

***The requirements and technical standards set by EU legislation for the supervision of depository and clearing activities by capital market participants***

*EMIR, CSDR and the related technical standards*

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# TABLE OF CONTENTS

- A. EMIR/CSDR/MIFIR – competent authorities and their supervisory role
- B. EMIR – Counterparty obligations, CCP reporting requirements and supervision & clearing members' obligations
- c. CSDR – CSD reporting requirements and supervision & participants' obligations

# **A. EMIR/CSDR/MIFIR – COMPETENT AUTHORITIES AND THEIR SUPERVISORY ROLE**

# Relevant EU regulations

- ▶ What are the relevant EU regulations for supervision of clearing and depository activities?
  - ▶ EMIR „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”
  - ▶ CSDR: „REGULATION (EU) No 909/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012”
  - ▶ MiFID II/MIFIR (access to CCPs and trading venues/obligations of trading participants acting as general clearing members): „ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU” & „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”

Other sectoral regulations and directives deal with exposures of regulated entities to derivatives, such as CRD IV/CRR for banks and investment firms, UCITS and AIF directives for investment funds...

EMIR/CSDR/MiFID/MIFIR contain provisions on powers of competent authorities (CA) under different sectoral regulations that enable those CAs relevant data access to information stored in TRs/CSDs.

# EMIR/CSDR/MIFIR

## Regulatory goals:

- Ensure a harmonised approach at the EU level
- EMIR – ensure greater data transparency for OTC derivatives trading
- EMIR – ensure data access to regulators and ESAs to identify systemic risks
- EMIR – strengthen CCPs' risk management framework and capital adequacy
- EMIR – impose a clearing obligation for classes of OTC derivatives where systemic risk has been identified
- CSDR – harmonise and strengthen organisational and capital requirements for CSDs
- CSDR – simplify cross border settlements
- CSDR – settlement discipline
- MiFIR – improve pre and post trade transparency
- MiFIR – ensure access to clearing and settlement services for trading venues and trading venue members
- MiFIR – bring OTC trading to trading venues for standardised instruments

## Dates of application:

### LEVEL I – EMIR:

- applicable since 2012,
- certain provisions became applicable only after RTS came into force (2013-2016)

### LEVEL I – CSDR:

- applicable since 2014,
- actual date of application tied into RTS coming into force (2016-2018)

### LEVEL I - MIFIR

- Date of application – initially 3. January 2017.
- Subsequently delayed to 3. January 2018.

### LEVEL II

- Delegated acts – EC
- ESMA RTS & ITS

### LEVEL III

- ESMA Guidelines
- EC Q&A
- ESMA Q&A

# COMPETENT AUTHORITIES

## EMIR:

**Scope: all derivatives, counterparty obligations when trading in derivatives, CCP authorisation and supervision, TR authorisation and supervision**

- Competent authority for the authorisation and supervision of CCPs – Article 22 EMIR
- Competent authority for the supervision of counterparty obligations (FCs and NFCs) – Article 10 EMIR
- MS are obligated to designate a CA to supervise NFCs (wide scope)
- Can be separate authorities
- ESMA authorises and supervises TRs directly
- CCP colleges have a role in CCP licensing and supervision

## EMIR:

CCP colleges composition:

- ESMA;
- the CCP's competent authority;
- the competent authorities responsible for the supervision of the clearing members of the CCP that are established in the three Member States with the largest contributions to the default fund of the CCP referred to in Article 42 on an aggregate basis over a one-year period;
- the competent authorities responsible for the supervision of trading venues served by the CCP;
- the competent authorities supervising CCPs with which interoperability arrangements have been established;
- the competent authorities supervising central securities depositories to which the CCP is linked;
- the relevant members of the ESCB responsible for the oversight of the CCP and the relevant members of the ESCB responsible for the oversight of the CCPs with which interoperability arrangements have been established;
- the central banks of issue of the most relevant Union currencies of the financial instruments cleared.

# COMPETENT AUTHORITIES

## CSDR:

**Scope: applies to the settlement of all financial instruments and activities of central securities depositories (CSDs)**

### Financial instruments – MiFID II definition (Section C Annex I)

- Competent authority for the authorisation and supervision of CSDs
- means the authority designated by each Member State in accordance with Article 11 of CSDR
- MS can designate more than one authority
- Relevant authority:
  - the authority responsible for the oversight of the securities settlement system operated by the CSD
  - the central banks in the Union issuing the most relevant currencies in which settlement takes place;
  - the central bank in the Union in whose books the cash leg of a securities settlement system operated by the CSD is settled.

## MiFIR:

**Scope: applies to disclosure of trade data to the public; reporting of transactions to the competent authorities; trading of derivatives on organised venues; non-discriminatory access to clearing and non-discriminatory access to trading in benchmarks; product intervention powers of competent authorities, ESMA and EBA and powers of ESMA on position management controls and position limits; provision of investment services or activities by third-country firms following an applicable equivalence decision by the Commission with or without a branch.**

### Financial instruments – MiFID II definition (Section C Annex I)

- Competent authority, designated by each Member State in accordance with MiFID II Article 67,

# SUPERVISORY DUTIES OF CAs

## EMIR:

- ❑ monitoring counterparty obligations (data reporting, mandatory clearing, collateral exchange)
- ❑ CCP licensing and supervision
- ❑ monitoring clearing members' obligations towards clients
- ❑ data collecting from TRs to identify systemic risks in their MS

## ▶ CSDR:

- ❑ monitoring issuers obligations to issue securities in book entry form
- ❑ monitoring settlement discipline
- ❑ CSD licensing and supervision
- ❑ monitoring CSD participants and their obligations towards clients
- ❑ monitoring CSD access and CSD links

## ▶ MiFIR (only where connected to clearing and depository services):

- ❑ monitoring access requests to CCPs and trading venues (MiFIR Articles 35&36)
- ❑ clearing obligation for traded derivatives (MiFIR Article 28)
- ❑ monitoring obligations of trading participants that act as general clearing members



# SUPERVISORY POWERS OF CAs

## EMIR, Article 22:

- „Each Member State shall ensure that the competent authority has the supervisory and investigatory powers necessary for the exercise of its functions.”

## ▶ CSDR, Article 11:

- „The competent authorities shall have the supervisory and investigatory powers necessary for the exercise of their functions.”
- Article 62 – publication of decisions
- Article 63 – administrative sanctions and other measures for infringements
- a public statement which indicates the person responsible for the infringement and the nature of the infringement in accordance with Article 62;
- an order requiring the person responsible for the infringement to cease the conduct and to desist from a repetition of that conduct;
- withdrawal of the authorisations granted under Article 16 or 54, in accordance with Article 20 or 57;
- a temporary or, for repeated serious infringements, a permanent ban against any member of the institution’s management body or any other natural person, who is held responsible, from exercising management functions in the institution;
- maximum administrative pecuniary sanctions of at least twice the amounts of the profit gained as a result of an infringement where those amounts can be determined;
- in respect of a natural person, maximum administrative pecuniary sanctions of at least EUR 5 million or in the Member States whose currency is not the euro, the corresponding value in the national currency on the date of adoption of this Regulation;
- in the case of a legal person, maximum administrative pecuniary sanctions of at least EUR 20 million or up to 10 % of the total annual turnover of the legal person according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts according to Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income according to the relevant Accounting Directives according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

# SUPERVISORY POWERS OF CAs

## MiFIR, Article 69 (more detailed in the definition of CAs supervisory powers)

- have access to any document or other data in any form which the competent authority considers could be relevant for the performance of its duties and receive or take a copy of it;
- require or demand the provision of information from any person and if necessary to summon and question a person with a view to obtaining information;
- carry out on-site inspections or investigations;
- require existing recordings of telephone conversations or electronic communications or other data traffic records held by an investment firm, a credit institution, or any other entity regulated by this Directive or by Regulation (EU) No 600/2014;
- require the freezing or the sequestration of assets, or both;
- require the temporary prohibition of professional activity;
- require the auditors of authorised investment firms, regulated markets and data reporting services providers to provide information;
- refer matters for criminal prosecution;
- allow auditors or experts to carry out verifications or investigations;
- require or demand the provision of information including all relevant documentation from any person regarding the size and purpose of a position or exposure entered into via a commodity derivative, and any assets or liabilities in the underlying market;
- require the temporary or permanent cessation of any practice or conduct that the competent authority considers to be contrary to the provisions of Regulation (EU) No 600/2014 and the provisions adopted in the implementation of this Directive and prevent repetition of that practice or conduct;
- adopt any type of measure to ensure that investment firms, regulated markets and other persons to whom this Directive or Regulation (EU) No 600/2014 applies, continue to comply with legal requirements;
- require the suspension of trading in a financial instrument;
- require the removal of a financial instrument from trading, whether on a regulated market or under other trading arrangements;
- request any person to take steps to reduce the size of the position or exposure;
- limit the ability of any person from entering into a commodity derivative, including by introducing limits on the size of a position any person can hold at all times in accordance with Article 57 of this Directive;
- issue public notices;
- require, in so far as permitted by national law, existing data traffic records held by a telecommunication operator, where there is a reasonable suspicion of an infringement and where such records may be relevant to an investigation into infringements of this Directive or of Regulation (EU) No 600/2014;
- suspend the marketing or sale of financial instruments or structured deposits where the conditions of Articles 40, 41 or 42 of Regulation (EU) No 600/2014 are met;
- suspend the marketing or sale of financial instruments or structured deposits where the investment firm has not developed or applied an effective product approval process or otherwise failed to comply with Article 16(3) of this Directive;
- require the removal of a natural person from the management board of an investment firm or market operator.

