FIA response to ESMA Consultation Paper on the Draft RTS on information on clearing fees and associated costs

Date: 4 September 2025

1. Introduction & Executive Summary

FIA[1] welcomes the opportunity to respond to the ESMA Consultation Paper on the Draft RTS on information on clearing fees and associated costs (Article 7c(4) of EMIR) ('Consultation Paper'). FIA members support the policy objective to provide sufficient transparency to clients accessing CCPs indirectly via clearing service providers ('CSPs') regarding fees that they would need to pay for the provision of clearing services.

However, FIA strongly believes that the proposals exceed what is necessary to meet the objective of the provisions, given the existing rules that already require the granular disclosure of clearing fees and associated costs under a number of EU regulations, including EMIR and MiFID II. Therefore, introducing the proposals would lead to duplicative, costly requirements for CSPs, without adding further value to clients.

As a principal point, FIA members who provide clearing services do not report any client dissatisfaction with the way that clearing fees and associated costs are communicated to clients to date.

Clients are generally motivated to select a CSP that has the lowest overall cost (amongst other factors such as risk appetite, client service, breadth of offering, location and choice of CCPs), and are agnostic as to the exact composition of that overall cost. The market for clearing services is highly competitive, with clients being able to choose from a number of CSPs which best meet their needs, whether this is driven by cost considerations, risk appetite or access to required CCPs. As such, there is no discernible benefit to clients from a further breakdown of costs by category as

[1] FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers. FIA's mission is to:

- support open, transparent and competitive markets,
- protect and enhance the integrity of the financial system, and
- promote high standards of professional conduct.

As the principal members of derivatives clearinghouses worldwide, FIA's clearing firm members play a critical role in the reduction of systemic risk in global financial markets.

ultimately, total cost is their primary focus, whereas there is a burden on CSPs to provide this information, where the net benefit is unclear.

As a result, we believe that the clearing fees and associated costs requirements as proposed in the **draft RTS should be significantly simplified and materially amended to enable firms to meet compliance with Article 7c(2) by directing clients to the CSPs' public disclosures that are already being made under Article 38(1) and Article 39(7) of EMIR and privately sharing bilateral disclosures under Article 4(3a) of EMIR or Article 24(4) of MiFID II (the latter upon request)**.

In this way, the Article 7c(2) disclosure could help bring together the different sources of existing information in a 'one-stop-shop' by clearly setting out in one document where and how to obtain existing disclosures, it would make it easier for clients to identify where/how to access this information, without requiring CSPs to transform or duplicate this information to meet a new set of substantially similar requirements to those that already exist.

To illustrate this point, in ***Appendix I*** to this response, we have compared some of the existing fee/cost disclosure requirements on CSPs in EMIR and MiFID II with EMIR Article 7c(2) and the proposed draft RTS requirements. The gap analysis shows significant overlap between the existing fee disclosure requirements and the ones proposed in the draft RTS. Whilst the obligations are not identical, they are substantively equivalent, just expressed in different terms.

Where there is less overlap with existing requirements (e.g. in relation to the level of detail and granularity), these are the areas where we believe there is minimal benefit for clients in receiving this extra information (as explained in our response). The apparent lack of overlap does not represent a meaningful gap for clients in practice that needs to be filled.

With this in mind, we note that the proposed draft RTS requirements should go hand in hand with the broader EU's simplification rulemaking agenda, so we ask ESMA to take into account this key objective when finalising the clearing fees and costs transparency requirements in Level 2 and to avoid introducing duplicative and overlapping disclosure requirements and unnecessary burden on EU CSPs.

Against this backdrop, we have set out below the views of FIA members that provide clearing services. In summary, we believe that the scope of the draft RTS is too broad and goes beyond the requirement in Level 1. In relation to fee types, we urge ESMA not to be overly prescriptive in mandating different types of fees, and instead focus on ensuring that CSPs disclose relevant fees and costs without duplication with existing requirements in a manner that is clear, understandable and meaningful, leaving flexibility for CSPs to adapt disclosures to their business models while meeting the transparency objective. On pass-on costs, clients would be best served if they obtain this information from the CCPs directly as there appears to be no obvious benefit if the CSPs duplicate the same information in their disclosures to clients. We also ask ESMA to confirm that compliance with existing regulatory requirements on CSPs in relation to clearing fees and costs disclosures satisfies the EMIR Article 7c(2) requirements, where relevant.

While not explicitly part of the Consultation Paper, we ask ESMA to consider introducing an appropriate implementation period for CSPs to meet the final RTS requirements. The amount of time required will vary depending on the final RTS requirements. Based on FIA's proposal in this response, we estimate that if CSPs are allowed to largely rely on existing MiFID and EMIR disclosures, CSPs will need less implementation time than if they are required to comply with ESMA's current proposals. Although we would note that firms will require a lot more than the 20 days currently contemplated in the draft RTS – this is due to the time needed to take any disclosure revisions through internal governance processes to identify the in-scope arrangements, compare the disclosures that they already make available to clients with the final RTS requirements and create a 'delta' that will make clear which pieces of information need to be provided to clients, implement system changes, go through required governance processes and obtain approvals.

