

# MiFID II Wholesale Firms Conference

## 19 October 2015, ExCeL

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# Breakout session: MiFIR Post-Trade Regulatory Technical Standards

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# Agenda

- Continue to implement G20 post-trade derivatives reform agenda
- Complement and interact with EMIR
- Impacts 3 key areas:
  - Access to CCPs and Trading Venues
  - Straight-Through Processing of Cleared Derivatives
  - Indirect Clearing of Exchange-Traded Derivatives

# Access to CCPs and trading venues (RTS 15)

# Access topics

- Right of access
- Reasons for denial
- Role of national competent authority
- Margin, collateral and netting
- Deferrals
- Conclusions

# Right of access

- A CCP must grant access if requested by a trading venue...
- ...unless it would expose it to significant undue risks that cannot be managed
- And vice versa

# Risks

	CCP	Trading venue
Volume of transactions	✓	
Systems incompatibility	✓	✓
Human resources	✓	
Unable to take on new instruments	✓	
Threat to economic viability, or minimum capital requirements	✓	✓
Legal risks	✓	
Incompatibility of rules	✓	✓

# Role of national competent authority

- Requester must inform own NCA and recipient's NCA
- Either NCA can deny access on grounds of:
  - Liquidity fragmentation
  - CCP's or trading venue's risk management procedures are insufficient to prevent significant undue risks to third parties



# CCP treatment of contracts from new trading venue

- Same margin and collateral methodologies as “economically equivalent” contracts
- “Economically equivalent” defined as
  - Same asset class as financial instruments already cleared
  - Not significantly different risk profile
  - No material differences

# CCP treatment of contracts from new trading venue (cont.)

- Apply same netting procedures to economically equivalent contracts...
  - If procedure is valid and enforceable, and
  - Unless legal or basis risk would not be sufficiently mitigated
- Apply same portfolio margining approach to all correlated contracts

# Possible deferrals

- Newly established CCPs (transferable securities and money market instruments)
- Small trading venues (ETDs)
- Possible deferral of application to ETDs for 30 months
  - Commission report by July 2016 based on risk assessment
  - NCA “taking into account the risks”

# Conclusions

- CCPs, TVs as targets
- CCPs, TVs as requesters
- Users of CCPs, TVs

Questions?

# Straight-Through Processing of Cleared Derivatives (RTS 26)

# ESMA Mandate - MiFIR Art. 29

*“**CCPs, trading venues and investment firms which act as clearing members** in accordance with EMIR shall have in place effective systems, procedures and arrangements in relation to cleared derivatives to ensure that transactions in cleared derivatives are submitted and accepted for clearing as quickly as technologically practicable using automated systems.”*

...

*ESMA shall develop draft regulatory technical standards to specify the minimum requirements for systems, procedures and arrangements (including the **acceptance timeframes**) under this Article **taking into account the need to ensure proper management of operational or other risks**, and shall have ongoing authority to update those requirements as industry standards evolve.”*

# Objectives

- Automate clearing processes to reduce manual involvement and errors
- Reduce counterparty credit risk by reducing time during which counterparties are exposed to each other
- Allowing wider range of counterparties to trade with each other



# Scope and obligations

- Which products?
  - All cleared derivatives (OTC, ETD, voluntarily or mandatorily cleared)
- Which entities?
  - CCPs, trading venues, clearing members
- Which obligations?
  - Transfer information, enable risk management checks, accept (or not) trades for clearing within certain timeframes

# Timings\*

	Bilateral OTC (no 'waiver')	Bilateral OTC ( 'waiver')	On venue Non-electronic (no 'waiver')	On venue Electronic (no 'waiver')	On venue ( 'waiver')
TV to provide tools for CM pre-execution limits checks (as per RTS 6)	N/A	N/A	✓	✓	Exempt
TV to ensure of the above before execution	N/A	N/A	10 minutes from order entry	60 seconds from order entry	Exempt
TV to inform client and CM when order outside above limits	N/A	N/A	5 minutes from order check	Real time	Exempt
TV to send transaction information to CCP	N/A	N/A	10 minutes from execution	10 seconds from execution	Exempt
CM to obtain evidence of execution timeframe and ensure counterparties send transaction information to CCP	30 minutes from execution	30 minutes from execution	N/A	N/A	N/A
CCP to send transaction information to CMs	60 seconds from receipt of CM info	Exempt	N/A	N/A	N/A
CM to accept or not	60 seconds from receipt of CCP info	Exempt	10 minutes from order entry (in effect for ping model)	60 seconds from order entry (in effect for ping model)	Exempt (RTS 6 still applies)

