

ANNEX I

This document comprises Annex I to FIA Europe's response to ESMA's December 2014 MiFID II Consultation Paper.

Please note that in addition to the mark ups of the RTS set out below, there are further mark ups within the sections of FIA Europe's main response to the consultation paper that relate to:

- (i) Non-Discriminatory Access to Trading Venues, CCPs and Benchmarks; and**
- (ii) Commodities,**

that have not been restated in this Annex I.

Please see the relevant sections of FIA Europe's main response for such mark ups.

This document comprises Annex I to FIA Europe's response to
ESMA's December 2014 MIFID II Consultation Paper.



Chapter 3: Transparency

RTS 9

Chapter 3: Transparency

RTS 9: Draft regulatory technical standards on transparency requirements in respect of bonds, structured finance products, emission allowances and derivatives

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

of [date]

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on transparency requirements for trading venues and investment firms with respect to bonds, structured finance products, emission allowances and 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 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments⁸, and in particular Article 1(8), Article 9(5), Article 11(4) and Article 21(5) thereof,

Whereas:

1. The regime established by Regulation (EU) No 600/2014 governing transparency requirements in respect of transactions in bonds, structured finance products, emission allowances and derivatives aims to ensure that investors are adequately informed as to the true level of actual and potential transactions in such financial instruments, whether those transactions take place on regulated markets, multilateral trading facilities, organized trading facilities, systematic internalisers, or outside those facilities. ~~A high degree of transparency~~ Transparency is essential to ensure a level playing field between trading venues so that the price discovery mechanism in respect of particular financial instruments is not impaired by the fragmentation of liquidity, and investors are not thereby penalised. On the other hand, this Regulation recognises that there may be circumstances where exemptions from pre-trade transparency obligations, or deferral of post-trade transparency obligations, may be necessary. This Regulation sets out details of those circumstances, bearing in mind the need both to ensure ~~a high level of transparency~~ transparency, and to ensure that liquidity on trading venues and elsewhere is not impaired as an unintended consequence of obligations to disclose transactions and thereby to make public risk positions.
2. If granting waivers in relation to pre-trade transparency requirements, or authorising the deferral of post-trade transparency obligations, competent authorities should treat all regulated markets, multilateral trading facilities and organised trading facilities equally and in a non-discriminatory manner, so that a waiver or deferral is granted either to all trading venues that they authorise under Directive 2014/65/EU and Regulation (EU) No 600/2014, or to none.
3. Information which is required to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the maximum time limit specified under Article 7(5) of this Regulation in exceptional cases where the systems available do not allow for a publication in a shorter period of time.
4. Regulation (EU) No 600/2014 provides in Article 9(1) (c) for a pre-trade transparency waiver for “derivatives

which are not subject to the trading obligation specified in Article 28 and other financial instruments for which there is not a liquid market". This means that the following instruments are eligible under this waiver: (i) derivatives subject to the clearing obligation but for which ESMA has determined that they shall not be subject to the trading obligation; and (ii) bonds, derivatives, structured finance products and emission allowances deemed illiquid as per Annex III.

5. Directive 2014/65/EU and Regulation (EU) No 600/2014 do not apply to primary markets and only regulate secondary markets except in some specific cases as specified for instance in Recital 45 of the Directive 2014/65/EU. By extension, this Implementing Regulation only applies to secondary markets and primary market transactions should be excluded from the provisions in this Regulation, unless otherwise specified.
6. Transactions should only be published under Article 21 of Regulation (EU) No 600/2014 in the cases of the purchase or sale of a bond, structured finance product, emission allowance or derivative. If transactions involve the use of any such instruments for collateral, lending or other purposes where the exchange is determined by factors other than the current market valuation, such transactions should not be published as they do not contribute to the price discovery process and would only blur the picture for investors and be a hindrance to achieving best execution.
7. Article 1(6) of Regulation (EU) No 600/2014 provides an exemption for the non-equity transparency requirements in Articles 8, 10, 18 and 21 of that Regulation. It provides that those requirements should not apply to regulated markets, market operators and investment firms in respect of a transaction where the counterparty is a member of the European System of Central Banks (ESCB) and where that transaction is entered into in performance of monetary, foreign exchange and financial stability policy which that member of the ESCB is legally empowered to pursue and where that member has given prior notification to its counterparty that the transaction is exempt.
8. Article 1(7) of Regulation (EU) No 600/2014 provides that this exemption should not apply in respect of transactions entered into by any member of the ESCB in performance of their investment operations. This should include operations conducted for administrative purposes or for the staff of the member of the ESCB which include transactions conducted in the capacity as an administrator of a pension scheme in accordance with Article 24 of the Statute of the European System of Central Banks and of the European Central Bank (the Statute).
9. Chapter II (Monetary Policy) of Title VIII (Economic and Monetary Policy) of the Treaty on the Functioning of the EU (TFEU) as well as Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank annexed to the Treaty on European Union and the TFEU set out the legal basis for a broad range of operations in pursuance of the basic tasks of the ESCB. The purpose of the exemption in Regulation (EU) No 600/2014 is to ensure that the effectiveness of operations conducted by members of the ESCB in the performance of these primary tasks under the Statute, and under equivalent national provisions for members of the ESCB in Member States whose currency is not the euro, which relies on the timeliness and confidentiality of transactions, should not be compromised by disclosure of information on such transactions. It is crucial for central banks to be able to control whether, when and how information about their actions is disclosed so as to maximise the intended impact and limit any unintended impact on the market. Therefore the regulatory technical standards should provide legal certainty for the members of the ESCB and their respective counterparties as to the application of or exemption from transparency requirements.
10. The primary ESCB tasks to define and implement the monetary policy of the Union, to conduct foreign exchange operations and to hold and manage the official foreign reserves of the Member States as well as to promote the smooth operation of payment systems are tasks conducted in accordance with Article 127(2) TFEU

and Article 3(1) of the Statute. In particular, the primary task under the TFEU and the Statute, and under equivalent national provisions for members of the ESCB in Member States whose currency is not the euro, to hold and manage the official foreign reserves of the Member States, is an essential part of the performance of foreign exchange policy. The main purpose of central banks holding and managing foreign reserves is to ensure that, whenever needed, there is a sufficient amount of liquid resources available for its foreign exchange policy operations involving foreign currencies. Due to this interconnection, the application of transparency requirements to foreign reserve management operations may result in unintended signals to the market, which could interfere with the foreign exchange policy of the Eurosystem and of members of the ESCB in Member States whose currency is not the euro. Similar considerations may also apply to foreign reserve management operations in the performance of monetary, foreign exchange and financial stability policy on a case-by-case basis.

11. For the purpose of this Regulation, plain vanilla covered warrants, leverage certificates, exotic covered warrants, exchange-traded-commodities; exchange-traded notes, negotiable rights and structured medium-term-notes should be considered securitised derivatives. This is not meant to be an exhaustive list of securitised derivatives.
12. This Regulation should provide clarity about which investment firm should make the information of a transaction public when both the buyer and the seller are EEA investment firms. When the transaction is executed between an EEA investment firm and a counterparty outside the EEA, the former should make the transaction public.
13. The provisions in this Regulation are closely linked, since they deal with specifying the pre-trade and post-trade transparency requirements that apply to non-equity financial instruments. To ensure coherence between those provisions, which will enter into force at the same time, and to facilitate a comprehensive view for stakeholders and in particular those subject to the obligations it is desirable to include these regulatory technical standards in a single Regulation.
14. This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
15. In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC⁹, in developing the draft regulatory technical standards on which this Regulation is based, ESMA has conducted open public consultations, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Article 1
Definitions

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

- (1) 'reserve order' means a reserve order as defined in Article 1 of Regulation (EC) No XXX/XXX [Transparency for equity and equity-like instruments];
- (2) 'stop order' means a stop order as defined in Article 1 of Regulation (EC) No XXX/XXX [Transparency for equity and equity-like instruments];

- (3) 'portfolio trade' means a portfolio trade as defined in Article 1 of Regulation (EC) No XXX/XXX [Transparency for equity and equity-like instruments];
- (4) new Product' means a bond, structured financial product, emission allowance or derivative admitted to trading on a trading venue after the application of this Regulation;
- (4-5) securities financing transactions' means ~~securities financing transactions~~ as defined in Article ~~13~~ of Regulation (EC) No XXX/XXX [~~Transparency for equity and equity-like instruments-SFT Regulation~~];
- (56) 'give-up' or 'give-in' means 'give-up' or 'give-in' transactions as defined in Article 1 of Regulation (EC) No xxx/xxx Transparency for equity and equity-like instruments];
- (67) 'request-for-quote system' means a trading system where a quote or quotes are ~~published~~ provided in response to a request for a quote submitted by one or more other members or participants; the quote is executable exclusively by the requesting member or market participant; the requesting member or participant may conclude a transaction by accepting the quote or quotes provided to it on request;
- (78) 'voice trading system' means a trading system where voice functionality is essential to the operation of the system and where transactions between members or participants are arranged through voice negotiation.