# LEVEL II regulation

## ▶ EMIR RTS:

- The standards cover:

- ▶ Details of the data to be reported to TRs (Regulation (EU) No 148/2013)
- ▶ Details of the application for registration as a TR (Regulation (EU) No 150/2013)
- ▶ Data to be published by trade TRs and operational standards (Regulation (EU) No 151/2013)
- ▶ Colleges for CCPs (Regulation (EU) No 876/2013)
- ▶ General requirements and prudential requirements for CCPs (Regulation (EU) No 153/2013; Regulation (EU) No 152/2013)
- ▶ Clearing obligation, risk mitigation techniques and NFCs (Regulation (EU) No 2015/2205, Regulation (EU) No 2016/592, Regulation (EU) No 2016/1178, Regulation (EU) No 2016/2251 & Regulation (EU) No 149/2013)

## ▶ CSDR:

All Level 2 measures (except for the technical standards on settlement discipline) have been published in the Official Journal of the European Union (OJ) on 10 March 2017:

- ❑ Delegated Act on Cash Penalties and Substantial Importance
- ❑ RTS on CSD Prudential Requirements (RTS 2017/390 )
- ❑ RTS on CSD Requirements (RTS 2017/392)
- ❑ ITS on CSD Requirements (ITS 2017/394)
- ❑ RTS on Internalised Settlement (RTS 2017/391)
- ❑ ITS on Internalised Settlement (ITS 2017/393)

## ▶ MiFIR (where connected to clearing and depository services):

- ❑ Clearing access in respect of trading venues and central counterparties (RTS 2017/581)
- ❑ The obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing (RTS 2017/582)
- ❑ The organisational requirements of investment firms engaged in algorithmic trading (RTS 2017/589 - Chapter IV)

# **B. EMIR – COUNTERPARTY OBLIGATIONS, CCP REPORTING REQUIREMENTS AND SUPERVISION & CLEARING MEMBERS' OBLIGATIONS**

# EMIR definitions

- ▶ „**NFC - Non-financial counterparty**” means an undertaking established in the Union other than FCs CCPs and TRs
- ▶ „**Intragroup transactions**” – OTC derivative contract entered into with a counterparty that is a member of the same group, under the conditions in EMIR Article 3;
- ▶ „**Derivative**” or „**Derivative contract**” – EMIR uses the MiFID I/MiFID II definition;
- ▶ „**OTC derivative**” or „**OTC derivative contract**” means a derivative contract the execution of which does not take place on a regulated market or on a third-country market considered as equivalent to a regulated market;
- ▶ „**Clearing obligation**” – obligation to clear OTC derivative contracts through a CCP under the conditions of EMIR Article 5 (2) EMIR-a;
- ▶ „**CM - Clearing member**” means an undertaking which participates in a CCP and which is responsible for discharging the financial obligations arising from that participation;

- „**CCP – Central Counterparty**” means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer;
- „**Clearing**” means the process of establishing positions, including the calculation of net obligations, and ensuring that financial instruments, cash, or both, are available to secure the exposures arising from those positions;
- „**TR -Trade repository**” means a legal person that centrally collects and maintains the records of derivatives;
- „**FC - Financial counterparty**” means an investment firm, a credit institution, an insurance undertaking, an assurance undertaking, a reinsurance undertaking, a UCITS and, where relevant, its management company, an institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC and an alternative investment fund managed by AIFMs authorised or registered in accordance with Directive 2011/61/EU;

# Counterparty obligations

FCs/NFC „+“/NFC „-“:

<b>Financial counterparties and non-financial counterparties above the clearing threshold</b>	>	Clearing obligation Risk mitigation techniques Reporting obligation
<b>Non-financial counterparties below the clearing threshold</b>	>	Reporting obligation Certain risk mitigation techniques (timely confirmation, portfolio reconciliation and compression, dispute resolution)
<b>CCPs</b>	>	CCP requirements
<b>Trade repositories</b>	>	TR requirements

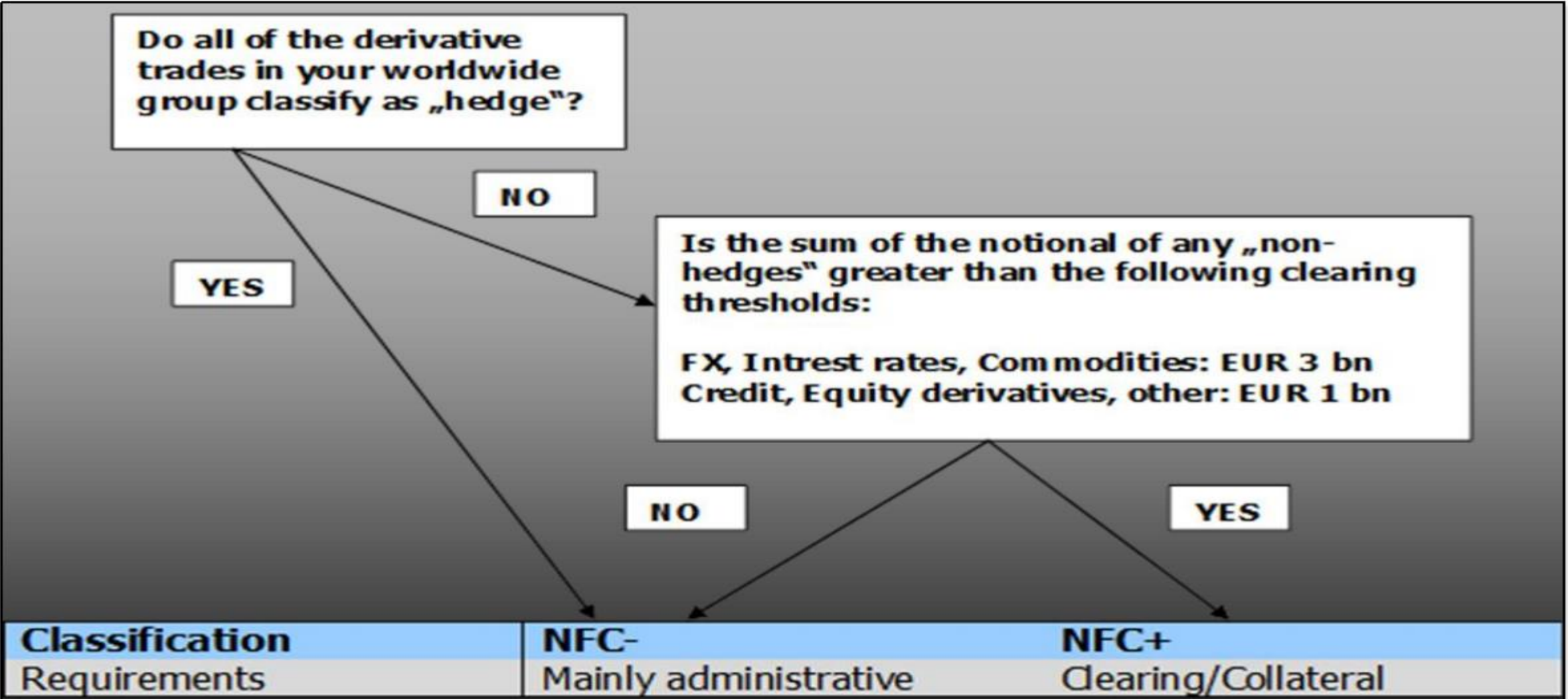
# Counterparty obligations

## What is the Clearing Threshold?

- The Clearing Threshold is an amount set by class of OTC derivative contracts. It is set by ESMA Technical Standards and will be reviewed on a regular basis.
  - ▶ NFCs need to notify their NCA and ESMA only on the first day that they exceed any of the clearing thresholds. In accordance with EMIR Article 10(1)(b), they will become NFC+ if the rolling average position over 30 working days exceeds the threshold. An NFC+ will need to centrally clear those of its OTC derivative contracts that are subject to the clearing obligation. Also, an NFC+ will need to apply more stringent risk mitigation techniques than an “ordinary” NFC.
- Value of the clearing thresholds (\* in gross notional value):

<b>EUR 1 billion*</b>	<b>Credit derivative contracts</b>
<b>EUR 1 billion*</b>	<b>Equity derivative contracts</b>
<b>EUR 3 billion*</b>	<b>Interest rate derivative contracts</b>
<b>EUR 3 billion*</b>	<b>Foreign exchange derivative contracts</b>
<b>EUR 3 billion*</b>	<b>Commodity derivative contracts and others</b>

