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FC | Finansbranschens Centralförbund
FFI | Federation of Finnish Financial Services

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Federation of Finnish Financial Services represents banks, insurers, finance houses, securities dealers, fund management companies and financial employers operating in Finland. Its membership includes employee pension, motor liability and workers compensation insurers, all three providers of statutory insurance lines that account for much of Finnish social security. The Federation has about 460 members who employ a total of 43,000 people.

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CONSULTATION ON THE DRAFT TECHNICAL STANDARDS FOR THE REGULATION ON OTC DERIVATIVES, CCPS AND TRADE REPOSITORIES

The Federation of Finnish Financial Services (hereinafter "FFI") welcomes the opportunity to respond to the ESMA consultation on the Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories (EMIR) launched on June 25th 2012.

1 KEY PRIORITIES

- Implementation of clearing and reporting obligations into practice will be very challenging. They will create a major need for process adjustments for all counterparties, CCPs and authorities. **The consolidation of risks requires resilient systems and therefore any incomplete implementation must be avoided.** Further, a sufficient phase-in period would also ensure that tightening requirements do not diminish the competitiveness of European banks, companies and infrastructure providers. ESMA needs to ensure sound implementation by extending the implementation periods.

- The FFI strongly opposes any interim solutions for reporting. Market initiatives such as LEI, UTI and UPI are already in good progress and the creation of an interim solution would harm these projects. Reporting always leads to changes the IT systems of all parties. The cost of these changes could be minimized if ESMA supports and drafts the standards according to the current initiatives. Thus the **phase-in periods should be adjusted so as to ensure the implementation of LEI, UTI and UPI at the same time**. This removes the need for ESMA to plan any interim measures and ensures proper functioning of derivatives market.

- The FFI supports **the EU regulatory regime that promotes competition and interoperability between CCPs** and other market infrastructures. This is the fundamental aim behind EMIR and many other Single Rulebook dossiers. We recognize that derivatives are a special instrument and new to the clearing obligation. Therefore more experience on interoperability in derivatives clearing might be needed. However, ESMA standards should not prejudice development of interoperability arrangements and competition in other instruments and dossiers.

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2 STUCTURE OF OUR RESPONSE

This response consists of two general sections: Our key priorities are presented above and will be expanded on in the specific comments. In addition, we have some general comments on the proposed approach and on some specific items in the consultation. Detailed comments to the proposal are presented section four according to the structure of the EMIR itself and to the consultation paper.

Finally, the end of our response contains comments on points which either require further clarification or which could benefit from a different technical solution. These points are mostly related to the proposals on reporting obligation.

3 GENERAL REMARKS

- Our members represent a wide variety of market participants in terms of services provided, nationality, company structure and size in the financial market industry and warmly welcome the flexible and more pragmatic overall approach in the draft Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS). The scope of the standards is respectably wide, especially since EMIR is as of yet unpublished.

- Further, our members are subject to EMIR from different angles. Banking members and securities dealers act as clearing members and service providers to non-financial companies and to smaller financial institutions. Our employee pension provider members pension are active users of derivatives. Taking all this into account, the draft standards seem to balance relatively well between stakeholders.

- The public consultations on classes of OTC derivatives, accompanied with consulting the date of effect of the clearing obligation will be a major improvement when the market participants need to prepare for clearing certain OTC derivatives.

- The FFI welcomes the detailed requirements for central counterparties (CCPs). Following the entry into force of EMIR, they will indeed become more crucial players in the financial market environment, and therefore must be required to put a great emphasis on their risk management.

- CCPs currently provide equities clearing in regulated markets as well as multilateral clearing facilities (MTFs). In many European MTFs, CCPs already operate in a competitive environment. Most regulated markets are still not open for competing CCPs.

- Considering the nature of equities clearing in regulated markets, the draft RTS and ITS provide CCPs with relatively extensive rights concerning their standards. This applies especially to margin and collateral requirements. We would prefer that ESMA *at least balances these rights with as wide disclosure obligations as possible*.

- In general, the CCP standards have been drafted to apply as a minimum, thus giving CCPs the right to apply higher requirements. The FFI recommends that ESMA

reconsiders the necessity of such rules because minimum requirements may also have their downsides. Minimum level harmonization could make it difficult for authorities as well as market participants to recognize the full effect of these regulations or the differences in CCPs practices.

- The FFI appreciates that the CPSS-IOSCO Principles for Financial Market Infrastructures as well as many industry initiated harmonisation and standardization projects are taken into account when drafting technical standards. This approach will most likely make it easier for market participants to adjust their systems into the new rules.

- Regarding the formats for trade repository reporting: further clarification would be welcomed, especially in terms of portfolio reporting and hybrids. More detailed comments are included in a later section (see page 14 onwards). The FFI would also welcome guidance on whether all fields must be reported at all times. In addition, we reiterate the request that reporting should only involve information that brings valuable additional information to the authorities.

- The obligations and requirements in EMIR in general are relatively new in the financial market context and when discussing with the market, many details seem to require further clarification. Therefore there might be a need for additional, non-binding guidance from the regulators.