TITLE I

TRANSPARENCY FOR TRADING VENUES AND INVESTMENT FIRMS

CHAPTER 1

Pre-trade transparency for regulated markets, MTFs and OTFs

Article 2

Pre-trade transparency obligations

[Article 9(5) (b) of Regulation (EU) No 600/2014]

1. For the purpose of Article 8 of Regulation (EU) No 600/2014, market operators and investment firms operating a trading venue shall, in accordance with the trading system they operate, make public information in respect of bonds, structured finance products, emission allowances and derivatives as specified in Annex I.
2. The obligation to make public information as specified in Annex I shall not apply to a new product for a period of 1 year following admittance to trading on a trading venue.

Article 3

Waiver for large in scale orders

[Article 9(5) (c) of Regulation (EU) No 600/2014]

For the purpose of Article 9(1)(a) of Regulation (EU) No 600/2014, an order shall be considered to be large in scale compared with the normal market size if, at the point of entry or following any amendment, it is equal to or greater than the relevant large in scale size:

- (a) as specified in Annex III until 30 April 2018;
- (b) as determined according to the methodology specified in Article 11 starting on 1 May 2018.

Article 4

Waiver for orders held in an order management facility

[Article 9(5) (c) of Regulation (EU) No 600/2014]

1. For the purposes of Article 9(1)(a) of Regulation (EU) No 600/2014 competent authorities may waive orders held in an order management facility of a trading venue from pre-trade transparency obligations where:

- (a) the order is intended to be disclosed to the order book operated by the trading venue and it is contingent on objective conditions that are defined in advance by the system's protocol;
- (b) the order cannot interact with other trading interest prior to disclosure to the order book operated by the trading venue; and
- (c) once disclosed to the order book the order interacts with other orders in accordance with the rules applicable to orders of that kind at the time of disclosure.

2. Reserve orders, stop orders and other orders that comply with the first paragraph shall be considered as orders held in an order management facility.

3. Market operators or the investment firms operating a trading venue shall ensure that all orders held in an order management facility are at the point of entry and following any amendment not smaller than the minimum tradable quantity set in advance by the system's operator under its rules and protocols. The minimum size for reserve orders shall be, at the point of entry and following any amendment, not smaller than €10,000.

Article 5

Waiver for orders which are above the size specific to the financial instrument

[Article 9(5) (d) of Regulation (EU) No 600/2014]

1. For the purposes of Article 9(1)(b) of Regulation (EU) No 600/2014 competent authorities may grant to market operators and investment firms operating a trading venue a waiver for actionable indications of interest in request-for-quote and voice-trading systems, which are equal to or larger than the relevant size specific to the financial instrument:

- (a) as specified in Annex III until 30 April 2018;
- (b) as determined according to the methodology specified in Article 11 starting on 1 May 2018.

2. Market operators or investment firms operating a trading venue shall make public at least an indicative pre-trade price that is close to the price of the trading interest advertised through their systems, with the use of a clear methodology, which shall be made transparent to the public through the rules of the trading venue.

Article 6

Waiver for financial instruments for which there is not a liquid market

[Article 9(5) (e) of Regulation (EU) No 600/2014]

1. For the purpose of Article 9(1) (c) of Regulation (EU) No 600/2014, financial instruments for which there is not a liquid market are specified in Annex III.

2. New products shall be considered financial instruments for which there is not a liquid market for a period of 1 year following admittance to trading on a trading venue.

CHAPTER 2

Post-trade transparency for regulated markets, MTFs, OTFs and investment firms

Article 7

Post-trade transparency obligations

[Article 11(4) (a) & (b) and Article 21(5) (a) & (c) of Regulation (EU) No 600/2014]

1. Investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall, with regard to transactions executed in respect of bonds, structured finance products, emission allowances and derivatives, make public the details specified in Table 1 of Annex II and use the appropriate flags listed in Table 2 of Annex II.
2. The details and flags specified under paragraph 1 shall be made public either by reference to each transaction or in a form aggregating the volume and price of all transactions in the same bond, structured finance product, emission allowance and derivative taking place at the same price at the same time.
3. Where a cancellation of a previously published trade report has to be made, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall make public a new trade report which contains all the details of the original trade report and the cancellation flag as specified in Table 2 of Annex II.
4. Where an amendment of a previously published trade report has to be made, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall:
 - (a) make public a new trade report which contains all the details of the original trade report and the cancellation flag as specified in Table 2 of Annex II; and
 - (b) make public a new trade report which contains all the details of the original trade report except for those details that are corrected and the amendment flag as specified in Table 2 of Annex II.
5. Post-trade information shall be made available as close to real time as possible and in any case within 15 minutes after the execution of the relevant transaction from 3 January 2017 until 1 January 2020 and within 5 minutes thereafter.
6. Where a transaction between two investment firms is concluded outside the rules of a trading venue, either on own account or on behalf of clients, the investment firm that sells the financial instrument concerned shall be responsible for making the transaction public through an Approved Publication Arrangement (APA).
7. By way of derogation to the previous paragraph, if only one of the investment firms party to the transaction is a systematic internaliser in the given instrument, that firm shall report the transaction, informing the seller of the action taken.
8. Investment firms shall take all reasonable steps to ensure that the transaction is made public as a single transaction. For those purposes two matching trades entered at the same time and for the same price with a single party interposed shall be considered to be a single transaction.

Article 8

Deferred publication of transactions

[Article 11(4) (c) of Regulation (EU) No 600/2014]

1. The deferred publication of information in respect of transactions may be authorised by the competent

authority in accordance with Article 11(1) of Regulation (EU) No 600/2014, for a period of no longer than 48 hours for bonds, structured finance products, derivatives and emission allowances, provided that one of the following criteria is satisfied:

- (a) The size of the transaction is equal to or exceeds the relevant large in scale size
 - (i) as specified in Annex III until 30 April 2018;
 - (ii) as determined according to the methodology defined in Article 11 of this Regulation starting on 1 May 2018.
 - (b) The instrument belongs to a class of bonds, structured finance products, derivatives or emission allowances for which there is not a liquid market as specified in Annex III.
 - (c) The instrument is a new product.
 - (ed) The size of the transaction executed between an investment firm dealing on own account other than on a matched principal basis as per article 4(1) (38) of Directive 2014/65/EU and another counterparty is equal to or exceeds the relevant size specific to the instrument:
 - (i) as specified in Annex III until 30 April 2018;
 - (ii) as determined according to the methodology defined in Article 11 of this Regulation starting on 1 May 2018.
2. When the time period of deferral in accordance with paragraph 1 lapses, all the details of the transaction on an individual basis shall be published immediately unless an extended or an indefinite time period of deferral is granted in accordance with Article 10 of this Regulation.

Article 9

Application of OTC post-trade transparency to certain transactions

[Article 21(5) (b) of Regulation (EU) No 600/2014]

The obligation in Article 21(1) of Regulation (EU) No 600/2014 shall not be applied to the following:

- (a) transactions included under Article 3(3) of Regulation (EU) No xxx/20xx [Obligation to report transactions] where applicable;
- (b) securities financing transactions;
- (c) the exercise of options, of covered warrants or convertible bonds;
- (d) primary markets transactions (such as the issuance, allotment or subscription, placements and the exercise of pre-emption rights);
- (e) give-ups or give-ins; or
- (f) transfers of financial instruments such as segregated collateral in bilateral transactions or in the context of a CCP margin and collateral requirements.

