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| Response Form to the Consultation Paper |
| Draft technical advice on commercial terms for providing clearing services under EMIR (FRANDT) |

**Responding to this paper**

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex III. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **2 December 2019.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_FRANDT\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_FRANDT\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_FRANDT\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open consultations” 🡪 “Draft technical advice on commercial terms for providing clearing services under EMIR (FRANDT)”).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘[Data protection](https://www.esma.europa.eu/about-esma/data-protection)’.

**Who should read this paper**

All interested stakeholders are invited to respond to this consultation. In particular, responses are sought from counterparties acting (or intending to act) as clearing service providers and counterparties that are current or potential clearing clients.

**General information about respondent**

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| --- | --- |
| Name of the company / organisation | French Banking Federation |
| Activity | Banking sector |
| Are you representing an association? |  |
| Country/Region | France |

**Introduction**

***Please make your introductory comments below, if any***

<ESMA\_COMMENT\_FRANDT\_1>

General comments

We thank ESMA for this first proposal of the regulatory technical standards for the implementation of the FRANDT requirement. Before providing our detailed answers to the questions in the consultation, we wish to make some general observations, which we believe should be taken into deeper consideration by ESMA when determining the final RTS proposal.

EMIR REFIT has introduced new *de minimis* thresholds for smaller financial counterparties, which are expected to alleviate the problems in access to clearing generated under EMIR as originally drafted. This new provision has only entered into force recently, and its effects are going to be known progressively. The entry into force of the FRANDT requirement is foreseen two years after the entry into force of EMIR REFIT, by which time these new provisions should have addressed the original concern. We therefore consider that the FRANDT requirement should be focussed accordingly: we find that this newly implemented exemption thresholds for smaller financial counterparties are clearly targeted at alleviating the problem of clearing access, and the FRANDT requirement should be considered as a complementary measure; accordingly, we believe that a much more proportionate approach than the one that is proposed should be adopted.

Paragraphs 14 and 15 of the consultation paper rightly observes that capital constraints and market concentration are among the most important reasons for which there is insufficient access to clearing services. While we agree with this analysis, we wish to point out that the implementation of FRANDT will not address either of these underlying structural problems. Moreover, the implementation of FRANDT cannot and should not seek to guarantee the availability of clearing services to any potential client, and EMIR REFIT affirms that the FRANDT requirement should not result in an obligation to contract. On the contrary, should the requirement be disproportionately calibrated, as the current draft suggests, rather than encouraging easier access to clearing it will further disincentivise clearing service providers from offering such services.

Product scope

We welcome the clarification provided in paragraph 12 concerning the scope of the FRANDT requirement, and it consider logical to align it with the scope of Art. 4 of EMIR. This would not preclude clearing members adopting some or all of these requirements in relation to clearing services generally.

Territorial scope

OTC derivatives clearing is a global business and the providers of clearing services are competing in an international environment. For this reason we wish to highlight the importance to achieve a final FRANDT requirement that would facilitate an enforcement regime resulting in a globally level playing field between EU providers and their international competitors. The French banks emphasize that an unlevel playing field would be a major threat for the competitive position of European clearing service providers, especially if European clearing service providers are required to be more transparent than their third country competitors.

The consultation paper, in our view, does not provide sufficient clarity as to the territorial scope of application of the FRANDT requirement. We therefore wish to obtain a confirmation that the requirement will apply to all products in scope of Art. 4 of EMIR submitted to clearing on behalf of EU clients to any CCP authorised to provide clearing services in the EU. We wish to highlight the need for ESMA and the European Commission to ensure that the location of the clearing member or the location of the CCP does not preclude effective application of the requirement.

We are not certain that an effective application to third country CCPs authorised in the EU could be guaranteed. On the other hand, we are aware that CCPs established in the EU currently represent a limited percentage of the total market. In any case, the guarantee of a level playing field is of paramount importance for European clearing service providers.

