA is required to define highly liquid financial instruments with minimal market and credit risk, the highly secure arrangement for the deposit of cash and other assets and the concentration limits to individual obligors.

211. The DP already highlighted the outline of the draft RTS on investment policy and requested feed-back from stakeholders on a number of issues. On the general approach described in the DP, there were mixed views amongst CCPs on whether the criteria should be more or less restrictive than the one set out in the DP (including in comparison to the criteria proposed for the collateral RTS). It was suggested, for example, that ESMA considered expanding the list of eligible financial instruments to include covered bonds, Undertakings for Collective Investments in Transferable Securities (UCITS) and

collateralised investments secured by corporate bonds and covered bonds. After further evaluation ESMA has determined that the range of permissible financial instruments strikes an appropriate balance between prudence and the need to ensure availability. ESMA further stresses that whereas on collateral the CCP can apply haircuts to protect itself, on its investment policy it will face directly the risks affecting the assets it has invested in.

212. With regards to the criteria used for assessing whether a financial instrument is sufficiently highly liquid, is was suggested by respondents that additional measures to quantify liquidity could be derived from metrics such as trade frequency, average transaction size, issuance size, tradable volume, bid-offer spread and the number of market makers present.

213. While it may be advantageous to tighten the metrics by which the liquidity of a financial instrument is assessed, such metrics would require considerable prescription in this RTS which would be contrary to the criteria-based approach taken by ESMA in drafting this RTS. To ensure sufficient flexibility and in order to future-proof the regulation, ESMA has decided against taking an overly prescriptive approach and for this reason has decided against prescribing additional metrics such as those suggested by respondents.

214. With reference to duration, the following suggestions were made by respondents in respect of the average time-to-maturity of the CCP's portfolio of debt instrument investments:

- a maximum average time-to-maturity of 2 years for debt instruments (which would harmonise with the Commodity Futures Trading Commission (CFTC) rules);
- a maximum average duration of 4-5 years;
- a maximum average duration of 1 year, with a maximum time to maturity of 2 years (which would be consistent with the definition of Money Market Funds).

215. In respect of investment in debt instruments, the time-to-maturity of the portfolio determines the level of price sensitivity to which the CCP is exposed (which impacts upon the value at which the CCP can liquidate the debt instrument if required – holders of short term debt instruments are typically less at risk from changes in interest rates, and therefore the price of the bond, than holders of longer-term debt instruments).

216. Respondents proposed a range of durations from 1 year to 5 years. In order to give CCPs sufficient flexibility to appropriately diversify their investments across financial instruments with a range of maturities, and to avoid any risk of causing a shortage of short-dated debt instruments, ESMA has decided to increase the average of the time-to-maturity of the portfolio from 12 months to 24 months. This will also align with the CFTC rules.

217. With reference to the currency of financial instruments, similar comments as the one described above for the collateral standards were provided. ESMA has therefore retained a consistent approach between the two draft RTS, which aligns with the basic approach outlined in the DP, but has revised the language in the draft RTS in Annex III to avoid any unintentional discrimination between Union currencies.

218. With reference to concentration risk, while almost all responding clients and some CCPs and clearing members found ESMA's proposal for concentration limits adequate, some respondents did raise concerns with certain aspects of the proposal included in the DP. In particular concerns stressed that:

- not all exposures can be definitively quantified or aggregated;

- certain governments and geographical diversification requirements should be excluded from the concentration limits; and
- the application of concentration limits in case of CCPs with small financial resources could be inefficient.

219. It should be noted that the requirement that CCPs consider credit risk exposures to individual obligors when making investment decisions is set out in EMIR and therefore is not a requirement which can be departed from in the draft RTS . The importance of concentration limits is also included in the CPSS-IOSCO Principles for FMIs, where it is set out that a CCP should carefully consider not only its credit risk exposures with an obligor but also the CCPs other relationships with that obligor which might create additional exposures, such as where the obligor is also a participant or an affiliate of a participant in the CCP.

220. In this regard, the criteria set out in the Investment Policy draft RTS are considered by ESMA as being sufficiently prudent. One requirement which has, however, been included is a more explicit requirement for CCPs to consider the correlation between an obligor and the CCPs' clearing members (in the DP ESMA was considering to require CCPs to take into account only economic or legal interdependence).

221. The proposal for a limit on the amount of cash placed on an unsecured basis was generally supported by CCPs, clearing members and clients. In addition, it should be noted that under EMIR where cash is deposited other than with a central bank then such deposit should be performed through highly secured arrangements. ESMA has therefore specified that where cash is deposited other than with a central bank then a certain proportion of the CCP's cash deposits should be secured in a particular way, namely through collateralisation. In setting this proportion ESMA has taken into account the need for CCPs to be able to manage securities settlements and margin inflows, which cannot be fully controlled at all times.

222. With reference to highly secured arrangements for financial instruments, while the majority of CCPs supported the current proposals, some clients and clearing members suggested further restrictions on the type of arrangements under which financial instruments should be deposited. These suggestions can broadly be summarised as relating to segregation, rehypothecation and security transfer. Segregation is already dealt with in EMIR (Article 47 (5)), however it was noted that the criteria proposed in the DP addressed only the type of institution at which financial instruments should be deposited and not any features of the arrangement itself. ESMA has included in the draft RTS in Annex III additional criteria concerning the arrangements under which financial instruments should be deposited.

223. The majority of the responses from CCPs and clients were in favour of the use of derivatives for hedging however some respondents considered that the use of derivatives by CCPs should be limited to default management. ESMA considers that: 1) CCPs, being netted by definition, should not have any open position on FX or interest rate that might give rise to risks to be hedged; 2) under the investment policy the CCP is not supposed to take any FX or interest risk that requires hedging; 3) the need to hedging risks could, therefore, only arise from the collateral, but the risk arising from collateral should be covered by the CCP with adequate haircuts; 4) it could be quite difficult to determine which derivatives are entered into for hedging or speculative purposes; 5) CCPs with a banking licence could be eventually required to clear their derivatives with another CCP. ESMA has therefore concluded that the use of derivatives may only be used in the exercise of the CCP's default management procedures.

IV.XII Review of models, stress testing and back testing

(Article 49) (Annex III, Chapter XIII, SBT)

224. Under the RTS for review of models, stress and back testing, ESMA is required to specify a) the types of tests to be undertaken for different classes of financial instruments and portfolios; b) the involvement of clearing members or other parties in the tests; c) the frequency of tests; d) the time horizons of tests; and e) the key information a CCP shall publicly disclose on its risk management model and assumptions adopted to perform its stress tests.

225. The DP included a detailed framework for all the elements that ESMA is required to develop under these draft RTS. As highlighted in the DP, ESMA considered that a criteria based approach is the most appropriate for implementing the relevant requirements in this respect. The DP included a number of questions on these draft RTS on which the feed-back from stakeholders has been analysed as follows.

226. Respondents expressed a general agreement with definitions. Therefore ESMA does not see a need for any amendment.

227. With reference to the validation process, a number of respondents suggested that the supervising authority should validate CCP models. Such requirement is already included in EMIR, so the RTS should not repeat the same requirement. It was also suggested that in certain circumstances and subject to appropriate governance controls, models should be capable of amendment prior to independent validation. Also in this case, EMIR already requires that all changes to a CCP's models and parameters should be validated by its competent authority and ESMA before adopting such changes.

228. It was suggested that detailed information on stress scenarios should be disclosed to the supervising authority to ensure that every CCP applies reasonable stress tests. The supervising authority will be able to request any relevant information from the CCP so there is no need to specify specific information CCPs should disclose to their competent authority.

229. As for the requirements on back testing, respondents expressed a general agreement with the proposed requirements with a few specific points. There were suggestions to back test and validate margin models using hypothetical portfolios, to back test volatility estimates and a number of respondents said that back testing should be coupled with an analysis of adequate test statistics. It should be noted that these types of tests fall into sensitivity analysis (as defined in CPSS-IOSCO Principle 6) which has been included in the draft RTS.

230. Some CCPs said that the requirement to separately test clients' positions and portfolios should not be included and that testing programmes should only be applied to clearing member portfolios, including those held on behalf of clients. ESMA agrees with this argument in view of the responsibility of the clearing member rather than of the client towards the CCP. This has been clarified in the RTS. However, it is also important for a CCP to consider the potential losses that could arise from the default of a client that clears through multiple clearing members.

231. It was suggested that if a sufficient length of price history is not available for all contracts then an adequate proxy would be required e.g. a contract similar in nature but with a longer price history. ESMA has included a provision on the validation of valuation models to cover this.

232. With reference to disclosure of back testing results, there were varied responses. Most respondents who would fall under the category of clients of clearing members agreed with such disclosure, whereas most CCPs disagreed with it. It was suggested by some of these respondents (including non-CCPs) that where clients specifically request back testing results and/or analysis, they should be provided with relevant information about the margin models' reliability. It was also suggested that clearing members and clients should receive either anonymised data or only data relating to their own portfolios. Generally there was some concern over confidentiality given the sensitivity of data and the complexity of interpreting results. ESMA agreed that it might be possible to identify particular participants if data were anonymised and decided that it would be appropriate to provide aggregated data and that clearing

members and clients should only have access to detailed back testing results and analysis for their own portfolios. Regarding the possible conflicts of interest and confidentiality issues that could arise from reporting back testing results and analysis to the risk committee, it was decided that reporting would be required in a form that does not breach confidentiality.

233. Regarding the time horizons for back tests, out of only 13 responses 6 said that there was no need for the requirements to be more granular whereas one respondent suggested to introduce a single time horizon for all CCPs set out at 250 business days. ESMA agreed to keep the drafting at the proposed level of flexibility however to include a provision that the time horizon used for back tests should include data from the most recent year or as long as a CCP has been clearing the product if that is less than a year.

234. With reference to the requirements on stress testing, there was general agreement with the proposed requirements with a few specific points. It was suggested that exposure limits should also be calibrated and tested against conditions of extreme stress so this has been included as an additional risk factor.

235. One respondent suggested that requirements should be different for smaller CCPs because installation and maintenance costs for example would put them at a competitive disadvantage. Although ESMA understands the concerns expressed, EMIR does not make any distinction between larger and smaller CCPs and it is therefore not possible to introduce such a distinction in the draft RTS.

236. It was suggested by more than one respondent that the proposed requirements should be treated as minimum requirements. ESMA has based its drafting, including for all of the technical standards for CCP requirements, on minimum requirements and CCPs can adopt more stringent standards than the provisions specified where on a risk based assessment they deem it necessary. ESMA has made this point clear in a recital.

237. As for disclosure of stress testing results, responses were similar to those made on the disclosure of back tests with CCPs generally opposing such disclosure to clients. It was suggested that clients should have access to stress testing results only for their own portfolios. One CCP suggested that CCPs should not be required to publish the outcomes of all the stress tests and that members who are requested to submit additional margins or to reduce their exposures as a result of extreme outputs from stress testing should be made aware of the detail and outcome of the stress tests performed on their own positions. More than one respondent suggested that there should be public disclosure of stress testing results and analysis. However, ESMA decided against this due to confidentially issues. An approach consistent with the disclosure of back test results has been adopted.

238. With reference to reverse stress tests, most respondents are in support of requiring CCPs to conduct reverse stress tests. It was suggested by one respondent that ESMA should introduce a requirement for CCPs to conduct reverse stress testing on a monthly basis. This suggestion was agreed and incorporated. Two respondents asked for further clarity on the objective of such tests. ESMA has therefore introduced a recital to explain the purpose of the requirement to conduct reverse stress tests.

239. As for the parties involved in the definition and review of tests, some respondents made suggestions on the composition of the risk committee. However, it should be noted that this is specified in EMIR and would go beyond ESMA's mandate for this RTS. It was raised by a number of respondents that the involvement of the risk committee could be controversial. The risk committee being composed of representatives of its clearing members and clients could raise conflicts of interest issues from users of the CCP being too closely associated with the definition of testing methodologies. ESMA therefore decided that the risk committee, in its advisory role, would be reported to on the results and analysis of tests in a form that does not breach confidentiality to facilitate the review of CCP models.

240. With reference to the testing of default procedures, most respondents agreed with the introduction of simulation exercises. It was suggested that member involvement should either be decided by the risk committee or where deemed appropriate by the CCP as it is not practicable due to the sensitivity of information for all clearing members, clients, interoperating CCPs and any other third parties to be involved. However, ESMA has not prescribed how a CCP should run a simulation process and it is important for all parties involved to clearly understand their roles in a default situation. Additionally ESMA does not prescribe that actual positions are used in a simulation process.

241. With reference to the frequency of the tests, most respondents agreed with the proposed frequency of tests with some specific comments made as follows: 1) default management simulations should be run more frequently due to the expansion of new products or additional clearing members; 2) a full validation of the CCP's risk management model should be performed at least annually or more frequently when there are material market developments; and 3) it is not sensible to conduct more stress testing during stressed market conditions but instead CCPs should focus on active risk management (for example market monitoring and calling additional margin).

242. Regarding point 1) above, the suggestion has been considered by incorporating a requirement for CCPs to run simulation exercises following material changes to their default management procedures and following the addition of new types of contracts being cleared. Additionally the requirement to review default management procedures annually has been deleted given the requirement to test procedures at least quarterly. ESMA also agreed that simulation exercises, which would involve clearing members, clients and relevant third parties, should be run at least annually. Regarding point 2), ESMA agreed that performing a full validation during stressed market conditions could be burdensome, however it was decided that in line with CPSS-IOSCO principles for FMIs, CCPs should conduct a thorough analysis of testing results more frequently during stressed market conditions. Regarding point 3), ESMA agreed that intra-day stress testing during stressed market conditions could be burdensome.

243. With reference to public disclosure of models and assumptions, most respondents argued that detailed disclosure should not be required but that disclosure of the main principles underlying the models and assumptions adopted would be appropriate. It was also suggested that the nature of the tests performed should be publicly disclosed, together with (retrospectively after an appropriate delay for any necessary rectification) the summary results of these tests. These suggestions were incorporated.

V. Trade Repositories

244. In developing the draft technical standards on TRs and with a view of fostering international consistency, ESMA has sought to build on the few existing pieces of international work, notably the June 2010 ODRF guidance of the Warehouse Trust on access to TR-held data on CDS; the IOSCO-CPSS Report on OTC derivatives data reporting and aggregation requirements; the CPSS-IOSCO TF on Access to TR-held Data work (on-going), and the proposed or adopted regulations of a number of third-countries. Where applicable, the draft CPSS-IOSCO Principles for FMI have been considered in the drafting of the draft technical standards.

245. However, these global standards are not specific enough for the level of granularity that the draft technical standards are expected to take under EMIR. ESMA therefore proposes to introduce more stringent requirements but will endeavour to ensure compatibility with the high level principles agreed at the international level, to the extent that they are consistent with EMIR. This will encourage

consistency between the EU and international requirements and should facilitate EU-based TRs to operate on a global basis, as well as third country TRs to be recognised in accordance with the EMIR procedure. Progress has been made in reducing these inconsistencies to the minimum and further ESMA efforts will follow when the standards are implemented.

246. The DP contained detailed elements of the fields and formats to be reported to TRs, elements of the information to be provided to ESMA for the purpose of registration of TRs, and the elements that TRs should make available to the public and the relevant authorities.

247. The responses to the DP were very helpful in shaping the technical standards, including the mechanics of the reporting obligation and the minimum contents of the reports. The main challenge relates to the measurement of costs. Although some stakeholders raised possible concerns in this respect, they did not provide any quantitative element or analysis to support their arguments. The absence of quantitative feedback did not allow ESMA to perform, at this stage, a quantitative impact study of the proposals. Nevertheless, some indications of the qualitative impacts of the proposed draft technical standards are included in Annex VII.

248. In addition, while drafting the RTS and ITS on TRs, ESMA consulted the members of the ESCB and other relevant entities listed under Article 81 of EMIR in regard to the access to TR data.

V.I Reporting obligation

(Article 9 of EMIR) (Annex V, RTS on the minimum details of the information to be reported to TRs and Annex VI, ITS on the format and frequency of trade reports to TRs)

249. In developing draft RTS regarding the details and type of reporting to TRs, ESMA considers the following elements as key:

a. the purpose and content of reporting;

b. the elements to correctly identify the contracts and the corresponding counterparties; and

c. the level of granularity.

250. In developing draft ITS on format and frequency, ESMA considers:

a. the fields required to report each element; and

b. standard codes for the identification of contracts, trades, counterparties/clients, etc.

251. ESMA's view is that the fields indicated in Table 1 of Annex V should be reported by counterparties to TRs in order to comply with Article 9. This table takes into account some of the suggestions and amendments provided in the DP responses and these are described in more detail under the specific sections below.

252. The table is divided in two sub-sets: (i) Section 1 - counterparty data (to be reported separately by each counterparty or their appointed reporting entity); and (ii) Section 2 - common data (may be reported by only one counterparty, if reporting also on behalf of the other, or an appointed reporting entity). In general, the responses to the DP were supportive of this proposal and therefore this approach has been maintained. There were some specific comments seeking clarification on who is

required to report which table(s) therefore the drafting of the RTS has been amended to ensure that this process is made clearer.

Purpose of reporting

253. For the purpose of reporting, ESMA has considered the G20 Pittsburgh declaration and the objectives of EMIR including improving transparency in the derivative markets, protection against market abuse and systemic risk mitigation. ESMA also considers that TR data will be useful to ensure firms' compliance with other requirements in EMIR including the clearing exemption and in the future, ensuring that the clearing threshold is set at the appropriate level.

254. A comparison has also been made between reporting to TRs under EMIR and the transaction reporting mechanisms already in place in the EU under Markets in Financial Instruments Directive (MiFID). The Committee of European Securities Regulators (CESR now ESMA) has in the past advocated synergies between existing transaction reporting mechanisms and the usage of TRs by simultaneous reporting under EMIR and MiFID. The draft MiFID proposal notes that TRs may seek authorisation as an Approved Reporting Mechanisms (ARM) under MiFID, and if this authorisation is granted, then the reporting of a trade to the TR/ARM would ensure compliance with both the EMIR and MiFID reporting requirements. In order for a TR to qualify as an ARM, the dataset between what is reported under the MiFID transaction reporting requirements (currently under review as part of the MiFID review) and the data that will need to be reported under EMIR will need to be compatible, to the extent that this is possible.

255. The majority of the respondents to the DP urged ESMA to consider consistency between the two reporting requirements in the EU to avoid duplication and reduce the reporting burden on firms. A number of responses indicated that TRs should be the basis for reporting under both MiFID and EMIR. Whilst efforts have been made to ensure that the two data sets are aligned as much as possible, reporting under EMIR, as understood by ESMA, is still more extensive in scope than MiFID. There are also concerns regarding the transmission of data from a TR; the current TR approach and the approach that has been taken in the draft RTS for Article 81 is for access to be provided to the relevant authorities via a regulatory portal. However, under MiFID, transaction reports are actively sent to the relevant national competent authorities.

256. Nevertheless, given the objective of reducing the reporting burden for industry, whilst ensuring there is no detriment in the transparency to regulators, ESMA will continue working towards the objective of a common reporting mechanism with any differences to be discussed with the TRs and the national competent authorities.

Contents of reporting under parties to the contract

257. EMIR indicates a minimum set of information to be required and this is included in the draft RTS (Annex IV): the parties to the contract, beneficiary of the rights and obligations arising from it, and the main characteristics of the contract including the type, underlying, maturity, notional value, price and settlement date. These fields in the table have not changed as they are required under EMIR.

258. The majority of the DP responses were in favour of the current fields listed in order to accurately identify the counterparties of the contract. In particular, respondents strongly supported the development of the Legal Entity Identifier (LEI) and that any fields which would be captured by this should not be reported twice. ESMA agrees with this approach and will ensure that if a global entity identifier is in place, it should be used. However, in view of the very strong support and need for entity identifiers, an interim solution in line with the technical specifications agreed by the Financial Stability

Board (FSB) might need to be developed in case of delay in establishing a global solution. In any circumstance, duplication should not occur.

259. Comments were raised with regards to the data fields specifying whether the contract is 'directly linked to commercial activity or treasury financing' and whether the contract is above the 'clearing threshold'. As mentioned above, ESMA considers that TR data will be useful to ensure firms' compliance with other requirements in EMIR. These include monitoring compliance with the clearing exemption and in the future, ensuring that the clearing threshold is set at the appropriate level.

Beneficiaries

260. EMIR indicates that where the economic beneficiary of a derivatives trade is different to the counterparty, the beneficiary of the rights and obligations arising from the transaction should be identified. While back-to-back trades would be reported separately, transparency of other trading techniques must be ensured, including the use of structures where there may be 'morphing' of beneficiaries.

261. The responses to the DP highlighted a number of views; some respondents feel that in the case of an investment fund, it is not necessary to look through the underlying funds and investors as it is at the management company level where decisions impacting systemic risks are taken. Others indicated that broker-dealers who report the details of a derivative trade will not have access to the necessary data to identify the ultimate beneficiary. Other respondents feel that the LEI would be the appropriate solution to identify the beneficiaries to a trade.

262. Regarding the definition of a beneficiary, the draft RTS is consistent with the wording provided in the EMIR text. Where the transaction is executed by a structure (fund, trust, etc.) which represents a number of beneficiaries, the beneficiary field should identify this structure and not all the individual beneficiaries.

Format of reporting

Codes

263. Under EMIR, ESMA is required to develop draft ITS specifying the formats that need to be used in the reporting of trade information to TRs. ESMA has considered the widest use of codes as possible. These codes will serve a multitude of purposes, including consistency, uniqueness, reducing the costs of reporting, analysing the information reported and increasing the efficiency in the overall reporting chain, provided certain principles are followed in creating, generating and using the code.

264. The majority of the respondents strongly supported the development of the global LEI and where not available, that Bank Identification Codes (BIC) and Business Entity Identifiers (BEI) should be used.

265. The general approach taken in the draft ITS is that the LEI should be used if it follows the principles outlined in the CPSS-IOSCO report[7]. If an LEI is not available, an interim entity identifier solution will be used. However, in view of the very strong support and need for entity identifiers, an interim solution

[7] OTC Derivatives, Data reporting and Aggregation; principles to be followed include; uniqueness, neutrality, reliability, open source, scalability, accessibility, appropriate costs and under an appropriate governance basis.

in line with the technical specifications agreed by the FSB might need to be developed in case of delay in establishing a global solution. In any circumstance, duplication should not occur.

266. In order to appropriately identify and categorise derivative products, an organised taxonomy is essential, covering the range of derivatives products traded. This taxonomy should be designed in order to clarify the array of products available in the derivatives markets which are covered by EMIR. As mentioned above, codes are essential to ensure efficient reporting and it may be derived from the taxonomies that are already available. In some cases, for example bespoke products, codes may be difficult to design although the taxonomies should be flexible enough to describe possible complex products.

267. As regards product codes, there was general industry support for the development of the Unique Product Identifier (UPI) by ISDA. However, concerns were raised that the taxonomy may not cover all derivatives, particularly bespoke and hybrids. There was also a suggestion that TRs should develop the functionality to identify the composition of baskets. ESMA welcomes this suggestion, given the need to ensure transparency, particularly with regards to equity derivatives and derivatives of derivatives.

268. The approach taken in the draft ITS with regards to identifying products follows the same line that has been taken for the LEI; The UPI should be used if it is globally available and complies with principles consistent with the one listed in the CPSS-IOSCO report on data aggregation. If the UPI is not available, the taxonomy as outlined in the draft ITS should be used for identifying products.

Additional points

Trade Identification

269. ESMA believes that in order to effectively match counterparties to a trade, where those trades are reported separately by each counterparty (potentially to two different trade repositories), a Unique Trade Identifier (UTI) or other trade ID should be reported with each counterparty to allow for the matching of each side of the transaction.

270. There was general support for the development of a universal UTI or for TRs to provide a matching service which could generate a trade ID between counterparties. ESMA considers that if an identifier with a universal character is available, it should be used to enable reconciliation. However, ESMA is aware that industry has not progressed in this area until quite recently. These initiatives will therefore be followed by ESMA with interest, notably with a view to fostering timely implementation of the trade ID for EMIR purposes.

Pricing and fees

271. ESMA considers that the three essential elements which will be useful to authorities in understanding the price at which derivatives are traded are:

a. price/rate/spread;

b. price multiplier; and

c. up-front payment.

272. The majority of DP respondents were supportive of these fields and therefore they remain unchanged. Other fields were considered with respect to fees, i.e. determining whether the trading price differs

from the market fair value as a result of fees being incorporated into a price by a broker when trading with a client. In general, respondents felt that it is difficult to capture fees at the trade level and there are associated confidently issues. No additional fields have therefore been added.

Risk mitigation and clearing

273. ESMA considers a number of fields should be reported in order to facilitate the monitoring of market participants compliance with EMIR obligations, including the clearing obligation procedures. These elements are:

a. a timestamp on the time of reporting to the TR;

b. the type of platform where the trade was executed;

c. whether confirmation has taken place on the transaction and, if so, whether it was by electronic means;

d. whether the exposure of counterparties to the trade is collateralised;

e. whether there is an obligation to clear, whether the trade was cleared and, if cleared, when the trade was novated for clearing and by which CCP;

f. whether the trade qualifies as intra-group for the application of the exemption on intra-group trades.

274. The majority of respondents were supportive of requiring the information above and therefore these fields remain unchanged. There was a recommendation that the "clearing obligation" and "intra-group" fields could be filled by the TR however ESMA's view is that the responsibility of reporting these fields should remain with the counterparties.

Specific asset classes

275. Whilst counterparties are expected to report all the applicable information in relation to the parties to the contract, the contract type, details of the transaction, risk mitigation, clearing and the exposure of a contract, additional fields are needed to correctly identify the relevant asset class. These additional fields will only apply to the specific asset class.

276. In the DP, ESMA already considered specific fields for the following asset classes:

a. interest rate derivatives;

b. currency derivatives.

277. In general, respondents were in favour of these fields, however requested that where these go beyond the information required under EMIR, they should be subject to a rigorous cost benefit analysis. There were a number of recommendations to consider other fields, including non-deliverable forwards, derivatives on derivatives, more fields for CDS, more option types, more currency options for forex and swaptions.

278. Taking these in turn, ESMA considers that non-deliverable forwards would be captured by a UPI or by the taxonomy outlined in the ITS. A derivative on a derivative would be captured by the fields already listed under "contract type". The "underlying" field would capture the information for CDS. Regarding option types and swaptions, 'put or call' options were considered sufficient. The UPI should capture the

information under forex however additional fields have been included in the event that a UPI is not available.

279. Regarding other asset classes, ESMA did not originally include any specific fields in the DP on commodity derivatives. Since the publication of the DP, ESMA has consulted the existing TRs on the data fields that they currently collect regarding commodity derivatives and also Agency for the Cooperation of Energy Regulators (ACER) with regards to the information that should be specifically reported for energy commodity derivatives. A proposal is included in the table of fields under Annex V with a specific field for the reporting of energy derivatives and also more general fields for all commodities.

280. No additional fields are proposed for the reporting of credit and equity derivatives.

Data on exposures

281. ESMA believes that the reporting of exposure data would greatly improve the monitoring of systemic risk. Nevertheless, ESMA is aware that both counterparties and TRs may need time to adapt to the reporting requirements that currently are considered 'data gaps' in the CPSS-IOSCO Report on Data Aggregation.

282. The majority of the respondents were not in favour of this information being reported citing issues relating to complexity in the calculation, the collateral being held at the portfolio level and the constant movement of the value chain. Nevertheless, some respondents felt that it would not be impossible to obtain this information.

283. Whilst ESMA understands the challenges involved in reporting this data, it has taken the view that collateral needs to be reported, in order to properly monitor concentration of exposures and systemic risk.

284. Specific fields have been included in the table of fields, Annex V, including information on the type, amount and currency of collateral. Where counterparties exchange collateral on a portfolio basis and it is not possible to report collateral exchanged for an individual contract, counterparties may report to a TR collateral exchanged on a portfolio basis.

285. In addition, ESMA considers that daily updated information about the mark-to-market valuation of the outstanding contract should also be required in order to quantify the counterparty's exposure more accurately.

286. Finally, ESMA believes that accurate monitoring of exposures may require more than position and collateral data and further reporting requirements may need to be determined in future revisions of the standards, taking into account market developments and the needs of entities with systemic risk mandates.

Reporting by third parties

287. Reporting to TRs may be undertaken by third parties, i.e. parties other than the two counterparties to a derivatives transaction. ESMA expects counterparties to carefully select such third parties to ensure they are providing accurate and timely information to TRs, particularly due to the fact that such third entities may be outside the powers of a competent authority. Third parties need to guarantee protection of the data and compliance with the reporting obligation in the same way the counterparty appointing them is required to do so.

288. Given the importance of maintaining accurate data in a TR, ESMA may request the competent authority of a counterparty to take action in relation to the use of a third party reporting entity which is not able to ensure that counterparties duly comply with their reporting obligations under EMIR and/or do not enable TRs to perform their duties. In the most extreme cases (such as when the third party is not fulfilling its obligations for multiple counterparties across Europe, or where the actions of the third party severely affects a TR) ESMA should be able to intervene. In particular, competent authorities should be able to require counterparties under their scope of action to stop using a certain reporting entity in case repeatedly incorrect or delayed data is provided by the third party to a TR after the third party was given a sufficient period of time in order to take remedial action. Along the same lines, ESMA should be able to prevent a TR, under its supervision role, to accept reporting by third parties that may jeopardise the accuracy of the data held in the TR.

289. The majority of the responses to the DP did not raise any concerns with this proposal, therefore this proposal has been maintained in the draft RTS. Some respondents asked for greater clarity on which third parties would be permitted, however ESMA does not consider it appropriate to be prescriptive in the draft RTS on the types of third parties that could be used.

Other data fields

290. Whilst the majority of the respondents were supportive of the fields proposed in the DP, there were a number of other more general suggestions of additional fields that should be considered. These were as follows; extending the notional amount beyond 10 digits, amortising notionals, straddles, step-up coupons, local master agreements, currency of the premium and futures with both a cap and floor rate.

291. These were considered and in turn, ESMA has the following remarks; ESMA agrees that for some currencies the notional amount may extend beyond 10 digits, therefore 20 digits is proposed in the table of fields. A field detailing the amortisation of notionals is potentially too complex to include at this stage. Regarding straddles, it was considered that this information would be captured under a UPI. Step-up coupons and futures with a cap and floor rate were considered very specific and not necessary for the purpose of EMIR reporting. The "master agreement" field has been amended to ensure that any local agreements could be captured here. ESMA considers that the currency of the premium is unlikely to be different from the currency of the notional.

Reconciliation of data

292. Whilst no specific question was raised in the DP, EMSA considers that there is a need for the details of a contract to be reconciled or agreed between two counterparties when reporting to different counterparties. Reconciliation would be expected to reduce the number of un-matched trades across TRs. Also, EMIR states that data needs to be aggregated and compared across TRs so that a number of authorities can access this data. Two possible solutions have been considered in the cost benefit analysis; to require the counterparties to reconcile the data or to require TRs to reconcile the data of a trade report when the counterparties are reporting to different TRs.

293. ESMA feels it would be impractical and potentially costly for each counterparty to communicate and confirm the details of every transaction with the other counterparty before it is reported to the TR. It would therefore be more practical for TRs to perform this role after the data is reported to the TRs. Furthermore, some TRs are already in a position to offer matching services to their clients. However, ESMA recognises that this option would still be costly and complex for TRs and there would be a need for a UTI or other common trade ID to allow TRs to compare data without breaching confidentiality. The draft RTS requires that where counterparties are reporting to different TRs, TRs should use, where available, universal codes to ensure that the common data is reconciled between counterparties.

Reporting start date

294. The draft ITS requires ESMA to determine the reporting start date and any phase in period for trades that were outstanding at the time of entry into force. Various options for determining the most appropriate start date have been analysed in the cost benefit analysis; the reporting obligation should start at a fixed period after a TR is authorised to receive trade reports for a particular asset class or the reporting obligation should start at a fixed period after the adoption of EMIR and the technical standards.

295. Whilst ESMA understands the need to begin reporting as soon as practicable and in line with the G20 commitment, setting the start date after the authorisation of a TR would allow the industry (both TRs and counterparties) to have sufficient time for implementation, while still ensuring that there will be at least a TR available and authorised to receive transaction reports for that asset class. It would also avoid direct reporting to ESMA, who will not have the necessary operational and IT structures in place to appropriately deal with receiving potentially large numbers of complex trade reports that no TR would be dealing with. On the other hand, setting a fixed date after the adoption of EMIR and the technical standards would give market participants as well as TRs and authorities the legal certainty that reporting is going to start in a specified point in time.

296. ESMA considers that a combined approach is the most appropriate solution whereby a fixed date is set based on the registration of a TR with an ultimate deadline of no more than 2 years after which reporting will be sent to ESMA if a TR for a particular asset class is not available.

V.II Application for registration

(Article 56 of EMIR) (Annex V, RTS specifying the details of the application for registration as a TR and Annex VI, ITS specifying the format of applications for registration for TRs)

297. In defining the elements to be contained in the application for registration of TRs, ESMA considers the following elements:

a. Ownership

A structure chart is required which should indicate all the associated entities of the TR at the global level. Lists of the relevant shareholders are required as well as information on any parent undertakings and their regulators.

b. Organisational structure, governance and compliance

A chart is required detailing the roles, reporting lines, accountable persons, and details on the internal controls and the functions under those controls (e.g. compliance, review, risk assessment and audit). Details are also required on the fitness and properness of the senior management and board members, policies on the appointment of senior staff, and the identification and mitigation of any potential conflicts of interest.

c. Staffing and compensation

Specific details are required on remuneration, mitigation of the over-reliance on individual employees, staff-sharing with other entities and details of the fitness and properness of the TR staff.

d. Financial resources

Detailed financial and business documentation (annual reports, balance sheet, business plan) are required.

e. Conflicts of interest

Internal policies on the identification, mitigation and inventory of conflicts of interest are required

f. Resources and procedures

Detailed information on the IT systems and outsourcing arrangements, with particular emphasis on any ancillary services are to be provided to ESMA.

g. Access rules and pricing

Details on compliance, particularly on the accuracy, confidentiality access rights of the data are required.

Additional requirements are included on price transparency including the pricing policy, structure and the separation of core and ancillary service fees.

h. Operational reliability

Extensive details on operational risk management, financial and business resources, processes, interdependencies, business continuity elements and testing are required. This includes the necessary and readily available financial resources needed to ensure smooth operations of the TR in all circumstances and an orderly winding down or restructuring of operations.

i. Recordkeeping

Information on the procedures required in order to ensure timely registration, data confidentiality, integrity, format/aggregation level and to ensure that the data is kept up to date.

j. Data availability

Detailed information is required in order to demonstrate that TRs will be able to provide regular and aggregate information to the public, detailed information to the relevant counterparties and competent authorities, respecting the timeline and other requirements under EMIR and the draft technical standards.

298. ESMA consulted previously on whether there would be any issues in providing the information/documentation as outlined above, and in particular on:

a. the appropriate timeline over which ESMA should be requesting business plans (e.g. 1, 3, 5 years);

b. the appropriate and prudent length of time for which a TR must have sufficient financial resources enabling it to cover its operating costs (e.g. 6 months / 1 year).

299. Some respondents noted that requiring remuneration details of employees who have no significant management roles would not be particularly relevant. Others suggested that balance sheets and income statements should be provided on an annual basis. As regards financial resources, some respondents suggested that these should be limited to provide critical services and operations. One respondent

suggested that financial resources should reflect the implementation period that the industry would need to switch from one TR to another. Based on the responses received ESMA is proposing:

a. 3 years as the appropriate timeline over which ESMA should be requesting business plans; and

b. 6-month minimum coverage of financial resources to cover potential general business losses. This is consistent with the CPSS-IOSCO Principles for FMIs which foresees operating expenses coverage for a minimum of 6 months.

300. In defining the format of the application for registration of TRs, ESMA believes that an application for registration should be provided in an instrument which:

a. stores information in a way accessible for future reference; and

b. allows the unchanged reproduction of the information held.

301. To ensure the accurate registration and identification of TRs, the TR applicant should:

a. assign a unique reference number to each document it submits and ensures that the information submitted clearly identifies to which specific requirement of the standards it refers to, and in which document that information is provided;

b. clearly identify and explain, where in its view a requirement of the standards does not apply;

c. include a cover letter with any documents sent to ESMA which is signed by a member of the TR's senior management, attesting that the submitted information is accurate and complete to the best of their knowledge, as of the date of that submission;

d. accompany any documents submitted to ESMA with the relevant corporate legal documentation showing the accuracy of the information, including verification of any decisions taken at board level.

302. The responses received on the requirements above was very positive therefore these proposals are reflected in the draft technical standards.

303. Some responses suggested that ESMA should offer a secure website submission system which would provide a receipt after submission of a TR application in order to protect business sensitive information. In view of the technical and budgetary implications of this proposal, ESMA will give due consideration to it on a longer term basis.

304. Some respondents noted that documents signed by senior management (in this context a person able to represent the company from a legal perspective, such as a Board Member) could be burdensome from an administrative point of view. ESMA believes that this process is similar to what is required for the registration of other types of entities (e.g. CRAs) and ESMA considers that senior management accountability is required for the registration of a supervised entity and that this registration process would only occur once. It does not represent an ongoing cost for the TR nor a barrier to entry. It would also not be required for each of the individual documents but rather a batch of documents.

V.III Transparency and data availability

(Article 81 of EMIR) (Annex V, RTS specifying the details to be made available by TRs)

305. When developing the draft technical standards which define the scope of the data to which authorities and the public will have access , ESMA considers the following key elements:

a. the granularity of data to be disclosed per type of recipient: (i) for the public; (ii) for each relevant authority;

b. how information should be disclosed and organised;

c. the means to receive this information (e.g. direct access, website, other);

d. the frequency of the disclosure to both the public and to the different authorities; and

e. the level of aggregation to be considered in the public disclosure or depending on the receiving authority.

306. ESMA's approach as regards the output of TR data is to ensure the accuracy of data and ensuring that each authority or the public only has access according to their mandates. ESMA also considers that where possible, information should be made available to authorities in an automated form rather than via ad-hoc requests as this will limit the requestors' ability to obtain timely access to information while also being burdensome for TRs.

307. Regarding data access more generally, some preliminary work has already been conducted at the international level, notably by the OTC Derivatives Regulators Forum (ODRF). The ODRF guidelines on data access were however designed for a specific class of derivatives, for a particular TR and at a certain point in time. The broader scope of EMIR requires a different approach. CPSS and IOSCO have also launched a specific task force, following the FSB[8] and G20[9] mandates, to take forward work on authorities' access to TR data (although still building on the work of the ODRF). ESMA is contributing its experience to this work in view of its specific mandate under Article 81 of EMIR. ESMA will seek to incorporate any relevant output from this work into the draft RTS, although the Task Force report is expected to be launched after or very shortly before the EMIR draft technical standards are submitted by ESMA to European Commission for endorsement.

308. On the data to be accessed by authorities, efforts were made to facilitate, as much as possible, an ex-ante definition of the scope of access. This access should be tailored according to each of the relevant authorities in view of their specific mandates under EMIR. Two approaches were envisaged when discussing data access and more specifically, the level of access: the institutional approach and the functional one. In the institutional one, entities are classified in pre-defined categories (types of institutions); under the functional approach, entities accessing TR data would be considered according to the competences they have and the functions they perform. The functional approach was chosen, which is also compatible with EMIR and the earlier ODRF approach.

309. In some situations, precision is needed on the range of entities captured, given the national limitations to the jurisdiction of some authorities. Not all types of authorities have the same access level, under the same category because of their different mandates. ESMA has considered these different scenarios in order to correctly determine the access levels. This will make access to data by the competent authorities easier, avoid confidentiality breaches and reassure counterparties and TRs by

[8] http://www.financialstabilityboard.org/publications/r_111011b.pdf

[9] http://www.g20.org/Documents2011/11/Cannes%20Declaration%204%20November%202011.pdf

providing additional certainty on the filters to be applied to the interface between the TR data and the authorities.

310. ESMA consulted the entities listed in Article 81 in order to identify the level of details and type of aggregation required to fulfil their respective mandates. However, consultation with the members of the ESCB is still on-going, in particular on the most appropriate way to ensure that all EU prudential supervisors have access to the relevant information for the exercise of their duties. From the work already conducted, ESMA's conclusion was that the authorities that supervise individual entities should have access to transaction level[10] information for the entities they supervise, whereas for other entities, only position level access should be given. In particular:

(i) ESMA should not have any restrictions to the transaction level data held at trade repositories, for the purpose of trade repository supervision, to be able to make information requests, take appropriate supervisory measures and also monitor whether the registration should be kept or withdrawn.

(ii) ESMA is also required under its Regulation to perform economic analysis/research and systemic risk monitoring and mitigation and financial stability, paying particular attention to any systemic risk posed by financial market participants, the failure of which may impair the operation of the financial system or the real economy.

(iii) The ESRB, alongside ESMA, has a mandate for monitoring and preserving financial stability in the EU, and some entities have a similar role at a national level. They should have access to position data for all counterparties within their respective jurisdictions and for derivatives contracts where the reference entity of the derivative contracts is located within their respective jurisdiction or where the reference obligation is the sovereign debt of the respective jurisdiction.

(iv) Competent authorities supervising CCPs who need to access TR data for the supervision of such entities, should have access to all transaction level data on transactions cleared or reported by the supervised CCP.

(v) Members of the ESCB may deal with traditional central banking activities such as conduct of monetary policy, primary issue of government securities, issue of currency and may regulate the supply of credit or hold the reserves of other banks, and therefore have an interest in data regarding trades in Euros or another currency if applicable, thus having access to position data in the relevant currency, for a number of relevant counterparties to be defined active in such currency or where the sovereign debt of the jurisdiction of the central bank is a reference obligation. Therefore, the access to TR data by relevant ESCB members will serve to fulfil their basic tasks, most notably the functions of a central bank of issue and also their financial stability mandate.

(vi) In addition, certain ESCB members might have different mandates under national legislation and to fulfil their tasks under these mandates they would receive data in accordance to the different mandates listed in Article 81(3) of EMIR and in the technical standards.

(vii) Securities and market authorities have duties of investor protection and financial stability in their respective jurisdictions. Therefore they need to access transaction data on markets, participants, products and underlyings covered by their surveillance/enforcement mandate.

---

[10] Transaction level being understood in this context as the set of details indicated in the table in Annex II for each relevant transaction.

(viii) Authorities appointed under Article 4 of Directive 2004/25/EC on takeover bids need specific data to fulfil their mandates. Access should be allowed to the transactions in equity derivatives where the underlying is either admitted to trading on a regulated market in their jurisdiction, or has their registered office within their jurisdiction.

(ix) ACER needs access to TR data for the purpose of monitoring wholesale energy markets in order to detect and deter market abuse in cooperation with national regulatory authorities, and the monitoring of wholesale energy markets to detect and deter market abuse under Regulation of 25 October 2011 (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT). ACER should therefore have access to all data contained in a trade repository as regards energy derivatives.

311. The relevant authorities of a third country that have entered into an international agreement with the EU and the relevant authorities of a third country that have entered into a cooperation arrangement with ESMA will have access depending on their specific mandates under the applicable EMIR provisions (Articles 75 and 76 respectively, and Article 81 and the associated draft technical standards) and the relevant arrangements.

312. In relation to information to be made publicly available by TRs, ESMA focused on the level of aggregation of data to be disclosed and the frequency of such disclosure. Feedback to the DP demonstrated a clear view in favour of ensure anonymity of the counterparties to the trade, particularly in less liquid transactions with fewer market participants. As regards the possible aggregation categories, ESMA received very mixed feedback including counterparty type, instruments, country, currency, asset class, top notionals or top reference entities. Some desire was expressed for ESMA to conduct a public consultation on the different aggregation reports before they are published by TRs. ESMA has taken a view that at least the type of derivative (asset class) and a breakdown of the aggregate open positions per derivative type should be published in aggregate form.

313. ESMA believes that only aggregate-level (and not transaction or portfolio) data should be considered, in order to comply with Article 81(5) of EMIR. ESMA has drafted the RTS with a duty on TRs to ensure that the published data does not enable, by any means, the identification of individual counterparties or trades. ESMA will be monitoring the compliance with this obligation when supervising the public availability of TR data. The draft RTS on access to TR data includes a provision requiring that the information which is publicly disclosed is not capable of identifying a party to any contract.

314. As regards the frequency of public disclosure, the market feedback did not agree on a specific deadline (some suggested monthly, others weekly) nor on the implications of the different frequencies. Nevertheless, the majority of respondents agreed that disclosure should not be real time (which the reporting obligation timeline would not even enable) or the next day (following the EMIR reporting deadline). As regards next day reporting, the implications on liquidity were considered a key factor, with weekly reporting for more liquid contracts, but a flexible approach preferred for less liquid/bespoke contracts (either monthly or quarterly). Other respondents suggested that the same frequency could apply to all contracts (e.g. monthly). An interesting point raised by some respondents was that the disclosure should be done according to pre-defined timescales to avoid certain persons receiving information in advance.

315. Having in mind these responses and after further consideration, ESMA believes a weekly disclosure is the appropriate period to be considered and that a simple solution for all asset classes should be adopted rather than very complex or dynamic timelines per asset class or liquidity level. This is however to be taken as a minimum frequency. TRs will be free to offer more frequent disclosure (i.e. more than once a week or even daily). ESMA has provided for this flexibility in the draft RTS by stating that TRs should disclose data via a webpage or on a portal.

316. In order to allow the entities listed in Article 81(3) of EMIR to aggregate and compare data across trade repositories, ESMA has included a specific provision to ensure that the necessary information is made available by using all relevant international communication procedures. To ensure clarity on the relevant procedures, ESMA may, at a later stage, issue guidelines or recommendations.

ANNEX I - Legislative mandate to develop draft technical standards

Article 4

ESMA shall develop draft regulatory technical standards specifying the contracts that are considered to have a direct, substantial and foreseeable effect within the EU or the cases where it is necessary or appropriate to prevent the evasion of any provision of this Regulation.

ESMA shall develop draft regulatory technical standards specifying the types of indirect contractual clearing arrangements that do not increase counterparty risk and ensure that assets and position benefit from the protection with equivalent effects as segregation and portability.

Article 5

ESMA shall develop draft regulatory technical standards specifying the following:

a) the details to be included in the notification from the competent authorities to ESMA;

b) the criteria to be assessed to determine if a class of derivatives should be subject to CCP clearing (standardisation, volume and liquidity, price availability);

Article 6

ESMA may develop draft regulatory technical standards to specify the details to be included in the public register on the classes of derivatives subject to the clearing obligation.

Article 8

ESMA shall develop drafts regulatory technical standards specifying the concept of liquidity fragmentation.

Article 9

ESMA shall develop draft regulatory technical standards specifying the details and type of the reports to trade repositories for the different classes of derivatives.

The reports shall contain at least:

a) the parties to the contract and, where different, the beneficiary of the rights and obligation arising from it;

b) the main characteristics of the contracts including the type, underlying maturity, notional value, price, and settlement date.

ESMA shall develop draft implementing technical standards determining:

a) the format and frequency of the reports for the different classes of derivatives;

b) the date by which derivatives contracts shall be reported, including any phase in for contracts entered into before the reporting obligation applies.

Article 10

ESMA shall develop draft regulatory technical standards setting:

a) criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity referred to in paragraph (3);

b) values of the clearing thresholds. The value of those thresholds shall be determined taking into account the systemic relevance of the sum of net positions and exposures by counterparty and per class of OTC derivatives.

Article 11

ESMA shall draft regulatory technical standards specifying:

a) the procedures and arrangements referred to in paragraph 1 of Article 11 (timely confirmation, portfolio reconciliation, etc.);

b) the market conditions that prevent marking-to-market and the criteria for using marking to model;

c) the details of the exempted intragroup transactions to be included in the notification competent authorities;

d) the details of the information to be publicly disclosed on exempted intragroup transactions.

Article 18

ESMA shall draft regulatory technical standards specifying:

a) the conditions under which Union currencies are to be considered as the most relevant for central banks of issue participation in CCP colleges;

b) the details of practical arrangements for the functioning of the colleges.

Article 25

ESMA shall draft regulatory technical standards specifying the information that the applicant third country CCP shall provide ESMA in its application for recognition.

Article 26

ESMA, in consultation with the members of the ESCB, shall develop draft regulatory technical standards specifying the minimum content of the rules and governance arrangements referred to in paragraphs (1) to (8):

a) organisational structure, lines of responsibility, internal control mechanisms and administrative and accounting procedures;

b) effective policies and procedures to ensure compliance with the Regulation;

c) separation between reporting lines for risk management and other CCP operations;

d) remuneration policy promoting sound and effective risk management;

e) information technology to ensure security, integrity and confidentiality of information maintained by the CCP;

f) disclosure of governance arrangements and governing rules and admission criteria;

g) independent audits of CCPs.

Article 29

ESMA shall develop draft regulatory technical standards specifying the details of the records and information to be retained by CCPs.

ESMA shall develop draft implementing technical standards to determine the format of the records and information to be retained.

Article 34

ESMA shall, in consultation with the members of the ESCB, develop draft regulatory technical standards specifying the minimum content and requirements of the business continuity policy and of the disaster recovery plan.

Article 41

ESMA shall, after consulting EBA and the ESCB, develop draft regulatory technical standards specifying the appropriate percentage and time horizons for the liquidation period and the calculation of historical volatility to be considered for the different classes of financial instruments taking into account the objective to limit procyclicality and the conditions under which portfolio margining practices can be implemented.

Article 42

ESMA shall, in close cooperation with the ESCB and after consulting EBA, develop draft regulatory technical standards specifying the framework for defining extreme but plausible market conditions, that should be used when defining the size of the default fund and of the other financial resources.

Article 44

ESMA shall, after consulting the relevant authorities and the members of the ESCB, develop draft regulatory technical standards specifying the framework for managing the CCP's liquidity risk that a CCP shall withstand.

Article 45

ESMA shall, after consulting the relevant authorities and the members of the ESCB, develop draft regulatory technical standards specifying the methodology for calculation and maintenance of the amount of the CCP's own resources to be used in the default waterfall.

Article 46

ESMA shall, after consulting, EBA, the ESRB and the ECSB develop draft regulatory technical standards specifying the type of collateral that could be considered highly liquid, such as cash, gold, government and

high-quality corporate bonds, covered bonds, and the haircuts and the conditions under which commercial bank guarantees may be accepted as collateral.

Article 47

ESMA shall, after consulting EBA and the ESCB, develop draft regulatory technical standards specifying the financial instruments that can be considered highly liquid, bearing minimal credit and market risk, the highly secured arrangements for the deposit of cash and financial instruments and the concentration limits.

Article 49

ESMA shall, after consulting EBA and the ESCB, develop draft regulatory technical standards specifying the following:

a) the type of tests to be undertaken for different classes of financial instruments and portfolios;

b) the involvement of clearing members or other parties in the tests;

c) the frequency of the tests;

d) the time horizons of the tests;

e) the key information to be publicly disclosed on the risk management model and assumptions adopted to perform the stress tests.

Article 56

ESMA shall develop draft regulatory technical standards specifying the details of the application for registration to ESMA.

ESMA shall develop draft implementing technical standards determining the format of the application for registration to ESMA.

Article 81

ESMA shall, after consulting the members of the ESCB, develop draft regulatory technical standards specifying the frequency and the details of the information referred to in paragraphs 1 (public disclosure) and 3 (disclosure to relevant authorities) as well as operational standards required in order to aggregate and compare data across repositories and for the entities referred to in paragraph 3 to have access to information as necessary. Those draft regulatory technical standards shall aim to ensure that the information published under paragraph 1 is not capable of identifying a party to any contract.

ANNEX II - Draft regulatory technical standards on OTC derivatives

COMMISSION DELEGATED REGULATION (EU) No .../..

of [date]

supplementing Regulation (EU) No xx/xxxx [EMIR] of the European Parliament and of the Council with regard to regulatory technical standards on OTC derivatives

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No xx/xxxx [EMIR] of the European Parliament and of the Council of dd mmmm yyyy on OTC derivatives, central counterpaties and trade repositories[11], and in particular Articles 4, 5, 6, 8, 10 and 11 thereof.

Whereas:

(1) In view of the global nature of the OTC derivatives market, this Regulation should take into account the relevant internationally agreed guidelines and recommendations on OTC derivatives market reforms and mandatory clearing and Principle 19 of CPSS-IOSCO Principles for Financial Market Infrastructures on tiered participation arrangements. This will ensure, as much as possible, consistency with the approach in other jurisdictions.

(2) To ensure that an indirect clearing arrangement does not expose the CCP, clearing member, client or indirect client to additional counterparty risk and that the assets and positions of the indirect client benefit from appropriate protections, indirect clearing arrangements should provide for specific rights and obligations of parties to the arrangement. In particular, the arrangements should ensure that clearing members and, to the extent necessary, the CCP routinely identify, monitor and manage any material risks arising from indirect clearing arrangements.

(3) Indirect clearing arrangements should be established so as to ensure that indirect clients retain continuous access to clearing services following the default of either the clearing member or the client of the clearing member providing those services. To ensure that indirect clients benefit from equivalent protection as clients, indirect clients should be included in the transfer of client positions to an alternative clearing member under the portability requirements established in Article 39 of Regulation 2012/XXX [EMIR]. Indirect clearing arrangements should ensure that appropriate safeguards are in place against client failure in particular they should support transferring indirect client positions to an alternative provider of clearing services. An alternative provider should not be compelled to accept transferred positions, unless by prior contractual arrangement, in order to avoid exposing the alternative providers to risks that they were not expecting to take.

(4) Indirect clients should benefit from an equivalent level of protection as direct clients. As a consequence, the requirements set out in this Regulation on the segregation and portability of positions and assets of indirect clients should prevail over any conflicting laws, regulation and administrative provisions of the Member State that prevents the parties from fulfilling them.

(5) In circumstances where indirect client positions cannot be transferred following a client default, contractual arrangements should be in place which ensure that the clearing member facilitates

[11] OJ.....

continuous access to clearing services by holding indirect client positions directly. To ensure the clearing member is able to manage the contingent risks stemming from this arrangement, indirect clearing arrangements should ensure that the clearing member receives from the client sufficient information to assess the scale of the risk, including the identity of each indirect client. As this information may be commercially sensitive, its use should be limited to risk management purposes only and an internal 'Chinese wall' should be established by each clearing member to prevent misuse of commercially-sensitive information.

(6) When it authorises a CCP to clear a class of OTC derivatives, the competent authority is required to notify the European Securities and Markets Authority (ESMA). This notification should include detailed information which is necessary for ESMA to carry out its assessment process, including information on liquidity and volume of the relevant class of OTC derivatives. Although the information flows from the competent authority to ESMA, it is the CCP having requested the authorisation that should initially provide the required information to the competent authorities which may then complement it.

(7) All information to be included in the notification from the competent authority to ESMA for the purpose of the clearing obligation may not always be available, especially for new products. Nevertheless, when available, estimates should be provided with a clear indication of the assumptions made. The notification should also contain information pertaining to the counterparties, such as the type and number of counterparties, the steps required to start clearing with a CCP, their legal and operational capacity or their risk management framework in order to allow ESMA to assess the ability of the active counterparties to comply with the clearing obligation without disruption to the market.

(8) The notification from the competent authority to ESMA should contain information on the degree of standardisation, liquidity and price availability, in order for ESMA to assess whether a class of derivatives should be subject to the clearing obligation. The criteria related to liquidity and price availability are assessed by ESMA with different considerations than the one made by the competent authority while authorising the CCP. Liquidity in this context is assessed on a wider perspective and differs from the liquidity after the clearing obligation would apply. In particular, the fact that a contract is sufficiently liquid to be cleared by one CCP does not necessarily imply that it should be subject to the clearing obligation. ESMA's assessment should not replicate or duplicate the controls already made by the competent authority.

(9) The information to be provided to ESMA for the purpose of the clearing obligation should enable ESMA to assess the availability of price information, there may be a difference between access to pricing information by the CCP at one point in time and access in the future to pricing information by market participants. In particular, the fact that a CCP has access to the necessary price information to be able to manage the risks of clearing the relevant derivative contracts within a certain class, does not automatically imply that the class of derivatives should be subject to the clearing obligation.

(10) The level of details available in the register of classes of OTC derivative contracts subject to the clearing obligation depends on the relevance of the criteria for each class of OTC derivative contracts. With practice and experience, ESMA may consider relevant to add additionnal characteristics as permitted pursuant to this Regulation.

(11) Allowing access by multiple CCPs to a trading venue could broaden participant access to that venue and therefore enhance overall liquidity. It is necessary in such circumstances to specify the notion of liquidity fragmentation within a venue where it may threaten the smooth and orderly functioning of markets for the class of financial instruments for which the request is made.

(12) The assessment of the competent authority of the trading venue to which a CCP has requested access and of the competent authority of the CCP should be based on the mechanisms available to prevent liquidity fragmentation within a trading venue.

(13) It would not be proportionate for clearing members of the CCP serving a trading venue which receive a request for access by another CCP to be required to become clearing members of the requesting CCP. Where there are entities which are clearing members of both CCPs, they may facilitate the transfer and clearing of transactions executed by market participants separately served by the two CCPs, to limit the risk of liquidity fragmentation. Nevertheless, it is important that a request to access a trading venue by a CCP does not fragment liquidity in a manner that would increase the risks to which the incumbent CCP is exposed.