Article 10

Transparency requirements in conjunction with deferred publication at the discretion of the CA

[Article 11(4) (d) of Regulation (EU) No 600/2014]

1. If competent authorities exercise their rights in conjunction with an authorisation of deferred publication pursuant to Article 11(3) of Regulation (EU) No 600/2014 the following criteria shall apply:

- (a) If exercising the right pursuant to Article 11(3)(a) of Regulation (EU) No 600/2014, competent authorities shall request during the 48 hour time period of deferral the publication of:
 - (i) all the details of a transaction listed in Table 1 of Annex II except for those relating to volume, namely quantity and quantity notation; or
 - (ii) the publication the next working day before 09.00 CET of transactions in a daily aggregated form for a minimum number of 5 transactions executed on the same calendar day.
- (b) If exercising the right pursuant to Article 11(3)(b) of Regulation (EU) No 600/2014 the publication of the volume of an individual transaction shall be omitted during an extended time period of deferral of four weeks following the transaction.
- (c) Regarding non-equity instruments that are not sovereign debt, competent authorities shall request the aggregation of several transactions executed over the course of one calendar week to be published on the following Tuesday before 09.00 CET, ahead of the extended period of deferral of the publication of all the details of the transactions on an individual basis of four weeks if exercising the right pursuant to Article 11(3) (c) of Regulation (EU) No 600/2014.
- (d) Regarding sovereign debt instruments, competent authorities shall request the aggregation of several transactions executed over the course of one calendar week to be published on the following Tuesday before 09.00 CET if exercising the right pursuant to Article 11(3)(d) of Regulation (EU) No 600/2014.

2. In relation to all instruments that are not sovereign debt, when the extended time period in accordance with paragraph 1(b) lapses, the outstanding details of all the transactions shall be published on the next working day before 09.00 CET. For sovereign debt instruments the same shall apply if competent authorities decide not to use the options in Article 11(3)(b) and (d) of Regulation (EU) No 600/2014 consecutively pursuant to the second subparagraph of Article 11(3) of Regulation (EU) No 600/2014.

In relation to sovereign debt instruments, if competent authorities apply the options in Article 11(3)(b) and (d) of Regulation (EU) No 600/2014 consecutively pursuant to the second subparagraph of Article 11(3) of Regulation (EU) No 600/2014, competent authorities shall request for several transactions to be aggregated over the course of one calendar week and for the total volume traded per sovereign debt instrument in that calendar week to be published on the Tuesday following the expiry of the extended period of deferral of four weeks counting from the last day of the calendar week.

3. In relation to all instruments that are not sovereign debt, when the extended time period in accordance with paragraph 1(c) lapses, all the details of the transactions on an individual basis shall be published four weeks after the publication of the aggregated details in accordance with paragraph 1(c) before 09.00 CET.

4. The aggregated daily or weekly data referred to in paragraph 1 shall contain the following information for the bonds, structured finance products, derivatives and emission allowances in respect of each day or week of the calendar period concerned:

- (a) The weighted average price;

- (b) The total volume traded as referred to in Table 3 of Annex II; and
 - (c) The total number of transactions
5. Transactions shall be aggregated per ISIN for bonds, structured finance products, emission allowances and securitised derivatives and at contract level for other derivatives.
6. If the weekday foreseen for the publications required under paragraph 1 (c) and (d) and paragraphs 2 and 3 is a not a working day, the publications shall be effected on the following working day before 09.00 CET.
7. Where a transaction between two investment firms, either on own account or on behalf of clients, is executed outside the rules of a trading venue, the relevant competent authority for the purpose of this Article shall be the competent authority of the investment firm responsible for making the trade public through an APA in accordance with Article 7 paragraphs 6 to 8.

CHAPTER 3

Provisions common to pre-trade and post-trade transparency

Article 11

Size of orders that are large in scale compared with the normal market size, orders that are above the size specific to a financial instrument, relevant minimum large in scale size of transactions and size of the transactions that are above the size specific to a financial instrument

[Article 9(5) letters (c) and (d) and Article 11(4)(c) of Regulation (EU) No 600/2014]

1. In respect of each class of financial instruments for which there is a liquid market and each class of financial instruments for which there is not a liquid market as specified in Annex III, competent authorities shall ensure that the calculations to determine the following measures are made promptly after the end of each calendar year:
- (a) the large in scale size referred to in Articles 3(b) and 8(1)(a)(ii);
 - (b) the size specific to the financial instrument referred to in Articles 5(1)(b) and 8(1)(c)(ii).
2. The large in scale size referred to in paragraph 1(a) of this Article, shall be determined as the greater of:
- (a) the trade size corresponding to the trade below which lies 90% of all the transactions executed for this class of financial instruments; and
 - (b) until 30 April 2018, the large in scale threshold floor as provided for in Table 47 of Section 11 of Annex III for the corresponding class.
3. The threshold determined in accordance to paragraph (2) shall be rounded ~~up~~ to the ~~next~~ nearest:
- (b) 100,000 if the threshold value is smaller than 1 million;
 - (c) 500,000 if the threshold value is equal to or greater than 1 million but smaller than 10 million;
 - (d) 5 million if the threshold value is equal to or greater than 10 million but smaller than 100 million;
 - (e) 25 million if the threshold value is equal to or greater than 100 million.
4. The calculation of the large in scale size referred to in paragraph 2, shall take into account all the

transactions executed in the Union in respect of all the financial instruments belonging to the class in question between 1 January and 31 December of the preceding year.

5. The trade size and the total volume of the transactions referred to in paragraph 2(a) and (b) should be determined for the class in question as specified in Table 3 of Annex II of this Regulation.

6. The size specific to the financial instrument referred to in paragraph 1(b), shall be calculated as the trade size corresponding to the trade below which lies 50% of all transactions executed for this class of financial instruments 50% of the corresponding large in scale size as determined in accordance with paragraphs 2, 3, 4 and 5.

7. On the first trading day of April of each year, competent authorities shall, in relation to each class of financial instruments as specified in Annex III, ensure publication of the thresholds in paragraph (1)(a) and (b) of this Article.

8. The thresholds in paragraph 1(a) and (b) shall apply for the 12-month period starting on 1 May following publication and ending on the following 30 April.

9. All competent authorities shall ensure the first publication of the thresholds referred to in paragraph 1(a) and (b) on the first working day of April 2018, based on the reference period 1 January 2017 to 31 December 2017.

Article 12

Transactions to which the exemption in Article 1(6) of Regulation (EU) No 600/2014 shall apply

[Article 1(6) of Regulation (EU) No 600/2014]

A transaction is considered to be entered into by a member of the ESCB in performance of monetary, foreign exchange and financial stability policy if it is:

- (b) carried out for the purposes of monetary policy, including an operation carried out in accordance with Articles 18 and 20 of the Statute of the ESCB and the ECB or an operation carried out under equivalent national provisions for members of the ESCB in Member States whose currency is not the euro;
- (c) a foreign-exchange operation, including operations carried out to hold or manage official foreign reserves of the Member States or the reserve management service provided by a member of the ESCB to central banks in other countries to which the exemption has been extended in accordance with Article 1(9) of Regulation (EU) No 600/2014; or
- (d) carried out for the purposes of financial stability policy.

Article 13

Transactions to which of the exemption in Article 1(6) of Regulation (EU) No 600/2014 shall not apply

[Article 1(8) of Regulation (EU) No 600/2014]

The exemption in Article 1(6) of Regulation (EU) No 600/2014 shall not apply in respect of a transaction entered into with a member of the ESCB where that member has entered into the transaction for the performance of an operation that is unconnected with that member's performance of one of the tasks referred to in Article 12, including a transaction entered into by that member of the ESCB:

- (a) for the management of its own funds;
- (b) conducted for administrative purposes or for the staff of the member of the ESCB which include transactions conducted in the capacity as administrator of a pension scheme for its staff; or

- (c) for its investment portfolio pursuant to obligations under national law.

Article 14

Temporary suspension of transparency obligations

[Article 9(5) (a) of Regulation (EU) No 600/2014]

1. For financial instruments for which there is a liquid market in accordance with Annex III of this Regulation, a competent authority may temporarily suspend the obligations referred to in Articles 8 and 10 Regulation (EU) No 600/2014 when for a class of bonds, structured finance products, emission allowances or derivatives, the total volume as defined in Table 3 of Annex II calculated for the previous 30 days represents less than 40% of the average monthly volume calculated for the 12 full calendar months preceding those 30 days.
2. For financial instruments for which there is not a liquid market in accordance with Annex III, a competent authority may temporarily suspend the obligations referred to in Articles 8 and 10 of Regulation (EU) No 600/2014 when for a class of bonds, structured finance products, emission allowances or derivatives, the total volume as defined in Table 3 of Annex II calculated for the previous 30 days represents less than 20% of the average monthly volume calculated for the 12 full calendar months preceding those 30 days.
3. To perform these calculations, competent authorities shall take into account all the transactions executed on all venues in the Union for the class of bonds, structured finance products, emission allowances or derivatives concerned. The calculations shall be performed on the basis of the classes defined in Annex III of this Regulation.
4. Before the competent authorities exercise the power of suspending transparency, they shall ensure that the significant decline in liquidity across all venues is not the result of seasonal effects of the relevant class of financial instruments on liquidity.

