



Draft Regulatory and Implementing Technical Standards under EMIR Regulation. November 2012.

ESMA has published, on the 27th September, a final report containing the draft Regulatory Technical Standards (RTSs) and the Implementing Technical Standards (ITSs) under the Regulation nº 648/2012, of the European Parliament and of the Council, on OTC derivatives, Central Counterparties (CCPs) and Trade Repositories (TRs) (forward EMIR Regulation). The RTSs and the ITSs include the feedback from the previous consultations and as well ESMA proposed changes, from ESMA's previous proposal, describing the specific details of how EMIR's requirements are to be regulated and implemented. EMIR objectives -improving OTC derivative markets in the European Union by reducing risk (use of CCPs for standardised OTC derivatives) and by increasing transparency- are developed in detail in the new technical standards:

a) **Reduction of risks:** risk mitigation techniques are set out for OTC derivatives that are not centrally cleared, such as timely confirmation, reconciliations, portfolio compression and dispute resolutions. ESMA has introduced phase-in periods for all requirements and adjusted the frequency of reconciliations. The requirements for clearing members under an indirect clearing arrangement have been substantially modified, but still ensuring equivalent level of protection to indirect clients (those not members of a CCP).

b) **Sound and resilient CCPs:** a set of organisational, conduct of business and prudential requirements for CCPs are defined including margin requirements, establishment of a default fund, default waterfall, liquidity risk management, and investment policy of CCPs as well as stress and back tests (the last has been substantially redesigned going towards a period of at least one year including stress market conditions). The pro cyclicity is addressed in a more flexible manner, the two-day minimum liquidation period for margin calculation has been maintained, more flexibility has been introduced for the models applicable to portfolio margining, and a delayed date of EMIR Regulation application is introduced for energy markets.

c) **Increased transparency and supervision:** the details of derivatives transactions that need to be reported to TRs are defined, including the information to be provided to ESMA for the authorisation and supervision of TRs, and the data to be made available to relevant authorities and the public.

The report follows the structure of EMIR Regulation with three sections and several annexes with the complete text of the articles contained in the technical standards:

1. OTC Derivatives

ESMA will establish a procedure to analyse the characteristics of certain classes of OTC derivatives (degree of standardization) in order to assess the application of the clearing obligation in a CCP. The indirect clearing arrangements with a clearing member will allow the access to CCPs of a higher number of OTC derivatives contracts. In the event of non-financial counterparties that uses OTC derivatives with hedging purpose, a clearing thresholds should be fixed to determine when they should be subject to the clearing obligation in a CCP. OTC derivatives contracts that are not cleared by a CCP should adopt other risk mitigation techniques.

2. Central Counterparties (CCPs)

ESMA has placed emphasis on the CPSS-IOSCO Principles for Financial Market Infrastructures (PFMIs) in the development of this draft technical standards.

The CCPs will be monitored by Colleges in which Central Banks will take part. CCP organisation will include, among other aspects, IT systems and reporting lines. The criteria to determine the collaterals that CCPs will request are defined and, also, the types of assets accepted as collaterals. The CCPs will constitute a default fund in case of members default, and will include a methodology (default waterfall) for calculation and maintenance of a CCP's own resources to be used in a default situation.

3. Trade Repositories (TRs)

The purpose of the reporting to TRs obligation seeks the improvement of transparency in the derivative markets, the protection against market abuse and systemic risk mitigations. The content of the reporting is described in the technical standards: elements to correctly identify the contracts and the corresponding counterparties (beneficiaries of the rights and obligations arising from the contract, types of contracts, underlying, maturities, notional values, prices), clearing procedure data (settlement dates, timestamp on the time of reporting to the TR, type of platform, confirmation, obligation to clear and clearing member), data on exposures (report data on daily mark-to-market valuations of contracts) and collateral (type and amount).

This final report has been submitted by the end of September to the European Commission who has three months to decide whether to endorse ESMA's draft technical standards.

The full text of the standards may be found in the following link:

http://www.esma.europa.eu/system/files/2012-600_0.pdf