

Submission Date

03/05/2023

ESMA_QA_885

Status: Answer Published

Additional Information

Level 1 Regulation

Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR)
- CCPs

Topic

EU-CCPs

Additional Legal Reference

Article 38 of EMIR - old CCP question 16 dated 11/02/2014

Subject Matter

Transparency (old CCP question 16 dated 11/02/2014)

Question

(a) EMIR Article 38(3) states that “a CCP shall disclose to its clearing members and to its competent authority the price information used to calculate its end-of-day exposures to its clearing members”. In some cases, particularly for OTC products, the final prices used to value trades may be combined from different sources, for example quotes from different market participants. Should CCPs also disclose these intermediate price inputs?

(b) EMIR Article 38(1) states that “a CCP and its clearing members shall publicly disclose the prices and fees associated with the services provided”. What are the criteria for considering that the prices and fees are publicly disclosed?

(c) EMIR Article 38(5) states that “a CCP shall publicly disclose any breaches by clearing members of the criteria referred to in Article 37(1) and the requirements laid down in paragraph 1 of this Article” (i.e. Article 38 of EMIR). Through which tool should the CCP disclose this information?

(d) Article 38(1) of EMIR states that “a CCP and its clearing members shall publicly disclose the prices and fees associated with the services provided”. What information regarding prices and fees must CCPs and clearing members actually disclose in order to meet the requirement to “disclose fees and prices associated with the services provided”? In particular, do CCPs and clearing members need to publish a numerical figure or would a narrative or qualitative discussion of the factors that will drive prices and fees meet the requirement under Article 38(1) of EMIR? Furthermore, should the publicly disclosed prices and fees be those for a brand new client with no history, the average prices and fees across all clients or the lowest prices and fees charged to a client?

ESMA Answer

11-02-2014

Original language

(a) Yes, the CCP should disclose such intermediate price inputs to clearing members and competent authorities, as this is part of the relevant price information used to calculate end-of-day exposures. It does not need to disclose the identity of the firms providing the quotes if this is subject to restrictions on grounds of confidentiality.

(b) The prices and fees should be considered as publicly disclosed when they are published on the CCP's and the clearing members' respective websites. Public disclosure, including in accordance with articles 38(1) and 39(7) is expected to include publication on a firm's website in an easily identifiable location on a page without any access limitations.

(c) The CCP should publish on its website the breaches made by clearing members of the criteria referred to in Article 37(1) of EMIR, by identifying at least the relevant clearing member, except in the cases indicated in Article 38(5) of EMIR. The CCP should constantly monitor that its clearing members comply with the requirements laid down in Article 37(1) of EMIR.

(d) CCPs and clearing members need to publish numerical figures in order to meet the requirement to “disclose fees and prices associated with the services provided” as set out in Article 38(1) of EMIR. A narrative or qualitative discussion of the factors that will drive prices and fees is not enough. The numerical figures published should at least include those for a brand new client and accompanying this should be a list of the various discounts or rebates available to clients and the factors that would qualify a client to receive such discounts or rebates.

The text of Article 38(1) of EMIR provides that a CCP and its clearing members shall publicly disclose the ‘prices and fees of each service provided separately, including discounts and rebates and the conditions to benefit from those reductions’. In order to meet this requirement 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 a narrative or qualitative discussion of prices and fees would not satisfy this requirement. Similarly, publishing only the average prices and fees across all clients or the lowest prices and fees charged to a client would not satisfy this requirement