Article 15

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 3 January 2017.

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 II: Details of transaction to be made available to the public

Table 3
Measure of volume

Type of instrument	Volume
Bonds and structured finance products	Total nominal value of debt instruments traded
Securitized derivatives	Number of units traded * price per unit
Interest rate derivatives	Notional amount of traded contracts
Foreign Exchange Derivatives	Notional amount of traded contracts
Equity derivatives	Number of contracts * contract size* strike (options) or future price (futures)
Commodity derivatives	Notional amount of traded contracts <u>Tons of Metal, or other standard unit of measurement relating to the specific underlying commodity type as the case may be</u>
Credit derivatives	Notional amount of traded contracts
Contract for differences	Notional amount of traded contracts
Other derivatives	Notional amount of traded contracts
Emission allowances	Tons of Carbon Dioxide

Annex III: Liquidity assessment, LIS and SSTI thresholds for non- equity financial instruments

Section 3

Contract types definitions

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

- (1) 'Futures' means a contract to buy or sell a commodity or financial instrument in a designated future date at a price agreed upon at the initiation of the contract by the buyer and seller. ~~Every futures~~ and which contract has standard terms that dictate the minimum quantity and quality that can be bought or sold, the smallest amount by which the price may change, delivery procedures, maturity date and other characteristics related to the contract.
- (2) 'Option' means a contract that gives the owner the right, but not the obligation, to buy (call) or sell (put) a specific financial instrument or commodity at a predetermined price, strike or exercise price, at or up to a certain future date or exercise date.
- (3) 'Swap' means a contract in which two parties agree to exchange cash flows ~~in one financial instrument for another~~ at a certain future date.
- (4) 'Forward agreement' means a ~~private agreement~~ contract between two parties to buy or sell a commodity or financial instrument at a designated future date at a price agreed upon at the initiation of the contract by the buyer and seller.
- (5) 'Swaption' means a contract that gives the owner the right, but not the obligation, to enter a swap at or up to a certain future date or exercise date. In some cases the swaption may be settled with a cash payment equal to the market value of the underlying swap at the time of exercise.
- (6) **'All other derivatives' means those categories of derivatives that either: i) do not fall within one of the other classes (i.e. are not interest rate, equity, commodity, foreign exchange, credit derivatives classes); and/or ii) Have multiple underliers, such that they can fall within multiple classes.**

Section 4

Interest rate derivatives

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

- (1) 'Interest rate derivatives' means any contract as defined in Annex I, Section C(4) of Directive 2014/65/EU whose underlying is an interest rate, a bond, a loan, a swapnote, any basket, portfolio or index including an interest rate, a bond, a loan, a swapnote or any other product representing the performance of an interest rate, a bond, a loan, ~~or~~ a swapnote.
- (2) 'All other interest rate derivatives' means any class of interest rate derivatives which do not fall within any of the classes set out in Table 5 to 31.
- (23) 'Bond futures liquid class' means a bond futures characterised by a specific combination of underlying type, underlying and time to maturity as specified in each row of Table 5 Bond futures – liquid classes.
- (34) 'Bond futures class not having a liquid market' means a bond futures which is not a bond futures liquid class. Tables 5 and 6 only apply to interest rate derivatives which are exchange-traded derivatives.
- (45) 'Time to Maturity' means the time period from trade date to expiry of the futures contract.

Table 5

Bond futures – liquid classes

[Refer to Text]

Table 6

Bond futures – classes not having a liquid market

[Refer to Text]

- (1) 'Interest rate futures liquid class' means an interest rate futures characterised by a specific combination of underlying type, underlying and time to maturity as specified in each row of Table 7 Interest rate futures – liquid classes.
- (2) 'Interest rate futures class not having a liquid market' means any interest rate futures which is not an interest rate futures liquid class. Tables 7 and 8 only apply to interest rate derivatives which are exchange-traded derivatives.
- (3) 'Time to Maturity' means the time period from trade date to expiry of the futures contract.

Table 7

Interest rate futures – liquid classes

[Refer to Text]

Table 8

Interest rate futures – classes not having a liquid market

[Refer to Text]

- (1) Bond option liquid class' means a bond option characterised by a specific combination of underlying type, underlying, and time to maturity as specified in each row of Table 9 Bond options – liquid classes.
- (2) 'Bond option class not having a liquid market' means a bond option which is not a bond option liquid class. Tables 9 and 10 only apply to interest rate derivatives which are exchange-traded derivatives.
- (3) 'Time to Maturity' means the time period from the trade date to expiry of the option contract.

Table 9

~~Bond options~~ **Options on Bond Futures – liquid classes**

[Refer to Text]

Table 10

~~Bond options~~ **Options on Bond Futures – classes not having a liquid market**

[Refer to Text]

- (4) Interest rate option liquid class' means an interest rate option characterised by a specific combination of underlying type, underlying, and time to maturity as specified in each row of Table 11 Interest rate options – liquid classes.
- (5) 'Interest rate option class not having a liquid market' means an interest rate option which is not an interest rate option liquid class. Tables 11 and 12 only apply to interest rate derivatives which are exchange-traded derivatives
- (6) 'Time to Maturity' means the time period from the trade date to expiry of the option contract.

Table 11

~~Interest rate options~~ **Options on Interest Rate Futures – liquid classes**
[Refer to Text]

Table 12

~~Interest rate options~~ **Options on Interest Rate Futures – classes not having a liquid market**
[Refer to Text]

- (1) Swaption liquid class' means an interest rate swaption contract whose notional amount is denominated in one of the currencies specified in each row of Table 13 Swaptions – liquid classes.
- (2) 'Swaption class not having a liquid market' means an interest rate swaption which is not a swaption liquid class.

Table 13

Swaptions – liquid classes
[Refer to Text]

Table 14

Swaptions – classes not having a liquid market
[Refer to Text]

- (1) 'Forward rate agreement (FRA)' means a forward rate agreement contract on an interest rate.
- (2) 'Forward rate agreement (FRA) liquid class' means a forward rate agreement characterised by a specific combination of underlying interest rate, currency in which the nominal amount is denominated and tenor as specified in each row of Table 15 FRA – liquid classes.
- (3) 'Forward rate agreement (FRA) class not having a liquid market' means a forward rate agreement which is not a FRA liquid class;
- (4) 'LIBOR' means London Interbank Offered Rate.
- (5) 'EURIBOR' means Euro Interbank Offer Rate.
- (6) 'STIBOR' means Stockholm Interbank Offered Rate.
- (7) 'BBSW' means Bank Bill Swap.
- (8) 'JIBAR' means Johannesburg Interbank Agreed Rate.
- (9) 'Tenor' means the time period from trade date to maturity date of the contract.

Table 15

FRA – liquid classes
[Refer to Text]

Table 16

FRA – classes not having a liquid market
[Refer to Text]

- (1) Multi-currency swaps' or 'cross-currency swaps' means a swap where two parties exchange cash flows

denominated in different currencies where the cash flows are determined by interest rates.

- (2) 'Fixed to float multi-currency swap' means a multi-currency swap where the cash flows of one leg are determined by a fixed interest rate while those of the other leg are determined by a floating interest rate.
- (3) 'Fixed to float multi-currency swap liquid class' means a fixed to float multi-currency swap characterised by a specific combination of tenor and currency-pair in which the notional amount of the two legs are denominated as specified in each row of Table 17 Fixed to Float Multi-currency swaps – liquid classes.
- (4) 'Fixed to float multi-currency swap class not having a liquid market' means a fixed to float multi-currency swap which is not a fixed to float multi-currency swap liquid class.
- (5) 'Tenor' means the time period from trade date to maturity date of the contract.

