



EUROPEAN PRINCIPAL
TRADERS ASSOCIATION

Response by the FIA European Principal Traders Association to the European Commission consultation on the draft Delegated Regulation specifying the conditions under which the commercial terms for clearing services for OTC derivatives are to be considered to be fair, reasonable, non-discriminatory and transparent (FRANDT)

7 April 2021

Introduction

The FIA European Principal Traders Association (FIA EPTA) represents 30 independent European Principal Trading Firms (PTFs) that deal on own account, using their own money for their own risk, to provide liquidity and immediate risk-transfer in exchange-traded and/or centrally-cleared markets for a wide range of instruments, including shares, options, futures, bonds, OTC derivatives and ETFs. As market makers and liquidity providers, our members contribute to efficient, resilient, and high-quality secondary markets that serve the investment and risk management needs of end-investors and corporates throughout Europe.

Many of FIA EPTA's members are clients of direct clearing members, and therefore rely on clearing members for access to financial markets. In consequence, we are supportive of the overarching objective which the Delegated Regulation on FRANDT seeks to achieve, which is to increase access to client clearing services by ensuring that clearing members provide clearing services on fair, reasonable, non-discriminatory, and transparent terms.

In this regard, FIA EPTA members specifically consider that additional regulatory requirements need to be specified so as to ensure that conflicts of interest which may exist within banking groups which offer client clearing services are effectively addressed.

We welcome the opportunity to provide our comments to the present consultation. Should you need any additional clarifications or feedback, we stand ready to support the Commission with any further information it may require.

Addressing conflicts of interest

FIA EPTA members strongly consider that the draft Delegated Regulation should specifically address the issue of conflicts of interest. We note that Article 4(3a) of EMIR requires clearing members to take "all reasonable measures to identify, prevent, manage and monitor conflicts of interest, in particular between the trading unit and the clearing unit, that may adversely affect the fair, reasonable, non-discriminatory and transparent provision of clearing services." In regard to setting out regulatory

technical standards regarding the “requirements that facilitate clearing services on a fair and non-discriminatory basis” per Article 4(3a)(c), we consider that it would be extremely helpful to further detail this requirement.

In particular, we would encourage the Commission to clarify that trading personnel should not influence or interfere with the decisions of clearing personnel regarding (i) whether to provide clearing services to a customer, and (ii) the commercial terms offered to a clearing customer, including fees.

Such a clarification is consistent with rules already adopted in the US (see page 6 “Conflicts of Interest in Clearing Activities”) at https://www.cftc.gov/sites/default/files/idc/groups/public/@news-room/documents/file/bcs_factsheets_final.pdf). It should be noted that all of the leading clearing service providers in the EU already comply with these rules for their U.S. client clearing business.

This clarification would help to develop the FRANDT standards in a meaningful way that will improve access to clearing and bring concrete benefits to clearing customers, while not creating an undue burden on clearing members.

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