- Market participants welcome ESMA's approach of avoiding duplicate reporting according to EMIR and MiFID requirements in the future. The FFI has already seen some promising structures on how a trade repository will be able to report on the basis of both dossiers, and sincerely hopes that ESMA will support such initiatives.

- Similarly, the interplay between the MiFID review, the CRD IV and other dossiers regulating same entities and actions needs to be considered in the drafting process. ESMA has already taken a good step in this direction.

- The requirements to provide information could be simplified by regulating that any entity that needs to provide information to the competent authorities would be required to provide information only to its own competent authority. Authorities would then co-operate in sharing information to their co-authorities.

- FFI understands that ESMA is not posing any obligation for financial counterparties to monitor whether their non-financial counterparties exceed the clearing threshold. This approach should be maintained, as financial counterparties do not have the means to monitor such trades due to their amount of non-financial counterparties.

- Finally, we recommend a clear rule that ensures that each party is only responsible for fulfilling their own reporting obligations. Any additional obligation has to be subject to an express contractual clause between the parties.

4 SPECIFIC COMMENTS ON PROPOSALS

4.1 Part I: Clearing obligation

OTC Derivatives - Types of indirect clearing obligation [Page 9, Paragraph 22]

The objective with building a structure where the level of protection for an indirect clearing member is a replica from the one that is in place between the CCP and its clearing member is understandable. However, this approach should, in our opinion, be adjusted with minor exemptions in the situation of a CCP default, since such default will have a major impact on the clearing member as well. More concrete examples of such situations (where the clearing member may not be able to provide services to its clients to the same extend as CCPs) are included below on page 5.

OTC Derivatives – Clearing Thresholds [Page 15-16, Paragraph 65]

The standards stipulate a clearing obligation for all asset classes when a non-financial counterparty (NFC) exceeds the clearing threshold in one asset class. On one hand, once a NFC has set up clearing arrangements, it might be easier for a NFC to clear all asset classes in the same systems. On the other hand, especially if the NFC actively uses only one class of derivatives, such total clearing obligation might become too expensive and difficult to manage, however. This could lead to corporations deciding not to hedge in certain asset classes, in order to avoid the risk of having to clear relatively few trades.

EMIR article 10 seems to provide the market with flexibility in this respect when it states that a NFC shall --- clear all *relevant* future contracts --- (article 10.1 (c). The FFI recommends an approach where the clearing obligation would apply only to those classes of OTC derivatives contracts where the threshold is exceeded. In addition, the NFC could choose to clear all classes in a CCP.

OTC Derivatives – Intra-group exemptions [Page 21, Paragraph 103-106]

The FFI believes that a one-stop scheme in the notification procedure would be of great benefit to the intra-group participants, while still achieving the aim of the notification. This means that the notifications on intra-group exemptions would only be required to home authorities which will share information to other relevant authorities.

The possibility to notify intragroup transactions as a whole, or at least at a certain frequency, would ease the burden for authorities and particularly for smaller participants. For instance, notification procedure could be complemented with a possibility of general notification, to exempt all intragroup transactions from notifications, instead of notifying on a case-by-case basis. This would prove very useful in markets with many competing banks with different organizational structures ranging from individual banks and branches to co-operative and savings banks. Therefore we recommend that ESMA introduces a more flexible and if ESMA prefers a certain frequency, we prefer using a biannual or quarterly notification.

Finally, the FFI gladly welcomes the flexibility provided in the ways disclosure can be made.

OTC Derivatives - Indirect clearing arrangements [Page 62, Recital 2]

The draft RTS urges clearing members, and to some extent, CCPs to routinely identify, monitor and manage any material risks arising from indirect clearing arrangements. The FFI recommends that the institution providing services to the indirect client should, together with the CCP, be responsible for taking due care of these material risks as they are best positioned to follow (the performance of) the indirect clearing member. In addition, the client and indirect client are in a contractual relationship with each other and can thus agree on more detailed risk management terms, if needed.

OTC Derivatives - Indirect clearing arrangements [Page 62, Recital 3]

According to the proposed RTS, indirect clearing members will have continuous ("to ensure that indirect clients retain") access to clearing services following the default of a clearing member or a client of the clearing member. In practice, business continuity plans are built in a way where delays in the access to clearing services may occur. This relates mainly to the default of a CCP, but also mirrors the case of a clearing member default. Placing a requirement to provide continuous access for indirect clearing members might prove impossible to fulfill, as clearing members may be in a situation where their own access has been delayed due to other defaults.

> We therefore recommend either rephrasing this requirement to ***"…ensure that indirect clients retain access to clearing services without undue delay…"*** or aligning it with the wording that is proposed in the beginning of recital 5 on page 62. Such phrasing in the recital would better support the wording in the actual Article 4 ICA paragraph 4, too.

OTC Derivatives – Liquidity fragmentation [Page 63, Recital 11]

Interoperability arrangements are recognized as important for greater integration of the post-trading market (EMIR recital 73). The FFI is in favor of interoperability and any other EU level regulatory dossiers that promote more competition between market infrastructure providers.