Table 17

Fixed to Float Multi-currency swaps – liquid classes

[Refer to Text]

Table 18

Fixed to Float Multi-currency swaps – classes not having a liquid market

[Refer to Text]

- (1) 'Float to float multi-currency swap' means a multi-currency swap where the cash flows of both legs are determined by floating interest rates.
- (2) 'Float to float multi-currency swap liquid class' means a float to float multi-currency swap characterised by a specific combination of tenor and currency-pair in which the notional amount of the two legs are denominated as specified in each row of Table 19 Float to Float Multi-currency swaps – liquid classes.
- (3) 'Tenor' means the time period from trade date to maturity date of the contract.

Table 19

Float to Float Multi-currency swaps – liquid classes

[Refer to Text]

Table 20

Float to Float Multi-currency swaps – classes not having a liquid market

[Refer to Text]

- (1) Fixed to fixed multi-currency swap means a multi-currency swap where the cash flows of both legs are determined by fixed interest rates.
- (2) 'Tenor' means the time period from trade date to maturity date of the contract.

Table 21

Fixed to Fixed Multi-currency swaps – classes not having a liquid market

[Refer to Text]

- (1) Overnight Index Swap (OIS) means a swap related to a published index of a daily overnight reference interest rate.

- (2) 'OIS multi-currency swap' means a multi-currency swap where the cash flows of at least one leg are determined by an Overnight Index Swap (OIS) rate.
- (3) 'Tenor' means the time period from trade date to maturity date of the contract.

Table 22

OIS Multi-currency swaps – classes not having a liquid market

[Refer to Text]

- (1) 'Inflation multi-currency swap' means a multi-currency swap where the cash flows of at least one leg are determined by an inflation rate.
- (2) 'Single-currency swap' means a swap where two parties exchange cash flows denominated in the same currency where the cash flows of at least one leg are determined by interest rates.
- (3) 'Fixed to float single-currency swap' means a single-currency swap where the cash flows of one leg are determined by a fixed interest rate while those of the other leg are determined by a floating interest rate.
- (4) 'Fixed to float single-currency swap liquid class' means a fixed to float single-currency swap characterised by a specific combination of tenor and currency in which the notional amount is denominated as specified in each row of Table 23 Fixed to Float Single- currency swaps – liquid classes.
- (5) 'Fixed to float single-currency swap class not having a liquid market' means a fixed to float single-currency swap which is not a fixed to float single-currency swap liquid class.
- (6) 'Tenor' means the time period from trade date to maturity date of the contract.

Table 23

Fixed to Float Single-currency swaps – liquid classes

[Refer to Text]

Table 24

Fixed to Float Single-currency swaps – classes not having a liquid market

[Refer to Text]

- (1) 'Inflation single-currency swap' means a ~~single-currency swap~~ swap where the two parties exchange cash flows denominated in the same currency where the cash flows of at least one leg are determined by an inflation rate.
- (2) 'Inflation single-currency swap liquid class' means an inflation single-currency swap characterised by a specific combination of tenor and currency in which the notional amount is denominated as specified in each row of Table 25 Inflation Single-currency swaps – liquid classes.
- (3) 'Inflation single-currency swap class not having a liquid market' means an inflation single-currency swap which is not an inflation single-currency swap liquid class.
- (4) 'Tenor' means the time period from trade date to maturity date of the contract.

Table 25

Inflation Single-currency swaps – liquid classes

[Refer to Text]

Table 26

Inflation Single-currency swaps – classes not having a liquid market

[Refer to Text]

- (1) 'OIS single-currency swap' means a single-currency swap where the cash flows of at least one leg are determined by an Overnight Index Swap (OIS) rate.
- (2) 'OIS single-currency swap liquid class' means an OIS single-currency swap characterised by a specific combination of tenor and currency in which the notional amount is denominated as specified in each row of Table 27 OIS Single-currency swaps – liquid classes.
- (3) 'OIS single-currency swap class not having a liquid market' means an OIS single-currency swap which is not an OIS single-currency swap liquid class.
- (4) 'Tenor' means the time period from trade date to maturity date of the contract.

Table 27

OIS Single-currency swaps – liquid classes

[Refer to Text]

Table 28

OIS Single-currency swaps – classes not having a liquid market

[Refer to Text]

- (1) 'Float to float single-currency swap' means a single-currency swap where the cash flows of both legs are determined by floating interest rates.
- (2) 'Float to float single-currency swap liquid class' means a float to float single-currency swap characterised by a specific combination of tenor and currency in which the notional amount is denominated as specified in each row of Table 29 Float to Float Single-currency swaps – liquid classes.
- (3) 'Float to float single-currency swap class not having a liquid market' means a float to float single-currency swap which is not a float to float single-currency swap liquid class.
- (4) 'Tenor' means the time period from trade date to maturity date of the contract.

Table 30

Float to Float Single-currency swaps – classes not having a liquid market

[Refer to Text]

- (1) Fixed to fixed single-currency swap means a single-currency swap where the cash flows of both legs are determined by fixed interest rates.
- (2) 'Tenor' means the time period from trade date to maturity date of the contract.

Table 31

Fixed to Fixed Single-currency swaps – classes not having a liquid market

[Refer to Text]

Section 4
Equity derivatives

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

- (1) 'Equity derivatives' means any contract as defined Annex I, Section C(4) of Directive 2014/65/EU related to:
 - (a) one or more shares, depositary receipts, ETFs, certificates, other similar financial instruments, cash-flows or other products related to the performance of one or more shares, depositary receipts, ETFs, certificates, or other similar financial instruments;
 - (b) a portfolio or an index including one or more shares, depositary receipts, ETFs, certificates, other similar financial instruments, cash-flows or other products related to the performance of one or more shares, depositary receipts, ETFs, certificates, or other similar financial instruments.
- (2) 'Index option' means an option whose underlying is an index composed of shares.
- (3) 'Index futures' means futures whose underlying is an index composed of shares.
- (4) 'Stock option' means an option whose underlying is a share.
- (5) 'Stock futures' means futures whose underlying is a share.
- (6) 'Stock dividend option' means an option on the dividend of a specific share.
- (7) 'Stock dividend futures' means futures on the dividend of a specific share.
- (8) 'Dividend index option' means an option on an index composed of dividends of more than one share.
- (9) 'Dividend index futures' means futures on an index composed of dividends of more than one share.
- (10) 'Option on a basket or portfolio of shares' means an option whose underlying is a basket or a portfolio of shares.
- (11) 'Futures on a basket or portfolio of shares' means futures whose underlying is a basket or a portfolio of shares.
- (12) 'Option on other underlying values' means an option whose underlying is a volatility index or an ETF.
- (13) 'Volatility Index' means an index relating to the volatility of a specific underlying index of equities.
- ~~(14)~~ 'Futures on other underlying values' means futures whose underlying is a volatility index or an ETF.
- ~~(15)~~ 'Equity derivatives liquid class' means any of the contract types as specified in each row of Table 32 Equity derivatives – liquid classes.
- ~~(16)~~ 'Equity derivatives not having a liquid market' means an equity derivative which is not an equity derivatives liquid class. Table 32 only applies to equity derivatives which are exchange-traded derivatives.

Table 32
Equity derivatives – liquid classes
[Refer to Text]

Table 33
Equity derivatives – classes not having a liquid market

[Refer to Text]

Section 5
Commodities derivatives

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

- (1) 'Metal commodity futures liquid class' means a commodity futures characterised by a specific combination of underlying type, underlying and currency in which the contract is denominated as specified in each row of Table 34 Metal commodity futures – liquid classes.

'Metal commodity futures class not having a liquid market' means commodity futures which are not a metal commodity futures liquid class

Table 34
Metal commodity futures – liquid classes
[Refer to Text]

Table 35
Metal commodity futures – classes not having a liquid market
[Refer to Text]

- (1) 'Metal commodity option liquid class' means a commodity option characterised by a specific combination of underlying type, underlying and currency in which the contract is denominated as specified in each row of Table 36 Metal commodity options – liquid classes.
- (2) 'Metal commodity options class not having a liquid market' means a commodity option which is not a metal commodity option liquid class.

