

Draft technical standards

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

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 with regard to regulatory technical standards specifying the type of information to be disclosed by clearing members and clients that provide clearing services to clients

of []

(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 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories⁹⁻³, in particular Article 7c(4) thereof,

Whereas:

- (1) Clearing members and clients that provide clearing services to clients (“clearing service providers”) should disclose the fees and other associated costs for each CCP at which they provide clearing services, directly or indirectly, including both CCPs authorised under Article 14 of Regulation (EU) No 648/2012 and CCPs recognised under Article 25 of Regulation (EU) No 648/2012. To account for the difference of structure and internal ~~organization~~organisation among CCPs, such disclosure should be provided for each CCP at the level of each different clearing service.
- (2) In order to ensure a sufficient level of transparency and comparability across different clearing service providers, the disclosed fees should be broken down by category based on objective criteria and linked to the corresponding cost item or service provided. Where ~~applicable~~relevant, the different categories should include, but are not limited to, onboarding fees, fixed fees and transaction fees.
- (3) The disclosure should cover the total cost of clearing, including potential discounts, rebates or ~~fees~~fee caps, which should be based on objective criteria such as clearing volumes and patterns.

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³ OJ L 201, 27.7.2012, p. 1–59.

- (4) To ensure a fair commercial treatment and comparability of different offers, both existing and prospective clients should benefit from the disclosure of the fees and other associated costs, subject to appropriate non-disclosure agreements.
- (5) In order to account for the difference in the level of details that may be provided by third country CCPs, clearing service providers which are unable to identify or share part of the required information on the fees related to third-country CCP clearing services should clearly explain the reasons thereof to their clients.
- (6) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (7) ESMA has developed the draft regulatory technical standards in consultation with the European Banking Authority (EBA). In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)^{40,41}, ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010.

HAS ADOPTED THIS REGULATION:

Article 1

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 are directly~~ related to the provision of clearing services ~~and charged by the CCP~~ (“pass-on costs”). Such requirement can be met by referring to existing public disclosure from the CCP, along with a concise description of the costs passed-on to the clients.

⁴ [OJ L 331, 15.12.2010, p. 84.](#)

4.

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.

⁴⁰ OJ L 331, 15.12.2010, p. 84.

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 a clearing service provider charges different fees or costs to its clients for the purpose of establishing accounts or undertaking clearing as referred to under Article 7a of Regulation (EU) 648/2012, they shall be disclosed separately.
- 7.8. Where the information available from a CCP ~~recognized~~ recognised as a Tier 1 CCP in accordance with Article 25(2a) of Regulation (EU) 648/2012 is limited, clearing service providers shall disclose the information required under this Regulation only to the extent it is available. They shall also duly inform their clients ~~on~~ of the legal or operational reasons justifying such limitations.
9. Where applicable, the disclosure requirements set out under this Regulation can be met by referring to existing disclosures provided in accordance with Article 24 of Directive (EU) No 2014/65, Article 4(3a) and Article 38(1) of Regulation (EU) No 648/2012, provided that the data disclosed meets the requirements set out under this Regulation.

Article 2

On-boarding fees

1. ~~Clearing~~ Where clearing service providers ~~shall disclose, separately where practicable, the charge~~ on-boarding fees, ~~which is i.e. fees to cover~~ 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, these fees shall be disclosed separately.
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~~ Where clearing service providers ~~shall disclose, separately where practicable, the charge~~ fixed fees, i.e. 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, these fees shall be disclosed separately.
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~~Where clearing service providers ~~shall disclose separately the charge~~ fees that depend on the number of transactions or on volumes related to the clearing activity of the client (“transaction fees”), ~~these fees shall be disclosed separately.~~
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.

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.

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

Done at Brussels

For the Commission

The President