2. Responses to Consultation Paper questions

a. *ESMA Question 1 - Is there any aspect of the scope of this requirement that ESMA should consider detailing further?*

i. *EMIR clearing fees and costs requirements should apply to clearing arrangements on EU authorised CCPs only*

Recital 16 of EMIR 3.0 refers specifically to '*Union CCPs*', whereas section 13 of the Consultation Paper and Recital 1 of the draft RTS refer to EU authorised CCPs and recognised third-country CCPs. **We urge ESMA to reconsider the clearing arrangements in scope of this requirement and align the RTS text with that of Level 1, expressly clarifying that only clearing arrangements that are cleared at EU authorised CCPs are in scope of the RTS requirements.**

Applying the requirements to also include recognised third country CCPs would bring the RTS in direct conflict with Level 1. Furthermore, this would also create practical implementation challenges for CSPs as they would be subject to a different regulatory framework on transparency than the CCP, whose regulatory and supervisory regime has been deemed equivalent and as a third-country CCP would not be compelled to provide the information.[2]

[2] We note the draft RTS comments on this point, asking CSPs to explain legal/operational reasons for not providing transparency to their client.

ii. *<u>Territorial scope</u>*

While ESMA states in the Consultation Paper that '*The disclosure requirements set out under Article 7c(2) of EMIR apply to all CSPs which provide clearing services in the Union…*', this still raises questions about which clearing arrangements exactly are in scope, provided that they start/end at an EU authorised CCP, as there is no definition in EMIR as to what '*provide clearing services in the Union*' means. **We ask that ESMA clarify in the final report that Article 7c(2) applies where both the CCP and the end client are located in the EU.** In other words, clearing arrangements where a non-EU client accesses an EU CCP via an EU or a non-EU CSP, are not in scope of Article 7c(2).

Even if the territorial scope of Article 7c(2) is restricted to EU clients and EU CCPs, significant logistical challenges remain, particularly when the CSP is located outside of the EU. In this case, the non-EU CSP might assert that the requirement does not apply to its operations, putting EU CSPs at a competitive disadvantage. Furthermore, transparency issues can emerge within a clearing chain where a non-EU CSP may not be obligated to provide transparency to its non-EU clients. One of its non-EU clients, in turn, could be acting as a CSP for an EU end-client. This creates a potential break in the transparency chain, impacting the overall visibility of transactions. Please see example of the latter clearing fact pattern below.

- *EU end-client <-> non-EU client/CSP2 <-> non-EU CSP1 <-> EU CCP*

We ask ESMA to clarify that in these cases, the CSP could point to the logistical challenges of requiring a third-country CSP to provide the transparency (in the same way that the draft RTS carves this out for recognised third-country Tier 1 CCPs at the moment).

iii. *<u>Product scope</u>*

In terms of product scope, we understand that EMIR Article 7c(2) **applies to centrally cleared derivatives transactions** (i.e., ETDs and cleared OTC). Such understanding would be consistent with Recital 16 of EMIR 3.0, which specifically references derivatives transactions when it provides context for EMIR Article 7c. **We ask that ESMA explicitly clarify this in the final draft RTS**.

iv. *<u>Disclosure of rebates, caps and discounts</u>*

Article 1(6) of the draft RTS states that '*Where a clearing service provider applies discounts, caps, and rebates, it shall disclose the conditions for benefitting from such discounts, caps, and rebates and allow clients to understand how discounts, caps, and rebates are calculated, and on which category of fees they apply.*'.

We believe that this specific requirement goes beyond the Level 1 text. EMIR Article 7c(2) states that the following is to be disclosed: '*the fees to be charged to such clients* *for the provision of clearing services and any other fees charged including fees charged to clients which pass on costs, and other associated costs related to the provision of clearing services.*'

There is no reference to rebates and discounts which are already dealt with by EMIR Articles 38(1) and 4(3a). **We ask ESMA to remove this requirement from the RTS to stay within the scope parameters set out in Level 1 and avoid duplication of requirements.**

b. ESMA Question 2 - Do you agree with the typology of fees identified by ESMA? If not, what fees would be more suitable?

We suggest that ESMA does not go into excessive detail specifying the types of fees or list fees that are charged only in rare or exceptional circumstances. Since some costs are inherently unforeseeable, CSPs would not be able to disclose them in advance in any meaningful way. The objective of Article 7c(2) of EMIR – to enable clients to compare the conditions under which clearing services are offered – does not require an overly granular breakdown of costs and charges. What matters most to clients from a cost perspective is the total fee charged by CSPs, not an artificial breakdown of charges into predefined categories that may not reflect the way services are actually priced or structured in practice.

Imposing excessive granularity risks creating rigid disclosure frameworks that are burdensome to implement and ultimately do not bring additional value to clients. We therefore **recommend that ESMA avoids specifying mandatory categories, and instead focuses on ensuring that CSPs disclose costs in a manner that is clear, comparable and meaningful, leaving flexibility for firms to adapt disclosures to their business models while meeting the transparency objective**.