Table 36
Metal commodity options – liquid classes
[Refer to Text]

Table 37
Metal commodity options – classes not having a liquid market
[Refer to Text]

- (1) 'Energy commodity futures liquid class' means a commodity futures characterised by a specific combination of underlying type, underlying, currency in which the contract is denominated and time to maturity as specified in each row of Table 38 Energy commodity futures – liquid classes.
- (2) 'Energy commodity futures class not having a liquid market' means commodity futures which are not an energy commodity futures liquid class

Table 38
Energy commodity futures – liquid classes
[Refer to Text]

Table 39
Energy commodity futures –classes not having a liquid market
[Refer to Text]

Table 40

Energy commodity options – classes not having a liquid market

[Refer to Text]

- (1) 'Agricultural commodity futures liquid class' means a commodity futures whose underlying is one of those specified in each row of Table 41 Agricultural commodity futures – liquid classes.
- (2) 'Agricultural commodity futures class not having a liquid market' means commodity futures which are not an agricultural commodity futures liquid class.

Table 41

Agricultural commodity futures – liquid classes

[Refer to Text]

Table 42

Agricultural commodity futures – classes not having a liquid market

[Refer to Text]

- (1) 'Agricultural commodity option liquid class' means a commodity option whose underlying is one of those specified in each row of Table 43 Agricultural commodity options – liquid classes.
- (2) 'Agricultural commodity options class not having a liquid market' means a commodity option which is not an agricultural commodity option liquid class.

Table 43

Agricultural commodity options – liquid classes

[Refer to Text]

Table 44

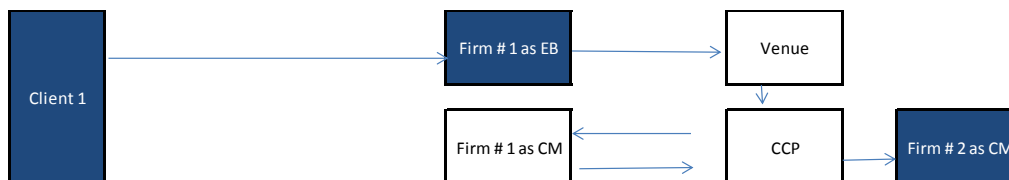
Agricultural commodity options – classes not having a liquid market

[Refer to Text]

Chapter 8: Market Data Reporting

Worked Examples

WORKED EXAMPLES – ETD Option Exercise on Reporting



Scenario 1 Call option on Brent Crude Dec 15 partially exercised in May 2015

Day						MIFID text	
1	Client	Execution	Buy 10 lots	Brent Crude Dec 15	Option	Reportable	Execution
	Firm # 1 EB	Execution	Buy 10 lots	Brent Crude Dec 15	Option	Reportable	Execution
	Firm # 1 CM	Clearing to Guarantor CM	Buy 10 lots	Brent Crude Dec 15	Option	Non reportable	
	Firm # 1 CM	Give up from Guarantor CM	Buy 10 lots	Brent Crude Dec 15	Option	Non reportable	
	Firm # 2 CM	Give in by Ultimate CM	Buy 10 lots	Brent Crude Dec 15	Option	Non reportable	
	Client	EOD Position	Buy 10 lots	Brent Crude Dec 15	Option	Non reportable	
	Firm # 2 CM	EOD Position	Buy 10 lots	Brent Crude Dec 15	Option	Non reportable	
	Client	Partial Early Exercise	Sell 4 lots	Brent Crude Dec 15	Option	Reportable	
	Firm # 2 CM	Partial Early Exercise	Sell 4 lots	Brent Crude Dec 15	Option	Reportable	
	Client	Underlying Future resulting from Exercise	Buy 4 lots	Brent Crude Dec 15	Future	Reportable	Result of Exercise
2	Firm # 2 CM	Underlying Future resulting from Exercise	Buy 4 lots	Brent Crude Dec 15	Future	Reportable	Result of Exercise
	Client	EOD Position	Buy 6 lots	Brent Crude Dec 15	Option	Non reportable	
	Firm # 2 CM	EOD Position	Buy 6 lots	Brent Crude Dec 15	Option	Non reportable	
	Client	EOD Position	Buy 4 lots	Brent Crude Dec 15	Future	Non reportable	
	Firm # 2 CM	EOD Position	Buy 4 lots	Brent Crude Dec 15	Future	Non reportable	

Scenario 2 Call option on Brent Crude Dec 15 fully exercised at expiry

Day						MIFID text	
1	Client	Execution	Buy 10 lots	Brent Crude Dec 15	Option	Reportable	Execution
	Firm # 1 EB	Execution	Buy 10 lots	Brent Crude Dec 15	Option	Reportable	Execution
	Firm # 1 CM	Clearing to Guarantor CM	Buy 10 lots	Brent Crude Dec 15	Option	Non reportable	
	Firm # 1 CM	Give up from Guarantor CM	Buy 10 lots	Brent Crude Dec 15	Option	Non reportable	
	Firm # 2 CM	Give in by Ultimate CM	Buy 10 lots	Brent Crude Dec 15	Option	Non reportable	
	Client	EOD Position	Buy 10 lots	Brent Crude Dec 15	Option	Non reportable	
	Firm # 2 CM	EOD Position	Buy 10 lots	Brent Crude Dec 15	Option	Non reportable	
2	Client	Expiry/ Exercise	Sell 10 lots	Brent Crude Dec 15	Option	Reportable	
	Firm # 2 CM	Expiry/ Exercise	Sell 10 lots	Brent Crude Dec 15	Option	Reportable	
	Client	Underlying Future resulting from Exercise	Buy 10 lots	Brent Crude Dec 15	Future	Reportable	Result of Exercise
	Firm # 2 CM	Underlying Future resulting from Exercise	Buy 10 lots	Brent Crude Dec 15	Future	Reportable	Result of Exercise
	Client	EOD Position	0 lots	Brent Crude Dec 15	Option	Non reportable	
	Firm # 2 CM	EOD Position	0 lots	Brent Crude Dec 15	Option	Non reportable	
	Client	EOD Position	Buy 10 lots	Brent Crude Dec 15	Future	Non reportable	
Firm # 2 CM	EOD Position	Buy 10 lots	Brent Crude Dec 15	Future	Non reportable		

Chapter 9: Post Trading Issues

RTS 37 (STP)

CHAPTER 9: POST-TRADING ISSUES

RTS 37: Draft regulatory technical standards on the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing (STP)

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

of [date]

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012 with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing (STP)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive (EU) No 2014/65/EU [MiFID II] of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, and in particular Article 17(a) thereof.

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May on markets in financial instruments and amending Regulation (EU) No 648/2012,

Whereas:

- (1) In order to manage operational risk, it is important to determine whether a derivative transaction can be cleared by a CCP at an early stage. It is therefore necessary to identify it in a clear manner.
- (2) The information needed by the trading venue and the CCP to perform their tasks as set in this regulation should be pre-determined and clearly set in the documentation of the trading venue and CCP.
- (3) It is more efficient for the market to determine whether a difficulty could occur in the post-trading process, at an early stage, and preferably before the transaction is entered into. Therefore, when the derivative transaction is entered into on a trading venue, the trading venue should get the clearing member limits for the clients and check them against the orders.
- (4) It is not necessary for the clearing member to provide such limits or for the trading venue to check orders it receives against them when the rules of the trading venue and the CCP that clears the transaction resulting from such orders require that the CCP becomes the central counterparty to the buying and selling clearing members for each such transaction.
- (45) When a transaction is entered into electronically on a trading venue, its processing can be automated and therefore its processing time can be much shorter than when it is not. As a result the time for a trading venue to process a derivative transaction should be much shorter for electronically traded derivative transactions.
- (56) As the trading venue sends the information related to derivative transactions to the CCP in a pre-agreed electronic format for both the transactions entered into in an electronic and non-electronic manner, the CCP should not need a different timeframe for these transactions for deciding whether the transaction can be accepted for clearing or not.
- (67) When derivative transactions subject to the clearing obligation are not entered into on a trading venue but on a bilateral basis, the process is usually less automated. As a result, more time would be needed to transfer the information to the CCP.

- (78) In order to manage the credit risks related to derivative contracts that are not entered into on a trading venue, the CCP should allow the clearing member to review the transaction and decide whether to accept it. As the process between the CCP and the clearing member is usually automated, this process should require limited time.
- (89) When derivative contracts are cleared on a voluntary basis, they can be submitted for clearing at any time. At the point when they are submitted to the CCP, they do not differ from other derivative transactions and the same process as for those submitted to the clearing obligation should apply.
- (910) As the processing of a derivative transaction subject to the clearing obligation concluded electronically on a trading venue is very short, there should be no or extremely limited damage suffered by the counterparties whose transactions are rejected by a CCP and therefore these transactions should be considered void. As the timeframe is longer for other derivative contracts, the parties should know in advance how the transaction will be treated.
- (101) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the European Commission.
- (112) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council, the European Securities and Markets Authority has conducted open public consultations on the draft regulatory 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:

CHAPTER I

General provisions

[Article 29 of Regulation (EU) No xx/2014]

Article 1

Content and format of the transfer of information

1. A trading venue shall detail in its rules the information it needs in order to submit a derivative transaction to a CCP for clearing and the format in which that information shall be provided.
2. A CCP shall detail in its rules the information it needs in order to clear a transaction submitted to it and the format in which that information shall be provided.

