Date: 27 September 2012
ESMA/2012/606

PRESS RELEASE

ESMA defines standards for derivatives and CCPs

The European Securities and Markets Authority (ESMA) has today published its technical standards on the *Regulation on OTC derivatives, central counterparties and trade repositories (EMIR)*, which set out the specific details of how EMIR's requirements are to be implemented.

The EMIR framework aims to improve the functioning of OTC derivatives markets in the European Union (EU), by reducing risks via the use of central clearing and risk mitigation techniques, increasing transparency via trade repositories, and ensuring sound and resilient central counterparties (CCPs).

Steven Maijoor, ESMA Chair, said:

> "The publication of ESMA's standards on EMIR sees the EU taking its final steps towards meeting the G20 commitment on bringing OTC derivatives trading under supervision, and provides clarity to the market on the shape of the new regime. The new regulatory framework reduces the risks arising from OTC derivatives trading by improving transparency in the sector and ensuring resilient central counterparties.
>
> "The implementation of this regime enables the EU to play its role in strengthening the global financial system through promoting stable and well-functioning financial markets, ensuring a level playing field for market participants and enhancing investor protection."

New EU regulatory framework

ESMA's standards on EMIR set out in detail the new regulatory framework for derivatives in the EU. Set out below under each overarching objective are the key changes ESMA introduced following the consultation process:

Increased transparency and supervision by:

- Defining the details of derivatives transactions that need to be reported to trade repositories, including the information to be provided to ESMA for the authorisation and supervision of trade repositories and the data to be made available to relevant authorities and the public:
  - ESMA has clarified that reporting of collateral can be done on a portfolio basis and that reporting of mark to market values is only applicable to those counterparties under the obligation to calculate those on a daily basis (which does not include non-financials under the threshold);
  - ESMA extended the provisions on access by the relevant authorities to ensure that they will be able to fulfil their mandates.

- Setting out how the clearing thresholds will operate:
  - In its standards, ESMA clarifies that employee's benefits (such as stock options) and acquisitions would be covered by the hedging definition.
  - The values of the level of the threshold (from €1bn to €3bn depending on the asset class) and the way to calculate the non-hedging positions (gross notional value) has been kept mostly unchanged compared to the consultation paper.

The reduction of counterparty risks by:

- Setting out the risk mitigation techniques for OTC derivatives that are not centrally cleared, such as timely confirmation, portfolio compression and reconciliation:
  - ESMA has introduced phase-in periods for all requirements and adjusted the frequency of reconciliation;
  - The requirements for clearing members under an indirect clearing arrangement have been substantially modified, but still ensuring equivalent protection to indirect clients.

Ensuring sound and resilient CCPs by:

- Defining a set of organisational, conduct of business and prudential requirements for CCPs including margin requirements, default fund, default waterfall, liquidity risk management, and investment policy of CCPs, as well as stress and back tests:

- ESMA has maintained the 99.5% minimum confidence interval for OTC derivatives, but clarifying that a lower percentage can be used for products similar to exchange traded ones;
- The calculation of the look-back period has been substantially redesigned, going towards a period of at least one year including stressed market conditions and procyclicality addressed in a different and 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;
- The skin in the game, as a percentage of the minimum capital, has been reduced to 25% from the initial 50%; and
- The conditions for the backing of bank guarantees has been revised and a delayed date of application introduced for energy markets.

ESMA held two rounds of public consultations in developing these standards, receiving 165 responses which contributed to shaping the final standards published today. The final standards have been sent today to the European Commission for their adoption as EU Regulations that will be directly applicable throughout the EU.

Notes for editors

1. *Final Report on draft technical standards under the Regulation of OTC Derivatives, CCPs and Trade Repositories*.

2. Impact assessment - Annex VIII of the Final report on draft Regulatory and Implementing Technical Standards on Regulation (EU) 648/2012 on OTC derivatives, central counterparties and trade repositories.

3. ESMA previously published a Consultation Paper on *Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories ESMA/2012/95* on July 2012.

4. ESMA previously published a Discussion Paper on *Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories ESMA/2012/95* on 16 February 2012.

5. EBA Final draft Regulatory Technical Standards on Capital Requirements for Central Counterparties.

6. A derivative is a contract between two parties linked to the future value or status of the underlying to which it refers to (e.g. the development of interest rates or of a currency value, or the possible bankruptcy of a debtor). An over-the-counter (OTC) derivative is a derivative not traded on an exchange but instead privately negotiated between two counterparties. The use of derivatives has grown exponentially over the last decades, with OTC transactions being the main contributor to this growth.

7. ESMA is an independent EU Authority that was established on 1 January 2011 and works closely with the other European Supervisory Authorities responsible for banking (EBA) and insurance and occupational pensions (EIOPA).

8. ESMA's mission is to enhance the protection of investors and promote stable and well-functioning financial markets in the European Union (EU). As an independent institution, ESMA achieves this aim by building a single rule book for EU financial markets and ensuring its consistent application across the EU. ESMA contributes to the regulation of financial services firms with a pan-European reach, either through direct supervision or through the active co-ordination of national supervisory activity.

Further information:

Reemt Seibel
Communications Officer
Tel: +33 (0)1 58 36 4272
Mob: +33 6 42 48 55 29
Email: press@esma.europa.eu

David Cliffe
Senior Communications Officer
Tel: +33 1 58 36 43 24
Mob: +33 6 42 48 29 06
Email: press@esma.europa.eu