(14) In order to establish which OTC derivative contracts objectively reduce risks, counterparties may apply one of the definitions provided in this Regulation including the accounting definition based on International Financial Reporting Standards rules. The accounting definition may be used by counterparties even though they do not apply IFRS rules. Some non-financial counterparties may use local GAAP. It is expected that most of the contracts classified as hedging under local GAAP would fall within the general definition of contracts reducing risks directly related to commercial activity or treasury financing activity provided for in this Regulation. In some circumstances, it may not be possible to hedge a risk by using a directly related derivative contract i.e. one with exactly the same underlying and settlement date as the risk being covered. In such case, the non-financial counterparty may use proxy hedging and use a closely correlated instrument to cover its exposure.

(15) While the clearing thresholds should be set taking into account the systemic relevance of the related risks, it is important to consider that the OTC derivatives that reduce risks are excluded from the computation of the clearing thresholds and that the clearing thresholds allow an exception to the principle of the clearing obligation for those OTC derivatives which may be considered as investments. More specifically, the value of the clearing thresholds should be reviewed periodically and should be determined by class of OTC derivative contracts. The classes of OTC derivatives determined for the purpose of the clearing thresholds may be different from the classes of OTC derivatives for the purpose of the clearing obligation. When a non-financial counterparty exceeds one of the clearing thresholds set for a class of OTC derivatives, the clearing threshold should be considered exceeded.

(16) The clearing thresholds are used by non-financial counterparties, they should therefore be simple to implement. For this purpose they should be based on the gross notional value of the OTC derivative contracts.

(17) For those OTC derivative contracts that are not cleared, risk mitigation techniques such as timely confirmation should apply. The confirmation of OTC derivative contracts may refer to one or more master agreements, master confirmation agreements, or other standard terms. It may take the form of an electronically executed contract or a document signed by both counterparties.

(18) It is essential that counterparties confirm the terms of their transactions as soon as possible following the execution of the transaction, especially when the transaction is electronically executed or processed, in order to ensure common understanding and legal certainty of the terms of the transaction. Counterparties entering into non-standard or complex OTC derivative contracts may need to implement tools and change market practices in order to comply with the requirement to timely confirm their OTC derivative contracts.

(19) To further mitigate risks, portfolio reconciliation enables each counterparty to undertake a comprehensive review of a portfolio of transactions as seen by its counterparty in order to promptly identify any misunderstandings of key transaction terms. Such terms should include the valuation of each transaction and may also include other relevant details such as the effective date, scheduled maturity date, any payment or settlement dates, the notional and currency of the transaction, the underlying instrument, the position of the counterparties, the business day convention and any relevant fixed or floating rates.

(20) Portfolio compression may also be an efficient tool for risk mitigation purpose. Financial counterparties and non-financial counterparties that have a portfolio of derivative contracts not cleared by a CCP above the level determined in this Regulation should have procedures in order to analyse the possibility to use portfolio compression that would allow them to reduce their counterparty credit risk.

(21) Dispute resolution aims at mitigating risks stemming from contract that are not centrally cleared. Counterparties should have an agreed framework for resolving any dispute when they enter into an OTC derivative transaction with each other. This framework intends to avoid that unresolved disputes increase and expose counterparties to additional risks. Disputes should be identified, managed and appropriately disclosed.

(22) For the purpose of specifying market conditions that prevent marking-to-market, it is necessary to specify inactive markets. A market may be inactive for several reasons including when there is

no regularly occurring market transactions on an arm's length basis. In such case there is no or a restrictive number of transactions.

(23) The technical standards related to marking-to-model applies to financial counterparties and non-financial counterparties above the clearing threshold and therefore has a broader scope that Directive 2006/49/EC on capital adequacy of investment firms and credit institutions which set requirements to be complied with when marking-to-model. Therefore, requirements set in this Regulation apply without prejudice to other applicable rules including the above mentioned Directive.

(24) The expertise and technical knowledge for the design of the model used for the marking-to-model lies with the senior management which should be appropriately involved in the development of this model. However, in order to ensure appropriate accountability, the approval of the model is the responsibility of the board or the delegated committee of the board.

(25) When counterparties can apply the intragroup exemption following their notification to the competent authorities but without waiting for a positive decision from such competent authorities, it is important to ensure that the competent authorities get appropriate and sufficient information in order to assess whether it should object to the use of the exemption.

(26) When counterparties apply an intragroup exemption, they should publicly disclose it in order to ensure transparency vis-a-vis market participants and potential creditors. This is particularly important for the potential creditors in terms of assessing risks as failing disclosure they may have the perception that the OTC derivative contracts entered into by this counterparty would be centrally cleared or subject to risk mitigation techniques when it would not be the case.

(27) It is desirable to include the technical standards related to the OTC derivatives in a single instrument since they either relate to the clearing obligation or they are closely related to that obligation.

(28) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.

(29) In accordance with Article 10 of Regulation (EU) No 1095/2010, ESMA has conducted open public consultations on the draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010.

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL

Article 1

Subject matter and scope

This regulation lays down the detailed rules supplementing Articles 4, 5, 6, 8, 10, 11 of Regulation (EU) No xx/xxxx [EMIR].

Article 2

Definitions

For the purpose of this Regulation

(1) 'indirect client' means the client of a client of a clearing member

(2) 'indirect clearing arrangement' means the service provided by a client of a clearing member to an indirect client.

CHAPTER II

INDIRECT CLEARING ARRANGEMENTS

Article 1 ICA

Indirect clearing arrangements

An indirect clearing arrangement meets the conditions referred to in the second subparagraph of paragraph 3 of Article 4 of Regulation 2012/XXX [EMIR] if it complies with the requirements of this Chapter.

Article 2 ICA

Structure of indirect clearing arrangements

1. Any client of a clearing member of a CCP shall be permitted to provide clearing services to one or more of its own clients, provided that the client of the clearing member is subject to appropriate regulatory requirements, including authorisation.

2. The contractual terms of an indirect clearing arrangement shall be defined by the client providing the service. They shall include an obligation on the clearing member to honour any obligations between the client and its indirect clients following the default of the client.

Article 3 ICA

Obligations of authorised CCPs

1. Indirect clearing arrangements shall not be subject to business practices by the CCP which act as a barrier to their establishment on reasonable commercial terms. The indirect clearing arrangements shall ensure that, at the request of a clearing member, the CCP maintains separate records and accounts enabling each client to distinguish in accounts held with the CCP the assets and positions of the client from those held for the accounts of the indirect clients of the client.

2. A CCP shall not be required to enter into direct contractual relationships with indirect clients. It shall identify, monitor and manage any remaining material risks arising from indirect clearing arrangements that could affect the resilience of the CCP.

Article 4 ICA

Obligations of clearing members and clients

1. A clearing member shall be required to facilitate indirect clearing arrangements on reasonable commercial terms. These terms shall be publicly disclosed by the clearing member.

2. When facilitating indirect clearing arrangements, a clearing member shall implement the following segregation arrangements as indicated by the client:

    a. keep separate records and accounts enabling each client to distinguish in accounts with the clearing member the assets and positions of the client from those held for the accounts of its indirect clients;

b. keep separate records and accounts enabling each client to distinguish in accounts with the clearing member the assets and positions held for the account of an indirect client from those held for the account of other indirect clients.

3. The requirement to enable each client to distinguish in accounts with the clearing member between assets held for different persons is met if the arrangements provide for the conditions specified in Article 39(9) of Regulation 2012/XXX [EMIR] to be met. The clearing member shall cooperate with each client that provides indirect clearing services to ensure that indirect clients are informed of the risks associated with the alternative segregation options described in paragraph 2. Such information shall include a description of the main legal implications of the respective levels of segregation offered including information on the insolvency law applicable in the relevant jurisdictions.

4. A clearing member shall establish robust procedures to manage the default of a client that provides indirect clearing services. These procedures shall be supported by the CCP and shall allow the transfer of such assets and positions to an alternative client or clearing member, or support the prompt liquidation of assets and positions of indirect clients. An alternative client or clearing member shall not be obliged to accept these assets and positions unless it has entered into a prior contractual agreement to do so.

5. Where the clearing member maintains records and accounts in accordance with paragraph 2(a), the procedures described in paragraph 4 shall include arrangements for obtaining the agreement of all of the indirect clients affected by the transfer. Where the clearing member maintains records and accounts in accordance with paragraph 2(b), the procedures described in paragraph 4 shall allow each indirect client to identify the client or clearing member to which its positions and assets will be transferred.

6. In circumstances where the positions and assets of indirect clients cannot be successfully transferred, the clearing member shall offer to hold directly the positions and assets in an equivalent account with the CCP for a period of at least 30 days and on reasonable commercial terms. These terms shall be specified in advance as part of the contractual relationship between the clearing member and the client.

7. The client shall provide sufficient information for the clearing member to evaluate and manage the counterparty risk that it could reasonably expect to incur in view of indirect clearing arrangements. The clearing member shall establish robust internal procedures to ensure this information cannot be used for commercial purposes. Details of these procedures shall be disclosed to clients and indirect clients on request.

8. A client that provides indirect clearing services shall keep separate records and accounts that enable it to distinguish between its own assets and positions and those held for the account of its indirect clients. It shall offer indirect clients a choice between the position and account segregation options described in paragraph 2 and cooperate with the clearing member and the CCP to ensure that indirect clients are fully informed of the risks associated with each option.

9. A client that provides indirect clearing services shall request the clearing member to open a segregated account at the CCP. The account shall be for the exclusive purpose of holding the assets and positions of its indirect clients. The client shall not be required to disclose information on individual indirect clients to the clearing member, except for the purposes specified in paragraph 7 or in the event of default. In the event of default, all information held by a client in respect of its indirect clients shall be made immediately available to the clearing member.

CHAPTER III

CLEARING OBLIGATION PROCEDURE

NOTIFICATION TO ESMA

Article 1 DET

Details to be included in the notification from the competent authority to ESMA

1. The notification referred to in Article 5(1) of Regulation No xx/2012 [EMIR] shall include the following information:
    a. a clear identification of the class of OTC derivatives;
    b. a clear identification of the OTC derivative contracts within the class of OTC derivative contracts;
    c. The other information to be included in the public register in accordance with Article 1 PR;
    d. any further characteristics necessary to distinguish OTC derivative contracts within the class of OTC derivative contracts from OTC derivative contracts outside that class;
    e. evidence of the degree of standardisation of the contractual terms and operational processes for the relevant class of OTC derivative contracts;
    f. data on the volume of the class of OTC derivative contracts;
    g. data on the liquidity of the class of OTC derivative contracts;
    h. evidence of availability to market participants of fair reliable and generally accepted pricing information for contracts in the class of OTC derivative contracts; and
    i. evidence, where available, of the impact of the clearing obligation on availability to market participants of pricing information;
2. For the purpose of assessing the date or dates from which the clearing obligation takes effect, including any phasing-in and the categories of counterparties to which the clearing obligation applies, the notification referred to in Article 5(1) of Regulation (EU) xx/2012 [EMIR] shall include at least the following:
    a. data relevant to assessing the expected volume of the class of OTC derivative contracts if it becomes subject to the clearing obligation;
    b. whether other CCPs already clear the same class of OTC derivative contracts;
    c. evidence of the ability of the CCP to handle the expected volume of the class of OTC derivative contracts if it becomes subject to the clearing obligation and to manage the risk arising from the clearing of the relevant class of derivative contracts;
    d. the type and number of counterparties active and expected to be active within the market for the class of OTC derivative contracts if it becomes subject to the clearing obligation;
    e. an outline of the different tasks to be completed in order to start clearing with the CCP, together with the determination of the time required to fulfil each task;
    f. information on the risk management, legal and operational capacity of the range of counterparties active in the market for the class of OTC derivative contracts if it becomes subject to the clearing obligation.
3. For the purpose of paragraph 1 points (f), (g), and paragraph 2 point (a), the notification shall include, for the class of OTC derivative contracts and for each derivative contract within the class, the following

relevant market information, including historical data, current data as well as any change that is expected to arise if the class of OTC derivative contracts become subject to the clearing obligation effect:

a. the number of transactions;

b. the total volume;

c. the total open interest ;

d. the depth of orders including the average number of orders and of requests for quotes;

e. the tightness of spread;

f. the measures of liquidity under stressed market conditions;

g. the measures of liquidity for the execution of default procedures.

4. For the purpose of paragraph 1 point (e), the notification shall include, for the class of OTC derivative contracts and for each derivative contract within the class, data on the daily reference price as well as the number of days per year with reference price it considers reliable over the previous 12 months.

5. The CCP having requested authorisation to clear the class of derivative contracts to which the notification refers to shall provide the information set out in paragraphs 1 to 4 to the competent authority.

6. A notification may include such other information as the competent authority considers is relevant to ESMA's tasks under Article 5 of Regulation (EU) N. X/2012 [EMIR].

7. Where, following a negative assessment by ESMA on the eligibility for the clearing obligation of a given class of OTC derivative contracts, the competent authority is informed that the market conditions or any of the information provided under paragraph 1 to 6 change in a way that might result in a positive assessment by ESMA, it shall submit a new notification with updated information to ESMA which shall perform an assessment on the eligibility of that class of OTC derivative contracts for the clearing obligation.

8. The evidence and information provided by the competent authority under paragraphs 1 and 2 shall be analysed by ESMA which will give due consideration to:

a. The evidence provided in the course of the public consultation referred to in Article 5(2) of the Regulation (EU) No xx/2012 [EMIR];

b. Where available, information gathered from trade repositories and execution venues ;

c. Where appropriate, information gathered from any other sources, including information gathered from the consultation with third country competent authorities referred to in Article 5(2) of Regulation (EU) No xx/2012 [EMIR].

CHAPTER IV

CRITERIA FOR THE DETERMINATION OF THE CLASSES OF OTC DERIVATIVE CONTRACTS SUBJECT TO THE CLEARING OBLIGATION

Article 1 CRI

Criteria to be assessed by ESMA

1. This Article specifies further the criteria referred to in points (a) to (c) of the first subparagraph of Article 5(4) of Regulation (EU) xx/2012 [EMIR].

2. In relation to the degree of standardisation of the contractual terms and operational processes of the relevant class of OTC derivative contracts, ESMA shall take into consideration:

    a. whether the contractual terms of the relevant class of OTC derivative contracts incorporate common legal documentation, including master netting agreements, definitions, standard terms and confirmations which set out contract specifications commonly used by counterparties;

    b. whether the operational processes of that relevant class of OTC derivative contracts are subject to automated post-trade processing and lifecycle events that are managed in a common manner to a timetable which is widely agreed among counterparties.

3. In relation to the volume and the liquidity of the relevant class of OTC derivative contracts, ESMA shall take into consideration:

    a. whether the margins or financial requirements of the CCP would be proportionate to the risk that the clearing obligation intends to mitigate;

    b. the stability of the market size and depth in respect of the product over time;

    c. the likelihood that market dispersion would remain sufficient in the event of the default of a clearing member;

    d. the number and the value of the transactions.

4. In relation to the availability of fair, reliable and generally accepted pricing information in the relevant class of OTC derivative contracts, ESMA shall take into consideration whether the information needed to accurately price the contracts within the relevant class of OTC derivative contracts is easily accessible to market participants on a reasonable commercial basis and whether it would continue to be easily accessible if the relevant class of OTC derivative contracts became subject to the clearing obligation.

CHAPTER V

PUBLIC REGISTER

Article 1 PR

Details to be included in ESMA's Register

1. This Article specifies the details to be included in the public register referred to in Article 6(1) of Regulation (EU) No xx/2012 [EMIR].
2. In relation to the classes of OTC derivative contracts that are subject to the clearing obligation pursuant to Article 4 of Regulation (EU) No xx/2012 [EMIR], the public register shall include for each class of OTC derivative contracts:
    a. the general class of OTC derivative contracts;
    b. the type of OTC derivative contracts within the class;
    c. the underlying of OTC derivative contracts within the class;
    d. for underlyings which are financial instruments, an indication of whether the underlying is a single financial instrument or issuer or an index or portfolio;
    e. for other underlyings an indication of the category of the underlying;

f. the currencies of OTC derivative contracts within the class;

g. the range of maturities of OTC derivative contracts within the class;

h. the settlement conditions of OTC derivative contracts within the class;

i. the range of payment frequency of OTC derivative contracts within the class;

j. the calculation and business day convention of OTC derivative contracts within the class;

k. the product identifier of the relevant class of OTC derivative contracts;

l. any other characteristic required to distinguish one contract in the relevant class of OTC derivative contracts from another.

3. In relation to CCPs that are authorised or recognised for the purpose of the clearing obligation, the public register shall include for each CCP:

   a. the identification code, in accordance with [Article 3 of ITS on trade repositories on Identification of Counterparties and other entities];

   b. the full name;

   c. the country of establishment;

   d. the competent authority designated in accordance with Article 22 of Regulation (EU) N. xxxx/2012 [EMIR]

4. In relation to the dates from which the clearing obligation takes effect, including any phased-in implementation, the public register shall include:

   a. the identification of the categories of counterparties to which each phase-in period applies;

   b. Any other condition required pursuant to the regulatory technical standards adopted under Article 5(2) of Regulation EU N. xx/2012 [EMIR], in order for the phase-in period to apply.

5. The public register shall include the reference of the regulatory technical standards adopted under Article 5(2) of Regulation EU N. xx/2012 [EMIR], according to which each clearing obligation was established

CHAPTER VI

LIQUIDITY FRAGMENTATION

Article 1 LF

Specification of the notion of liquidity fragmentation

1. This Article specifies the notion of liquidity fragmentation for the purpose of Article 8 of Regulation (EU) No X/2012 [EMIR].
2. Liquidity fragmentation refers to a situation in which the participants in a trading venue are unable to conclude a transaction with one or more other participants in that venue because of the absence of clearing arrangements to which all participants have access.
3. Access by a CCP to a trading venue which is already served by another CCP does not give rise to liquidity fragmentation within the trading venue if, without the need to impose a requirement on clearing members of the incumbent CCP to become clearing members of the requesting CCP, all participants to the trading venue have access, directly or indirectly, to either:

   a. at least one CCP in common; or

   b. clearing arrangements established by the CCPs.

4. The arrangements for the fulfilling of the conditions under point (a) or (b) of paragraph 3 shall be established before the requesting CCP starts providing clearing services to the relevant trading venue.

5. Access to a common CCP as referred to in point (a) of paragraph 3 may be established through clearing members, clients or through indirect clearing arrangements.

6. Clearing arrangements referred to in point (b) of paragraph 3 may foresee the transfer of transactions executed by such market participants to clearing members of other CCPs or, without prejudice to the conditions in the second subparagraph of Article 8(4) of Regulation EU xxxx/2012 [EMIR], take the form of interoperability arrangements under which the relevant CCPs agree to such arrangement and the relevant competent authorities approve it.

CHAPTER VII

NON FINANCIAL COUNTERPARTIES

Article 1 NFC

Criteria for establishing which OTC derivative contracts are objectively reducing risks

1. For the purpose of Article 10(3) of Regulation (EU) No X/2012 [EMIR], an OTC derivative contract is objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group, when, whether by itself or in combination with other derivative contracts, and whether directly or through closely correlated instruments, it meets one of the following conditions:

    a. it covers the risks arising from the potential change in the value of assets, services, inputs, products, commodities or liabilities that the non-financial counterparty or its group owns, produces, manufactures, processes, provides, purchases, merchandises, leases, sells or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the ordinary course of its business;

    b. it covers the risks arising from the potential indirect impact on the value of assets, services, inputs, products, commodities or liabilities referred to in subparagraph (a), resulting from fluctuation of interest rates, inflation rates or foreign exchange rates.

    c. it qualifies as a hedging contract pursuant to International Financial Reporting Standards (IFRS) adopted in accordance with Article 3 of Regulation (EC) No 1606/2002.

2. For the purpose of Article 10(3) of Regulation (EU) No X/2012 [EMIR], a derivative contract entered into by a non-financial counterparty or by other non-financial entities within the group to which the non-financial counterparty belongs shall not be considered as objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity of the non-financial counterparty or of that group if it is entered into for a purpose that is in the nature of speculation, investing or trading.

Article 2 NFC

Clearing thresholds

The clearing thresholds values for the purpose of Article 10 of Regulation No XXX/2012 [EMIR] shall be:

a. EUR 1 billion in notional value for credit derivative contracts;
b. EUR 1 billion in notional value for equity derivative contracts;
c. EUR 3 billion in notional value for interest rate derivative contracts;
d. EUR 3 billion in notional value for foreign exchange derivative contracts;
e. EUR 3 billion in notional value for commodity derivative contracts and other OTC derivative contracts not defined under (a) to (d).

CHAPTER VIII

RISK-MITIGATION TECHNIQUES FOR OTC DERIVATIVE CONTRACTS NOT CLEARED BY A CCP

Article 1 RM

Timely confirmation

1. This Article specifies procedures and arrangements for the purpose of Article 11(1)(a) of Regulation (EU) No X/2012 [EMIR].

2. An OTC derivative contract concluded with a financial counterparty or a non-financial counterparty that meets the conditions referred to in Article 10(1)(b) of Regulation (EU) N0 xxxx/2012 [EMIR] and which is not cleared by a CCP shall be confirmed, where available via electronic means, as soon as possible and at the latest by the end of the same business day.

3. Where a transaction referred to in paragraph 2 is concluded after 16.00 local time, or when the transaction is concluded with a counterparty located in a different time zone which does not allow same day confirmation, the confirmation shall take place as soon as possible and at the latest by the end of the next business day.

3. An OTC derivative contract concluded with a non-financial counterparty that does not meet the conditions referred to in Article 10(1)(b) of Regulation (EU) N0 xxxx/2012 [EMIR], shall be confirmed as soon as possible and at the latest by the end of the second business day following the date of execution.

4. Financial counterparties shall have the necessary procedure to report on a monthly basis to the competent authority designated in accordance with Article 48 of Directive 2004/39/EC the number of unconfirmed OTC derivative transactions referred to in paragraph 1 to 2 that have been outstanding for more than five business days.

Article 2 RM

Portfolio reconciliation

1. This Article specifies procedures and arrangements related to portfolio reconciliation for the purpose of Article 11(1)(b) of Regulation (EU) No X/2012 [EMIR].
2. Financial and non-financial counterparties to an OTC derivative contract shall agree in writing or other equivalent electronic means with each of their counterparties on the terms on which portfolios shall be reconciled. Such agreement shall be reached before entering into the OTC derivative contract.

3. Portfolio reconciliation shall be performed by the counterparties to the OTC derivative contracts with each other, or by a qualified third party duly mandated to this effect by a counterparty. The portfolio reconciliation shall cover key trade terms that identify each particular OTC derivative contract and

shall include at least the valuation attributed to each contract in accordance with Article 11(2) of Regulation (EU) No xxxx/2012 [EMIR].

4. In order to identify at an early stage, any discrepancy in a material term of the OTC derivative contract, including its valuation, the portfolio reconciliation shall be performed:

    a. each business day when the counterparties have 500 or more OTC derivative contracts outstanding with each other;

    b. otherwise, at an appropriate time period based on the size and volatility of the OTC derivative portfolio of the counterparties with each other and at least:

        i. once per month for a portfolio of fewer than 300 OTC derivative contracts outstanding with a counterparty;
        ii. once per week for a portfolio between 300 and 499 OTC derivative contracts outstanding with a counterparty.

Article 3 RM

Portfolio compression

1. This Article specifies procedures and arrangements related to portfolio compression for the purpose of Article 11(1)(b) of Regulation (EU) No X/2012 [EMIR].
2. Financial counterparties and non-financial counterparties with 500 or more OTC derivative contracts outstanding which are not centrally cleared shall have procedures to regularly, and at least twice a year, analyse the possibility to conduct a portfolio compression exercise in order to reduce their counterparty credit risk and engage in such a portfolio compression exercise. Financial counterparties and non-financial counterparties shall ensure that they are able to provide a reasonable and valid explanation to the relevant competent authority for concluding that a portfolio compression exercise is not appropriate.

3. Financial and non-financial counterparties shall terminate each of the fully offset OTC derivative contracts no later than when the compression exercise is finalised.

Article 4 RM

Dispute resolution

1. This Article specifies procedures and arrangements related to dispute resolution for the purpose of Article 11(1)(b) of Regulation (EU) No X/2012 [EMIR].
2. In order to identify and resolve any dispute between counterparties, financial counterparties and non-financial counterparties, shall, when concluding OTC derivative contracts with each other have agreed detailed procedures and processes in relation to the following matters:
    a. identification, recording, and monitoring of disputes relating to the recognition or valuation of the contract and to the exchange of collateral between counterparties. Those procedures shall at least record the length of time for which the dispute remains outstanding, the counterparty and the amount which is disputed;
    b. resolution of disputes in a timely manner;
    c. resolution of disputes that are not resolved within five business days, including third party arbitration or a market polling mechanism.

2. Financial counterparties shall report to the competent authority designated in accordance with Article 48 of Directive 2004/39/EC any disputes between counterparties relating to an OTC derivative contract, its valuation or the exchange of collateral for an amount or a value higher than EUR 15 million and outstanding for at least 15 business days.

Article 5 RM

Market conditions that prevent marking-to-market

1. For the purpose of Article 11(2) of Regulation (EU) x/2012 [EMIR], market conditions prevent marking-to market of an OTC derivative contract when:

   a. the market is inactive; or

   b. the range of reasonable fair values estimates is significant and the probabilities of the various estimates cannot reasonably be assessed.

2. A market for an OTC derivative contract is inactive when quoted prices are not readily and regularly available and those prices available do not represent actual and regularly occurring market transactions on an arm's length basis.

Article 6 RM

Criteria for using marking-to-model

For the purpose of Article 11(2) of Regulation (EU) x/2012 [EMIR], marking-to-model shall fulfil each of the following criteria:

a. incorporate all factors that counterparties would consider in setting a price, including using as much marking-to-market information as possible;

b. be consistent with accepted economic methodologies for pricing financial instruments;

c. be calibrated and tested for validity using prices from any observable current market transactions in the same financial instrument or based on any available observable market data;

d. be validated and monitored independently from the division taking the risk;

e. be duly documented and approved by the board as frequently as necessary and at least annually. This approval may be delegated to a committee.

Article 7 RM

Intragroup transaction notification details

1. This Article specifies the exempted intragroup transactions to be included in the application or notification referred to in paragraph 6 to 10 of Article 11 of Regulation (EU) No X/2012 [EMIR].
2. The application or notification shall be in writing and shall include the following information:

a. the legal counterparties to the transactions including their identifiers in accordance with [Article 3 of ITS on trade repositories on Identification of Counterparties and other entities];
b. the corporate relationship between the counterparties;
c. details of the supporting contractual relationships between the parties;
d. the category of intragroup transaction met by the counterparties as determined by Article 3 paragraphs 1 and 2 of Regulation (EU) No xxxx/2012 [EMIR];
e. details of the transactions for which the counterparty is seeking the exemption, including:

(i) the general class of OTC derivative contracts;

(ii) the type of OTC derivative contracts;

(iii) the underlyings;

(iv) the notional currencies;

(v) the range of contract tenors;

(vi) the settlement type;

(vii) the anticipated size, volumes and frequency of OTC derivative contracts per annum;

(viii) the total credit limits for engaging in OTC derivative contracts between the parties.

3. As part of its application or notification to the relevant competent authority a counterparty shall also submit supporting information evidencing that the conditions of Article 11 (6) to (10) of Regulation (EU) No xxxx/2012 [EMIR] are fulfilled including legal opinions or summaries, copies of documented risk management procedures, historical transaction information, copies of the relevant contracts between the parties.

4. A counterparty required to submit a notification of an intention to apply the exemption to the relevant competent authority in accordance with Articles 11(7) or 11(9) of Regulation (EU) No xxxx/2012 [EMIR] shall submit that notification within 14 days of utilising the relevant exemption.

5. Where a competent authority determines that further information is required in order to assess the fulfilment of the conditions of Article 11 (6) to (10) of Regulation (EU) No xxxx/2012 [EMIR], that relevant competent authority may submit a request for information to the counterparty. Such request shall be in writing.

6. A positive decision from a competent authority under Articles 11(6), 11(8) or 11(10) of Regulation (EU) No xxxx/2012 [EMIR] shall be communicated to the counterparty in writing including the following information:

a) whether the exemption is a full exemption or a partial exemption;
b) in the case of a partial exemption, a clear identification of the limitations of the exemption; and
c) any additional relevant information.

7. A negative decision by the relevant competent authority under Articles 11(6), 11(8) or 11(10) of Regulation (EU) No xxxx/2012 [EMIR] or an objection by the relevant competent authority under Articles 11(7) or 11(9) of Regulation (EU) No xxxx/2012 [EMIR] shall be communicated to the counterparty in writing and shall include:

(i) identification of the conditions of Article 11 (6) to (10) of Regulation (EU) No xxxx/2012 [EMIR] that have not been fulfilled; and

(ii) a detailed reasoning of why the competent authority deems those conditions not to be fulfilled.

8. A decision by a competent authority under Article 11(8) of Regulation (EU) No xxxx/2012 [EMIR] shall be communicated to the counterparty in accordance with paragraph 6 of this Article within 2 months of receipt of the application for exemption.

9. A decision by the competent authority of the financial counterparty under Article 11(10) of Regulation (EU) No xxxx/2012 [EMIR] shall be communicated to the competent authority of the non-financial counterparty in accordance with paragraph 6 of this Article within 2 months of receipt of the application for exemption.

10. The competent authority of the non-financial counterparty shall confirm whether it is in agreement with the decision of the competent authority of the financial counterparty within 2 months of receipt of the decision under the paragraph 1.

11. A notification by a competent authority in accordance with Article 11(11) of Regulation (EU) No xxxx/2012 [EMIR] shall be submitted to ESMA in writing.

12. The competent authority shall submit the notification to ESMA:

(i) With respect to a notification under Articles 11(7) or 11(9) of Regulation (EU) No xxxx/2012 [EMIR] within 1 month from receipt of the notification; and
(ii) With respect to a decision of the competent authority under Articles 11(6), 11(8) or 11(10) of Regulation (EU) No xxxx/2012 [EMIR], within 1 month from the decision being submitted to the relevant counterparty.

13. The notification to ESMA shall include the following information:

(i) The information listed in paragraph 2 of this Article;
(ii) Whether the decision is positive or negative;
(iii) In the case of a positive decision:
I. A summary of the basis on which the conditions of Article 11 (6) to (10) of Regulation (EU) No xxxx/2012 [EMIR] are deemed to have been fulfilled; and
II. In respect of Articles 11(6), 11(8) or 11(10) of Regulation (EU) No xxxx/2012 [EMIR], whether the exemption is a full exemption or a partial exemption.
(iv) In the case of a negative decision:
I. Identification of the conditions of Article 11 (6) to (10) of Regulation (EU) No xxxx/2012 [EMIR] that have not been fulfilled; and
II. A summary of why the competent authority deems the conditions in Article 11 (6) to (10) of Regulation (EU) No xxxx/2012 [EMIR] have not been fulfilled.

14. Where a negative decision or objection is communicated by a competent authority, a counterparty may submit a further application or notification in the case where there has been a material change in the circumstances that formed the basis of that decision or objection.

15. Counterparties that have submitted a notification or received a positive decision shall immediately notify the relevant competent authority of any change in circumstance that could affect the fulfilment of the conditions of Article 11 (6) to (10) of Regulation (EU) No xxxx/2012 [EMIR] . The Competent Authority may decide to object to the application of the exemption or to withdraw its decision. The counterparty may submit a renewed notification in accordance with paragraph 2 of this Article.

Article 8 RM

Intragroup transaction – Information to be publicly disclosed

For the purpose of Article 11(11) of Regulation (EU) xxxx/2012 [EMIR], a public disclosure of an exemption under paragraph 3 of that Article shall contain the following information:

a. the legal counterparties to the transactions including their identifiers in accordance with [cross reference to TR ITS];

b. the relationship between the counterparties;

c. whether the exemption is a full exemption or a partial exemption, and

d. the notional aggregate amount of the OTC derivative contracts for which the intragroup exemption applies.

Article []

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

[It shall apply from [...]. However, Articles x and y shall apply from [...].]

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

[For the Commission
The President]

[For the Commission
On behalf of the President]

[Position]

ANNEX III - Draft regulatory technical standards on CCP requirements

COMMISSION DELEGATED REGULATION (EU) No .../..

of [date]

supplementing Regulation (EU) No xx/xxxx [EMIR] of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central couterparties

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No xx/xxxx [EMIR] of the European Parliament and of the Council of dd mmmm yyyy on [OTC] derivatives transactions, central counterpaties and trade repositories[12], and in particular Articles 18, 25, 26, 29, 34, 41, 42, 44, 45, 46, 47, 49 thereof.

Whereas:

(1) Regulation (EU) No xx/xxxx [EMIR] establishes the general framework for a regulatory regime for central counterparties (CCPs) in the Union, setting out, among other matters: organisational requirements (including record keeping and business continuity) and prudential requirements (including in relation to margins, the default fund, liquidity risk controls, the default waterfall, collateral, investment policy, review of models, stress testing and backing). These provisions need to be adequately supplemented by technical standards in this Regulation to ensure that CCPs operate in a prudent and harmonised manner across the Union. It is desirable to include these technical standards in a single instrument since they all concern requirements with which CCPs must comply.

(2) To carry out its duties effectively, the relevant competent authority should be provided with access to all necessary information to determine whether the CCP is in compliance with its conditions of authorisation. Such information should be made available by the CCP without undue delay.

(3) In view of the global nature of financial markets these regulatory technical standards should take into account the CPSS-IOSCO Principles for Financial Market Infrastructures which serve as a global benchmark for regulatory requirements for CCPs together with relevant parts of the global regulatory standard on bank capital adequacy and liquidity agreed by the members of the Basel Committee on Banking Supervision which address the risk management of a CCP.

(4) It is important that CCPs are able to adopt more stringent standards than set forth in this Regulation if for risk management purposes it is deemed appropriate, the provisions should therefore be minimum requirements.

(5) In order to ensure a consistent and coherent functioning of colleges across the Union it is necessary to specify the arrangements for the participation in the colleges for CCPs to facilitate the exercise of the tasks specified in Regulation (EU) No xx/xxxx [EMIR] and in this Regulation.

---

[12] OJ.....

(6) The exclusion of a central bank of issue of a relevant Union currency of financial instruments cleared in the CCP does not affect the rights of such central bank of issue to request and receive information in accordance with Article 18(3) and 84 of Regulation (EU) No xx/xxxx [EMIR].

(7) The activity of a CCP may be relevant for a particular currency, the relevance of a currency for the participation of a central bank of issue should be determined by the share of that currency of the CCP activity, in order to maintain a proportionate size of the college.

(8) To ensure the college meetings achieve an effective outcome, the objectives of any meeting or activity of the college should be clearly identified by the competent authority of the CCP, in consultation with the college members. They should be circulated well in advance, preferably at least a week, to the participants together with documentation prepared by the CCP's competent authority and/or by other members of the college so that the discussion can be effective.

(9) To ensure the timely and up to date exchange of information amongst college members, the college should meet regularly and this meeting should give the opportunity to college members to discuss and provide input to the competent authority's review of the arrangements, strategy, process and mechanism employed by the CCP to comply with EMIR and this Regulation, as well as to discuss the competent authority's evaluation of the risks to which the CCP is, or may realistically be forecast to be, exposed and pose.

(10) ESMA should, as part of its general co-ordination role, seek to identify and promulgate best practice on colleges operations to ensure consistent practical arrangements of colleges across the EU.

(11) To ensure all the views of the college members are duly taken into account, the competent authority should do its utmost possible to ensure that any disagreement among authorities that have a right to become members of a college are resolved before finalising the written agreement for the establishment and functioning of the college. ESMA should facilitate the finalisation of the agreement through its mediation role, where appropriate.

(12) In order for college members to be able to consider effectively and reach a joint opinion on a risk assessment of the CCP, it is necessary that the provisions in this Regulation include practical arrangements concerning the contents of the risk assessment.

(13) It is important to ensure that recognised third country CCPs do not disrupt the orderly functioning of European markets or have competitive advantage to authorised CCPs, the information to be provided to ESMA under the recognition of third country CCP should enable ESMA to assess whether the CCP is in full compliance with the prudential requirements applicable in that third country. In addition, the equivalence determination by the Commission should ensure that the laws and regulations of the third country are equivalent to every provision under title IV of Regulation xxx/2012 [EMIR] and of this Regulation.

(14) ESMA may recognise a CCP established in a third country if the conditions established in Article 25 of Regulation xxx/2012 [EMIR] are fulfilled, ESMA is entitled to require additional information to the one strictly necessary to assess those conditions. In particular considering that not only prudential requirements are relevant for ensuring an adequate level of investor protection.

(15) The on-going assessment of the full compliance of the third country CCP with the prudential requirements of such third country is the duty of the third country competent authority, the information to be provided to ESMA by the applicant third country CCP should not have the objective of replicating the assessment of the third country competent authority, but ensuring that the CCP is subject to effective supervision and enforcement in the third country, thus guaranteeing a high degree of investor protection.

(16) To allow ESMA to perform a complete assessment, the information provided by the applicant third country CCP should be complemented by the relevant information to assess the effectiveness of the on-going supervision by the third country competent authority, enforcement powers and actions taken. Such information should be provided under the cooperation arrangement established in accordance with Article 25(2) letter (c) of Regulation xxx/2012 [EMIR]. Such cooperation arrangement should ensure that ESMA is informed in a timely manner on any supervisory or enforcement action against the CCP applying for recognition and any change of the conditions under which authorisation to the relevant CCP was granted on any

relevant update on the information originally provided by the CCP under the recognition process.

(17) The requirements of Regulation xxx/2012 [EMIR] relating to internal risk reporting lines need further specification to implement a risk-management framework, which includes the structure, rights and responsibilities of the internal risk management process. The governance arrangements should reflect the different corporate law requirements in the Union, in order to ensure that CCPs can operate under a sound legal framework.

(18) To ensure that a CCP implements the appropriate procedures to comply with this Regulation, Regulation (EU) No xx/xxxx [EMIR] and Regulation (EU) No xx/xxxx [Commission Implementing Regulation on record keeping], the role and responsibilities of a compliance function of a CCP should be specified.

(19) It is necessary to clearly define the responsibilities of the board and the senior management as well as to specify minimum requirements for the functioning of the board in order to ensure that the organisational structure of a CCP enables it to perform its services and activities in a continuous and orderly manner.

(20) It is important for CCP to establish dedicated head of risk, technology, compliance and other functions to promote clear responsibilities and ensure that relevant contact persons are available for specific functions that the competent authority can rely on.

(21) In order to ensure the sound and prudent management of a CCP it is important to establish a remuneration policy that disincentivises excessive risk taking. For the remuneration policy to produce the intended effects, it should be adequately monitored and reviewed by the board.

(22) It is necessary to define minimum requirements concerning information technology systems and information security frameworks, to ensure a high degree of security in information processing and to ensure that information technology systems work in a safe and efficient manner.

(23) Public Disclosure with respect to certain organisational requirements helps assessments as to whether and how the CCP meets requirements concerning sound and prudent management, thus ensuring an adequate degree of transparency.

(24) It is important for the operations of a CCP to be subject to internal and external audit processes that are frequent and sufficiently independent and for a CCP to define the responsibilities and reporting lines of internal auditors, to ensure that issues are escalated to the board of the CCP and to the competent authorities in a timely manner. When establishing and maintaining an internal audit function, its mission, independence and objectivity, scope and responsibility, authority, accountability and standards should be clearly defined.

(25) Data concerning the contracts cleared by CCPs and the positions held by the clearing members and clients of CCPs need to be recorded in order to provide competent authorities ESMA and the relevant members of the European System of Central Banks (ESCB) with a thorough knowledge of CCPs' credit exposure towards clearing members so that they can monitor the implied systemic risk. Such records also enable competent authorities and the relevant members of the ESCB to adequately re-construct the clearing process, in order to assess compliance with regulatory requirements. Once recorded, the data is also useful for CCPs in meeting regulatory requirements and obligations towards clearing members.

(26) Data concerning the internal organisation and the activities related to the business of CCPs needs to be recorded so as to ensure that competent authorities can verify the compliance of CCPs with relevant regulatory requirements. Once recorded, the data is also useful for CCPs to demonstrate compliance with regulatory requirements in case of disputes with clearing members.

(27) Data that is reported by CCPs to trade repositories needs to be recorded so as to empower competent authorities to verify the compliance of CCPs with the reporting obligation set out in the Regulation (EU) No xx/xxxx [EMIR] and to easily access information in cases where this cannot be found in trade repositories.

(28) The information recorded by CCPs plays an important role for the authorities in carrying out their duties. It is of utmost importance that the records are maintained in a safe and confidential manner and that other measures are implemented to grant all the information and details can be provided to the competent authorities and relevant members of the ESCB readily upon request.

The competent authority has due regard to the implicit and explicit costs prior to making such a request. The CCP should support authorities in interpreting and analysing the records maintained.

(29) The record-keeping requirements in relation to trades should make use of the same concepts used in the reporting obligation set out in Article 9 of Regulation (EU) No xx/xxxx [EMIR], in order to ensure appropriate reporting by CCPs.

(30) The continued and uninterrupted functioning of a CCP is of crucial importance for the financial markets. A CCP should therefore be required to ensure a minimum level of critical services and the recovery of its services with the shortest delay possible.

(31) The business continuity policy and disaster recovery plan of a CCP should ensure that the CCP can perform a minimum level of critical services following a disruption to its services.

(32) The secondary processing site of the CCP should be located sufficiently distant and in a sufficiently geographically distinct location from the primary site so that it would not be subject to the same disaster which may cause the unavailability of the primary site.

(33) Scenarios should be used to analyse the impact of crisis events on critical services. Such scenarios could for example include the unavailability of systems because of a natural disaster and are to be reviewed periodically.

(34) It is important that the default of a clearing member does not cause significant losses to other market participants. Therefore, CCPs are required to cover through margins posted by the defaulter, at least, a relevant proportion of the possible loss that during the close out process the CCP might have. This Regulation should determine the minimum percentage the margins should cover for different classes of financial instrument. Furthermore, it should provide CCPs with principles they should follow to adequately tailor their margin levels to the characteristics of each financial instrument or portfolio they clear.

(35) CCPs should not reduce their margins to a level that compromise their safety as a result of the existence of a highly competitive environment. For this reason, margin calculations should follow some minimum requirements in their basic components. In this sense, margins should take into account both the evolution in the recent period and in periods of stress.

(36) Margins should ensure that the CCP is adequately covered during the whole time period needed to manage its exposure to a defaulting member and during which the CCP is exposed to market risk related to the management of the defaulters' positions. To determine this period, the CCP should consider the relevant characteristics of the financial instruments or portfolio cleared, such as its level of liquidity, the size of the position or its concentration. CCPs should prudently evaluate the time periods that would take the complete closure of a defaulter position since the last collection of margins.

(37) CCPs should to the maximum extent practical and prudent avoid destabilising procyclical margin management practices or procyclical changes in these practices. In order to avoid causing or exacerbating financial instability.

(38) A suitable definition of extreme but plausible market conditions is a core component of CCP risk management. Member default exposes a CCP to market risk that will be more pronounced where markets are illiquid or prices are volatile.

(39) Extreme but plausible market conditions should not be considered as a static concept, but rather as conditions that evolve over time and vary across markets, in order to ensure that the CCP risk management framework remains up to date. One market scenario can be extreme but plausible for one CCP while not having great importance for another. A CCP should establish a robust framework for identifying the markets to which it is exposed and employ a common minimum set of standards for defining extreme but plausible conditions in each identified market. It should also consider objectively the potential for simultaneous pressures in multiple markets.

(40) To ensure appropriate and robust governance arrangements are in place, the framework used by a CCP to identify extreme but plausible market conditions should be discussed by the Risk Committee and approved by the Board. It should be reviewed annually, with results discussed by the Risk Committee and the shared with the Board. The review should ensure that changes to the scale and concentration of the CCP's exposures as well as the markets in which it operates are reflected in the definition of extreme but plausible market conditions. This review should not,

however, substitute for continuous judgment by the CCP on the adequacy of its default fund in light of evolving market conditions.

(41) To ensure efficient management of their liquidity risk, CCPs should be required to establish a liquidity risk management framework. The framework of a CCP should depend on the nature of its obligations and address the tools a CCP has available for assessing the liquidity risk it is facing, determining the liquidity pressures likely to occur and ensuring the adequacy of its liquid resources.

(42) In assessing the adequacy of its liquid resources, a CCP should be required to consider the size and liquidity of the resources it holds, as well as possible concentration risk of these assets.

(43) In order to effectively assess the adequacy of its liquid resources it is important that CCPs are able to identify all major kinds of liquidity risk concentrations within its resources that are immediately available and on which they can draw.

(44) As CCPs have connections with parties for different purposes, they should be required to consider the additional risks stemming from multiple relationships, interdependencies and concentration.

(45) As liquidity has to be readily available for same day transactions (or even intra-day transactions), a CCP might employ cash at the central bank of issue and at creditworthy commercial banks, committed lines of credit, and committed repos, as well as highly marketable collateral held in custody and investments that are readily available and convertible into cash with prearranged and highly reliable funding arrangements, even in stressed market conditions. However these should not be counted as part of prearranged liquid financial resources unless they satisfy the requirements established in this Regulation.

(46) The mandatory use of a CCP's dedicated own resources to cover part of the losses arising from the default of one or more of its clearing members is crucial in incentivising a CCP to implement sound and resilient measures for the management of counterparty credit risk.

(47) It is important to establish a common methodology for the calculation and the maintenance of a specific amount of these dedicated own resources a CCP should maintain to be used in the default waterfall, in order to provide the necessary incentive to the CCP to set prudent requirements and to keep this amount to an adequate level while avoiding regulatory arbitrage.

(48) Although the dedicated own resources to be used in the default waterfall are part of the capital that a CCP needs to maintain to conduct its business, these resources are separated and have a distinct function from the minimum capital requirements that should cover different risks to which a CCP might be exposed.

(49) To ensure the robustness of a CCP, the CCP should set appropriate standards so that it accepts only highly liquid assets as collateral.

(50) Acceptable collateral should satisfy a minimum set of criteria to ensure that is highly liquid and can be converted into cash rapidly and with minimal price impact. These criteria refer to the issuer of the collateral, the extent to which it can be liquidated in the market and whether its value is correlated with the credit standing of the member posting the collateral to cater for possible wrong-way risk. A CCP should have the option to apply additional criteria where necessary to achieve the desired level of robustness.

(51) To avoid wrong-way risk, clearing members should not in general be permitted to use their own securities or securities issued by an entity from the same group as collateral. However, a CCP should be able to allow clearing members to post covered bonds that are insulated from the insolvency of the issuer. The underlying collateral should nevertheless be appropriately segregated from the issuer and satisfy the minimum criteria for acceptable collateral. A clearing member should not issue financial instruments for the primary purpose of using it as collateral by another clearing member.

(52) A CCP should be required to accept as collateral a commercial bank guarantee only after a thorough assessment of the issuer and of the legal, contractual and operational framework of the guarantee in order to ensure that the collateral accepted by a CCP is sufficiently secured. The guarantee should always be backed by assets that satisfy the minimum criteria for acceptable collateral in order to ensure the CCP retains adequate protection against member default. The

CCP should accept such collateral from non-financial clearing members only and should only be able to do so to a limited extent in order to avoid excessive exposure by the CCP.

(53) To limit its market risk, a CCP should be required to value its collateral at least daily. It should apply prudent haircuts that reflect the potential decrease of value of the collateral over the interval between its last revaluation and the time by which the collateral can reasonably be assumed to be liquidated under stressed market conditions. The level of collateral should also take account of potential wrong-way risk exposures.

(54) The implementation of haircuts should enable the CCP to avoid large and unexpected adjustments on the amount of collateral required, thus avoiding to the extent possible pro-cyclical effects.

(55) A CCP should be required to avoid the risk of concentrating the collateral on a limited number of issuers or assets to avoid potential significant adverse price effects in case of liquidation of the collateral in a short period of time. Concentrated collateral positions should not be considered highly liquid for this reason.

(56) Liquidity, credit and market risk should be considered at portfolio level as well as at the level of an individual financial instrument. A concentrated portfolio can have a significant negative effect on the liquidity of the collateral or of the financial instruments in which the CCP can invest its financial resources, since selling large positions in stressed market conditions is unlikely to be feasible without depressing the market price.

(57) The criteria that financial instruments should meet to be considered eligible investments for the CCP, should take into account Principle 16 of the CPSS-IOSCO Principles for Financial Market Infrastructure in order to ensure international consistency. In particular, a CCP should be required to apply restrictive standards concerning the issuer of the financial instrument, the transferability of the financial instrument and the credit, market, volatility, inflation and foreign exchange risk of the financial instrument. A CCP should ensure that it does not undermine measures taken to limit the risk exposure of its investments by having excessive exposures to any individual financial instrument, type of financial instrument, individual issuer, and type of issuer or individual custodian.

(58) The use of derivatives by a CCP, whether for speculative or hedging purposes, exposes a CCP to additional credit and market risks and it is therefore necessary to define a restrictive set of circumstances in which a CCP can invest its financial resources in derivatives. In particular, speculative use of derivatives by CCPs is considered to be insufficiently prudent. Given that a CCP's aim should be to have a flat position with regards to market risk, the only risks that a CCP should need to hedge are those concerning the collateral that it accepts or the risks arising from the default of a clearing member. Risks concerning the collateral that a CCP accepts can be sufficiently managed through haircuts and it is not considered necessary for a CCP to use derivatives in this regard. Derivatives should only be used by a CCP for the purposes of hedging the portfolio of a defaulted clearing and only where the CCP's default management procedures envisage such use.

(59) To ensure that CCPs are always adequately protected against liquidity risk, the maintenance of cash in a secure form should not impact on the CCP's management of liquidity.

(60) It is necessary to set out rigorous stress and back testing requirements to ensure that a CCP's models, their methodologies and liquidity risk management framework work properly, taking into account all risks the CCP is exposed to, so that the CCP has at all times adequate resources to cover those risks.

(61) To ensure consistent application of requirements for CCPs it is necessary to set out detailed provisions with respect to the types of test to be undertaken: including both stress and back testing. In order to cater for the wide range of security and derivative contracts which may be cleared in the future, reflect differences in CCP's business and risk management approaches, allow for future developments and new risks to be dealt with and allow for sufficient flexibility, a criteria based approach is necessary.

(62) Various aspects of a CCP's financial resources, notably margin coverage, default funds and other financial resources, are designed to cover different scenarios and objectives, it is therefore necessary to provide specific requirements to reflect these objectives and to ensure consistent application across CCP's. The combination of margin, default fund contributions and other

financial resources should at the least ensure coverage in the event that the two clearing members with the largest exposures default in extreme but plausible market conditions. In assessing the necessary coverage in such a scenario the CCP should not net off any exposures between these two clearing members, in order to avoid reducing the potential impacts that these exposures might have.

(63) The Basel Committee on Banking Supervision identified specific risk factors by asset class that could be incorporated in stress testing for banks. Those factors that are relevant for stress testing CCPs' models, their methodologies and liquidity risk management framework should be reflected in the requirements CCPs should comply with.

(64) The different types of financial instruments which a CCP may clear are subject to a variety of specific risks. A CCP should therefore be required to consider all the risks relevant to the business it provides clearing services for in its models, their methodologies and liquidity risk management framework to ensure it adequately measures its potential future exposure. In order for such risks to be properly considered, stress testing requirements should include instrument-specific risks relevant to different types of financial instruments. For example, a CCP clearing equity related products should consider in its stress testing the movement of related industry sectors or cyclical or non-cyclical sectors.

(65) For a CCP to ensure that its model for calculating initial margins adequately reflects its potential exposures, in addition to the daily back testing of its margin coverage which looks at the adequacy of the margin being called, it should also back test key assumptions of the model, which if incorrect may have a significant impact on the ability of the CCP's model to calculate initial margin accurately.

(66) Rigorous sensitivity analysis of margin requirements may take on increased importance when markets are illiquid or volatile and should be used to determine the impact of varying important model parameters. Sensitivity analysis is an effective tool to explore hidden shortcomings that cannot be discovered through back testing.

(67) It is important for a CCP to conduct its stress and back tests regularly in order to ensure that a CCP's models, their methodologies and liquidity risk management framework appropriately take into account relevant market factors and circumstances. Failures to do so could lead to a CCP's financial and liquid financial resources being inadequate to cover the actual risks it is exposed to. This will also allow a CCP's models, their methodologies and liquidity risk management framework to deal with changing markets and new risks promptly.

(68) Modelling extreme market conditions can help a CCP determine the limits of its current models, liquidity risk management framework, financial resources and liquid financial resources; however, it requires the CCP to exercise judgment when modelling different markets and products. Reverse stress testing should be considered a helpful management tool but need not, necessarily, drive the CCP's determination of the appropriate level of financial and liquid financial resources.

(69) The involvement of clearing members, clients and other relevant stakeholders in the testing of a CCP's default management procedures, through simulation exercises, is essential to ensure that they have the understanding and operational capability to successfully participate in a default management situation. Simulation exercises should replicate a default scenario to demonstrate the roles and responsibilities of clearing members, clients and other relevant stakeholders. Additionally it is important that a CCP has appropriate mechanisms that enable it to ascertain whether corrective action is required and to identify any lack of clarity in, or discretion allowed by, the rules and procedures. The testing of a CCP's default management procedures is particularly important where it relies on non-defaulting clearing members or third parties to assist in the close-out process and where the default procedures have never been tested by an actual default.

(70) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.

(71) The European Securities and Markets Authority (ESMA) has consulted, where relevant, the relevant authorities and the members of the European System of Central Banks (ESCB) before submitting the draft technical standards on which this Regulation is based. In accordance with Article 10 of Regulation (EU) No 1095/2010, ESMA has conducted open public consultations on

such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010.

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL

Article 1

Subject matter

This regulation lays down the detailed rules supplementing Articles 18, 25, 26, 29, 34, 41, 42, 44, 45, 46, 47 and 49 of Regulation (EU) No xx/xxxx [EMIR].

Article 2

Definitions

For the purpose of this Regulation, the following definitions shall apply:

(1) 'back testing' means an ex-post comparison of observed outcomes with expected outcomes derived from the use of margin models.

(2) 'basis risk' means the risk arising from less than perfectly correlated movements between two or more assets or contracts cleared by the CCP.

(3) 'clearing unit' means any part or personnel of a CCP that performs any clearing activities within the CCP.

(4) 'confidence interval' means the percentage of exposures movements for each financial instrument cleared with reference to a specific lookback period that a CCP is required to cover over a certain liquidation period.

(5) 'convenience yield' means the benefits from direct ownership of the physical commodity and is affected both by market conditions and by factors such as physical storage costs.

(6) 'financial resources' means the sum of financial resources available to a CCP in accordance with Article 41 to 43 of Regulation (EU) No xx/xxxx [EMIR].

(7) 'haircut' means the difference between the market value of an asset and its value when posted as collateral.

(8) 'initial margin' means margin collected by the CCP to cover potential future exposure to clearing members providing the margin and, where relevant, interoperable CCPs in the interval between the last margin collection and the liquidation of positions following a default of a clearing member or of an interoperable CCP default.

(9) 'jump to default risk' means the risk that a counterparty or issuer defaults suddenly before the market has had time to factor in its increased default risk.

(10) 'liquidation period' means the time period used for the calculation of the margins that the CCP estimates it is needed to manage its exposure to a defaulting member and during which the CCP is exposed to market risk related to the management of the defaulters' positions.

(11) 'lookback period' means the time horizon for the calculation of historical volatility.

(12) 'margins' means margins as referred to in Article 41 of Regulation (EU) No xx/xxxx [EMIR] which can be, at least, composed of initial margins and variation margins.

(13) ‘money-market instrument’ means money-market instruments as defined in Article 4(1)(19) of Directive 2004/39/EC[13].

(14) ‘stress testing’ means the application of stressed parameters, assumptions, and scenarios to the models used for the estimation of risk exposures to make sure that a CCP’s financial resources would be sufficient to cover those exposures under extreme but plausible market conditions.

(15) ‘testing exception’ means where a CCP’s model or liquidity risk management framework did not identify the appropriate amount of coverage necessary to achieve the intended coverage.

(16) ‘transferable securities’ means transferable securities as defined in Article 4(1)(18) of Directive 2004/39/EC.

(17) ‘variation margin’ means margins collected or paid out to reflect current exposures resulting from actual changes in market price.

(18) ‘wrong-way risk’ means the risk arising from exposure to a counterparty or issuer which is adversely correlated with the credit quality of that counterparty.

(19) ‘independent party’ means a party that is sufficiently separate from the part of the CCP’s business that develops, implements and will operate the model or policies being reviewed without a material conflict of interest; this could either be an internal party that has separate reporting lines or an external party.

CHAPTER II

COLLEGE

Article 1 CG

General

This Chapter specifies the conditions under which the Union currencies referred to in Article 18(2)(h) of Regulation (EU) No X/2012 are to be considered as the most relevant for the participation of the relevant central banks of issue in the college, and the details of practical arrangements for the functioning of colleges for the purpose of Article 19 of that Regulation.

Article 2 CG

Determination of most relevant currencies

1. The most relevant Union currencies shall be identified on the basis of the relative share of each currency in the CCP’s average end-of-day open positions across all financial instruments cleared by the CCP, calculated over a period of one year.
2. The most relevant Union currencies shall be the three currencies with the highest relative share calculated in accordance with paragraph 1 provided that their share exceeds 10 per cent.
3. The calculation of the relative share of the currencies shall be calculated on an annual basis.