# Counterparty obligations



Classification	NFC-	NFC+
Requirements	Mainly administrative	Clearing/Collateral



# REPORTING OBLIGATION

All counterparties are obligated to report EDT and OTC derivative transactions to TRs:

Case 1 – Bilateral, non-cleared trade (basic case)



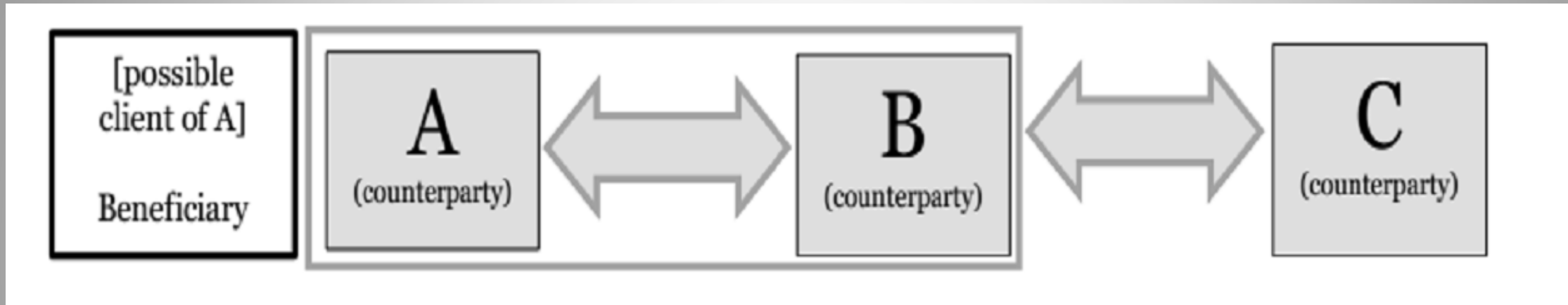
Source: ESMA EMIR Q&A

- No specific provisions apply to this case. Both counterparties have an obligation to report.
- Both identify the other as counterparty . A should identify its client, if any, as beneficiary in its report.
- Should parties agree to centrally clear this type of bilateral transaction, reporting duties do not change. The CCP could however centralize reporting, should counterparties and the CCP agree on such delegation.

# REPORTING OBLIGATION

All counterparties are obligated to report EDT and OTC derivative transactions to TRs:

Case 2 - Principal trades in a chain



Source: ESMA EMIR Q&A

- A is a client of B. They conclude a transaction that is back-to-back to another transaction that B is concluding with C.
- All 3 counterparties (i.e. each of the two counterparties to the two contracts) have the duty to report.
- B acts as principal in both trades and is therefore considered as a counterparty of both under EMIR, being thus under the duty to report the contract, reporting A as counterparty in the first trade and C as its counterparty in the second trade. C and A will name B as their counterparty.

# REPORTING OBLIGATION

## NCA and relevant authorities have access to TR data

### EMIR- Article 81:

- ❑ ESMA;
- ❑ EBA;
- ❑ EIOPA;
- ❑ the ESRB;
- ❑ the competent authority supervising CCPs accessing the trade repositories;
- ❑ the competent authority supervising the trading venues of the reported contracts;
- ❑ the relevant members of the ESCB, including the ECB in carrying out its tasks within a single supervisory mechanism under Council Regulation (EU) No 1024/2013 (30);
- ❑ the relevant authorities of a third country that has entered into an international agreement with the Union;
- ❑ supervisory authorities designated under MiFID II;
- ❑ the relevant Union securities and market authorities whose respective supervisory responsibilities and mandates cover contracts, markets, participants and underlyings which fall within the scope of EMIR;
- ❑ the relevant authorities of a third country that have entered into a cooperation arrangement with ESMA;
- ❑ the Agency for the Cooperation of Energy Regulators established by Regulation (EC) No 713/2009 of the European Parliament and of the Council;
- ❑ the resolution authorities designated under Article 3 of Directive 2014/59/EU of the European Parliament and the Council;
- ❑ the Single Resolution Board established by Regulation (EU) No 806/2014;
- ❑ competent authorities or national competent authorities within the meaning of Regulations (EU) No 1024/2013 and (EU) No 909/2014 and of Directives 2003/41/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU and, 2014/65/EU, and supervisory authorities within the meaning of Directive 2009/138/EC;
- ❑ the competent authorities designated for SFTR.

# REPORTING OBLIGATION

## How is TR data used?

- to check if the counterparties to OTC derivative contracts comply with their obligations under EMIR (reporting, clearing, valuation, collateral exchange)
- to aggregate data (sectoral, MS, EU wide) and assess systemic risks and concentration of risk
- aggregated data is disseminated to the public to ensure greater transparency,
- to determine classes of OTC derivatives that should be subject to the clearing obligation under EMIR,
- to determine classes of OTC derivatives that should be subject to the trading obligation under MiFIR.

ESMA ensures TR data validation by TRs.

CAs need to contact TRs to get data access.

All TRs have different forms that regulators need to fill out.

Commonly, the regulator needs to inform the TR of the scope of its mandate so that the TR can determine what data the regulator can access.

# CCP's REPORTING OBLIGATIONS

## After its initial licensing, how are CCP's supervised?

- ❑ Regular reporting (supervisory reports on levels of margins, DF and exposures, back testing coverage, stress tests, etc.; capital adequacy reporting)
- ❑ Yearly review (under Article 21. of EMIR – this has a wide scope and covers all EMIR requirements)
- ❑ Yearly model validation (under Article 49. of EMIR and Article 59. of RTS 153/2013)
- ❑ Add hoc reporting if certain conditions are met (capital requirements + 10% buffer – the „notification threshold” under Article 1(3) of RTS 152/2013; fall of SIG („skin in the game”) below the threshold in Article 35. of EMIR; changes in the management structure under Article 31(1) of EMIR; amendments to collateral concentration limits or any breach of collateral concentration limits under Article 42 of RTS 153/2013; any decision in which the board decides not to follow the advice of the risk committee, under Article 28(5) of EMIR; outsourcing of major activities linked to risk management, under Article 35 of EMIR; information on costs and revenues of the services provided, under Article 38. of EMIR; CM default, under Article 48 of EMIR)
- ❑ EMIR College activities/reports (this depends on the dynamic of the college information exchange – defined as at least annually, but will be more frequent in practice)

CCP regulatory reporting is currently not fully defined through Level 2/Level 3 regulation and scope and frequency of the reporting can be defined by NCAs and national laws.

This can be agreed upon at a level of the CCP College.

# EMIR COLLEGES

## What is their role?

- Initial licensing of CCPs and their subsequent monitoring and supervision.

## Duties:

- ❑ the preparation of the opinion if the CCP is to be licensed (Article 19 EMIR)
- ❑ the exchange of information, including requests for information
- ❑ agreement on the voluntary entrustment of tasks among its members
- ❑ the coordination of supervisory examination programmes based on a risk assessment of the CCP
- ❑ the determination of procedures and contingency plans to address emergency situations (Article 24 EMIR).

## The College must operate based on a written agreement.

- Regulation (EU) No 876/2013
- ESMA Guidelines and Recommendations regarding written agreements between members of CCP colleges
- ESMA's opinion on the composition of CCP colleges under EMIR (Reference 2015/838)

# EMIR COLLEGES

## What is their role?

### - Yearly review

*„When the NCA performs a review or evaluation of a CCP under Article 21 of EMIR, it will provide detailed results of the findings of the review or evaluation to College Members”*

### - Emergency situations

The NCA and all College Members are responsible for assessing whether a CCP is facing an emergency situation.

- ❑ any situation on which there is (or is a serious threat of) a major disruption to the functioning of a CCP,
- ❑ or there is significant evidence to indicate that there is a high risk of a default of a major participant of a CCP ,
- ❑ or such a default has already occurred

## Information to be shared in emergency/crisis situations:

### Details to be shared in an emergency situation;

- actions likely to be taken by Chairing Authority or, where relevant, by another authority;
- actions being taken by CCP A, including under its default rules, recovery or emergency procedures;
- if applicable, details of any default protections exercised and/or recovery powers deployed by CCP A;
- if applicable, details of failure-to-settle procedures used (by currency if relevant);
- details on the prospective implications of disruptions to CCP A's performance and for the full and timely provision of its services to its clearing members and interoperable infrastructures; and
- any other available information that would be of particular relevance to other College Members.

# EMIR COLLEGES

## Crisis situations

The College needs to have a protocol regarding the operation of the College in an emergency situation.

This protocol will indicate:

- the type of information that the NCA and College Members are expected to share in an emergency situation,
- how such information will be communicated and
- the timeframes in which communication would likely occur, in various different crisis scenarios.

The protocol needs to be regularly tested in coordination with the emergency situation testing of the CCP itself.

The CCP has an obligation to establish crisis management procedures under Article 22. of RTS 153/2013.