We recognize that derivatives are a special instrument and new to the clearing obligation. Therefore more experience on interoperability might be needed before competition among CCPs on derivatives can be introduced. As derivatives are in this respect an exception to the main rule of open access, the solution for derivatives in these standards should not prejudge other areas in the Single Rulebook (e.g. CSDR and MiFIR).

In order to ensure development of interoperability arrangements for transferable securities and money market instruments according to EMIR recital 73, we suggest the following clarification to these standards.

Proposal for an amendment to Recital 11 in RTS on OTC derivatives (page 63)

> (11) Allowing access by multiple CCPs to a trading venue could broaden participant access to that venue and therefore enhance overall liquidity. It is necessary in such circumstances to specify the notion of liquidity fragmentation within a venue where it may threaten the smooth and orderly functioning of markets for the class of ~~financial instruments~~ **OTC derivatives** for which the request is made.

Proposal for an amendment to Article 1 LF paragraph 2, Chapter VI in RTS on OTC derivatives (page 71)

> 2. **For the purpose of OTC derivatives,** liquidity fragmentation refers to a situation in which the participants are unable to conclude a transaction with one or more other participants in that venue because of the absence of clearing arrangements to which all participants have access.

OTC derivatives – Objectively reducing risks
[Page 64, Recital 14 and Page 72, Article 1 NFC, Paragraph 1, Subparagraph c]

The FFI agrees with the proposed criteria as it will provide the much needed flexibility in recognizing various hedging purposes and strategies.

For future reference, this approach could be used where the same is considered for pension arrangements according to article 89 EMIR.

OTC Derivatives – Clearing threshold [Page 64, Recital 15]

The proposed clearing thresholds take duly into account the systemic risks that may arise from the derivatives contracts with non-financial counterparties. Furthermore, the FFI believes that the separation between asset classes will prove useful in the future. Referring to the notional value of the OTC derivatives contract is very welcomed, as well.

In the recital for the clearing threshold, it is stated that the value of the threshold will be periodically reviewed. The FFI welcomes such reviews. In order for the non-financial counterparties to be prepared for the future and since clearing arrangements will lead to major changes in their systems, FFI proposes some clarifications to recital on clearing thresholds.

ESMA should consider whether it could decide on (*a) the timescale when the threshold is to be reviewed* and *(*b*) how much the threshold can be lowered in a review*. For (a), an appropriate balance between preparedness and changes in the financial markets could be three years, whereas for (b) we would recommend choosing a maximum percentage between 0 to 20 per cent. In our opinion, this would efficiently cover the need for changes in the threshold and at the same time make it easier for companies to plan their actions with regard to derivatives on a mid-term basis.

Proposal for an amendment to recital 15 in RTS on OTC derivatives (page 64)

> (15) --- More specifically, the value of the clearing thresholds should be reviewed periodically and should be defined by class of OTC derivative contracts. **A review shall be made at earliest after three years after the regulation setting the thresholds has entered into force. In a review, the threshold can only be lowered up to 20 per cent.** The classes of OTC derivatives determined for the purpose of the ---.

Finally, the criteria for making these changes must be carefully considered. It is crucial to bring systemically important non-hedging exposures into CCPs. Such decision is more based on the participant's ability to absorb certain risks than on transaction sizes relative to the overall market size. To clarify, let's assume we have a transaction size of 5 units where the clearing threshold is 10 units and the aggregated market size at the moment is 100 units. This transaction remains below the threshold and will not be cleared. Later on the market size shrinks to 50 units. In this environment, a transaction size of 5 units appears twice as large in proportion to before but, in absolute terms does not automatically mean an increase in counterparty risk, and the clearing thresholds may therefore possibly remain intact. Thus the focus should be on the entities' risk absorption ability.

OTC Derivatives – Structure of indirect clearing arrangements
[Page 66, Article 2 ICA, Paragraph 2]

The RTS explicitly states that the contractual terms of an indirect clearing arrangement must be defined by the client providing the service, without the participation of the clearing member. Obliging the clearing member to honor any obligation between the client and the indirect client may therefore pose an additional risk element to the clearing member, which should be avoided. Such obligations that are borne outside the clearing member's consideration are in practise impossible for the clearing member to cover or take into risk considerations. In addition, a contractual agreement between two parties cannot be binding upon third parties and therefore such an obligation is not enforceable or effective.

Further, the requirements on Article 4 ICA paragraph 7 about the information the client is required to provide are not enough to cover the responsibility that derives from this obligation. Therefore the obligation on article 2.2 ICA needs to be deleted.

OTC derivatives – Obligations of clearing members and clients
[Page 66, Article 4 ICA, Paragraph 1]

The FFI recognizes these situations, in which a clearing member may not be able to facilitate indirect clearing arrangements. Therefore a requirement laid down to facilitate these in point 1 can not apply to all clearing members due to a restriction of their own access, their smaller size etc.

In order to clarify the situation, we recommend amending the paragraph so that it does not require facilitation but instead makes it possible to facilitate such arrangements. The arrangements should, then be made on reasonable commercial terms.