[13] OJ L 145, 30.4.2004, p. 1

Article 3 CG

The operational organisation of colleges

1. The written agreement on the establishment and functioning of the college shall be established by the CCP's competent authority, following consultation with the other members of the college.

2. To establish the written agreement, the CCP's competent authority shall draft a proposal, circulate it for discussion to the members of the college and decide on the final written agreement. The written agreement shall include a process for annual review and for changes to it to be initiated at any time by the CCP's competent authority or other members of the college, subject to approval by the college.

3. All members of the college shall sign the written agreement without conditions or reservations. When an authority refuses to sign the agreement, this shall not impact the cooperation between the other signatories.

Article 4 CG

Membership and participation in the colleges

1. Where a request for information is made to a college by a competent authority of a Member State which is not a member of the college in accordance with Article 18(3) of Regulation (EU) No X/2012 [EMIR], the CCP's competent authority, after having consulted the college, shall decide on the most appropriate way to provide and request information to and from the authorities that are not members of the college.

2. Each member of the college shall designate one participant to attend the meetings of the college and may designate one alternate, with the exception of the CCP's competent authority which may require additional participants who shall have no voting rights.

3. Where the central bank of issue of one of the most relevant Union currencies corresponds to more than one central bank, the relevant central banks shall determine the single representative who will participate in the college.

4. Where a member of the college has the right to participate in the college under more than one of points (c) to (h) of Article 18 (2) of Regulation (EU) No X/2012 [EMIR], it may nominate additional participants who shall have no voting rights.

5. Where in accordance with this Article there is more than one participant from a college member, or there are more college members belonging to the same Member State than number of votes that can be exercised by those college members in accordance with Article 19(3) of Regulation (EU) No X/2012 [EMIR], that college member or those college members shall inform the college which participants shall exercise voting rights.

Article 5 CG

Governance of the colleges

1. The CCP's competent authority shall ensure that the work of the college facilitates the tasks to be performed according to Articles 15, 17, 49, 51 and 54 of Regulation (EU) No X/2012 [EMIR].

2. The college shall notify ESMA of any tasks that the college wishes or is required to perform in addition to paragraph 1. ESMA shall have a coordination role in monitoring the tasks performed by a college and ensuring that its objectives are in line with those of other colleges so far as possible.

3. The CCP's competent authority, shall at least ensure that:

   a. the objectives of any meeting or activity of the college are clearly identified;

   b. the number of participants does not undermine the effectiveness of college meetings or activities while ensuring that all college members are fully informed of the college activities that are relevant to them;

   c. the timetable for meetings or activities of the college is defined so that their outcome provides decisive assistance to the supervision of the CCP;

   d. the CCP and other key stakeholders have a clear understanding of the role and functioning of the college;

   e. the activities and effectiveness of the college are regularly reviewed and remedial action is taken if the college is not operating effectively.

4. To ensure the efficiency and effectiveness of the college, the CCP's competent authority shall act as a central point of contact for any matter related to the practical organisation of the college. The CCP's competent authority shall ensure that at least the following tasks are performed:

   a. draw-up, update and circulate the contact list of college members;
   b. circulate the agenda as well as documentation for meetings or activities of the college;
   c. record minutes of the meetings and formalise action points;
   d. manage the college website or other electronic information-sharing mechanism, if any;
   e. where practical, provide information and specialised teams where appropriate, to assist the college in its tasks;
   f. information is appropriately shared among members of the college.

5. The frequency of college meetings shall be determined by the CCP's competent authority having regard to the size, nature, scale, complexity and potential impacts of the activities of the CCP, external circumstances and potential requests by college members. There shall be at least an annual meeting of the college and if deemed necessary by the CCP's competent authority, a meeting each time that an authorisation or extension of authorisation decision needs to be taken. The CCP's competent authority shall organise, periodically, multilateral meetings between members of the college and the senior management of the CCP.

Article 6 CG

Exchange of information among authorities

1. Each member of a college shall provide the CCP's competent authority with all information necessary for the operational functioning of the college and for the performance of the key activities in which the member participates. The CCP's competent authority shall provide the members of the college with similar information.

2. The CCP's competent authority shall at least provide the following information to the college:

   a. significant changes to the structure and ownership of the CCP's group;

b. significant changes in the level of the CCP's capital;
c. changes in the organisation, senior management, processes or arrangements that have a significant impact on governance or risk management;
d. a list of clearing members of the CCP;
e. details of the authorities involved in supervision of the CCP, including any changes in their responsibilities;
f. information on any material threats to the CCP's ability to comply with EMIR and the technical standards;
g. difficulties that have potentially significant spill-over effects;
h. factors which suggest a potentially high risk of contagion;
i. significant developments in the financial position of the CCP;
j. early warnings of possible liquidity difficulties, major fraud;
k. events of member default;
l. sanctions and exceptional supervisory measures;
m. reports on performance problems or incidents occurred;
n. regular data on the activity of the CCP, the scope and frequency of which shall be agreed as part of the written agreement described in Article 2 CG;
o. overview of major commercial proposals, including new products or services to be offered;
p. changes in the CCP's risk model, stress testing and back testing;
q. changes in the CCP's interoperability arrangements, where applicable.

3. The exchange of information between the members of the college shall reflect their responsibilities and information. To avoid unnecessary information flows, the exchange of information shall be kept proportionate and risk-focused.
4. Authorities which receive confidential information from the college shall ensure that it is only used in the course of their duties in accordance with Article 84 (2) of Regulation (EU) No xx/xxxx [EMIR].

5. The members of the college shall consider the most effective ways of communicating information to ensure continuous, timely and proportionate exchange of information.

Article 7 CG

Voluntary sharing and delegation of tasks

1. College members shall agree upon detailed terms of any specific delegation arrangements and arrangements for the voluntary entrustment of tasks to other members, in particular in the case of delegations which will result in the delegation of a member's main supervisory tasks.

2. Parties to specific delegation arrangements and arrangements for the voluntary entrustment of tasks shall agree on detailed terms which cover at least the following topics:

   a. the specific activities in clearly specified areas that will be entrusted or delegated;
   b. the procedures and processes to be applied;
   c. the role and the responsibilities of each party;
   d. the type of information to be exchanged among the parties.

3. The sharing and delegation of tasks shall not purport to result in a change in the allocation of the decision-making power of the CCP's competent authority.

Article 8 CG

Opinion of the college

1. The risk assessment report to be prepared by a CCP's competent authority in accordance with Article 19(1) of Regulation (EU) No X/2012 [EMIR] shall contain, at least, the key risks that the CCP is exposed to and how the CCP proposes to mitigate these risks.

2. The report shall be submitted to the college within an appropriate timescale to ensure that college members are able to review it and contribute to it if required.

3. The competent authority of the CCP, as the chair of the college, shall take steps to ensure a joint opinion is reached on the risk assessment in accordance with Article 19 (1) and in accordance with the voting procedures as set out in Article 19 (3) of Regulation (EU) No xx/xxxx [EMIR].

4. The written agreement referred to in Article 3 CG shall specify a quorum for meetings of the college.

5. The CCP's competent authority shall endeavour to ensure that each college meeting has a quorum. In the case that a quorum is not met, the chair shall ensure that any decisions that need to be taken are postponed until a quorum is present.

Article 9 CG

Emergency Situations

1. Where an emergency situation as described in Article 24 of Regulation (EU) No xx/xxxx [EMIR] has arisen, the CCP's competent authority shall ensure that the relevant information is shared with the college in whatever means or forum is the most appropriate to avoid unnecessary delay.

2. The CCP's competent authority shall organise and set the agenda for an annual crisis management planning meeting amongst members of the college in cooperation with the CCP if necessary.

CHAPTER III

RECOGNITION OF THIRD COUNTRY CCPs

Article 1 3C

Information to be provided to ESMA for the recognition of a CCP

1. An application for recognition from a CCP established in a third country in accordance with Article 25 of Regulation (EU) No xxx/2012 [EMIR] shall contain the following information:

   (a) its rules and internal procedures with evidences of full compliance with the requirements applicable in that third country;

   (b) details of its financial resources, the form and methods in which they are maintained and the arrangements to secure them;

(c) details on the margin methodology and for the calculation of the default fund;

(d) a list of the eligible collateral;

(e) classes of financial instruments cleared;

(f) identities of the shareholders or members with qualifying holdings;

(g) results of the stress tests and back tests performed during the year preceding the date of application;

(h) a list of the Member States in which it intends to provide services;

(i) details of any outsourcing arrangements;

(j) details of any interoperability arrangement, including the information provided to the third country competent authority for the purpose of assessing the arrangement.

CHAPTER IV

ORGANISATIONAL REQUIREMENTS

Article 1 ORG

Governance arrangements

1. The governance arrangements shall be designed in such a way as to promote the sound and prudent management of the CCP and thereby support financial stability and foster fair and efficient markets.

2. A CCP shall define its organisational structure as well as the policies, procedures and processes by which its board and senior management operate. These arrangements shall be clearly specified and well-documented.

3. Key components of the governance arrangements to be defined by the CCP shall include:

   (a) the composition, role and responsibilities of the board and any board committees
   (b) the roles and responsibilities of the management;
   (c) the senior management structure;
   (d) the reporting lines between the senior management and the board;
   (e) the procedures for the appointment of board members and senior management;
   (f) the design of the risk management, compliance and internal control functions; and
   (g) the processes for ensuring accountability to stakeholders.

4. A CCP shall establish lines of responsibility which are clear, consistent and well-documented. A CCP shall specify clearly a dedicated head of risk, technology, compliance and any other function it considers material to meet the requirements under Regulation (EU) No xx/xxxx [EMIR] and this Regulation.

5. A CCP that is part of a group shall take into account any implications of the group for its own governance arrangements including whether it has the necessary level of independence to meet its regulatory obligations as a distinct legal entity and whether its independence could be compromised by the group structure or by board members also being members of the board of

other parts of the same group. In particular, such a CCP shall consider specific procedures for preventing and managing conflicts of interest including with respect to outsourcing arrangements. Without prejudice to outsourcing arrangements, a CCP shall have its own dedicated human resources which are not shared with other group entities.

6. Where a CCP maintains a two-tiered board system, the role and responsibilities of the board and senior management shall be allocated to the supervisory board and the management board as appropriate.

7. The risk management policies, procedures, systems and controls shall be part of a coherent and consistent governance framework that is reviewed and updated regularly.

Article 2 ORG

Risk management and internal control mechanisms

1. A CCP shall have a sound framework for the comprehensive management of all material risks to which it is or may be exposed. A CCP shall establish documented policies, procedures and systems that identify, measure, monitor and manage such risks. In establishing risk-management policies, procedures and systems, a CCP shall provide incentives to its clearing members to manage and contain the risks they pose to the CCP.

2. A CCP shall take an integrated and comprehensive view of all relevant risks. These include the risks it bears from and poses to its clearing members and, to the extent practicable, clients as well as the risks it bears from and poses to other entities such as, but not limited to interoperable CCPs, securities settlement and payment systems, settlement banks, liquidity providers, central securities depository, trading venues served by the CCP and other critical service providers. A CCP shall develop appropriate risk management tools to be in a position to manage and report on all relevant risks. These shall include the identification and management of system, market or other interdependencies. A CCP shall provide uninterrupted clearing services following problems elsewhere in the group of the CCP or as a result of activities linked to clearing. If a CCP provides services linked to clearing that present a distinct risk profile from, and potentially pose significant additional risks to its functions, it shall manage those additional risks adequately. This may include separating legally the additional services that the CCP provides from its core functions, or taking equivalent action in an appropriate way.

3. The governance arrangements shall ensure that the board of a CCP assumes final responsibility and accountability for managing the CCP's risks. The board shall determine and document an appropriate level of risk tolerance and risk bearing capacity for the CCP. The board and senior management shall ensure that the CCP's policies, procedures and controls are consistent with the CCP's risk tolerance and risk bearing capacity and that address how the CCP identifies, reports, monitors and manages risks.

4. A CCP shall employ robust information and risk-control systems to provide the CCP and, where appropriate, its clearing members and, to the extent practicable, clients with the capacity to obtain timely information and to apply risk management policies and procedures appropriately. These systems shall ensure, at a minimum that credit and liquidity exposures are monitored continuously at the CCP level as well as at the clearing member level and, to the extent practicable, at the client level.

5. A CCP shall establish a risk management function. The CCP shall ensure that the risk management function has the necessary authority, resources, expertise and access to all relevant information, is sufficiently independent from the management and has a direct reporting line to the board. The

CCP shall appoint a chief risk officer who shall implement the risk management framework including the policies and procedures established by the board.

6. A CCP shall have adequate internal control mechanisms to assist the board in monitoring and assessing the adequacy and effectiveness of a CCP's risk management policies, procedures and systems. Such mechanisms shall include sound administrative and accounting procedures, a robust compliance function and an independent internal audit and validation or review function.

7. A CCP shall inform the competent authority and the clearing members of the applicable haircuts and of the conditions implying a modification in the applicable haircuts, including by demonstrating that pro-cyclical effects are suitably limited. A CCP shall notify the competent authority, and where appropriate seek its authorisation, and the clearing members of any amendment.

8. A CCP shall inform the competent authority and the clearing members of the applicable concentration limits on collateral. A CCP shall also notify the competent authorities and the clearing members of any amendment to these limits.

9. If the CCP breaches its concentration limit policies and procedures, it shall inform the competent authority immediately. The CCP shall rectify the breach at the earliest possible opportunity.

10. A CCP shall keep its accounts in conformity with international standards adopted in accordance with Article 3 of Regulation (EC) 1606/2002 Financial statements shall be prepared on an annual basis and be audited by statutory auditors or audit firms within the meaning of Directive 2006/43/EC.

Article 3 ORG

Compliance

1. A CCP shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the CCP and its employees to comply with the CCP's obligations under this Regulation, the Regulation (EU) No xx/xxxx [EMIR] and Regulation (EU) No xx/xxxx [Commission Implementing Regulation], as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the competent authorities to exercise their powers effectively under these Regulations.

2. A CCP shall ensure that its rules, procedures and contractual arrangements are clear and comprehensive and in compliance with this Regulation, Regulation (EU) No xx/xxxx [EMIR] and Regulation (EU) No xx/xxxx [Commission Implementing Regulation] as well as all other applicable regulatory and supervisory requirements and that its activities and operations are legally sound. The rules, procedures and contractual arrangements of the CCP shall be recorded in writing or another durable medium within the meaning of Directive 2002/65/EC. These rules, procedures, and contractual arrangements and any accompanying material shall be accurate, up-to-date and readily available to the competent authority, clearing members and, where appropriate, clients. A CCP shall identify and analyse through independent legal opinions, as appropriate, the soundness of the rules, procedures and contractual arrangements of the CCP. The CCP shall have a process for proposing and implementing changes to its rules and procedures and consult with clearing members and the competent authority on any relevant changes.

3. In developing its rules, procedures and contractual arrangements a CCP shall consider relevant regulatory principles and industry standards and market protocols and clearly indicate where such practices have been incorporated into the documentation governing the rights and obligations of

the CCP, its clearing members and other relevant third parties. In particular, a CCP shall clearly indicate the extent to which it relies on determinations by third parties.

4. A CCP shall identify and analyse through independent legal opinions, as appropriate, potential conflict of laws issues and develop rules and procedures to mitigate legal risk resulting from such issues. A CCP's rules and procedures shall clearly indicate the law that is intended to apply to each aspect of the CCP's activities and operations.

5. A CCP shall establish and maintain a permanent and effective compliance function which operates independently. The CCP shall ensure that the compliance function has the necessary authority, resources, expertise and access to all relevant information. When establishing its compliance function the CCP shall take into account the nature, scale and complexity of its business, and the nature and range of the services and activities undertaken in the course of that business. The method of determining the remuneration of the relevant persons involved in the compliance function must not compromise their objectivity or be likely to do so.

6. The CCP shall designate a chief compliance officer who is responsible for the compliance function and who shall be sufficiently independent from senior management, report directly to the board. The chief compliance officer shall at least : as a minimum, have the following responsibilities:

    (a) monitor and, on a regular basis, assess the adequacy and effectiveness of the measures put in place in accordance with paragraph 4 and the actions taken to address any deficiencies in the CCP's compliance with its obligations;
    (b) administer the compliance policies and procedures established by senior management and the board;
    (c) advise and assist the persons responsible for carrying out CCP services and activities to comply with the CCP's obligations under this Regulation (EU) No xx/xxxx [EMIR] and Regulation (EU) No xx/xxxx [Commission Implementing Regulation] and other regulatory requirements, where applicable;
    (d) report regularly to the board on compliance by the CCP and its employees with this Regulation, Regulation (EU) No xx/xxxx [EMIR] and Regulation (EU) No xx/xxxx [Commission Implementing Regulation];
    (e) establish procedures for the effective remediation of instances of non-compliance;
    (f) ensure that the relevant persons involved in the compliance function are not involved in the performance of the services or activities they monitor and that any conflicts of interest of such persons are properly identified and eliminated.

Article 4 ORG

Organisational structure and separation of the reporting lines

1. A CCP shall define the composition, role and responsibilities of the board and senior management and any board committees. These arrangements shall be clearly specified and well-documented. The board shall establish, at a minimum an audit committee and a remuneration committee. The risk committee established in accordance with Article 26 of the Regulation (EU) No xx/xxxx [EMIR] shall be an advisory committee to the board.

2. The board shall assume, at a minimum, the following responsibilities:

    (a) the establishment clear objectives and strategies for the CCP;
    (b) the effective monitoring of senior management;
    (c) the establishment of appropriate remuneration policies,

(d) the establishment and oversight of the risk management function;
(e) the oversight of the compliance and internal control function;
(f) the oversight of any outsourcing arrangements;
(g) the oversight of compliance with all provisions of this Regulation, Regulation (EU) No xx/xxxx [EMIR], Regulation (EU) No xx/xxxx [Commission Implementing Regulation] and all other regulatory and supervisory requirements;
(h) the provision of accountability to the shareholders or owners and employees, clearing members and their customers and other relevant stakeholders.

3. The senior management shall have, at a minimum, the following responsibilities:
(a) ensuring consistency of the CCP's activities with the objectives and strategy of the CCP as determined by the board;
(b) designing and establishing compliance and internal control procedures that promote the CCP's objectives;
(c) subjecting the internal control procedures to regular review and testing;
(d) ensuring that sufficient resources are devoted to risk management and compliance
(e) be actively involved in the risk control process;
(f) ensuring that risks posed to the CCP by its clearing and activities linked to clearing are duly addressed.

4. The board may delegate tasks to sub-committees. Board approval shall be required for material decisions that could have a significant impact on the risk profile of the CCP.

5. The arrangements by which the board and senior management operate shall include processes to identify, address and manage potential conflicts of interest of members of the board and senior management.

6. A CCP shall have clear and direct reporting lines between its board and senior management in order to ensure that the senior management is accountable for its performance. The reporting lines for risk management, compliance and internal audit shall be clear and separate from those for the other operations of the CCP. The chief risk officer shall report directly to the Board through an independent member of the board. The chief compliance officer and the head of the internal audit function shall report directly to the board.

Article 5 ORG

Remuneration policy

1. A CCP shall design its remuneration policy in such a way as to promote the soundness and effectiveness of its risk management. The policy shall be designed to prevent engaging in incentives to excessive risk-taking and to prevent a relaxation of risk standards that may arise from inappropriate remuneration.

2. The remuneration committee shall design and further develop the remuneration policy, oversee its implementation by senior management and review its practical operation on a continuous basis. The policy itself shall be documented and reviewed, at a minimum, on an annual basis.

3. The remuneration policy shall be designed to align the level and structure of remuneration with prudent risk management. The policy shall take into consideration prospective risks as well as existing risks and risk outcomes. Pay out schedules shall be sensitive to the time horizon of risks. In particular in the case of variable remuneration the policy shall take due account of possible

mismatches of performance and risk periods and shall ensure that payments are deferred as appropriate. The fixed and variable components of total remuneration shall be balanced and shall be consistent with risk alignment.

4. The remuneration policy shall provide that staff engaged in risk management, compliance and internal audit functions are remunerated in a manner that is independent of the business performance of the CCP. The level of remuneration shall be adequate in terms of responsibility as well as in comparison to the level of remuneration in the business areas.

5. As a minimum, the remuneration policy shall be subject to independent audit, on an annual basis. The results of these audits shall be made available to the competent authority.

Article 6 ORG

Information technology systems

1. A CCP shall design and ensure its information technology are reliable and secure as well as capable of processing the information necessary for the CCP to perform its activities and operations in a safe and efficient manner. The information technology architecture shall be well-documented. The systems shall be adequate to deal with the CCP's operational needs and the risks the CCP faces, be resilient, including in stressed market conditions, and be scalable, if necessary, to process additional information. The CCP shall provide for procedures and capacity planning as well as for sufficient redundant capacity to allow the system to process all remaining transactions before the end of the day in circumstances where a major disruption occurs. The CCP shall provide for procedures for the introduction of new technology including clear revision plans.

2. In order to ensure a high degree of security in information processing and to enable connectivity with its clearing members and clients as well as with its service providers in line with Article 32a of [EMIR], a CCP shall base its information technology systems on internationally recognised technical standards and industry best practices. The CCP shall subject its systems to stringent testing, simulating stressed conditions, before initial use, after making significant changes and after a major disruption has occurred. Clearing members and clients, interoperable CCPs and other interested parties shall be involved as appropriate in the design and conduct of these tests.

3. A CCP shall maintain a robust information security framework that appropriately manages its information security risk. The framework shall include appropriate mechanisms, policies and procedures to protect information from unauthorised disclosure, ensure data accuracy and integrity and guarantee the availability of the CCP's services. The CCP shall appoint a dedicated senior management member being responsible for the administration of the information technology systems and the information security framework.

4. The information security framework shall include, at a minimum, the following features:

    (a) access controls to the system;
    (b) adequate safeguards against intrusions and data misuse;
    (c) specific devices to preserve data authenticity and integrity, including, but not limiting to cryptographic techniques;
    (d) reliable networks and procedures for accurate and prompt data transmission without major disruptions; and
    (e) audit trails;

5. When outsourcing its information technology system or parts of it to another entity or to a third party service provider, the CCP shall ensure that this entity or service provider meets the same

standards the CCP would need to meet when using in-house systems. The CCP shall have adequate and documented arrangements for the selection of such entities or service providers, timely access to all information and proper control and monitoring tools.

6. The information technology systems and the information security framework shall be reviewed, at a minimum, on an annual basis. They shall be subject to independent audit assessments and the results of these assessments shall be reported to the board and shall be made available to the competent authority.

Article 7 ORG

Disclosure

1. A CCP shall make available to the public free of charge at a minimum:

   (a) its governance arrangements, including its organisational structure as well as key objectives and strategies;
   (b) its rules (including management default procedures), procedures and supplementary texts;
   (c) relevant business continuity information;
   (d) key elements of the remuneration policy;
   (e) key financial information including its most recent audited financial statements;
   (f) a list of all current clearing members;
   (g) information on the CCP's risk management systems, techniques and performance in accordance with Chapter XIII;
   (h) admission criteria for clearing membership.

2. A CCP shall disclose to the public free of charge any material changes in its governance arrangements, objectives, strategies and key policies as well as in its applicable rules and procedures.

3. A CCP shall disclose to clearing members and to clients known to the CCP all relevant information on its design and operations as well as on their rights and obligations necessary to enable them to identify clearly and understand fully the risks and costs associated with using the CCP's services. For all other clients, upon request information shall be passed to them through their clearing member. In order to facilitate understanding of its procedures and arrangements the CCP shall offer additional documentation and training, where appropriate.

4. The information to be disclosed to clearing members and clients in accordance with paragraph 3 shall include, at a minimum information on the following:

   (a) the CCP's current clearing services, including detailed information on what it provides under each service and on the costs incurred when using each service;
   (b) the CCP's risk management systems, techniques and performance, including information on financial resources, investment policy, price sources and models used in margin calculations;
   (c) the law and the rules governing:
      (i) the access to the CCP;
      (ii) the contracts concluded by the CCP with clearing members and, where practicable, clients;
      (iii) the contracts that the CCP accepts for clearing;
      (iv) any interoperability arrangements;

(v) the use of collateral and default fund contributions, including the liquidation of positions and collateral and the extent to which collateral is protected against third party claims.

(d) relevant business continuity information.

5. Information to be disclosed to the public by the CCP shall be accessible on its website. Information shall be available in at least a language customary in the sphere of international finance.

Article 8 ORG

Auditing

1. A CCP shall establish and maintain an internal audit function which is separate and independent from the other functions and activities of the CCP and which has the following tasks:
   (a) to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the CCP's systems, internal control mechanisms and governance arrangements;
   (b) to issue recommendations based on the result of work carried out in accordance with letter (a);
   (c) to verify compliance with those recommendations;
   (d) to report internal audit matters to the board.

2. The internal audit function shall have the necessary authority, resources, expertise, and access to all relevant documents. It shall be sufficiently independent from the management and shall report directly to the board.

3. Internal audit shall assess the effectiveness of the CCP's risk management processes and control mechanisms in a manner that is risk-based and independent of the business areas assessed. The internal audit function shall have the necessary access to information in order to review all of the CCP's activities and operations, processes and systems, including outsourced activities.

4. Internal audit assessments shall be based on a comprehensive audit plan that shall, at a minimum, be reviewed and reported to the competent authority, at a minimum, on an annual basis. The CCP shall ensure that special audits may be performed on an event-driven basis at short notice. Audit planning and review shall be approved by the board.

5. A CCP's clearing operations, risk management processes, internal control mechanisms and accounts shall be subject to external audit. External audits shall be performed, at a minimum, on an annual basis and notified to the competent authority

CHAPTER V

RECORD KEEPING

Article 1 RK

General requirements

1. A CCP shall maintain full, complete, readily accessible and systematic records of all its activities. Such records shall be adequately accessible for business continuity purposes and shall include the records specified in this Chapter.

2. The records shall be retained in a medium that allows the storage of information in accordance with [cross reference implementing technical standards on record keeping Annex IV] in a way that allows information to be provided readily upon request to the competent authorities, ESMA and relevant ESCB members, and in such a form and manner that the following conditions are met:

   (a) it is possible to reconstitute each key stage of the processing by the CCP;

   (b) it is possible to record, trace and retrieve the original content of a record before any corrections or other amendments;

   (c) it is not possible for the records to be manipulated or altered.

Article 2 RK

Transaction records

1. A CCP shall maintain records of all transactions in all contracts it clears and shall ensure that its records include all information necessary to conduct a comprehensive and accurate reconstruction of the clearing process for each contract and that each record on each transaction is uniquely identifiable and searchable at least by all fields concerning the CCP, interoperable CCP, clearing member, client, if known to the CCP, and financial instrument.

2. In relation to every transaction received for clearing, a CCP shall make and keep updated a record at a minimum of the following details, immediately after in receive the relevant information:

   (a) the unit price and price notation, the quantity and quantity notation;

   (b) the clearing capacity, which identifies whether the transaction was a buy or sale from the perspective of the CCP recording;

   (c) the instrument identification;

   (d) the identification of the clearing member , if known to the CCP, and in case of a give-up, the identification of the party that transferred the contract;

   (e) the identification of the venue where the contract was concluded;

   (f) the date and time of interposition of the CCP;

   (g) the date and time of termination of the contract;

   (h) the terms and modality of settlement;

   (i) the date and time of settlement or of buy-in of the transaction and to the extent they are applicable of the following details:

   (j) the day and the time at which the transaction was originally concluded;

   (k) the original terms and parties of any contract cleared; and

   (l) the identification of the interoperable CCP clearing one leg of the transaction.

3. A CCP shall retain the transaction records for a period of at least ten years following the date in which they are made, in accordance with [Article 2 of ITS see Annex IV].

Article 3 RK

Position records

1. A CCP shall maintain records of positions held by each clearing member. Separate records shall be held for each account kept in accordance with Article 39 of Regulation (EU) No xx/xxxx [EMIR] and shall ensure that its records include all information necessary to conduct a comprehensive and accurate reconstruction of the transactions that established the position and that each record

is identifiable and searchable at least by all fields concerning the CCP, interoperable CCP, clearing member, client, if known to the CCP, and financial instrument.

2. At the end of each business day a CCP shall make a record in relation to each position, which includes the following details, to the extent they are linked to the position in question:

   (a) the identification of the clearing member, of the client, if known to the CCP, and of the interoperable CCP maintaining such position, where applicable;

   (b) the sign of the position;

   (c) the daily calculation of the value of the position with records of the prices at which the contracts are valued, and of any other relevant information;

   (d) the amounts of margins, default fund contributions and other financial resources referred to in Article 43 of Regulation (EU) No xx/xxxx [EMIR], called by the CCP and the corresponding amount actually posted by the clearing member at the end of day and changes to that amount that may occur intra-day, with respect to each single clearing member and client account if known to the CCP.

3. A CCP shall retain position records for a period of at least ten years following date in which they are made, in accordance with [Article 2 of ITS see Annex IV].

Article 4 RK

Business records

1. A CCP shall maintain adequate and orderly records of activities related to its business and internal organisation.

(b) The records referred to in paragraph 1 shall be made each time a material change in the relevant documents occurs and shall include at least:

   (a) the organisational charts for the board and relevant committees, clearing unit, risk management unit, and all other relevant units or divisions;

   (b) the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and the amounts of those holdings;

   (c) the documents attesting the policies, procedures and processes required under Chapter IV and Article 1DF;

   (d) the minutes of board meetings and, if applicable, of meetings of sub-committees of the board and of senior management committees;

   (e) the minutes of meetings of the risk committee;

   (f) the minutes of consultation groups with clearing members and clients, if any;

   (g) internal and external audit, risk management reports, compliance reports, and reports by consultant companies, including management responses;

   (h) the business continuity policy and disaster recovery plan, required under Article 1BC;

   (i) the liquidity plan and the daily liquidity reports, required under Article 1LIQ;

   (j) records reflecting all assets and liabilities and capital accounts as required by Regulation (EU) No xx/xxxx [EMIR];

   (k) complaints received, with information on the complainant's name, address, and account number; the date the complaint was received; the name of all persons identified in the complaint; a description of the nature of the complaint; the disposition of the complaint, and the date the complaint was resolved;

   (l) records of any interruption of services or dysfunction, including a detailed report on the timing, effects and remedial actions;

   (m) records of the results of the back and stress tests performed;

(n) written communications with competent authorities, ESMA and the relevant members of the ESCB;

(o) legal opinions received in accordance with RTS on organisational requirements;

(p) where applicable, documentation regarding interoperability arrangements with other CCPs;

(q) the information under Article 7 ORG, paragraph 1(f) and paragraph 4(c);

(r) the relevant documents describing the development of new business initiatives;

(c) A CCP shall retain the business records for a period of at least ten years from the date in which they are made and in accordance with [Article 2 of ITS see Annex IV].

Article 5 RK

Records of data reported to a trade repository

1. A CCP shall identify and retain all information and data required to be reported in accordance with Article 9 of the Regulation (EU) No xx/xxxx [EMIR], along with a record of the date and time the transaction is reported.

Article 6 RK

Retention and inspection of records

1. Where the CCP maintains records outside the Union, it shall ensure that competent authorities, ESMA and the relevant members of the ESCB are able to access the records to the same extent and within the same periods as if they were maintained within the Union.

2. Each CCP shall name the relevant persons who can, within the delay established in Article 2(4) of the [draft ITS on record keeping] for the provision of the relevant records, explain the content of its records to the competent authorities.

3. All records required to be kept by a CCP under this Regulation shall be open to inspection by the competent authorities and ESMA. CCPs shall provide the competent authorities with direct data feed to the records required under Articles 2RK and 3RK, when requested.

CHAPTER VI

BUSINESS CONTINUITY

Article 1 BC

Strategy and policy

1. A CCP shall have a business continuity policy and a disaster recovery plan which are approved by the board. The business continuity policy and the disaster recovery plan shall be subject to independent reviews which are reported to the board.

2. The business continuity policy shall identify all critical business functions and related systems, and include the CCP's strategy, policy, and objectives to ensure the continuity of these functions and systems.

3. The business continuity policy shall take into account external links and interdependencies within the financial infrastructure including trading venues cleared by the CCP, securities settlement and payment systems and credit institutions used by the CCP or a linked CCP. It shall also take into account critical functions or services which have been outsourced to third-party providers.

4. The business continuity policy and disaster recovery plan shall contain clearly defined and documented arrangements for use in the event of a business continuity emergency, disaster or crisis which are designed to ensure a minimum service level of critical functions.

5. The disaster recovery plan shall identify and include recovery point objectives and recovery time objectives for critical functions and determine the most suitable recovery strategy for each of these functions. Such arrangements shall be designed to ensure that in extreme scenarios critical functions are completed on time and that agreed service levels are met.

6. A CCP's business continuity policy shall identify the maximum acceptable down time of critical functions and systems. At a minimum, the CCP shall ensure recovery of its critical functions within 2 hours.

7. A CCP shall take into account the potential overall impact on market efficiency in determining the recovery times for each function.

Article 2 BC

Risk analysis

1. A CCP shall use conduct a business impact analysis which is designed to identify the business functions which are critical to ensure the services of the CCP. The criticality of these functions to other institutions and functions in the financial infrastructure shall be part of the analysis.

2. A CCP shall use scenario based risk analysis which is designed to identify how various scenarios affect the risks to its critical business functions.

3. In assessing risks a CCP shall take into account dependencies on external providers, including utilities services. A CCP shall take action to manage these dependencies through appropriate contractual and organisational arrangements.

4. Business impact analysis and scenario analysis shall be kept up to date and at a minimum be reviewed annually. The analyses shall take into account all relevant developments, including market and technology developments.

Article 3 BC

Disaster recovery

1. A CCP shall have in place arrangements to ensure continuity of its critical functions based on disaster scenarios. These arrangements shall at least address the availability of adequate human resources, the maximum downtime of critical functions, and fail over and recovery to a secondary site.

2. A CCP shall maintain a secondary processing site capable of ensuring continuity of all critical functions of the CCP identical to the primary site. The secondary site shall have a geographical risk profile which is distinct from that of the primary site.

3. A CCP shall maintain or have an immediate access to a secondary business site, at least, to allow staff to ensure continuity of the service if the primary location of business is not available.

4. The need for additional processing sites shall be considered by the CCP, in particular if the diversity of the risk profiles of the primary and secondary sites do not provide sufficient confidence that the CCP's business continuity objectives will be met in all scenarios.

Article 4 BC

Testing and monitoring

1. A CCP shall test and monitor its business continuity policy and disaster recovery plan at regular intervals and after significant modifications or changes to the systems or related functions to ensure the business continuity policy achieves the stated objectives. .

2. Testing of the business continuity policy and disaster recovery plan shall:

   a. involve scenarios of large scale disasters and switchovers between primary and secondary sites;

   b. include participation of clearing members, external providers and relevant institutions in the financial infrastructure with which interdependencies have been identified in the business continuity policy.

Article 5 BC

Maintenance

1. A CCP shall regularly review and update it business continuity policy to include all critical functions and the most suitable recovery strategy for them.

2. A CCP shall regularly review and update its disaster recovery plan to include the most suitable recovery strategy for all critical functions and the most suitable recovery strategy for them.

3. Updates to the business continuity policy and disaster recovery plan shall take into consideration the outcome of the tests and recommendations of independent reviews and other reviews and of competent authorities. CCPs shall review their business continuity policy and disaster recovery plan after every significant disruption, to identify the causes and any required improvements to the CCP's operations, business continuity policy and disaster recovery plan.

Article 6 BC

Crisis management

1. A CCP shall have a crisis management function to act in case of an emergency. The crisis management function shall be overseen by the board. The crisis management procedure shall be clear and documented in writing.

2. The crisis management function shall contain well-structured and clear procedures to manage internal and external crisis communications during a crisis event.

3. Following a crisis event, the CCP shall undertake a review of its handling of the crisis. The review shall, where relevant, incorporate contributions from clearing members and other external stakeholders.

Article 7 BC

Communication

1. A CCP shall have a communication plan which documents the way in which relevant internal and external stakeholders will be kept adequately informed during a crisis. External stakeholders include competent authorities, clearing members, settlement agents, securities settlement and payment systems and trading venues.

2. Scenario analysis, risk analysis, reviews and results of monitoring and tests shall be reported to the board.

CHAPTER VII

MARGINS

Article 1 MAR

Percentage

1. A CCP shall calculate the initial margins to cover the exposures movements for each financial instrument that it is margined on a product basis, over the time period defined in Article 2 MAR and assuming a time horizon for the liquidation of the position as defined in Article 3 MAR. For the calculation of initial margins the CCP shall at least respect the following confidence intervals:
    a. for OTC derivatives, 99.5%.
    b. for financial instruments other than OTC derivatives, 99%
2. For the determination of the adequate confidence interval for each class of financial instruments it clears, a CCP shall in addition consider at least the following factors:
    a. The complexities and level of pricing uncertainties the class of financial instruments have that may limit the validation of the calculation of the initial and variation margin calculation.
    b. The risk characteristics of the class of financial instruments, which can include, but are not limited to, volatility, duration, liquidity, non-linear price characteristics, jump to default risk and wrong way risk.
    c. The degree to which other risk controls do not adequately limit credit exposures.
    d. The inherent leverage of the class of financial instruments, including whether the class of financial instrument is significantly volatile, is highly concentrated among few market players or may be difficult to close out.
3. The CCP shall inform its competent authority on the criteria considered to determine the percentage applied to the calculation of the margins for each class of financial instruments and shall justify appropriately any departure of the above framework.
4. When a CCP revise the level of the margins in order to better reflect current market conditions, it should take into account any potential procyclical effects of such revision.

Article 2 MAR

Time horizon for the calculation of historical volatility

1. A CCP shall assure that according to its model methodology and its validation process established in accordance with Chapter XIII, initial margins cover at least with the confidence interval defined in article 1 an historical volatility calculated weighting equally the two following periods:
    a. The latest 6 months
    b. The 6 months reflecting the most stressed market conditions during the last 30 years or as long as reliable price data is available.
2. A CCP may use any other time horizon for the calculation of historical volatility periods provided that the use of such time periods results in margin requirements at least as conservative as those obtained with the time periods defined in the paragraph 1.
3. A CCP shall define and use other time horizons for the calculation of historical volatility when, according to the revision of the margin models outlined in Chapter XIII, the periods referred to in paragraph 1 do not properly contain the necessary information to assure that the margins ensure the protection of the CCP with the required degree of coverage. The CCP shall assure that the new time horizons produce conservative margin requirements.
4. Margin parameters for financial instruments without a historical observation period shall be based on conservative assumptions. The CCP shall promptly adapt the calculation of the margins required based on the analysis of the price history of the new financial instruments.

Article 3 MAR

Time horizons for the liquidation period

1. A CCP shall define the time horizons for the liquidation period taking into account the characteristics of the financial instrument cleared, the market where is traded, and the period for the calculation and collection of the margins. This liquidation periods shall be at least:
    a. for OTC derivatives, 5 business days.
    b. for financial instruments other than OTC derivatives, 2 business days.
2. In all cases, for the determination of the adequate liquidation period the CCP, shall evaluate and sum at least the following:
    a. The longest possible period that may elapse from the last collection of margins up to the declaration of default by the CCP or activation of the default management by the CCP.
    b. The estimated period needed to design and execute the strategy for the management of the default of a clearing member according to the particularities of each class of financial instrument, including its level of liquidity and the size and concentration of the positions, and the markets the CCP will use to close-out or hedge completely a clearing member position.
    c. Where relevant, the period needed to cover the counterparty risk to which the CCP is exposed.
3. In evaluating the periods defined in the paragraph 2, the CCP shall consider, at least, the factors indicated in paragraph 2 of Article 1 MAR and the time period for the calculation of the historical volatility as defined in Article 2 MAR.
4. A CCP shall use the same time horizons for the liquidation period for the calculation of the margin requirements for all the types of accounts a CCP may keep open according the Article 39 of [EMIR].

Article 4 MAR

Portfolio margining

1. A CCP may allow offsets or reductions in the required margin across the financial instruments that it clears if the price risk of one financial instrument or a set of financial instruments is significantly and reliably negatively correlated with the price risk of other financial instruments.

2. The CCP shall document its approach on portfolio margining, in particular it shall at least provide that:

    a. The correlation between two or more financial instruments cleared is evidenced over two years and, demonstrates resilience during stressed historical or hypothetical scenarios. The CCP shall demonstrate the existence of an economic rationale for the price relation.

    b. The level of negative price correlation should be at least minus 70% for each pair of financial instruments or for each pair of baskets of financial instruments where the offsets are allowed. Temporary fluctuations in the level of correlation may be acceptable provided that the negative price correlation remains below minus 50% and that the fluctuation is for a period no longer than 3 months.

3. All financial instruments to which portfolio margining is applied shall be covered by the same default fund.

4. The amount of margin offsets shall be proportional to the level of correlation evidenced. The maximum offset shall be calculated as 80% of the correlation for the time horizon for calculation of historical volatility as defined in Article 2 MAR.

5. A CCP may use any other procedure for the calculation of the adequate offset between different sets of products periods provided that the margin requirements are at least as conservative as those defined in this Article, it is able to demonstrate a clear convergence with the parameters specified in paragraph 2 and the approach used is based on a sound theoretical framework and subject to on-going review.

6. The margins offsets related to portfolio margining shall be subject to a sound and meaningful stress test programme in accordance with Chapter XIII.

Article 5 MAR

Procyclicality

A CCP shall ensure that its policy for selecting and revising the percentage for confidence interval, the liquidation period and the lookback period avoids excessive procyclicality in aggregate margin requirements to the extent that the soundness and financial security of the CCP is not negatively affected. This shall include avoiding when possible disruptive big step changes in margins requirements and establishing transparent and predictable procedures for adjusting margin requirements in response to changing market conditions.

CHAPTER VIII

DEFAULT FUND

Article 1 DF

Framework and governance

1. To determine the minimum size of default fund and amount of other financial resources necessary to satisfy the requirements of Articles 42and 43 of Regulation 2012/XXX [EMIR], taking into account group dependencies, a CCP shall establish a robust framework for defining the types of extreme but plausible market conditions.

2. The framework shall include a general policy statement describing how the CCP defines extreme but plausible market conditions. It shall be fully documented and retained in accordance with Article 1 RK.

3. The framework shall be discussed by the risk committee and approved by the board. The robustness of the framework and its ability to reflect market movements shall be subject to at least an annual review. The review shall be discussed by the risk committee and reported to the board.

Article 2 DF

Identifying extreme but plausible market conditions

1. The framework described in Article 1 DF shall reflect the risk profile of the CCP. It shall identify all the markets risks to which a CCP would be exposed following the default of one or more clearing member, including but not limited to unfavourable movements in the market prices of cleared instruments, reduced market liquidity for these instruments, and declines in the market value of collateral. The framework shall also reflect additional risks to the CCP arising from the simultaneous failure of entities in the group of the defaulting clearing member.

2. The framework shall individually identify all the markets to which a CCP is exposed in a clearing member default scenario. For each identified market the CCP shall specify extreme but plausible conditions based, at least on:

    a. a range of historical scenarios, including periods of extreme market movements observed over the past 30 years (or as long as reliable data have been available) that would have exposed the CCP to greatest financial risk. If a CCP decides that recurrence of a historical instance of large price movements is not plausible, it shall justify its omission from the framework to the competent authority.

    b. a range of potential future scenarios, founded on consistent assumptions regarding market volatility and price correlation across markets and drawing on both quantitative and qualitative assessments of potential market conditions.

3. The framework shall also consider, quantitatively and qualitatively, the extent to which extreme price movements could occur in multiple identified markets simultaneously. The framework shall recognise that historical price correlations may breakdown in extreme but plausible market conditions.

Article 3 DF

Reviewing extreme but plausible scenarios

The procedures described in Articles 2 DF shall be subject to continuous review, taking into account all relevant market developments and the scale and concentration of clearing member exposures. The set of historical and hypothetical scenarios used by a CCP to identify extreme but plausible market conditions shall be reviewed by the risk committee at least every three months and material changes shall be reported to the board.

CHAPTER IX

LIQUIDITY RISK CONTROLS

Article 1 LIQ

Assessment of liquidity risk

1. A CCP shall establish a robust liquidity risk management framework which shall include effective operational and analytical tools to, identify, measure and monitor its settlement and funding flows on an on-going and timely basis, including its use of intraday liquidity. CCPs shall regularly assess the design and operation of their liquidity management framework.

2. A CCP's liquidity risk management framework shall ensure with a high level of confidence that the CCP is able to effect same-day and, where appropriate, intraday settlement of payment obligations in all relevant currencies. A CCP's liquidity risk management framework shall also include the assessment of its potential future liquidity needs under a wide range of potential

stress scenarios Stress scenario shall include the default of clearing members according to article 44 of Regulation (EU) No xx/xxxx [*EMIR]* from the date of a default until the end of a liquidation period and the liquidity risk generated by its investment policy and procedures in extreme but plausible market conditions.

3. The liquidity risk management framework shall include a liquidity plan which is documented and retained in accordance with Article 4RK. The minimum content of the liquidity plan shall include the CCP's procedures for:

    a. identifying sources of liquidity risk;

    b. managing and monitoring, at least on a daily basis, its liquidity needs across a range of market scenarios;

    c. maintaining sufficient liquid financial resources and the possibility to activate other liquid resources to cover its liquidity needs and distinguish among the use of the different types of liquid resources;

    d. the daily assessment and valuation of the liquid assets available to the CCP and its liquidity needs;

    e. assessing timescales over which the CCP's liquid financial resources should be available

    f. considering potential liquidity needs stemming from clearing members ability to swap cash for non-cash collateral;

    g. the processes in the event of liquidity shortfalls;

    h. the replenishment of any liquid financial resources it may employ during a stress event.

    The board shall approve the plan after consulting the risk committee.

4. A CCP shall assess the liquidity risk it faces including where the CCP or its clearing members cannot settle their payment obligations when due as part of the clearing or settlement process, taking also into account the investment activity of the CCP. The risk management framework shall address the liquidity needs stemming from the CCP's relationships with any entity towards which the CCP has a liquidity exposure including::

    a. settlement banks;

    b. payments systems;

    c. securities settlement systems;

    d. nostro agents;

    e. custodian banks;

    f. liquidity providers;

    g. interoperable CCPs;

    h. service providers.

5. A CCP shall take into account any interdependencies across the entities listed in paragraph 4 and multiple relationships that an entity listed in paragraph 4 may have with a CCP in its liquidity risk management framework.

6. A CCP shall establish a daily report on the execution of its liquidity plan. The reports shall be documented and retained in accordance with Article 4 RK.

Article 2 LIQ

Access to liquidity

1. A CCP shall maintain, in each relevant currency, liquid resources commensurate with its liquidity requirements, defined in accordance with Article 44 of [EMIR] and Article 1 of this Regulation. These liquid resources shall be limited to:

    a. cash deposited at the central bank of issue;

    b. cash deposited at authorised credit institutions in accordance with Article 3 INV;

    c. committed lines of credit;

    d. committed repurchase agreements; and

    e. highly marketable financial instruments that:

        i. satisfy the requirements of Articles 1 and 2 INV;

        ii. the CCP can demonstrate are readily available and convertible into cash on a same-day basis using prearranged and highly reliable funding arrangements, including in stressed market conditions.

2. A CCP shall have regard to the currencies in which its liabilities are denominated and shall take into account the potential effect of stressed conditions on its ability to access foreign exchange markets in a manner consistent with the securities settlement cycles of foreign exchange and securities settlement systems.

3. Committed lines of credit that are provided against collateral provided by clearing members shall not be double counted as liquid resources. A CCP shall take action to monitor and control the concentration of liquidity risk exposures to individual liquidity providers.

4. A CCP shall obtain a high degree of confidence through rigorous due diligence that its liquidity providers have enough capacity to perform according to the liquidity arrangements.

5. A CCP shall periodically test its procedures to access pre-arranged funding arrangements. This may include methods such as drawing down test amounts of the commercial lines of credit, to check the speed of access to the resources and reliability of procedures.

6. A CCP shall have detailed procedures within its liquidity plan for using its liquid financial resources to fulfil its payment obligations during a liquidity shortfall. The liquidity procedures shall clearly state when certain resources should be used. The procedures shall also describe how to access cash deposits or overnight investments of cash deposits, how to execute same-day market transactions, or how to draw on prearranged liquidity lines. These procedures shall be regularly tested. A CCP shall also establish an adequate plan for the renewal of funding arrangements in advance of their expiration.

Article 3 LIQ

Concentration risk

1. A CCP shall closely monitor and control the concentration of its liquidity risk exposure, including its exposures to the entities listed in Article 1(4) and to entities in the same group.

2. A CCP shall ensure that it is not excessively dependent on any of the entities referred to in paragraph 1. Where such entities are part of the same group as the CCP or its clearing members, the CCP shall ensure that its liquidity risk management is not excessively dependent on one entity or group of entities. This shall include examining both potential liquidity needs and liquidity providers.

3. A CCP's liquidity risk management framework shall include the application of exposure and concentration limits.

4. A CCP shall define processes and procedures for breaches of concentration limits.

CHAPTER X

DEFAULT WATERFALL

Article 1 DW

Calculation of the amount of the CCP's own resources to be used in the default waterfall

1. A CCP shall keep, and indicate separately in its balance sheet, an amount of dedicated own resources for the purpose set out in Article 45(4) of Regulation (EU) No xx/xxxx [EMIR]. This amount shall be at least equal to the 50 per cent of the capital, including retained earnings and reserves, held in accordance with Article 16(2) of Regulation (EU) No xx/xxxx [EMIR].
   The CCP shall revise this amount on a yearly basis.

2. Where the CCP has established more than one default fund for the different classes of financial instruments it clears, the total dedicated own resources calculated under paragraph 1 shall be allocated to each of the default funds in proportion to the size of each default fund, to be separately used for defaults arising in the different market segments to which the default funds refer to.

3. No resources other than capital, including retained earnings and reserves, as referred to in Article 16(2) of Regulation (EU) No xx/xxxx [EMIR] can be used to comply with the requirement under paragraph 1.

Article 2 DW

Maintenance of the amount of the CCP's own resources to be used in the default waterfall

1. A CCP shall immediately inform the competent authority if the amount of dedicated own resources held falls below the amount required by Article 1 DW, together with the reasons for the breach and a comprehensive description in writing of the measures and the timetable for the replenishment of such amount.
2. Where a subsequent default of one or more clearing members occurs before the CCP has reinstated the dedicated own resources, only the residual amount of the allocated dedicated own resources shall be used for the purpose of Article 45 of Regulation (EU) No xx/xxxx [EMIR].
3. A CCP shall reinstate the dedicated own resource at least within three months from the notification under paragraph 1.

CHAPTER XI

COLLATERAL

Article 1 COL

Assets eligible as highly liquid collateral

1. A CCP shall collect from clearing members margin, default fund contributions and contributions to other financial resources in the form of highly liquid collateral. This collateral shall meet the criteria in paragraph 3.

2. A CCP shall establish and implement policies and procedures to assess and continuously monitor the liquidity of assets accepted as collateral and take remedial action where appropriate. In addition, a CCP shall review its eligible asset policies and procedures at least annually. Such a review shall also be carried out whenever a material change occurs that affects the CCP's risk exposure.

3. For the purpose of paragraph 1 of Article 46 of Regulation (EU) No xx/xxxx [EMIR], highly liquid collateral means an asset which satisfies each of the following conditions:

   (a) in the case of cash, the cash is denominated in one of the following currencies:

      (i) a currency the risk of which the CCP can demonstrate with a high level of confidence to the competent authorities that it is able to manage;

      (ii) a currency in which the CCP clears transactions, in the limit of the collateral required to cover the CCP's exposures in that currency;

   (b) in the case of financial instruments:

      (i) they have been issued by an issuer that the CCP can demonstrate to the competent authority with a high degree of confidence has low credit risk based on a stable and objective internal or external assessment, taking into consideration the risk arising from the establishment of the issuer in a particular country.

      (ii) the CCP can demonstrate with a high degree of confidence that the financial instruments have a low market risk based upon an internal or external opinion given with a high level of confidence based on a stable and objective assessment;

      (iii) they are denominated in one of the following currencies:

         (1) a currency which the CCP can demonstrate with a high level of confidence to the competent authorities that it is able to manage the risks on the currency;
         (2) a currency in which the CCP clears contracts, in the limit of the collateral required to cover the CCP's exposures in that currency;

      (iv) they are freely transferable and without any regulatory or legal constraint that impairs liquidation;

      (v) they have an active outright sale or repurchase agreement market, with a diverse group of buyers and sellers, to which the CCP can demonstrate reliable access, including in stressed conditions;

      (vi) they have reliable price data published on a regular basis;

      (vii) they are not issued by:

         (1) the clearing member providing the collateral, or an entity that is part of the same group as the clearing member, except in the case of a covered bond and only where the assets backing that bond are appropriately segregated within a robust legal framework and satisfy the requirements of this subparagraph (b) of paragraph 3 of this Article;
         (2) a CCP or an entity that is part of the same group as a CCP;
         (3) an entity whose business involves providing essential services to the CCP unless that entity is an EEA central bank or a central bank of issue of a currency in which the CCP has exposures;
         (4) an entity whose exclusive purpose is to own means of production that are essential for a clearing member's business or the CCP; or
         (5) an entity whose exclusive purpose is to own or to manage real estate property.

(viii) are not otherwise subject to significant wrong-way risk;

(c) in the case of a commercial bank guarantee, subject to limits agreed with the competent authority it:

(i) is issued to guarantee a non-financial clearing member or client that is known to the CCP and to whom the bank guarantee covers an exposure in an individual segregated account;

(ii) has been issued by an issuer that the CCP can demonstrate to the competent authority with a high degree of confidence has low credit risk based on a stable and objective internal or external assessment, taking into consideration the risk arising from the establishment of the issuer in a particular country.

(iii) is denominated in one of the following currencies:

(1) a currency which the CCP can demonstrate with a high level of confidence to the competent authorities that it is able to manage the risks on the currency;
(2) a currency in which the CCP clears contracts, in the limit of the collateral required to cover the CCP's exposures in that currency;

(iv) is irrevocable, unconditional and the issuer cannot rely on any legal or contractual exemption or defence to oppose the payment of the guarantee;

(v) can be honoured, on demand, within the period of liquidation of the portfolio of the defaulting clearing member providing it without any regulatory, legal or operational constraint;

(vi) is not issued by:

1) an entity that is part of the same group as the non-financial clearing member covered by the guarantee
2) a CCP or an entity that is part of the same group as a CCP,
3) an entity whose business involves providing essential services to the CCP unless that entity is an EEA central bank or a central bank of issue of a currency in which the CCP has exposures;
4) an entity whose exclusive purpose is to own means of production that are essential for a clearing member's business or the CCP;

(vii) is not otherwise subject to significant wrong-way risk;

(viii) is fully backed by collateral that satisfies the requirements of subparagraph 3(b) and the CCP can demonstrate can be realised on a same-day basis; and

(ix) the suitability of the guarantor has been ratified by the Board of the CCP after a full assessment of the issuer and of the legal, contractual and operational framework of the guarantee in order to have a high level of comfort on the effectiveness of the guarantee, and notified to the competent authority;

(d) in the case of gold, it is allocated pure gold bullion of recognised good delivery which is:

(i) directly held by the CCP;

(ii) deposited with an EEA central bank or a central bank of issue of a currency in which the CCP has exposures that ensures the full protection of the gold and enables the CCP prompt access to the gold when required;

(iii) deposited with an authorised credit institution as defined under Directive 2006/48/EC that ensures the full protection of the gold, enables the CCP prompt access to the gold when required and the CCP can demonstrate to the competent authority with a high degree of confidence has low credit risk based on a stable

and objective internal or external assessment, taking into consideration the risk arising from the establishment of the issuer in a particular country;

(iv) deposited a third country credit institution that is subject to and complies with prudential rules considered by the competent authorities to be at least as stringent as those laid down in Directive 2000/12/EC or in Directive 93/6/EEC and which has robust accounting practices, safekeeping procedures and internal controls that ensure the full protection of the gold, enables the CCP prompt access to the gold when required and the CCP can demonstrate to the competent authority with a high degree of confidence has low credit risk based on a stable and objective internal or external assessment, taking into consideration the risk arising from the establishment of the issuer in a particular country;

(e) in the case of a guarantee issued by a central bank, it:

(i) is issued by an EEA central bank or a central bank of issue of a currency in which the CCP has exposures;

(ii) is denominated in one of the following a currencies:

(1) a currency the risk of which the CCP can demonstrate with a high level of confidence to the competent authorities that it is able to manage;
(2) a currency in which the CCP clears transactions, in the limit of the collateral required to cover the CCP's exposures in that currency;

(iii) is irrevocable, unconditional and the issuing central bank cannot rely on any legal or contractual exemption or defence to oppose the payment of the guarantee;

(iv) can be honoured within the period of liquidation of the portfolio of the defaulting clearing member providing it without any regulatory, legal or operational constraint.

Article 2 COL

Valuing collateral

1. For the purposes of valuing highly liquid collateral as defined in Article 1 COL, a CCP shall establish and implement policies and procedures to monitor on a near to real-time basis the credit quality, market liquidity and price volatility of each asset accepted as collateral. A CCP shall monitor on a regular basis, and at least annually, the adequacy of its valuation policies and procedures. Such review shall also be carried out whenever a material change occurs that affects the CCP's risk exposure.