# CCPs

## Novation or “open offer”:

### Novation

- ❑ Through novation, the original contract between the buyer and seller is extinguished and replaced by two new contracts, one between the CCP and the buyer and the other between the CCP and the seller.

### “Open offer”

- ❑ In an open offer system, a CCP is automatically and immediately interposed in a transaction at the moment the buyer and seller agree on the terms. If all pre-agreed conditions are met, there is never a contractual relationship between the buyer and seller in an open offer system.

**Either novation or open offer gives market participants legal certainty that a CCP is obligated to effect settlement if the legal framework is supportive of the method used.**

- ❑ EU CCPs EU use both systems:

CCP	Novation	Open offer
Eurex Clearing	NO	YES
SiX - Clear	NO	YES
CCP.Austria	NO	YES
EMCF	YES	YES
EROCCP	YES	NO
LCH Clearnet Ltd.	YES	YES
LCH Clearnet SA.	YES	NO

# CCP CLEARING MEMBERS

A CCP is exposed to its CMs and needs to consider:

- the liquidity of the market it serves,
- the volatility of the market it serves/instruments that it clears,
- CMs' credit risk,
- market risk of the cleared transactions in normal and stress conditions,
- the CCP's liquidity needs and how they can be affected by CM default,
- impact of market stress on the CCP's ability to liquidate assets
- what haircut should be used on CM and client collateral and on own liquidity sources

First level of protection are participation requirements for CMs.

Participation requirements differ among CCPs, but generally can be classified as:

- Capital level and size,
- Capital adequacy ,
- Necessary regulatory authorizations,
- Access to liquidity,
- Supervised entity,
- Adequate credit rating (assessed by the CCP)

Categories of membership:

- GCM ("general clearing member"),
- CM/DCM ("clearing member/direct clearing member")
- TP/NCM ("trading participant/non-clearing member").

# CCP CLEARING MEMBERS

## **GCM can:**

- Clear its own transactions and transactions of its clients (i.e. its brokerage clients),
- Clear transactions for one or more TP/NCMs and their clients,

## **CM/DCM can:**

- Clear its own transactions and transactions of its clients (i.e. its brokerage clients),

## **TP/NCM has to:**

- Enter into a contract with a GCM to be able to clear its own transactions and transactions of its clients
- EMIR Article 39. – there is an obligation to segregate CMs' own accounts from client accounts.
- All CCP's must offer the following minimal account structure:
  - CM house account,**
  - omnibus account for clients**
  - Individual accounts for clients.**

**A CCP calculates margins for all of these accounts separately and cannot net between positions on separate accounts.**

**CCP calculates margin requirements towards members - IM + VM + DF contribution**

EMIR & RTS 153/2013 mandate intra-day and end-of day calculations.

**All TPs need not be direct clearing members and usually are not.**

# CCP CLEARING MEMBERS

**A CCP has to have an EMIR compliant methodology to calculate IM/VM and DF contributions.**

The methodology needs to be tested by using:

- Margin coverage back tests,
- Model parameters back tests
- Stress tests under a range of scenarios,
- Sensitivity analysis,
- Retroactive stress testing.

**The test results need to be monitored, analysed and used to validate the CCP's model.**

**CCPs can have additional mechanisms of risk mitigation:**

- transactional limits,
  - total exposure limits,
  - "kill switch" (GCM/NCM)
  - Concentration limits, etc.
- 
- The purpose of margin collection is to protect the CCP from market and credit risk in the event of CM default, during the assessed liquidation period, in „normal conditions”.
  - The default fund contribution serves to protect the CCP in the event of CM default, during the assessed liquidation period, in stressed market conditions.
  - The CCP also needs to assess and calculate its liquidity needs
- 
- **A example of margin and DF calculation - KDPW\_CCP (EU EMIR licensed CCP).**

# Example - KDPW\_CCP- membership requirements

## Regulated market:

- GCM:
  - PLN 50 M (EUR 12 M) and PLN 5 M add-on (EUR 1.2 M) for every NCM – if CM is a bank;
  - PLN 15 M (ca. EUR 3.5 M) and PLN 2 M add-on (EUR 0.5 M) for every NCM – if CM is an investment firm;
- DCM:
  - PLN 25 M (EUR 6 M) if bank;
  - PLN 4 M (EUR 1 M) if investment firm;
- Clearing house:
  - PLN 15 M (EUR 3.5 M).

## OTC market:

- GCM:
  - PLN 100 M (ca. EUR 25 M);
- CM:
  - PLN 50 M (ca. EUR 12.5 M);
- Clearing house:
  - PLN 100 M (ca. EUR 25 M).

# Example Margin - KDPW\_CCP

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KDPW\_CCP uses margin levels:

## ➤ Initial deposit

KDPW\_CCP uses this to cover intra-day changes of exposure. This is collected immediately when a CM is accepted. Minimal amount: 1M PLN for the OTC market, 100 000 PLN for the regulated market.

## ➤ Initial margin

EMIR required amount to cover exposure to the CM in the liquidation period, at a 99-99,9% confidence level.

## ☐ Additional margin

## ☐ Variation margin

This is an amount that is exchanged daily, depending on mark-to-market value of the portfolio.

# Example Margin

## ➤ SPAN® Methodology (Standard Portfolio Analysis of Risk)

Two elements for margin calculation under SPAN:

- **Liquidation risk margin (this covers market risk in the liquidation period – i.e. 4 days),**
- **mark-to-market margin (intraday market risk)**

**Liquidation risk margin – calculation steps**

1. Financial instruments are classified into liquidity classes
2. A base for further calculations is determined (to which liquidity class should a chosen portfolio be assigned)
3. Net exposure is calculated (netting can only be performed within the same liquidity class). We come to a net „buy” and net „sell” position (exposure) in each liquidity class.
4. Example:

ISIN	Liquidity class
ISIN 1	LQ1
ISIN 2	LQ1
ISIN 3	LQ1
ISIN 4	LQ2
ISIN 5	LQ2
ISIN 6	LQ3
ISIN 7	LQ3
ISIN 8	LQ4

Liquidity class	Instrument	Market side (B/S)	Quantity	Reference price	QxP (B)	QxP (S)
LQ1	ISIN 1	B	7200	102,3	736.560,00	0,00
	ISIN 2	B	1300	45,6	59.280,00	0,00
	ISIN 3	S	500	175,2	0,00	87.600,00
Total LQ1					795.840,00	87.600,00
LQ2	ISIN 4	B	300	8,5	2.550,00	0,00
	ISIN 5	S	3000	9,2	0,00	27.600,00
Total LQ2					2.550,00	27.600,00
LQ3	ISIN 6	B	400	23,6	9.440,00	0,00
	ISIN 7	S	900	56	0,00	50.400,00
Total LQ3					9.440,00	50.400,00
LQ4	ISIN 8	S	1500	89	0,00	133.500,00
Total LQ4					0,00	133.500,00

24.5.2017.

# Example Margin

## ➤ SPAN® Methodology (Standard Portfolio Analysis of Risk)

Margin for liquidation risk – calculation steps (continued)

4. Then the total net position of the portfolio in each liquidity class is calculated

Liquidity class	QxP (B)	QxP (S)	ABS (Q*P (B)) - (QxP (S))
LQ1	795.840,00	87.600,00	708.240,00
LQ2	2.550,00	27.600,00	25.050,00
LQ3	9.440,00	50.400,00	40.960,00
LQ4	0,00	133.500,00	133.500,00

5. Also, the total gross position of the portfolio in each liquidity class is calculated

Liquidity class	QxP (B)	QxP (S)	ABS (Q*P (B)) + (QxP (S))
LQ1	795.840,00	87.600,00	883.440,00
LQ2	2.550,00	27.600,00	30.150,00
LQ3	9.440,00	50.400,00	59.840,00
LQ4	0,00	133.500,00	133.500,00

6. Indirect liquidation risk is calculated (based on market risk and specific risk of each LQ in the portfolio)

Margin for market risk (for each LQ the CCP internally determines risk factor Y– this is used with the total net position)

Margin for specific risk (for each LQ the CCP internally determines risk factor X– this is used with the total gross position)

Liquidity class	Y (market risk)	X (specific risk)
LQ1	5,00%	3,00%
LQ2	7,00%	4,00%
LQ3	7,00%	4,00%
LQ4	10,00%	5,00%

Risk factors examples:





# Example Margin

## ➤ SPAN® Methodology (Standard Portfolio Analysis of Risk)

Liquidation risk margin – calculation steps (continued)