Furthermore, **we ask ESMA to explicitly allow CSPs to rely on their existing fees and costs disclosures under MiFID II costs and charges requirements and EMIR requirements to avoid duplicative disclosures that are a compliance burden for the CSPs without providing additional benefit for the clients**.

We urge ESMA to fully apply the principle of proportionality, as enshrined in Article 5 of the Treaty on the Functioning of the European Union (TFEU), in developing its approach to the clearing fees and associated costs disclosure requirements.

In addition, we ask ESMA to clarify in the final draft RTS that **if a CSP does not actually charge a client for a particular service, the fee does not need to be disclosed**. The current draft RTS may be interpreted such that CSPs need to disclose the possibility of certain fees being paid by the client, even where the CSP does not in fact charge the client for such fees, which would be very far-reaching and would not contribute to the policy objective of this requirement stated above. **We recommend that ESMA specify in in the final draft RTS that each provision applies '*where applicable*'.**

We also ask ESMA to clarify in the final draft RTS that the notion of fees excludes interest charges as those are already covered and disclosed to clients separately.

c. *ESMA Question 3 - Do you agree with ESMA's proposal in relation to pass-on costs?*

CSPs' obligation should be limited to providing a link to the CCPs' public disclosure[3]. If firms were required to do otherwise, it would result in duplication and be overly burdensome as CCPs' costs are subject to frequent changes. Providing direct access to the information on CCPs' websites would enable clients to receive the most up-to-date and accurate information on CCP costs.

Additional requirements on CSPs should be limited to what is genuinely useful to clients. **Duplicating information that is already publicly available offers little added value and may contribute to disclosure fatigue.** We note that our proposed approach would be consistent both with Level 1, as well as with the regulatory simplification agenda.

In general, FIA members that provide clearing services do not think it is feasible to list every cost that can be passed on. Within clearing documentation and fee schedules, CSPs typically include clauses that describe and allow them to pass on CCPs' costs. CCPs can have a whole range of fees and penalties that could be charged in specific circumstances but are not part of the onboarding or transactional charges a client might incur (e.g. related to delivery failure on futures/options). But if that situation arose, CSPs may wish to pass that charge onto the client. It would not be practical for a CSP to provide their own breakdown of these CCP charges, which are not fixed or variable against a specific index, they are instead contained within the T&Cs / CCP rulebooks. It would therefore be better, as suggested above, if CSPs could simply point to a CCP's pricing schedule and rulebooks (e.g. via an online link), rather than needing to itemise these separately.

The draft RTS seems to assume a '*cost plus*' fee structure, where a CSP passes on the charges from a CCP plus their own fees on top. It is possible for some CSPs to charge an '*all in*' fee, whereby the client is charged an amount (e.g. Basis points on IM charge, or ticket fee, or both). This fee would cover the costs the CSP incurs by the CCP, without

[3] EU CCPs already provide significant fee transparency, typically on their websites. For example, see fee disclosures for Eurex Clearing (here), Euronext Clearing (here), ECC (here), Nasdaq Clearing (here) and BME Clearing (here).

passing on separate CCP costs. **We ask ESMA to confirm that the obligation on the CSP here is only to provide transparency on the CSP 'all in' fee, and not the underlying costs incurred.**[4] The latter would be impractical and unattainable as it is not possible to fully decompose a cost base across different clients.

Similarly, one must distinguish between variable fees that are driven by client activity that are ultimately passed on to individual clients and fixed costs of running a clearing business which cannot be decomposed. Therefore, **we ask ESMA to clarify in the final RTS that a CSP is not required to break down the operational, legal or infrastructure costs they incur in providing the service, if these are not independently charged as a fee to the client**; they are covered via a ticket fee, etc.

d. ESMA Question 4 - Do you agree with the proposed level of disaggregation?

We would reiterate that clients are driven to select a clearing firm that delivers the lowest overall cost to them (amongst other factors such as risk appetite, client service, breadth of offering, location and choice of CCPs) and are not interested in the way in which a cost is disaggregated.

Importantly, we believe that EMIR Article 7c(2) should be interpreted and applied in light of existing provisions that require clearing members or, in some cases, CSPs to make a fees and costs disclosure to their clients, for example, EMIR Articles 4(3a) (FRANDT), 38(1), 39(7) and MiFID II Article 24(4) and MiFID II RTS 6 Article 27. These existing requirements enable a client to understand the relevant costs and we would advise against introducing additional requirements that do not clearly demonstrate a clear benefit to a client.

Therefore, we ask that ESMA clarify in Article 1 of the RTS that compliance with the requirements listed above satisfies the requirements under Article 7c(2) of EMIR, where the disclosures are substantively equivalent. In our view, this would serve as a model example of correct application of the principle of proportionality, as well as meeting the simplification agenda principles. FIA CSP members take some comfort from ESMA's statement in paragraph 31 of the Consultation Paper, which suggests that compliance with EMIR Article 38(1) would go a long way towards satisfying the Article 7c(2) requirements. We would urge ESMA in the Final Report to go further than that and confirm compliance with EMIR Article 7c(2) in all cases where CSPs already make substantively equivalent information available to clients as required by EMIR or MiFID II.