Risk

The proposed requirement includes provisions concerning internal risk controls of clearing services providers. We consider it a serious misconstruction to include risk controls in the scope of a requirement meant to regulate commercial practices, and we find it inappropriate to intervene in the risk procedures as a way to render clearing “more accessible”. We further note that clearing services providers are obliged by Art. 25 of EMIR RTS 6, to implement adequate, sufficiently conservative risk management policies. Requiring from the clearing members to satisfy their statutory obligations under RTS 6 on the one hand, and to make sure that their risk controls are FRANDT-compliant on the other hand, would place them in a position of conflict of regulatory obligations, and could potentially compromise the objectives of these risk controls. To the extent that any requirements based on internal risk policies are clearly disclosed and explained to the client in the process of bilateral negotiation and subsequently during the on-going relationship, we believe that the duty for the providers to act fairly and reasonably is properly discharged. We elaborate more in detail on this issue in our detailed answers to questions 2, 3, and 4.

General approach to the problem of facilitating access to clearing

The consultation paper appears to proceed on the assumption that clearing services are offered to retail customers, who seem to be in need extensive explanations and protections. This does not correspond to reality– given the nature of the entities subject to the CO under EMIR, the majority of entities concerned would be per se eligible counterparties, while some of them could also be professional clients.

<ESMA\_COMMENT\_FRANDT\_1>

**Questions**

1. : Do you generally agree with the approach on transparency and how to publicly disclose fees and commercial terms and other conditions? Please elaborate and if you disagree with any specific requirement, please suggest alternative ones. You can also suggest additional ones.

<ESMA\_QUESTION\_FRANDT\_1>

We understand that the FRANDT requirement should be aimed at achieving more fairness and transparency about the contractual terms for the provision of clearing services, as per Art. 4(3a)(a) of EMIR. However, we do not support the approach based on very broadly mandated public disclosures. Public disclosures should strike the right balance between information that will be both meaningful and useful to the client, and information that is sensitive for the service provider, and should avoid achieving the reverse of the intended, including adverse effects on the willingness of clearing services providers to continue to offer such services.

We disagree that the proposed disclosures, while being very extensive, would indeed provide clients with information that is relevant or indeed useful. This regards both the proposed disclosures of fees and costs, as well as contractual disclosures.

In order to achieve more ex ante transparency, and go beyond the high-level requirements currently defined in Art. 38(1) of EMIR, we support the proposal made by the FIA in their contribution to this consultation, to make available a standardised RFP schedule (standardised across service providers) (or termsheet), detailing the stages of the negotiation and on-boarding process, presenting the relevant commercial terms which may be the subject to further bilateral negotiation and the subsequent key elements of the KYC process, and providing a generic description of the various types of fees that apply.

In relation to fees and charges, we support the overall aim to make more information available to the client, including, inter alia, though public disclosures on an ex ante basis.

We however disagree with the objective to achieve more harmonisation in the pricing structures and we do not consider it to be feasible. Every provider determines the structure of fees and charges based on the structure of its own business and its internal operational setup. It would be illogical to require business to re-organise in order to logically reflect an imposed fee structure template. It is also to be noted that the identified components are part of a unitary service, so the fees whilst broken down would have to be regarded on an aggregated basis in order for a client to make a comparison between the proposals of two clearing service providers.

Providers could make publicly available ranges of some of the proposed fees, broken down into classes of instruments, in order to allow potential clients to have a first anticipation of the eventual costs before engaging in a bilateral negotiation, under the caveat that these numbers should be considered as indicative. Such ranges of prices can be accompanied by a description of the factors that will have influence on the final level of cumulative fees that will be applied to the client.

Concerning fees breakdowns, we agree with the classification of various types of fees provided by ESMA. We disagree, however, that a full ex ante price comparability can be achieved for all these types of fees and that it would provide prospective clients with meaningful, clear, and on-misleading information. While some indication of fees levels can be achieved for some of these categories of fees, it would be very impracticable for others.

Transaction fees: as per our comments above, providers could disclose ranges of fees per class of asset/clearing segment per CCP, which can also be grouped into numbers of transactions as specified in Article 6 (7) of the draft technical advice, as a first indication. These ranges of fees can be accompanied by a description of factors that will influence and determine the final level of fees charged.