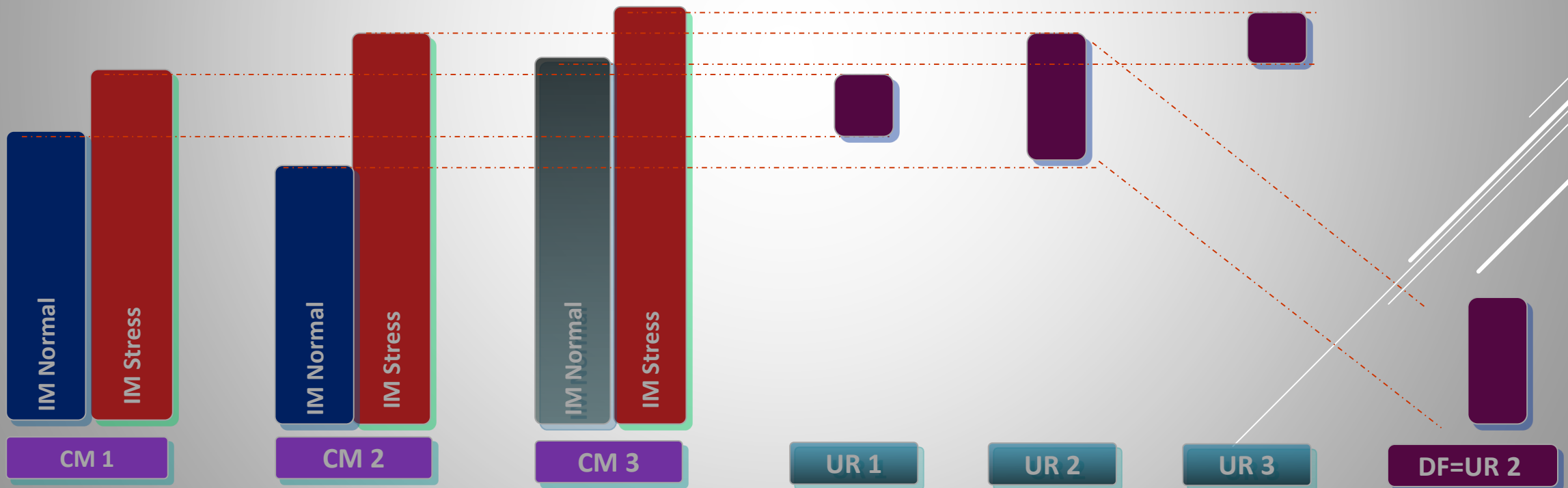
### 7. Requirement for the initial liquidation risk margin is:

Liquidity class	Y (market risk) (1)	X (specific risk) (2)	Net position (3)	Gross position (4)	Market risk (5) = (1)*(3)	Specific risk (6) = (2)*(4)	Intermediary risk (7) = (5) +(6=
LQ1	5,00%	3,00%	708.240,00	883.440,00	35.412,00	26.503,20	61.915,20
LQ2	7,00%	4,00%	25.050,00	30.150,00	1.753,50	1.206,00	2.959,50
LQ3	7,00%	4,00%	40.960,00	59.840,00	2.867,20	2.393,60	5.260,80
LQ4	10,00%	5,00%	133.500,00	133.500,00	13.350,00	6.675,00	20.025,00

### 8. This amount can be adjusted with correlations between LQs (this can lower the margin amount)

# DF contribution calculation

- Default fund
- Covers the highest level of *uncovered risk* (by IM – which is calibrated in normal conditions).
- Uncovered risk (UR) = IM Stress – IM Normal
  - IM Stress – stress-test Initial margin (this is calculated in EbMPC conditions and scenarios)
  - IM Normal – initial margin in normal conditions



# CCP CLEARING MEMBERS

- ❑ CCP CMs (banks and investment firms) need to comply with certain client protection rules from EMIR and its technical standards:
  - EMIR Article 37(3) („Clearing members that clear transactions on behalf of their clients shall have the necessary additional financial resources and operational capacity to perform this activity. The CCP’s rules for clearing members shall allow it to gather relevant basic information to identify, monitor and manage relevant concentrations of risk relating to the provision of services to clients. Clearing members shall, upon request, inform the CCP about the criteria and arrangements they adopt to allow their clients to access the services of the CCP. Responsibility for ensuring that clients comply with their obligations shall remain with clearing members.“),
  - EMIR Article 38(1) („A CCP and its clearing members shall publicly disclose the prices and fees associated with the services provided. They shall disclose the prices and fees of each service provided separately, including discounts and rebates and the conditions to benefit from those reductions. A CCP shall allow its clearing members and, where relevant, their clients separate access to the specific services provided.“),
  - EMIR Article 39(4), 5. i 7. EMIR-a, Segregation and portability (4. – „A clearing member shall keep separate records and accounts that enable it to distinguish both in accounts held with the CCP and in its own accounts its assets and positions from the assets and positions held for the account of its clients at the CCP.“; 5. „A clearing member shall offer its clients, at least, the choice between omnibus client segregation and individual client segregation and inform them of the costs and level of protection referred to in paragraph 7 associated with each option. The client shall confirm its choice in writing.“; 6. „When a client opts for individual client segregation, any margin in excess of the client’s requirement shall also be posted to the CCP and distinguished from the margins of other clients or clearing members and shall not be exposed to losses connected to positions recorded in another account.“; 7. „CCPs and clearing members shall publicly disclose the levels of protection and the costs associated with the different levels of segregation that they provide and shall offer those services on reasonable commercial terms. Details of the different levels of segregation shall include a description of the main legal implications of the respective levels of segregation offered including information on the insolvency law applicable in the relevant jurisdictions.“)
  - RTS-a 149/2013 CM obligations for indirect clearing arrangements.

CMs need to:

- Communicate with clients,
- Review and manage contractual relationships,
- Review and manage internal risk controls (exposure to clients and to the CCP).

# CCP CLEARING MEMBERS

CCP's CMs need to cover margins for all account positions.

CCP → protects itself from the risk of CM default  
CM → protects itself from the risk of client default  
Client → risks of indirect clients' default

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. .  
. .

- ❑ As a consequence of netting and depending on used account structures (ISA, OSA „net”, OSA „gross”, FISA) a CMs exposure towards its clients can be greater than the CM's exposure towards the CCP.
- ❑ The CCP run calculation represents the minimal amount that the CM needs to collect from clients to fulfil its obligations towards the CCP (or the CM can finance its clients for a fee).
- ❑ However, this CCP calculated amount does not need to represent the total exposure of the CM towards its clients
- ❑ These are two different categories
- ❑ EU CCPs give their members tools to calculate and predict their margin requirements based on the portfolio composition and total exposure
  - Web-tools for margin calculation simulations,
  - I.e. some regulators have allowed the CMs to use the CCPs methodology to calculate their own collateral requirements towards clients.

# CCP CLEARING MEMBERS

CMs need to:

- Ensure collateral financing and availability
- Notify their clients of the available segregation levels and notify the CCP of their choice so that it can be implemented
- Publicly disclose fees and costs connected to clearing and the consequences of choosing different segregation levels

CMs can:

- Finance their clients' collateral requirements as a part of their service
- Collect collateral from clients and pass it to the CCP (for the required amount)
- Combine the two approaches depending on the structure of their clients, the relevant account structure and their own capital adequacy requirements and liquidity ratio

This impacts:

- The CM's fee structure.
- The CM's general service conditions
- The CM's internal procedures and risk management systems,
- Client contractual documentation
- The CM's liquidity arrangements
- The CM's capital requirements

# CCP CLEARING MEMBERS

## CM practical requirements:

1. Contractual basis for collecting collateral from clients
2. Client clearing agreements
3. Collateral use in the case of client default
4. Disclose applicable fees
5. Internal risk (margin) calculation methodology (can use CCP based calculations)
6. Type of collateral accepted by the CM
7. If eligible collateral type differs from that of the CCP, have arrangements to transfer collateral
8. Publicly disclose the legal consequences of different level of account segregation
9. Notify clients of their right to choose between ISA and OSA account structures
10. Notify the CCP of the clients' choice

*Repo arrangements, buy-sell back, credit lines...*

How collateral will be collected and held – legal form?