Article 2

Mandatorily cleared transactions

Where a transaction is cleared in accordance with Article 29(1) of Regulation (EU) No 600/2014 or subject to the clearing obligation in accordance with Article 4 of Regulation (EU) No 648/2012, section 1 or 2 of chapter II shall apply depending on whether it is executed on a trading venue or on a bilateral basis.

CHAPTER II

Straight through processing

Section 1

Derivative transactions mandatorily cleared and executed on a Trading Venue

Article 3

Pre-trade check

1. A clearing member shall provide to the trading venue the limits applicable to its clients that are entering into transactions referred to in Article 2 on that trading venue and update them on a regular basis.
2. A trading venue shall check that the amount of the order of the client is within the limit set by the clearing member for that client before the execution of the order.
3. The trading venue shall perform the check referred to in paragraph 2:
 - (a) within 60 seconds from the receipt of the order when the order is entered into electronically;
 - (b) within 10 minutes from the receipt of the order when the order is not entered into electronically

When the order is not within the limit, the trading venue shall inform the client and the clearing member on a real time basis when the order is entered into electronically, and within 5 minutes when the order is not entered into electronically.

4. When a trading venue is using the services of a service provider, it remains responsible for complying with paragraphs 2 and 3 of this Article.
5. Paragraphs 1 to 4 of this Article 3 shall not apply to a clearing member or a trading venue in respect of any order which is submitted to that trading venue by a member or participant of the trading venue or any client where, on execution of a transaction resulting from such order pursuant to the rules of the trading venue:
 - (a) the rules of the trading venue require that each such member or participant which is not a clearing member of the CCP through which the transaction is cleared has a contractual arrangement with such a clearing member, under which the clearing member automatically becomes party to the transaction;
 - (b) the rules of the CCP through which such transaction is cleared provide that the transaction is cleared by the clearing member on each side of the transaction automatically becoming the counterparty to the CCP; and
 - (c) the rules of the trading venue provide for the immediate creation of equivalent transactions between the clearing member and the member or participant of the trading venue or its client, as the case may be.
6. For the purposes of Article 3(5):
 - (a) a member or participant of a trading venue is a person which is recognised as such by the trading venue and which is bound by the rules of that trading venue; and
 - (b) a client is a person which has a contractual arrangement with a member or participant of the trading venue permitting it to submit orders to the trading venue and providing that the member or participant will enter into an equivalent transaction to the transaction(s) created pursuant to the rules of the trading venue if the rules of the trading venue do not themselves create an equivalent transaction to which the client is party.

Article 4

Transfer of information

1. For transactions referred to in Article 2 executed electronically on a trading venue, the trading venue shall send the information related to the transaction to the CCP within an average of 10 seconds measured over the trading venue's hours of trading on each trading day.
2. For transactions referred to in Article 2 that are not executed electronically on a trading venue, the trading venue shall send the information related to the transaction to the CCP within 10 minutes from the execution of the transaction.
3. The CCP shall accept or reject the clearing of a transaction referred to in paragraphs 1 or 2 within an average of 10 seconds following the receipt of the transmission from the trading venue measured over the trading venue's hours of trading on each trading day and inform the clearing member and the trading venue on a real time basis.

Section 2

Derivative transactions executed on a bilateral basis and subject to the clearing obligation

Article 5

Transfer of information

1. For transactions that are executed on a bilateral basis and subject to the clearing obligation in accordance with Article 4 of Regulation (EU) No 648/2012, the clearing member shall ensure that the counterparties send the information related to the trade to the CCP within 30 minutes from the execution of the transaction.
2. Within 60 seconds from the receipt of the transaction, the CCP shall check the acceptance of the transaction with the clearing member. The clearing member shall accept or refuse the transaction within 60 seconds from receiving the information from the CCP.
3. The CCP shall accept or reject the clearing of a transaction within 10 seconds following the receipt of the clearing member's acceptance and inform the clearing members and the counterparties on a real time basis.

Section 3

Derivative transactions voluntary cleared

Article 6

Transfer of information

1. Where a transaction is executed on a trading venue or on a bilateral basis and is submitted to CCP clearing on a voluntary basis, paragraph 2 of Article 5 shall apply.
2. The CCP shall accept or reject clearing of a transaction within 10 seconds following the receipt of the clearing member's acceptance and inform the clearing members and the trading venue or the counterparties on a real time basis.

Section 4

Derivative transactions rejected from clearing

Article 7

Rejection of a transaction

1. Where a derivative contract referred to in Section 1 is concluded on a trading venue and is rejected by the CCP, the trading venue shall void such contract.
2. Where a derivative contract other than those referred to in Section 1 is concluded on a trading venue and is rejected by the CCP, the following shall apply:
 - (a) If the contract is submitted to clearing in accordance with the rules of the trading venue, these rules shall determine its treatment following a rejection by the CCP;
 - (b) If the contract is submitted to clearing by the counterparties, the agreement between them shall determine its treatment following a rejection by the CCP.
3. Where a derivative contract is concluded on a bilateral basis and is rejected by the CCP, the agreement between the parties shall determine the treatment for such contract.
4. Without prejudice to paragraphs 1 to 3, when the rejection is due to a technical problem, the transaction could be re-submitted for clearing once within 10 seconds from the previous submission.

Article 8

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 3 January 2017.

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]

Chapter 9: Post Trading Issues

RTS 38 (Indirect Clearing)

RTS 38: Draft regulatory technical standards on indirect clearing

COMMISSION DELEGATED REGULATION (EU) No .../.. of [date] supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for [indirect clearing]

(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 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, and in particular Article 30 thereof.

Whereas:

(1) An indirect clearing arrangement should not expose a central counterparty (CCP), clearing member, client or indirect client to additional counterparty risk and the assets and positions of the indirect client should benefit from an appropriate level of protection. It is therefore essential that any type of indirect clearing arrangements specified in this Regulation comply with minimum conditions for ensuring their safety. To that end, the parties involved in such indirect clearing arrangements shall be subject to specific obligations. Such arrangements extend beyond the contractual relationship between indirect clients and the client of a clearing member that provides indirect clearing services.

(2) Regulation (EU) No 648/2012 requires a CCP to be a designated system under Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems. This implies that clearing members of CCPs should qualify as participants within the meaning of that Directive. Therefore to ensure an equivalent level of protection to indirect clients as granted to clients under Regulation (EU) No 648/2012, it is necessary to ensure that clients providing indirect clearing services are credit institutions, investment firms, or equivalent third country credit institutions or investment firms.

(3) Indirect clearing arrangements should be established so as to ensure that indirect clients can obtain in a default situation a level of protection of equivalent effect as the one envisaged for direct clients under Regulation (EU) No 648/2012. This does not imply that indirect clients should be provided with exactly the same options and account segregation arrangements envisaged for clients. However, the account structure, the level of collateral maintained on behalf of indirect clients and the requirements for CCPs, clearing members and clients should ensure that the overall level of protection granted to indirect clients is of equivalent effect as the one envisaged for clients under Regulation (EU) No 648/2012.

(4) As indirect clearing arrangements may give rise to specific risks, all the parties included in an indirect clearing arrangement, including clearing members and CCPs, should routinely identify, monitor and manage any material risks arising from the arrangement. Appropriate sharing of information between clients that provide indirect clearing services and clearing members that facilitate those services is especially important in this context. Clearing members should use information provided by clients for risk management purposes only and should prevent the misuse of commercially sensitive information, including through the use of effective barriers between different divisions of a financial institution to avoid conflicts of interest.