On-boarding fees: we consider that this type of fees is particularly unsuitable for a generic *ex ante* disclosure. Several different factors are likely to be taken into consideration while on-boarding the client, each of them capable of influencing the ultimate cost of on-boarding. These elements can only be factored into the final fee based on each individual case, following a bilateral negotiation and KYC process. In consequence, the range of fees that can be charged for the process of on-boarding can vary quite considerably. Should the providers be required to disclose publicly a generic, estimated range, it is likely to be a very broad spectrum and have very little added value to the prospective client.

Fees in relation to additional services: we consider the notion of “additional services” to be unclear, and such services are not in any case an indispensable part of the clearing services. They are also likely to vary according to the client, and clearers should not be expected to guess a theoretical range of additional services their prospective clients may be interested in. Accordingly these services should not be included in the scope of the FRANDT requirement.

Concerning the proposal to structure the fees for clearing services around pre-defined client categories, we consider that it would not achieve its intended purpose and add very little value to the prospective client. First, for the reasons already mentioned above, there is no existing industry standard for categorising clients. This means that the same client could be categorised differently by different clearing services providers. Secondly, there are multiple factors that would determine each client category, such as transaction volumes in terms of portfolio size, number of transactions, maturities, credit rating, overall business profile, CCP selection, and many more. The client would have to make a very detailed self-assessment in order to place itself correctly in the classification. Such detailed client assessment is the core intention of the on-boarding and KYC process, which will be conducted during the bilateral negotiation with the prospect client, therefore such theoretical, ex-ante self- assessment is unnecessary and duplicative. Moreover, the client profile is likely to evolve over time, and the contingent actions and obligations in that respect are in any case closely regulated by the service contract.

Concerning the disclosures of contractual terms, we do not support the idea of making public “standard” contractual terms. Instead, in addition to the disclosures already made under Art. 27 of RTS 6, the relevant terms could be referenced in the RFP template or termsheet, together with details as to how these documents can be obtained (if/as relevant) from the relevant bodies producing them.

First, a standard contract form will provide very little useful information to the client, as it would only be a skeleton on which the relevant elements would later be added in the course of bilateral negotiation with the future client. Such standard, generic forms are meant to contain numerous elections and discretions. Moreover, up and until the client has received a complete offer, it will not be in a position to effectively compare different contracts. We also wish to draw the attention of ESMA that the most commonly used standard schedules, i.e. the FIA and ISDA documentation, are not public domain and it would be an outright breach of copyright law to make them public. Therefore, the assertion made in para 44 of the consultation paper that this requirement should not be too burdensome is incorrect.

Finally, we wish to re-iterate that prospect clearing clients are institutional clients who should have the basic understanding of the complexities of OTC derivatives clearing without the need to have these elements explained in great detail upfront, and have the full capacity to engage in a genuine contractual negotiation.

Recommendations:

We consider the following proposals would increase the comparability of services offers between clearing service providers, while being compatible with, and complementary to the current transparency requirements for clearing services providers under Art. 38(1) of EMIR in terms of fees disclosures:

1. A standardised RFP schedule would increase the transparency of the on-boarding process and shed more clarity on the basic requirements, stages of on-boarding and key elements of the KYC process, and summarise all types of fees that could apply.
2. An exhaustive list of all fees with descriptions, including, where these fees are not fixed amounts, a summary of factors that would determine the final level of fees when applied to each individual case.
3. A term sheet detailing the basic transaction fees could be published, providing an indicative range of prices, broken down in categories by numbers of trades.

We do not consider that the disclosure of standard contractual terms and the disclosures of client categories would be informative, meaningful and useful for the intended purpose. We do not consider that it is feasible to provide exhaustive and definitive *ex ante* transparency of the total costs of clearing services. In order to obtain a full picture of the costs, the prospective client needs to engage in a bilateral negotiation, which requires both counterparties to share sensitive information. Confidentiality of such negotiation should be adequately protected.

<ESMA\_QUESTION\_FRANDT\_1>

1. : Do you generally agree with the elements to be taken into consideration in the commercial terms for the provision of clearing services? Please elaborate and if you disagree with any specific element, please suggest alternative ones. You can also suggest additional ones.