Financial collateral directive:

- Title transfer
- Special pledge

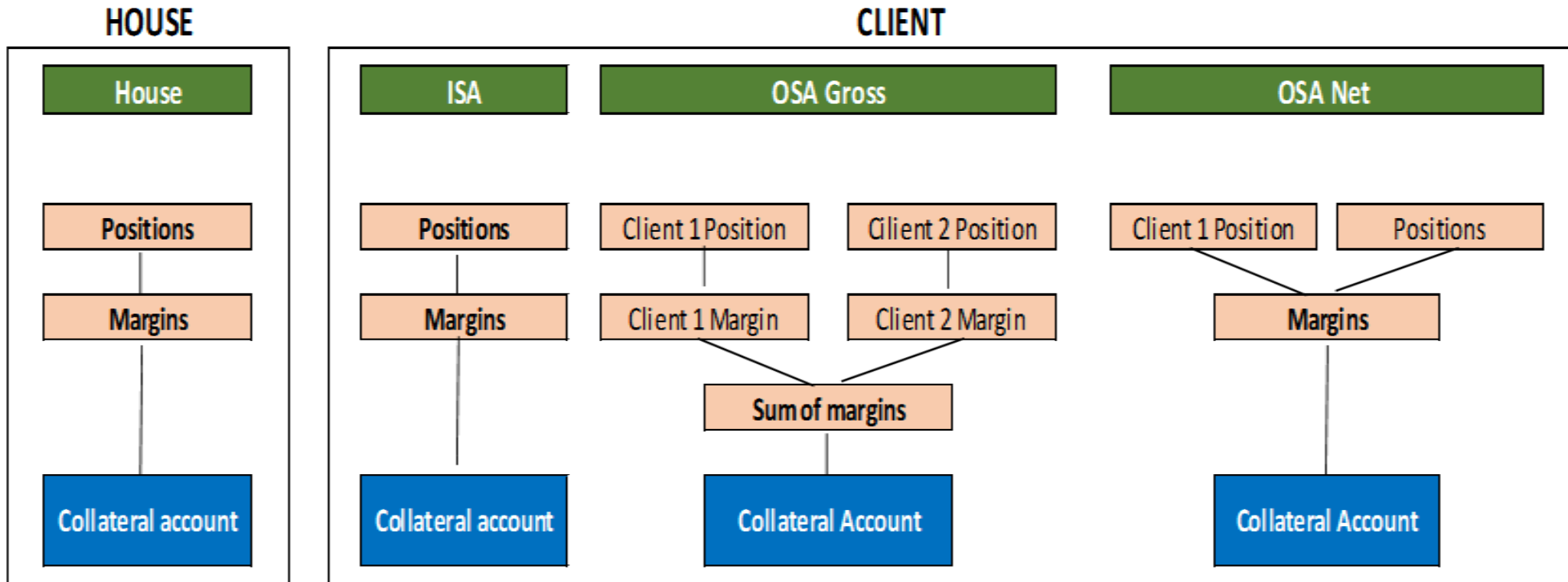
MiFID II prohibits the use of title transfer for retail clients (Article 16(10) MiFID II=

*„An investment firm shall not conclude title transfer financial collateral arrangements with retail clients for the purpose of securing or covering present or future, actual or contingent or prospective obligations of clients.”*

Retail client means a client who is not a professional client (Annex II of MiFID II)

# Segregation levels

## Account structure overview



# CCP CLEARING MEMBERS

## What are EMIR segregation requirements?

### Minimal requirements:

- Individual segregation (client position and collateral are at the CCP level segregated from the CM house account and from other clients' accounts), and
- Omnibus segregation (clients' position and collateral are at the CCP level segregated from the CM house account, but they are not segregated from other clients in the omnibus account)
- EU CCPs offer different account structures and sub-structures to meet their CMs' needs (at those of their clients)

CCP	Account structure	Position segregation	Collateral segregation		Collateral transfer ("non cash")	Client assets protection	Direct membership for clients	Full Individually Segregated Account (FISA)
			By value	By assets				
CME	Net Omnibus	✓	Net	x	Title transfer	✓	x	x
	Gross Omnibus	✓	Gross	x	Title transfer	✓	x	x
	Individual segregated	✓	Gross	x	Title transfer	✓	x	x
	Fully segregated	✓	Gross	✓	Title transfer	✓	x	✓



# CCP CLEARING MEMBERS

## What are EMIR segregation requirements - continued

CCP	Account structure	Position segregation	Collateral segregation		Collateral transfer (“non cash”)	Client assets protection	Direct membership for clients	Full Individually Segregated Account (FISA)
			By value	By assets				
Eurex Clearing	OSA “net”	✓	Net	x	Special pledge	✓	x	x
	OSA “gross”	✓	Gross	x	Title transfer	x	x Porting-indirect client participation	x
	ISA	✓	Gross	✓	Title transfer	x	x	x
ICE	Net Omnibus CS (ETD) UK	✓	Net	x	Title transfer	✓	x	x
	Net Omnibus CS (ETD) Non-UK	✓	Net	x	Title transfer	x	x	x
	Gross Omnibus CS (ETD) UK	✓	Gross	x	Title transfer	✓	x	x
	Gross Omnibus CS (ETD) Non-UK	✓	Gross	x	Title transfer	x	x	x
	Sponsored principal	✓	Gross	✓	Title transfer	x	✓	✓
	Alternative ISA	✓	Gross	✓	Title transfer	x	x	x

# CCP CLEARING MEMBERS

## What are EMIR segregation requirements - continued

CCP	Account structure	Position segregation	Collateral segregation		Collateral transfer ("non cash")	Client assets protection	Direct membership for clients	Full Individually Segregated Account (FISA)
			By value	By assets				
LCH	Net Omnibus (ETD &OTC)	✓	Net	x	Special pledge	✓ For UK	x	x
	OSA omnibus net (OTC)	✓	Net	x	Special pledge	✓ For UK	x	x
	LSOC (FCM Account)	✓	Gross	x	Special pledge	x	x	x
	ISA	✓	Gross	✓	Special pledge	✓ For UK	x	x
	Full Asset segregated	✓	Gross	✓	Special pledge	✓ For UK	x	x
	Full Physical segregated	✓	Gross	✓	Special pledge	x	x	✓
Nasdaq OMX	Direct Pledge	✓	Gross	✓	Special pledge	✓	✓	✓
	Indirect Pledge	✓	Gross	x	Special pledge	✓ For UK	x	x
	Omnibus	✓	Gross	✓	Special pledge	✓ For UK	x	x
	Single Client	✓	Gross	x	Special pledge	✓ Za UK	x	x
	Individual Client Segregated (ISA)	✓	Gross	✓	Special pledge	✓ For UK	x	x

# SEGREGATION LEVELS

## How do the segregation levels differ?

### Key differences:

- ❑ Margin calculation and the end margin amount that need so be covered for the position,
- ❑ The likelihood of porting the position and the collateral to another CM in the event of CM default ,
- ❑ „leapfrog payments” if there is no porting.

### ISA v. OSA:

- ISA is a safer account structure from the client's point of view, but will result in a larger margin requirement than for OSA net accounts because there is no netting across positions in a ISA account
- ISA and OSA „gross” are comparable when it comes to ensuring client protection,
- OSA „net” has a higher netting effect and will likely result in lower margin requirements (except in the case of directional portfolios),
- ISA accounts have a higher likelihood of porting
- OSA „net” accounts have the lowest likelihood of porting,
- If porting is not successful, the CCP will need to liquidate all positions:
- The ISA account is not exposed to position risks of other clients,
- A client on the OSA account is exposed to risk of all the other clients on that account
- ISA account – if porting is unsuccessful, the liquidation amount is returned directly to the ISA client ,
- OSA account, if porting is unsuccessful, and clients are unknown to the CCP, the liquidation amount is returned to the CM in default (there is a risk that client funds will become a part of the insolvency estate of the CM)
- As an added protection, for ISA clients, all excess collateral collected by the CM (above CCP requirements) needs to be passed to the CCP for
- There is no equivalent requirement for OSA accounts

# ***C. CSDR – CSD reporting requirements and supervision & CSD participants' obligations***

# CSDR REQUIREMENTS

## What new obligations does CSDR impose on market participants and issuers?

1. **The obligation to record securities issues in book-entry form in CSDs** (if these are traded on a trading venue or used as financial collateral) – Article 3. CSDR

*Book-entry form: immobilise or dematerialise the issue*

2. **New measures to increase settlement discipline for transferable securities, money-market instruments, units in collective investment undertakings and emission allowances** – Articles 5., 6 & 7 of CSDR

ISD on trading venues = T+2

3. **New quarterly reporting obligations for settlement internalisers** – Article 9. of CSDR

*Internalised settlement instruction' means an instruction by a client of the settlement internaliser to place at the disposal of the recipient an amount of money or to transfer the title to, or interest in, a security or securities by means of a book entry on a register, or otherwise, which is settled by the settlement internaliser in its own books and not through a securities settlement system.*

4. **Harmonised CSD licensing and supervision** - Title III of CSDR

5. **Licensing and supervision of banking-type ancillary services** – Title IV of CSDR