2. A CCP shall mark to market its collateral on a near to real time basis and where not possible a CCP shall be able to demonstrate to the competent authorities that it is able to manage the risks.

Article 3 COL

Haircuts

1. A CCP shall establish and implement policies and procedures to determine prudent haircuts to apply to collateral value.

2. Haircuts shall recognise that collateral may need to be liquidated in stressed market conditions and take into account the time required to liquidate it. The CCP shall demonstrate to the competent authority that haircuts are calculated in a conservative manner to limit as far as possible pro-cyclical effects and wrong-way risk. For each collateral asset, the haircut shall be determined taking in consideration the relevant criteria, including:

a) the type of asset and level of credit risk associated with of the financial instrument or the issuer based upon an internal or external assessment and taking into consideration the risk arising from the establishment of the issuer in a particular country;
b) the contractual maturity of the asset;
c) the historical and hypothetical future price volatility of the asset in stressed market conditions;
d) the liquidity of the underlying market, including bid/ask spreads;
e) the foreign exchange risk, if any.

3. A CCP shall monitor on a regular basis the adequacy of the haircuts. A CCP shall review the haircut policies and procedures at least annually and whenever a material change occurs that affects the CCP risk exposure, but should avoid as far as possible disruptive step changes in haircuts that could introduce pro-cyclicality. The haircut policies and procedures shall be independently validated at least annually.

Article 4 COL

Concentration limits

1. A CCP shall establish and implement policies and procedures to ensure that the collateral remains sufficiently diversified to allow its liquidation within the defined holding period without a significant market impact. The CCP shall assess in particular the concentration of collateral provided in the financial instruments of an individual issuer, type of issuer in terms of economic sector, activity and geographic region, and type of asset or commercial bank guarantees. In order to avoid a high credit exposure to an individual issuer, type of issuer or type of asset, a CCP shall determine concentration limits at the level of each clearing member and at the level of all clearing members. The policies and the procedures shall determine the risk mitigation measures when the concentration limits are exceed by a clearing member or all clearing members in total.

2. Concentration limits shall be determined in a conservative manner taking into account all relevant criteria, including:

(a) the amount of collateral provided by the clearing member;
(b) the amount of collateral provided in financial instruments issued by an individual issuer;
(c) financial instruments issued by issuers of the same type in terms of economic sector, activity, geographic region;
(d) the amount of collateral provided in commercial bank guarantees or exposure to a type of asset;
(e) the level of credit risk of the financial instrument or of the issuer based upon an internal or external opinion given with a high level of confidence based on a stable and objective assessment;
(f) the liquidity and the price volatility of the financial instruments.

3. A CCP shall ensure that no more than 10 per cent of its collateral is issued or guaranteed by a single commercial institution or group of institutions. Where the CCP received more than 50 per cent of the collateral in the form of commercial bank guarantees, this limit shall be set out at 25 per cent.

4. In calculating the limits mentioned in paragraph 3, a CCP shall include the total exposure of a CCP to an issuer, including the amount of the cumulative credit lines, certificates of deposit, time deposits, savings accounts, deposit accounts, current accounts, money-market funds, and reverse repurchase facilities utilised by the CCP. These limits shall not apply to collateral held by the CCP in excess of the minimum requirements for margins, default fund or other financial resources.

5. When determining the concentration limit for a CCP's exposure to an individual issuer, a CCP shall aggregate and treat as a single risk its exposure to all financial instruments issued by the

issuer or by a group entity, explicitly guaranteed by the issuer or by a group entity, and to financial instruments issued by undertakings whose exclusive purpose is to own means of production that are essential for the issuer's business or to own or manage real estate property.

6. A CCP shall monitor on a regular basis the adequacy of its concentration limit policies and procedures. A CCP shall review its concentration limit policy and procedure at least annually and whenever a material change occurs that affects the risk exposure of the CCP.

7. A CCP shall inform the competent authority and the clearing members of the applicable concentration limits and of any amendment to these limits.

8. If the CCP materially breaches a concentration limit set out in its policies and procedures, it shall inform the competent authority immediately. The CCP shall rectify the breach as soon as possible.

CHAPTER XII

INVESTMENT POLICY

Article 1 INV

Highly liquid financial instruments

1. For the purpose of Article 47(1) of Regulation (EU) No xx/xxxx [EMIR], debt instruments can be considered highly liquid financial instruments, bearing minimal credit and market risk if they meet each of the following conditions:

   a. they are issued or explicitly guaranteed by:

      1. a government;
      2. a central bank; or
      3. a multilateral development bank;

   b. the CCP can demonstrate that they have low credit risk taking into consideration the risk arising from the establishment of the issuer in a particular country, low market risk, low volatility and low inflation risk, each based upon a stable and objective internal or external assessment given with a high level of confidence;

   c. the average time-to-maturity of the portfolio does not exceed two years;

   d. they are denominated in one of the following currencies:

      (i) a currency the risks of which the CCP can demonstrate with a high level of confidence that it is able to manage; or

      (ii) a currency in which the CCP clears transactions, in the limit of the collateral received in that currency;

   e. they are freely transferable without any regulatory or legal constraint that impairs liquidation;

   f. they have an active outright sale or repurchase agreement market, with a diverse group of buyers and sellers, including in stressed conditions and to which the CCP has reliable access;

   g. reliable price data on these instruments are published on a regular basis; and

   h. they are not subject to material wrong-way risk.

2. Notwithstanding paragraph 1 financial instruments shall not be considered highly liquid, bearing minimal credit and market risk for the purpose of Article 47(1) of Regulation (EU) No xx/xxxx [EMIR], if a CCP invests in them with the primary aim of increasing return or maximise profit.

3. For the purpose of Article 47(1) of Regulation (EU) No xx/xxxx [EMIR], derivative contracts can also be considered highly liquid financial investments, bearing minimal credit and market risk if they are entered into for the purpose of macro-hedging the portfolio of a defaulted clearing member as part of the CCP's default management procedure and thereby reduce the credit and market risk to which the CCP is exposed, and provided that reliable price data are published on a regular basis. Where derivative contracts are used in such circumstances then such use shall be approved by the board after having consulted the risk committee.

Article 2 INV

Highly secured arrangements for the deposit of financial instruments

1. If a CCP is unable to deposit the financial instruments referred to in Article 1 INV or those posted to it as margins or as default fund contributions both by way of title transfer and security transfer with the operator of a securities settlement system that ensures the full protection of those instruments then such financial instruments shall be deposited with:

    a. a central bank that ensures the full protection of those instruments and that enables the CCP prompt access to the financial instruments when required; or

    b. an authorised credit institution as defined under Directive 2006/48/EC that ensures the full protection of those instruments, enables the CCP prompt access to the financial instruments when required and that the CCP can demonstrate has low credit risk taking into consideration the risk arising from the establishment of the credit institution in a particular country, based upon a stable and objective internal or external assessment given with a high level of confidence; or

    c. a third country financial institution that is subject to and complies with prudential rules considered by the relevant competent authorities to be at least as stringent as those laid down in Directive 2000/12/EC or in Directive 93/6/EEC and which has robust accounting practices, safekeeping procedures, and internal controls and that ensures the full protection of those instruments, enables the CCP prompt access to the financial instruments when required and that the CCP can demonstrate to have low credit risk taking into consideration the risk arising from the establishment of the financial institution in a particular country, based upon a stable and objective internal or external assessment given with a high level of confidence.

2. Where financial instruments are deposited in accordance with letter (b) or (c) of paragraph 1 they shall be held under arrangements that prevent any losses to the CCP due to the default or insolvency of the authorised financial institution.

Article 3 INV

Highly secured arrangements maintaining cash

1. For the purpose of Article 47(4) of Regulation (EU) No xxx/2012 [EMIR], where cash is deposited other than with a central bank then such deposit shall meet each of the following conditions:

    a. the deposit is in one of the following currencies:

(i) a currency the risks of which the CCP can demonstrate with a high level of confidence that it is able to manage;

(ii) a currency in which the CCP clears transactions, in the limit of the collateral received in that currency;

b. the deposit shall be placed with one of the following entities:

(i) an authorised credit institution as defined under Directive 2006/48/EC that the CCP can demonstrate to have low credit risk (taking into consideration the risk arising from the establishment of the issuer in a particular country) based upon a stable and objective internal or external assessment given with a high level of confidence;

(ii) a third country financial institution that is subject to and complies with prudential rules considered by the competent authorities to be at least as stringent as those laid down in Directive 2000/12/EC or in Directive 93/6/EEC and which has robust accounting practices, safekeeping procedures, and internal controls and that the CCP can demonstrate to have low credit risk (taking into consideration the risk arising from the establishment of the issuer in a particular country) based upon a stable and objective internal or external assessment given with a high level of confidence.

2. Where cash is maintained in accordance with paragraph 1 then not less than 98 per cent of such cash shall be deposited through arrangements that ensure the collateralisation of the cash with highly liquid financial instruments meeting the requirements under Article 1 INV.

Article 4 INV

Concentration limits

1. A CCP shall establish and implement policies and procedures to ensure that the financial instruments in which its financial resources are invested remain sufficiently diversified.

2. A CCP shall determine concentration limits and monitor the concentration of its financial resources invested:

(a) in individual financial instruments;

(b) in types of financial instruments;

(c) in individual issuers;

(d) in types of issuer; and

(e) with counterparties with which arrangements as provided for in Article 2(1) letters (b) and (c) or in Article 3(2) INV are established.

3. When considering types of issuer a CCP shall take into account the following:

(a) geographic distribution;

(b) interdependencies and multiple relationships that an entity may have with a CCP; and

(c) the level of credit risk.

4. The policies and the procedures shall determine the risk mitigation measures when the concentration limits are exceeded.

5. When determining the concentration limit for a CCP's exposure to an individual issuer or custodian, a CCP shall aggregate and treat as a single risk, the exposure to all financial

instruments issued by, or explicitly guaranteed by, the issuer and all financial resources deposited with the custodian.

6. A CCP shall monitor on a regular basis the adequacy of its concentration limit policies and procedures. In addition, a CCP shall review its concentration limit policy and procedure at least annually and whenever a material change occurs that affects the risk exposure of the CCP.

7. If the CCP breaches a concentration limit set out in its policies and procedures, it shall inform the competent authority immediately. The CCP shall rectify the breach as soon as possible

Article 6 INV

Non-cash collateral

Where collateral is received under title transfer in the form of financial instruments in accordance with the provisions of Chapter XI [COLL], only Articles 2 [INV] and 4 [INV] of this Chapter shall apply.

CHAPTER XIII

REVIEW OF MODELS, STRESS TESTING AND BACK TESTING

Article 1 SBT

Model Validation

1. A CCP shall conduct a comprehensive validation of its models, their methodologies and the liquidity risk management framework used to quantify, aggregate, and manage its risks. Any material revisions or adjustments to its models, their methodologies and the liquidity risk management framework shall be subject to appropriate governance and validated by a qualified and independent party prior to application
2. A CCP's validation process shall be documented and at least shall specify the policies used to test the CCP's margin, default fund and other financial resources methodologies and framework for calculating liquid financial resources. Any material revisions or adjustments to such policies shall be subject to appropriate governance and validated by a qualified and independent party prior to application.
3. A comprehensive validation shall, at least, include the following:
   (a) an evaluation of the conceptual soundness of the models and framework, including developmental supporting evidence;

   (b) a review of the on-going monitoring procedures, including verification of processes and benchmarking;

   (c) a review of the parameters and assumptions made in the development of its models, their methodologies and the framework;

   (d) a review of the adequacy and appropriateness of the models, their methodologies and framework adopted in respect of the type of contracts they apply to;

(e) a review of the appropriateness of its stress testing scenarios in accordance with Chapter VIII and Article 6 SBT; and

(f) an analysis of the outcomes of testing results.

4. A CCP shall establish the criteria against which it assesses whether its models, their methodologies and liquidity risk management framework can be successfully validated. The criteria shall include successful testing results.

5. Where pricing data is not readily available or reliable, a CCP shall address such pricing limitations and, at least, adopt conservative assumptions based on observed correlated or related markets and current behaviours of the market.

6. If a CCP estimates prices, the systems and valuation models used for this purpose shall be subject to validation and testing. A CCP shall have its valuation models validated under a variety of market scenarios by a qualified and independent party to ensure that its models accurately produces appropriate prices, and where appropriate, it shall adjust its calculation of initial margins to reflect any identified model risk.

7. A CCP shall regularly conduct an assessment of the theoretical and empirical properties of its margin model for all the financial instruments that it clears.

Article 2 SBT

Testing programmes

1. A CCP shall have policies and procedures in place that detail the stress and back testing programmes it undertakes to assess the appropriateness, accuracy, reliability and resilience of the models and their methodologies used to calculate its risk control mechanisms including margin, default fund contributions, and other financial resources in a wide range of market conditions.

2. A CCP's policies and procedures shall also detail the stress testing programme it undertakes to assess the appropriateness, accuracy, reliability and resilience of the liquidity risk management framework.

3. The policies and procedures shall include at least methodologies for the inclusion of the selection and development of appropriate testing, including portfolio and market data selection, the regularity of the tests, the specific risk characteristics of the financial instruments cleared, the analysis of testing results and exceptions and the relevant corrective measures needed.

4. A CCP shall include any client positions which expose it to uncovered losses as a result of a clearing member default when performing all tests.

Article 3 SBT

Back testing

1. A CCP shall assess its margin coverage by back testing its models to calculate its initial margins against actual market changes. A CCP shall back test its models from each day in order to evaluate whether there are any testing exceptions to margin coverage. Coverage shall be evaluated across financial instruments, clearing members and take into account portfolio effects and, where appropriate, interoperable CCPs.

2. A CCP shall consider a range of appropriate historical time horizons for its back testing programme to ensure that the observation window used is sufficient enough to mitigate any detrimental effect on the statistical significance.

3. A CCP shall consider in its back testing programme, at least, clear statistical tests, including a range of confidence intervals, and performance criteria to be defined by CCPs for the assessment of back testing results.

4. A CCP shall periodically report its back testing results and analysis in a form that does not breach confidentially to the risk committee in order to seek their advice in the review of its margin model.

5. Back testing results and analysis shall be made available to all clearing members and, where known to the CCP, clients. For all other clients back testing results and analysis shall be made available by the relevant clearing members on request. Such information shall be aggregated and clearing members and clients shall only have access to detailed back testing results and analysis for their own portfolios.

6. A CCP shall define the procedures to detail the actions it could take given the results of back testing analysis.

Article 4 SBT

Sensitivity testing and analysis

1. A CCP shall conduct sensitivity tests and analysis to assess the coverage of its margin model under various market conditions using historical data from realised stressed market conditions and hypothetical data for unrealised stressed market conditions.

2. A CCP shall use a wide range of parameters and assumptions to capture a variety of historical and hypothetical conditions, including the most-volatile periods that have been experienced by the markets it serves and extreme changes in the correlations between prices of contracts cleared by the CCP, in order to understand how the level of margin coverage might be affected by highly stressed market conditions and changes in important model parameters.

3. Sensitivity analysis shall be performed on a number of actual and representative clearing member portfolios. The representative portfolios shall be chosen based on their sensitivity to the material risk factors and correlations to which the CCP is exposed to. Such sensitivity testing and analysis shall be designed to test the key assumptions of the initial margin model at a number of confidence intervals, giving appropriate consideration to, at minimum, the term structure of the risk factors, and the assumed correlation between risk factors.

4. A CCP shall evaluate the potential losses in clearing member positions.

5. A CCP shall, where applicable, consider parameters reflective of the simultaneous default of clearing members that issue financial instruments cleared by the CCP or the underlying of derivatives cleared by the CCP. Where applicable, the effects of a client's default that issues financial instruments cleared by the CCP or the underlying of derivatives cleared by the CCP shall also be considered.

6. A CCP shall periodically report its sensitivity testing results and analysis in a form that does not breach confidentially to the risk committee in order to seek its advice in the review of its margin model.

7. A CCP shall define the procedures to detail the actions it could take given the results of sensitivity testing analysis.

Article 5 SBT

Stress testing

1. A CCP's stress testing programme shall require the CCP to conduct a range of stress tests on a regular basis that shall consider the CCP's product mix and all elements of its models and their methodologies and its liquidity risk management framework.

2. A CCP's stress testing programme shall also include the testing of critical parameters, including those reflecting risk factors specified in Article 6 SBT, and assumptions made in its risk methodologies and its liquidity risk management framework to determine the sensitivity of the system to errors in the calibration of such parameters and assumptions.

3. A CCP's stress testing programme shall prescribe that stress tests are performed, using defined stress testing scenarios, on both past and hypothetical extreme but plausible market conditions in accordance with Chapter VIII. Past conditions to be used shall be reviewed and adjusted, where appropriate. A CCP shall also consider other forms of appropriate stress testing scenarios including, but not limited to, the technical or financial failure of its settlement banks, nostro agents, custodian banks, liquidity providers, or interoperable CCPs.
4. A CCP shall have the capacity to adapt its stress tests quickly to incorporate new or emerging risks.
5. A CCP shall consider the potential losses arising from the default of a client which clears through multiple clearing members.
6. A CCP shall periodically report its stress testing results and analysis in a form that does not breach confidentially to the risk committee in order to seek its advice in the review of its models, its methodologies and its liquidity risk management framework.
7. Stress testing results and analysis shall be made available to all clearing members and, where known to the CCP, clients. For all other clients back testing results and analysis shall be made available by the relevant clearing members on request. Such information shall be aggregated and clearing members and clients shall only have access to detailed stress testing results and analysis for their own portfolios.
8. A CCP shall define the procedures to detail the actions it could take given the results of stress testing analysis.

Article 6 SBT

Stress testing - Risk factors to test

1. A CCP shall identify, and have an appropriate method for measuring, relevant risk factors specific to the contracts it clears that could affect its losses. A CCP's stress tests shall, at least, take into account risk factors specified for the following type of financial instruments, where applicable:
   (a) Interest rate related contracts: risk factors corresponding to interest rates in each currency in which the CCP clears financial instruments. The yield curve modelling shall be divided into various maturity segments in order to capture variation in the volatility of rates along the yield curve. The number of related risk factors shall depend on the complexity of the interest rate contracts cleared by the CCP. Basis risk, arising from less than perfectly correlated movements between government and other fixed-income interest rates, shall be captured separately.
   (b) Exchange rate related contracts: risk factors corresponding to each foreign currency in which the CCP clears financial instruments and to the exchange rate between the currency in which margin calls are made and the currency in which the CCP clears financial instruments.
   (c) Equity related contracts: risk factors corresponding to the volatility of individual equity issues for each of the markets cleared by the CCP and to the volatility of various sectors of the overall equity market. The sophistication and nature of the modelling technique for a given market shall correspond to the CCP's exposure to the overall market as well as its concentration in individual equity issues in that market.
   (d) Commodity contracts: risk factors that take into account the different categories and sub-categories of commodity contracts and related derivatives cleared by the CCP, including, where appropriate, variations in the convenience yield between derivatives positions and cash positions in the commodity.
   (e) Credit related contracts: risk factors that consider jump to default risk, including the cumulative risk arising from multiple defaults, basis risk and recovery rate volatility.

2. A CCP shall also, at least, give appropriate consideration to the following in its stress tests:

(a) correlations, including those between identified risk factors and similar contracts cleared by the CCP;
(b) factors corresponding to the implied and historical volatility of the contract being cleared;
(c) specific characteristics of any new contracts to be cleared by the CCP;
(d) concentration risk, including to a clearing member, and group entities of clearing members;
(e) interdependencies and multiple relationships;
(f) relevant risks including foreign exchange risk;
(g) set exposure limits; and
(h) wrong-way risk.

Article 7 SBT

Stress testing - total financial resources

1. A CCP's stress-testing programme shall ensure that its combination of margin, default fund contributions and other financial resources are sufficient to cover the default of at least the two clearing members to which it has the largest exposures under extreme but plausible market conditions. The stress testing programme shall also examine potential losses resulting from the default of entities in the same group as the two clearing members to which it has the largest exposures under extreme but plausible market conditions.
2. A CCP's stress-testing programme shall ensure that its margins and default fund are sufficient to cover at least the default of the clearing member to which it has the largest exposures or of the second and third largest clearing members, if the sum of their exposures is larger in accordance with Article 42 of [EMIR].
3. The CCP shall conduct a thorough analysis of the potential losses it could suffer and shall evaluate the potential losses in clearing member positions, including the risk that liquidating such positions could have an impact on the market and the CCP's level of margin coverage.
4. A CCP shall, where applicable, consider in its stress tests, the effects of the default of a clearing member that issues financial instruments cleared by the CCP or the underlying of derivatives cleared by the CCP. Where applicable, the effects of a client's default that issues financial instruments cleared by the CCP or the underlying of derivatives cleared by the CCP shall also be considered.
5. A CCP's stress tests shall consider the liquidation period as outlined in Chapter VII.

Article 8 SBT

Stress testing – liquid financial resources

1. A CCP's stress-testing programme of its liquid financial resources shall ensure that they are sufficient in accordance with the Chapter IX.
2. Additionally a CCP shall have clear and transparent rules and procedures to address insufficient liquid financial resources highlighted by its stress tests to ensure settlement of payments obligations. A CCP shall also have clear procedures for using the results and analysis of its stress tests to evaluate and adjust the adequacy of its liquidity risk management framework and liquidity providers.
3. The stress testing scenarios used in the stress testing of liquid financial resources shall consider the design and operation of the CCP, and include all entities that might pose material liquidity risk to it. Such stress tests shall also consider any strong linkages or similar exposures between its clearing members, including other entities that are part of the same group, and assess the

probability of multiple defaults and the contagion effect among its clearing members that such defaults may cause.

Article 9 SBT

Maintaining sufficient coverage

1. A CCP shall establish and maintain procedures to recognise changes in market conditions, including increases in volatility or reductions in the liquidity of the financial instruments it clears, so as to promptly adapt calculation of its margin requirement to appropriately account for new market conditions.
2. A CCP shall conduct tests on its haircuts in order to ensure collateral can be liquidated at least at its haircutted value in observed and extreme but plausible market conditions.
3. If a CCP collects margin at a portfolio, as opposed to product level, it shall continuously review and test offsets among products. A CCP shall base such offsets on prudent and economically meaningful methodology that reflects the degree of price dependence between the products. In particular, a CCP shall test how correlations perform during periods of actual and hypothetical severe market conditions.

Article 10 SBT

Review of models using test results

1. A CCP shall have clear procedures to determine the amount of additional margin it may need to collect, including on an intraday basis, and to recalibrate its margin model where back testing indicates that the model did not perform as expected with the result that it does not identify the appropriate amount of initial margin necessary to achieve the intended level of confidence. Where a CCP has determined that it is necessary to call additional margin it shall do so by the next margin call and before any changes are made to either the margin model or adopted parameters.

2. A CCP shall evaluate the source of testing exceptions highlighted by its back tests. Depending on the source of exceptions, the CCP shall determine whether a fundamental change to the margin model, or to the models that input into it, is required and whether the recalibration of current parameters is necessary.

3. A CCP shall evaluate the sources of testing exceptions highlighted by its stress tests. The CCP shall determine whether a fundamental change to its models, their methodologies or its liquidity risk management framework is required or if the recalibration of current parameters or assumptions is necessary, on the basis of the sources of exceptions.

4. Where the results of the tests show an insufficient coverage of margin, default fund or other financial resources, a CCP shall increase overall coverage of its financial resources to an acceptable level by the next margin call and before any changes are made to either its models or their methodologies, including adopted parameters. Where the results of the tests show insufficient liquid financial resources, the CCP shall increase its liquid financial resources to an acceptable level as soon as is practicable before any changes are made to its liquidity risk management framework.

Article 11 SBT

Reverse stress tests

1. A CCP shall conduct reverse stress tests which are designed to identify the extreme scenarios and market conditions in which the combination of its margin, default fund and other financial resources may provide insufficient coverage of credit exposures and for which its liquid financial resources may be insufficient. When conducting such tests a CCP shall model extreme market conditions that go beyond what are considered plausible market conditions, in order to help determine the limits of its models, its liquidity risk management framework, its financial resources and its liquid financial resources.

2. A CCP shall develop reverse stress tests tailored to the specific risks of the markets and of the contracts that it provides clearing services for.

3. A CCP shall use the results and analysis of its reverse stress tests to help identify extreme but plausible scenarios.

Article 12 SBT

Testing default procedures

1. A CCP shall test and review its default procedures to ensure they are both practical and effective. A CCP shall perform simulation exercises as part of the testing of its default procedures.

2. A CCP shall, following testing of its default procedures, identify any uncertainties and appropriately adapt its procedures to mitigate such uncertainty.

3. A CCP shall, through conducting simulation exercises, verify that all clearing members, where appropriate, clients and other relevant parties including, but not limited to, interoperable CCP's and any related service providers, are duly informed and know the procedures involved in a default scenario

Article 13 SBT

Frequency

1. A CCP shall conduct a comprehensive validation of its models and their methodologies at least annually.
2. A CCP shall conduct a comprehensive validation of its liquidity risk management framework at least annually.
3. A CCP shall conduct a full validation of its valuation models at least annually.
4. A CCP shall review the appropriateness of the policies specified in Article 2 SBT, shall be reviewed at least annually.
5. A CCP shall analyse and monitor its model performance and financial resources coverage in the event of defaults by back testing margin coverage at least daily and conducting at least daily stress testing using standard and predetermined parameters and assumptions.
6. A CCP shall analyse and monitor its liquidity risk management framework by conducting at least daily stress tests of its liquid financial resources.

7. A CCP shall conduct a detailed thorough analysis of testing results at least on a monthly basis in order to ensure its stress testing scenarios, models and liquidity risk management framework, underlying parameters and assumptions are correct. Such analysis shall be conducted more frequently in stressed market conditions, including when the financial instruments cleared or markets served in general display high volatility, become less liquid, or when the size or concentrations of positions held by its clearing members increase significantly or when it is anticipated that a CCP will encounter stressed market conditions.

8. Sensitivity analysis shall be conducted at least monthly, using the results of sensitivity tests. This analysis should be conducted more frequently when markets are unusually volatile or less liquid or when the size or concentrations of positions held by its clearing members increase significantly.

9. A CCP shall test offsets among financial instruments and how correlations perform during periods of actual and hypothetical severe market conditions at least annually.

10. A CCP's haircuts shall be tested at least monthly.

11. A CCP shall conduct reverse stress tests at least monthly.

12. A CCP shall test and review its default procedures in accordance with Article 12(1) SBT at least quarterly and perform simulation exercises in accordance with Article 12(3) SBT at least annually. A CCP shall also perform simulation exercises following any material change to its default procedures and following the addition of any new types of contracts being cleared by the CCP.

Article 14 SBT

The time horizons

1. The time horizons used for stress tests shall be defined in accordance with Chapter VIII and shall include forward-looking extreme but plausible market conditions.

2. The historical time horizons used for back tests shall include data from the most recent year or as long as a CCP has been clearing the relevant financial instrument if that is less than a year.

Article 15 SBT

Information to be publicly disclosed

1. A CCP shall publicly disclose the general principles underlying its models and their methodologies, the nature of tests performed, with a summary of the test results and any corrective actions undertaken.
2. A CCP shall make available to the public key aspects of its default procedures, including:
   (a) the circumstances in which action may be taken;
   (b) who may take those actions;
   (c) the scope of the actions which may be taken, including the treatment of both proprietary and client positions, funds and assets;
   (d) the mechanisms to address a CCP's obligations to non-defaulting clearing members; and
   (e) the mechanisms to help address the defaulting clearing member's obligations to its clients.

Article []

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [ ]

[For the Commission
The President]

[On behalf of the President]

[Position]

ANNEX IV - Draft implementing technical standards on record keeping requirements for CCPs

COMMISSION IMPLEMENTING REGULATION (EU) No .../..

of [date]

laying down implementing technical standards with regard to the format of the records to be maintained by central counterparties

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No xx/xxxx [EMIR] of the European Parliament and of the Council of dd mm yyyy on [OTC] derivatives transactions, central counterparties and trade repositories[14], and in particular Articles 29 thereof,

Whereas:

(1) To carry out their duties effectively and consistently, the relevant competent authorities should be provided with data that are comparable among CCPs. The use of common formats also facilitate the reconciliation of data across CCPs.

(2) A CCP should be required to retain data for record keeping purposes in a format compatible with the format in which data is retained by trade repositories, taking into account that in certain circumstances CCPs and trade repositories are required to maintain or report the same information. The use of a common format across different financial market infrastructures facilitates the greater use of these formats by a wide variety of market participants, thus promoting standardisation.

(3) To facilitate straight through processing and reduction of costs to market participants, it is important to use standardised procedures and data formats across CCPs to the extent possible.

(4) The underlying should be identified by using a single identifier, however there is currently no market wide standardised code to identify the underlyings within a basket. CCPs should therefore indicate at least that the underlying is a basket and use International Securities Identification numbers (ISINs) for standardised indices where possible. This Regulation is based on the draft implementing technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(5) In accordance with Article 15 of Regulation (EU) No 1095/2010, ESMA has conducted an open public consultation before submitting the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion

[14] OJ.....

of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010.

Article 1

Subject matter

This regulation lays down the detailed rules on the format of the records and information to be retained by CCPs in accordance with Article 29 of Regulation (EU) No xxxx/2012 [EMIR].

Article 2

General provisions

1. A CCP shall keep the records and information in a durable medium which enables the CCP to store information in a way accessible for future reference by the competent authorities.

2. A CCP shall establish and maintain a record-keeping system which satisfies the following conditions:

   a) it prevents the alteration of the records;

   b) it ensures the security and confidentiality of the data recorded;

   c) it incorporates mechanisms for identifying and correcting errors;

   d) it includes appropriate precautionary measures to enable the timely recovery of the records in the case of a system failure.

3. Where records or information are less than 6 months old, they shall be kept in a format which enables the CCP to provide the records or information to a competent authority as soon as possible and at the latest by the end of the following business day following a request from the competent authority.

4. Where records or information are older than 6 months, they shall be kept in a format which enables the CCP to provide the records or information to a competent authority within five business days.

Article 3

Formats of records

1. A CCP shall retain the record of each contract processed in the format set out in Table 1 in the Annex.

2. A CCP shall retain the record of each position in the format set out in Table 2 in the Annex.

3. A CCP shall retain the records of activities related to its business and internal organisation in the format set out in Table 3 in the Annex.

Article []

Entry into force

This Regulation shall enter into force 20 days following that of its publication in the *Official Journal of the European Union*.

It shall apply from [...]

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [ ]

[For the Commission
The President]

[On behalf of the President]

[Position]

ANNEX 1 to implementing technical standard on record-keeping requirements for CCPs

Tables of fields to be recorded under Article 29 of EMIR

Table 1 – Records of transactions processed

	FIELD	FORMAT	DESCRIPTION
1	Reporting timestamp	*ISO 8601 date format / UTC time format.*	Date and time of reporting.
2	Price/rate/spread	*C=Cash, P=Percentage, S= Spread and amount (xxxx,yy).*	The price per security or derivative contract excluding commission and (where relevant) accrued interest. In the case of a debt instrument, the price may be expressed either in terms of currency or as a percentage.
3	Currency	*ISO Currency Code.*	The currency in which the price is expressed. If, in the case of a bond or other form of securitised debt, the price is expressed as a percentage, that percentage shall be included.
4	Quantity	*Up to 10 numerical digits.*	The number of units of the financial instruments, the nominal value of bonds, or the number of derivative contracts included in the transaction.
5	Quantity notation		An indication as to whether the quantity is the number of units of financial instruments, the nominal value of bonds or the number of derivative contracts.
6	CCP side	*B=Buyer / S=Seller*	
7	Product ID	*Unique Product Identifier (UPI) or in accordance with the information in Article 4 of [ITS on format and frequency of trade reports to trade repositories.]*	The contract shall be identified by using a unique product identifier, where available.
8	Clearing member ID	*Legal Entity Identifier (LEI), interim entity identifier or BIC*	In case of give-up.
9	Beneficiary ID	*Legal Entity Identifier (LEI), interim entity identifier or BIC or Client Code*	If the beneficiary of the contract is not a C/P to this contract it has to be identified by a unique code or, in case of individuals, by a client code.
10	Party that transferred the contract (in case of give-up)	*Legal Entity Identifier (LEI), interim entity identifier, BIC or Client Code*	
11	Venue of execution / OTC	*ISO 10383 Market Identifier Code (MIC) where relevant, XOFF for listed derivatives that are traded off-*	Identification of the venue where the transaction was executed.

		exchange or XXXX for OTC derivatives.	
12	Date of interposition	*ISO 8601 date format*	The day on which the interposition of the CCP in the contract was executed.
13	Time of interposition	*UTC time format*	The time at which the interposition of the CCP in the contract was executed, reported in the local time of the competent authority to which the transaction will be reported, and the basis in which the transaction is reported expressed as Coordinated Universal Time (UTC) +/- hours.
14	Date of termination of the contract	*ISO 8601 date format*	The day on which the termination of the contract occurred.
15	Time of termination of the contract	*UTC time format*	The time at which the termination of the contract occurred, reported in the local time of the competent authority to which the transaction will be reported, and the basis in which the transaction is reported expressed as Coordinated Universal Time (UTC) +/- hours.
16	Delivery type	*C = cash, P = physical, O = option available to C/P*	Whether the contract is settled physically or in cash.
17	Settlement date	*ISO 8601 date format*	The day on which the settlement or the buy-in of the contract is executed
18	Time of settlement or of buy-in in the contract	*UTC time format*	The time at which the settlement or the buy-in of the contract is executed, reported in the local time of the competent authority to which the transaction will be reported, and the basis in which the transaction is reported expressed as Coordinated Universal Time (UTC) +/- hours.
Details on the original terms of the contracts cleared, to be provided to the extent they are applicable			
19	Date	*ISO 8601 date format*	The day on which the contract was originally concluded.
20	Time	*UTC time format*	The time at which the original contract was originally concluded, reported in the local time of the competent authority to which the transaction will be reported, and the basis in which the transaction is reported expressed as Coordinated Universal Time (UTC) +/- hours.
21	Product ID	*Unique Product Identifier (UPI) or in accordance with the information in*	The contract shall be identified by using a unique product identifier

		Article 4 of [ITS on format and frequency of trade reports to trade repositories.]	where available.
22	Underlying)	*ISO 6166 International Securities Identifying Number (ISIN) / Legal Entity Identifier (LEI) / B= Basket / I=Index.*	The instrument identification applicable to the security that is the underlying asset in a derivative contract as well as the transferable security falling within Article 4(1)(18)(c) of Directive 2004/39/EC.
23	Derivative type (in case of derivative contract)	The harmonised description of the derivative type should be done according to one of the top level categories as provided by a uniform internationally accepted standard for financial instrument classification.	
24	Inclusion of the instrument in the ESMA register of contracts subject to the clearing obligation (in case of derivative contract)	*Y=Yes / N=No.*	
Other information to be provided to the extent they are applicable			
25	Identification of the interoperable CCP clearing on leg of the transaction	*Legal Entity Identifier code (LEI), interim entity identifier or BIC of the CCP clearing the contract.*	

Table 2 Position records

	FIELD	FORMAT
1	Clearing member ID	*Legal Entity Identifier (LEI), interim entity identifier or BIC*
2	Beneficiary ID	*Legal Entity Identifier (LEI), interim entity identifier, BIC or Client Code*
3	Interoperable CCP maintaining the position	*Legal Entity Identifier (LEI), interim entity identifier, BIC or Client Code*
4	Sign of the position	*B=Buyer / S=Seller*
5	Value of the position	*Up to 10 numerical digits (xxxx,yy).*
6	Price at which the contracts are valued	*Up to 10 numerical digits (xxxx,yy).*
7	Currency	*ISO Currency Code.*

8	Other relevant information	*Free Text*
9	Amount of margins called by the CCP	*Up to 10 numerical digits (xxxx,yy).*
10	Amount of default fund contributions called by the CCP	*Up to 10 numerical digits (xxxx,yy).*
11	Amount of other financial resources called by the CCP	*Up to 10 numerical digits (xxxx,yy).*
12A	Amount of margins posted by the Clearing Member with reference to client account A	*Up to 10 numerical digits (xxxx,yy).*
13A	Amount of default fund contributions posted by the Clearing Member with reference to client account A	*Up to 10 numerical digits (xxxx,yy).*
14A	Amount of other financial resources posted by the Clearing Member with reference to client account A	*Up to 10 numerical digits (xxxx,yy).*
15B	Amount of margins posted by the Clearing Member with reference to client account B	*Up to 10 numerical digits (xxxx,yy).*
16B	Amount of default fund contributions posted by the Clearing Member with reference to client account B	*Up to 10 numerical digits (xxxx,yy).*
17B	Amount of other financial resources posted by the Clearing Member with reference to client account B	*Up to 10 numerical digits (xxxx,yy).*

Table 3 Business records

	FIELD	FORMAT	DESCRIPTION
1	Organisational charts	*Free text*	Board and relevant committees, clearing unit, risk management unit, and all other relevant units or divisions.
Shareholders or members that have qualifying holdings (fields to be added for each of the relevant shareholder/member)			

2	Type	*S=Shareholder / M=member*	
3	Type of qualified holding	*D=direct / I=indirect*	
4	Type of entity	*N=natural person / L=legal person*	
5	Amount of the holding	*Up to 10 numerical digits (xxxx,yy)*	
Other documents			
6	Policies, procedures, processes required under organisational requirements	*Documents*	
7	Minutes of Board meetings, meeting of sub-committees (if applicable) and of Senior Management Committees (if applicable)	*Documents*	
8	Minutes of meetings of the risk committee	*Documents*	
9	Minutes of consultation group with clearing members and clients (if any)	*Documents*	
100	Reports of internal and external audit, risk management, compliance and consultant	*Documents*	
11	Business continuity policy and disaster recovery plan	*Documents*	
12	Liquidity plan and daily liquidity reports	*Documents*	
13	Documents reflecting all assets and liabilities and capital accounts	*Documents*	
14	Complaints received	*Free text*	For each complaint: information on complaint's name, address and account number; date of receiving the complaint; names of all persons identified in the complaint; description of the nature of the complaint; disposition of the

			complaint; date at which the complaint was resolved.
15	Information on interruption of services or dysfunction	*Free text*	Information on any interruption of services or dysfunction, including a detailed report on the timing, effects and remedial actions.
16	Results of back and stress test performed	*Free text*	
17	Written communications with competent Authorities, ESMA and the relevant members of the ESCB	*Documents*	
180	Legal opinions received in accordance with organisational requirements	*Documents*	
19	Interoperability arrangements with other CCPs (where applicable)	*Documents*	
20	List of all clearing members (art. 7(1)(f) ORG	*Free text / Document*	List in accordance with Article 7(1)(f).
21	Information required by article 7(4)(c) ORG	*Free text / Documents*	Law and Rules governing (i) the access to the CCP, (ii) the contracts concluded by the CCP with clearing members and, where practicable, clients, (iii) the contracts that the CCP accepts for clearing, (iv) any interoperability arrangements, (v) the use of collateral and default fund contributions, including the liquidation of positions and collateral and the extent to which collateral is protected against third party claims (level of segregation).
22	Development on new initiative processes	*Free text*	In case of the provision of new services.

ANNEX V - Draft regulatory technical standards on trade repositories

COMMISSION DELEGATED REGULATION (EU) No .../..

of [date]

supplementing Regulation (EU) No xx/xxxx [EMIR] of the European Parliament and of the Council with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No xx/2012 [EMIR] of the European Parliament and of the Council of dd mm yyyy on OTC derivatives, central counterparties and trade repositories[15], and in particular Articles in particular Article 9(5) thereof.

Whereas:

(1) In order to allow flexibility, a counterparty should be able to delegate the reporting of the contract to the other counterparty or to a third party. Counterparties should also be able to agree to delegate reporting to a common third entity (including a CCP), the latter submitting one report, including the relevant table of fields, to the trade repository. In these circumstances and in order to ensure data quality, the report should indicate that it is made on behalf of both counterparties and will contain the full set of details that would have been reported had the trade been reported separately.

(2) In order to preserve the integrity of the data, the competent authority over a counterparty using a third entity for reporting purposes has the discretion to deem the latter unfit if the data becomes unreliable and any decision taken in this regard shall be communicated to ESMA. For the same reasons, ESMA then may prohibit trade repositories to accept reports from certain third parties if any issues regarding data integrity are not rectified.

(3) To avoid inconsistencies in the Common Data that is reported in Table 2, each counterparty to a trade should ensure that the Common Data reported is agreed between both parties to the trade. A unique trade identifier will help with the reconciliation of the data in the case that the counterparties are reporting to different trade repositories.

(4) To avoid duplicate reporting and to reduce the reporting burden, where one counterparty or CCP reports on behalf of both counterparties, the counterparty should be able to send one report to the trade repository containing the relevant information.

(5) It is important that reports specify the asset class that a derivative falls into in order to ensure a the contract is correctly identified. In the particular case of hybrid derivatives, counterparties should agree which type of derivative the trade most closely resembles, before the details of the transaction are reported to a trade repository.

(6) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission and it reflects the relevance of the role of

[15] OJ.....

trade repositories to improve transparency of markets towards the public and regulators, the data to be reported to, collected by and made available by trade repositories depending on derivative type and the nature of the trade.

(7) [The European Securities and Markets Authority (ESMA) has consulted, where relevant, the relevant authorities and the members of the European System of Central Banks (ESCB) before submitting the draft technical standards on which this Regulation is based. In accordance with Article 10 of Regulation (EU) No 1095/2010, ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010.]

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation lays down regulatory technical standards specifying the details of any derivative contract to report to a trade repository and the type of such reports pursuant to Article 9(5) of Regulation (EU) No xx/2012.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) 'counterparties' means financial counterparties and non-financial counterparties, as defined in Article 2(8) and 2(9), respectively, of Regulation (EU) No xx/2012. [EMIR];

(2) 'beneficiary' is the party subject to the rights and obligations arising from the contract. Where the transaction is executed by a structure, such as a trust or fund, representing a number of beneficiaries, the beneficiary should be identified as that structure;

(3) 'execution timestamp' means the moment when the two counterparties agree to the primary economic terms of a contract, which may occur prior to the confirmation of the contract;

(4) 'confirmation' means the moment when the full terms of the contract, and any relevant master agreement are agreed between both counterparties to the contract;

(5) 'conclusion of a contract' has the same meaning as the 'execution of a transaction' under Article 25 (3) of Directive 2004/39/EC[16]

(6) 'equity derivative' means a derivative contract the value of which derives from one or more equity linked underlyings, including shares or an equity index;

[16] OJ L.145, 30.4.2004, p xx

(7) ‘interest rate derivative’ means a derivative contract which involves the exchange of cash flows calculated on a notional amount using specified interest rates;

(8) ‘currency derivatives’ means a derivative contract where the underlying is a currency or basket of currencies.

(9) ‘commodity derivative’ means a derivative contract where the value of which derives from an underlying commodity or commodity index;

(10) ‘credit derivative’ means a derivative contract where the value of the contract which derives from an underlying credit exposure;

(11) ‘other derivative’ means a derivative product, including hybrid derivatives, that does not fall within one of the derivative contracts types defined in paragraphs 6 to 10.

Article 3

Details to be reported

1. A report shall contain the information to a trade repository set out in Table 1 of the Annex.
2. A report shall contain the information set out in those sections of Table 2 of the Annex which apply to the type of derivative contract concluded, as indicated in Table 2.
3. Where one report is made on behalf of both counterparties, it shall contain the information set out in Table 1 of the Annex in relation to each of the counterparties. The information set out in Table 2 of the Annex should be submitted only once.
4. Where one report is made on behalf of both counterparties to a trade, the report shall indicate that the report is made on behalf of both counterparties.
5. If the counterparties, or another entity, report to different trade repositories, the trade repositories shall use, where available, universal codes to ensure that the common data is agreed between both parties to the trade.
6. Where one counterparty reports a trade to a trade repository on behalf of the other counterparty, or a third entity reports a trade to a trade repository on behalf of both counterparties, the details reported shall include the full set of details that would have been reported had the trades been reported to the trade repository by each counterparty separately.

Article 4

Reporting by a third entity

1. A third entity is deemed appropriate if in the view of the delegating counterparty, it guarantees protection of the data and compliance with the reporting obligation under Article 9 of Regulation No (EU) No xx/2012 [EMIR].
2. The relevant competent authority for the counterparty may deem the third entity to be unfit and require the counterparty or the central counterparty to report directly or to choose another third entity, in particular if reporting is repeatedly incorrect or delayed after the third entity was given a sufficient period of time in order to take remedial action.
3. The decision referred to in the paragraph 2 shall be communicated to ESMA after being taken.

4. ESMA may prohibit trade repositories to accept transactions from certain third parties, under the criteria listed above. The decision referred to in this paragraph shall be communicated to national competent authorities after being taken.

Article 5

Cleared trades

1. Novation of a derivative contract shall be treated for reporting purposes as a modification of that contract.
2. Where novation occurs before reporting to a trade repository, a report shall be made on the basis of the terms of the transaction before novation and indicating that it has been cleared.
3. The procedure described under paragraph 2 does not affect the legal effect of novation, nor the qualification of a central counterparty as a counterparty in that context.
4. If a transaction is concluded in a trading venue and cleared by a CCP such that a counterparty is not aware of the identity of the other counterparty to the derivative contract, the counterparty shall identify the CCP as its counterparty.

Article 6

Reporting of collateral

1. The data on collateral required under Table 2 of the Annex shall be reported on the basis of all collateral exchanged, including cash, securities, pledges and any other relevant interests.

2. In the event counterparties exchange collateral on a portfolio basis and it is not possible to report collateral exchanged for an individual contract, counterparties may report to a trade repository collateral exchanged on a portfolio basis, in which case the following information shall be reported for all the collateral exchanged:

    i. collateral type;
    ii. collateral amount;
    iii. currency of collateral amount.

3. The counterparties shall report to the trade repository the specific contracts over which collateral has been exchanged.

Article 7

Reporting log

Modifications to the data registered in trade repositories shall be kept in a log identifying the person or persons that requested the modification, including the trade repository itself if applicable, the reason or reasons for such modification, a date and timestamp and a clear description of the changes, including the old and new contents of the relevant data fields.

Article 8

Hybrid derivatives

In the case of a hybrid derivative, a report shall be made on the basis of the asset class that the counterparties agree the contract most closely resembles before the report is sent to a TR.

Article 9

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

[It shall apply from [...]. However, Articles x and y shall apply from [...].]

ANNEX 1 to regulatory technical standard on the details to be reported to trade repositories

Article 9 of EMIR

Table 1 - Counterparty Data

	FIELD	DETAILS TO BE REPORTED
	Parties to the contract	
1	Reporting timestamp	Date and time of reporting.
2	C/P ID	The reporting counterparty shall be identified by a unique code or, in the case of individuals, by a client code.
3	ID of the other C/P	Unique identifier for the other counterparty of the contract.
4	Name of C/P	Corporate name of C/P, i.e. name of financial C/P; non-financial C/P; or individual.
5	Domicile of C/P	Information on the registered office, consisting of full address, city and country.
6	Corporate sector of C/P	Nature of the company activities / status (bank, insurance company, etc.).
7	Financial or non-financial nature of C/P	Indicate if the C/P a financial or non-financial counterparty in accordance with Article 2 (8,9)of Regulation No (EU) No xx/2012 [EMIR].
8	Broker ID	In case C/P uses a broker to execute the contract, this broker shall be identified by a unique code.
9	Reporting entity ID	ID of the reporting entity.
10	Clearing member ID	In case of give-up.
11	Beneficiary ID	If the beneficiary of the contract is not a C/P to this contract it has to be identified by a unique code or, in case of individuals, by a client code.
12	Trading capacity	Identifies whether the contract was executed on own account (on own behalf or behalf of a client) or for the account of, and on behalf of, a client.
13	C/P side	Identifies whether the contract was a buy or a sell from the reporting C/P's perspective. This field shall be left blank for contracts where the relevant information has been provided in field No. 37 (Direction).
14	Trade with non-EEA C/P	In case the C/P has entered into a trade with a non-EEA C/P who is not subject to the reporting obligation.
15	Directly linked to commercial activity or treasury financing	For non-financial C/P; Information on whether the contract is objectively measurable as directly linked to the non-financial counterparty's commercial or treasury financing activity, as referred to in Art. 10(3) Regulation No (EU) No xx/2012 [EMIR].
16	Clearing threshold	For non-financial C/P; information whether the counterparty is above the clearing threshold referred to in Art. 10(3) Regulation No (EU) No xx/2012 [EMIR].

Table 2 - Common Data

	FIELD	DETAILS TO BE REPORTED	APPLICABLE TYPES OF DERIVATIVE CONTRACT
	Section 2a - Contract type		**All contracts**
1	Taxonomy	The taxonomy used for describing the classification of the reported contract.	
2	Product ID	The contract shall be identified by using a unique product identifier.	
3	Underlying	The underlying shall be identified by using an unique identifier for this underlying. In case of baskets or indices, an indication for this basket or index shall be used where an unique identifier does not exist.	
4	Currency	The currency of the notional amount or the currency to be delivered or, for currency derivatives, the currency to be delivered.	
	Section 2b - Details on the transaction		**All contracts**
5	Trade ID	An internationally agreed UTI.	
6	Venue of execution / OTC	The venue of execution shall be identified by an unique code for this venue, or that the contract was concluded OTC.	
7	Price / rate / spread	The price per derivative excluding, where applicable, commission and accrued interest.	
8	Notional amount	Face value of the contract, i.e. value of the deliverables.	
9	Price multiplier	The number of derivatives represented by one contract.	
10	Quantity	Number of contracts included in the contract.	
11	Up-front payment	Amount of any up-front payment.	
12	Delivery type	Whether the contract is settled physically or in cash.	
13	Execution timestamp	The time and date a contract was executed or modified, indicating time zone.	
14	Effective date	Date when obligations under the contract come into effect.	
15	Maturity date	Date when contract expires / exercise date.	

16	Termination date	If different from maturity	
17	Settlement date	Date of settlement of the underlying.	
18	Master Agreement type	Rreference to any master agreement, if existent (e.g. ISDA Master Agreement; Master Power Purchase and Sale Agreement; International ForEx Master Agreement; European Master Agreement or any local Master Agreements).	
19	Master Agreement date	Reference to the date of the master agreement version, if any (e.g. 1992, 2002, ...).	
	Section 2c - Risk mitigation / Reporting		**All contracts**
20	Confirmation	Whether the contract was electronically confirmed, non-electronically confirmed or remains unconfirmed.	
21	Confirmation timestamp	Date and time of the confirmation.	
	Section 2d - Clearing		**All contracts**
22	Clearing obligation	Whether the reported contract is subject to the clearing obligation under Regulation (EU) No. X/2012 [EMIR].	
23	Cleared	Whether clearing has taken place.	
24	Clearing timestamp	Time and date clearing took place.	
25	CCP	In case of a contract that has been cleared, the unique code for the CCP that has cleared the contract.	
26	Intragroup	Indicates whether the contract was concluded as an intra-group transaction, defined in [Art. 3] of Regulation No (EU) No xx/2012 [EMIR]	
	Section 2e- Exposures		**All contracts**
27	Collateralisation	Whether exchange of collateral occurred to cover the contract in accordance with Article 11 of Regulation No (EU) No xx/2012 [EMIR].	
28	Collateral basis	Whether the exchange of collateral occurred on a portfolio basis.	
29	Collateral type	Type of collateral that is posted to/by a counterparty.	
30	Other	Any other type of collateral that is posted by a	

	collateral type	counterparty	
31	Collateral amount	Amount of collateral that is posted by a counterparty	
32	Currency of collateral	Currency of the amount of collateral that is posted by a counterparty	
33	Other currency of collateral amount	Other currency of the amount of collateral that is posted by a counterparty	
34	Mark to market value of contract	Revaluation of the contract, specifying the difference between the closing price on the previous day against the current market price.	
35	Mark to market date of contract	Date of the last mark to market valuation.	
36	Master netting agreement	Type of master agreement in place covering netting arrangements, if different from the master agreement identified in field 18	
	Section 2f- Interest Rates	**If a UPI is reported and contains all the information below, this is not required to be reported**	**Interest rate derivatives**
37	Direction	Whether the reporting counterparty is receiving or paying the fixed rate. In case of float-to-float or fixed-to-fixed contracts this field has to be filled as unspecified.	
38	Fixed rate	Level of the fixed rate leg.	
39	Fixed rate day count fraction	The actual number of days in the relevant fixed rate payer calculation period.	
40	Fixed leg payment frequency	Frequency of payments for the fixed rate leg.	
41	Floating rate payment frequency	Frequency of payments for the floating rate leg.	
42	Floating rate reset frequency	Frequency of floating rate leg resets.	
43	Floating rate to floating rate	An indication of the interest rates used which are reset at predetermined intervals by reference to a market reference rate.	
44	Fixed rate to fixed	An indication of the interest rates used which do not vary during the life of the transaction.	

	rate		
45	Fixed rate to floating rate	An indication of the fixed and floating rate used.	
	Section 2g - Currency	**If a UPI is reported and contains all the information below, this is not required to be reported**	**Currency derivatives**
46	Currency 2	The cross currency, as different from the currency of delivery.	
47	Exchange rate 1	Exchange rate at the moment of the conclusion of the contract.	
48	Exchange rate 2	Exchange rate at the moment of the conclusion of the contract.	
49	Value date	The date on which both currencies traded will settle.	
50	Forward exchange rate	Forward exchange rate on value date.	
51	Exchange rate basis	Quote base for exchange rate.	
	Section 2h - Commodities	**If a UPI is reported and contains all the information below, this is not required to be reported**	**Commodity derivatives**
	General		
52	Commodity base	Name of the commodity group.	
53	Commodity details	Details of the particular commodity.	
54	Load type	Product delivery profile: baseload, peak, off-peak, block hours or other which correspond to the delivery periods of a day.	
55	Delivery point or zone	Physical or virtual point where the delivery takes place.	
56	Delivery start date and time	Start date and time of delivery.	
57	Delivery end date and time	End date and time of delivery.	
58	Border	Identification of the border or border point of a transportation contract.	
	Energy		
59	Daily or hourly quantity	For energy commodities, daily or hourly quantity in MWh which corresponds to the underlying commodity.	
	Section 2i - Options	**If a UPI is reported and contains all the information below, this is not required to be**	**Contracts that contain an option**

		reported	
60	Option type	Indicates whether the contract is a call or a put from the reporting counterparty's perspective.	
61	Option style (exercise)	Indicates whether the option may be exercised only at a fixed date (European, Bermudan and Asian style) or at any time during the life of the contract (American style).	
62	Strike price (cap/floor rate)	The strike price of the option.	
	Section 2j - Modifications to the trade report		**All contracts**
63	Action type	Whether the report: • is reporting a derivative contract or post-trade event for the first time, it will be identified as 'new'; • modifies details of a previously reported derivative contract, it will be identified as 'modify' • cancels a specific trade or post trade event, it will be identified as 'cancel'; • Contains any other amendment, it will be identified as 'Other'.	
64	Details of action type	Where field 63 is reported as 'other' the details should be specified here.	

COMMISSION DELEGATED REGULATION (EU) No .../..

supplementing Regulation (EU) No xx/2012 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the application for registration as a trade repository

of [ ]

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No xx/2012] of the European Parliament and of the Council of dd mm yyyy on OTC derivative transactions, central counterparties and trade repositories [17], and in particular Article 56(3) thereof.

Whereas:

(1) The European Securities and Markets Authority (ESMA) is responsible for the registration and supervision of trade repositories under Title VI of Regulation (EU) No XX/2012, and is required to develop draft regulatory technical standards specifying the details of the application for registration as a trade repository.

(2) This Regulation therefore sets out the information that should be provided to ESMA as part of an application for registration by a trade repository.

(3) A trade repository should provide information on the structure of its internal controls and the independence of its governing bodies, in order to enable an assessment of whether the corporate governance structure ensures the independence of the trade repository and whether structure and reporting routines are appropriate.

(4) To ensure the integrity of a trade repository business, it is important for a trade repository to ensure that its managers and employees are aware of and follow the relevant policies, rules and procedures that are applicable to the services of a trade repository. An independent person from among the senior staff of the trade repository would therefore ensure compliance and have a centralised view of the relevant policies, rules and procedures within the trade repository. Also with a view to preserve the integrity of the data, it is important that trade repositories are subject to strict record-keeping requirements that include maintaining a detailed log of all modifications to the reports. This should also enable modifications to be linked to the original contract

(5) For the purpose of ensuring the sound and prudent management of the trade repository and in order for ESMA to assess the good repute, as well as the experience and skills of the senior management, an applicant trade repository should provide the curriculum vitae, recent criminal record and self-declaration of the good repute of its senior management.

---

[17] OJ.....

(6) In order to ensure adequate business continuity arrangements are in place, and in order to reduce operational risks, the trade repository should provide information to ESMA to demonstrate that it has the necessary financial resources at its disposal for the performance of trade repository functions on an on-going basis.

(7) Although the branches of a trade repository established in the European Union are not legal persons as such, separate information on branches should be provided in order to enable ESMA to clearly identify the position of the branches in the organisational structure of the trade repository; assess the fitness for duty and appropriateness of the senior management of the branches; and evaluate whether the control mechanisms, compliance and other functions in place are considered to be robust and enough to identify, evaluate and manage the branches' risks in an appropriate manner.

