



Response by the FIA European Principal Traders Association to the ESMA consultation on draft Technical Advice on commercial terms for providing clearing services under EMIR (FRANDT)

2 December 2019

Introduction

The FIA European Principal Traders Association (FIA EPTA) represents 28 independent European Principal Trading Firms (PTFs) that deal on own account, using their own money for their own risk, to provide liquidity and immediate risk-transfer in exchange-traded and centrally-cleared markets for a wide range of instruments, including shares, options, futures and ETFs. As market makers and liquidity providers, our members contribute to efficient, resilient, and high-quality secondary markets that serve the investment and risk management needs of end-investors and corporates throughout the EU.

Many of FIA EPTA's members are clients of direct clearing members, and therefore rely on clearing members for access to financial markets. As a result, we are supportive of the overarching objective of this consultation and the underlying FRANDT concept which is to increase access to client clearing services by ensuring that clearing members provide clearing services on fair, reasonable, non-discriminatory, and transparent terms.

For the purposes of this consultation, we have taken the liberty of providing our comments in this introductory section. Should you need any additional clarifications or feedback, we stand ready to support ESMA with any further information it may require.

The importance of ensuring access to clearing services

We would encourage ESMA and the European Commission to implement the FRANDT requirement in a principles-based manner that can be applied to all derivatives clearing services, including in asset classes and instruments that are not subject to the EMIR clearing obligation. In doing so, FIA EPTA members believe it is important to appropriately balance the goal of increasing transparency and fairness with the reality that bilateral negotiations and client-specific customisations should continue to be permitted.

In this regard, we note that clearing members have expressed concerns that specific aspects of the draft technical advice may be overly prescriptive and burdensome. We encourage ESMA to carefully evaluate this feedback in order to ensure that FRANDT will not be implemented in a manner that inadvertently decreases access to clearing or raises the costs associated with the provision of clearing

services as this could translate back in decreasing liquidity and or increasing spreads on a diverse range of securities including, for example, ETFs.

As outlined above, many FIA EPTA members are dependent on clearing members for access to financial markets and we acknowledge that if requirements were to become too prescriptive, this could disincentivise clearing firms from providing these services – including for our members.

Separately, we note that there are certain obstacles to clearing which FRANDT itself may not solve. This is primarily related to specific capital requirements to which clearing members subject and the fact that there continues to be a lack of consistency the application of global capital rules. In particular the fact that the Current Exposure Measure (CEM) in the context of the leverage ratio (LR) requirements largely fails to recognise the off-setting benefits between correlated, but not identical exchange traded derivatives (ETDs) is seriously constraining the ability for clearing members to offer client clearing services. The planned transition from CEM to the Standardised Approach for Counterparty Credit Risk (SA-CCR – which does allow for improved netting possibilities between correlated ETDs) will be a major relief for clearing members and their clients who are market makers in ETDs. However, it will not be before mid-2021 that these new rules will enter into effect in Europe (whilst the US recently announced that banks may voluntarily already adopt SA-CCR as of April 1, 2020).

We recognise that the abovementioned issue cannot be resolved directly by EU market supervisors or ESMA, but we do suggest that the rules in relation to FRANDT should be drafted in such a way that the limitations which are inherent in the capital treatment of the client clearing of ETDs are considered.

Addressing conflicts of interest

Additionally, FIA EPTA members would strongly encourage ESMA to also consider specifically addressing conflicts of interest as part of its technical advice. We note that Article 4(3a) of EMIR requires clearing members to take “all reasonable measures to identify, prevent, manage and monitor conflicts of interest, in particular between the trading unit and the clearing unit, that may adversely affect the fair, reasonable, non-discriminatory and transparent provision of clearing services.” As part of providing technical advice regarding “requirements that facilitate clearing services on a fair and non-discriminatory basis” per Article 4(3a)(c), it would be extremely helpful to further detail this requirement.

In particular, we would encourage ESMA to clarify that trading personnel should not influence or interfere with the decisions of clearing personnel regarding (i) whether to provide clearing services to a customer, and (ii) the commercial terms offered to a clearing customer, including fees. Such a clarification is consistent with rules already adopted in the US (see page 6 “Conflicts of Interest in Clearing Activities”) at https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/bcs_factsheets_final.pdf). It should be noted that all of the leading clearing service providers in the EU already comply with these rules for their US client clearing business.

This clarification would help to implement FRANDT in a meaningful way that will improve access to clearing and bring concrete benefits to clearing customers, while not creating an undue burden on clearing members.