6. **A harmonised sanctioning regime for infringements** - Title V of CSDR

# NCA obligations under CSDR

NCA obligations	CSDR requirements
<b>Article 4. CSDR (Enforcement)</b>	<p><i>Ensure that Article 3. CSDR (Book-entry form) is applied</i></p> <p><i>This is the obligation of the CA of the CSD, the CA of the trading venue and the CA responsible for the application of Directive 2002/47/EC (financial collateral directive)</i></p>
<b>Article 5(3) CSDR-a (Intended settlement date)</b>	<p>Any participant in a securities settlement system that settles in that system on its own account or on behalf of a third party transactions in transferable securities, money-market instruments, units in collective investment undertakings and emission allowances shall settle such transactions on the intended settlement date.</p> <p>For trading venues the ISD is T+2.</p> <p>This is enforced by the CA of the participant's MS of establishment, the CA of the trading venue,</p>
<b>Article 8(1) CSDR (Enforcement)</b>	<p>Ensure that Article 6 (Measures to prevent settlement fails) and 7 (Measures to address settlement fails) of CSDR are applied.</p> <p>This is enforced by the CA of the participant's MS of establishment, the CA of the trading venue, investment firms and CCPs, and the CA of the CSD.</p>
<b>Article. 9(1) point 2. CSDR (Settlement internalisers)</b>	<p><i>Settlement internalisers shall report to the competent authorities of their place of establishment on a quarterly basis the aggregated volume and value of all securities transactions that they settle outside securities settlement systems.</i></p> <p><i>Competent authorities shall without delay transmit the information received under the first subparagraph to ESMA and shall inform ESMA of any potential risk resulting from that settlement activity.</i></p>
<b>Article 10(1) CSDR (Competent authority)</b>	<p>Licenses and supervises the CSD (Articles 16., 17., 19. &amp; 20. CSDR).</p>
<b>Article 13(1) CSDR (Exchange of information)</b>	<p><i>Competent authorities, relevant authorities and ESMA shall, on request and without undue delay, provide one another with the information required for the purposes of carrying out their duties under this Regulation.</i></p>
<b>Article 15. CSDR (Emergency situations)</b>	<p>Competent authorities and relevant authorities shall immediately inform ESMA, the European Systemic Risk Board and each other of any emergency situation relating to a CSD</p>
<b>Article 17. CSDR (Procedure for granting authorisation)</b>	<p>Covered in the previous presentations.</p> <p>The CA licenses the CSD with the input and opinion of the other relevant authorities.</p>

# NCA obligations under CSDR

NCA obligations	CSDR requirements
<b>Article 18(3) CSDR</b> (Effects of the authorisation)	A CSD may have a participation only in a legal person whose activities are limited to the provision of services listed in Sections A and B of the Annex, unless such a participation is approved by its competent authority on the basis that it does not significantly increase the risk profile of the CSD.
<b>Article 19. CSDR</b> (Extension and outsourcing of activities and services)	The CA approves: <ul style="list-style-type: none"> <li>- additional core services listed in Section A of the Annex, not covered by the initial authorisation;</li> <li>- ancillary services permitted under, but not explicitly listed in Section B of the Annex, not covered by the initial authorisation;</li> <li>- the operation of another securities settlement system;</li> <li>- the settlement of all or part of the cash leg of its securities settlement system in the books of another settlement agent;</li> <li>- setting up an interoperable link, including those with third-country CSDs.</li> </ul>
<b>Article 20. CSDR (Withdrawal of authorisation)</b>	The CA can withdraw the authorisation of a CSD, where the CSD: <ul style="list-style-type: none"> <li>- has not made use of the authorisation during 12 months, expressly renounces the authorisation or has provided no services or performed no activity during the preceding six months;</li> <li>- has obtained the authorisation by making false statements or by any other unlawful means;</li> <li>- no longer complies with the conditions under which authorisation was granted and has not taken the remedial actions requested by the competent authority within a set time-frame;</li> <li>- has seriously or systematically infringed the requirements laid down in this Regulation or, where applicable, in Directive 2014/65/EU or Regulation (EU) No 600/2014.</li> </ul>
<b>Article 21(1) CSDR</b> (CSD register)	Notify the licensing of a CSD to ESMA (or the extension/withdrawal of authorisation)
<b>Article 22. CSDR</b> (Review and evaluation)	The CA shall: <ul style="list-style-type: none"> <li>- conduct a yearly review (at least on an annual basis, review the arrangements, strategies, processes and mechanisms implemented by a CSD with respect to compliance with this Regulation and evaluate the risks to which the CSD is, or might be, exposed or which it creates for the smooth functioning of securities markets)</li> <li>- review and approve the CSDs recovery plan</li> <li>- establish and maintain a suitable resolution plan for the CSD</li> <li>- establish the frequency and depth of the review and evaluation</li> <li>- subject the CSD to on-site inspections</li> <li>- consult the relevant authorities when performing the review and evaluation of the CSD.</li> <li>- inform the relevant authorities, including any remedial actions or penalties, of the review and evaluation results</li> <li>- require a CSD that does not meet the requirements of this Regulation to take at an early stage the necessary actions or steps to address the situation.</li> </ul>

# NCA obligations under CSDR

NCA obligations	CSDR requirements
<p><b>Article 23. CSDR</b> (Freedom to provide services in another Member State)</p>	<p>CSD passporting. The CA of the CSD that wants to provide its services within the territory of another Member State:</p> <ul style="list-style-type: none"> <li>- <b>receives the CSD notification</b> (including the following information: a programme of operations stating in particular the services which the CSD intends to provide; the currency or currencies that the CSD intends to process; where there is a branch, the organisational structure of the branch and the names of those responsible for the management of the branch; where relevant, an assessment of the measures the CSD intends to take to allow its users to comply with the national law of the host MS)</li> <li>- transmit the notification to the CA of the host MS (within three months)</li> <li>- the host MS CA can object in certain conditions,</li> </ul>
<p><b>Article 24. CSDR</b> (Cooperation between authorities of the home Member State and of the host Member State and peer review)</p>	<p>The obligation for the CA of the host MS &amp; home MS to cooperate and, if the CSD is of substantial importance for the functioning of the securities markets and the protection of the investors in that host MS, establish formal cooperation agreements for the supervision of the activities of that CSD in the host Member State.</p> <p>If the CA of the host Member State has clear and demonstrable grounds for believing that a CSD providing services within its territory is in breach of the obligations arising from the provisions of CSDR, it shall refer those findings to the competent authority of the home Member State and to ESMA.</p>
<p><b>Article 25. CSDR</b> (Third countries)</p>	<p>ESMA recognises third country CSDs. The CA of the Member States in which the third-country CSD intends to provide CSD services shall assess the compliance of the third-country CSD with the MS securities and corporate law and inform ESMA with a fully reasoned decision whether the compliance is met or not within three months from the receipt of all the necessary information from ESMA.</p>
<p><b>Article 27(8) CSDR</b> (Senior management, management body and shareholders)</p>	<p>Approve or deny the proposed changes in the control of the CSD. The CA shall refuse to approve proposed changes in the control of the CSD where there are objective and demonstrable grounds for believing that they would pose a threat to the sound and prudent management of the CSD or to the ability of the CSD to comply with this Regulation.</p>
<p><b>Article 30. CSDR</b> (Outsourcing)</p>	<p>Approve or deny the CSD's outsourcing arrangements</p>



# NCA obligations under CSDR

NCA obligations	CSDR requirements
<b>Article 33. CSDR</b> (Requirements for participation)	The CA of the CSD shall duly examine the participants complaints (after a CSD has refused to grant them access) by assessing the reasons for refusal and shall provide the requesting participant with a reasoned reply.
<b>Article 45(6) CSDR</b> (Operational risks)	Receive and act on CSD notifications on operational incidents.
<b>Article 47(2) CSDR</b> (Capital requirements)	Regarding the plan for the raising of additional capital and for ensuring the orderly winding-down or restructuring of its operations and services where the CSD is unable to raise new capital – the CA can require the CSD to take additional measures or to make any alternative provision where the competent authority considers that the CSD’s plan is insufficient.
<b>Article 49. CSDR</b> (Freedom to issue in a CSD authorised in the Union)	<p>MS ensure a list of key relevant provisions of the corporate or similar law of the Member State under which the securities are constituted, is compiled. Competent authorities shall communicate that list to ESMA by 18 December 2014.</p> <p>Access to CSDs</p> <p>Where a CSD refuses to provide services to an issuer, it shall provide the requesting issuer with full written reasons for its refusal. In the case of a refusal, the requesting issuer shall have the right to complain to the competent authority of the CSD that refuses to provide its services.</p> <p>The competent authority of that CSD shall duly examine the complaint by assessing the reasons for refusal provided by the CSD and shall provide the issuer with a reasoned reply.</p>
<b>Article 52. CSDR</b> (Procedure for CSD links)	Act on complaints of requesting CSD (in the case of refusal of access).
<b>Article 53. CSDR</b> (Access between a CSD and another market infrastructure)	Act on complaints of requesting CCPs, CSDs and trading venues (in the case of refusal of access).

# CSD's REPORTING OBLIGATIONS

## After their initial licensing, how are CSDs supervised?

- ❑ Regular reporting (statistical and periodical data under Articles 41-43 of RTS on CSD organisational requirements)
- ❑ Yearly review (under Article 21. of CSDR– this has a wide scope and covers all CSDR requirements)
- ❑ Add hoc reporting if certain conditions are met (see next tables)
- ❑ Enforcement (imposition of administrative sanctions and other measures and their publication) – Articles 61-66 of EMIR

CSD regulatory reporting is fully defined through Level 2 regulation, however the frequency of the reporting can be defined by NCAs and national laws (more frequent than annually).