[4] We note that the CCP fee becomes a cost to the CSP here, not a fee to the client – which is the language distinction the draft RTS seems to make.

Generally, we understand that CSPs may in practice often provide highly disaggregated fees to their clients. For example, in the context of exchange-traded derivatives, they would quote transaction costs for each exchange/CCP and also for different contracts. On the other hand, however, they may be asked by clients clearing OTC transactions to quote them for multiple CCPs. It would be counterproductive to require CSPs by regulation to disaggregate the fees every time and then the CSPs needing to explain to their clients why they were unable to provide them the required information. As set out in the Introduction, CSPs do not recall this being a particular issue raised by their clients that needed to be solved for, especially not by regulation.

Furthermore, we note that the Level 1 text does not mandate a disclosure at the level of the CCP service and so the draft RTS appears to go beyond what Level 1 requires. Specifically, EMIR Article 7c(2) states that '...*shall disclose, in a clear and understandable manner, <u>for each CCP at which they provide clearing services</u>, the fees to be charged to such clients for the provision of clearing services*...'. **We therefore ask ESMA to only mandate that fees are disaggregated at the CCP level but not at the level of each clearing service at the CCP, as being required to do so would not be practical or in line with Level 1.**

3. <u>Other comments</u>

a. *<u>Implementation period</u>*

We note that ESMA is working on the understanding that the RTS come into effect 20 days after publication in the Official Journal (OJ) of the EU.

If ESMA accepts the FIA proposals put forward in this response and revises the RTS requirements to allow CSPs to rely on their existing disclosures to satisfy Article 7c(2), CSPs will require a shorter implementation time than the implementation time needed if the RTS requirements remained unchanged. However, CSPs would not be able to comply within 20 days after publication in the OJ of the EU because at a minimum, they will still require sufficient lead time to go through their respective internal processes to identify the in-scope arrangements, compare the disclosures that they already make available to clients with the final RTS requirements and create a 'delta' that will make clear which pieces of information need to be provided to clients, implement system changes, go through required governance processes and obtain approvals. To comply with such revised requirements, considering operational complexity of in-scope arrangements and the bilateral nature of the disclosure requirements under EMIR Article 7c(2), we respectfully ask ESMA to introduce an implementation period of at least <u>6 months</u> to give CSPs sufficient time to prepare for orderly compliance with the RTS.

Alternatively, if the final RTS requirements were to remain similar to the draft RTS proposed by ESMA, CSPs would require a significantly longer timeframe to comply with the RTS requirements, considering the broad extraterritorial reach of the proposed requirements, operational complexity of in-scope arrangements, the granularity and prescriptiveness of details imposed by the draft RTS, the duplicative nature of the disclosure requirements under EMIR Article 7c(2), in addition to the other considerations mentioned in the paragraph above. In this case, we respectfully ask ESMA to introduce an implementation period of at least 12 months.

APPENDIX I

Gap analysis between EMIR 3.0 clearing fees and cost disclosure obligations and existing cost disclosure obligations on CSPs

The European Union financial services regulatory system already imposes several obligations on various types of market participants to make disclosures relating to the fees that they charge for the provision of clearing services. Accordingly, this gap analysis has been prepared to highlight the areas where there is overlap between:

(a) the clearing cost disclosure requirement introduced by Article 7c(2) of EMIR, as specified by the Draft RTS, and

(b) the existing cost disclosure obligations under the European Union financial services regulatory system.

This is intended to be a high-level analysis that has been produced to assist FIA with formulating its response to the CP. It is not an exhaustive analysis of the various cost disclosure obligations, and it should not be relied upon as formal legal advice.

Annex A to this Appendix sets out extracts of the legislation that are relevant to the various cost disclosure obligations.

Key for colour coding:

	Existing disclosure obligation fully overlaps[5] with EMIR 3.0 disclosure obligation
	Existing disclosure obligation partially overlaps with EMIR 3.0 disclosure obligation
	Existing disclosure obligation does not overlap with EMIR 3.0 disclosure obligation

Element of the obligation	EMIR 3.0 clearing cost disclosures (Art. 7c(2), EMIR and as further proposed by ESMA in the Draft RTS)	EMIR clearing fee disclosures (Art. 38(1), EMIR)	EMIR segregation cost disclosures (Art. 39(7), EMIR)[6]	EMIR FRANDT requirements (Art. 4(3a), EMIR)	MiFID ex-ante costs and charges disclosures (Art. 24(4), MiFID II)
Who is obliged to make the disclosure	CSPs providing (direct and indirect) clearing services in the EU.	EU CCPs, Tier 2 non-EU CCPs[7], EU and non-EU clearing members[8] of EU CCPs.[9]	EU CCPs, Tier 2 non-EU CCPs[10], EU and non-EU clearing members[11] of EU CCPs.[12]	CSPs providing direct and indirect clearing services in the EU. (*See also 'Scope of derivatives subject to the disclosure' below.)*	EU investment firms and credit institutions, and non-EU investment firms and credit institutions performing investment services and activities through an EU branch.
The types of clearing services for which the disclosure obligation applies	CSPs must provide the disclosures for each CCP (service) at which they provide clearing services. This includes EU and non-EU CCPs.	Disclosures must be provided for all clearing services provided by the relevant CCP or the clearing member.	Disclosures must be provided for all clearing services provided by the relevant CCP or the clearing member.	No distinction is drawn between different types of CCPs. However, CCP service scope is driven by the scope of derivatives subject to the disclosure (below).	No distinction is drawn between different types of CCPs. Disclosures apply to all investment services and ancillary activities performed by the firm.