In case of a client default, the obligations of the clearing member could be further clarified, to ensure (a) access to clearing services for the indirect client without undue delay and (b) that a clearing member can duly analyze the risks and possibilities to transfer or take directly on such positions.

OTC derivatives – Obligations of clearing members and clients
[Page 66, Article 4 ICA, Paragraph 3]

We welcome the rules that state clearing members must co-operate with their clients in order to ensure that indirect clients can also monitor the risks associated with different segregation possibilities. However, the detailed requirements to provide descriptions and information on the insolvency law might prove difficult to fulfill. The FFI proposes that the obligation to provide such information would need to be based on the contract between the client and the indirect client. Therefore the detailed requirements in the last sentence of Article 4 ICA paragraph 3 could be deleted.

Another option is to exempt from these provisions situations where all participants (clearing member, client and indirect client) belong to the same jurisdiction.

OTC Derivatives – Criteria to be assessed by ESMA
[Page 69, Article 1 CRI, Paragraph 3]

We believe that the differences in liquidity or volume by currency also need to be taken into consideration. The example of Interest Rate Swaps that we provided in our response to the discussion paper states that the liquidity of NOK Interest Rate Swaps is poor, whereas the liquidity of EUR Interest Rate Swaps is good, thus creating a need to consider different currencies in calculations.

The fact of currency differentiation does not appear to be part of the volume and liquidity considerations outlined in the Consultation Paper. Since it is not explicitly stated in paragraph 3, we would like to seek confirmation that currency is an implicit factor in defining the number and value of transactions (paragraph 3 d.), i.e. number and value by currency, or a part on what will differentiate one asset class from another, similar to the list of asset classes in the public register (Article 1 PR).

Hedge transactions relating to covered bonds

Hedge transactions relating to covered bonds have a special set-up and should in our opinion not be subject to clearing obligation according to article 5 EMIR, regardless of counterparties. Firstly, these derivatives contracts are insulated from the insolvency of the issuer. Secondly, the collateral in these transactions is in most jurisdictions posted unilaterally by counterparty hedging for the default whereas the counterparty has a preferential claim on the cover pool.

In practice, it will be extremely hard, if not impossible, to clear such contracts in a CCP. Thus we would welcome a clarification by ESMA stating that hedge transactions relating to covered bonds are exempted from the clearing obligation.

Further, an express exemption in the Level 1 text of EMIR and proceeding on the assumption that a repackaging or structured finance special purpose vehicle ("SPV") will be classified as a non-financial counterparty, it is not clear from the drafting of Article 1 NFC that the OTC derivatives entered into by such an SPV to hedge the repackaged notes or liabilities relating to a structured finance debt issuance or securitized derivatives issuance will qualify for the hedging exemption. ESMA should clarify how Article 1 NFC is intended to be applied to both orphan and consolidated balance sheet SPVs that typically enter into OTC derivatives trades with the arranging, sponsor or originating banks (the latter will invariably be classified as financial counterparties under EMIR).

OTC Derivatives – Details to be included in ESMA's register [page 70, Article 1 PR]

The FFI has been considering the technical set-up of the public register. We would welcome a system that provides automatic notifications to the market participants each time new classes of OTC derivatives contracts become subject to clearing obligation. This would need to be accompanied with the opportunity to join an e-mail based distribution list, through which these notifications would be received.

OTC Derivatives – Criteria for establishing which OTC derivative contracts are objectively reducing risks [Page 72, Article 1 NFC, Paragraph 2]

The proposed Regulation states that a derivative contract which is entered into a purpose of speculation, investing or trading shall not be considered as objectively measureable as reducing risks. The FFI considers that the relatively generic definitions in this respect might prove problematic in the future. Therefore we recommend a phrasing in which

> "**Anything that does not meet the conditions in paragraph 1 (Art 1 NFC) shall not be considered as objectively measurable as reducing risks directly related to the commercial activity or treasury financing.**"

OTC Derivatives –Timely confirmation [Page 73, Article 1 RM]

The regulation contains many desirable elements pertaining to regulating the timely confirmation of transactions. These include, for example, the flexibility in terms of transactions that are concluded relatively late or between counterparties located on different time zones.

The proposed confirmation timelines are suitable for plain vanilla products. However, it is not possible to confirm complex structured products within the same business day or within the day after the transaction is concluded. In more complex products, counterparties often discuss the details of those confirmations several times and thus the confirming process requires more time. An exception for complex structural products should be introduced on article 1(4) RM due to the longer confirmation period. Further, the obligation in 1.4 RM to report the number of trades that have remained unconfirmed for more than five business days would in practice mean that the number of all traded structured products would need to be reported monthly.

In addition, FFI would like ESMA to consider once more if it would be possible to create a sub-class for transactions that are not confirmed via electronic means. We remain confident that there will be such transactions even in the future, especially with non-financial counterparties. In terms of postal confirmations, the traditional deadline of seven days could be used as a benchmark. This would add the needed flexibility in this regard, too. Further, such exceptions would not prove problematic in terms of receiving the information on time as the proposed article 1 RM paragraph 4 about reporting outstanding contracts would balance such situations.