(8) It is important for a trade repository to keep any ancillary services, or other business lines that it may offer outside the scope of the trade repository, operationally separate from the trade repository's function under Regulation (EU) No xx/2012 [EMIR] in order to preserve the independence of the trade repository obligation of. This is applicable to any businesses of the trade repository which are not part of the trade repository itself.

(9) In order for ESMA to assess the continuity and orderly function of an applicant's technological systems, it should provide ESMA with descriptions of the relevant technological systems and how these are managed. The applicant should also describe any outsourcing arrangements that are relevant for its services.

(10) The fees associated with the services provided by trade repositories are important information for enabling market participants to make an informed choice. For full transparency of the prices that a trade repository takes for its services, each service and function shall disclose its prices and fees separately. The trade repository may also allow reporting entities to access specific services separately.

(11) Given that market participants and regulators rely on the data maintained by trade repositories, it is necessary to ensure that a trade repository is subject to strict operational and record-keeping requirements.

(12) The risk management models associated with the services provided by a trade repository are necessary to enable market participants to make an informed choice.

(13) In order to secure full access to the trade repository, third party service providers shall be granted non-discriminatory access to information maintained by the trade repository, on the condition that the entity providing the data and the relevant counterparties have provided their consent. An applicant trade repository should therefore provide ESMA with information about its access policies and procedures.

(14) In order to carry out its authorisation and supervision duties effectively, ESMA should be able to request all necessary information from trade repositories, related third parties and third parties to whom the trade repositories have outsourced operational functions and activities.

(15) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission, pursuant to the procedure in Article 10 of Regulation 1095/2010.

(16) ESMA has conducted open public consultations on the draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established under Article 37 of Regulation (EU) No 1095/2010.

CHAPTER 1

SUBJECT MATTER

Article 1

Subject matter

This Regulation lays down the rules which specify the details of the application for registration to be submitted by a trade repository to the European Securities and Markets Authority (hereinafter "ESMA") in accordance with Article 56(3) of Regulation (EU) No XX/2012.

CHAPTER 2

REGISTRATION

SECTION 1

GENERAL

Article 2

Identification, legal status and class of derivatives

1. An application for registration shall identify the applicant and the activities which it intends to carry out which require it to be registered as a trade repository.

2. An application shall in particular contain the following information:

   (a) the full name of the trade repository and legal address (registered office within the European Union);

   (b) an excerpt from the relevant commercial or court register, or other forms of certified evidence of the place of incorporation and scope of business activity of the trade repository, as of the application date;

   (c) information on the types of derivatives for which the trade repository is applying to be registered;

   (d) the articles of association stating that the applying company is to conduct trade repository services;

   (e) the minutes from the meeting where the board of directors approved the application;

(f) the name and contact details of the persons responsible for compliance, or any other staff involved in compliance assessments within the trade repository;

(g) the programme of operations, including indications of the location of the main business activities;

(h) the identification of any subsidiaries and, where relevant, the group structure;

(i) any service, other than the trade repository function, that the applicant intends to provide; and

(j) any information on any pending judicial, administrative, arbitration or any other litigation proceedings irrespective of their type, that the applicant may be party to, particularly as regards tax and insolvency matters and where significant financial or reputational costs may be incurred, or any non-pending proceedings, if able to still have any material impact on trade repository costs.

3. ESMA may also require any additional information during the examination of the application for registration if it considers it relevant for the assessment of the applicants compliance with the requirements set out in Articles 56 to 59 of Regulation EU xx/2012 [EMIR].

4. If a requirement of either the Regulatory Implementing Standard or the Regulatory Technical Standard required under Article 56 of Regulation No (EU) No xx/2012 [EMIR] is not applicable to a trade repository's registration request, the applicant shall clearly indicate this in the application and also provide for an explanation.

Article 3

Policies and procedures

1. Where this Regulation requires policies or procedures to be provided, an applicant shall ensure that the policies or procedures contain or are accompanied by each of the following items:

(a) an indication of the person is responsible for the approval and maintenance of the policies and procedures;

(b) a description of how compliance with the policies and procedures will be ensured and monitored, and who is responsible for implementing this;

(c) a description of the measures to adopt in the event of a breach of policies and procedures; and

(d) an indication of the procedure for reporting to ESMA any material breach of policies or procedures which may result in a breach of the conditions for initial registration.

SECTION 2

OWNERSHIP

Article 4

Ownership of the trade repository

1. An application shall contain:

   (a) a list of each person or entity who directly or indirectly holds 5% or more of the applicants capital or of its voting rights or whose holding makes it possible to exercise a significant influence over the applicants management; and

   (b) a list of any undertakings in which a person referred to in paragraph (1) (a) holds 5% or more of the capital or voting rights or over whose management they exercise a significant influence.

2. Where the trade repository has a parent undertaking, the applicant shall:

   (a) identify the country where the parent undertaking is incorporated and if different, where geographically located; and

   (b) indicate whether the parent undertaking is authorised or registered and subject to supervision, and when this is the case, state any reference number of the company available and the name of the responsible supervisory authority.

Article 5

Ownership chart

1. An application shall contain a chart showing the ownership links between the parent undertaking, subsidiaries and any other associated entities or branches.

2. The undertakings shown in the chart referred to in the previous paragraph shall be identified by their full name, legal status and address of the head office and, where applicable, registered office.

SECTION 3

ORGANISATIONAL STRUCTURE, GOVERNANCE AND COMPLIANCE

Article 6

Organisational chart

1. An application shall contain organisational chart detailing its organisational structure of the applicant, including in respect of any ancillary services.

2. The chart referred to in the previous paragraph shall include information about the identity of the person responsible for each significant role, including senior management and persons who direct the activities of any branches.

Article 7

Corporate governance

1. An application shall contain information regarding the applicant's internal corporate governance policies and the procedures and terms of reference which govern its senior management, including the board, its non-executive members and, where established, committees.
2. The information shall include a description of the selection process, appointment, performance evaluation and removal of senior management and members of the board.
3. Where the applicant adheres to a recognised corporate governance code of conduct, an application shall identify the code and provide an explanation for any situations where the applicant deviates from the code.

Article 8

Internal controls

1. An application shall contain an overview of the internal controls of the trade repository. This shall include information regarding its compliance function, review function, risk assessment, internal control mechanisms and arrangements of its internal audit function.

2. Where relevant, the overview shall include information on the following matters:

   (a) the applicants' policies and procedures support of its the internal controls;

   (b) the monitoring and evaluation of the adequacy and effectiveness of the trade repository's systems;

   (c) the control and safeguard for the applicants information processing systems; and

   (d) the internal bodies in charge of the evaluation of the findings.

3. An application shall contain the following information with respect to the applicant's internal audit function:

   (a) an explanation of how its internal audit methodology is developed and applied taking account of the nature of the applicants activities, complexities and risks; and

   (b) a work plan for the next three years.

Article 9

Regulatory compliance

An application shall contain the following information regarding an applicant's policies and procedures for ensuring compliance with Regulation (EU) No X/2012 [EMIR]:

(a) a description of the roles of the persons responsible for compliance and of any other staff involved in the compliance assessments, including how the independence of the compliance function from the rest of the business will be ensured;

(b) the internal policies and procedures designed to ensure that the applicant, including its managers and employees, comply with all the provisions of Regulation (EU) No X/2012, including a description of the role of the board and of senior management; and

(c) where available, the most recent internal report prepared by the persons responsible for compliance or any other staff involved in compliance assessments within the trade repository.

Article 10

Senior management and members of the board

An application shall contain the following information in respect of each member of the senior management and each member of the board with:

(a) a copy of the curriculum vitae in order to enable the assessment on the adequate experience and knowledge to perform adequately their responsibilities;

(b) details regarding any criminal convictions of the relevant person, if applicable, notably via an official certificate if available at the relevant Member State;

(c) a self-declaration on their good repute, where each member of the senior management and the members of the board shall state whether they fall under any of the following categories:

i. has been convicted of any criminal offence;
ii. has been subject to or has been notified of any proceedings of a disciplinary nature brought by a regulatory body or of a criminal nature;
iii. has been subject to any adverse finding in civil proceedings in connection with the provision of financial services, misconduct, fraud or the management of a legal entity;
iv. has to his or her knowledge been subject to any existing or previous investigation by any regulatory authority or government bodies or agencies;
v. has been involved with an undertaking whose registration or authorisation was withdrawn by a regulatory body;
vi. has been refused the right to carry on activities which require registration or authorisation by a regulatory body;
vii. has been involved in the management of an undertaking which has gone into insolvency, liquidation or administration while this person was connected to the undertaking or within a year of the person ceasing to be connected to the undertaking;
viii. has been involved with an undertaking which was investigated or suspended by a regulatory body and which resulted in an enforcement action;
ix. has been investigated, suspended or sanctioned by a regulatory body;
x. has been disqualified from acting as a director, disqualified from acting in any managerial capacity, dismissed from employment or other appointment in an undertaking as a consequence of allegations of misconduct or malpractice.

(d) a declaration of any potential conflicts of interests that the senior management and the members of the board may have in performing their duties and how these conflicts are managed.

SECTION 4

STAFFING AND REMUNERATION

Article 11

Staffing policies and procedures

An application shall contain the following policies and procedures:

(a) a copy of the remuneration policy for the senior management, board members and the staff employed in risk and control functions; and

(b) a description of the measures in place to mitigate the risk of over-reliance on any individual employees.

Article 12

Fitness and properness

An application shall contain the following information about the applicant's staff:

(a) a general list of the staff employed including their role and qualifications per role;

(b) a specific description of the information technology-staff employed for providing the trade repository services including their role and qualifications of each individual;

(c) a description of the roles and qualifications of each individual who is responsible for internal audit, internal controls, compliance, risk assessment and internal review;

(d) an indication of whether any of the staff members who also carry out tasks that are unrelated to the trade repository business; and

(e) details regarding the training and development relevant to the trade repository business, including any examination or other type of formal assessment required for staff regarding the conduct of trade repository activities.

SECTION 5

FINANCIAL RESOURCES FOR THE PERFORMANCE OF THE TRADE REPOSITORY

Article 13

Financial reports and business plans

1. An application shall contain the following financial and business information:

(a) a complete set of financial statements, prepared on an annual basis in conformity with international standards adopted in accordance with Article 3 of Regulation EC 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards; where the financial statements of the applicant are subject to statutory audit within the meaning given in Article 2(1) of the Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, the financial reports shall include the audit report on the annual and consolidated financial statements;

(b) if the applicant is audited, the name and the national registration number of the external auditor; and

(c) a financial business plan contemplating different business scenarios for the trade repository services, over a minimum three years reference period.

2. Where historical financial information referred to in paragraph 1 is not available, an application shall contain:

(a) the pro-forma statement demonstrating proper resources and expected business status in six months after registration is granted;

(b) an interim financial report where the financial statements are not yet available for the requested period of time; and

(c) a statement of financial position, such as a balance sheet, of income, of changes in equity and of cash flows and notes comprising a summary of accounting policies and other explanatory notes, in case no annual financial statements are available.

3. An application shall contain the audited annual financial statements of any parent undertaking for the three financial years preceding the date of the application.

4. An application shall contain:

(a) an indication of future plans for the establishment of subsidiaries and their location; and

(b) a description of the business activities which the trade repository plans to carry out, specifying the activities of subsidiaries.

SECTION 6

CONFLICTS OF INTEREST

Article 14

Management of conflicts of interest

An application shall contain the following information on conflicts of interest:

(a) policies and procedures with respect to the identification, management and disclosure of conflicts of interest and a description of the process used to ensure that the relevant persons are aware of the policies and procedures;

(b) any other measures and controls put in place to ensure the requirements referred to in paragraph (a) on conflicts of interest management are met; and

(c) the process used to ensure that the relevant persons are aware of the policies and procedures detailed in this Article.

Article 15

Confidentiality

An application shall contain the internal policies preventing any use of information stored in the trade repository for illegitimate purposes, such as disclosure of confidential information, or not permitted for commercial use. The latter shall include, but not be limited to, a description of the internal procedures on the staff permissions to access and use the passwords to TR-held data specifying staff purpose, scope of data able to be consulted and limits to the use of data. Trade repositories shall provide ESMA with information on the processes to keep a log identifying each staff member accessing TR-held data, timestamp, nature of data accessed and purpose.

Article 16

Inventory and mitigation of conflicts of interest

1. An application shall contain an up-to-date inventory, at the time of the application, of existing material conflicts of interest in relation to any ancillary or other related services provided by the applicant and a description of how these are being managed.

2. Where a trade repository is part of a group, the inventory shall include any material conflicts of interest arising from other undertakings within the group how these conflicts are being managed.

SECTION 7

RESOURCES AND PROCEDURES

Article 17

Information Technology resources and outsourcing

An application shall contain a description of the following matters:

(a) the systems and user facilities developed in order to provide services to the clients, including a copy of any user manual and internal procedures;

(b) the investment and renewal policies on information technology resources; and

(c) outsourcing arrangements, together with the methods employed to monitor the service level of the outsourced functions and a copy of the contracts governing such arrangements.

Article 18

Ancillary services

Where an applicant, a member of its group, or an undertaking with which the applicant has a material agreement relating to trading or post-trading service offers, or plans to offer, any ancillary services, an application shall contain a description of:

(a) the ancillary services that the trade repository, or the group owning the trade repository, performs and a description of any agreement that the trade repository may have with companies offering trading, post-trading, or other related services, as well as copies of such agreements; and

(b) the procedures and policies that will ensure the operational separation between trade repository services and other business lines, including in the case that a separate business line is run by the trade repository, a company belonging to its holding company, or any other company within which the trade repository has a material agreement in the context of the trading or post-trading chain or business line.

SECTION 8

ACCESS RULES

Article 19

Transparency about access rules

An application shall contain:

(a) the access policies and procedures pursuant to which users access data in a trade repository including any process by which users may need to amend or modify registered contracts;

(b) a copy of the terms and conditions which determine the applicant's rights and obligations; and

(c) a description of the different categories of access available to users if more than one.

Article 20

Transparency about compliance arrangements and accuracy of data

An application shall contain:

(a) the procedures in order to verify the compliance of the reporting entity with the requirements established by the trade repository; and

(b) the procedures for the identification of the counterparties and to verify the correctness of the information reported.

Article 21

Pricing policy transparency

An application shall contain a description of:

(a) the pricing policy, including any existing discounts and rebates and conditions to benefit from such reductions;

(b) the fee structure for providing any ancillary services including the estimated cost of the trade repository services and ancillary services, along with a description of the methods used to account the separate cost that the trade repository may incur when providing trade repository services and ancillary services; and

(c) a description of the methods used in order to make the information available for clients, notably reporting entities, and prospective clients, including a copy of the fee structure where trade repository services and ancillary services shall be unbundled.

SECTION 9

OPERATIONAL RELIABILITY

Article 22

Operational risk

An application shall contain:

(a) a detailed description of the resources available and procedures designed to identify and mitigate operational risk and any other material risk to which the applicant is exposed to, including a copy of any relevant manuals and internal procedures;

(b) a description of the liquid net assets funded by equity to cover potential general business losses in order to continue providing services as a going concern and an assessment of the sufficiency of its financial resources with the aim of covering the operational costs of a wind-down or reorganisation of the critical operations and services over at least a 6 month period;

(c) a business continuity plan and an indication of the policy for updating the plan. In particular, the plan shall include:

i. all business processes, escalation procedures and related systems which are critical to ensuring the services of the trade repository applicant , including any relevant outsourced service and including the trade repository strategy, policy and objectives towards the continuity of these processes;

ii. the arrangements in place with other financial market infrastructure providers including other trade repositories;

iii. the arrangements to ensure a minimum service level of the critical functions and the expected timing of the completion of the full recovery of those processes;

iv. the maximum acceptable down time for business processes and systems;

v. the procedures to deal with incident logging and reviews;

vi. testing programme and the results of any tests;

vii. the number of alternative technical and operational sites available, their location, the resources when compared with the main site and the business continuity procedures in place in the event that alternate sites need to be used; and

viii. information access to a secondary business site to allow staff to ensure continuity of the service if a main office location is not available.

(d) a description of the arrangements for ensuring the applicant's trade repository activities in case of disruption and the involvement of trade repository users and other third parties in them.

SECTION 10

RECORDKEEPING

Article 23

Recordkeeping policy

1. An application shall contain information about the receipt and administration of data, including any policies and procedures to ensure:

   (a) a timely and accurate registration of the information reported;

   (b) how the data is maintained both online and offline; and

   (c) how the data is adequately copied for business continuity purposes.

2. An application shall contain a description of the recordkeeping systems, policies and procedures that are used in order to ensure that information is modified appropriately and that positions are calculated correctly in accordance with relevant legislative or regulatory requirements.

SECTION 11

DATA AVAILABILITY

Article 24

Data availability mechanisms

1. An application shall contain a description of the resources, methods and channels that the applicant will use to facilitate access to the information on aggregate positions in accordance with Article 81 of Regulation (EU) No xx/2012, together with:

   (a) a description of the resources, methods and channels that the trade repository will employ in order to facilitate the access to its information to the public and to counterparties to trades, and the update frequency, along with a copy of the specific manuals and internal policies; and

   (b) a description of the resources, methods and facilities that the trade repository will employ in order to facilitate the access to its information to the relevant authorities in accordance with Article 81 of Regulation (EU) xx/2012 [EMIR], the frequency of the update and the controls and verifications that the trade repository may establish for the access process, along with a copy of the specific manuals and internal procedures.

Article 25

Verification of the accuracy and completeness of the application

1. Any information submitted to ESMA during the registration process shall be accompanied by a letter signed by a member of the board of the trade repository and of the senior management, attesting that the submitted information is accurate and complete to the best of their knowledge, as of the date of that submission.

2. The information shall also be accompanied, where relevant, with the relevant corporate legal documentation showing the accuracy of the data.

Article 26

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

[It shall apply from [...]. However, Articles x and y shall apply from [...].]

This Regulation shall be binding in its entirety and directly applicable in all Member States.

COMMISSION DELEGATED REGULATION (EU) No .../..

supplementing Regulation (EU) No xx/2012 of the European Parliament and of the Council with regard to regulatory technical standards specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data

of [ ]

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No xx/2012] of the European Parliament and of the Council of dd mm yyyy on OTC derivative transactions, central counterparties and trade repositories [18], and in particular Article 81 thereof

Whereas:

(1) The access to trade repository-held data is a matter of global relevance and in order to foster international consistency, this Regulation incorporates to the extent possible, the work of the OTC Derivatives Regulators Forum and IOSCO-CPSS Task Force on OTC Derivatives and the CPSS-IOSCO groups on Financial Market Infrastructures on this topic.

(2) The requirements should follow a functional approach so that entities accessing TR data are considered according to the competences they have and the functions they perform in order to clearly identify the relevant contract and counterparty information.

(3) The European Securities and Markets Authority (ESMA) should have access to all the transaction level data held at trade repositories, for the purpose of trade repository supervision, to be able to make information requests, take appropriate supervisory measures and also monitor whether the registration should be kept or withdrawn.

(4) ESMA should have access under several mandates under its Regulation and EMIR. The access to data by individual staff members of ESMA should be in line with each of those specific mandates.

(5) The ESRB and ESMA have a mandate for monitoring and preserving financial stability in the EU, therefore should have access to position data for all counterparties for the purpose of their respective tasks.

(6) Competent authorities supervising CCPs need access to to enable the effective supervision of such entities, and should therefore have access to all the information necessary for the exercise of their duties on the entities they supervise and in the competent authorities' jurisdiction.

(7) In accordance with Article 127 (2) of the TFEU, the basic tasks to be carried out through the relevant members of the ESCB are: (i) to define and implement the monetary policy of the

[18] OJ.....

Union, (ii) to conduct foreign-exchange operations consistent with the provisions of Article 219 of the TFEU, (iii) to hold and manage the official foreign reserves of the Member States, and (iv) to promote the smooth operation of payment systems. Therefore, access by the relevant ESCB members serves to fulfil their basic tasks, most notably the functions of a central bank of issue and their financial stability mandate.

(8) Certain ESCB members might have different mandates under national legislation and to fulfil their tasks under these mandates, they should receive data in accordance to the different mandates listed in Article 81(3) of Regulation xx/2012 [EMIR] and in this Regulation.

(9) Authorities responsible for the prudential supervision of counterparties subject to the reporting obligation are not listed under Article 81(3) of Regulation xx/2012 [EMIR], ESMA should, in accordance with Article 81(4) of Regulation xx/2012 [EMIR], ensure that they have prompt access to the details of the transactions reported to trade repositories by the supervised entities..

(10) The relevant Union securities and market authorities, which may have prudential supervisory responsibilities, have duties of investor protection and financial stability in their respective jurisdictions and, need to access transaction data on markets, participants, products and underlyings covered under by their surveillance and enforcement mandate.

(11) The supervisory authorities appointed under Article 4 of Directive 2004/25/EC on takeover bids need access to the transactions in equity derivatives where the underlying is either admitted to trading on a regulated market in their jurisdiction, has their registered office or head office within their jurisdiction or is an offeror for a company for such an undertaking and the consideration offered by the offeror includes securities.

(12) The Agency for the Cooperation of Energy Regulators (ACER) needs access for the purpose of monitoring wholesale energy markets in order to detect and deter market abuse in cooperation with national regulatory authorities, and the monitoring of wholesale energy markets to detect and deter market abuse under Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT). ACER should therefore have access to all data held by a trade repository as regards energy derivatives.

(13) Regulation (EU) No xx/2012 [EMIR] covers only trade data and not pre-trade data such as orders to trade as required under REMIT. Therefore, trade repositories may not be the appropriate source of information to ACER in that regard.

(14) Other authorities may have an interest in accessing trade repository-held data. Regulation (EU) No xx/2012 [EMIR] provides that ESMA shall share the information necessary for the exercise of their duties, as regards other relevant Union authorities, and ESMA will consider the information to be provided. The other authorities herein possibly having mandates on determining and monitoring the clearing obligation, conducting restructuring or resolution of counterparties, monitoring takeovers, regulating specific counterparties (non-financials) and sectors pertaining to the underlying of a derivative.

(15) Entities accessing trade repository-held data under Article 81 of Regulation No (EU) No xx/2012 [EMIR] should ensure that they keep and enforce policies in order to ensure that only the relevant persons access the information for a well-defined and legally-founded purpose, also being clear on the possible other persons authorised to access such data; the standards recognise this.

(16) In accordance with Article 10 of Regulation (EU) No 1095/2010, ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities consulted the members of the ESCB and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010.

HAS ADOPTED THIS REGULATION:

Chapter I

ACCESS TO TRADE-REPOSITORIES-HELD DATA

Article 1

Subject matter

This Regulation lays down regulatory technical standards specifying:

a) the frequency and the details of the aggregate positions by class of derivatives on the contracts reported to trade repositories and of the necessary information available to the entities referred to in Article 81(3) of Regulation (EU) No xx/2012 to enable them to fulfil their respective responsibilities and mandates;

b) the operational standards required in order to aggregate and compare data across repositories and for the entities referred to in point (a) to have access to data as necessary.

Article 2

Publication of aggregate data

1. The information to be published on the contracts reported to a trade repository shall include at least:

   a) the type of derivative; and

   b) a breakdown of the aggregate open positions per derivative type as follows:

      i. credit;

      ii. equities;

      iii. interest rates;

      iv. commodities; and

      v. foreign exchange.

2. The data shall be published on a website or an online portal which is easily accessible to the public.

3. The data to be published shall be updated on at least a weekly basis.

Article 3

Data access by relevant authorities

1. A trade repository shall provide access to all transaction data to ESMA for the purpose of fulfilling its supervisory competences and ESMA shall enact internal procedures in order to ensure the appropriate staff access and any relevant limitations of access as regards non-supervisory activities under ESMA's mandate.

2. A trade repository shall provide the Authority for the Cooperation of Energy Regulators (ACER) with access to all transaction data regarding derivatives where the underlying is energy.

3. A trade repository shall provide a competent authority supervising CCPs accessing the trade repository with access to all the transactions data cleared or reported by the CCP.

4. A trade repository shall provide a competent authority supervising the venues of execution of the reported contracts with access to all the transaction data on contracts executed on those venues.

5. A trade repository shall provide a supervisory authority appointed under Article 4 of Directive 2004/25/EC on take-over bids with access to all the transactions data on derivatives where the underlying is a security issued by a company which meets one of the following conditions:

   a) it is admitted to trading on a regulated market within their jurisdiction;

   b) it has its registered office or, where it has no registered office, its head office, in their jurisdiction;

   c) it is an offeror for a company within (a) or (b) and the consideration offered by the offeror includes securities.

6. The data to be provided in accordance with paragraph 5 shall include the following information on:

   i. the underlying security;

   ii. the derivative type;

   iii. the sign of the position;

   iv. the number of reference securities; and

   v. the counterparties to the derivative.

7. A trade repository shall provide a relevant Union securities and markets authority access to all transaction data on markets, participants, contracts and underlyings that fall within the scope of that authority according to its respective supervisory responsibilities and mandates.

8. A trade repository shall provide the ESRB, ESMA and the relevant members of the ESCB with position data:

   a) for all counterparties within their respective jurisdictions;

   b) for derivatives contracts where the reference entity of the derivative contract is located within their respective jurisdiction or where the reference obligation is sovereign debt of the respective jurisdiction.

9. A trade repository shall provide a relevant ESCB member with access to position data for derivatives contracts in the currency issued by that member.

Article 4

Third country authorities

1. In relation to a relevant authority of a third country that has entered into an international agreement with the Union as referred to in Article 75 of Regulation (EU) No X/2012 [EMIR], a trade repository shall provide access to the data specified for the equivalent type of Union authority in the relevant categories of Article 2, taking account of the third country authority's mandate and responsibilities.

2. In relation to a relevant authority of a third country that has entered into a cooperation arrangement with ESMA as referred to in Article 76 of Regulation (EU) No xx/2012 [EMIR], a trade repository shall provide access to the data as specified for the equivalent type of Union authority in Article 3, taking account of the third country authority's mandate and responsibilities.

Article 5

Operational standards for aggregation and comparison of data across trade repositories

1. A trade repository shall provide access to the entities listed in Article 81(3) of Regulation (EU) No xx/2012 [EMIR] in accordance with the relevant international communication procedures and standards for messaging and reference data.

2. ESMA may issue guidelines or recommendations identifying relevant international communications procedures and standards for messaging and reference data for the purposes of this Article under the procedure described in Article 16 of Regulation 1095/2010 of the European Parliament and of the Council.

Article 6

Operational standards for access to data

1. A trade repository shall record information regarding the access to data given to the entities listed in Article 81(2) of Regulation (EU) No. xx/012 [EMIR].

2. The information referred to in the previous paragraph shall include:

a) the scope of data accessed;

b) the legal right to access such data under Regulation (EU) No. xx/2012 [EMIR] and this Regulation, by referring to the relevant provisions.

Article 7

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

ANNEX VI - Draft implementing technical standards on trade repositories

COMMISSION IMPLEMENTING REGULATION (EU) No .../..

laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No xx/2012 of the European Parliament and of the Council

of [ ]

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No xx/2012 of dd mm yyyy of the European Parliament and of the Council on OTC derivatives transactions, central counterparties and trade repositories and in particular Article 9(6) thereof,

Whereas:

(1) To avoid inconsistencies, all data sent to trade repositories under Article 9 of Regulation (EU) No xx/2012 [EMIR] should follow the same rules and standards for all trade repositories, all counterparties and all types of derivatives. Therefore a unique data set should be used for describing a trade in derivatives.

(2) To ensure consistency, all parties to a trade should be identified by a unique code. A global legal entity identifier or an interim entity identifier, to be defined under a governance framework which is compatible with the FSB recommendations, should be used to identify all financial and non-financial counterparties, brokers, central counterparties, and beneficiaries once available, in particular to ensure consistency with the CPSS-IOSCO report on OTC Derivatives Data Reporting and Aggregation Requirements that describes legal entity identifiers as a tool for data aggregation. In the case of agency trades, the beneficiaries should be identified as the individual or entity on whose behalf the trade was concluded.

(3) Since OTC derivatives typically are neither uniquely identifiable by single International Securities Identification Numbers (ISIN), nor describable by using the ISO Classification of Financial Instruments (CFI) code, a new identification method has to be developed. If a Unique Product Identifier (UPI) is available and follows the principles of uniqueness, neutrality, reliability, open source, scalability, accessibility, has a reasonable cost basis and is under an appropriate governance framework, it should be used. If a UPI meeting these requirements is not available, an appropriate taxonomy defined by ESMA should be used. If an interim LEI is developed, these requirements should also apply.

(4) The underlying itself should be identified by using a single identifier, however there is currently no market wide standardised code to identify the underlyings within a basket. Counterparties should therefore be required to indicate at least that the underlying is a basket and use ISINs for standardised indices where possible.

(5) This Regulation is based on the draft implementing technical standards submitted by the European Securities and Markets Authority to the Commission.

(6) The European Securities and Markets Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010.

HAS ADOPTED THIS REGULATION:

Article 1

Subject-matter

This Regulation lays down implementing technical standards specifying the following:

(a) the format and frequency of the reports on derivative contracts made in accordance with Article 9 of Regulation (EU) No xx/2012 [EMIR];

(b) the date by which such derivative contracts shall be reported;

Article 2

Format of derivative contract reports

The information contained in a made under Article 9 of Regulation (EU) No xx/2012 [EMIR] shall be provided in the format specified in specified in the Annex.

Article 3

Identification of counterparties and other entities

1. A report shall use a legal entity identifier (LEI) to identify:

   a. a counterparty which is a legal entity if legal entities;
   b. a broking entity;
   c. a reporting entity;
   d. a beneficiary which is a legal person ;
   e. a CCP.

2. Where a legal entity is not available, a report shall use an interim entity identifier which is compatible with the recommendations made by the Financial Stability Board.

3. If neither a legal entity identifier nor an interim entity identifier is available, a report shall use a business identifier code (BIC) in accordance with ISO 9362 (BIC) shall be used where available.

Article 4

Identification of Derivatives

1. A report shall identify a derivative contract using a unique product identifier (UPI) which is:

   a. unique;

b. neutral;
c. reliable
d. open source;
e. scalable;
f. accessible;
g. available at a reasonable cost basis;
h. Subject to an appropriate governance framework.

2. Where a UPI does not exist a report shall identify a derivative contract on the following basis:

a. The asset class of the underlying shall be identified as one of the following:
(i) equity
(ii) interest rate products;
(iii) credit;
(iv) currency;
(v) commodities
(vi) other
b. The derivative type shall be identified as one of the following:
(i) options
(ii) futures
(iii) swaps
(iv) forward rate agreements
(v) contracts for difference
c. In the case of hybrid derivatives, the report shall be made on the basis of the asset class that the counterparties agree the derivative contract most closely resembles.

Article 5

Reporting of collateral

1. Where collateral is reported as exchanged on a portfolio basis, the following information shall be reported for all the collateral exchanged:

a. collateral type;
b. collateral amount;
c. currency of collateral amount.

2. Where collateral is reported on a portfolio basis, the specific contracts over which collateral has been exchanged.

Article 6

Reporting start date

1. The date by which a derivative contract shall be reported shall be the earlier of:
    a. 1 July 2013where a trade repository for that particular derivative type has been registered under Article 55 of Regulation (EU) No xx/2012 [EMIR] before 1 May 2013;
    b. If there is no trade repository registered for that particular derivative type under Article 55 of Regulation (EU) No xx/2012 [EMIR] on 1 May 2013, 60 days after the registration of a trade repository for that particular derivative type under Article 55 of Regulation (EU) No xx/2012 [EMIR];
    c. 1 July 2015.
2. In paragraph 1, a 'derivative type' is one of the derivative types specified in Article 2(6) to Article 2(11) of Commission Regulation (EU) No X/X [RTS on reporting obligation].
3. Where there is no trade repository for a particular asset class registered under Article 56 of Regulation (EU) No xx/2012 [EMIR] by 1 July 2015, the reporting obligation shall commence on this date and contracts shall be reported to ESMA in accordance with Article 9(3) of that Regulation.
4. Those derivative contracts which were entered into on or after the date of entry into force of Regulation [EMIR] but before the reporting start date, shall be reported to a trade repository within 90 days of the reporting start date for a particular asset class.
5. Those derivative contracts which were entered into before the date of entry into force of Regulation (EU) No xx/2012 [EMIR] and were outstanding on the date of entry into force of that Regulation, shall be reported to a trade repository within 180 days of the reporting start date for a particular asset class.

ANNEX 1 to implementing technical standard on format of the details to be reported to trade repositories
Article 9 of EMIR

Table 1 - Counterparty Data

	FIELD	FORMAT
	Parties to the contract	
1	Reporting timestamp	ISO 8601 date format / UTC time format.
2	C/P ID	Legal Entity Identifier (LEI), interim entity identifier, BIC or Client Code.
3	ID of the other C/P	Legal Entity Identifier (LEI), interim entity identifier, BIC or Client Code.
4	Name of C/P	Free Text, 50 alphanumerical digits. If in the LEI, or an interim entity identifier, no need for this field.
5	Domicile of C/P	Free Text, 500 alphanumerical digits. If in the LEI, or an interim entity identifier, no need for this field.
6	Corporate sector of C/P	Taxonomy (B=Bank, I=Insurance company), if not in the LEI database.
7	Financial or non-financial nature of C/P	F=Financial Counterparty, N = Non-Financial Counterparty
8	Broker ID	Legal Entity Identifier (LEI), interim entity identifier, or BIC.
9	Reporting entity ID	Legal Entity Identifier (LEI), interim entity identifier, or BIC.
10	Clearing member ID	Legal Entity Identifier (LEI), interim entity identifier, or BIC.
11	Beneficiary ID	Legal Entity Identifier (LEI), interim entity identifier, BIC or Client Code.
12	Trading capacity	P=Principal, A=Agent.
13	C/P side	B=Buyer, S=Seller.
14	Trade with non-EEA C/P	Y=Yes, N=No.
15	Directly linked to commercial activity or treasury financing	Y=Yes, N=No; changes over the lifetime of a contract need to be reported. In case the hedge is no longer justified, the report should be amended.
16	Clearing threshold	Y=Above, N=Below

Table 2 -Common Data

	FIELD	FORMAT	APPLICABLE TYPES OF DERIVATIVE CONTRACT
	Section 2a - Contract type		**All contracts**
1	Taxonomy	Taxonomy to be defined either by the industry or subsidiary solution defined by ESMA.	
2	Product ID	Unique Product Identifier (UPI) or information in accordance with Article 4.	
3	Underlying	ISO 6166 International Securities Identifying Number (ISIN) / Legal Entity Identifier (LEI), B= Basket, I=Index.	
4	Indication of the currency of the notional; in FX derivatives the currency to be delivered.	ISO Currency Code.	
	Section 2b - Details on the transaction		**All contracts**
5	Trade ID	Up to 20 numerical digits.	
6	Venue of execution / OTC	ISO 10383 Market Identifier Code (MIC) where relevant, XOFF for listed derivatives that are traded off-exchange or XXXX for OTC derivatives.	
7	Price / rate / spread	Format (C=Cash, P=Percentage, Spread=S) and amount (xxxx,yy).	
8	Notional amount	Up to 20 numerical digits (xxxx,yy).	
9	Price multiplier	Up to 10 numerical digits.	
10	Quantity	Up to 10 numerical digits.	
11	Up-front payment	Numerical digits in the format xxxx,yy.	
12	Delivery type	C=Cash, P=Physical, O=Option Available to counterparty.	
13	Execution timestamp	ISO 8601 date format / UTC time format.	
14	Effective date	ISO 8601 date format.	
15	Maturity date	ISO 8601 date format.	
16	Termination date	ISO 8601 date format.	
17	Settlement date	ISO 8601 date format.	

18	Master Agreement type	Free Text.	
19	Master Agreement date	ISO 8601 date format.	
	Section 2c - Risk mitigation / Reporting		**All contracts**
20	Confirmation	Y=Non-electronically confirmed, N=Non-confirmed, E=Electronically confirmed.	
21	Confirmation timestamp	ISO 8601 date format, UTC time format.	
	Section 2d - Clearing		**All contracts**
22	Clearing obligation	Y=Yes, N=No.	
23	Cleared	Y=Yes, N=No.	
24	Clearing timestamp	ISO 8601 date format / UTC time format.	
25	CCP	Legal Entity Identifier code (LEI), interim entity identifier, or BIC of the CCP clearing the contract.	
26	Intragroup	Y=Yes / N=No.	
	Section 2e- Exposures		**All contracts**
27	Collateralisation	U=uncollateralised, PC= partially collateralised, OC=one way collateralised or FC- fully collateralised.	
28	Collateral basis	Y=Yes / N=No.	
29	Collateral type	C=cash, = securities, B=bonds, M=mixed, O=Other	
30	Other Collateral type	Free text.	
31	Collateral amount	Indicates the amount of collateral that is posted by a counterparty	
32	Currency of collateral amount	E = Euros, US = US dollars, UK = Pound Stirling, O = Other	
33	Other currency of collateral amount	Free text.	
34	Mark to market value of contract	Format (C=Cash, P=Percentage, S=Spread) and amount (xxxx,yy).	
35	Mark to market date of contract	ISO 8601 date format / UTC time format.	
36	Master netting agreement	Free text.	
	Section 2f - Interest Rates		**Interest rate derivatives**
37	Direction	P=Payer of fixed rate, R=Receiver of fixed rate, U=Unspecified, In general, if the principal is paying or receiving the fixed rate. For float-to-float and fixed-to-fixed, it is unspecified. For non-swap or swaptions, the instrument that was bought or sold.	
38	Fixed rate	Numerical digits in the format xxxx,yy.	

39	Fixed rate day count fraction	Numerical digits in the format xxxx,yy.	
40	Fixed leg payment frequency	D=daily, W=weekly, M=monthly, Q=quarterly, S=semi-annually, A=annually, or Dxxs, if a certain number of days, xxx being the specific amount of days (e.g. D010=10 days).	
41	Floating rate payment frequency	D=daily, W=weekly, M=monthly, Q=quarterly, S=semi-annually, A=annually, or Dxxs, if a certain number of days, xxx being the specific amount of days (e.g. D010=10 days).	
42	Floating rate reset frequency	D=daily, W=weekly, M=monthly, Q=quarterly, S=semi-annually, A=annually, or Dxxs, if a certain number of days, xxx being the specific amount of days (e.g. D010=10 days).	
43	Floating rate to floating rate	Numerical digits in the format xxxx,yy.	
44	Fixed rate to fixed rate	Numerical digits in the format xxxx,yy.	
45	Fixed rate to floating rate	Numerical digits in the format xxxx,yy.	
	Section 2g - Currency / Forex		**Currency derivatives**
46	Currency 2	ISO 4217 Currency Code.	
47	Exchange rate 1	Numerical digits in the format xxxx,yy.	
48	Exchange rate 2	Numerical digits in the format xxxx,yy.	
49	Value date	ISO 8601 date format.	
50	Forward exchange rate	Numerical digits in the format xxxx,yy.	
51	Exchange rate basis	Numerical digits in the format xxxx,yy.	
	Section 2h - Commodities		**Commodity derivatives**
	General		
52	Commodity base	AP=Agricultural Commodities, E=Energy, F=Freights, P=Paper, M=Metals, PM=Precious Metals, O= Other.	
53	Commodity details	Free text.	
54	Load type	Free text.	
55	Delivery point or zone	Free text, field of up to 20 characters.	
56	Delivery start date and time	ISO 8601 date format.	
57	Delivery end date and time	ISO 8601 date format.	
58	Border	Free text.	
	Energy		
59	Daily or hourly quantity	Free text.	
	Section 2i - Options		**Contracts that contain an option**
60	Option type	P=Put, C=Call.	

61	Option style (exercise)	A=American, B=Bermudan, E=European, S=Asian.	
62	Strike price (cap/floor rate)	Numerical digits in the format xxxx,yy.	
	Section 2j - Modifications to the contract		**All contracts**
63	Action type	N=New, M=Modify, C=Cancel.	
64	Details of action type	Free text.	

COMMISSION IMPLEMENTING REGULATION (EU) No .../..

laying down implementing technical standards with regard to the format of applications for registration for trade repositories according to Regulation (EU) No xx/2012 of the European Parliament and of the Council

of [ ]

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No xx/2012 of dd mm yyyy of the European Parliament and of the Council on OTC derivatives transactions, central counterparties and trade repositories and in particular Article 56(4) thereof,

Whereas:

(1) Any information submitted to ESMA in an application for registration of a trade repository should be provided in a durable medium, which enables its storage for future use and reproduction. In order to facilitate the identification of the information submitted by a trade repository, an application should be required to give all documents a unique reference number.

(2) This Regulation is based on the draft regulatory implementing standards submitted by ESMA to the Commission, pursuant to the procedure in Article 10 of Regulation 1095/2010.

(3) ESMA has conducted open public consultations on the draft implementing technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established under Article 37 of Regulation (EU) No 1095/2010.

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

This Regulation lays down the rules determining the format of an application for registration as a trade repository made under Article 56 of Regulation (EU) No X/2012.

Article 2

Format of the application

1. An application for registration shall be provided in an instrument which stores information in a way accessible for future reference and which allows the unchanged reproduction of the information held.

2. A trade repository shall give a unique reference number to each document it submits and ensure that the information submitted clearly identifies to which specific requirement of this Regulation it refers to, and in which document that information is provided.

Article 3

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [ ]

[For the Commission
The President]

[On behalf of the President]

[Position]

ANNEX VII - Impact Assessment

INTRODUCTION

In carrying out a cost benefit analysis on the draft regulatory technical standards it should be noted that:

- The main policy decisions have already been taken under the primary legislation (EMIR) and the impact of such policy decisions have already been analysed and published by the European Commission;
- ESMA does not have the ability to deviate from its specific mandate set out in the primary legislation;
- ESMA policy choices should be of a pure technical nature and not contain issues of a political nature;
- In most circumstances ESMA's policy options are limited to the approach it takes to drafting a particular regulatory or implementing technical standard.

Against this background and for many of the draft RTS and ITS, ESMA has considered whether it is more appropriate to adopt a criteria-based or a prescriptive approach to drafting the technical standards. The approach taken differs depending on the RTS or ITS considered, but generally the approach followed by ESMA recognises that market participants (CCPs in particular) have the tools to manage the risk arising from their activities and to adapt to market changes. So unless the specific mandate assigned to ESMA specifies that a prescriptive approach should be introduced or the specific issues surrounding a particular technical standard require a more prescriptive approach, ESMA has followed a criteria-based approach. The justification for, and analysis of the cost and benefits of, this choice are generally common to the different technical standards. For this reason, in the specific sections below, similar reasoning is given as to the choice between a criteria-based versus a prescriptive approach, but depending on the technical standard the outcome is not always the same.

With reference to the monetary value attached to the identified costs and benefits, it should be noted that in the discussion paper, ESMA explicitly asked respondents to provide data to support this cost benefit analysis. Data was provided by a few respondents but this did not prove sufficient to perform a cost-benefit analysis of a quantitative nature. Respondents to this consultation paper are therefore invited to justify their answers by providing supporting evidences of a quantitative nature and to provide relevant information to complement this qualitative analysis.

OTC DERIVATIVES DRAFT RTS

INDIRECT CLEARING ARRANGEMENTS

Policy options:

(a): What is the best approach to ensure that indirect clients benefits from protection equivalent to those of direct clients?

Specific objective	Ensuring that counterparties subject to the clearing obligation can access a CCP through indirect clearing arrangements benefiting from equivalent protection as

	a direct clearing arrangement.
Policy option 1	Indirect clients should have the same rights and the same degree of segregation up to the CCP as direct clients.
How would achieving the objective alleviate/eliminate the problem?	By replicating the CCP – clearing member – client structure one step below.
Policy option 2	Indirect clients should not have the same rights up to the CCP, but similar rights replicated one step below in the clearing chain, considering the indirect nature of the clearing arrangements
How would achieving the objective alleviate/eliminate the problem?	Establishing obligations for clearing members and client supporting indirect clearing arrangements.
Which policy option is the preferred one? Explain briefly.	Policy option 2, given the higher costs of option 1 and the fact that the indirect nature of the arrangement should be recognised.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The option is the sole responsibility of ESMA.

Impacts of the proposed policies:

Policy option 1	Indirect clients should have the same rights and the same degree of segregation up to the CCP as direct clients.
Benefits	It will ensure the full protection of indirect clients from the default of: 1) the client providing indirect clearing services; 2) the clearing member; 3) other clients of the clearing member; 4) other indirect clients of the same client.
Regulator's costs	The costs for regulators will be similar under the two options. Enforcing such a requirement will not change significantly under the two options.
Compliance costs	The costs for CCPs, clearing members and clients will be much higher if the same structure and rights assigned to clients is replicated to up to the entire chain.
Indirect costs	The costs for indirect clients will be much higher, thus the end objective of indirect clearing arrangements (i.e. facilitating access to CCPs to small clients that the clearing members would not be interested to serve) might not be fulfilled.
Policy option 2	Indirect clients should not have the same rights up to the CCP, but similar rights replicated one step below in the clearing chain, considering the

	indirect nature of the clearing arrangements
Benefits	It will ensure an equivalent level of protection to indirect clients and similar rights as direct clients, but replicated one step below in the clearing chain.
Regulator's costs	The costs for regulators will be similar under the two options. Enforcing such a requirement will not change significantly under the two options.
Compliance costs	The policy option would still imply certain costs for clients providing indirect clearing services and for clearing members, but these would be justified by ensuring that the indirect clients benefit from an equivalent level of protection as clients.
Indirect costs	The lower compliance cost will result in a lower indirect cost and overall,a greater benefit to society.

DETAILS IN THE NOTIFICATION FROM THE COMPETENT AUTHORITY TO ESMA

Policy options:

(a): What is the most appropriate way for ESMA to get the information to be included in the notification?

Specific objective	To ensure ESMA gets relevant updated data in order to assess whether a class of derivatives should be subject to the clearing obligation
Policy option 1	ESMA to get information from the competent authority.
How would achieving the objective alleviate/eliminate the problem?	The competent authority is authorising a CCP to clear a class of OTC derivatives and will obtain information for this purpose.
Policy option 2	The CCP provides the information to the competent authority that provides it to ESMA.
How would achieving the objective alleviate/eliminate the problem?	The competent authority will be able to request information from CCP and complement it with its other information. ESMA may complement the information with data it gets for example from the trade repositories.
Which policy option is the preferred one? Explain briefly.	The second option is preferred as it allows ESMA to get the most relevant, updated and complete information
Is the policy chosen within the sole responsibility of ESA? If not, what other	The option is the sole responsibility of ESMA.

body is concerned / needs to be informed or consulted?	

Impacts of the proposed policies:

Option 1	ESMA to get information from the competent authority.
Benefits	The competent authority has already obtained and analysed information when authorising the CCP to clear a class of OTC derivatives.
Disadvantages	The analysis of the competent authority has a different objective and scope that the ESMA analysis. Relevant information for ESMA may not have been transmitted by the CCP to the competent authority.
Regulator's costs	Communication means.
Compliance costs	Communication means .
Indirect costs	N/A
Option 2	ESMA to get information from the competent authority as provided by the CCP, and complemented with other information the competent authority may have
Benefits	The information provided by the CCP is complemented by information gathered by the competent authority and ESMA.
Disadvantages	The CCP is requested to provide more information to the competent authorities.
Regulator's costs	Communication means.
Compliance costs	Communication means and analysis.
Indirect costs	N.A

CRITERIA TO BE ASSESSED BY ESMA

1. **To ensure adequate specification of criteria to assess whether a class of OTC derivative should be subject to the clearing obligation.**

<u>Policy options:</u>

(a): What is the most appropriate way to assess volume and liquidity?

Specific objective	To ensure volume and liquidity are adequately assessed.
Policy option 1	To assess the volume and liquidity through the number and value of transactions.
How would achieving the objective alleviate/eliminate the problem?	The number and value of OTC derivative contracts provide an indication about its level of standardisation.
Policy option 2	To assess the volume and liquidity through the number and value of transactions, the proportionality of the

	margin or financial requirements of the CCP to the risks to mitigate, the stability of the market size and depth through time, the expected market dispersion in case of default of a clearing member.
How would achieving the objective alleviate/eliminate the problem?	The information under option 2 provides a clear and adequate view on the volume and liquidity of a class of OTC derivatives.
Which policy option is the preferred one? Explain briefly.	The second option is preferred as takes into consideration a number of factors that are all relevant in the determination of liquidity and volume of a class of OTC derivatives.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The option is the sole responsibility of ESMA.

Impacts of the proposed policies:

Option 1	To assess the volume and liquidity through the number and value of transactions.
Benefits	The approach is simple to implement.
Disadvantages	It does not allow a complete view on liquidity and volume of a class of OTC derivatives.
Regulator's costs	N/A
Compliance costs	Registration of data
Indirect costs	N/A
Option 2	To assess the volume and liquidity through the number and value of transactions, the proportionality of the margin or financial requirements of the CCP to the risks to mitigate, the stability of the market size and depth through time, the expected market dispersion in case of default of a clearing member.
Benefits	The approach is more complete and allows taking into consideration several parameters for a better view on liquidity and volume.
Disadvantages	More data needs to be gathered and analysed.
Regulator's costs	N/A
Compliance costs	Registration of data
Indirect costs	N/A

DETAILS TO BE INCLUDED IN THE ESMA REGISTER

<u>Policy options:</u>

(a): What is the most appropriate way to identify the classes of derivatives in ESMA Register?

Specific objective	To ensure the class of OTC derivatives subject to the clearing obligation is unequivocally identified in the ESMA register.
Policy option 1	To identify the class of OTC derivatives by reference to the general class of derivatives, the type of derivative contract and the underlying.
How would achieving the objective alleviate/eliminate the problem?	The general class of derivatives, the type of derivative contract and the underlying information are key information to identify a class of OTC derivatives.
Policy option 2	To identify the class of OTC derivatives by reference to the general class of derivatives, the type of derivative contract, the underlying, the currencies, the range of maturities, settlement conditions, payment frequency, business day convention, the product identifier.
How would achieving the objective alleviate/eliminate the problem?	The information under option 2 provides a granular definition of a class of OTC derivatives and therefore a clear identification.
Which policy option is the preferred one? Explain briefly.	The second option is preferred as takes into consideration more criteria to determine a class of OTC derivatives.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The option is the sole responsibility of ESMA.

Impacts of the proposed policies:

Option 1	To identify the class of OTC derivatives by reference to the general class of derivatives, the type of derivative contract and the underlying.
Benefits	The identification is based on simple criteria easy to implement.
Disadvantages	The criteria may not be sufficiently granular to distinguish between the classes of OTC derivatives which are subject to the clearing obligation and those which are not.
Regulator's costs	Set up of the register.
Compliance costs	N/A
Indirect costs	N/A
Option 2	To identify the class of OTC derivatives by reference to the general class of derivatives, the type of derivative contract, the underlying, the currencies, the range of maturities, settlement conditions, payment frequency, business day convention, the product identifier.

Benefits	The identification of a class of OTC derivatives is based on a high number of information which allows distinguishing to a high level of granularity between classes of OTC derivatives.
Disadvantages	More data need to be included in the register.
Regulator's costs	Set up of the register.
Compliance costs	N/A
Indirect costs	N/A

(b): What is the most appropriate way to identify a CCP in ESMA Register?

Specific objective	To ensure identification of the CCP.
Policy option 1	To identify the CCP by its name and country of establishment.
How would achieving the objective alleviate/eliminate the problem?	The name and country of establishment allow identifying the relevant CCPs.
Policy option 2	To identify the CCP by its identification code, name, country of establishment, and the relevant competent authority.
How would achieving the objective alleviate/eliminate the problem?	The information under option 2 provides a granular identification of a CCP.
Which policy option is the preferred one? Explain briefly.	The second option is preferred as it takes into consideration unique criteria to identify the CCP.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The option is the sole responsibility of ESMA.

Impacts of the proposed policies:

Option 1	To identify the CCP by its name and country of establishment.
Benefits	The identification is based on simple criteria easy to implement.
Disadvantages	The criteria may not be sufficiently granular to distinguish between the CCP and may not fit the identification criteria used by the market.
Regulator's costs	Set up of the register.
Compliance costs	N/A
Indirect costs	N/A

Option 2	To identify the CCP by its identification code, name, country of establishment, and the relevant competent authority.
Benefits	The use of several criteria including the identifier code allows a clear identification and may better fit with market practice.
Disadvantages	More data need to be included in the register.
Regulator's costs	Set up of the register.
Compliance costs	N/A
Indirect costs	N/A

RISKS DIRECTLY RELATED TO COMMERCIAL ACTIVITY OR TREASURY FINANCING ACTIVITY

Policy options:

(a): What is the most appropriate way to specify OTC derivative contracts that reduce risks related to commercial activity or treasury financing activity?

Specific objective	To ensure the most appropriate way to specify OTC derivative contracts that reduce risks related to commercial activity or treasury financing activity
Policy option 1	For the the risks that the OTC derivative contracts cover, set criteria that contracts theyshould meet in order for the derivatives to be considered in the definition and reduce risks related to commercial activity or treasury financing activity.
How would achieving the objective alleviate/eliminate the problem?	Counterparties assess their OTC derivative contracts against criteria set in the RTS to determine whether they reduce risks related to commercial activity or treasury financing activity.
Policy option 2	List the risks the OTC derivative contracts should cover in order for the derivatives to be considered in the definition and reduce risks related to commercial activity or treasury financing activity.
How would achieving the objective alleviate/eliminate the problem?	Counterparties assess their OTC derivative contracts against the list of risks the contracts should cover to determine whether they reduce risks related to commercial activity or treasury financing activity.
Which policy option is the preferred one? Explain briefly.	The second option is preferred as a list of risks to be covered allows a more accurate assessment.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed	The option is the sole responsibility of ESMA.

or consulted?	

Impacts of the proposed policies:

Option 1	For the the risks that the OTC derivative contracts cover, set criteria that contracts theyshould meet in order for the derivatives to be considered in the definition and reduce risks related to commercial activity or treasury financing activity.
Benefits	A criteria based approach allows flexibility for counterparties to assess whether the OTC derivative contracts would be considered as reducing risks directly related to the commercial or treasury activity.
Disadvantages	A criteria based approach may give room for different interpretations by counterparties of whether the OTC derivative contracts would be considered as reducing risks directly related to the commercial or treasury activity.
Regulator's costs	N/A
Compliance costs	Process the assessment.
Indirect costs	N/A
Option 2	List the risks the OTC derivative contracts should cover in order for the derivatives to be considered in the definition and reduce risks related to commercial activity or treasury financing activity.
Benefits	A list based approach provides a clear basis for counterparties to process the assessment.
Disadvantages	A list based approach allows less flexibility for the counterparties in their assessment.
Regulator's costs	N/A
Compliance costs	Process the assessment.
Indirect costs	N/A

CLEARING THESHOLD

<u>Policy options:</u>

(a): What is the most appropriate measure for the value of the clearing threshold?

Specific objective	Appropriate measure for the denomination of the clearing threshold .
Policy option 1	To denominate the clearing threshold in nominal value.
How would achieving the objective	The nominal value allows a straightforward measure of

alleviate/eliminate the problem?	the size of OTC derivative contracts.
Policy option 2	To denominate the clearing threshold in market value.
How would achieving the objective alleviate/eliminate the problem?	The market value allows a measure of the size of the OTC derivatives which is regularly updated.
Which policy option is the preferred one? Explain briefly.	The first option is preferred as it is a stable and easy measure.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The option is the sole responsibility of ESMA.

Impacts of the proposed policies:

Option 1	To denominate the clearing threshold in nominal value
Benefits	Straightforward value which is not disputed.
Disadvantages	The value is fixed at the time of entering into the contract.
Regulator's costs	N/A
Compliance costs	System registering notional value of the OTC derivative contracts
Indirect costs	N/A
Option 2	To denominate the clearing threshold in market value
Benefits	The value of the OTC derivative contract is regularly updated.
Disadvantages	The market valuation may be disputed and may be more complex to use for some non-financial counterparties,
Regulator's costs	N/A
Compliance costs	System registering market value of the OTC derivative contracts
Indirect costs	N/A

TIMELY CONFIRMATION

Policy options:

(a): What should be the timeline within which confirmation should occur?

Specific objective	To set a timeframe that it timely and practical for counterparties to achieve.
Policy option 1	Confirmation should occur within a set time period following the execution of the transaction, for example

	within 15 minutes.
How would achieving the objective alleviate/eliminate the problem?	This approach would ensure that a common understanding and legal certainty of the terms of the contract are reached almost immediately following the execution of the transaction.
Policy option 2	Confirmation should occur as soon as possible following the execution of a transaction but within a final deadline, for example end of the same day.
How would achieving the objective alleviate/eliminate the problem?	This approach would allow counterparties more time to achieve a common understanding and legal certainty of the terms of the contract, particularly in the case of non-standard or complex OTC derivative contracts.
Which policy option is the preferred one? Explain briefly.	Option 2 is the preferred option as the requirement will encourage counterparties to confirm transactions as soon as possible, but acknowledges the fact that more bespoke contracts may take longer to confirm.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The option is the sole responsibility of ESMA.