[5] By "overlap" we do not necessarily mean that the obligations are identical. Rather, we consider that the obligations are substantively equivalent, even though they may be expressed in different terms.

[6] See also Article 27 of 'RTS 6' under MiFID II. Finally, also see Article 2(1)(b) of Commission Delegated Regulation (EU) No 149/2013, which requires clients providing indirect clearing services to "publicly disclose the general terms and conditions under which it provides those services".

[7] Unless comparable compliance has been granted for that Tier 2 non-EU CCP in accordance with Article 25a of EMIR.

[8] To the extent that they have concluded that they are in scope of the requirement.

[9] Article 39(7) is subject to ESMA Q&A that explains the territorial scope of the obligation. However, no such Q&A exists for Article 38(1). Articles 38(1) and 39(7) are both expressed as applying to "CCPs" and their "clearing members". We therefore expect that the territorial scope of Article 38(1) would be the same as for Article 39(7).

[10] Unless comparable compliance has been granted for that Tier 2 non-EU CCP in accordance with Article 25a of EMIR.

[11] To the extent that they have concluded that they are in scope of the requirement.

[12] See CCP Answer 8(i) and 8(j) of the ESMA Q&As on EMIR implementation.

Element of the obligation	EMIR 3.0 clearing cost disclosures (Art. 7c(2), EMIR and as further proposed by ESMA in the Draft RTS)	EMIR clearing fee disclosures (Art. 38(1), EMIR)	EMIR segregation cost disclosures (Art. 39(7), EMIR)[6]	EMIR FRANDT requirements (Art. 4(3a), EMIR)	MiFID ex-ante costs and charges disclosures (Art. 24(4), MiFID II)
To whom the disclosure needs to be made	Bilateral disclosure to existing and prospective clients of the CSP.	Public disclosure. ESMA expects these to be published on the CCP's or the clearing member's website (as the case may be) in an easily identifiable location without access limitations.	Public disclosure. ESMA expects these to be published on the CCP's or the clearing member's website (as the case may be) in an easily identifiable location without access limitations.	Bilateral disclosure to clients requesting clearing services from the CSP.	Bilateral disclosure to clients and potential clients. Firms generally do not have to apply this obligation to eligible counterparties. Firms may be able to agree to a more limited application of this obligation to professional clients.
Timing or trigger for the disclosures	Disclosures must be provided upon request.	Ongoing disclosure obligation. No specific timing requirements or triggers.	Ongoing disclosure obligation. It is implicit that a clearing member must make the disclosure at the time when it "offers" its client a choice of segregation.	Disclosures must be made in response to a complete "request for proposal" for clearing services made by a client.	Disclosures must be made "in good time" before the provision of investment services and/or ancillary services.
Scope of derivatives subject to the disclosures	All centrally cleared derivative transactions.	All derivative transactions cleared via the relevant clearing service.	All derivative transactions cleared via the relevant clearing service.	Limited to OTC derivative transactions that are subject to the clearing obligation under EMIR.	All MiFID financial instruments (which includes all derivatives that are subject to regulation under EMIR).
What must be disclosed	The fees and costs associated with the clearing service.	The prices and fees of each clearing service provided separately, including discounts and rebates and the conditions to benefit from those reductions.	The levels of protection and the costs associated with the different levels of segregation (i.e., omnibus client segregation and individual client segregation) that they provide.	The proposal made by the CSP in response to a request for proposal must include, amongst other things, the commercial terms on which the clearing services will be provided (including with respect to fees) and the information required to be published by articles 38(1) and 39(7) of EMIR.	Appropriate information on all expected costs and charges relating to the investment and/or ancillary services to be provided. This information must include any third-party payments.
Level of detail required	Disclosures must be made in a detailed and transparent manner that allows clients to easily understand and compare the fees charged for the clearing service offered. Each fee must be associated with the corresponding clearing service. Where a CSP applies discounts, caps, and rebates, it must disclose the conditions for benefitting from such discounts, caps, and rebates and allow clients to understand how they are calculated, and on which category of fees they apply.	ESMA expects that the information publicly disclosed must enable potential clients to establish a reasonable estimate in a manner that enables them to compare the cost of clearing with different CCPs and clearing members. Publishing only average prices and fees across all clients or the lowest prices and fees charged to a client is not sufficient. ESMA expects numerical figures to be disclosed, not simply a qualitative narrative of the factors that drive the fees.	No specific requirements.	All fees, prices, discounts and pass-on costs, as agreed between the CSP and the client, must be clearly specified. Fees, prices, and discounts should be based on objective criteria, including volumes cleared, clearing patterns and needs and requirements of a client.	All costs and charges that are not caused by the occurrence of underlying market risk must be aggregated to allow the client to understand the overall cost as well as the cumulative effect on return of the investment, and where the client so requests, an itemised breakdown shall be provided.