Finally, we would welcome clarity on which one of the proposed timeframes is the primary timeline when transactions with non-financial counterparties below the threshold (NFC-) are confirmed. It seems that whenever the counterparty is a NFC-, article 1(4) RM would apply. However, according to recital 76 (on page 17), article 1(4) RM would only apply when both counterparties are NFC-, and in any other case article 1(2) or 1(3) RM would apply instead.

OTC Derivatives - Intragroup transaction notification details [Page 75, Article 7 RM]

We have already recommended a more flexible approach to notify on intra-group transaction above (page 4). In addition to those more general comments about the recital, we see the proposed details in the RTS as quite extensive.

It is to be expected that the competent authorities will become quite familiar with intragroup concluding such transactions and we would therefore like to ease the burden that reporting intragroup related information creates. We do not see a need to provide each time information that relates to, for example, corporate relationship or details of the supporting contractual relationships. There might even be room for distinguishing between financial and non-financial counterparties because the competent authorities are already familiar with financial counterparties as their supervisors.

OTC Derivatives – Intragroup transaction – Information to be publicly disclosed [Page 78, Article 8 RM, Paragraph 1, Subparagraph d]

The FFI agrees with the points (a) to (c) on the details of intragroup exemptions that are to be publicly disclosed. However, we consider that in this particular case, the notional aggregate amount of those contracts should be considered commercially sensitive data that should not be published. In our opinion, it should be enough for the general public to know that exemptions exist, but the amount of these contracts will be of additional value only to authorities.

4.2 Part II: CCP requirements

CCP Requirements – Setting up minimum requirements [Page 79, Recital 4]

EMIR is a good example of regulation (together with many other Single Rulebook dossiers) that aims both at ensuring stability in the financial markets and maintaining a level playing field with similar requirements for counterparties. The regulation and the Rulebook may lead to consolidation in the long run in order to create robust and reliable infrastructures. However, the competition aspect should not be undermined.

Competition among CCPs is welcomed by the FFI, as this creates new business opportunities, ensures better service and brings price reductions. Resilient infrastructures also need efficient supervisors. Lastly, proper competition with the right means fosters the smooth functioning of internal market.

CCPs currently provide equities clearing both in regulated markets and in MTFs. In many European MTFs, CCPs are already working in a competitive environment where clearing members have a choice between interoperable CCPs. However, in most of the regulated markets these equities CCPs provide their services in a non-competitive environment. In many cases, the CCP belongs to the same silo structure with the exchange, possibly increasing barriers to market entry. Taking into account the probable consolidation development, we are generally worried about partial lack of competition and increasing prices.

Considering the nature of equities clearing in regulated markets, the draft RTS provides CCPs with rather extensive rights concerning their standards. In addition, many of the provisions in the RTS are minimum requirements. This applies especially to margin and collateral requirements. We would recommend ESMA to either (a) *further consider the need for such rights against the non-competitive background* or at least (b) *balance these rights with as wide disclosure obligations as possible*.

Non-competitive position may easily lead to a situation where the CCP uses these freedoms for its own advantage. These situations are best prohibited when the CCP will be under disclosure obligation to both its clearing members and to authorities in all countries where the CCP provides its services. In addition, proper consultation periods and the possibility to conduct capital analysis are key in ensuring proper functioning of such CCPs.

In the sections below, the FFI has been recognizing situations where the scope of disclosure could be further improved.

CCP Requirements – CCPs dedicated own resources
[Page 83, Recital 46 and Page 111, Article 1 DW]

The FFI welcomes the requirement that a CCP should cover part of the losses arising from a default from its own dedicated resources and the proposed amount of resources. This requirement, together with the sufficient level of resources adds an additional pressure for CCPs to maintain prudent systems and to compete with each other on a sound basis instead of with risk-related factors.

CCP Requirements – Commercial bank guarantees
[Page 83-84, Recital 52 and page 113, Article 1 COL, Paragraph 3, Subparagraph c, point i]

The FFI agrees with the recital's approach, which sets up appropriate safeguards to ensure that the collateral in terms of commercial bank guarantees is sufficiently secured. This exception is important for the non-financial counterparties, as stated in the recital.

However, in markets with many competing financial market counterparties there may exist financial counterparties that are significantly smaller than many non-financial counterparties entering into derivatives contracts. For those smaller FCs, it will be more difficult to post other forms of collateral than commercial bank guarantees from larger banks. Since appropriate safeguards are already set, the **FFI sees that the exemption does not have to be limited to non-financial counterparties only.**

CCP Requirements – Hedging the portfolio of a defaulted clearing member [Page 84, Recital 58]

The FFI questions the need for a CCP to hedge the portfolios from the defaults of their clearing members. CCPs receive both collateral and default fund contributions according to strict regulations, and those safeguards are meant to cover open positions in a possible default situation. Therefore, allowing CCPs to hedge in derivatives for the purposes of extra safety would, in our opinion, be an additional risk and complexity factor that should not be imposed.