<ESMA\_QUESTION\_FRANDT\_2>

We understand that ESMA’s mandate is to develop the existing requirement to offer clearing services on reasonable terms by enriching this requirement by the notion of conditions that are “unbiased and reasonable.” However, we disagree that mandating more *ex ante* transparency is the right approach to achieve this purpose. The client can only make an assessment whether the offer is “unbiased and reasonable” once it has a concrete, comprehensive proposal at hand, which cannot be achieved on an *ex ante* basis and through public disclosures. We believe that the intended purpose is better achieved by requiring that clearers provide, upon prospective client’s demand, well-founded, *bona fide* justifications for the elements that raise the client’s questions. Such clarifications should be provided on a bilateral basis.

Concerning technology requirements, we do not agree that IT should be potentially considered as an  intentional barrier for access to clearing services, and we do not understand what interest providers would have in investing resources in IT solutions deliberately intended to act as an inhibition for certain clients, without any business- or risk-related justification.

Moreover, IT alone is not, nor should it be, a driver in the development of the clearing services offer, and the operated IT structures have multiple other functions to satisfy, such as interoperability with the IT systems of the various FMIs (the CCPs) and intermediaries used, interoperability with other branches of business, etc. As long as the providers inform the prospective client about the IT requirements that would have to be satisfied in order to be accepted as a client, which is an integral part of the on-boarding process, we do not see any specific justification to submit IT structures to the FRANDT requirement.

Finally, we are concerned about proposals made in para 63 of the consultation paper whereby clearers should make “less advanced processes for accessing clearing” available. Also, in para 64 ESMA states that “Clearing service providers should be careful in their technology requirements for accessing their clearing services to ensure that they are not considered as unreasonable considering the services requested or provided.” We find this reasoning far-fetched and illogical, and we re-iterate that IT solutions are developed and implemented with the objective to provide safe and efficient and scalable operations, not as a means of pre-determining a prospective client base. In addition, we do not agree that clearers should be required to implement manual processes, or scale down their IT systems only to satisfy individual clients, and we do not see any justification why prospect client should be in a position to force future providers to change their internal IT set-ups. This is also inconsistent with the assumption that there should be no obligation to contract.

Concerning the proposals made for the commercial terms, we refer to our arguments made under Q1 above, and we re-iterate that generic public disclosures will have little informative value for the client. Moreover, the client could only assess the proposed contract once it has a concrete proposal at hand, hence in the framework of a bilateral negotiation. Nothing would prevent a prospect or existing client to engage with alterative providers in order to obtain a point of reference.  Hence we believe that a termsheet or Request For Proposal (RFP), setting out the general commercial terms, would be more appropriate together with a description of the contractual terms to be used.  Where the contractual terms are those produced by an industry body such as the International Swaps and Derivatives Association (ISDA) or FIA, as is generally the case in the cleared OTC derivatives market, cross reference to these terms together with a description of where the standardized terms are available should suffice.

We also strongly disagree with the proposals to limit the ability of clearing service providers to change contractual terms and to terminate the contract. We consider it inconsistent with the declaration repeatedly made in the consultation paper that ESMA does not intend to limit the contractual freedom.  Nor is it consistent with prudent risk management.

In particular, we observe that the consultation paper integrates, into the FRANDT framework some important elements of clearing members’ risk management policy, which is driven by different objectives than commercial policy, treating these two fundamentally different aspects as  subject to similar standards of justification. This is a serious misconception, which would compromise a clearing member’s ability to manage risks properly.

We think that the proposal made in para 74 of the consultation paper to impose a mandatory minimum termination notice period, as well as the proposal in para 75 that clients should be granted sufficient time to identify and on-board a new provider, are inconsistent with the principle that FRANDT should not result in a duty to contract; moreover, these are entirely incompatible with the corresponding termination notice periods which are imposed on clearing members by the CCPs and with the clearing member’s internal risk management policies. We also find the suggested minimum notice period of six months arbitrary and unfounded. As already mentioned above in the introductory part, clearing members are obliged by statute to implement rigorous risk management policies, of which the ability to terminate a client is a vital element.