Element of the obligation	EMIR 3.0 clearing cost disclosures (Art. 7c(2), EMIR and as further proposed by ESMA in the Draft RTS)	EMIR clearing fee disclosures (Art. 38(1), EMIR)	EMIR segregation cost disclosures (Art. 39(7), EMIR)[6]	EMIR FRANDT requirements (Art. 4(3a), EMIR)	MiFID ex-ante costs and charges disclosures (Art. 24(4), MiFID II)
Level of granularity vis-a-vis the types of fees	To the extent possible, the fees must be broken down into the following categories: (a) on-boarding fees; (b) fixed fees; (c) transaction fees; and (d) other fees and costs.	No prescribed breakdown of prices and fees into various categories.	No prescribed breakdown of prices and fees into various categories.	Fees should clearly distinguish between costs directly related to the provision of clearing services to the client and costs related to the provision of clearing services in general, separately for each cost item, including IT costs, licensing costs and costs for collateral management.	Firms must aggregate separately: (a) costs and charges in connection with the investment service; (b) costs and charges associated with the relevant financial instruments; and (c) third party payments received by the firms in connection with the services. If a client requests a breakdown of the costs and charges, they must be broken down into at least the following categories: (a) one-off charges; (b) ongoing charges; (c) costs related to any initiated transactions; (d) charges related to ancillary services; and (e) incidental costs.
Level of granularity vis-a-vis the clearing services	Disclosures must be provided for each CCP at the level of each clearing service.	Disclosures must be provided at the level of each clearing service.	Disclosures must be provided at the level of each clearing service.	Disclosures must be provided at the level of each clearing service.	Disclosures must be provided at the level of the investment or ancillary service.
Treatment of "pass-on" costs	Pass-on costs relating to the provision of the clearing services must be clearly identified.	No specific treatment of pass-on costs.	No specific treatment of pass-on costs.	Information must be provided in the commercial terms about any pass-on costs.	No specific treatment of pass-on costs, but third-party payments and benefits must be disclosed and itemised separately.

Annex A
Extracts of relevant legislation

Part 1 – EMIR 3.0 clearing cost disclosures

EMIR

Article 7c
Information on the provision of clearing services

2. Notwithstanding Article 4(3a), clearing members and clients that provide clearing services to clients shall disclose, in a clear and understandable manner, for each CCP at which they provide clearing services, the fees to be charged to such clients for the provision of clearing services and any other fees charged including fees charged to clients which pass on costs, and other associated costs related to the provision of clearing services.

[…]

Draft Regulatory Technical Standards

Article 1
General provisions

1. Clearing members and clients that provide clearing services to clients ("clearing service providers") shall disclose fees and costs associated with the clearing service provided, in a detailed and transparent manner that allows clients to easily understand and compare the fees charged for the clearing service offered.
2. Clearing service providers shall disclose fees and costs referred to under paragraph 1 to both existing and prospective clients upon request.
3. Clearing service providers shall associate each fee with the corresponding service provided, and to the extent possible breakdown the fees charged in accordance with the categories set out under Articles 2, 3, 4, and 5 of this Regulation.
4. The information on fees and costs shall clearly indicate any fees charged to the client which pass on costs related to the provision of clearing services ('pass-on costs').
5. Where relevant, clearing service providers shall breakdown the fees or costs at the level of each clearing service for each CCP at which they provide clearing services.
6. Where a clearing service provider applies discounts, caps, and rebates, it shall disclose the conditions for benefitting from such discounts, caps, and rebates and allow clients to understand how discounts, caps, and rebates are calculated, and on which category of fees they apply.

7. Where the information available from a CCP recognized as a Tier 1 CCP in accordance with Article 25(2a) of Regulation (EU) 648/2012 is limited, clearing service providers shall duly inform their clients on the legal or operational reasons justifying such limitations.

Article 2

On-boarding fees

1. Clearing service providers shall disclose, separately where practicable, the on-boarding fees, which is the one-off cost for the client payable at the beginning of the contractual relationship with the clearing service provider to access the clearing service, or any extension thereof.

2. The information on the onboarding fees shall include, where relevant:

    a. A registration fee;

    b. A fee for the set-up of IT systems at the clearing service provider and where relevant at the CCP;

    c. A fee for the initial assessment of the client.

Article 3

Fixed fees

1. Clearing service providers shall disclose, separately where practicable, the fixed fees that are charged periodically to the clients, and which are designed to cover the fixed costs of providing access to clearing and are not linked to the level of clearing activity of the client

2. The information on the fixed fees shall include, where relevant:

    a. the recurring minimum fees;

    b. the recurring fees to cover the IT infrastructure costs;

    c. the recurring fees for maintaining different types of accounts; and

    d. the recurring fees for collateral management and transformation, unless these depend on the clearing activity of the client and are treated under Article 4.