CCP Requirements – Exchange of information among authorities [Page 88, Article 4 CG, Paragraph 1 and Page 89, Article 6 CG, Paragraph 2]

The exchange of information between home and host authorities is extremely vital to ensure a balance between level playing field and minimum requirement rules. Therefore the FFI gladly welcomes the list of information that, as a minimum, needs to be provided to the college and to other authorities (according to EMIR 18.3).

Further, the FFI would like ESMA to consider the possible consolidation development of market infrastructure providers in the future. This could mean that colleges would consist of the same authorities, regardless of the CCP (or any other type of infrastructure provider). In those situations, EMIR 18.3 would apply to most authorities, allowing them to request information that is relevant for the performance of its supervisory duties.

> To ensure the above balance, we recommend that ESMA clearly states that the "information that CCPs competent authority shall at least provide according to article 6.2 in the RTS has the meaning of relevant information according to EMIR 18.3."

CCP Requirements – Compliance [Page 94, Article 3 ORG, Paragraph 2]

The rules and regulations of the CCP are vital for clearing members to be able to identify different risk scenarios and their own participation in the CCPs activity. They need to be as clear as possible to all clearing members regardless of their jurisdiction. In addition, it is vital that clearing members have a proper consultation period that makes it possible to incorporate changes to the draft versions of the rules. The FFI members welcome what is stated in the regulation about legal opinion, analysis and consultations with clearing members.

In order to ensure a level playing field between clearing members, we recommend that ESMA adds a minor additional requirement to the article.

Proposal for an amendment to Article 3, paragraph 2 ORG, Chapter IV in RTS on CCP requirements

> 2. "--- The CCP shall have a process for proposing and implementing changes to its rules and procedures and **equally** consult with **all** clearing members and the competent authority on any relevant changes."

Further, we propose considering the addition of a minimum consultation period of, for instance, 30 business days into the regulation, to ensure that all members can react to those changes.

CCP Requirements – Disclosure [Page 98, Article 7 ORG, Paragraph 4]

We refer to what was stated on minimum requirements and their balancing with exchange of information between authorities (see earlier discussion in this response) and disclosure requirements. The information that is to be disclosed to clearing members and clients according to paragraphs 3 and 4 is already a significant improvement.

> However, as long as CCPs are not able to efficiently compete on all markets and on their service level, the FFI **recommends aligning these disclosure requirements with those of the members of the college**. This would improve CCP performance and the thrust in their business significantly.

The FFI understands that not all information can be publicly available. However, clearing members and clients however trust their positions and risks in CCPs daily and therefore need to be aware of any changes that happen in the CCP. This applies especially to changes in CCPs own capital. Additional valuable information to the clearing members would, for example, include the procedures on how a CCP calculates the haircuts to different asset classes according to Article 3(2) COL.

CCP Requirements – Communication [Page 104, Article 7 BC, Paragraph 1]

Chapter VI on business continuity succeeds in incorporating member influence in a proper manner while ensuring robust and resilient systems and recovery plans. The FFI suggest a minor technical change to paragraph 1 on communication, where it is stated that external stakeholders will be kept adequately informed during a crisis according to a communication plan. In many articles clients are aligned with clearing members if they are known to the CCP. In order to ensure coherence, it would be useful to add those known clients to the list of external stakeholders here as well.

CCP Requirements – Percentage [Page 105, Article 1 MAR, Paragraph 3]

Margins are essential for ensuring that the default of a clearing member does not affect other clearing members and their positions. We therefore hold that the same information on margin related changes and criteria that is provided to CCPs competent authority should be provided to the clearing members as well. In addition, any margin revisions should be subject to a consultation period of e.g. 30 business days.

Proposal for an amendment to Article 1, paragraph 3 MAR, Chapter VII in RTS on CCP requirements

> 3. The CCP shall inform its competent authority **and its clearing members** on the criteria considered --- any departure of the above framework. **A revision of the margin shall be subject to an equal consultation with all clearing members and the competent authority.**

CCP Requirements – Assets eligible as highly liquid collateral
[Page 111-114, Article 1 COL]

The FFI has been worried about the sufficiency of cash if it is the only collateral deemed to be highly liquid in other dossiers, such as CRD IV, as well. This would lead to major problems in the financial markets and most likely to a situation where most market participants would not be able to post such collateral. Therefore the wide approach taken by ESMA in the draft RTS is very much appreciated. Further, detailed rules on different collateral types and concentration limits are sufficient to ensure liquidity in situations of stress, while still leaving the market more flexible and liquid in many instruments.

Please also see our comments on commercial bank guarantees above (page 11).

4.3 Part III: Trade repositories

Trade Repositories – Reporting of collateral
[Page 49, Point 283 - 284 and Page 140, Article 6]

The regulation sets the possibility to report collateral on a portfolio basis where it is not possible to report for an individual contract.