Impacts of the proposed policies:

Option 1	Confirmation should occur within a set time period following the execution of the transaction, for example within 15 minutes.
Benefits	Gives legal certainty to both counterparties very quickly following the conclusion of the transactions.
Disadvantages	It is a demanding timeframe, does not reflect the current market practice and gives little room for counterparties to discuss and/or dispute the terms of the contract.
Regulator's costs	N/A
Compliance costs	Counterparties entering into non-standard or complex OTC derivative contracts may have to implement systems to enable compliance.
Indirect costs	N/A
Option 2	Confirmation should occur as soon as possible following the execution of a transaction but within a final deadline, for example end of the same day.
Benefits	This provides counterparties with a degree of flexibility to meet the requirements.
Disadvantages	It may not incentivise counterparties to confirm their contracts as soon as possible, which could potentially lead to less legal certainty on the terms of the

	transaction.
Regulator's costs	N/A
Compliance costs	N/A
Indirect costs	N/A

(b): Should the requirements for timely confirmation differ depending on the ways it is executed or processed?

Specific objective	To set a timeframe that it timely but practical for counterparties to achieve.
Option 1	To have a specific timeframe when the transaction is electronically executed
-How would achieving the objective alleviate/eliminate the problem?	The timing of the confirmation should be more ambitious for the counterparties whose transactions are electronically executed.
Option 2	To have a specific timeframe when the transaction is not electronically executed but is electronically processed
-How would achieving the objective alleviate/eliminate the problem?	Counterparties may need longer to confirm the details when the transaction is not electronically executed but is electronically processed.
Option 3	To have a specific timeframe for transactions that are not executed or processed electronically
-How would achieving the objective alleviate/eliminate the problem?	This approach would allow counterparties greater flexibility to ensure there is a common understanding of the terms of a transaction.
Option 4	To have the same timeframe for all transactions, whether electronically confirmed, processed or not.
-How would achieving the objective alleviate/eliminate the problem?	This approach would ensure a level playing field for all counterparties.
Which technical option is the preferred one? Explain briefly.	Option 4 is the preferred option as having one timely confirmation requirement would foster consistency and certainty for all EU counterparties.
Is the option chosen within the sole responsibility of ESMA? If not, what other body is concerned / needs to be informed or consulted?	The option is the sole responsibility of ESMA.

Impacts of the proposed policies:

Option 1	To have a specific timeframe when the transaction is electronically executed.
Benefits	Electronic execution uses standardised key terms of the contract, therefore leading to less legal uncertainly following the execution of a transaction.
Disadvantages	Electronic execution may not always equal legal standardisation, therefore it does not guarantee that transactions can be confirmed quicker.
Regulator's costs	N/A

Compliance costs	Counterparties whose transactions are electronically executed already uses systems that enables quicker confirmation therefore the costs may be less.
Indirect costs	N/A
Option 2	To have a specific timeframe when the transaction is not electronically executed but is electronically processed.
Benefits	This approach gives counterparties a degree of flexibility to achieve the requirements when the transactions is not electronically confirmed.
Disadvantages	The fact that the transaction is electronically processed does not necessarily mean that the legal terms of the contracts can be agreed between counterparties quicker.
Regulator's costs	N/A
Compliance costs	Counterparties whose transactions are electronically processed already uses systems that may enable quicker confirmation therefore the costs may be less.
Indirect costs	N/A
Option 3	To have a specific timeframe for transactions that are not executed or processed electronically
Benefits	Counterparties whose transactions are neither electronically executed nor processed, may need a greater degree of flexibility to have systems in place to achieve the requirements.
Disadvantages	This may not incentivise counterparties to confirm the contracts on a timely basis.
Regulator's costs	N/A
Compliance costs	N/A
Indirect costs	N/A
Option 4	To have the same timeframe for all transactions, whether electronically confirmed, processed or not.
Benefits	This ensures that the timely confirmation requirements are the same for EU counterparties therefore fostering consistency and certainty.
Disadvantages	The requirement does not distinguish between transactions that may be confirmed at an earlier moment.
Regulator's costs	N/A
Compliance costs	Counterparties, particularly those who transact less frequently, may have to implement systems to enable them to achieve compliance.
Indirect costs	N/A

(c): What is the appropriate timely confirmation requirement for non-financial counterparties below the clearing threshold?

Specific objective	To set a timeframe that it timely but practical for non-financial counterparties that are below the clearing threshold to achieve.
Option 1	Confirmation should occur as soon as possible following the execution of a transaction but within a final deadline, for example

	end of the same day.
-How would achieving the objective alleviate/eliminate the problem?	This timeframe could be the same as those counterparties that are above the clearing threshold and therefore would ensure a level playing field.
Option 2	Confirmation should occur as soon as possible following the execution of a transaction but within a final deadline set over a longer time period, for example end of the 2nd business day.
-How would achieving the objective alleviate/eliminate the problem?	The timing of the confirmation could be less ambitious for the non-financial counterparties that do not exceed the clearing threshold as they transact less regularly and it is likely that the contracts have less of a systemic relevance then those counterparties that are above the threshold.
Which technical option is the preferred one? Explain briefly.	Option 2 is the preferred option as it takes into consideration the risk profile of that type of counterparty.
Is the option chosen within the sole responsibility of ESMA? If not, what other body is concerned / needs to be informed or consulted?	The option is the sole responsibility of ESMA.

Impacts of the proposed policies:

Option 1	Confirmation should occur as soon as possible following the execution of a transaction but within a final deadline, for example end of the same day.
Benefits	Gives rapidly legal certainty following the conclusion of the transactions.
Disadvantages	This may not be enough time for non-financial counterparties, particularly in the case that counterparties are not transacting frequently.
Regulator's costs	N/A
Compliance costs	Non-financial counterparties may have to implement systems to enable them to comply with the timely confirmation requirement.
Indirect costs	N/A
Option 2	Confirmation should occur as soon as possible following the execution of a transaction but within a final deadline set over a longer time period, for example end of the 2nd business day.
Benefits	This provides non-financial counterparties below the clearing threshold with a greater degree of flexibility to meet the requirements.
Disadvantages	It may not incentivise non-financial counterparties to confirm their contracts as soon as possible, which could potentially lead to less legal certainty on the terms of the transaction.
Regulator's costs	N/A
Compliance costs	N/A
Indirect costs	N/A

PORTFOLIO RECONCILIATION

Policy options:

(a): What are the key trade terms to be included in a portfolio reconciliation?

Specific objective	To ensure that the appropriate key trade terms are included in portfolio reconciliation
Option 1	Portfolio reconciliation covers the key trade terms that identify each particular OTC derivative contract.
-How would achieving the objective alleviate/eliminate the problem?	The key trade terms are likely to be standardised therefore making it easy for reconciliation to be agreed between counterparties.
Option 2	Portfolio reconciliation should cover the key trade terms including at least the valuation attributed to each contract.
-How would achieving the objective alleviate/eliminate the problem?	This approach may allow reconciliation to be limited to valuation only and will be consistent with the valuation requirements that are already required under EMIR.
Which technical option is the preferred one? Explain briefly.	Option 2 is the preferred option as it will provide a key term by which the contracts can be reconciled.
Is the option chosen within the sole responsibility of ESMA? If not, what other body is concerned / needs to be informed or consulted?	The option chosen is the sole responsibility of ESMA.

Impacts of the proposed policies:

Option 1	Portfolio reconciliation covers the key trade terms that identify each particular OTC derivative contract.
Benefits	The key trade terms are likely to be standardised and therefore easier to agree between counterparties.
Disadvantages	It may be burdensome for counterparties as each term may have to be individually reconciled to ensure that the contracts match.
Regulator's costs	N/A
Compliance costs	Counterparties may have to develop the necessary systems and processes to ensure effective reconciliation.

Indirect costs	N/A
Option 2	Portfolio reconciliation should cover the key trade terms including at least the valuation attributed to each contract.
Benefits	This approach may allow reconciliation to be limited to valuation, as already required under EMIR.
Disadvantages	This may duplicate the contract valuation exercise already required under EMIR as mark-to-market or to-model allows counterparties to identify any mismatches at the portfolio level.
Regulator's costs	N/A
Compliance costs	This may relieve counterparties of the burden of having to exchange all the underlying trade terms and a discrepancy in valuation would be expected to show up any discrepancy on an underlying economic terms.
Indirect costs	N/A

(b): What should determine the frequency of portfolio reconciliation?

Specific objective	To ensure that portfolio reconciliation occurs over an appropriate frequency.
Option 1	A requirement to perform the exercise each business day when the counterparties have over 300 or more derivatives contracts with each other and then differentiated based on the size and volatility of the OTC derivatives portfolio.
-How would achieving the objective alleviate/eliminate the problem?	A lower figure would capture more contracts and therefore all more contracts to be reconciled.
Option 2	A requirement to perform the exercise each business day when the counterparties have over 500 or more derivatives contracts with each other and then differentiated based on the size and volatility of the OTC derivatives portfolio.
-How would achieving the objective alleviate/eliminate the problem?	A higher figure would distinguish between counterparties that have larger and potentially more systemically relevant contracts. This option is also in line with the approach taken in the US.
Which technical option is the preferred one? Explain briefly.	Option 2 is preferred as it will distinguish between counterparties that have larger and potentially more systemically relevant contracts.

Is the option chosen within the sole responsibility of ESMA? If not, what other body is concerned / needs to be informed or consulted?	The option chosen is the sole responsibility of ESMA.

Impacts of the proposed policies:

Option 1	A requirement to perform the exercise each business day when the counterparties have over 300 or more derivatives contracts with each other and then differentiated based on the size and volatility of the OTC derivatives portfolio.
Benefits	More counterparties will undertake a comprehensive review of their portfolio of transactions, as seen by its counterparty, in order to promptly identify any misunderstandings of the key transaction terms.
Disadvantages	This may be burdensome for counterparties who transact less but would nevertheless be captured by this requirement.
Regulator's costs	N/A
Compliance costs	Counterparties may have to develop the necessary systems and process in order to ensure compliance.
Indirect costs	N/A
Option 2	A requirement to perform the exercise each business day when the counterparties have over 500 or more derivatives contracts with each other and then differentiated based on the size and volatility of the OTC derivatives portfolio.
Benefits	Only the largest and potentially most systemically relevant will undertake a comprehensive review of their portfolio of transactions, as seen by its counterparty, in order to promptly identify any misunderstandings of the key transaction terms.
Disadvantages	This may not capture all important counterparties.
Regulator's costs	N/A
Compliance costs	N/A
Indirect costs	There may be misunderstandings of the key transaction terms which are not identified by some of the most systemically relevant counterparties.

PORTFOLIO COMPRESSION

POLICY OPTIONS:

(a): Should some counterparties with non-centrally cleared OTC derivative contracts be required to engage into portfolio compression?

Specific objective	Counterparties should reduce their counterparty credit risk for their non-centrally cleared OTC derivative contracts.
Option 1	To require counterparties having more than a set number of non-centrally cleared contracts to perform portfolio compression exercise.
-How would achieving the objective alleviate/eliminate the problem?	This option would ensure participation of those counterparties to portfolio compression.
Option 2	To require counterparties to regularly assess whether portfolio compression should be undertaken.
-How would achieving the objective alleviate/eliminate the problem?	This option would ensure counterparties analyse performance of portfolio compression.
Which technical option is the preferred one? Explain briefly.	Option 2 is the preferred option as portfolio compression may not always be possible or appropriate.
Is the option chosen within the sole responsibility of ESMA? If not, what other body is concerned / needs to be informed or consulted?	The choice is the sole responsibility of ESMA.

Impacts of the proposed policies:

Option 1	To require counterparties having more than a set number of non-centrally cleared contracts to perform portfolio compression exercise
Benefits	This approach would ensure the reduction of counterparty credit risk for counterparties that have a relevant portfolio of non-centrally cleared contracts.
Disadvantages	Portfolio compression may not be appropriate for some OTC derivative contracts.

Regulator's costs	N/A
Compliance costs	There may be costs involved in ensuring that the exercise is carried out.
Indirect costs	N/A
Option 2	To require counterparties to regularly assess whether portfolio compression should be undertaken.
Benefits	The analysis would be mandatory and counterparties would assess when compression is appropriate.
Disadvantages	A part of the portfolio may not be subject to compression.
Regulator's costs	N/A
Compliance costs	Cost of performing the analysis and performing compression when appropriate.
Indirect costs	N/A

DISPUTE RESOLUTION

POLICY OPTIONS:

(a) What length of time should the procedures cover when there is a dispute concerning an OTC Derivative contract and it is not resolved with a certain time period?

Specific objective	To ensure disputes are resolved in a timely manner.
Option 1	Procedure agreed by the counterparties to deal with disputes that are not resolved in a timely manner.
-How would achieving the objective alleviate/eliminate the problem?	This approach would enable counterparties to develop the procedures over a flexible time period if there is a disagreement.
Option 2	Procedure agreed by the counterparties to deal with disputes that are not resolved in a timely manner and procedure agreed by the counterparties to deal with disputes that are not resolved within 5 business days.
-How would achieving the objective alleviate/eliminate the problem?	This approach would ensure flexibility for the counterparties and still ensure that when a dispute is not resolved within a specified time period a specific approach is agreed upon.

Which technical option is the preferred one? Explain briefly.	Option 2 is the preferred option as it provides flexibility but still ensure a consistent time period for all.
Is the option chosen within the sole responsibility of ESMA? If not, what other body is concerned / needs to be informed or consulted?	The option chosen is the sole responsibility of ESMA.

Impacts of the proposed policies:

Option 1	Procedure agreed by the counterparties to deal with disputes that are not resolved within a timely manner.
Benefits	Flexibility for the counterparties to agree on a procedure without strict timing constraints.
Disadvantages	It is not ensured that disputes are solved in a certain period of time.
Regulator's costs	N/A
Compliance costs	Set up of procedures by counterparties.
Indirect costs	N/A
Option 2	Procedure agreed by the counterparties to deal with disputes that are not resolved in a timely manner and procedure agreed by the counterparties to deal with disputes that are not resolved within 5 business days.
Benefits	Combination of flexibility for counterparties when disputes do not exceed a certain time period and ensure a specific treatment is organised when disputes are outstanding for more than this period of time.
Disadvantages	Pressure for counterparties to resolve the dispute by 5 business days.
Regulator's costs	N/A
Compliance costs	Set up of procedures by counterparties.
Indirect costs	N/A

MARKET CONDITIONS PREVENTING MARKING-TO-MARKET AND CRITERIA FOR MARKING-TO-MODEL

POLICY OPTIONS:

(a): What is the most appropriate way to ensure that mark-to-market is used?

Specific objective	To ensure marking-to-market is applied when market conditions allow.
Option 1	To consider that marking-to-market is prevented when the market is inactive.
How would achieving the objective alleviate/eliminate the problem?	When the market is inactive, no market input can be used to mark-to market.
Option 2	To consider that marking-to-market is prevented when the market is inactive or when the range of reasonable fair values estimates is significant and probabilities of the various estimates cannot be reasonably assessed.
How would achieving the objective alleviate/eliminate the problem?	The definition of market conditions preventing marking-to-market is broadened and encompasses the situation where markets are active but market data may not be used in a reliable manner.
Which option is the preferred one? Explain briefly.	Option 2 is preferred as the definition reflects the fact that even when the market is active, market data may not be used.
Is the option chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The option chosen is the sole responsibility of ESMA.

Impacts of the proposed policies:

Option 1	To consider that marking-to-market is prevented when the market is inactive.
Benefits	The definition is simple.
Disadvantages	This option is not complete and other market conditions may prevent the use of marking-to-market.
Regulator's costs	N/A
Compliance costs	N/A
Indirect costs	N/A
Option 2	To consider that marking-to-market is prevented when the market is inactive or when the range of reasonable fair values estimates is significant and probabilities of the various estimates cannot be

	reasonably assessed.
Benefits	This definition is more complete as it reflects the fact that even when the market is active, the conditions may prevent the use of market input as it is not reliable.
Disadvantages	This option is more complex as it requires reviewing the range of fair values estimates.
Regulator's costs	N/A
Compliance costs	N/A
Indirect costs	N/A

ACCESS TO A TRDING VENUE

Policy options:

(a): What would be the best approach to define the RTS on liquidity fragmentation?

Specific objective	To achieve an appropriate level of consistency in the interpretation of liquidity fragmentation as an issue for consideration in the assessment of CCPs' requests to access a new venue.
Policy option 1	The liquidity fragmentation RTS defines measures which would need to be in place in order to prevent liquidity fragmentation.
How would achieving the objective alleviate/eliminate the problem?	Such an approach would set a clear standard by which to judge *ex ante* whether new CCP applications for access would cause liquidity fragmentation.
Policy option 2	The liquidity fragmentation RTS defines liquidity fragmentation as a concept but leaves open the definition of measures which might be used to prevent it.
How would achieving the objective alleviate/eliminate the problem?	Such an approach would leave greater flexibility to national authorities to interpret the rules.
Which policy option is the preferred one? Explain briefly.	Policy option 1 appears preferable on the basis that CCPs may often be seeking access on a cross-border basis, and therefore that a consistent approach across the EU will be particularly important.
Is the policy chosen within the sole	The policy response chosen is the responsibility of

responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	ESMA.

Impacts of the proposed policies:

Policy option 1	The liquidity fragmentation RTS defines measures which would need to be in place in order to prevent liquidity fragmentation.
Benefits	Provides a clear and unambiguous benchmark to meet in order to demonstrate that access by a CCP would not cause liquidity fragmentation. Ensures a more consistent interpretation across the EU.
Regulator's costs	A more prescriptive approach may imply slightly lower costs for regulators since there would be less analysis and subjective judgement required. However, the difference appears unlikely to be significant.
Compliance costs	Compliance costs should be reduced if the RTS ensures a consistent interpretation of the rules across the EU.
Indirect costs	N/A
Policy option 2	The liquidity fragmentation RTS defines liquidity fragmentation as a concept but leaves open the definition of measures which might be used to prevent it.
Benefits	Omitting any definition of the measures to be taken to avoid liquidity fragmentation would permit greater flexibility to regulators to interpret the rules.
Regulator's costs	This approach may imply slightly higher regulator's costs as it would require more analysis and subjective judgement to implement, with the relevant justification to be provided for.
Compliance costs	The absence of a consistent interpretation across the EU could require CCPs to adopt different approaches to preventing liquidity fragmentation in different jurisdictions.
Indirect costs	N/A

Monetary value: It would be very difficult to assign a specific monetary value to the cost and benefits of the option described above, as there is very significant uncertainty over i) the extent to which CCPs will seek access to new venues under EMIR; ii) the approaches they will take to addressing the problem of liquidity fragmentation; and iii) whether a highly specified requirement would prevent CCPs from requesting access or impose higher compliance costs on firms as they put in place costly measures to prevent liquidity fragmentation.

CCP REQUIREMENTS DRAFT RTS AND ITS

CCP COLLEGE

Policy options:

(a): Should the most relevant currencies be determined relatively to the CCP activity in a particular currency or of the relevance of the CCP activity for a particular currency?

Specific objective	Ensuring that the central banks of the most relevant Union currencies are adequately represented in the college.
Policy option 1	The relevance is determined relatively to the CCP activity in a particular currency.
How would achieving the objective alleviate/eliminate the problem?	Defining the percentage of the total CCP activity in a particular currency above which the currency would be considered one of the most relevant. This is set as 10% with maximum 3 central banks admitted as central banks of issuance of the most relevant currency.
Policy option 2	The relevance is determined on the basis of the total activity of a CCPs in a particular currency.
How would achieving the objective alleviate/eliminate the problem?	The relevance is determined in absolute value, so that after a certain activity by a CCP in a particular union currency is reached that currency would be considered relevant.
Which policy option is the preferred one? Explain briefly.	Policy option 1. It will determine a limited number of central banks of issue consistently with the participation of other authorities.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The policy response chosen is the responsibility of ESMA.

Impacts of the proposed policies:

Policy option 1	The relevance is determined relatively to the CCP activity in a particular currency.
Benefits	It will determine stable and consistent criteria for college participation.

Regulator's costs	Lower than under policy option 2 given the limited number of central banks participating in the college and the stability of the participation.
Compliance costs	None. It will be indifferent for CCPs the criteria adopted.
Indirect costs	None. Information sharing with central banks that do not have right to participate, but interested in receiving certain information would need to be established.
Policy option 2	The relevance is determined on the basis of the total activity of a CCPs in a particular currency.
Benefits	It will add flexibility, leaving to the discretion of the central banks to participate in a college after a certain level is reached.
Regulator's costs	Higher in view of the larger and flexible college composition.
Compliance costs	N/A, It will be indifferent for CCPs the criteria adopted.
Indirect costs	N/A

(b):Limited or unrestricted college participation?

Specific objective	The practical arrangements for colleges shall be designed in such a way as to promote the effective and orderly functioning of the college in order to facilitate with the exercise of the tasks as specified in EMIR.
Policy option 1	The Practical Arrangements for Colleges RTS prescribe in a detailed manner the participation of the college members.
How would achieving the objective alleviate/eliminate the problem?	This approach ensures a comparable structure and therefore consistency amongst EU college participation. The structure would ensure that the college size remains effective at making decisions.
Policy option 2	The Practical Arrangements for College RTS should enable unrestricted access to the college as long as the participants have a mandate under EMIR.
How would achieving the objective alleviate/eliminate the problem?	This approach ensures that college participation remains flexible and enables any authority with a relevant mandate to participate in the college.
Which policy option is the preferred one? Explain briefly.	A more flexible approach, as described in Option 2, is preferred to ensure that college participation is not limited for authorities with a relevant mandate under EMIR.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed	The policy response chosen is the responsibility of ESMA.

or consulted?	

Impacts of the proposed policies:

Policy option 1	The Practical Arrangements for Colleges RTS prescribe in a detailed manner the participation of the college members.
Benefits	Ensures that the college size remains effective and efficient.
Regulator's costs	There may be administrative costs or delays involved in determining who should or should not attend.
Compliance costs	N/A
Indirect costs	N/A
Policy option 2	The Practical Arrangements for College RTS should enable unrestricted access to the college as long as the participants have a mandate under EMIR.
Benefits	Ensures that all the relevant participants with a mandate under EMIR are able to participate in the college.
Regulator's costs	The size of the college could be quite large and therefore the practical costs of organising college meetings to accommodate all attendees could become high.
Compliance costs	N/A
Indirect costs	N/A

(c): Specific or more flexible rules for the practical arrangements of a college?

Specific objective	The practical arrangements for college shall be specified in a way as to promote the effective and orderly functioning of the college in order to facilitate with the exercise of the tasks as specified in EMIR.
Policy option 1	The Practical Arrangements for Colleges RTS prescribe in a detailed manner the working rules of the college and its members.
How would achieving the objective alleviate/eliminate the problem?	Specific rules would ensure that the roles and responsibilities of the college participants are defined and that the overall objectives of the college are able to be met in a clear manner.
Policy option 2	The Practical Arrangements for Colleges RTS should remain flexible on the working rules of the college.
How would achieving the objective alleviate/eliminate the problem?	A more flexible approach would enable the college to decide on the most appropriate way to achieve the overall objectives of the college.
Which policy option is the preferred one? Explain briefly.	A more flexible approach, as described in option 2, is preferred to enable the college to decide on the most appropriate working rules and practices to adopt in order to achieve the overall objectives of the college.
Is the policy chosen within the sole responsibility of ESA? If not, what other	The policy response chosen is the responsibility of

body is concerned / needs to be informed or consulted?	ESMA.

Impacts of the proposed policies:

Policy option 1	The Practical Arrangements for Colleges RTS prescribe in a detailed manner the working rules of the college and its members.
Benefits	Ensures that the working rules and practices across EU colleges are harmonised.
Regulator's costs	There may be costs involved of producing specific documentation to the college if requested and specified in the RTS.
Compliance costs	There may be costs involved for the CCP of producing specific information to the college if prescribed in the RTS.
Indirect costs	N/A
Policy option 2	The Practical Arrangements for Colleges RTS should remain flexible on the working rules of the college.
Benefits	Enables EU colleges to decide on the most appropriate way to achieve the objectives of the college.
Regulator's costs	There may be costs involved of producing ad-hoc documentation to the college if not specified in the RTS.
Compliance costs	There may be costs involved for the CCP of producing ad-hoc information to the college if not prescribed in the RTS.
Indirect costs	N/A

RECOGNITION OF THIRD COUNTRY CCPs

<u>Policy options:</u>

(a): What is the best approach for determining the information to be sent by a third country CCP for recognition?

Specific objective	Ensuring that ESMA has the relevant information to assess the relevant criteria for a third country CCP to be recognised.
Policy option 1	ESMA receives evidence from the CCPs that in complying with third country requirements, EMIR and the relevant RTS and ITS are respected.
How would achieving the objective alleviate/eliminate the problem?	Requiring third country CCPs to send a comparison table of their internal rules, the third country rules and the EMIR and RTS/ITS requirements.

Policy option 2	ESMA does not assess whether the third country CCPs in complying with the third country regime also complies with EMIR and relevant RTS and ITS.
How would achieving the objective alleviate/eliminate the problem?	Requiring evidence of the effective compliance of the CCP with the third country regime and on the actual implementation of these requirements.
Which policy option is the preferred one? Explain briefly.	Policy 2 is the preferred one because it will not duplicate the equivalence assessment by the European Commission and the supervisory role of the third country competent authority.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The policy response chosen is the responsibility of ESMA.

Impacts of the proposed policies:

Policy option 1	ESMA receives evidence from the CCPs that in complying with third country requirements, EMIR and the relevant RTS and ITS are respected.
Benefits	It gives greater certainty over the fulfilment of the overall objectives of the recognition process: no market disruption, no regulatory arbitrage, investor protection.
Regulator's costs	It risks duplicating the work already conducted under the equivalence assessment by the European Commission. Higher cost for ESMA in making its assessment.
Compliance costs	Higher compliance cost for the CCP to produce the relevant material and to ensure compliance with two regimes.
Indirect costs	Higher barriers to entry the European market will limit competition with an overall higher cost for the society.
Policy option 2	ESMA does not assess whether the third country CCPs in complying with the third country regime also complies with EMIR and relevant RTS and ITS.
Benefits	It ensures that the relevant criteria are fulfilled without duplicating efforts.
Regulator's costs	Lower regulator costs in producing the assessment.
Compliance costs	Lower compliance cost in making the information available.
Indirect costs	Lower barriers to entry.

ORGANISATION REQUIREMENTS

Policy options:

(a): Prescriptive rules or criteria-based approach?

Specific objective	The governance arrangements shall be designed in such a way as to promote the sound and prudent management and thereby support financial stability and foster fair and efficient markets. Robust governance arrangements should be applied in a consistent and transparent manner across CCPs. Standards on governance arrangements should be sufficiently flexible to cater for the various governance and reporting structures employed by CCPs, to allow for future developments and new risks to be dealt with appropriately. It should be readily ascertainable as to whether a particular CCP is in compliance with the applicable standards.
Policy option 1	The Organisational Requirements RTS prescribe in a detailed manner the key elements of its organisational structure, key functions and reporting lines.
How would achieving the objective alleviate/eliminate the problem?	Such approach ensures a comparable structure and therefore a level playing field across CCPs. It may be easier for competent authorities to assess compliance with such standards; exactly the same 'tests' would apply to every CCP.
Policy option 2	The Organisational Requirements RTS adopt criteria to take in consideration by the CCP to determine the governance of the CCP in order to achieve the main objectives set forth in Article 24 EMIR.
How would achieving the objective alleviate/eliminate the problem?	A criteria based approach is more flexible and would allow the CCP, given its business strategy and the services it offers, to find appropriate governance structures that are supposed to reach the main objective of a sound and prudent management against the risk the CCP is exposed to.
Which policy option is the preferred one? Explain briefly.	A rule based approach is preferred in order to ensure that certain key elements of sound and prudent management are implemented that support the objectives of central clearing.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The policy response chosen is the responsibility of ESMA in consultation with other relevant Authorities (EBA) and with the members of the ESCB.

Impacts of the proposed policies:

Policy option 1	The Organisational Requirements RTS prescribe in a detailed manner the key elements of its organisational structure, key functions and reporting lines.
Benefits	Such approach promotes a level playing field between EU CCPs.
Regulator's costs	Monitoring compliance with more detailed rules should not entail material on-going costs for the regulator once the assessment framework for assessing compliance with the organisational requirements is established. The regulator could implicitly incur additional costs if the detailed rules were inappropriate for the specific risk profile and left little flexibility to apply more suitable requirements.
Compliance costs	A CCP may need to expend resources amending its governance framework to comply with the standards prescribed in the RTS. Compliance costs will embrace costs for documentation and provision of legal expertise necessary to assess the soundness of its governance arrangements.
Indirect costs	N/A
Policy option 2	The Organisational Requirements RTS adopt criteria to take in consideration by the CCP to determine the governance of the CCP in order to achieve the main objectives set forth in Article 24 EMIR.
Benefits	A criteria based approach is inherently flexible, setting a high level framework against which a CCP's organisational arrangements must comply. The CCP will be capable of adjusting its governance model against the background of its business model and the structure it might be part of.
Regulator's costs	It may be more difficult for a regulator to assess the CCPs' on-going compliance with criteria based standards, since CCPs could adopt very different approaches to compliance.
Compliance costs	A CCP may need to expend resources amending its governance framework to comply with the standards prescribed in the RTS.Compliance costs will embrace costs for documentation and provision of legal expertise necessary to assess the soundness of its governance arrangements.
Indirect costs	Indirect costs might incur in the case of failure of a CCP due to the lack of a sufficiently sound and prudent governance arrangements. Indirect costs might incur due to the lack of confidence in sufficiently sound and prudent governance arrangements.

(b): Designation of chief risk, chief compliance and chief IT officer

Specific objective	In order to ensure sound and prudent management, the CCP should appoint a chief risk-, compliance- and IT officer.
Policy option 1	The Organisational Requirements RTS requires the CCP to appoint a chief risk, compliance and IT officer.
How would achieving the objective alleviate/eliminate the problem?	Dedicated functions, resources and personnel with respect to risk, compliance and IT strengthen the key functions with respect to governance arrangements.

Policy option 2	The Organisational Requirements RTS leaves flexibility on how the risk, compliance and IT functions are exercised.
How would achieving the objective alleviate/eliminate the problem?	The implementation of functions with respect to risk, compliance and IT will meet the respective objectives. Staff and resources could be allocated as appropriate.
Which policy option is the preferred one? Explain briefly.	Option 1 is preferred as the reliability of core functions depends on clearly defined responsibility and designated personnel with clearly designated responsibilities.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The policy response chosen is the responsibility of ESMA in consultation with other relevant Authorities (EBA) and with the members of the ESCB.

Impacts of the proposed policies:

Policy option 1	The Organisational Requirements RTS requires the CCP to appoint a chief risk, compliance and IT officer.
Benefits	Core functions with respect to governance are equipped with designated staff with clear responsibilities. Ensuring sound and prudent risk management and appropriate control over key operational issues by dedicated staff (especially chief risk officer) on a continuous basis would be a valuable complement to the supervision exercised by competent authorities and as such might increase its effectiveness as well as strengthen the overall resilience of a CCP.
Regulator's costs	N/A
Compliance costs	Costs for designated staff; CCPs cannot recur to personnel within the group.
Indirect costs	N/A
Policy option 2	The Organisational Requirements RTS leaves flexibility on how the risk, compliance and IT functions are exercised.
Benefits	Market entry might be easier for smaller CCPs with less human resources. Respective functions in a group structure could create synergies.
Regulator's costs	N/A
Compliance costs	Costs for implementing respective functions and attribute them with respective human resources.
Indirect costs	Indirect costs might incur in the case of failure of a CCP due to the lack of a sufficiently sound and prudent governance arrangements. Indirect costs might incur due to the lack of confidence in sufficiently sound and prudent governance arrangements.

(c): Should the CCP be required to have dedicated staff for all its functions?

Specific objective	Appropriate determination of a degree to which the CCP allocates the staff to its business activity is necessary in

	order to ensure the best execution of a CCP's core functions.
Policy option 1	A CCP should be required to have dedicated staff for all its functions.
How would achieving the objective alleviate/eliminate the problem?	Dedicated own staff for all business functions would enable the CCP to execute its operations in a safe manner and fully independently from the whole group structure.
Policy option 2	A CCP should be allowed to rely on staff at the group level for some of its functions.
How would achieving the objective alleviate/eliminate the problem?	General permission for the CCP to use the staff at the group level gives more organizational flexibility and allows the CCP to adjust its structure and resources to the actual business purposes. In that way, the CCP could allocate the dedicated staff only for those functions that are considered to be the most essential.
Which policy option is the preferred one? Explain briefly.	Option 1 is preferred as it ensures safer organizational model and adequate level of CCP's independence within a corporate structure.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The policy response chosen is the responsibility of ESMA in consultation with other relevant Authorities (EBA) and with the members of the ESCB.

Impacts of the proposed policies:

Policy option 1	A CCP should be required to have dedicated staff for all its functions.
Benefits	Covering the whole scope of CCPs functions by dedicated own human resources enhances corporate self-reliance and therefore fulfils the need for the uninterrupted provision of clearing services
Regulator's costs	Ensuring distinct staff for the CCP operation should not entail material on-going costs for the regulator once the proposed solution is implemented.
Compliance costs	The related costs are high as the CCP would have to permanently maintain a developed staff structure without possibility of recourse to the group's personnel. However, costs may be reduced, to a certain extent, by the way of outsourcing arrangements.
Indirect costs	The obligation to ensure dedicated staff to all functions may constitute a more significant burden for smaller CCPs and, as a consequence, reduce their competitive power.
Policy option 2	A CCP should be allowed to rely on staff at the group level for some of its functions.
Benefits	Market entry for smaller CCPs with less human resources would be easier. Respective functions in a group structure could create synergies. There would be more organizational flexibility for all CCPs.
Regulator's costs	Not requiring distinct staff for the CCP operation should not entail material on-going costs for the regulator once this solution is

	implemented.
Compliance costs	The level of such costs would be easier to manage by the CCP as it could decide itself whether and how much own staff it needs to accomplish its functions effectively.
Indirect costs	Indirect costs may arise in the case the CCP fails to provide its core services due to the insufficiency of own resources. (With no dedicated staff it would be more difficult to ensure the proper level of independence within a larger organization).

(d): Should disclosure apply as a principle of full disclosure of all facts demonstrating that the CCP complies with its legal obligations?

Specific objective	Disclosure of arrangements necessary to comply with organisational requirements might help understand whether and how a CCP meets respective legal obligations.
Policy option 1	As a principle, a CCP should disclose all material necessary to understand how it meets its legal obligations
How would achieving the objective alleviate/eliminate the problem?	This approach would help to ensure that each interested party would have a full picture of the CCPs operations.
Policy option 2	A CCP should disclose all key aspects of its operations to relevant stakeholders and to the public to the extent that addresses their respective relation to the CCP
How would achieving the objective alleviate/eliminate the problem?	This approach would help to ensure that each relevant party would be put in a position to understand what the CCP does in order to meet its legal obligations relevant with respect to its relation to the respective party.
Which policy option is the preferred one? Explain briefly.	Option 2 is preferred, as disclosure is "staged" on the basis of the specific needs of different parties. The adopted approach to disclosure restrictions should be possibly pragmatic in order to respect the commercial confidentiality of information.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The policy response chosen is the responsibility of ESMA in consultation with other relevant Authorities (EBA) and with the members of the ESCB.

Impacts of the proposed policies:

Policy option 1	Disclosure of arrangements necessary to comply with organisational requirements might help understand whether and how a CCP meets respective legal obligations.
Benefits	On the basis of a full disclosure principle the peer pressure to meet the legal obligations is strong. This could enhance the sound and prudent management of the CCP.

Regulator's costs	Regulators would have to assess the application of caveats to disclosure.
Compliance costs	High, as the CCP would have to disclose extensive files and filter confidential information.
Indirect costs	Too wide disclosure of information might constitute the additional social cost as it will inherently decrease the information value.
Policy option 2	A CCP should disclose all key aspects of its operations to relevant stakeholders and to the public to the extent that addresses their respective relation to the CCP.
Benefits	All relevant stakeholders would have access to information to understand the CCPs operations in relation to their respective relation to the CCP.
Regulator's costs	Costs would incur in the course of regular supervision.
Compliance costs	Compliance costs for preparation of documentation but less than for option 1.
Indirect costs	N/A

RECORD KEEPING

Policy options:

(a): Adequacy of the data recorded for the aim of reconstruction of the CCP's clearing process

Specific objective	The information and data recorded should be adequate to conduct a comprehensive and accurate reconstruction of the CCP's clearing process for each contract and of the transactions that established each position.
Policy option 1	The Record Keeping RTS specify in a detailed manner the fields of the transaction and position records.
How would achieving the objective alleviate/eliminate the problem?	The data required to be maintained are divided into those concerning each single cleared contract and those concerning each single position. Every contract/position registration reflects the articulation of the accounts' structure of the CCP (clearing members and clients, if known to the CCP) and gives information on the financial instrument of the contract/position and the venue in which the contract is concluded.
Policy option 2	CCPs are free to identify the set of fields on transaction and position records to be maintained.
How would achieving the objective alleviate/eliminate the problem?	The requirement established by the RTS is just to record data separately for transactions and positions, in compliance with the provision in Article 29 of EMIR, but no further details are indicated by the standard. This implies that CCPs are free to decide what level of granularity to provide within the records.
Which policy option is the preferred one?	Policy option 1 is the preferred one as it will ensure an

Explain briefly.	harmonised approach and comparison of data among different CCPs.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	Yes, it is compatible with ESMA mandate under Article 29 of EMIR that requires for a consistent application of the Article to specify the details of the records and information to be retained by CCPs.

Impacts of the proposed policies:

Policy option 1	The Record Keeping RTS specify in a detailed manner the fields of the transaction and position records.
Benefits	It would be easier for competent authorities to reconstruct the clearing process as well as the transactions that established each position. Benefits may also derive for CCPs, as the data stored could prove useful to govern the clearing process and to reconstruct it at a subsequent time, for internal purposes.
Regulator's costs	Any possible change to the existing supervisory practices, as the verification of the CCPs' clearing process, will need to be structured taking into consideration the specific record fields established by the RTS. Consistency with the technical choices taken for TRs is also needed (e.g. the selection of the same uniform internationally accepted standard for financial instrument/trading venue classification), as far as the record keeping of contracts/positions by the CCP concerns the same data set captured by the reporting obligation to the TRs.
Compliance costs	An existing CCP may need to re-architect its IT infrastructure to allow the information to be correctly indexed, searched, maintained, retrieved and destroyed. Resources to be allocated in expanding its storage capacity and amending the procedures that set the type and number of records to keep the costs will be even higher for non-financial companies previously not subject to any requirements.
Indirect costs	There is the possibility of an overlapping with certain information fields due to be reported to TRs and or company law requirements, which are already at the disposal of the authorities.
Policy option 2	CCPs are free to identify the set of fields on transaction and position records to be maintained.
Benefits	The wide discretion left to the CCP on the specific details to record allows calibration according to its own internal organisation. This option would provide a useful level of information on the clearing process, as it obliges to distinguishing between the transaction and the positions.
Regulator's costs	It may be more difficult (or it may take longer) for a regulator to reconstruct the CCP's clearing process, due to the different sets of information recorded. It leads to less comparability among CCPs. It could make more difficult the reconciliation of data coming from the CCP records and data coming from the TRs.
Compliance costs	CCPs could need to provide additional data at the request of the authority in case the recording of information should prove insufficient for regulatory purposes. The provision of additional information on a non-organised basis could even be more expensive than regular recording and maintenance.
Indirect costs	The absence of consistency and transparency across CCPs may lead to an effect on the competitiveness between CCPs based on the different costs of

	providing for different sets of record fields.

(b): Adequacy of the data recorded for the aim of reconstruction of the CCP's business

Specific objective	The technical standard should require the same set of information and data on the CCPs activities related to their business and internal organisation to be recorded across CCPs, so as to ensure homogeneity of controls when coming to the verification of the CCPs compliance to EMIR.
Policy option 1	Detailed specification of the fields of the CCP business' records.
How would achieving the objective alleviate/eliminate the problem?	The Record keeping RTS indicates a number of specific charts, policies, procedures, minutes, reports, contracts, complaints and other relevant documents to be maintained in each record, which mirror the key aspects of the activity conducted by the CCP in relation to its business and internal organisation, with particular attention to those areas in which precise requirements have been prescribed by EMIR (i.e. the governance).
Policy option 2	CCPs free to identify the set of fields on business records to be maintained.
How would achieving the objective alleviate/eliminate the problem?	The Record keeping RTS adopts an approach whereby reference is made to those areas in EMIR where specific requirements have been set, however leaving a CCP free to identify the specific documents to be maintained in order to allow demonstrating compliance with EMIR provisions.
Which policy option is the preferred one? Explain briefly.	Policy option 1 is the preferred one as it will ensure an harmonised approach and comparison of data among different CCPs.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	Yes, it is compatible with ESMA mandate under Article 29 of EMIR that requires for a consistent application of the Article to specify the details of the records and information to be retained by CCPs.

Impacts of the proposed policies:

Policy option 1	Detailed specification of the fields of the CCP business' records.
Benefits	It may be easier for competent authorities to assess compliance with the requirements provided by EMIR on several aspects of the CCPs' activity. A more prescriptive approach may also promote greater comparability and transparency across CCPs.
Regulator's costs	Any possible change to the existing supervisory practices, as the verification of the CCPs' compliance with the regulation, will need to be

	structured basing on the specific documents required to be recorded.
Compliance costs	An existing CCP may need to expend resources expanding its storage capacity and amending the procedures that set the type and number of records to keep as well as the relative IT equipment.
Indirect costs	Standards prescribed in the RTS may need to be amended only when all of the rest of the RTS setting the requirements for CCPs should change. Such indirect costs are thus unavoidable but contained.
Policy option 2	CCPs are free to identify the set of fields on business records to be maintained.
Benefits	The main advantage is to avoid loopholes. The definition of an exact list of documents, although affirmed as not exhaustive, could induce CCPs to neglect keeping other documents, not included in the same list, that are important for the activity they perform. This approach is flexible enough to allow a CCP to best assess what are the most relevant documents attesting the compliance with EMIR, taking into consideration the specific characteristics of its activity.
Regulator's costs	It may be difficult (or it may take longer) for a regulator to assess and/or compare compliance in case this approach is followed. The information/data retained by CCPs could also be not sufficient to allow a complete analysis of the compliance. In case the same regulator supervises more than one CCP, it may face different sets of data/information to process.
Compliance costs	It may be difficult (or it may take longer) for a CCP to assess exactly the right set of data/information to retain to be able to demonstrate its compliance. This could lead, time by time, to the request by the authorities of other information the CCP is expected to record, with costs for the CCP higher than producing information on an organised-basis.
Indirect costs	The absence of consistency and transparency across CCPs, which may have an effect on the competitiveness of a CCP (the different cost to the CCPs, associated with the different substance of the recording).

(c): Frequency of the records with the aim of reconstruction of the clearing process

Specific objective	The information and data should be recorded at a frequency that permits, at any time, the reconstruction of the CCP's clearing process.
Policy option 1	Specific frequencies for each type of records (transactions, positions, business).
How would achieving the objective alleviate/eliminate the problem?	According to the different types of data to record, a CCP is required to make the registration: (i) for the transaction records, on a close to real-time basis, that is "immediate" in relation to every contract it received for clearing; (ii) for the position records, at the end of each business

	day; (iii) for the business records, each time a material change in the relevant documents occurs.
Policy option 2	A CCP is free to identify the frequency of recording.
How would achieving the objective alleviate/eliminate the problem?	A CCP could individually establish the frequency of recording of the required data.
Which policy option is the preferred one? Explain briefly.	Policy option 1 is the preferred one as it will ensure a harmonised approach and comparison of data among different CCPs.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	Yes, it is compatible with the ESMA mandate under Article 29 of EMIR given that the frequency is an essential element of the details to be specified.

Impacts of the proposed policies:

Policy option 1	Specific frequencies for each type of records (transactions, positions, business).
Benefits	As the frequency is pre-defined, certain information is expected to be found in the CCP database, thus without any unjustified time lapse. Accordingly, as all of the useful data are registered at the sametime, it is easier for competent authorities to reconstruct the clearing process and to verify the general compliance of the CCP. Moreover, a more thorough frequency of recording at the CCP level could integrate the information the authorities get from TRs.
Regulator's costs	Any possible change to the existing supervisory practices, as the verification of the clearing process and of the compliance of CCPs, needs being structured taking into consideration the frequency of recording established by the RTS.
Compliance costs	An existing CCP may need to expend resources amending the procedures that set the frequency of recording as well as the relative IT equipment, whereas the actual internal procedure is less prescriptive.
Indirect costs	It could cause a somewhat generation of useless information (an example of this could be a position/contract on a low-volatile financial instrument that changes at a rate less than the frequency of the recording).
Policy option 2	A CCP is free to identify the frequency of recording.
Benefits	The CCPs would set the frequency of recording by taking into consideration the characteristics of the activity performed and by assessing the types of data to be recorded according to its internal organisation. This allows a reduction of the costs relating to the record keeping requirements.
Regulator's costs	It may happen that the data needed is not found in the CCP database, at

	the time it is required by the authority, because it has not been recorded yet. A lack of comparability among CCPs could be seen.
Compliance costs	CCPs could need to provide additional data at the request of the authority in case the recording of information should prove not up to date. As aforementioned for other purposes, this situation will happen on a non-organised basis and then will probably be even more expensive than regular recording and maintenance.
Indirect costs	The absence of a consistent frequency of recording across CCPs may have an effect on the competitiveness of a CCP (the different cost to the CCPs, associated with the different frequency and thus number of records to be maintained).

BUSINESS CONTINUITY

Policy options:

(a): Should an exact time limit for the recovery of services should be prescribed or it should be left to the CCPs on the basis of specific criteria

Specific objective	To ensure that CCP ensures timely recovery of its services.
Policy option 1	Prescribe a maximum down time.
How would achieving the objective alleviate/eliminate the problem?	This approach provides a clear goal for the CCPs and the stakeholders such as regulators to design and maintain the BCP. It also allows for maximum harmonisation between CCPs and regulators in assessing the BCP arrangements.
Policy option 2	Prescribe criteria for the maximum down time.
How would achieving the objective alleviate/eliminate the problem?	This approach provides for a more flexible and tailor made BCP arrangement. This can, for example, be useful when considering the costs of continuing critical services compared to the costs of continuing all services.
Which policy option is the preferred one? Explain briefly.	Policy option 1 is the preferred one. Given that it will ensure the application of a consistent standard across CCPs. Flexibility in this respect will not help better managing the risks CCPs are exposed to, on the contrary can increase the overall cost for the system
Is the policy chosen within the sole responsibility of ESA? If not, what other	The policy chosen is the responsibility of ESMA after consultation of the members of the ESCB. The policy

body is concerned / needs to be informed or consulted?	chosen is compatible with the mandate.

Impacts of the proposed policies:

Option 1	Prescribe a maximum down time.
Benefits	The benefits include, transparency, comparability across CCPs, Prescribe criteria for the maximum down time, harmonisation, it is straight forward, has limited complexity and increases the soundness of CCPs and market reliability.
Regulator's costs	It facilitates regulators expectations and enforceability.
Compliance costs	Should be limited in view of the fact that the CCPs already implements similar standards today.
Indirect costs	N/A
Option 2	Prescribe criteria for the maximum down time.
Benefits	The benefits include, flexibility, it covers the CCP's specific risk related to its business and the approach is adaptable to cover new developments and risks.
Regulator's costs	Higher costs in the definition of strict and harmonised criteria. Higher costs in assessing that the criteria are applied in a consistent manner.
Compliance costs	Unknown, possibly lower because of the flexibility to CCPs to adapt to their business.
Indirect costs	N/A

(b): Should a CCP be allowed to maintain: 1) one secondary site for both business and IT operations or 2) a secondary site for business services as well as a secondary site for IT services.

Specific objective	Ensure the continuity of business services and IT services to the maximum extent possible.
Policy option 1	Allow the CCP to combine business continuity with IT continuity.
How would achieving the objective alleviate/eliminate the problem?	The standard would be in line with international standards.
Policy option 2	The CCP should maintain a secondary site for business

	services and one for IT services.
How would achieving the objective alleviate/eliminate the problem?	The standard would be stricter than the international standard and improve the BCP of the CCP.
Which policy option is the preferred one? Explain briefly.	The RTS prescribes separate secondary sites for business and IT services. This is considered common practice by CCPs within the EU.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The policy chosen is the responsibility of ESMA after consultation of the members of the ESCB. The policy chosen is compatible with the mandate.

Impacts of the proposed policies:

Option 1	Allow the CCP to combine business continuity with IT continuity.
Benefits	It is less complex.
Regulator's costs	Limited but lower impact as BCP arrangements will be easier to assess.
Compliance costs	It has lower costs.
Indirect costs	NA
Option 2	The CCP should maintain a secondary site for business services and one for IT services.
Benefits	The benefits include increased safety and it is in line with current market practice.
Regulator's costs	Limited but higher impact as BCP arrangements will be more extensive.
Compliance costs	Higher costs because of additional secondary site.
Indirect costs	Improved BCP arrangements.

MARGINS

<u>Policy options:</u>

(a) What are the appropriate minimum percentages over 99% to be applied to the calculation of the margins? Should they be prescribed comprehensively for each class of financial instrument or should the percentage determination be built on criteria based approach?

Specific objective	A high percentage of confidence interval results in the CCP requiring higher margins to its clearing members,

	and the later to its clients. In case of a default, the costs will be likely covered by the resources posted by the defaulting party. Additionally, specifying some minimum requirements to be applied in a fix standard, similar for all European CCPs, is particularly important to ensure that CCPs do not compete on risks and lower the bar.
Policy option 1	The margins RTS prescribes the minimum level of percentage for each class of financial instrument.
How would achieving the objective alleviate/eliminate the problem?	Such approach ensures transparency and an undoubted level playing field across CCPs. Additionally, it may make easier for the competent authorities to assess the technical standards are applied in a consistent way and in the manner the authorities are expecting.
Policy option 2	The Margins RTS adopts criteria to take in consideration by the CCP to determinate the percentage for confidence interval for each class of financial products.
How would achieving the objective alleviate/eliminate the problem?	A criteria based approach is inherently flexible because rather than fixing a specific percentage, the RTS sets out a high level framework against in which a CCP's policies must comply. The CCP can adapt its risk exposure in function the profile of the instruments cleared and adapts its risk policy over time.
Which policy option is the preferred one? Explain briefly.	A mixed approach is preferred. Percentage should be at least 99.5% for OTC derivatives products and at least 99% for other classes of financial products. Those percentage should be increased by each CCP if needed, based on a criteria based approach taking into account, inter alia: (a) The complexities and level of pricing uncertainties the class of financial instruments have that may limit the validation of the calculation of the initial and variation margin calculation. (b) The risk characteristics of the class of financial instruments, which can include, but are not limited to, volatility, duration, liquidity, non-linear price characteristics, jump to default risk and wrong way risk. (c) The degree to which other risk controls do not adequately limit credit exposures.

	(d) The inherent leverage of the class of financial instruments, including whether the class of financial instrument is significantly volatile, is highly concentrated among few participants or may be difficult to close out. (e) Positions held are of a significant size. (f) The exposures generated by clearing participants are significant compared to their underlying financial strength. (g) The risk of failures for the physically settled trades or financial products.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The policy response chosen is the responsibility of ESMA in consultation with EBA and with the members of the ESCB. The policy chosen is within EMIR mandate that explicitly asks ESMA to define the right percentage for the different financial instruments.

Impacts of the proposed policies:

Policy option 1	The margins RTS prescribes the minimum level of percentage for each class of financial instrument.
Benefits	Such approach promotes a high degree of level playing field in EU. It may be easier for competent authorities to assess compliance with such standards. Prescription may also promote greater comparability and transparency across CCPs. This approach would allow the authorities to have a direct control of the level of margins that are requested by CCPs for each class of financial instrument. In this sense, it may be considered advantages of specifying high percentages in the RTS the following: Procyclicality;Setting margins in a conservative manner will help the CCP to maintain a sufficient buffer in stressed period, thus avoiding continuous adjustments via margins calls that can exacerbate a difficult market condition; Moral hazard; Setting higher confidence intervals would determine a lower use of default fund contribution, thus limiting the recourse to the latter and the moral hazard issue connected to it. Better capital treatment; Margins are expected to get a more favourable capital treatment than default fund contributions, thus clearing member would certainly have a preference for higher confidence intervals. Portability; If the overall risk that the CCP need to cover is manage via a larger recourse to margins, this would facilitate the portability of client positions. This is due to the fact that for a CCP will be easier to find a surviving clearing members if the positions that the latter should take are

	almost entirely covered by margins. The same will not be true if the surviving clearing member would be asked to pay a substantial contribution to the default fund in view of the client position it is taking. Short history; If the product the CCP intends to clear have short time series on which to calibrate its model, it would be justified to apply a higher confidence interval.
Regulator's costs	A prescriptive approach facilitates the enforceability of the requirements.
Compliance costs	Depends on the required percentages and gaps compared to the current practices.
Indirect costs	The indirect cost would be similar in both cases if authorities set the percentages using the same level exigency as when assessing the criteria based approach. Compliance costs, in both cases, could be large if the result of the application of standards were percentages substantially higher than the current practices of CCPs. It could be considered cons of explicitly setting high percentages the following: Lower trading activity; Too high margins as a consequence of the higher confidence interval, might disincentivise trading on particular products, thus reducing the liquidity of those. Management of a default; If a CCP can rely mostly on margins, the management of a default would be seriously injured. With limited mutualised resources, the CCP could only rely on the resources of the defaulting clearing member, thus limiting the resources at its disposal in a default situation. Little justification for clearing member involvement in the CCP governance. In case of very limited mutualisation of losses, the clearing members have less reason for being directly involved in monitoring the CCP risk management, given that they risk only the money they post to cover their exposures.
Policy option 2	The Margins RTS adopts criteria to take in consideration by the CCP to determinate the percentage for confidence interval for each class of financial products.
Benefits	A criteria based approach is inherently flexible setting a framework against which a CCP's investment choices or policies must comply. The criteria allow the CCP to choose and manage their risk exposure in function of the market, the products cleared, the clearing members, etc. This approach gives the capacity to the CCPs to react rapidly in case of evolution of its risk exposure and ensure their robustness in keeping control of the risk exposure.
Regulator's costs	It may be more difficult, costly and less efficient for a regulator to assess compliance with criteria based standards.

Compliance costs	The CCP needs resources to develop, monitor and adapt the margin framework.
Indirect costs	Criteria based standards may not be applied in a consistent and transparent manner across CCPs which may have an effect on the competitiveness of a CCP (a cost to the CCP) or the on-going viability of the CCP (a cost to the clearing members or to society).

It should be noted that for this RTS, the monetary value depends on the level of percentage and if the standards are set substantially higher than the current practices of CCPs.

(b): Should the lookback period include a stress historical period

Specific objective	The lookback period should be defined so that it is conservative and does limit the procyclicality of margins.
Policy option 1	Initial margins are calculated taking into account only the most recent margin conditions and therefore the historical lookback period is a fixed time period of one/two years.
How would achieving the objective alleviate/eliminate the problem?	Such option would increase procyclicality.
Policy option 2	Initial margins are calculated taking into account a relatively long time period, e.g. 10 years. This approach would be more likely to include stressed market conditions, although would not necessarily weight these conditions appropriately if they occurred long ago.
How would achieving the objective alleviate/eliminate the problem?	Such option would not reflect enough the recent period.
Policy option 3	Initial margins are calculated on the basis of both stable and stress market conditions, but both are equally weighted.
How would achieving the objective alleviate/eliminate the problem?	Such approach would achieve balance and would be both conservative and less procyclical.
Which policy option is the preferred one? Explain briefly.	Option 3 for the reasons explained above. The CCP should assure that according to its model methodology and its validation process in compliance initial margins cover at least with the confidence interval defined above an historical volatility calculated

	weighting equally the two following periods: a. The latest 6 months b. 6 months reflecting the most stressed historical market conditions during the last 30 years or as long as reliable price data have been available. It is also proposed to specify that the CCP should use additionally other historical periods when, according to the Stress and Back Testing, the periods above do not properly contain the necessary information to assure that the margins protect to the CCP with the required degree of coverage. Thus the change in the lookback period should only aim at increasing the margins.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The policy response chosen is the responsibility of ESMA in consultation with other relevant Authorities (EBA) and with the members of the ESCB.

Impacts of the proposed policies:

Policy option 1	Initial margins are calculated taking into account only the most recent margin conditions and therefore the historical lookback period is a fixed time period of one/two years.
Benefits	Takes into account the volatility of a product in the recent period.
Regulator's costs	No specific regulator's cost is expected.
Compliance costs	No, most CCPs do take into account a period of the last 1 or 2 years.
Indirect costs	N/A
Policy option 2 :	Initial margins are calculated taking into account a relatively long time period, e.g. 10 years. This approach would be more likely to include stressed market conditions, although would not necessarily weight these conditions appropriately if they occurred long ago.
Benefits	Setting margins in a conservative manner will help the CCP to maintain a sufficient buffer in stressed period, thus avoiding continuous adjustments via margins calls that can exacerbate a difficult market condition. The longer the period under consideration, the most likely it will include stress market conditions and if stress market conditions are considered in the lookback period, the most conservative will be the determination of the actual margins requirements. However, if the stressed conditions occurred far in the past, their effects in the model might be of little significance and not

	be weighted appropriately.
Regulator's costs	No specific regulator's cost is expected.
Compliance costs	Might be high if the policy implies a significant departure from current margins calculations.
Indirect costs	Lower trading activity. Too high margins as a consequence of the higher confidence interval, might disincentivise trading on particular products, thus reducing the liquidity of those.
Policy option 3	Initial margins are calculated on the basis of both stable and stress market conditions, but both are equally weighted.
Benefits	A balanced approach reflecting both the recent market conditions and stress market conditions.
Regulator's costs	No specific regulator's cost is expected
Compliance costs	Expected to be limited as this approach is favoured by most stakeholders.
Indirect costs	N/A

(c): What is the best approach to define the RTS as regard the appropriate liquidation period: a prescriptive approach or criteria based approach?