Article 4

Transaction fees

1. Clearing service providers shall disclose separately the fees that depend on the number of transactions or on volumes related to the clearing activity of the client ("transaction fees").

2. The information on transaction fees shall clearly indicate whether they are linked to the number of transactions or volumes cleared by the client.

Article 5

Other fees and costs

All fees and other costs related to the provision of clearing services which are not covered in the categories set out under Articles 2, 3, and 4 of this Regulation shall be disclosed as “other fees”.

When a clearing service provider includes “other fees and costs” in the fee disclosure, the clearing service provider shall provide an explanation of the expenses that these fees and costs cover.

<u>**Part 2 – EMIR clearing fee disclosures**</u>

<u>EMIR</u>

Article 38

Transparency

1. A CCP and its clearing members shall publicly disclose the prices and fees associated with the services provided. They shall disclose the prices and fees of each service provided separately, including discounts and rebates and the conditions to benefit from those reductions. A CCP shall allow its clearing members and, where relevant, their clients separate access to the specific services provided.

   A CCP shall account separately for costs and revenues of the services provided and shall disclose that information to ESMA and the competent authority.

<u>**Part 3 – EMIR segregation cost disclosures**</u>

<u>EMIR</u>

Article 39

Segregation and portability

5. A clearing member shall offer its clients, at least, the choice between omnibus client segregation and individual client segregation and inform them of the costs and level of protection referred to in paragraph 7 associated with each option. The client shall confirm its choice in writing

7. CCPs and clearing members shall publicly disclose the levels of protection and the costs associated with the different levels of segregation that they provide and shall offer those services on reasonable commercial terms. Details of the different levels of segregation 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.

Part 4 – EMIR FRANDT requirements

<u>EMIR</u>

Article 4
Clearing obligation

3a. Without being obliged to contract, clearing members and clients which provide clearing services, whether directly or indirectly, shall provide those services under fair, reasonable, non-discriminatory and transparent commercial terms. Such clearing members and clients shall 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. Such measures shall also be taken where trading and clearing services are provided by different legal entities belonging to the same group.

<u>Commission Delegated Regulation (EU) 2021/1456</u>

Article 1
Scope

This Regulation applies to clearing members and clients which provide clearing services in the Union, whether those services are provided directly or indirectly ('clearing service providers'), where those services are provided in relation to OTC derivative contracts that are subject to the clearing obligation pursuant to Article 4(1) of Regulation (EU) No 648/2012.

Article 2
Fair, reasonable, non-discriminatory and transparent commercial terms

Commercial terms for clearing services provided by clearing service providers shall be considered to be fair, reasonable, non-discriminatory and transparent where they meet the requirements laid down in the Annex.

<u>Annex to Commission Delegated Regulation (EU) 2021/1456</u>

3. **Disclosure of commercial terms**

3.1. A proposal made by the clearing service provider in reply to a complete request for proposal includes, in a clear and structured manner, the following:

(a) the information referred to in the following provisions:

(i) Article 38(1) of Regulation (EU) No 648/2012;

(ii) Article 39(7) of Regulation (EU) No 648/2012;

(b) the terms and conditions under which the clearing service provider offers its clearing services, including terms and conditions which are specific to the prospective client;

[...]

[...]

6. **Fees and pass-on costs**

6.1. Fees, prices and discounts are transparent and based on objective criteria.

6.2. Information is provided in the commercial terms about any fees charged to the client which pass on costs related to the provision of clearing services (‘pass-on costs’).

6.3. All fees, prices, discounts and pass-on costs, as agreed between the clearing service provider and the client, are clearly specified in the commercial terms.

Part 5 – MiFID ex-ante costs and charges disclosures

MiFID II Directive

Article 24

General principles and information to clients

4. Appropriate information shall be provided in good time to clients or potential clients with regard to the investment firm and its services, the financial instruments and proposed investment strategies, execution venues and all costs and related charges. That information shall include the following:

(a) when investment advice is provided, the investment firm must, in good time before it provides investment advice, inform the client:

(i) whether or not the advice is provided on an independent basis;

(ii) whether the advice is based on a broad or on a more restricted analysis of different types of financial instruments and, in particular, whether the range is limited to financial instruments issued or provided by entities having close links with the investment firm or any other legal or economic relationships, such as contractual relationships, so close as to pose a risk of impairing the independent basis of the advice provided;

(iii) whether the investment firm will provide the client with a periodic assessment of the suitability of the financial instruments recommended to that client;

[...]

(c) the information on all costs and associated charges must include information relating to both investment and ancillary services, including the cost of advice, where relevant, the cost of the financial instrument recommended or marketed to the client and how the client may pay for it, also encompassing any third-party payments.

