

Jonathan Hill
**Commissioner for Financial Stability,
Financial Services and Capital Markets
Union**
European Commission
Rue de la Loi / Wetstraat 200
1049 Brussels
Belgium

Ref: regulatory technical standards on indirect clearing under EMIR and under MiFIR

Dear Commissioner Hill,

I am writing to you regarding the two sets of regulatory technical standards (RTS) on indirect clearing for OTC derivatives and for exchange-traded derivatives, which ESMA has been empowered to develop under Regulation (EU) No 648/2012¹ (EMIR) and Regulation (EU) No 600/2014² (MiFIR) of the European Parliament and of the Council.

These two empowerments share the same objective of specifying the types of indirect contractual arrangements that do not increase counterparty risk and ensure that the assets and positions of the counterparty benefit from protection with equivalent effect as referred to in Articles 39 and 48 of EMIR.

The requirements related to OTC derivatives were set in Commission Delegated Regulation (EU) No 149/2013³ (EMIR RTS), whereas the requirements related to exchange-traded derivatives have been in development under the MiFIR mandate (draft MiFIR RTS).

In accordance with Articles 10(1), 15(1) and 37(1) of the Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁴, ESMA has conducted open public consultations on the draft MiFIR RTS on indirect clearing for exchange-traded derivatives.

¹ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

² Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

³ Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012, supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing (OJL 52, 23.2.2013, p. 11).

⁴ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).



Through these consultations, stakeholders have unanimously raised a series of important concerns. In order to address these concerns, it is necessary to develop alternative requirements for both OTC derivatives and exchange-traded derivatives than those requirements set in the EMIR RTS. ESMA has since developed a new set of requirements for indirect clearing arrangements that takes into consideration this feedback.

In the interest of preserving the smooth and orderly functioning of the markets, ESMA is of the opinion that amendments to the EMIR RTS need to be considered. ESMA thus intends to conduct a consultation on the possible amendments to the EMIR RTS that would be consistent with the requirements as envisaged for the draft MiFIR RTS.

According to the MiFIR mandate the draft MiFIR RTS for exchange-traded derivatives should be consistent with the provisions established for OTC derivatives in the EMIR RTS. In order to fulfill this empowerment, ESMA intends to submit to the European Commission the draft MiFIR RTS and the draft amendments to the EMIR RTS together. This draft MiFIR RTS has thus not been submitted with the rest of the MiFIR RTS, but will be submitted following the new consultation.

For any further information on these RTS, please contact Rodrigo Buenaventura, Head of the Markets Division of ESMA.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'S/M' with a flourish.

Steven Maijor

cc.: Roberto Gualtieri MEP, Chair of the Committee on Economic and Monetary Affairs, European Parliament

Pierre Gramegna, President of the ECOFIN Council, Council of the European Union

Jeppe Tranholm-Mikkelsen, Secretary-General of the Council of the European Union

Olivier Guersent, Director General, DG Financial Stability, Financial Services and Capital Markets Union, European Commission