Specific objective	A prescriptive approach sets a minimum fix standard, similar for all European CCPs. This is particular important so that to ensure that CCPs do not compete on risks and lower the bar.
Policy option 1	The margins RTS prescribes a minimum number of days for the liquidation period.
How would achieving the objective alleviate/eliminate the problem?	Such approach ensures transparency and a level playing field across CCP. It may be easier for competent authorities to assess compliance with such standards.
Policy option 2	The Margins RTS adopts criteria to take in consideration by the CCP to determinate the liquidation period.
How would achieving the objective alleviate/eliminate the problem?	A criteria based approach is inherently flexible.
Which policy option is the preferred one? Explain briefly.	A mixed approach is preferred. Liquidation period should be at least 5 days for OTC derivatives products and at least 2 days for other classes of financial products. Those minimum should be increased by each CCP if needed, based on a criteria based approach. For the

	determination of the adequate liquidation period, the CCP shall be responsible of defining the period for which the CCP is exposed after a default taking into consideration the characteristics of the financial instrument cleared, the market where is traded, and the period for the calculation and collection of the margins. For the setting of the close-out period, the CCP, at least, shall evaluate and sum the following: (a) The longest possible period that may elapse since the last collection of margins up to the declaration of default by the CCP (or activation of the default management by the CCP). (b) The estimated period needed to design, activate and execute the strategy for the management of the default of a clearing member according to the particularities of each class of financial instrument and the markets the CCP will use to close-out or hedge completely a large clearing member position. In evaluating those periods, the CCP should take into account historical price and liquidity data, including the worst events that occurred in the selected time period for the product cleared. The CCP should take into account the relevant characteristics of the products cleared such as inter alia: a) the level of liquidity, b) the size of positions, c) the concentration of positions.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The policy response chosen is the responsibility of ESMA in consultation with other relevant Authorities (EBA) and with the members of the ESCB.

Impacts of the proposed policies:

Policy option 1	The margins RTS prescribes a minimum number of days for the liquidation period.
Benefits	Such approach promotes a high degree of level playing field in EU. It may be easier for competent authorities to assess compliance with such standards. Prescription may also promote greater comparability and transparency across CCPs. This approach would allow the authorities to have a direct control of the level of margins that are requested by CCPs for

	each class of financial instrument.
Regulator's costs	No specific regulator's cost is expected. Easier to enforce and ensure consistent application of a prescriptive approach.
Compliance costs	CCPs are not expected to applied already today lower liquidation periods than the one included in the prescribed approach. So the costs are not expected to be huge.
Indirect costs	N/A
Policy option 2	The Margins RTS adopts criteria to take in consideration by the CCP to determinate the liquidation period.
Benefits	A criteria based approach is inherently flexible setting a framework against which a CCP's investment choices or policies must comply. The criteria allow the CCP to choose and manage their risk exposure in function of the market, the products cleared, the clearing members, etc. This approach gives the capacity to the CCPs to react rapidly in case of evolution of its risk exposure and ensure their robustness in keeping control of the risk exposure.
Regulator's costs	It may be more difficult, costly and efficient for a regulator to assess compliance with criteria based standards.
Compliance costs	The CCP needs resources to develop, monitor and adapt the margin framework.
Indirect costs	Criteria based standards may not be applied in a consistent and transparent manner across CCPs which may have an effect on the competitiveness of a CCP (a cost to the CCP) or the on-going viability of the CCP (a cost to the clearing members or to society).

DEFAULT FUND

Policy options:

(a) Should the RTS only set criteria on how to specify a framework for defining extreme but plausible market conditions, or should some key parameters also be subject to prescriptive measures ensuring that certain minimum standards are adhered to?

Detailed objectives	The RTS on Default Fund should ensure that the framework does consider the relevant historical scenarios in defining extreme and plausible market conditions
Policy option 1	The RTS prescribes the time period to be applied when considering which historical scenarios shall be included in identifying extreme but plausible market conditions.
How would this option achieve the objective?	The advantage of prescribing the minimum historical period to be considered is that it may be easier for competent authorities to assess compliance. Such

	prescription may also promote greater comparability and transparency across CCPs.
Policy option 2	The RTS provides broad criteria stating that historical scenarios should be considered in defining extreme but plausible market conditions.
How would this option achieve the objective?	A criteria based approach is inherently flexible and will leave to the CCP to identify the relevant time period to be considered in identifying historical scenarios that would expose it to greatest risk.
Which policy option is the preferred one? Explain briefly.	Policy option 1, as this will ensure that the CCPs have a common approach and that most likely will consider occurred market conditions in their frameworks. It should be noted that although the RTS will not include a list of scenario that CCPs should include in their models, at least the framework for defining them should follow common standards.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The policy response chosen is the responsibility of ESMA in consultation with other relevant Authorities (EBA) and with the members of the ESCB.

Impacts of the proposed policies:

Policy option 1	The RTS prescribes the time period to be applied when considering which historical scenarios shall be included in identifying extreme but plausible market conditions.
Benefits	Prescription may help to ensure consistently strong standards across CCPs and also promote greater comparability and transparency.
Regulator's costs	It may be easier for competent authorities to assess compliance with prescriptive standards as experience with one CCP would read across to all other CCPs. On the other hand, more prescription may equate to more rules and may therefore require more compliance checks by the regulator.
Compliance costs	An existing CCP may need to expend resources amending its risk management framework to comply with the standards prescribed in the RTS where such are incompatible with current practice. This could lead to the CCP being unable to identify and take due care of those situations that are "extreme but plausible" for the CCP. In any case the RTS still leaves to the CCPs to define the most appropriate framework and it is essentially a criteria-based approach with certain prescribed elements. Thus the burden of compliance is not expected to be huge. In addition, the requirement to have a framework for defining extreme but plausible conditions is set in EMIR and it is not for this impact assessment to measure the impact of such

	requirement.
Indirect costs	Standards prescribed in the RTS may not be sufficiently flexible to deal with risks or developments which arise or are identified in the future. Amending the RTS would likely require considerable resources (also including time). If the prescribed standards were not to be amended, or were not to be timely amended, then the on-going viability of the CCP may be affected (which might impose a cost to the clearing members or to society). There is also risk that CCPs simply follow the requirements without taking due care to the specifics of own operations. Moral hazard might be a result.
Policy option 2	The RTS provides broad criteria stating that historical scenarios should be considered in defining extreme but plausible market conditions.
Benefits	A criteria-based approach is inherently flexible setting a high level framework that can adapt to take account of future market developments.
Regulator's costs	It may be difficult/take longer for a regulator to assess compliance with criteria based standards. Different CCPs may adopt quite different approaches, increasing the resource cost of regulatory review.
Compliance costs	It may be difficult/take longer for a CCP to develop policies in compliance with criteria based standards. However, for those already having such a framework, it could more easily be adopted to the new requirements.
Indirect costs	Criteria based standards may not be applied in a consistent and transparent manner across CCPs which may have an effect on the competitiveness of a CCP (a cost to the CCP) or the on-going viability of the CCP (a cost to the clearing members or to society) – although such costs could be alleviated by strong cooperation between CAs as already envisaged in EMIR through the setup of colleges.

(b) On what level should the framework be adopted within the CCP? As a part of the risk management framework, should it be the sole responsibility of the risk manager, or should the Board be required to approve it as a separate requirement?

Specific objective	Ensuring that the framework is implemented by the CCP and form part of its risk management task.
Policy option 1	Require that the framework to be presented to the Risk Committee for advice, and approved by the Board. And that the annual review is presented to the risk committee and reported to the Board
How would this option achieve the objective?	This will ensure that the framework has been given adequate attention by CCPs' governing bodies, which should in turn translate into proper day-to-day risk management.

Policy option 2	To require the Chief Risk Officer to be responsible for implementing and updating the framework, as well as carrying out the annual review.
How would this option achieve the objective?	As this framework shall form an integrated part of the risk management policy of the firm, leaving the responsibility with the Chief Risk Officer would meet the objective.
Which policy option is the preferred one? Explain briefly.	Option 1 is chosen, as the EMIR refers to this as a separate item, the importance given would be in line with Board treatment.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The policy response chosen is the responsibility of ESMA in consultation with other relevant Authorities (EBA) and with the members of the ESCB.

Impacts of the proposed policies:

Policy option 1	Require that the framework to be presented to the Risk Committee for advice, and approved by the Board. And that the annual review is presented to the risk committee and reported to the Board
Benefits	Require Board approval ensures commitment from the highest level of the organisation.
Regulator's costs	As the framework of the "Extreme but plausible" has to be approved by the Board, following up on formal adoption, this approach should not impose substantial costs on the regulator.
Compliance costs	Has to be included in the documentation that shall be subject to risk committee advice and Board approval. Will therefore be likely to involve more costs than policy option 2, although in absolute terms internal reporting costs are unlikely to be material.
Indirect costs	N/A
Policy option 2	To require the Chief Risk Officer to be responsible for implementing and updating the framework, as well as carrying out the annual review.
Benefits	As this form part of the risk management policy, and the Chief Risk Officer is a designated role, making it the role of the Chief Risk Officer assures responsibility is where the risk is handled.
Regulator's costs	As the model adopted will be the one chosen by the CCP the regulator has to use more time to evaluate the model and assess compliance than would have been the case had a formal board procedure for approval been required.

Compliance costs	For CCPs already having a framework for identifying extreme but plausible market conditions, little compliance costs will arise as this is most likely in line with the current situation.
Indirect costs	N/A

LIQUIDITY RISK CONTROLS

Policy options:

(a): Should a prescriptive or criteria based approach be adopted when defining appropriate forms and sources of liquidity?

Detailed objectives	Standards should be applied in a consistent and transparent manner across CCPs. Standards should be sufficiently flexible to cater for the various risk management approaches employed by CCPs, the variety of products cleared by CCPs and allow for future developments and new risks to be dealt with appropriately It should be readily ascertainable as to whether a particular CCP is in compliance with the applicable standards.
Policy option 1	The Liquidity Risk Control RTS prescribes the specific financial assets that are regarded as fulfilling the liquidity requirement, the mix between the different assets including a minimum cash requirement.
How would this option achieve the objective?	The advantage of a prescriptive approach to defining standards in the RTS is that it may be easier for competent authorities to assess compliance with such standards. Such prescription may also promote greater comparability and transparency across CCPs.
Policy option 2	Criteria based approach where the characteristics of liquid assets are described.
How would this option achieve the objective?	A criteria based approach is inherently flexible because rather than identifying an exact list of financial assets and the distributions between these assets to fulfil the CCPs' Liquidity requirements or defining the exact characteristics of a particular policy that a CCP is required to have, the RTS sets out a high level framework against which a CCP's liquidity risk management or policies must comply.
Which policy option is the preferred one? Explain briefly.	A criteria based approached with certain prescribed elements is the preferred approach as it would maximise the benefits of the two approaches.

Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The policy response chosen is the responsibility of ESMA in consultation with other relevant Authorities (EBA) and with the members of the ESCB.

Impacts of the proposed policies:

Policy option 1	The Liquidity Risk Control RTS prescribes the specific financial assets that are regarded as fulfilling the liquidity requirement, the mix between the different assets including a minimum cash requirement.
Benefits	It may be easier for competent authorities to assess compliance with prescriptive standards. Prescription may also promote greater comparability and transparency across CCPs.
Regulator's costs	Where the standards prescribed in the RTS do not suit the business model or risk management approach of a CCP the competent authority may need to expend resource more closely monitoring the CCP (as opposed to requiring that a CCP adapt its liquidity choices or policies to better suit its business model or risk management approach because technical standards cannot be 'gold-plated'). There is also risk that CCPs simply place liquidity according to the permitted choices under the RTS without any prior risk assessment which would put the onus for such assessment on the regulator.
Compliance costs	An existing CCP may need to expend resources amending its business model or risk management framework to comply with the standards prescribed in the RTS where such are incompatible with the business model or risk management approach of the CCP. An existing CCP may be subject to increased costs where they need to alter their liquidity sources and providers.
Indirect costs	Standards prescribed in the RTS may not be sufficiently flexible to deal with risks or developments which arise or are identified in the future. Amending the RTS would likely require considerable resources (also including time). If the prescribed standards were not to be amended, or were not to be timely amended, then the on-going viability of the CCP may be affected (which might impose a cost to the clearing members or to society).
Policy option 2	Criteria based approach where the characteristics of liquid assets are described.
Benefits	A criteria based approach is inherently flexible setting a high level framework against which a CCP's liquidity choices or policies must comply.

Regulator's costs	It may be difficult/take longer for a regulator to assess compliance with criteria based standards.
Compliance costs	It may be difficult/take longer for a CCP to develop policies in compliance with criteria based standards.
Indirect costs	Criteria based standards may not be applied in a consistent and transparent manner across CCPs which may have an effect on the competitiveness of a CCP (a cost to the CCP) or the on-going viability of the CCP (a cost to the clearing members or to society) – although such costs could be alleviated by strong cooperation between CAs as already envisaged in EMIR through the setup of colleges.

(b): Is concentration of liquidity an appropriate area for technical standards, i.e. shall the 25% limitation on provision of credit line also be applied to anyone providing liquidity?

Specific objective	Ensuring that the liquidity of a CCP is not subject to undue concentration risk both stemming from asset class and asset provider.
Policy option 1	The concentration of liquidity stemming from one source is defined by limiting exposure to given thresholds. Further there are also defined minimum cash requirement.
How would this option achieve the objective?	The advantage of prescribed limits is that these ensure equal understanding and application of the requirements. Supervisors will also have a less challenging task with respect to evaluate compliance than if the RTS takes a more qualitative approach.
Policy option 2	The RTS does not provide defined thresholds with respect to concentration, but rather states which factors shall be considered in evaluate concentration risk.
How would this option achieve the objective?	An approach where the RTS does not provide any absolute thresholds are more flexible and do give less dictation with respect to liquidity risk management. This approach will also ensure that CCPs' are given a larger degree of choice, and the possibility to take account of local market conditions.
Which policy option is the preferred one? Explain briefly.	Policy option 2 is preferred as for certain markets it could be extremely difficult for CCPs to comply with such limit. In addition, such limits are considered to go beyond ESMA mandate under EMIR.
Is the policy chosen within the sole	The policy response chosen is the responsibility of

responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	ESMA in consultation with other relevant Authorities (EBA) and with the members of the ESCB.

Impacts of the proposed policies:

Policy option 1	The concentration of liquidity stemming from one source is defined by limiting exposure to given thresholds. Further there are also defined minimum cash requirement.
Benefits	It may be easier for competent authorities to assess compliance with prescriptive standards than with more criteria based ones. Prescription may also promote greater comparability and transparency across CCPs.
Regulator's costs	1) Moral hazard i.e. the risk that a CCP simply adhere to the standard without using own judgement. This would put the onus on the regulator. 2) Where the standards prescribed do not suit the CCP, i.e. local conditions or specific features of the clearing model might lead to the competent authority expend resources more closely monitoring the CCP.
Compliance costs	Significant as certain markets it might be extremely difficult to comply with a strict percentage. In addition, such percentage could be a significant limit for new CCPs to access the market.
Indirect costs	N/A
Policy option 2	The RTS does not provide defined thresholds with respect to concentration, but rather states which factors shall be considered in evaluate concentration risk.
Benefits	It will provide flexibility for the clearing house to adopt the liquidity risk management model best fitted for its characteristics. The CCP has the entire responsibility to adopt the best model.
Regulator's costs	As the model adopted will be the one chosen by the CCP the regulator has to use more time to evaluate the model and assess compliance than would have been the case had a prescriptive RTS stating thresholds been adopted.
Compliance costs	In view of the flexibility allowed to CCPs, the costs are expected to be much lower than under a prescriptive approach.
Indirect costs	Inappropriate liquidity risk management may lead to the CCP having greater liquidity risk.

DEFAULT WATERFALL

Policy options:

a) What is the best basis to calculate the CCP's own financial resources to be dedicated to the default waterfall?

Detailed objectives	The RTS should provide the adequate incentives for CCPs to adopt a prudent approach in their risk-management policy.
Policy option 1	The RTS prescribe that the CCP's skin in the game is determined on the basis of the CCP's own financial resources.
How would this option achieve the objective?	This approach avoids that a CCPs is disincentivised from adopting conservative policies with respect to the financial resources it collects from its clearing members, since the skin in the game is not linked to such resources.
Policy option 2	The RTS prescribe that the CCP's skin in the game is determined on the basis of the margins and default fund posted at the CCP itself.
How would this option achieve the objective?	The advantage of a margins/DF-based approach in the RTS is that the size of the skin in the game is linked to the dimension of the counterparty risk handled by the CCP itself, and thus leaves unchanged, in relative terms, the commitment of the CCP.
Which policy option is the preferred one? Explain briefly.	The preferred policy option is option 1, i.e. linking the skin in the game to the CCP resources. On one side, the advantage of a capital-based approach in the RTS is that the size of the skin in the game is supposed to be rather stable, since it is not linked to the cleared market volatility nor to the clearing members' positions. On the other, disentangling the size of the skin in the game of a CCP from the margins and default funds resources it collects avoids pro-cyclical implications since the skin in the game is not linked to market volatility, adding to the increase of guarantees.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The policy response chosen is the responsibility of ESMA in consultation with the members of the ESCB.

Impacts of the proposed policies:

Policy option 1	The RTS prescribe that the CCP's skin in the game is determined on the basis of the CCP's own financial resources.

Benefits	In both cases, the prescription may help to ensure consistently strong standards across CCPs and also promote greater comparability and transparency.
Regulator's costs	It may be easier for competent authorities to assess compliance with a capital-based approach, since the parameter would be immediately available from the CCP balance sheet.
Compliance costs	The compliance costs would depend to the minimum capital requirements to be determined in a RTS to be developed by EBA. Being more constant over time, it is expected to be lower than in option 2.
Indirect costs	A capital-based approach could incentivize CCPs to not raise their own financial resources above the minimum requirement. The CCP's contribution to the DW would be independent from the overall amount of the counterparty risk handled by the CCP.
Policy option 2	The RTS prescribe that the CCP's skin in the game is determined on the basis of the margins and default fund posted at the CCP itself.
Benefits	In both cases, the prescription may help to ensure consistently strong standards across CCPs and also promote greater comparability and transparency.
Regulator's costs	It may be less easy for competent authorities to assess compliance with a margins/DF-based approach, since not necessarily the necessary data would be immediately available.
Compliance costs	Expected to be high in view of the variability and size of margins requirements. The feed-back to the discussion paper suggests that this approach would imply significant costs to CCPs.
Indirect costs	A margins/DF-based approach could disincentivise CCPs to adopt more conservative policies with respect to the overall financial resources collected from their clearing members..

COLLATERAL

Policy options:

(a): What is the best approach to defining the collateral standard – prescriptive list of eligible collateral or criteria-based requirements?

Specific objective	Robust standards should be applied in a consistent and transparent manner across CCPs. Standards should be sufficiently flexible to cater for the various risk management approaches employed by CCPs, the variety of products cleared by CCPs and to allow for future developments and new risks to be dealt with

	appropriately. It should be readily ascertainable as to whether a particular CCP is in compliance with the applicable standards.
Policy option 1	The Collateral RTS prescribes the assets that can be considered eligible as collateral, the applicable haircuts and the concentration limits.
How would achieving the objective alleviate/eliminate the problem?	Such approach ensures transparency and a level playing field across CCP. It may be easier for competent authorities to assess compliance with such standards, exactly the same 'tests' would apply to every CCP.
Policy option 2	The Collateral RTS adopts criteria to take in consideration by the CCP to determinate the assets eligible as collateral, the haircuts and the concentration limits. The standard contemplates a general requirement for CCPs to demonstrate that assets accepted as collateral satisfy the criteria, including that they display low credit and market risks.
How would achieving the objective alleviate/eliminate the problem?	A criteria based approach is inherently flexible because rather than identifying an exact list of assets, haircuts and concentration limits which a CCP must implement, the RTS sets out a high level framework against in which a CCP's policies must comply. The CCP can adapt its risk exposure in function of its profile, the profile of its clearing members and adapts its risk policy over time.
Which policy option is the preferred one? Explain briefly.	A criteria based approach is preferred owing to the inherent difficulty of defining a durable list of assets that are sufficiently reliable and liquid to qualify as eligible collateral.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The policy response chosen is the responsibility of ESMA in consultation with other relevant Authorities (EBA), the ESRB and with the members of the ESCB.

Impacts of the proposed policies:

Policy option 1	The Collateral RTS prescribes the assets that can be considered eligible as collateral, the applicable haircuts and the concentration limits.
Benefits	Such approach promotes a high degree of level playing field between EU CCPs and promote greater comparability and transparency across CCPs.
Regulator's costs	Monitoring compliance with detailed rules should not entail material on-going costs for the regulator – a standard compliance could be applied to all CCPs. Regulators would implicitly incur additional costs if the detailed rules were inappropriate for the specific risk profile and left little flexibility to apply more suitable requirements.
Compliance costs	A CCP may need to expend resources amending its business model or risk management framework to comply with the standards prescribed in the RTS where such are incompatible with the business model or risk

	management approach of the CCP. The CCP cannot adjust its risk policy without a change or the regulation, potentially leading to inadequate level of overall robustness.
Indirect costs	Standards prescribed in the RTS may not be sufficiently flexible to deal with risks or developments which arise or are identified in the future. Amending the RTS would likely require considerable resources (also including time). If the prescribed standards were not to be amended, or were not to be timely amended, then the robustness of the CCP may be adversely affected (which might impose a substantial near-term cost to the clearing members or to society).
Policy option 2	The Collateral RTS adopts criteria to take in consideration by the CCP to determinate the assets eligible as collateral, the haircuts and the concentration limits. The standard contemplates a general requirement for CCPs to demonstrate that assets accepted as collateral satisfy the criteria, including that they display low credit and market risks.
Benefits	A criteria based approach is inherently flexible setting a high level framework against which a CCP's investment choices or policies must comply. The criteria allow the CCP to choose and manage their risk exposure in function of the market, the products cleared, the clearing members, etc. This approach gives the capacity to the CCPs to react rapidly in case of evolution of its risk exposure and ensure their robustness in keeping control of the risk exposure.
Regulator's costs	It may be more difficult for a regulator to assess CCPs' on-going compliance with criteria based standards, since CCPs could adopt very different approaches to compliance.
Compliance costs	The CCP needs resources to monitor and adapt its risk exposure, although ensuring compliance with fewer precise rules will reduce the overall compliance burden.
Indirect costs	Criteria based standards may not be applied in a consistent and transparent manner across CCPs which may have an effect on the competitiveness of a CCP (a cost to the CCP) or the on-going viability of the CCP (with long-term costs for society).

(b): Should the standard require a minimum proportion of collateral in cash?

Specific objective	In order to ensure the robustness of the CCP, the CCP should have available sufficient cash to cover same-day liquidity needs arising from failure of one or more clearing member. On the other hand, the framework set out in the RTS should be enough flexible to be adaptable to the heterogeneous situations of the CCP and to the future evolution of the CPP risk model, including the range of reliable liquidity resources that can be held.
Policy option 1	The standard allows the CCP or the clearing member to determine the level of cash provided as collateral.
How would achieving the objective alleviate/eliminate the problem?	Such approach allows flexibility for the CCP which can determinate the level of cash required relative to other

	types of collateral that can be used to generate liquidity when required. It also avoids any requirement for the CCP to maintain large unsecured cash balances.
Policy option 2	The standard prescribes a minimum of level of cash that a CCP has to receive from the clearing member.
How would achieving the objective alleviate/eliminate the problem?	This prescription ensures that the CCP has a minimum amount of the most liquid resource (cash) immediately available in case of default of clearing member.
Which policy option is the preferred one? Explain briefly.	Favour the flexible approach, allowing the Liquidity RTS to specify minimum requirements for CCP liquidity risk management that a CCP would have the option to satisfy (in part) via a minimum cash requirement.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The policy response chosen is the responsibility of ESMA in consultation with other relevant Authorities (EBA), the ESRB and with the members of the ESCB.

Impacts of the proposed policies:

Policy option 1	The standard allows the CCP or the clearing member to determine the level of cash provided as collateral.
Benefits	The CCP can determine the level of cash required from the clearing member in function of the market, the products cleared, the clearing members, etc. as well as a function of its access to alternative sources of liquidity in private markets or through regular access to the central bank.
Regulator's costs	The monitoring of CCPs' net liquidity exposures may be more difficult, although this is more relevant to the liquidity RTS than for collateral per se.
Compliance costs	Minimal difference between options, as the CCP would need to comply with the broader requirements of the RTS under both policy options.
Indirect costs	The absence of a cash requirement may make CCPs more vulnerable to liquidity shortages following a member default, although this should be mitigated by the liquidity RTS. The level of cash required may not be applied in a consistent and transparent manner across CCPs which may have an effect on the competitiveness of a CCP (a cost to the CCP) or the on-going viability of the CCP (a cost to the clearing members or to society).
Policy option 2	The standard prescribes a minimum of level of cash that a CCP has to receive from the clearing member.
Benefits	The minimum requirement to post collateral in the form of cash ensures that the CCP has resources immediately available to manage the default of a clearing member. The CCP can require a higher level of collateral in cash than the minimum sets out in the RTS enabling the CCP to manage its liquidity risk exposure. A minimum deposit in cash correlatively reduces the level of collateral in financial instruments or commercial bank guarantees and the market risk. The RTS allows a better transparency and a higher level playing field across the CCP.

Regulator's costs	The timeframe to evolve the RTS may be long and not compatible with changes to CCPs' business and risk management requirements. The cash may also need to be held on (unsecured) deposit with a commercial bank, introducing an additional risk as an unintended consequence of regulatory action (See investment policy where a limit to the cash maintain in this form is prescribed. Given that cash would need to be maintained with a central bank or be collateralised with financial instruments, it would appear as a regulatory inconsistency to require a minimum amount of cash under the collateral requirements).
Compliance costs	Minimal difference between options, as the CCP would need to comply with the broader requirements of the RTS under both policy options.
Indirect costs	Cost to clearing members could be higher if the requirement to post cash is introduced.

(c): Should clearing members be able to use their own or other clearing members' debt securities as collateral

Specific objective	In order to ensure the robustness of the CCP, the CCP should minimise as far as possible its exposure to wrong-way risks. The framework set out in the RTS should be enough flexible to be adaptable to the heterogeneous situations of the CCP and to the future evolution of the CPP risk model, and avoid restricting the range of eligible collateral to the extent that central clearing becomes uneconomic.
Policy option 1	The CCP is not permitted to accept as collateral any security issued by any clearing member.
How would achieving the objective alleviate/eliminate the problem?	This approach would help to ensure that the CCP is robust to widespread distress among institutions (often with similar business models) that are members of the CCP, but would also significantly restrict the universe of eligible collateral.
Policy option 2	The CCP is not permitted to accept as collateral from a clearing member any security issued by that member.
How would achieving the objective alleviate/eliminate the problem?	This approach would help to ensure that collateral posted by a member does not immediately lose value following its default, but would also exclude some assets (such as certain types of covered bond) that are commonly used as collateral in the market.
Which policy option is the preferred one? Explain briefly.	Option 2, with an exemption for self-issued covered bonds. This approach is judged to strike the most appropriate balance between minimising wrong-way risk to the CCP and ensuring adequate availability of eligible collateral.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The policy response chosen is the responsibility of ESMA in consultation with other relevant Authorities (EBA), the ESRB and with the members of the ESCB.

Impacts of the proposed policies:

Policy option 1	The CCP is not permitted to accept as collateral any security issued by any clearing member.
Benefits	The value of the collateral held by CCPs is robust to generalised distress affecting multiple clearing members simultaneously – the CCP is better protected against member default. Clearing members are not able to cross-collateralise positions with the CCP.
Regulator's costs	Minimal – a restriction of this kind would be relatively straightforward to apply and enforce.
Compliance costs	CCPs may need to adjust current risk management practices to accommodate tighter rules on use of clearing member securities. Restricting the set of eligible collateral is likely to increase costs (for members) and may undermine the competitiveness of the CCP (which may have costs for society).
Indirect costs	Restricting the set of eligible collateral may also cause wider market disruption, potentially disruption the allocation of capital to the real economy.
Policy option 2	The CCP is not permitted to accept as collateral from a clearing member any security issued by that member.
Benefits	Ensures that value of the collateral held by CCPs is not directly related to the credit standing of the clearing member. But exposure to wrong-way risk greater than under option 1. Limits wrong-way risk while allowing clearing members to use covered bonds as collateral (subject to certain conditions), consistent with their traditional role in funding markets.
Regulator's costs	Minimal – a restriction of this kind would be relatively straightforward to apply and enforce.
Compliance costs	Same as for option 1, but significantly less acute. The exemption for covered bonds would also broaden range of eligible collateral.
Indirect costs	Same as for option 1, but significantly less acute.

(d): Should the standard limit the amount of collateral received in commercial bank guarantees?

Specific objective	In order to ensure the robustness of the CCP, the CCP risk exposure to commercial bank guarantees should be capped due to the uncertainty on the effectiveness of the payment by the issuer of the guarantee in the timeframe compatible with the management of the default. However, the framework sets out in the RTS should be sufficiently flexible to accommodate the heterogeneous situations of the CCP and to the future evolution of the CPP risk model.
Policy option 1	The CCP is able to determine the amount of collateral provided in commercial bank guarantees.
How would achieving the objective alleviate/eliminate the problem?	Such approach allows a high flexibility for the CCP which can determine the maximum amount of commercial bank guarantees received as collateral in accordance with the eligibility criteria referred to in

	the RTS.
Policy option 2	The standard prescribes a maximum amount of collateral provided in form of commercial bank guarantees.
How would achieving the objective alleviate/eliminate the problem?	In addition to the eligibility criteria, the RTS fixes specific ceilings for the maximum risk exposure that a CCP can take on commercial bank guarantees.
Which policy option is the preferred one? Explain briefly.	Option 1, but with a requirement for the CCP to discuss with the competent authority.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The policy response chosen is the responsibility of ESMA in consultation with other relevant Authorities (EBA), the ESRB and with the members of the ESCB.

Impacts of the proposed policies:

Policy option 1	The CCP is able to determine the amount of collateral provided in commercial bank guarantees.
Benefits	The CCP can determine the level of commercial bank guarantees provided as collateral in function of the market, the products cleared, the clearing members, etc.
Regulator's costs	The monitoring of the CCP risk exposure and its solvability may be more difficult to carry out owing to different practices across CCPs
Compliance costs	The CCP may need resources to monitor and adapt its risk exposure on commercial bank guarantees and establish procedures for responding to breaches.
Indirect costs	The level of commercial bank guarantees accepted by the CCP may not be applied in a consistent and transparent manner across CCPs which may have an effect on the competitiveness of a CCP (a cost to the CCP) or the on-going viability of the CCP (a cost to the clearing members or to society).
Policy option 2	The standard prescribes a maximum amount of collateral provided in form of commercial bank guarantees.
Benefits	The level of the CCP risk exposure on commercial bank guarantees is better controlled. Limiting the amount of collateral provided in commercial bank guarantees oblige the CCP to hold collateral in cash and financial instruments which can be liquidate with more certainty and in the timeframe compatible with the management of the default. The RTS allows a better transparency and a higher level playing field across the CCP.
Regulator's costs	The timeframe to evolve the RTS may be long and not compatible with the CCP business.
Compliance costs	A CCP may need to expend resources amending its business model or risk management framework to comply with the standards prescribed in the RTS where such are incompatible with the business model or risk management approach of the CCP. The CCP cannot adjust its risk policy without a change or the regulation.

Indirect costs	Standards prescribed in the RTS may not be sufficiently flexible to deal with risks or developments which arise or are identified in the future. If the prescribed standards were not to be amended, or were not to be timely amended, then the on-going viability of the CCP may be affected (which might impose a cost to the clearing members or to society).

INVESTMENT POLICY

In respect of this RTS there are overlapping aspects with other requirements of EMIR (such as Collateral, Capital and Liquidity RTS) which should be considered. The policy issues mentioned below concern the ability of a CCP's investments to be liquidated rapidly with minimal adverse price effect.

Policy options:

(a) What are the appropriate criteria for determining the financial instruments that are sufficiently liquid and with minimal credit and market risk?

Specific objective	To ensure the robustness of the CCP by limiting the likelihood of a CCP incurring a loss.
Policy option 1	The Investment Policy RTS prescribes that a CCP may only invest its financial resources in cash denominated in certain currencies and debt instruments that meet a restrictive set of conditions regarding credit risk (e.g. the issuer/guarantor), market risk (e.g. time-to-maturity) and liquidity risk (e.g. level of market liquidity in the financial instrument).
How would this option achieve the objective?	Restrictive investment standards would seek to limit the likelihood of a CCP making a loss.
Policy option 2	The Investment Policy RTS prescribes that a CCP may invest its financial resources in cash denominated in any currency and any form of financial instrument that meets a restrictive set of conditions regarding credit risk (e.g. the issuer/guarantor), market risk (e.g. time-to-maturity) and liquidity risk (e.g. level of market liquidity in the financial instrument).
How would this option achieve the objective?	A greater degree of flexibility in the Investment Policy RTS framework would encourage CCP's to hold diversified investment portfolios which would limit the likelihood of a CCP making a loss.
Which policy option is the preferred one? Explain briefly.	Policy option one. Given that CCPs should be prohibited to invest for the sole objective of profit maximisation. Its investment activity should aim at protecting the resources collected from clearing members. Therefore, strict conditions should apply to avoid that the CCP incur losses on its investment activity
Is the policy chosen within the sole responsibility of ESA? If not, what other	The policy response chosen is the responsibility of ESMA after consultation with EBA and with the members of the

body is concerned / needs to be informed or consulted?	ESCB.

Impacts of the proposed policies:

Policy option 1	The Investment Policy RTS prescribes that a CCP may only invest its financial resources in cash denominated in certain currencies and debt instruments that meet a restrictive set of conditions regarding credit risk (e.g. the issuer/guarantor), market risk (e.g. time-to-maturity) and liquidity risk (e.g. level of market liquidity in the financial instrument).
Benefits	Restrictive investment standards may reduce the likelihood of a CCP incurring a loss by directing the financial resources of CCPs towards financial instruments which are more likely to be capable of being liquidated rapidly with minimal adverse price effect and cash in respect of which the CCP can manage the foreign exchange risk.
Regulator's costs	There is a risk that CCPs may become complacent and simply invest in instruments permitted under the Investment Policy RTS without any prior assessment of whether such investments suit the business model or risk management framework of the CCP. This might place additional requirements upon the regulator to undertake such assessment.
Compliance costs	Restrictive investment standards may require some CCPs to change the allocation of their investment portfolio. The CCP may have to exit existing positions at a loss. Restrictive investment standards may prevent a CCP from holding a sufficiently diversified investment portfolio and therefore increase the likelihood of the CCP incurring a loss (for example by concentrating the CCP's counterparty credit risk exposure). Restrictive investment standards may not be sufficiently flexible to deal with the business model or risk management framework of some CCPs (i.e. may not permits a CCP to invest in financial instruments of a duration which matches the liabilities of the CCP).
Indirect costs	Where the standards prescribed in the Investment Policy RTS are too restrictive then it is plausible that the range of financial instruments in which CCPs can invest their financial resources might be narrow. In such circumstances the market for eligible financial instruments might become distorted (i.e. the Investment Policy RTS might cause an increase in demand (and price) which would not otherwise have occurred).
Policy option 2	The Investment Policy RTS prescribes that a CCP may invest its financial resources in cash denominated in any currency and any form of financial instrument that meets a restrictive set of conditions regarding credit risk (e.g. the issuer/guarantor), market risk (e.g. time-to-maturity) and liquidity risk (e.g. level of market liquidity in the financial instrument).
Benefits	A greater degree of flexibility in the Investment Policy RTS framework may encourage CCP's to hold diversified investment portfolios which could limit the likelihood of a CCP making a loss.

Regulator's costs	It may involve resource for a regulator to assess whether the CCP has identified and can in fact monitor and manage the risks associated with investments in a wider range of currencies/financial instruments.
Compliance costs	It may involve resource for the CCP to assess whether the CCP has identified and can in fact monitor and manage the risks associated with investment in a wider range of currencies/financial instruments.
Indirect costs	A greater degree of flexibility in the Investment Policy RTS framework may expose a CCP to risks over and above those that it can monitor and manage and may increase the likelihood of a CCP incurring a loss. Such loss may require the recapitalisation of the CCP (which would be a cost to the CCP's shareholders), or in extremis could contribute to the failure of the CCP which could involve cost to market participants and wider society.

It is difficult to assign a specific monetary value to the cost and benefit listed above. In particular, the following uncertainties should be considered:

- the degree to which a CCP can monitor and manage the risks associated with a less restrictive investment portfolio;
- the likelihood of a CCP incurring a loss where it invests its financial resources in a less restrictive investment portfolio;
- the extent to which CCPs would invest in instruments permitted under the Investment Policy RTS without any prior assessment of whether such investments suit the business model or risk management framework of the CCP;
- the amount of time that might be required to be expended by regulators in monitoring whether a CCP's investments suit its business model or risk management framework;
- the potential loss faced by CCPs in exiting from investments which would not be permitted under restrictive investment standards;
- the extent to which restrictive investment standards would prevent a CCP from holding a sufficiently diverse investment portfolio;
- the extent to which CCPs need to invest in instruments which would not be permitted under restrictive investment standards (i.e. to match the duration of their liabilities).

(b) What are the appropriate criteria for determining the arrangements that are sufficiently highly secure for the deposit of financial instruments?

Specific objective	To ensure the robustness of the CCP by limiting the likelihood of a CCP incurring a loss.
Policy option 1	The Investment Policy RTS prescribes that where a CCP cannot deposit financial instruments posted as margins or as default fund contributions with the operator of a securities settlement system then such financial instruments shall be deposited with

	custodians that meeting a restrictive set of conditions regarding their creditworthiness and operational robustness and only deposited under arrangements that prevent any losses to the CCP due to the default or insolvency of the custodian.
How would this option achieve the objective?	Restrictive requirements regarding custodians and depository arrangements would seek to limit the likelihood of a CCP incurring any losses to the CCP due to the default or insolvency of the custodian.
Policy option 2	The Investment Policy RTS prescribes that a CCP may deposit financial instruments posted as margins or as default fund contributions with a wider variety of custodians and under arrangements which do not necessarily prevent any losses to the CCP due to the default or insolvency of the custodian.
How would this option achieve the objective?	A greater degree of flexibility in the Investment Policy RTS framework would enable CCP's to better diversify the custodians with which they deposit financial instruments posted as margins or as default fund contributions therefore limiting the likelihood of a CCP incurring a loss due to the default or insolvency of the custodian.
Which policy option is the preferred one? Explain briefly.	Policy option one. Clearing members need to rely on the CCP ability to always return the financial resources posted with it. Therefore, strict conditions should apply for the deposit of these resources in order to ensure that they are adequately protected.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The policy response chosen is the responsibility of ESMA after consultation with EBA and with the members of the ESCB.

Impacts of the proposed policies:

Policy option 1	The Investment Policy RTS prescribes that where a CCP cannot deposit financial instruments posted as margins or as default fund contributions with the operator of a securities settlement system then such financial instruments shall be deposited with custodians that meeting a restrictive set of conditions regarding their creditworthiness and operational robustness and only deposited under arrangements that prevent any losses to the CCP due to the default or insolvency of the custodian.
Benefits	Restrictive requirements regarding a CCP's custodians may reduce the likelihood of a CCP incurring a loss.
Regulator's costs	There is a risk that CCPs may become complacent and simply deposit instruments with custodians permitted under the Investment Policy RTS without a proper assessment of the risks associated with that particular custodian. This might place additional requirements upon the regulator

	to undertake such assessment.
Compliance costs	Restrictive standards may require some CCPs to change the arrangements under which they currently deposit financial instruments. Restrictive standards may prevent a CCP from depositing financial instruments with as diversified a range of counterparties and therefore increase the likelihood of the CCP incurring a loss.
Indirect costs	The use of custodians which qualify under restrictive standards may involve additional cost for CCPs insofar as financial institutions which are sufficiently robust and provide sufficient protection may charge higher fees. These fees may, to some degree, be passed on to end clients.
Policy option 2	The Investment Policy RTS prescribes that a CCP may deposit financial instruments posted as margins or as default fund contributions with a wider variety of custodians and under arrangements which do not necessarily prevent any losses to the CCP due to the default or insolvency of the custodian.
Benefits	A greater degree of flexibility in the Investment Policy RTS framework would encourage CCP's to deposit financial instruments with a diversified range of custodians.
Regulator's costs	It may involve resourceS for a regulator to assess whether the CCP has identified and can in fact monitor and manage the risks associated with the deposit of financial instruments with a wider range of custodians.
Compliance costs	It may involve resourceS for the CCP to assess whether it can in fact monitor and manage the risks associated the deposit of financial instruments with a wider range of custodians.
Indirect costs	A greater degree of flexibility in the Investment Policy RTS framework may expose a CCP to risks over and above those that it can monitor and manage and may increase the likelihood of a CCP incurring a loss due to the default of or insolvency of the custodian. Such loss may require the recapitalisation of the CCP (which would be a cost to the CCP's shareholders), or in extremis could contribute to the failure of the CCP which could involve cost to market participants and wider society.

It is difficult to assign a specific monetary value to the cost and benefit listed above. In particular, the following uncertainties should be considered:

- the degree to which custodians with less operational robustness and creditworthiness would increase the likelihood of the CCP incurring a loss. Although it is likely, it is not evident to assign a monetary value;
- the degree to which diversification is correlated to a reduction in the risk of loss for a CCP;
- the extent to which CCPs would deposit financial instruments without an appropriate assessment of the risks associated with a particular custodian;

- the amount of time that would be required to be expended by regulators in monitoring whether a CCP's custodians provide appropriate protection for financial instruments deposited with them;
- the extent to which CCPs currently deposit financial instruments under arrangements which would not qualify under restrictive standards;
- the extent to which restrictive standards would prevent a CCP from depositing financial instruments with a sufficiently diverse range of custodians;
- the extent to which fees would differ between custodians;
- the extent to which CCPs currently use custodians which would not qualify under restrictive standards.

(c) What are the appropriate criteria for determining the arrangements that are sufficiently highly secure for the deposit of cash?

Specific objective	To ensure the robustness of the CCP by limiting the likelihood of a CCP incurring a loss.
Policy option 1	The Investment Policy RTS prescribes that cash shall only be deposited by a CCP with custodians that meet a restrictive set of conditions regarding their creditworthiness and operational robustness and where the deposit is not performed through facilities made available by a central bank then a significant proportion of such cash need to be deposited through arrangements that would ensure collateralisation with high quality collateral.
How would this option achieve the objective?	Restrictive requirements regarding a CCP's custodians and arrangements for cash deposits would seek to limit the likelihood of a CCP incurring a loss.
Policy option 2	The Investment Policy RTS prescribes that a CCP may deposit cash with a wider variety of custodians and under arrangements which do not ensure collateralisation with high quality collateral.
How would this option achieve the objective?	A greater degree of flexibility in the Investment Policy RTS framework would enable CCP's to better diversify the custodians with which they deposit cash therefore limiting the likelihood of a CCP incurring a loss.
Which policy option is the preferred one? Explain briefly.	Policy option one in order to limit potential losses that a CCP might incur and given that the objective of the investment policy for a CCP is to protect the financial resources posted by clearing members rather than profit maximisation.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed	The policy response chosen is the responsibility of ESMA after consultation with EBA and with the members of the

or consulted?	ESCB.

Impacts of the proposed policies:

Policy option 1	The Investment Policy RTS prescribes that cash shall only be deposited by a CCP with custodians that meet a restrictive set of conditions regarding their creditworthiness and operational robustness and where the deposit is not performed through facilities made available by a central bank then a significant proportion of such cash need to be deposited through arrangements that would ensure collateralisation with high quality collateral.
Benefits	Restrictive requirements regarding a CCP's custodians and arrangements for cash deposits may reduce the likelihood of a CCP incurring a loss.
Regulator's costs	There is a risk that CCPs may become complacent and simply deposit cash with custodians permitted under the Investment Policy RTS without a proper assessment of the risks associated with a particular custodian. This might place additional requirements upon the regulator to undertake such assessment.
Compliance costs	Restrictive standards regarding a CCP's custodians and arrangements for cash deposits may require some CCPs to change the arrangements under which they currently deposit cash. Restrictive standards may also prevent a CCP from depositing cash with as diversified a range of custodians and therefore increase the likelihood of the CCP incurring a loss.
Indirect costs	The use of custodians which meet restrictive standards regarding a CCP's custodians and arrangements for cash deposits may involve additional cost for CCPs insofar as financial institutions which are sufficiently robust and provide sufficient protection may charge higher fees. These fees may, to some degree, be passed on to end clients.
Policy option 2	The Investment Policy RTS prescribes that a CCP may deposit cash with a wider variety of custodians and under arrangements which do not ensure collateralisation with high quality collateral.
Benefits	A greater degree of flexibility in the Investment Policy RTS framework would encourage CCP's to deposit cash with a diversified range of custody providers.
Regulator's costs	It may involve resource for a regulator to assess whether the CCP has identified and can in fact monitor and manage the risks associated with the deposit of cash with its custodians.
Compliance costs	It may involve considerable resource for the CCP to assess whether it can in fact monitor and manage the risks associated with the deposit of cash with its custodians.
Indirect costs	A greater degree of flexibility in the Investment Policy RTS framework may expose a CCP to risks over and above those that it can monitor and manage and may increase the likelihood of a CCP incurring a loss. Such loss may require the recapitalisation of the CCP (which would be a cost to the CCP's

	shareholders), or in extremis could contribute to the failure of the CCP which could involve cost to market participants and wider society.

It is difficult to assign a specific monetary value to the cost and benefit listed above. It should, however, be noted that from the survey carry out by ESMA it appeared evident that only a limited number of CCPs are subject to such strict requirement. Though, ESMA believes that the systemic role played by CCPs justify such strict requirement, as CCPs should not be exposed to the default of a limited number of credit institutions.

In considering the monetary values, ESMA is facing the uncertainties similarly to those mentioned under the previous policy option and the following:

- the extent to which CCPs would deposit cash without an appropriate assessment of the risks associated with a particular custodian and the likelihood that: i) such custodian could default; ii) the cash deposited with such custodian might be lost in the event of a default;
- the amount of time that would be required to be expended by regulators in monitoring whether a CCP's custodians provide appropriate protection for cash deposited with them.

(d) What are the appropriate criteria for determining the concentration limits?

Specific objective	To ensure the robustness of the CCP by limiting the likelihood of a CCP incurring a loss.
Policy option 1	The Investment Policy RTS requires a CCP to establish concentration limits per individual financial instrument, type of financial instrument, individual issuer, type of issuer and counterparty.
How would this option achieve the objective?	Restrictive concentration limits would seek to limit the likelihood of a CCP making a loss.
Policy option 2	The Investment Policy RTS requires a CCP to establish concentration limits only at the level of individual obligors.
How would this option achieve the objective?	A greater degree of flexibility in the Investment Policy RTS framework might encourage CCPs to hold diversified investment portfolios which could limit the likelihood of a CCP making a loss.
Which policy option is the preferred one? Explain briefly.	Policy option one as it ensures greater safety of the CCP.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The policy response chosen is the responsibility of ESMA after consultation with EBA and with the members of the ESCB.

Impacts of the proposed policies:

Policy option 1	The Investment Policy RTS requires a CCP to establish concentration limits per individual financial instrument, type of financial instrument, individual issuer, type of issuer and counterparty.
Benefits	Restrictive concentration limits may reduce the likelihood of a CCP incurring a loss by limiting the CCP's exposure not only to individual obligors but also to types of obligor.
Regulator's costs	There is a risk that CCPs may become complacent and simply invest in instruments permitted under the Investment Policy RTS without assessment of whether such investments suit the business model or risk management framework of the CCP. This could place additional requirements upon the regulator to undertake such assessment.
Compliance costs	Restrictive standards may require some CCPs to change the allocation of their investment portfolio. The CCP may have to exit existing positions at a loss. Restrictive standards may also prevent a CCP from holding a diversified investment portfolio/using a range of custodians and therefore may increase the likelihood of the CCP incurring a loss (for example by concentrating the CCP's counterparty credit risk exposure). Restrictive standards prescribed may not be sufficiently flexible to deal with the business model or risk management framework of some CCPs (i.e. permitting the CCP to invest in financial instruments of a duration which matches the liabilities of the CCP).
Indirect costs	Where the standards prescribed in the Investment Policy RTS are too restrictive then, when combined with a restrictive set of financial instruments in which a CCP can invest, it is possible that CCPs might struggle to find sufficient financial instruments in which they can invest their financial resources. In such circumstances the market for eligible financial instruments might become distorted whereby the Investment Policy RTS causes an increase in demand (and price) which would not otherwise have occurred.
Policy option 2	The Investment Policy RTS requires a CCP to establish concentration limits only at the level of individual obligors.
Benefits	A greater degree of flexibility in the Investment Policy RTS framework would encourage CCP's to hold diversified investment portfolios which could limit the likelihood of a CCP incurring a loss.
Regulator's costs	It may involve resource for a regulator to assess whether a CCP has identified and can in fact monitor and manage the risks associated with its investment portfolio.
Compliance costs	It may involve resource for a CCP to assess whether it has identified and can in fact monitor and manage the risks associated with its investment portfolio.
Indirect costs	A greater degree of flexibility in the Investment Policy RTS framework may expose a CCP to risks over and above those that it can monitor and manage and may increase the likelihood of a CCP incurring a loss. Such loss may

	require the recapitalisation of the CCP (which would be a cost to the CCP's shareholders), or in extremis could contribute to the failure of the CCP which could involve cost to market participants and wider society.

For similar reasons as explained under the policy options above, it is difficult to assign a monetary value to the cost and benefits listed above.

(e) Should a CCP be permitted to invest in derivative instruments for risk management (as opposed to speculative) purposes?

Specific objective	To ensure the robustness of the CCP by limiting the likelihood of a CCP making a loss.
Policy option 1	A CCP should be permitted to use derivatives for risk management purposes.
How would this option achieve the objective?	Using derivatives to hedge risks that a CCP would otherwise be exposed to may reduce the likelihood of a CCP making a loss.
Policy option 2	A CCP should not be permitted to invest in derivatives for risk management purposes.
How would this option achieve the objective?	Use of derivatives exposes a CCP to risks over and above those it would otherwise be exposed to may increase the likelihood of a CCP making a loss.
Which policy option is the preferred one? Explain briefly.	Policy option two, as it is considered that CCPs have other means than derivatives to manage the risks the might be exposed to. Therefore derivatives could only be used in exceptional circumstances for the management of a default.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The policy response chosen is the responsibility of ESMA after consultation with EBA and with the members of the ESCB.

Impacts of the proposed policies:

Policy option 1	A CCP should be permitted to use derivatives for risk management purposes.
Benefits	Using derivatives to hedge risks that a CCP would otherwise be exposed to may reduce the likelihood of a CCP making a loss.
Regulator's costs	Regulators may need to expend resources reviewing and monitoring a CCP's policies, procedures and risk management framework to ensure that

	the CCP has appropriate arrangements in place to manage the risks associated with the use of derivatives. It could also be difficult to ascertain that derivatives are in fact hedging risks faced by the CCP and not being used for speculative purposes. Regulators may need to expend resources attempting to ascertain that a CCP is not using derivatives to speculate.
Compliance costs	A CCP may need to expend resources developing, executing and monitoring compliance with policies, procedures and a risk management framework for the use of derivatives. It could also be difficult to ascertain that derivatives are in fact hedging risks faced by the CCP and not being used for speculative purposes. A CCP may need to expend resources attempting to ascertain that derivatives are not being used to speculate.
Indirect costs	The use of derivatives may expose a CCP to risks over and above those that it would otherwise be exposed to and may increase the likelihood of a CCP incurring a loss (through its derivative positions). Such loss may require the recapitalisation of the CCP (which would be a cost to the CCP's shareholders), or in extremis could contribute to the failure of the CCP which could involve cost to market participants and wider society. CCPs with a banking licence could be required to clear its derivatives with another CCP.
Policy option 2	A CCP should not be permitted to invest in derivatives for risk management purposes.
Benefits	The use of derivatives may expose a CCP to risks over and above those that it would otherwise be exposed to and may increase the likelihood of a CCP incurring a loss (through its derivative positions). A prohibition on the use of derivatives by a CCP may reduce the likelihood of a CCP incurring such a loss.
Regulator's costs	N/A
Compliance costs	Some CCPs may have previously entered into long-dated derivatives which could take some time to unwind. A prohibition on the use of derivatives by a CCP might force CCPs to exit these positions at a loss.
Indirect costs	A CCP, which by definition should have a flat book, should not have significant foreign exchange or interest rate risks that require hedging. Any need to hedge risks should, therefore, only arise from the CCP's acceptance of collateral, a risk which should be covered by the CCP employing adequate haircuts. A prohibition on the use of derivatives by CCPs should not, therefore, have a material effect on a CCP's ability to reduce the likelihood of its making a loss.

It is difficult to assign a specific monetary value to the cost and benefit mentioned above. In particular, it should be noted that there are uncertainties over:

- the degree to which CCPs have risks that need to be hedged and the degree to which such risks can be hedged through the use of derivatives;
- the quality of policies, procedures and risk management frameworks that CCPs would have in place to manage the risks associated with the use of derivatives;

- the amount of time required to be expended by regulators in monitoring the use of derivatives by CCPs and the risks associated with such use.

REVIEW OF MODELS STRESS TESTS AND BACK TESTS

Policy options:

a) Should the type of tests to be performed by a CCP be specified in the draft RTS or it should be left to the CCP under a set of criteria?

Specific objective	The policy has an objective to ensure that CCP's conduct the types of tests that promote highly robust risk management.
Policy option 1	The specification of the types of tests a CCP undertakes takes the form of a criteria-based approach which CCPs should satisfy in performing their tests.
How would achieving the objective alleviate/eliminate the problem?	This approach ensures sufficient flexibility to cater for the wide range of products which may be cleared in the future, reflect differences in CCPs' business and risk management approaches and allow future developments and new risks to be dealt with.
Policy option 2	The specification of the types of tests a CCP undertakes takes a prescriptive approach detailing the tests to be conducted by CCPs.
How would achieving the objective alleviate/eliminate the problem?	This approach will provide a uniform and transparent method of testing across CCPs.
Which policy option is the preferred one? Explain briefly.	Policy option 1 is preferred as CCPs vary in size, risk appetite, ownership and strategy amongst many other things, prescribing the types of tests CCPs should conduct to monitor and manage their risk exposure could create unmanaged and uncovered risk exposure and be detrimental in a default situation. A criteria-based approach allows CCPs to adapt their testing in a way that best suits their specificities.
Is the policy chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The policy response chosen is the responsibility of ESMA in consultation with other relevant Authorities (EBA) and with the members of the ESCB.

Impacts of the proposed policies:

Option 1	The specification of the types of tests a CCP undertakes takes the form of a criteria-based approach which CCPs should satisfy in performing their

	tests.
Benefits	A criteria-based approach provides for flexibility at the CCP to adapt its testing programmes, where necessary, in order to satisfy the criteria.The approach will ensure that CCP's are monitoring and managing the specific risks they are exposed to.The approach is adaptable to cater for any derivative products that may be cleared in the future and cover new developments and emerging risks. The approach is in line with CPSS-ISOCO and therefore ensures international consistency and reduces the possibility for regulatory arbitrage.
Regulator's costs	Greater supervisory checks would be envisaged as it would not be immediately apparent whether the criteria are respected and will require in-depth analysis to ensure compliance. This will use greater staff resource and time.
Compliance costs	It is envisaged that the compliance costs would be moderate as existing CCPs should already have a testing policy which promotes prudent risk management that can be easily adapted, where necessary, to satisfy the criteria-based testing regime. For new CCPs the costs will be higher as there will be a cost to implement the necessary infrastructure regardless of the policy option chosen. It is not envisaged that there will be a substantial increase in the number of CCPs in the coming years.
Indirect costs	A criteria-based approach could result in varied testing standards across CCPs and therefore a lack of consistency and transparency. Additionally there could also be differences in how CCPs calculate their resource coverage which could put a CCP at a competitive disadvantage.
Option 2	The specification of the types of tests a CCP undertakes takes a prescriptive approach detailing the tests to be conducted by CCPs.
Benefits	A prescriptive approach would provide for transparency, comparability across CCPs and harmonisation as it would be easier to demonstrate compliance. It is envisaged that the supervisory costs would be comparatively less as it would provide for clear and unambiguous standards to be met.
Regulator's costs	There is the risk of moral hazard because a CCP simply tests in the way prescribed without any prior assessment; this would put the onus on the competent authority. If the standards prescribed do not suit the business model or risks a CCP poses to its clearing members and the wider market, the competent authority may need to expend additional resources to more closely monitor the CCP (in comparison with requiring that a CCP adapt its test choices to better suit its business model and risk management approach).
Compliance costs	It is envisaged that the compliance costs would be significant as an existing CCP may need to expend additional resources amending its business model or risk management framework to comply with the standards prescribed in the standard where such are incompatible with the business model and risk management approach of the CCP. For new

	CCP's it is envisaged that the costs will be lower than for existing CCP's as there will be no need to amend existing testing models and/or business models. However it is not envisaged that there will be an increase in the number of CCPs.
Indirect costs	There could be risk exposures that have not been appropriately managed, due to excess reliance on the prescriptive standards. Amending the technical standard would require considerable resources (including time). If the prescribed standards were not to be amended, or were not to be timely amended, then the on-going viability of the CCP may be affected (which might impose a cost to the clearing members or to the market).