# Timings\*

	<b>Bilateral OTC (no waiver)</b>	<b>Bilateral OTC (waiver)</b>	<b>On venue Non-electronic (no waiver)</b>	<b>On venue Electronic (no waiver)</b>	<b>On venue (waiver)</b>
CCP to accept or not	10 seconds from receipt of CM's acceptance	Exempt (because 60 seconds from receipt of info from counterparties)	10 seconds from receipt of TV info	10 seconds from receipt of TV info	Exempt
CM to inform executing counterparty of CCP non-acceptance	as soon as CCP informed them	as soon as CCP informed them	as soon as CCP informed them	as soon as CCP informed them	Exempt
TV to inform executing counterparty of CCP non-acceptance	N/A	N/A	as soon as CCP informed them	as soon as CCP informed them	Exempt
CCP to inform CM of non-acceptance	Real time basis	Real time basis	N/A (see above)	N/A (see above)	N/A (see above)
Consequences of CCP not accepting derivative for clearing	Agreement between counterparties	Agreement between counterparties	Rules of Trading Venue	Void	Void (electronic) or subject to rules of Trading Venue (non-electronic)

# On-venue – ‘waiver’ requirements

- Rationale: STP already occurring due to arrangements between CCPs, TVs, CMs and TV members / participants / clients (but note RTS 6 still applies)
- Conditions
  - TV rules require non CM members / participants to have contractual arrangement with a CM
  - CCP rules provide that a derivative executed on TV is automatically and immediately cleared with that CM
  - TV rules provide that members / participants / clients become counterparty to the above cleared transaction (as client/indirect client)

# Bilateral - waiver requirements

- Rationale: STP already occurring due to arrangements between CCPs, CMs and clients
- Conditions
  - CCP rules ensure setting and maintenance of limits by CM for its clients (as per RTS 6)
  - CCP rules provide that a derivative transaction within above limits is cleared automatically by CCP within 60 seconds from receiving information from counterparties

# Consequences of CCP rejection

- Consequence varies depending on execution
- Rationale: only fastest STP should be void
- New derivative transaction with same economic terms can be submitted
  - If rejection due to technical / clerical problem
  - Within 1 hour from previous submission
  - TV not subject to Article 8 MiFIR

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Questions?

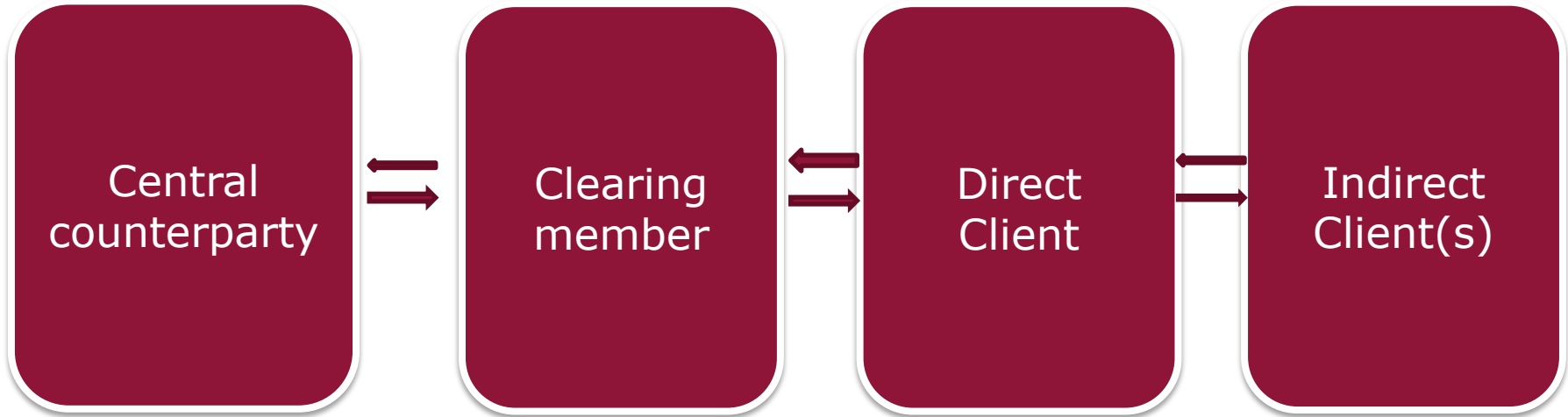
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# Indirect Clearing of Exchange-Traded Derivatives (ETDs) – *no RTS submitted*



# Indirect clearing



EMIR RTS contemplate 4-tier chains, but current contractual arrangements can involve further tiers in the ETD market

# The EMIR approach

- Aimed to open an alternative route to clearing for non clearing members without excessively increasing counterparty credit risk
- But so far not much take-up
- Problems identified – lack of certainty over clearing members' ability to return indirect client assets and port indirect client positions

# The MiFIR proposal

- Based on EMIR RTS but with significant tweaks
- No requirement for CM to facilitate porting
- More flexible requirements on CM and direct client around indirect client asset return
- Requirement for a gross omnibus option with all collateral value posted to CCP
- More explicit information sharing requirements between direct client and CM

# Next steps and difficult questions

- ESMA to amend EMIR RTS to provide consistent approach on both sets of RTS
- Difficult questions remain
  - What to do about long chains?
  - How necessary is porting?
  - Interaction with capital rules?
  - Cross border application
  - Certainty of indirect client status post default
  - CCP involvement in default management

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Questions?

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