When collateral is exchanged on a portfolio basis, there may be many types of collateral covering different currencies inside that portfolio. Due to this, it seems impossible to report on a portfolio basis, if the portfolio then needs to be broken down according to the information set out in Article 6(2). In practise, an individual counterparty may have several different collateral positions depending on the agreements made, and we doubt it is possible to see this under the current reporting specification. In addition, a specific collateral agreement may cover instruments that are outside the scope of the TR, such as securities lending. Therefore summing up all trades and comparing those with the position level collateral may not give an accurate picture of the collateral coverage.

Therefore, the FFI would like ESMA to clarify that all the information needs to be reported for individual contracts, and for portfolio contracts only the collateral amount (ii) needs to be reported. The same adjustments are required in Table 2 of the Annex to clarify that only certain fields need to be filled when a party is reporting on a portfolio basis. In addition, a unique position identifier or collateral agreement ID may be needed.

The FFI is aware of the discussion on what indexes should be used in the fields that will not be filled in every report. In this case, the extra fields of collateral type and currency could be filled with a [PB] for portfolio basis.

Trade Repositories - Hybrid derivatives [Page 141, Article 8]

The RTS explicitly states that hybrids shall be reported on the basis of the asset class that the counterparties agree the contract most closely resembles. The FFI is worried that in practise the asset class will be chosen on the basis of minimum reporting requirements, as these vary significantly between derivatives classes. In order to avoid such reporting arbitrage, more detailed and objective rules on the reporting of hybrids would be useful.

Trade Repositories – Table 2 Common data [Page 143, Table 2.11]

We question the need to report information on upfront payments, in order to reduce the amount of information that needs to be reported. In our opinion, only information that is relevant to the authorities should be reported. We do not believe that reporting on upfront payments adds valuable information.

Trade Repositories – Table 2 Common data [Page 145, Table 2.33]

The purpose of the field “other currency of collateral amount” remains unclear. We understand that it would be useful in a situation where the counterparty is reporting on a portfolio basis or where there are different collateral types posted for one transaction. However, cases such as these may involve the use of several different currencies. If this field is intended to cover such cases, additional fields are needed to ensure that all currencies can be reported.

Trade Repositories – Table 2 Common data [Page 147, Table 2.63]

The RTS leaves the counterparties with four different action types: New, Modify, Cancel or Other. In the formats of the ITS (Page 175, Table 2.63) only three action types are listed: New, Modify and Cancel. We suggest the content of these two standards is aligned.

In order to ease the reporting burden on modifications to the transaction, we believe that a report on the daily close-out (when modifications have taken place) would be sufficient to fulfill the objectives of supervision and risk management. Such an approach would ensure the capability of TR systems as well, because they would not be overburdened with multiple daily modifications, some of which might even be corrections of spelling mistakes.

Trade Repositories - Publication of aggregate data [Page 164, Article 2, Paragraph 1]

The FFI welcomes the publication of aggregate data as a basic principle in granting access to TRs. However, we question whether it will be possible to breakdown the open positions into derivatives on credit, equities, interest rates, commodities and foreign exchange in all transactions, especially on hybrids. Therefore there might be a need for minor exemptions from the basic rule applying to most transactions.

Trade Repositories – Identification of counterparties, other entities and Derivatives [Page 167, Recital 2-3 and Page 168-169, Articles 3-4]

The FFI is worried about the possibility for any interim solutions for identification. Projects that aim at creating identifiers for all of those types are already advancing well and therefore all the support for these projects would be welcome. Regulating about the possibility for an interim solution might actually postpone the development of the initiatives, thus creating extra costs and disincentives for the market participants.

Reporting costs will rise due to EMIR requirements, and any interim solutions will add additional technical costs that could be avoided. Any obligation to substitute one identifier for another 6 to 18 months down the line would entail substantial system modifications. Therefore the reporting requirements should support the current projects and be postponed until their finalization.

5 CLARIFICATION REQUESTS AND TECHNICAL COMMENTS

5.1 OTC Derivatives

OTC Derivatives - Types of indirect clearing obligation [Page 9, Paragraph 22]

Our members would welcome detailed explanations on the positions in different default situations on the basis of EMIR article 39 and the RTS. In order for counterparties to recognize the risks in different clearing arrangements, the effect of a default needs to be as clear as possible. Further, it should be considered if the CCP needs to be able to recognize the client or indirect client in a default situation.

OTC Derivatives – Details to be included in ESMA's register [Page 70, Article 1 PR, Paragraph 2, Point h]

We would welcome a clarification on what is meant by settlement conditions in paragraph 2, point (h) of article 1 PR.

5.2 CCP Requirements

CCP Requirements – Determination of most relevant currencies [Page 87, Article 2 CG]

The FFI believes explicit clarification of the role of ESCB national central banks in colleges would be appreciated by the market.

CCP Requirements – Portfolio margining [Page 106-107, Article 4 MAR]

Each CCP's approach on portfolio margining is at its own discretion. In order to ensure due preparation and thorough understanding of the impact of the regulation, we seek clarification of whether portfolio margining will be able to affect both initial margin and variation margin.

CCP Requirements – Concentration risk [Page 110, Article 3 LIQ, Paragraph 1]

We suggest a minor technical clarification to the regulatory text "…to the entities listed in Article 1(4) **LIQ** or **in this chapter** and to entities...".