It would be very difficult to assign a specific monetary value to the cost and benefits specified above, however also in view of the outcome of the discussion paper, it would be apparent that the net outcome is beneficial.

TRADE REPOSITORIES DRAFT RTS AND ITS

Policy options:

1. **What is the appropriate level of details to be reported to TR?**

Specific objective	To ensure that the appropriate details of any derivative, including any modification or termination are reported to a TR in the EMIR-defined timeline.
Option 1	To limit the table of fields to the main characteristics of the contracts, including at least the parties to the contract, the beneficiaries, instrument type, underlying, maturity, notional, value, price and settlement date.
How would achieving the objective alleviate/eliminate the problem?	This approach would reduce the reporting burden on firms, and provide authorities with a limited set of transaction level economics.
Option 2	To require additional information, describing more granular the characteristics of the trade, such as traded instruments, clearing procedures, involved intermediaries etc..
How would achieving the objective alleviate/eliminate the problem?	Regulatory purposes would be easier achievable if the granularity of received data was higher than just reflecting the minimum characteristics of contracts and counterparties.
Which option is the preferred one? Explain briefly.	Option 2 is the preferred option as there is a need to ensure that the appropriate level of data is send to TR in order for the mandate under EMIR to be effectively carried out.
Is the option chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The response chosen is of the sole responsibility of ESMA.

Impacts of the proposed options:

Option 1	To limit the table of fields to the main characteristics of the contracts, including at least the parties to the contract, the beneficiaries, instrument type, underlying, maturity, notional, value, price and settlement date.
Benefits	This approach would reduce the reporting burden on firms, and provide authorities with a limited set of transaction level economics.
Disadvantages	Essential information required for different regulatory purposes will be missing in the table of fields. Some of these purposes will not be achievable by using only this reduced amount of data.
Regulator's costs	Authorities will need to develop systems to effectively analyse the data, including for general systemic risk analysis.

Compliance costs	The reporting implementation costs will be reduced for market participants.
Indirect costs	The minimum level of information may not give NCAs or other authorities the information they need in order to carry out their duties and therefore they may have to ask for ad hoc requests which could be frequent and burdensome.
Option 2	To require additional information, describing more granular the characteristics of the trade, such as traded instruments, clearing procedures, involved intermediaries etc..
Benefits	Regulatory purposes would be easier achievable if the granularity of received data was higher than just reflecting the minimum characteristics of contracts and counterparties.
Disadvantages	There may be increased costs for firms to report, and may involve the linking of multiple systems at the counterparty, which may increase the likelihood of errors or omissions in reporting.
Regulator's costs	Regulators would have to prepare their systems to deal with this granular data. Complex data that goes beyond the scope of MiFID transaction reporting data may need to be integrated in the systems to gain the full benefit of TR data for market surveillance purposes.
Compliance costs	The reporting implementation costs will be higher for market participants and TRs will need to develop systems that can receive and process the additional data.
Indirect costs	N/A.

1a. What is the best identifier for counterparties, CCPs, beneficiaries and brokers?

Specific objective	To ensure accurate identification of counterparties, CCPs, beneficiaries and brokers.
Option 1	Identification is done using a global entity identifier from the implementation of the reporting obligation.
How would achieving the objective alleviate/eliminate the problem?	All participants to a trade such as counterparties, brokers, beneficiaries and CCPs can be identified by one unique code, where the reference data attached to this code also contains additional information, such as Name, Domicile etc. The number of fields required can therefore be reduced by using this code. By requiring an entity identifier to be reported from the implementation of the reporting obligation, this will mitigate the need for TR and counterparty systems to need to be changed to cater for the entity identifier once the global LEI system is implemented.
Option 2	Identification is done using BIC/Client Code until the global LEI is

	established.
How would achieving the objective alleviate/eliminate the problem?	BICs and client codes are already available in the systems of counterparties and regulators, because these codes are currently used for identification purposes regarding the reporting obligation under MiFID.
Option 3	Usage of an interim entity identifier solution until the development of the global LEI solution is complete. This interim solution would need to meet the technical criteria of the global LEI standard.
How would achieving the objective alleviate/eliminate the problem?	In the event a global LEI is not established by the time of the start of the reporting obligation, the additional work for reporting entities could be avoided by the use of an interim entity identifier when the reporting obligation starts.
Which option is the preferred one? Explain briefly.	Option 1 is the preferred solution however option 3 will be taken if the Global LEI is not adopted by the time the reporting obligation begins. If neither are available, option 2 will be taken.
Is the option chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The response chosen is of the sole responsibility of ESMA.

Impacts of the proposed options:

Option 1	Identification is done using a global LEI from the implementation of the reporting obligation.
Benefits	The number of fields required can be reduced by using this code.
Disadvantages	Branches and individuals will not be inside the scope of this code, so at least for these market participants, additional codes will be required. If the global LEI system has not been implemented by the start of the reporting obligation, an interim entity identifier solution may be necessary for use in reports to TRs, which could create increased compliance costs and a risk of further fragmentation of the global entity identifier.
Regulator's costs	A new code will have to be implemented in regulator's systems and a link to the database containing the additional information will have to be established.
Compliance costs	A new code will have to be implemented in regulator's systems and a link to the database containing the additional information will have to be established.
Indirect costs	N/A
Option 2	Identification is done using BIC/Client Code until the global LEI is established.

Benefits	BICs and client codes are already available in the systems of counterparties and regulators, because these codes are currently used for identification purposes regarding the reporting obligation under MiFID.
Disadvantages	TRs and counterparties will need initially develop systems to cater for BICs and client IDs, and then implement LEI identification, which is likely to increase complexity and risk errors in reporting. It will also reduce the ability of regulators to effective aggregate and analyse the data given the weaknesses in current counterparty identification systems.
Regulator's costs	Regulators will need to implement systems and procedures to be able to identify counterparties and aggregate data. This is likely to be quite complicated, particularly where relevant data is held across multiple TRs.
Compliance costs	Reporting entities have to design their systems in a way that BICs and client IDs are used for reporting purposes under EMIR and have to adjust their systems as soon as LEIs are available that would replace those codes.
Indirect costs	N/A
Option 3	Usage of an interim entity identifier solution until the development of the global LEI solution is complete. This interim solution would need to meet the technical criteria of the global LEI standard.
Benefits	In the event a global LEI is not established by the time of the start of the reporting obligation, the additional work for reporting entities could be avoided by the use of an interim entity identifier when the reporting obligation starts.
Disadvantages	However additional work might become necessary if the interim entity identifier does not meet the criteria of the final entity identifier in case the entity identifier characteristics have been changed since the interim LEI was developed.
Regulator's costs	Regulators would have to integrate in their systems an interim entity identifier and in a second step, replace this code by the final global entity identifier. As any interim solution should meet similar technical standards to the final global entity identifier, and so the transition from any interim identifier to a final identifier should not have substantial technical implications.
Compliance costs	Reporting entities would have to integrate in their systems an interim entity identifier and in a second step, replace this code by the final global entity identifier.
Indirect costs	N/A

1b. What is the best solution to identify traded instruments?

Specific objective	To ensure accurate identification of traded instruments
Option 1	Usage of an Unique Product Identifier (UPI) to unequivocally identify the traded product.
How would achieving the objective alleviate/eliminate the problem?	The traded instrument and its specifications have to be identified in the report. The UPI provides a unique number for those contracts and gives additional information about product type, underlying etc. Other commonly used identification methods for the complete OTC market are currently not available.
Option 2	Establishment of an interim regional UPI solution until the development of the global UPI solution is complete.
How would achieving the objective alleviate/eliminate the problem?	If an UPI is not available at the time the reporting obligation comes into effect, an interim UPI would provide a first idea of the contract's characteristics, although the interim UPI might not be as sophisticated as the final UPI.
Option 3	Establishment of an ESMA taxonomy other than UPI.
How would achieving the objective alleviate/eliminate the problem?	In case an UPI is not available the financial instrument could be identified by specifying the derivative type and the type of asset class underlying the derivative. This would give the basic information about the concluded contract without needing a unique product identifier or further descriptions.
Which option is the preferred one? Explain briefly.	Option 1 is the preferred option as this code would be universal however is a universal UPI is not available, an ESMA defined taxonomy would be the next preferred option.
Is the option chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The response chosen is of the sole responsibility of ESMA.

Impacts of the proposed options:

Option 1	Usage of a Unique Product Identifier to unequivocally identify the traded product.
Benefits	The traded instrument and its specifications have to be identified in the report. The UPI provides a unique number for those contracts and gives additional information about product type, underlying etc. Other commonly used identification methods for the complete OTC market are currently not available.
Disadvantages	An UPI might not be available at the time the reporting obligation comes into effect.

Regulator's costs	Regulators will have to integrate information about UPIs in their systems in order to understand the characteristics of traded instruments, especially in case of automated analysis procedures.
Compliance costs	Counterparties will have to integrate UPIs in their systems for each derivative contract they conclude and have to assure that the same code is reported by both counterparties.
Indirect costs	N/A
Option 2	Establishment of an interim regional UPI solution until the development of the global UPI solution is complete
Benefits	If an UPI is not available at the time the reporting obligation comes into effect, an interim UPI would provide a first idea of the contract's characteristics, although the interim UPI might not be as sophisticated as the final UPI.
Disadvantages	If contracts identified by an interim UPI are still outstanding when the final UPI comes into effect, the report already sent to the TR would have to be amended.
Regulator's costs	The amendment of outstanding contracts might cause additional costs for regulator's IT systems.
Compliance costs	The amendment of the original report in order to replace interim UPI by the final UPI would cause additional costs for counterparties and reporting entities.
Indirect costs	N/A
Option 3	Establishment of an ESMA taxonomy other than UPI.
Benefits	In case an UPI is not available the financial instrument could be identified by specifying the derivative type and the type of asset class underlying the derivative. This would give the basic information about the concluded contract without needing a unique product identifier or further descriptions.
Disadvantages	Only basic information about the contract would be available. Supervisory tasks that need more granular information might not be reached, especially when it comes to more complex or bespoke contracts that need more granularity to allow a sufficient specification.
Regulator's costs	Regulators will have to integrate taxonomy information in their systems in order to understand the characteristics of traded instruments.
Compliance costs	Counterparties will have to integrate the taxonomy in their systems and specify for each derivative contract they conclude the type of derivative and underlying. This would increase the

	implementation costs for reporting to TRs.
Indirect costs	In case of complex or bespoke derivatives that don't fit into the taxonomy categories in individual cases more inquiries might become necessary to help regulators understand the specifications of the concluded contract.

1c) What is the best option to identify the reported trade?

Specific objective	To ensure accurate identification of the reported trade
Option 1	The trade ID is provided by the TR.
How would achieving the objective alleviate/eliminate the problem?	The trade ID can be provided automatically for each incoming report without any additional requirements or costs for counterparties.
Option 2	The trade ID is provided by the counterparties.
How would achieving the objective alleviate/eliminate the problem?	Also in cases of reporting to different TRs dissenting reports it will be guaranteed that both reports contain a consistent ID
Option 3	The trade ID is provided by an independent provider.
How would achieving the objective alleviate/eliminate the problem?	The trade ID can be provided automatically for each incoming report to ensure that trades are matched before they are send to a TR.
Option 4	There is a global Unique Trade Identifier (UTI).
How would achieving the objective alleviate/eliminate the problem?	The trade ID would be unique and internationally harmonised.
Which option is the preferred one? Explain briefly.	Option 4 is the preferred option as it will improve the ability for reconciliation of trades both within a TR and between TRs. This would also reduce the likelihood of duplicate reporting, and assist regulators in avoiding double counting of contracts.
Is the option chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The response chosen is of the sole responsibility of ESMA.

Impacts of the proposed options:

Specific objective	To ensure accurate identification of the reported trade
Option 1	The trade ID is provided by the TR.
Benefits	The trade ID can be provided automatically for each incoming report without any additional requirements or costs for counterparties.

Disadvantages	If a trade is reported to different TRs, both TRs might provide a different trade ID for the same trade. A matching of both sides of the same trade would not be possible in this case.
Regulator's costs	N/A
Compliance costs	The reporting implementation costs will be reduced for market participants.
Indirect costs	In case of dissenting trade reports or reports to different TRs both reports won't receive the same trade ID.
Option 2	The trade ID is provided by the counterparties.
Benefits	Also in cases of reporting to different TRs dissenting reports it will be guaranteed that both reports contain a consistent ID.
Disadvantages	This will increase the risks of double counting transactions, and may make it challenging for TRs to reconcile trades that were reported to two TRs without disclosing confidential information about the contracts.
Regulator's costs	N/A
Compliance costs	Counterparties have to face the costs of reconciling the trade ID while concluding the contract.
Indirect costs	N/A
Option 3	The trade ID is provided by an independent provider.
Benefits	There are middleware providers who are in a position to provide this information now.
Disadvantages	There may be costs involved in obtaining a trade ID from a middleware provider.
Regulator's costs	N/A.
Compliance costs	There may be costs involved and it may be resource intensive for counterparties to obtain a trade ID from another provider.
Indirect costs	N/A.
Option 4	There is a global Unique Trade Identifier (UTI).
Benefits	In the case of reporting to different TRs, a unique and global UTI will guarantee that both reports contain a consistent ID.
Disadvantages	There may be costs involved in obtaining a unique trade ID and due to the necessary governance required in creating a global UTI,

	it may take some time for this option to be available.
Regulator's costs	N/A
Compliance costs	There may be costs involved and it may be resource intensive for counterparties to obtain a UTI.
Indirect costs	N/A

1da) Should fields related to the clearing obligation be reported?

Specific objective	To ensure that trade repositories can be used for the purpose of monitoring the compliance with the EMIR clearing obligation.
Option 1	Include a reporting field to note where a product is subject to the clearing obligation.
How would achieving the objective alleviate/eliminate the problem?	This field contains the information whether the concluded contract is subject to the clearing obligation under Art. 4 EMIR. The information given in this field can be used to monitor the clearing obligation exemption for non-financial counterparties under Article 10 EMIR.
Option 2	Not include a reporting field for the clearing obligation.
How would achieving the objective alleviate/eliminate the problem?	No additional requirement will be introduced.
Which option is the preferred one? Explain briefly.	Option 1 is the preferred option to enable the monitoring of the clearing exemption.
Is the option chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The response chosen is of the sole responsibility of ESMA.

Impacts of the proposed options:

Option 1	Include a reporting field to note where a product is subject to the clearing obligation.
Benefits	This field contains the information whether the concluded contract is subject to the clearing obligation under Art. 4 EMIR. The information given in this field can be used to monitor the clearing obligation exemption for non-financial counterparties under Article 10 EMIR.
Disadvantages	This information may not be stored in counterparties systems and

	so systems changes may be needed to report this information.
Regulator's costs	N/A
Compliance costs	The reporting implementation costs will be higher for market participants.
Indirect costs	N/A
Option 2	Not include a reporting field for the clearing obligation.
Benefits	There would be no additional reporting implementation costs for market participants.
Disadvantages	The exemption for non-financial counterparties under Article 10 EMIR could not be easily monitored.
Regulator's costs	Regulators would need to analyse each contract traded to determine if it is subject to a mandatory clearing obligation, which may be challenging to do, particularly in the absence of a Universal Product Identifier to appropriate categorise contracts.
Compliance costs	N/A
Indirect costs	Regulators would have to get the information from other sources or directly from the non-financial counterparty. Additional costs for both counterparties and regulators would arise from this procedure.

1db) Should the activity of non-financials be monitored through trade repository data

Specific objective	Ensuring the monitoring of compliance of EMIR obligations by non-financials.
Option 1	Include a reporting field for non-financial counterparties about direct link to commercial activity or treasury financing.
How would achieving the objective alleviate/eliminate the problem?	This field contains the information whether the concluded contract is directly linked to the commercial activity or treasury financing of the non-financial counterparty. The information given in this field can be used to monitor the clearing obligation exemption for non-financial counterparties under Article 10 EMIR.
Option 2	Not include a reporting field for non-financial counterparties about direct link to commercial activity or treasury financing.
How would achieving the objective alleviate/eliminate the problem?	There would be no additional requirement in that respect.
Which option is the preferred	Option 1 is the preferred option to enable the monitoring of the

one? Explain briefly.	clearing exemption.
Is the option chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The response chosen is of the sole responsibility of ESMA.

Impacts of the proposed options:

Specific objective	To ensure information is received on compliance with the EMIR clearing obligation.
Option 1	Include a reporting field for non-financial counterparties about direct link to commercial activity or treasury financing.
Benefits	This field contains the information whether the concluded contract is directly linked to the commercial activity or treasury financing of the non-financial counterparty. The information given in this field can be used to monitor the clearing obligation exemption for non-financial counterparties under Article 10 EMIR.
Disadvantages	This is a piece of information that, while non-financial firms will need to determine on a trade by trade basis in order to determine whether they will be above the clearing threshold, this information may not be easily able to be incorporated into the systems of the counterparties. In the event a non-financial counterparty delegated reporting to a third party, this is a piece of information that will need to be provided by the counterparty to the reporting firm for each and every trade, which may add further systems costs.
Regulator's costs	N/A
Compliance costs	The reporting implementation costs will be higher for market participants.
Indirect costs	N/A
Option 2	Not include a reporting field for non-financial counterparties about direct link to commercial activity or treasury financing.
Benefits	There would be no additional reporting implementation costs for market participants.
Disadvantages	The exemption for non-financial counterparties under Article 10 EMIR could not be easily monitored by regulators, particularly on an on-going basis without collecting substantial amounts of ad hoc data from firms.
Regulator's costs	Regulators will need to undertake additional work and receive information from non-financial counterparties in order to confirm that non-financial counterparties are meeting their EMIR

	requirements.
Compliance costs	N/A
Indirect costs	Regulators would have to get the information from other sources or directly from the non-financial counterparty. Additional costs for both counterparties and regulators would arise from this procedure.

1.dc) Should data on the clearing threshold be reported?

Specific objective	To ensure that trade repositories can be used for the purpose of monitoring the clearing threshold.
Option 1	Include a reporting field for non-financial counterparties about the clearing threshold.
How would achieving the objective alleviate/eliminate the problem?	This field contains the information whether the concluded contract is above the clearing threshold of the non-financial counterparty. The information given in this field can be used to monitor the clearing obligation exemption for non-financial counterparties under Article 10 EMIR.
Option 2	Not include a reporting field for non-financial counterparties about the clearing threshold.
How would achieving the objective alleviate/eliminate the problem?	There would be no additional requirement in this respect.
Which option is the preferred one? Explain briefly.	Option 1 is the preferred option to enable the monitoring of the clearing exemption.
Is the option chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The response chosen is of the sole responsibility of ESMA.

Impacts of the proposed options:

Option 1	Include a reporting field for non-financial counterparties about the clearing threshold.
Benefits	This field contains the information whether the concluded contract is above the clearing threshold of the non-financial counterparty. The information given in this field can be used to monitor the clearing obligation exemption for non-financial counterparties under Article 10 EMIR.
Disadvantages	Non-financial counterparties would need to keep track at all times of whether they are above the threshold at which the clearing

	obligation will apply to them, and report this information to a TR. Collecting this information in a form that would allow it to be inputted into a TR on an on-going basis might be difficult for counterparties.
Regulator's costs	N/A
Compliance costs	The reporting implementation costs will be higher for market participants.
Indirect costs	N/A
Option 2	Not include a reporting field for non-financial counterparties about the clearing threshold.
Benefits	There would be no additional reporting implementation costs for market participants.
Disadvantages	The exemption for non-financial counterparties under Article 10 EMIR could not be easily monitored.
Regulator's costs	Regulators will need to undertake additional work and receive information from non-financial counterparties in order to confirm that non-financial counterparties are meeting their EMIR requirements.
Compliance costs	N/A
Indirect costs	Regulators would have to get the information from other sources or directly from the non-financial counterparty. Additional costs for both counterparties and regulators would arise from this procedure.

1e. Should information on intra-group transactions be reported?

Specific objective	To ensure information is received on compliance with the EMIR mandatory clearing obligation and requirements for non-centrally cleared trades.
Option 1	Include a reporting field for counterparties giving the information whether the contract was concluded within the same group of undertakings (Intra-group transaction).
How would achieving the objective alleviate/eliminate the problem?	This field contains the information whether the conclusion of the contract is considered to be an Intra-group transaction under Art. 3 EMIR. The information given in this field can be used to monitor the clearing obligation exemption for counterparties under Article 10 EMIR.
Option 2	Not include a reporting field for counterparties giving the information whether the contract was concluded within the same

	group of undertakings (intra-group transaction).
How would achieving the objective alleviate/eliminate the problem?	There would be no additional reporting implementation costs for market participants.
Which option is the preferred one? Explain briefly.	Option 1 is the preferred option to enable the monitoring of the clearing exemption.
Is the option chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The response chosen is of the sole responsibility of ESMA.

Impacts of the proposed options:

Option 1	Include a reporting field for counterparties giving the information whether the contract was concluded within the same group of undertakings (Intra-group transaction).
Benefits	This field contains the information whether the conclusion of the contract is considered to be an Intra-group transaction under Art. 3 EMIR. The information given in this field can be used to monitor the clearing obligation exemption for counterparties under Article 10 EMIR.
Disadvantages	Counterparties would need to incorporate information about intragroup trades into their trading systems so they can be provided.
Regulator's costs	N/A
Compliance costs	The reporting implementation costs will be higher for market participants.
Indirect costs	N/A
Option 2	Not include a reporting field for counterparties giving the information whether the contract was concluded within the same group of undertakings (intra-group transaction).
Benefits	There would be no additional reporting implementation costs for market participants.
Disadvantages	The exemption for counterparties under Article 10 EMIR could not be easily monitored.
Regulator's costs	Regulators will need to undertake additional work and receive information from counterparties in order to confirm that counterparties are meeting their EMIR requirements.
Compliance costs	N/A

Indirect costs	Regulators would have to get the information from other sources or directly from the counterparty. Additional costs for both counterparties and regulators would arise from this procedure.

1f. Should trades with non-EEA counterparties be specifically identified?

Specific objective	To ensure trades with non-EEA counterparties can be identified
Option 1	Include a reporting field giving the information that the contract was concluded with a counterparty not located within the EEA.
How would achieving the objective alleviate/eliminate the problem?	The information provided by this field can be used to monitor systemic risk that could be building up between non-EU and EU entities and to identify trades in which only side is expected to be reported to a TR within the EU.
Option 2	Not include a reporting field giving the information that the contract was concluded with a counterparty not located within the EEA.
How would achieving the objective alleviate/eliminate the problem?	There would be no additional reporting implementation costs for market participants.
Which option is the preferred one? Explain briefly.	Option 1 is the preferred option to enable the monitoring of systemic risk under the mandate of EMIR.
Is the option chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The response chosen is of the sole responsibility of ESMA.

Impacts of the proposed options:

Option 1	Include a reporting field giving the information that the contract was concluded with a counterparty not located within the EEA.
Benefits	The information provided by this field can be used to monitor systemic risk that could be building up between non-EU and EU entities and to identify trades in which only side is expected to be reported to a TR within the EU.
Disadvantages	The reporting implementation costs will be higher for market participants.
Regulator's costs	N/A
Compliance costs	The reporting implementation costs will be higher for market participants.
Indirect costs	N/A

Option 2	Not include a reporting field giving the information that the contract was concluded with a counterparty not located within the EEA.
Benefits	There would be no additional reporting implementation costs for market participants.
Disadvantages	The exemption for non-financial counterparties under Article 10 EMIR could not be easily monitored.
Regulator's costs	Regulators will need to undertake additional work and receive information from non-financial counterparties in order to confirm that non-financial counterparties are meeting their EMIR requirements.
Compliance costs	N/A
Indirect costs	Regulators would have to get the information from other sources or directly from the non-financial counterparty. Additional costs for both counterparties and regulators would arise from this procedure.

1g. How should beneficiaries be identified and reported?

Specific objective	To ensure the beneficiary of a contract be identified and reported.
Option 1	Where the transaction is executed by a structure (fund, trust, etc.) representing a number of beneficiaries, the field beneficiary should identify such structure and not all the beneficiaries.
How would achieving the objective alleviate/eliminate the problem?	The information from this field would give general information about the beneficiaries of a contract and give regulator's useful information for supervisory purposes.
Option 2	Where the transaction is executed by a structure (fund, trust, etc.) representing a number of beneficiaries, the field beneficiary should identify all the beneficiaries including all the investors of a fund.
How would achieving the objective alleviate/eliminate the problem?	This option would provide near-complete information about the beneficiaries of a contract to regulator's, which would allow regulators to get a complete picture of where the risk lies for a particular derivatives contract.
Which option is the preferred one? Explain briefly.	Option 1 is the preferred option as it is at the management company level where decisions impacting systemic risks are taken.
Is the option chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The response chosen is of the sole responsibility of ESMA.

Impacts of the proposed options:

Option 1	Where the transaction is executed by a structure (fund, trust, etc.) representing a number of beneficiaries, the field beneficiary should identify such structure and not all the beneficiaries.
Benefits	This would allow authorities access to information about the general structure of beneficiaries and the exposure of funds and other entities that may be at risk in derivatives transactions.
Disadvantages	This would not give a complete picture of exposures and risks, and may allow for counterparties to hide the final beneficiary to a trade using trusts and other structures.
Regulator's costs	Regulators may need to undertake additional work to identify the final beneficiary of contracts, if not included in the trade repository.
Compliance costs	Firms will need to determine at which level to report beneficiaries and then will need to report on their behalf. This may add complexity where there are multiple funds or sub-funds entering into contracts.
Indirect costs	N/A.
Option 2	Where the transaction is executed by a structure (fund, trust, etc.) representing a number of beneficiaries, the field beneficiary should identify all the beneficiaries including all the investors of a fund.
Benefits	This would give regulator's a fuller picture of the true beneficiaries of a particular contract and where risk is borne.
Disadvantages	This option may result in the requirement to reports large amounts of information, particularly in large retail funds where there may be large number of investors. This could also produce large amounts of data for regulator's to interrogate, which may add complexity to the use of trade repository data.
Regulator's costs	Regulators will need to develop large and scalable systems to analyse the information from trade repositories.
Compliance costs	The compliance costs for counterparties are likely to be substantial as they will need to report information for a large number of beneficiaries and ensure this information is kept up to date.
Indirect costs	N/A.

1h. Should the formal confirmation of a trade be reported?

Specific objective	To collect information in relation to the formal confirmation of a trade.

Option 1	To include a field in relation to the confirmation of a trade.
How would achieving the objective alleviate/eliminate the problem?	The information given in this field can be used to monitor the timely confirmation requirements under Article 5 of EMIR.
Option 2	To not include a field in relation to the confirmation of a trade. It will be more difficult to monitor the timely confirmation requirements under Article 5 of EMIR.
How would achieving the objective alleviate/eliminate the problem?	It will be more difficult to monitor the timely confirmation requirements under Article 5 of EMIR.
Which option is the preferred one? Explain briefly.	Option 1 is preferred as it enables the monitoring of the timely confirmation requirements under Article 5 of EMIR.
Is the option chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The response chosen is of the sole responsibility of ESMA.

Impacts of the proposed options:

Option 1	To include a field in relation to the confirmation of a trade.
Benefits	Trades will be reported to trade repositories on a more timely basis and prevent firms from not reporting trades due to a lack of timely confirmation of the trade.
Disadvantages	Counterparties will need to ensure trades are reported to trade repositories possibly prior to confirmation, which will add to costs. It will also potentially result in trades being reported that are not eventually confirmed.
Regulator's costs	N/A
Compliance costs	Counterparties will need to ensure they can report the details of trades to trade repositories potentially before the trade is confirmed, which may require certain systems changes.
Indirect costs	N/A
Option 2	To not include a field in relation to the confirmation of a trade. It will be more difficult to monitor the timely confirmation requirements under Article 5 of EMIR.
Benefits	This will probably provide a clearly defined time for the reporting of trades to trade repositories.
Disadvantages	To the extent trades are not confirmed on a timely basis, regulators will not have access to a complete picture of the contracts to which counterparties are liable.

Regulator's costs	N/A
Compliance costs	Likely lower as information can be reported to trade repositories once electronically confirmed and in an automated manner.
Indirect costs	N/A

1i. Should exposures be reported?

Specific objective	To ensure the data fields meaningfully show the exposures of counterparties to other counterparties.
Option 1	Include fields which would provide an indication of the exposures between counterparties.
How would achieving the objective alleviate/eliminate the problem?	These fields would give regulators a meaningful indication of the exposures between counterparties.
Option 2	Do not include fields on exposures.
How would achieving the objective alleviate/eliminate the problem?	There would be no additional reporting implementation costs for market participants.
Which option is the preferred one? Explain briefly.	Option 1 is the preferred option as monitoring exposures and systemic risk is a specific mandate under EMIR.
Is the option chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The response chosen is of the sole responsibility of ESMA.

Impacts of the proposed options:

Option 1	Include fields which would provide an indication of the exposures between counterparties.
Benefits	This field would give an indication of the exposures between counterparties. This would allow regulators' to get a complete picture of the positions of firms with each other, including the collateral exchanged. This would provide substantial ability for regulator's to get a full view of the market and undertake analysis to identify market risks.
Disadvantages	This information will be more complex for counterparties to report and therefore more expensive.
Regulator's costs	Regulators will need to develop more complex systems to analyse this data.

Compliance costs	The reporting implementation costs will be higher for market participants.
Indirect costs	N/A
Option 2	Do not include fields on exposures.
Benefits	There would be no additional reporting implementation costs for market participants.
Disadvantages	Regulators would not be able to determine the true exposures between counterparties and would instead need to rely on imprecise measures such as notional exposures and trading volumes.
Regulator's costs	Regulators would need to develop systems to convert notional exposures to true exposures, and would need to rely on incomplete information to undertake risk analysis.
Compliance costs	Lower compliance costs given the reduced amount on information that will need to be provided to regulators.
Indirect costs	N/A

1j. Should information on master agreements be reported?

Specific objective	To receive information about any master agreements applying for counterparties to the transactions.
Option 1	Include information held within a master agreement.
How would achieving the objective alleviate/eliminate the problem?	Regulators would be able to obtain full information about the terms of the derivatives contract.
Option 2	Not include information held within a master agreement.
How would achieving the objective alleviate/eliminate the problem?	Regulators would need to rely on information in the table of fields and from bilateral requests to obtain full information about derivative contracts.
Which option is the preferred one? Explain briefly.	Option 1 is preferred due to the increased information available to regulators for a relatively low cost to counterparties.
Is the option chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The response chosen is of the sole responsibility of ESMA.

Impacts of the proposed options:

Option 1	Include information held within a master agreement.
Benefits	This field would provide further details of the contract agreed between the two counterparties. This would allow authorities to obtain a meaningful information about contracts, which will help to increase understanding of the contracts traded and any potential risks that may result from that.
Disadvantages	Counterparties will need to provide this information to trade repositories in a form that is usable by the trade repositories.
Regulator's costs	Regulators will need to develop systems to analyse the master agreements in place across the derivatives contracts.
Compliance costs	The reporting implementation costs will be higher for market participants.
Indirect costs	N/A
Option 2	Not include information held within a master agreement.
Benefits	There would be no additional reporting implementation costs for market participants.
Disadvantages	Regulators would not have full visibility of the terms of the derivatives contracts traded.
Regulator's costs	Regulators will need to make ad hoc requests of counterparties in order to analyse the full terms of a derivatives contract.
Compliance costs	N/A
Indirect costs	N/A

2. Should TRs be required to reconcile data?

Specific objective	To ensure the data reported by two counterparties matches each other when reported to different TRs.
Option 1	There is no requirement for data to be reconciled between TRs.
How would achieving the objective alleviate/eliminate the problem?	Allows the market to use solutions deemed to be most effective to ensure data is matched and reconciled. Would avoid placing an additional burden on market participants which could produce a limited improvement in the quality of data.
Option 2	To require the counterparties to reconcile the data of a trade report when they report to different TRs.
How would achieving the objective alleviate/eliminate	Reconciliation would be expected to reduce the number of un-matched trades across TRs. EMIR states that data needs to be

the problem?	aggregated and compared across TRs so that a number of authorities can access this data. However, this would be impractical and potentially costly for each counterparty to communicate and confirm the details of every transaction with the other counterparty before it is reported to the TR.
Option 3	To require TRs to reconcile the data of a trade report when the counterparties are reporting to different TRs.
How would achieving the objective alleviate/eliminate the problem?	It would be more practical for TRs to perform this role after the data is reported to the TRs. Furthermore, some TRs are already in a position to offer matching services to their clients.
Which option is the preferred one? Explain briefly.	ESMA has determined that reconciliation by TRs will be achievable if there is a universal trade identifier in place to allow TRs to compare data without disclosing confidential information. Therefore in the event this is in place, Option 3 will be preferred.
Is the option chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The response chosen is of the sole responsibility of ESMA.

Impacts of the proposed options:

Option 1	There is no requirement for data to be reconciled between TRs.
Benefits	Allows the market to use solutions deemed to be most effective to ensure data is matched and reconciled. Would avoid placing an additional burden on market participants which could produce a limited improvement in the quality of data.
Disadvantages	If data held by TRs relating to the same trade does not match then it will be difficult for regulators and other users of TR data to obtain an overview of systemic risk. If there is no requirement for reconciliation then counterparties may report data that does not match for each trade. An inability to accurately aggregate data due to unmatched and non-reconciled trades would reduce the value of TR data.
Regulator's costs	Regulators may need to take additional steps to ensure data is accurate and that data analysis is not providing inaccurate results due to non-reconciled data.
Compliance costs	N/A
Indirect costs	If the risk of unmatched trades crystallises then regulators will have to intervene directly with TRs and counterparties to reconcile trades which could be time-consuming and costly.
Option 2	To require the counterparties to reconcile the data of a trade report when they report to different TRs

Benefits	Reconciliation would be expected to reduce the number of un-matched trades across TRs. EMIR states that data needs to be aggregated and compared across TRs so that a number of authorities can access this data. However, this would be impractical and potentially costly for each counterparty to communicate and confirm the details of every transaction with the other counterparty before it is reported to the TR.
Disadvantages	Counterparties would need to reconcile every transaction with the other counterparty. This would be costly for counterparties, especially smaller firms, and could prolong the time taken to report.
Regulator's costs	Regulators would have to ensure that counterparties have reconciliation processes in place and TRs would have to ensure that reconciliation is being carried out effectively.
Compliance costs	This would be impractical and potentially costly for each counterparty to communicate and confirm the details of every transaction with the other counterparty before it is reported to the TR.
Indirect costs	Regulators may have to revisit the technical standards if counterparties are unable to reconcile trades in an effective manner.
Option 3	To require TRs to reconcile the data of a trade report when the counterparties are reporting to different TRs.
Benefits	It would be more practical for TRs to perform this role after the data is reported to the TRs. Furthermore, some TRs are already in a position to offer matching services to their clients.
Disadvantages	This would be costly and complex for TRs. There would need to be a Universal Trade Identifier to allow TRs to compare data without breaching confidentiality.
Regulator's costs	Regulators would have to take part in the creation of a Universal Trade Identifier. Regulators would also need to ensure the TRs are effectively reconciling data without breaching confidentiality requirements.
Compliance costs	There will be costs involved for the TRs to develop a system to reconcile contracts, for example by developing a message or communication service between the TRs.
Indirect costs	N/A

3. What it the most appropriate date for the entry into force of the reporting obligation?

Specific objective	To ensure the start of the reporting obligation is appropriate and proportionate to ensure adequate implementation for both market participants and ESMA.
Option 1	The reporting obligation should start at a fixed period after a TR is authorised to receive trade reports for a particular asset class.
How would achieving the objective alleviate/eliminate the problem?	This would allow the industry (TRs and counterparties) to have sufficient time for implementation, while still ensuring that there will be at least TR available and authorised to receive transaction reports for that asset class. It would also avoid direct reporting to ESMA, who will not have the necessary operational and IT structures in place to appropriately deal with receiving potentially large numbers of complex trade reports that no TR would be dealing with.
Option 2	The reporting obligation should start at a fixed period after the adoption of EMIR and the technical standards.
How would achieving the objective alleviate/eliminate the problem?	This option would allow the industry (TRs and counterparties) as well to have sufficient time for implementation. In addition to that, this option would give market participants as well as TRs and authorities the legal certainty that reporting is going to start in a specified point in time. Having in place the needed resources for implementation at this point in time would be much easier than it would be in case of a "moving target" under Option 1.
Which option is the preferred one? Explain briefly.	A combined approach is preferred whereby a fixed date is set based on the registration of a TR with the earliest start date of 1 July 2013, however with a ultimate deadline of no more than 2 years, after which reporting will be sent to ESMA.
Is the option chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The response chosen is of the sole responsibility of ESMA.

Impacts of the proposed options:

Option 1	The reporting obligation should start at a fixed period after a TR is authorised to receive trade reports for a particular asset class.
Benefits	This would allow the industry (TRs and counterparties) to have sufficient time for implementation, while still ensuring that there will be at least TR available and authorised to receive transaction reports for that asset class. It would also avoid direct reporting to ESMA, who will not have the necessary operational and IT structures in place to appropriately deal with receiving potentially large numbers of complex trade reports that no TR would be dealing with.
Disadvantages	If there are delays in the authorisation of TRs, then reporting may begin later than intended if there is no back-stop date by which reporting has to begin. This option could also result in a relatively short notice time for counterparties in the event the reporting obligation commences a short period of time following the

	registration of a TR.
Regulator's costs	During the time between entry into force and authorisation of a TR (which might be a long period) no reports will be sent at all. Regulators would need to get the information they need to fulfil their supervisory tasks from other sources (in case there are any).
Compliance costs	If regulators need to receive this information from other sources counterparties could face further costs by having to report trades in another way before the TR becomes authorised.
Indirect costs	N/A
Option 2	The reporting obligation should start at a fixed period after the adoption of EMIR and the technical standards.
Benefits	This option would allow the industry (TRs and counterparties) as well to have sufficient time for implementation. In addition to that, this option would give market participants as well as TRs and authorities the legal certainty that reporting is going to start in a specified point in time. Having in place the needed resources for implementation at this point in time would be much easier than it would be in case of a "moving target" under Option 1.
Disadvantages	If there are delays in the authorisation of TRs then there may not be sufficient time for TRs and CPs to finalise reporting arrangements before the reporting start date.
Regulator's costs	In the event there is not a TR registered in a particular asset class by the start date of the reporting obligation, ESMA will be required to receive reports, which will result in a systems and administrative cost to ESMA.
Compliance costs	It may be difficult for CPs to put reporting systems in place before a TR is authorised.
Indirect costs	N/A

4. Should the date of application of the reporting obligation be the same for all counterparties?

Specific objective	To ensure the start of the reporting obligation is appropriate and proportionate to ensure adequate implementation for market participants.
Option 1	The start date of the reporting obligation should be the same for all counterparties.
How would achieving the objective alleviate/eliminate	It was considered too complex to determine which types of firms should have a phased in reporting approach. Under this option all trades will have to be reported from a particular date, regardless of

the problem?	the counterparty. This would result in data being provided to TRs on the most timely basis and will allow for authorities to rapidly start analysing a complete market data set.
Option 2	The start date of the reporting obligation should differ according to the counterparty and could include certain transitional periods.
How would achieving the objective alleviate/eliminate the problem?	A distinction could be made between financial and non-financial counterparties which could allow non-financials or smaller corporates to have a slightly longer implementation period. This would give these counterparties a short additional time period to ensure their systems are able to submit accurate and timely details to TRs.
Which option is the preferred one? Explain briefly.	Option 1 is preferred to ensure reporting of contracts by counterparties in a consistent manner.
Is the option chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The response chosen is of the sole responsibility of ESMA.

Impacts of the proposed options:

Option 1	The start date of the reporting obligation should be the same for all counterparties.
Benefits	Under this option all trades will have to be reported from a particular date, regardless of the counterparty. This would result in data being provided to TRs on the most timely basis and will allow for authorities to rapidly start analysing a complete market data set.
Disadvantages	Counterparties may have differing abilities to report based on their size and business profile. Meeting the reporting deadline (in particular for backloaded contracts) may be a particular challenge for smaller market participants.
Regulator's costs	N/A
Compliance costs	Smaller CPs may be faced with a compliance timetable that is difficult to fulfil.
Indirect costs	The reduced ability for authorities to undertake systemic and prudential risk assessment is likely to result from a start date that is later than it would otherwise be.
Option 2	The start date of the reporting obligation should differ according to the counterparty and could include certain transitional periods.
Benefits	A distinction could be made between financial and non-financial counterparties which could allow non-financials or smaller corporates to have a slightly longer implementation period. This

	would give these counterparties a short additional time period to ensure their systems are able to submit accurate and timely details to TRs.
Disadvantages	There would be less certainty for counterparties. Not all trade data would be available at the initial start date. There may be confusion with trades between a financial and non-financial counterparty.
Regulator's costs	Under this option trades between financials and non-financials wouldn't be reported consistently.
Compliance costs	Counterparties may require guidance on which start date they face.
Indirect costs	N/A

5. What is the best approach to record that clearing took place?

Specific objective	To ensure that details of a contract which is cleared by a CCP is reported appropriately.
Option 1	Any clearing will be included as an amendment to the trade report.
How would achieving the objective alleviate/eliminate the problem?	This would be simple for counterparties, and would prevent duplication of data.
Option 2	If clearing occurs, a new trade report should be sent.
How would achieving the objective alleviate/eliminate the problem?	This may more accurately reflect the CCPs outstanding contracts, and may improve the ability to assess the risk position of the CCP.
Which option is the preferred one? Explain briefly.	Option one is preferred to ensure that the original contract between the two counterparties is maintained.
Is the option chosen within the sole responsibility of ESA? If not, what other body is concerned / needs to be informed or consulted?	The response chosen is of the sole responsibility of ESMA.

Impacts of the proposed options:

Option 1	Any clearing will be included as an amendment to the trade report.
Benefits	This would be simple for counterparties, and would prevent duplication of data.
Disadvantages	This may slightly increase the complexity of TR data and the ability to undertake a risk assessment using the data. It would also potentially provide an inaccurate reflection of the outstanding

	notionals at CCPs, as CCPs may net individual trades down, thus meaning there would not be a one-to-one relationship between original trades executed and positions held at CCPs.
Regulator's costs	N/A
Compliance costs	Counterparties would need to report clearing as an amendment. In the event reporting is delegated to a CCP, the CCP may need to obtain additional information from a counterparty in order to provide all the necessary information to a TR.
Indirect costs	N/A
Option 2	If clearing occurs, a new trade report should be sent.
Benefits	This may more accurately reflect the CCPs outstanding contracts, and may improve the ability to assess the risk position of the CCP.
Disadvantages	This will make using TR data on cleared trades for market abuse purposes more challenging as the information on the original trade will be decoupled from the information on the cleared trade. It will do this without adding any meaningful data to the database.
Regulator's costs	Regulators will likely need to undertake additional processing of TR data in order to identify the original trades where a trade is entered into and then later novated to a CCP. This may result in additional costs for regulators.
Compliance costs	It is unlikely the reporting of an amendment versus the reporting of a new trade should have a substantial impact on compliance costs, although reporting of a new trade may have a slightly higher cost due to the need to cancel a report and then resubmit two new reports.
Indirect costs	Having differences between the information reported to a TR and the information in counterparties and CCPs own systems could result in the need to maintain and reconcile two distinct databases, which could increase administration costs.

REGISTRATION OF TRADE REPOSITORIES

Policy options:

1. **What is the relevant information to be submitted to ESMA?**

Specific objective	To ensure the relevant documentation is submitted to ESMA to enable a thorough and robust assessment of a TR's application for registration.

Option 1	To include only the minimum information required for the registration of TRs.
-How would achieving the objective alleviate/eliminate the problem?	This option will be simpler for TRs to prepare the documentation that they consider sufficient to achieve compliance with the EMIR requirements, but it may be problematic under EMIR, having in mind the experience with the ESMA registration of CRAs and ESMA may have to require additional information throughout the application process.
Option 2	To request more detailed information in the registration of TRs.
-How would achieving the objective alleviate/eliminate the problem?	This would assist in harmonising the level of information a TR is required to send for the registration process.
Which technical option is the preferred one? Explain briefly.	Option 2 is the preferred option as additional relevant information may ensure a more thorough and robust assessment of a TRs application.
Is the option chosen within the sole responsibility of ESMA? If not, what other body is concerned / needs to be informed or consulted?	The response chosen is of the sole responsibility of ESMA.

Impacts of the proposed options:

Option 1	To include only the minimum information required for the registration of TRs.
Benefits	This may give the market more time to prepare the information that is required, if it is clearly specified early on that no relevant development of the RTS is expected. It would also allow the TRs to leverage their existing internal procedures and documentation with the submission of information during the application process
Disadvantages	The information may not enable a thorough assessment of a TR's application. The information may contain significant gaps which may delay the registration process. The TR operator may be unclear on whether there is a need to elaborate further the information to be submitted. The TR operator may be uncertain on how its application is going to be processed by ESMA.
Regulator's costs	This option may entail less cost initially, however the costs may increase during the assessment of the application as ESMA might be required to send a number of additional information requests of to the TR operator.

Compliance costs	This option may entail fewer costs in the initial delivery of the information to ESMA. However, it may increase the costs during the assessment of the application as ESMA might be required to send a number of additional information requests to the TR.
Indirect costs	N/A
Option 2	To request more detailed information in the registration of TRs.
Benefits	It may address any weaknesses identified and enhance the quality and effectiveness of the RTS. The consistency of the applications could be enhanced, therefore the treatment of the TRs in the registration will be harmonised, which will foster a level playing field. The registration timeline could be reduced; therefore, the cost of registration would decrease for all market participants.
Disadvantages	This might not allow the TR operator to leverage off its current internal documentation as the information required in the RTS may be wider in scope.
Regulator's costs	Overall, this may mean that more information is required to be submitted to ESMA. However, this may reduce the cost as it may allow a faster revision of the applications.
Compliance costs	Providing more documentation to ESMA is likely to incur increased compliance costs.
Indirect costs	N/A

2. **What is the appropriate timeline for a business plan to be included in the information to be provided for registration?**

Specific objective	To ensure that TRs provide a business plan for an appropriate time period.
Option 1	Request a business plan over a 3 year time period.
How would achieving the objective alleviate/eliminate the problem?	A 3 year business plan would provide ESMA with a view of TR's shorter term business to be taken into consideration during the registration assessment.
Option 2	Request a business plan over a 5 year time period.
How would achieving the objective alleviate/eliminate the problem?	A 5 year business plan would provide ESMA with both a short term and a longer term view of a TR's business plan which would be taken into consideration during the registration assessment.
Which technical option is the	Option 1 is the preferred option with a timeframe of 3 years as it will enable ESMA to make an assessment on the TR's current

preferred one? Explain briefly.	business model strategy and capabilities and whether/how this would change which could affect the TR's ability to provide TR services to market participants.
Is the option chosen within the sole responsibility of ESMA? If not, what other body is concerned / needs to be informed or consulted?	The response chosen is of the sole responsibility of ESMA.

Impacts of the proposed options:

Option 1	Request a business plan over a 3 year time period.
Benefits	A 3 year business plan would provide ESMA with a view of TR's shorter term business to be taken into consideration during the registration assessment.
Disadvantages	This would not provide ESMA with a longer term view of the TRs strategy.
Regulator's costs	N/A
Compliance costs	It has marginally reduced costs.
Indirect costs	N/A
Option 2	Request a business plan over a 5 year time period.
Benefits	A 5 year business plan would provide ESMA with both a short term and a longer term view of a TR's business plan which would be taken into consideration during the registration assessment.
Disadvantages	The TR may not have a view of the longer term plan.
Regulator's costs	N/A
Compliance costs	The business plan could take longer to be completed.
Indirect costs	N/A

3. What is the best approach to ensure that TRs have appropriate financial resources

Specific objective	To ensure that TRs have the appropriate and prudent level of financial resources enabling it to cover its operational costs.

Option 1	A TR should hold an unspecified amount of financial resources.
How would achieving the objective alleviate/eliminate the problem?	The EMIR level 1 text does not state the specific amount of financial resources that a TR should maintain. Therefore the RTS should not offer any specific guidance on how ESMA will assess its sufficiency.
Option 2	A TR should hold 6 months operational expenses.
How would achieving the objective alleviate/eliminate the problem?	A TR's financial resources should be consistent with other market infrastructure and therefore should hold enough financial resources to cover a 6 month period.
Which technical option is the preferred one? Explain briefly.	Option 2 is the preferred option as the TRs will not hold client assets and will not be exposed to counterparty risk. The main risks of a TR will be operational and 6 months of operational expenses is considered sufficient level of financial resources for business continuity purposes.
Is the option chosen within the sole responsibility of ESMA? If not, what other body is concerned / needs to be informed or consulted?	The response chosen is of the sole responsibility of ESMA.

Impacts of the proposed options:

Option 1	A TR should hold an unspecified amount of financial resources.
Benefits	Less costly for TRs and will enable the TR to adapt the level of its financial resource to its particular business profile.
Disadvantages	It would be almost impossible to enforce and to promote a level playing field.
Regulator's costs	N/A
Compliance costs	N/A
Indirect costs	An unlevel playing field might cause TRs to general hold less capital therefore leaving TR operators under-capitalised.
Option 2	A TR should hold 6 months of operational expenses.
Benefits	TRs will be assisted in maintaining a minimum level of financial resources to adequately perform their regulatory function. It will possibly allow TRs to anticipate the level of financial resources that ESMA will demand. It might create a level playing field for the TRs. It may facilitate international convergence and

	compliance with international standards.
Disadvantages	It may prevent TRs from entering the market and being authorised by ESMA if they do not hold sufficient financial resources.
Regulator's costs	N/A
Compliance costs	Any requirement to hold financial resources will incur costs and it may take time for sufficient funds to be raised.
Indirect costs	N/A

4. What is the appropriate information to ensure the operational reliability of a TR?

Specific objective	To ensure the operational reliability of a TR
Option 1	The RTS should specify some minimum content of the information that the TR operator should provide on its operational reliability (such as the need of a secondary business site).
How would achieving the objective alleviate/eliminate the problem?	This would increase the business continuity of a TR.
Option 2	The RTS should allow the TR operator to present documentation showing the compliance with EMIR operational requirements.
How would achieving the objective alleviate/eliminate the problem?	Less costly for TRs.
Which technical option is the preferred one? Explain briefly.	Option 1 is the preferred option as TR will be required to maintain an appropriate level of business continuity at all times.
Is the option chosen within the sole responsibility of ESMA? If not, what other body is concerned / needs to be informed or consulted?	The response chosen is of the sole responsibility of ESMA.

Impacts of the proposed options:

Option 1	The RTS should specify some minimum content of the information that the TR operator should provide on its operational reliability (such as the need of a secondary business

	site).
Benefits	Increases the chances that a TR can operate under adverse conditions. This will foster a level playing field and international convergence. This option will facilitate the assessment of the application.
Disadvantages	This will incur costs over a longer term period.
Regulator's costs	N/A
Compliance costs	This will incur costs over a longer term period.
Indirect costs	N/A
Option 2	The RTS should allow the TR operator to present documentation showing the compliance with EMIR operational requirements.
Benefits	Reduces costs for a TR.
Disadvantages	There is an increased risk that a TR will be able to operate if the primary site is experiencing adverse conditions.
Regulator's costs	N/A
Compliance costs	Reduces costs for a TR.
Indirect costs	N/A

5. Should a compliance officer be required?

Specific objective	To ensure compliance with the adequate policies and procedures required in order to follow the EMIR regulation.
Option 1	Require a compliance officer or similar person responsible for compliance.
How would achieving the objective alleviate/eliminate the problem?	Ensure that someone is able to have a centralised view of whether the requirements are being met.
Option 2	No requirement for an individual to be responsible for compliance.
How would achieving the objective alleviate/eliminate the problem?	Possibly less costs involved in hiring staff.
Which option is the preferred	Option 1 is the preferred option as there a number of compliance requirements that TR will have to meet at all times and having

one? Explain briefly.	an individual responsible for the TRs overall compliance will increase the likelihood that the requirements are met.
Is the option chosen within the sole responsibility of ESMA? If not, what other body is concerned / needs to be informed or consulted?	The response chosen is of the sole responsibility of ESMA.

5.2. IMPACTS OF THE PROPOSED POLICIES

Option 1	Require a compliance officer or similar person responsible for compliance.
Benefits	It facilitates the exercise of the compliance function, key under EMIR. Ensures a centralised view of compliance and a single contact point. Fosters an unbiased, independent view vis-a-vis the TR board of directors, its senior management and other staff.
Disadvantages	Costly to maintain and does not necessarily improve the compliance of a TR.
Regulator's costs	N/A
Compliance costs	Costly to maintain.
Indirect costs	N/A
Option 2	No requirement for an individual to be responsible for compliance.
Benefits	Less costly to maintain. A compliance officer is not required if senior management are already involved in compliance. TRs are essentially a database and its applicable rules are not complex to understand.
Disadvantages	The independency of the compliance function would be compromised. The compliance function would not be centralised and possibly less efficient.
Regulator's costs	N/A
Compliance costs	N/A
Indirect costs	N/A

PUBLIC DISCLOSURE ARTICLE 81

Policy options:

1. **What is the appropriate timeframe for the publication of data by TRs**

Specific objective	To ensure that the public accesses updated TR-held data
Option 1	Annual publication.
How would achieving the objective alleviate/eliminate the problem?	This would ensure a consolidated data set, while not being out of date over a 5 year series. The consolidation of data is relevant since a system where correlations would only be possible by individual downloads, would be very difficult to use. This is particularly the case where these downloads correspond to daily files. An annual publication would enable the public to aggregate 5 files (1 per year) rather than a higher number of files (e.g. 365 per year, if reports were only daily).
Option 2	Monthly publication.
How would achieving the objective alleviate/eliminate the problem?	This would enable consolidation while keeping a more balanced view of the data.
Option 3	Weekly publication as a minimum.
How would achieving the objective alleviate/eliminate the problem?	This would enable some consolidation while keeping a more balanced view of the data, enabling a TR to publish even more up to date data on a voluntary basis.
Option 4	Daily publication.
How would achieving the objective alleviate/eliminate the problem?	This would ensure the most up to date data. Real-time publication would not be possible under the reporting timeline of EMIR (T+1).
Option 5	Variable frequency.
How would achieving the objective alleviate/eliminate the problem?	This option would aim to cater for any liquidity concerns.
Which technical option is the preferred one? Explain briefly.	Option 3 is the preferred option since it offers the most balanced approach: up to date data within the EMIR deadlines and the public interests while keeping costs low for TRs instead of daily publication.
Is the option chosen within the sole responsibility of ESMA? If not, what other body is concerned / needs to be	This technical response is the sole responsibility of ESMA in drafting EMIR technical standards.

informed or consulted?	

Impacts of the proposed options:

Option 1	Annual publication.
Benefits	Consolidation would require less reading time for the public and a TR will have less costs in publishing the data.
Disadvantages	Data would not be meaningful since it could be out of date.
Regulator's costs	Throughout the year, regulators could be asked for data which is more up to date.
Compliance costs	Throughout the year, TRs could be asked for data which is more up to date.
Indirect costs	Entities using public data (i.e. for studies) would not benefit from more up to date data on a regular basis.
Option 2	Monthly publication.
Benefits	Still consolidated data.
Disadvantages	Not sufficiently up to date for some stakeholders.
Regulator's costs	Possible requests for more up to date data.
Compliance costs	Possible requests for more up to date data.
Indirect costs	Entities using public data (i.e. for studies) would not benefit from up to date data which is published on a regular basis.
Option 3	Weekly publication as a minimum.
Benefits	The benefits include, consolidated data, up to date data as per stakeholder feedback and the possibility of TR to publish even more up to date data on a voluntary basis.
Disadvantages	N/A
Regulator's costs	N/A
Compliance costs	Arrangements to publish data weekly, although this should be a one-off set-up cost.
Indirect costs	N/A
Option 4	Daily publication

Benefits	An up to date level of information is provided.
Disadvantages	There are costs for all the parties concerned, including recipients, due to the volume of reports.
Regulator's costs	Difficulty in supervising the accuracy of the high volume of public data. Therew could be possible multiplication of requests by stakeholders over a short timeframe.
Compliance costs	There could be processing costs and errors given that the daily publication would coincide with the reporting timeline (T+1).
Indirect costs	N/A
Option 5	Variable frequency
Benefits	This could cater for different product-specific or trading scenarios/events in availability of data (e.g. less liquid assets published less frequently).
Disadvantages	Not predictable, less transparent and more complex.
Regulator's costs	Possible clarification requests.
Compliance costs	Possible clarification requests.
Indirect costs	N/A