The information about all costs and charges, including costs and charges in connection with the investment service and the financial instrument, which are not caused by the occurrence of underlying market risk, shall be aggregated to allow the client to understand the overall cost as well as the cumulative effect on return of the investment, and where the client so requests, an itemised breakdown shall be provided. Where applicable, such information shall be provided to the client on a regular basis, at least annually, during the life of the investment.

[…]

Commission Delegated Regulation (EU) 2017/565

Article 50

Information on costs and associated charges (Article 24(4) of Directive 2014/65/EU)

1. For the purposes of providing information to clients on all costs and charges pursuant to Article 24(4) of Directive 2014/65/EU, investment firms shall comply with the detailed requirements in paragraphs 2 to 10.

   Without prejudice to the obligations set out in Article 24(4) of Directive 2014/65/EU, investment firms providing investment services to professional clients shall have the right to agree to a limited application of the detailed requirements set out in this Article with these clients. Investment firms shall not be allowed to agree such limitations when the services of investment advice or portfolio management are provided or when, irrespective of the investment service provided, the financial instruments concerned embed a derivative.

   Without prejudice to the obligations set out in Article 24(4) of Directive 2014/65/EU, investment firms providing investment services to eligible counterparties shall have the right to agree to a limited application of the detailed requirements set out in this Article, except when, irrespective of the investment service provided, the financial instruments concerned embed a derivative and the eligible counterparty intends to offer them to its clients.

2. For ex-ante and ex-post disclosure of information on costs and charges to clients, investment firms shall aggregate the following:

   (a) all costs and associated charges charged by the investment firm or other parties where the client has been directed to such other parties, for the investment services(s) and/or ancillary services provided to the client; and

(b) all costs and associated charges associated with the manufacturing and managing of the financial instruments.

Costs referred to in points (a) and (b) are listed in Annex II to this Regulation. For the purposes of point (a), third party payments received by investment firms in connection with the investment service provided to a client shall be itemised separately and the aggregated costs and charges shall be totalled and expressed both as a cash amount and as a percentage.

3. Where any part of the total costs and charges is to be paid in or represents an amount of foreign currency, investment firms shall provide an indication of the currency involved and the applicable currency conversion rates and costs. Investments firms shall also inform about the arrangements for payment or other performance.

4. In relation to the disclosure of product costs and charges that are not included in the UCITS KIID, the investment firms shall calculate and disclose these costs, for example, by liaising with UCITS management companies to obtain the relevant information.

5. The obligation to provide in good time a full ex-ante disclosure of information about the aggregated costs and charges related to the financial instrument and to the investment or ancillary service provided shall apply to investment firms in the following situations:

(a) where the investment firm recommends or markets financial instruments to clients; or

(b) where the investment firm providing any investment services is required to provide clients with a UCITS KIID or PRIIPs KID in relation to the relevant financial instruments, in accordance with relevant Union legislation.

6. Investment firms that do not recommend or market a financial instrument to the client or are not obliged to provide the client with a KID/KIID in accordance with relevant Union legislation shall inform their clients about all costs and charges relating to the investment and/or ancillary service provided.

[…]

8. Where calculating costs and charges on an ex-ante basis, investment firms shall use actually incurred costs as a proxy for the expected costs and charges. Where actual costs are not available, the investment firm shall make reasonable estimations of these costs. Investment firms shall review ex-ante assumptions based on the ex-post experience and shall make adjustment to these assumptions, where necessary.

[…]

10. Investment firms shall provide their clients with an illustration showing the

cumulative effect of costs on return when providing investment services. Such an illustration shall be provided both on an ex-ante and ex-post basis. Investment firms shall ensure that the illustration meets the following requirements:

(a) the illustration shows the effect of the overall costs and charges on the return of the investment;

(b) the illustration shows any anticipated spikes or fluctuations in the costs; and

(c) the illustration is accompanied by a description of the illustration.

Annex II to Commission Delegated Regulation (EU) 2017/565

Annex II

Costs and charges

Identified costs that should form part of the costs to be disclosed in the clients

Table 1 — All costs and associated charges charged for the investment service(s) and/or ancillary services provided to the client that should form part of the amount to be disclosed

Cost items to be disclosed		Examples:
One-off charges related to the provision of an investment service	All costs and charges paid to the investment firm at the beginning or at the end of the provided investment service(s).	Deposit fees, termination fees and switching costs(1)
Ongoing charges related to the provision of an investment service	All ongoing costs and charges paid to investment firms for their services provided to the client.	Management fees, advisory fees, custodian fees.
All costs related to transactions initiated in the course of the provision of an investment service	All costs and charges that are related to transactions performed by the investment firm or other parties.	Broker commissions(2), entry- and exit-charges paid to the fund manager, platform fees, mark ups (embedded in the transaction price), stamp duty, transactions tax and foreign exchange costs.
Any charges that are related to ancillary services	Any costs and charges that are related to ancillary services that are not included in the costs mentioned above.	Research costs. Custody costs.
Incidental costs		Performance fees

(1) Switching costs should be understood as costs (if any) that are incurred by investors by switching from one investment firm to another investment firm.

(2) Broker commissions should be understood as costs that are charged by investment forms for the execution of orders.