Similarly, proposal made in para 72 that risk models should stay in place and any changes to them should be communicated well in advance is impossible to reconcile with the duty imposed upon clearing members to implement robust and effective risk management policies. We also do not understand how changes to risk models could be used for discriminatory practices, as they are not developed and amended for the sake of individual clients, and are subject to strict supervisory supervision and approval.

Recommendations:

Clearers can outline the basic technology requirements though the RFP term sheet or schedule, in order to give prospective clients a preliminary understanding of the IT setup which they are operating. Also in line with our recommendations under Q1 above, the RFP schedule should detail the on-boarding process and the key elements of KYC, so that prospective clients have a preliminary overview of the key issues that will be subject to bilateral negotiations.

We do not support the proposals imposing mandatory contractual clauses, or obligations to implement specific IT processes with the sole purpose of supporting the interests of a specific class of potential clients. Such proposals seriously impact the ability of clearing members to correctly apply their risk policies, and are inconsistent with the principle that there should be no obligation to contract.

<ESMA\_QUESTION\_FRANDT\_2>

1. : Do you generally agree with the suggestions to assist in facilitating access to clearing services? Do you generally agree with the requirements listed to ensure prices are fair, proportionate and non-discriminatory? Please elaborate and if you disagree with any specific element, please suggest alternative ones. You can also suggest additional ones.

<ESMA\_QUESTION\_FRANDT\_3>

With respect to the claim made in para 79 concerning the on-boarding process, which is described as “disproportionally complex, uncommitted and time-consuming” for some categories of clients, we wish to re-iterate that by its very nature, clearing is a complex service and a certain level of administrative and operational burden is simply inevitable, regardless of the expected levels of clearing activity. This said, we re-iterate that clients with limited clearing volumes and smaller portfolios can now benefit from the exemption from Art. 4, introduced by EMIR REFIT, and we consider this provision to be the primary means to address their concerns, including their frustrations with the on-boarding process.

With regard to the proposal made in para 81, we agree that clearers could provide more information *ex ante* on the onboarding process, however this information would have to remain generic. We therefore support the proposal made by the FIA in their contribution to this consultation, to make available a standardised RFP schedule (or termsheet), detailing the stages of the negotiation and on-boarding process, presenting the relevant commercial terms which may be the subject to further bilateral negotiation and the subsequent key elements of the KYC process, and providing a generic description of the various types of fees that apply.We do not think that more harmonisation is feasible beyond a generic RFP schedule / term sheet, as every case of client on-boarding is different and determined by a different set of factors. In this vein, we do not think it would be meaningful to provide clients with estimated timelines, as these can vary substantially, also due to factors that are entirely beyond the clearing member’s control or ability to anticipate, such as the resources available to the client.

In line with the arguments presented above, we disagree with the proposals to impose requirements on clearing members to make available specific technological solutions for less sophisticated prospective clients, and we disagree that clearing members would have a valid incentive to implement IT solutions for the sole purpose of discrimination and without any risk- or business-related justification.

Concerning the proposal made in para 85, we strongly disagree with the requirement to disclose and justify to clients the downstream costs incurred by the clearing member. This is a disproportionate incursion into internal business organization, and such information is highly sensitive, even when disclosed on bilateral basis. We re-iterate that clearing members are under a general obligation to act in good faith and manage appropriately any conflicts of interests that may arise from their various business relations. Moreover, MiFID already imposes a sufficient level of transparency, specifically in terms of costs and charges, with the specific aim of addressing commercially undue practices that can give rise to a conflict of interest between the service provider and the client.

Recommendations:

We refer to the idea of standardized RFP schedule or termsheet to provide a detailed description of the on-boarding process and the basic elements of the KYC process.

We re-iterate that clearers have no economic incentive in adopting processes and solutions without clear business- or risk-based justification, and for the sole purpose of discrimination against certain type of clients. With regard to the need to substantiate that the adopted solutions have appropriate justification and are not intended as a way to discriminate, we believe that such information is likely to be highly sensitive, and therefore it could be provided to the prospect client on request and on a confidential basis.