(5) Indirect clients should be granted a level of protection of equivalent effect as the one envisaged for clients under Regulation (EU) No 648/2012. In line with what it is envisaged under Regulation (EU) No 648/2012, the requirements laid down in this Regulation on the segregation of indirect clients' positions and assets, the management of the default of a client and the return of liquidation proceeds to an indirect client should prevail over any conflicting laws, regulations and administrative provisions of the Member States that prevent the parties from fulfilling them. When direct clients outside the European Union ~~choose~~ choose to facilitate indirect clearing to indirect clients established in the European Union, the ~~types of client shall disclose to the~~ indirect clearing arrangements specified-client the risks that may arise in this Regulation

~~are only permitted when the respect of the third country insolvency law applicable to the direct client is compatible with this Regulation.~~

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation the following definitions apply:

(1) 'indirect client' means ~~a client which is established in the client European Union~~ of a client of a clearing member of ~~a CCP established in the European Union; and~~

(2) 'indirect clearing arrangement' or 'indirect clearing ~~service arrangement~~ 'services' means the set of contractual relationships between ~~the central counterparty (CCP), a CCP established in the European Union, a clearing member of the CCP, the client of a clearing member and the indirect client that allows, pursuant to which~~ the client of a clearing member ~~to provide~~ provides clearing services to an indirect client. Accordingly, the obligations set out in this Regulation do not apply to an entity that receives clearing services for exchange traded derivatives (whether directly or indirectly) from an indirect client.

Article 2

Structure of indirect clearing arrangements

1. Where a clearing member is prepared to facilitate indirect clearing, ~~any services for a client, such~~ client of ~~such the~~ clearing member shall be permitted to provide indirect clearing services to one or more of its own clients, provided that the client of the clearing member is an authorised credit institution, investment firm or an equivalent third country credit institution or investment firm.
2. The contractual terms of an indirect clearing arrangement shall be agreed between the client of a clearing member and the indirect client, after consultation with the clearing member on the aspects that can impact the operations of the clearing member and the ability of the clearing member to fulfil its obligations under this Regulation. They shall include contractual requirements on the client to honour all obligations in respect of the positions and assets of the indirect client towards the clearing member. These requirements shall refer only to transactions arising as part of the indirect clearing arrangement, the scope of which shall be clearly documented in the agreed contracts.

Article 3

Obligations of CCPs

1. Indirect clearing arrangements shall not be subject to business practices of the CCP which act as a barrier to their establishment on reasonable commercial terms. At the request of a clearing member, the CCP shall maintain 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. When a client manages multiple indirect clients in a single account with the segregation option provided for in Article 4(2) (b), the CCP shall calculate margin requirements separately for each indirect client. This calculation is based on the information under Article 4(3).
3. A CCP shall identify, monitor and manage any material risks arising from indirect clearing arrangements that could affect the resilience of the CCP.

Article 4

Obligations of clearing members

1. A clearing member that offers to facilitate indirect clearing services shall do so on reasonable commercial terms. Without prejudice to the confidentiality of contractual arrangements with individual clients, the clearing member shall publicly disclose the general terms on which it is prepared to facilitate indirect clearing services. These terms may include minimum operational requirements for clients that provide indirect clearing services.
2. When facilitating indirect clearing arrangements, a clearing member shall implement any of 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:
 - (i) distinguish in accounts with the clearing member the assets and positions of the client from those held for the accounts of its indirect clients; and (ii) distinguish in records the positions and the collateral value ~~of (after applying any haircut as agreed between the assets held for clearing member and the benefit of client or the client and the indirect client)~~ attributable to an indirect client from those ~~held for the benefit of~~ attributable to other indirect clients.
3. When a client manages multiple indirect clients in a single account with the segregation option provided for in paragraph 2(b), the clearing member shall ensure that the CCP has all the necessary information to determine the separate the positions ~~from of~~ of each indirect client in the account on a daily basis. This information is based on the information referred to in Article 5(2).
4. A clearing member that ~~offers~~ agrees to facilitate provide indirect clearing services in accordance with the segregation option in paragraph 2(b) shall transfer, in accordance with any relevant terms of the indirect clearing arrangements, to the relevant CCP ~~the(s) the value of any assets which such clearing member calls and receives from the client in respect of the relevant indirect client(s) clearing through the segregation option provided for in paragraph 2(b). Any additional collateral value of the assets it received from its client but not called for by the benefit clearing member shall be treated in accordance with any relevant terms of each the indirect client under segregation option in paragraph 2(b) clearing arrangements.~~
5. A clearing member ~~that offers shall, for each client for which it agrees to facilitate indirect clearing services shall, open an individually~~ a segregated account at the CCP for the ~~client's~~ client's exclusive purpose of holding the assets and positions of the client's indirect clients.
6. A clearing member that offers to facilitate indirect clearing services shall disclose the information under Article 39(7) of Regulation (EU) No 648/2012 with reference to the segregation arrangements available to clients that provide indirect clearing services.
7. A clearing member shall establish robust procedures to manage the default of a client that provides indirect clearing services. The clearing member shall ensure that its procedures allow for the prompt liquidation of the assets and positions of indirect clients following the default of the client. It shall also include the details of how the clearing member would communicate to indirect clients that the client is in default, the period of time window by when within which it will be expected that the relevant indirect client portfolios will have been liquidated, and the steps required pursuant to which reasonable endeavours shall be used to initiate the return of the liquidation proceeds to the indirect client pursuant to arrangements contemplated under Article 5(6) or (i) where the clearing member has insufficient information to make the payment to the indirect client or (ii) where the return of the liquidation proceeds to the indirect client would be contrary to or inconsistent with applicable law or regulation, the client for the account of the indirect client.

8. A clearing member shall use the information provided by clients under Article 5(7) to identify, monitor and manage any material risks arising from facilitating indirect clearing arrangements including using information provided by clients under paragraph 4 that could affect the resilience of the clearing member. The clearing member shall establish robust internal procedures to ensure this information cannot be used for commercial purposes.

Article 5

Obligations of clients

1. 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 alternative account segregation options provided for in Article 4(2) and shall ensure that indirect clients are fully informed of the risks associated with each segregation option. In the event that, notwithstanding reasonable endeavours on the part of the client, an indirect client does not inform the client of its choice of account segregation, the client shall be permitted to provide indirect clearing services using the account segregation option provided for in Article 4(2)(a).
2. When a client manages multiple indirect clients in a single account with the segregation option provided for in Article 4(2) (b), the client shall ensure that the clearing member has all the necessary information to separate the positions and the collateral value ~~of the assets held for the benefit of~~ attributable to each indirect client in the account on a daily basis.
3. A client that provides indirect clearing services shall request the clearing member to open ~~an individually a~~ a segregated account at the CCP. The account shall be for the exclusive purpose of holding the assets and positions of its indirect clients.
4. A client that provides indirect clearing services in accordance with the segregation option in Article 4(2) (b) shall ~~disclose the details transfer, in accordance with any relevant terms of the different levels indirect clearing arrangements, to its clearing member the value of segregation any assets which such client calls and a description of receives from the risk involved with relevant indirect client(s) clearing through the respective levels of segregation offered option provided for in Article 4(2)(b). Any additional collateral received but not called for by the client shall be treated in accordance with any relevant terms of the indirect clearing arrangements.~~
5. A client shall provide the indirect client with sufficient information to identify the CCP and the clearing member used to clear the indirect client's positions.
6. ~~A Save where contrary to or inconsistent with applicable law or regulation, a~~ Save where contrary to or inconsistent with applicable law or regulation, a client that provides indirect clearing services shall include, in its contractual arrangement with indirect clients, that have selected the account segregation option provided for in Article 4(2) (b), terms to facilitate the prompt return to the indirect client of the proceeds from the liquidation of the positions and assets held by the clearing member for the benefit of the indirect client. Where the inclusion of such terms would be contrary to or inconsistent with applicable law or regulation, the client shall ensure that indirect clients are made aware of the risks that may arise with respect to proceeds from the liquidation of the positions and assets held by the clearing member for the benefit of the indirect client.
7. A client shall provide the clearing member with sufficient information to identify, monitor and manage any material risks arising from facilitating indirect clearing arrangements. In the event of default of the client, all information held by the client in respect of its indirect clients shall be made immediately available to the clearing member. In particular, in the event of a default of the client, the client shall provide immediately the clearing member with sufficient information to identify the indirect clients ~~in relation to the information under paragraph 2.~~ that have selected the account segregation option provided for in Article 4(2)(b).

This document comprises Annex I to FIA Europe's response to ESMA's December 2014 MIFID II Consultation Paper.



Article 6

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 3 January 2017. ~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~ 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