In order to further improve the readability of the RTS, the cross reference in paragraph 2 could be made directly to Article 1(4) LIQ, as well.

5.3 Trade repositories

Trade Repositories – Definitions [Page 138, Article 2, Paragraph 1, Subparagraph 5]

The FFI recommends using the same terminology throughout different dossiers if there is no actual need to differentiate between these two trading environments.

Trade Repositories - Definitions [Page 138, Article 2, Paragraph 1, Subparagraph 2]

It is clear that a beneficiary is a party subject to the rights and obligations according to Article 2.1(1), and that a beneficiary is not a counterparty. However, we would prefer some concrete examples of beneficiaries according to the regulation, especially in light of the ISDA definition. Currently, there are some questions that pertain to whether the definition refers to allocation and how to differentiate a beneficiary from counterparty.

Trade Repositories – Definitions
[Page 138, Article 2, Paragraph 1, Subparagraph 6-10]

We take note that baskets are only recognized in the definition of currency derivatives but not for other derivative classes. For instance, for equities it is stated "…derives from one or more equity linked underlying --- or an equity index" and we would appreciate clarification on whether this means equity baskets (and commodity baskets according to 9 and credit baskets according to 10).

Trade Repositories - Cleared trades [Page 140, Article 5, Paragraph 2]

The regulation sets out rules on how to make a report on contracts that have been novated before reporting. According to paragraph 2, it shall be made on basis of the terms before novation. Provided that we understand this rule correctly, the exact details of the novated contract do not need to be reported. Should this not be the correct understanding and should there be an actual need to report both the initial and the novated contract, we would appreciate a clarification on this issue. In addition, we welcome any clarification stating that only relevant fields relating the modification need to be reported when modifications are made.

Trade Repositories - Counterparty data [Page 142, Table 1.8]

Counterparty may use a broker to execute a contract and should identify this broker in table 1.8 (Page 142). We are uncertain of the consequences to other reporting fields when a broker has been used and request clarity in this respect.

Trade Repositories - Counterparty data [Page 142, Table 1.10]

The FFI welcomes further clarity on the definitions in the details. This applies especially to take- up as opposite to give-up.

Trade Repositories - Counterparty data and common data [Page 142, Table 1 and Page 143, Table 2.5]

In order to ensure that the different reports in Table 1 and Table 2 can be linked to each other, we recommend that the field “Trade ID” (from Table 2.5) is added to Table 1 information as well.

Trade Repositories – Table 2 Common data [Page 143, Table 2.10]

In the “quantity” field, the draft states that the counterparty should report “Number of contracts included in the contract”. This statement seems somewhat misleading and should be further clarified or amended.

Trade Repositories – Table 2 Common data [Page 143, Table 2.12]

The delivery type alternatives are “physical settlement” and “cash settlement” in the RTS, whereas in the ITS (Page 172, 2.12) there are three different indexes for settlement type: physical, cash and option. The FFI recommends that the RTS and ITS are aligned in this respect.

Trade Repositories – Table 2 Common data [Page 144-145, Table 2.28-33]

Here we refer to the practical problems described above on collateral reporting on a portfolio basis, and request a clarification.

Trade Repositories – Table 2 Common data [Page 145, Table 2.34]

Our members wish for further clarification on the concrete description on how to report mark-to-market value.

Trade Repositories – Table 2 Common data [Page 145-146, Table 2.37 and 2.45]

In our members’ opinion, the guidelines for reporting these fields are unclear, especially for fixed to fixed and float to float instruments. Distinction between Leg 1 and Leg 2 could be introduced in the table. Additionally, addition of leg types and leg rate would be necessary. Alternatively, concrete examples would clarify the reporting in the different cases.

Trade Repositories – Table 2 Common data [Page 146, Table 2.54]

The RTS proposes that this information could consist of one of the following values of "baseload", "peak", "off-peak", "block hours" or "other", whereas in the ITS (Page 174, 2.54) the content is marked as a free text field. We request an alignment of these two standards.

Trade Repositories – Table 2 Common data [Page 172, Table 2.10]

The FFI holds that a quantity notation similar to the ones CCPs shall record according to field 5 of Annex 1 (Page 131) would be useful.

Trade Repositories – Table 2 Common data [Page 173, Table 2.29-2.30]

We prefer that collateral types are reported using standardized codes already available, such as the CFI code.

Trade Repositories – Table 2 Common data [Page 173, Table 2.32-2.33]

We recommend the use of ISO 4217 Currency code standard as is already suggested on 2.4 and on 2.46.

Trade Repositories – Table 2 Common data [Page 173, Table 2.35]

We seek clarification on whether the market valuation time is supposed to show the cut off time for the parameters used or the actual calculation time.

Trade Repositories – Table 2 Common data [Page 174, Table 2.56-2.57]

The proposed ISO standard only applies to the date format but the use of the existing ISO8601 Date Time format contains more information and would fit better for this purpose.

Yours sincerely

FEDERATION OF FINNISH FINANCIAL SERVICES

Lea Mäntyniemi