<ESMA\_QUESTION\_FRANDT\_3>

1. : Do you generally agree with the proposed elements regarding the risk control criteria? Please elaborate and if you disagree with any, please suggest alternative or additional ones.

<ESMA\_QUESTION\_FRANDT\_4>

On a general level, we believe that the inclusion of risk management policy in the scope of the FRANDT requirement is a misconception, and we do not believe that the risk controls implemented by the clearing members under the supervision of their competent authorities should be subject to additional constraints under FRANDT. The objectives pursued by FRANDT and the objectives pursued by risk management policies are fundamentally different in nature and should not be measured by the same standard.

It is important in our view to dissipate any potential misconception in which client payment obligations, resulting directly from risk management policies - such as margin payments, haircuts applied on collateral etc, should be classified under the notion of “costs”. While meeting payment obligations related to servicing client positions over time inevitably means that the client must readily make resources available and timely honour payments, such payments should not be considered as “costs” in the same meaning as fees. Unlike fees and other servicing costs, margin payments are not meant to guarantee commercial profitability of the service, but are a fundamental and indispensable for managing risks. Moreover, these elements are not meant to be subject to negotiation, are not meant for discretionary discounts and/or rebates without any direct relation to the risks.

Considering that clearing members are obliged to adopt appropriate risk management policies (RTS 6) and that these policies are subject to supervisory scrutiny and approval, we do not see how they could be used for discriminatory purposes. Requiring that clearing members justify their risk controls from the perspective of fairness and reasonableness is thus superfluous. In any case, we do not see how clearing members should be expected to make any ad hoc adjustments to their risk controls in order to satisfy FRANDT objectives when applied to any individual case. To the extent that any requirements based on internal risk policies are clearly disclosed and explained to the client in the process of bilateral negotiation and subsequently during the on-going relationship, we believe that the duty for the providers to act fairly and reasonably is properly discharged.

Clearing service providers are required to make a rigorous assessment of, and take into account the client’s risk profile, and wish to continue to do so. The measures proposed for the implementation of FRANDT in the draft technical guidance should not prescribe how banks should go about monitoring risks, and should not limit their ability to on-board clients based on risk criteria.

Recommendations:

We believe that risk controls should be subject to FRANDT requirements only to the extent the client has to be clearly informed about the mutual rights and obligations resulting from the application by the clearing member of its risk policy. Such rights and obligations are closely regulated by contract, and they reflect the regulatory obligations imposed on the clearing members by law, and the contractual obligations imposed on clearing members by the CCPs. We believe that that current market practice already satisfies the objectives of FRANDT principle, and there is no need to submit risk controls to any specific FRANDT requirements.

<ESMA\_QUESTION\_FRANDT\_4>

1. : Do you identify other benefits and costs not mentioned above associated to the proposed approach (option 2)? If you advocated for a different approach, how would it impact this section on the impact assessment? Please provide details.

<ESMA\_QUESTION\_FRANDT\_5>

With regard to policy option 2, we share ESMA’s approach to establish a principles-based regime that would detail the existing requirements under Art. 38(1) of EMIR, with the purpose of introducing more transparency and more comparability.

We propose solutions that would result in more granularity of the available information, and increase the ability of clients to anticipate the costs and challenges related to clearing on an ex ante basis, and provide them with new means of making well-informed choices about clearing services offers. However, we wish to highlight that there are objective limitations to full ex ante transparency and comparability, which are based on the natural heterogeneity of both clients and service providers.

We also wish to re-iterate that the inclusion of risk controls in the FRANDT framework is inappropriate, as factors related to risk management are of fundamentally different nature than commercial policies: where the latter are based on a cost-benefit analysis, the former are based on regulatory obligations and supported by supervisory oversight, and are generally not considered as negotiable.

We therefore find that the overall ESMA approach is too prescriptive and disproportionate, and focusses excessively on extensive disclosures and forced harmonisation, instead of proposing solutions that would provide clients with information that is meaningful, and at the same time in line with the intended objectives of FRANDT and proportionate.

<ESMA\_QUESTION\_FRANDT\_5>