# CSD reporting

Legal basis		CSD reports to who:	What needs to be reported
Article 7. CSDR (Measures to address settlement fails)	(1)	CA and relevant authorities	Settlement fails reports and any other relevant information, including the measures envisaged by CSDs and their participants to improve settlement efficiency.  Publish reports in aggregated and anonymised form on an annual basis.
	(9)	CA	Information on suspension of participants who have a high rate of settlement fails
Article 16(4) CSRD (Authorisation of a CSD)		CA	Inform the CA of any substantive changes affecting the compliance with the conditions for authorisation.
Article 17(1) CSDR (Procedure for granting authorisation)		CA	Submit an application for authorisation to the CA
Article 18 (3) CSDR (Effects of the authorisation)		CA	Inform the CA of the intention to obtain a participation in another legal person
Article 19. CSDR (Extension and outsourcing of activities and services)	(1)	CA	Submit an application to the CA for: <ul style="list-style-type: none"> <li>- additional core services listed in Section A of the Annex, not covered by the initial authorisation;</li> <li>- ancillary services permitted under, but not explicitly listed in Section B of the Annex, not covered by the initial authorisation;</li> <li>- the operation of another securities settlement system;</li> <li>- the settlement of all or part of the cash leg of its securities settlement system in the books of another settlement agent;</li> <li>- setting up an interoperable link, including those with third-country CSDs.</li> </ul>
	(5)	CA and relevant authorities	Notify the CA of Interoperable links of CSDs that outsource some of their services related to those interoperable links to a public entity
	(8)	CA	Notify the CA of the intention to provide additional ancillary services explicitly listed in Section B of the Annex of CSRD

# CSD reporting

Legal basis		CSD reports to who:	What needs to be reported
Article 22(2) CSDR (Review and evaluation)		CA	Submit a recovery plan to the CA
Article 23. CSDR (Freedom to provide services in another Member State)	(3)	CA	Submits the required information to the home MS CA – if it intends to provide services in another MS
	(7)	CA	Notifies the CA of any change in any of the previously communicated information
Article 26(6) CSDR (Organisational requirements – General provisions)		Management body of the CSD, User Committee, CA	Information on conducted regular independent audits
Article 27. CSDR (Senior management, management body and shareholders)	(5)	CA & the CSD auditor	Make the minutes of the meetings of the management body available to the competent authority and the auditor upon request.
	(7)	CA & the public	The data on the CSD ownership structure and inform and seek approval from the CA of any decision to transfer ownership rights which give rise to a change in the identity of the persons exercising control over the operation of the CSD
Article 28(6) CSDR (User committee)		CA & User committee	Inform of any decision in which the management body decides not to follow the advice of the user committee.
Article 29(2) CSDR (Record keeping)		CA, relevant authorities, other public bodies within their mandates	On request, will make available data kept In the CSD for services provided by that CSD.
Article 30. CSDR (Outsourcing)	(3)	CA, relevant authorities	All information necessary to enable them to assess the compliance of the outsourced activities with the requirements of CSDR
	(4)	CA	Obtain CA authorisation

# CSD reporting

Legal basis		CSD reports to who:	What needs to be reported
Article 34. CSDR (Transparency)	(6)	CA	A CSD shall account separately for costs and revenues of the core services provided and shall disclose that information to the competent authority.
	(7)	CA	A CSD shall account for the cost and revenue of the ancillary services provided as a whole and shall disclose that information to the competent authority.
Article 45(6) CSDR (Operational risk)		CA, relevant authorities	On request provide the CA with information on identified operational risks
Article 47(2) CSDR (Capital requirements)		CA	Provide to the CA updates to the plan for the raising of additional capital and for ensuring the orderly winding-down or restructuring of its operations and services where the CSD is unable to raise new capital.
Article 48. CSDR (CSD links)	(2)	CA, relevant authorities	Submit an application for authorisation for the establishment of a CSD link. Notify of the intention to establish a CSD link
	(7)	CA, relevant authorities	Notify detailed reasons for any CSD link not allowing for DVP settlement.
Article 49(2) CSDR (Freedom to issue in a CSD authorised in the Union)		Requesting issuer	Where an issuer submits a request for recording its securities in a CSD, the latter shall treat such request promptly and in a non-discriminatory manner and provide a response to the requesting issuer within three months.
Article 50. CSDR (Standard link access)		Receiving CSD, CA, relevant authorities	Notify of establishing a standard link access with another CSD
Article 51(1) CSDR (Customised link access)		Receiving CSD, CA	Submit an application for authorisation for the establishment of a customised link with another CSD.
Article 52(1) CSDR (Procedure for CSD links)		The requesting CSD	Notify of the decision to grant or refuse access
Article 53(2) CSDR (Access between a CSD and another market infrastructure)		The requesting CCP, trading venue	Notify of the decision to grant or refuse access

# CSD reporting - RTS

## Article 42 (RTS)

### Periodic information relevant for the reviews

*For each review period, the CSD shall provide the competent authority with the following information:*

- (a) a complete set of the latest audited financial statements of the CSD, including those consolidated at group level
- (b) a summarised version of the most recent interim financial statements of the CSD
- (c) any decisions of the management body following the advice of the user committee, as well as any decisions where the management body has decided not to follow the advice of the user committee
- (d) information on any pending civil, administrative or any other judicial or extrajudicial proceedings involving the CSD,
- (e) information on any pending civil, administrative or any other judicial or extrajudicial, proceedings involving a member of the management body or a member of the senior management that may have a negative impact on the CSD
- (f) any final decisions resulting from the proceedings referred to in points (d) and (e);
- (g) a copy of the results of business continuity stress tests or similar exercises performed during the review period
- (h) a report on the operational incidents that occurred during the review period and affected the smooth provision of any core services, the measures taken to address them and the results
- (i) a report on the performance of the securities settlement system, including an assessment of the system's availability during the review period, measured on a daily basis as the percentage of time the system is operational and functioning according to the agreed parameters
- (j) a summary of the types of manual intervention performed by the CSD
- (k) information concerning the identification of the CSD's critical operations, any substantive changes to its recovery plan, the results of stress scenarios, the recovery triggers and the recovery tools of the CSD
- (l) information on any formal complaints received by the CSD during the review period including information on the following elements:(i) the nature of the complaint;ii) how the complaint was handled, including the outcome of the complaint; iii) the date when the treatment of the complaint ended
- (m) information concerning the cases where the CSD denied access to its services to any existing or potential participant, any issuer, another CSD or another market infrastructure
- (n) a report on changes affecting any CSD links established by the CSD, including changes to the mechanisms and procedures used for the settlement in such CSD links;
- (o) information concerning all cases of identified conflicts of interests that materialised during the review period, including the description of how they were managed;
- (p) information concerning internal controls and audits performed by the CSD during the review period;
- (q) information concerning any identified infringements of CSDR,
- (r) detailed information concerning any disciplinary actions taken by the CSD, including any cases of suspension of participants with a specification of the period of suspension and the reason for such suspension;
- (s) the general business strategy of the CSD covering a period of at least three years after the last review and evaluation and a detailed business plan for the services provided by the CSD covering at least a period of one year after the last review and evaluation;

# CSD reporting - RTS

## Article 43 (RTS)

### Statistical data to be delivered for each review and evaluation

1. For each review period, the CSD shall provide the competent authority with the following statistical data:

(a) a list of the participants of each securities settlement system operated by the CSD, including information on their country of incorporation;

(b) a list of issuers and a list of securities issues recorded in securities accounts centrally and not centrally maintained in each securities settlement system operated by the CSD, specifying the country of incorporation of the issuers, and an identification of the issuers to whom the CSD provides the services referred to in points (1) and (2) of Section A of the Annex to CSDR;

(c) the total market value and nominal value of the securities recorded in securities accounts centrally and not centrally maintained in each securities settlement system operated by the CSD;

(d) the nominal and market value of the securities referred to in point (c) specified as follows:

(i) by each of the following types of financial instruments:

a. transferable securities referred to in point (a) of Article 4(1)(44) of MiFID II;

b. sovereign debt referred to in Article 4(1)(61) of MiFID II;

c. transferable securities referred to in point (b) of Article 4(1)(44) of MiFID II, other than those mentioned under point b);

d. transferable securities referred to in point (c) of Article 4(1)(44) of MiFID II;

e. exchange-traded funds as defined in point (46) of Article 4(1) of MiFID II (ETF);

f. units in collective investment undertakings, other than ETFs;

g. money-market instruments, other than those mentioned under point b);

h. emission allowances;

i. other financial instruments;

(ii) by country of incorporation of the participant; and

(iii) by country of incorporation of the issuer;

(e) the nominal and market value of the securities initially recorded in each securities settlement system operated by the CSD;

(f) the nominal and market value of the securities referred to in point (e) specified as follows:

(i) by types of financial instruments referred to in point (d)(i);

(ii) by country of incorporation of the participant; and

(iii) by country of incorporation of the issuer.

(g) the total number and the values of the settlement instructions against payment and the total number and the values of the free of payment (FOP) settlement instructions settled in each securities settlement system operated by the CSD;

# CSD reporting - RTS

## Article 43 (RTS)

### Statistical data to be delivered for each review and evaluation - Continued

(h) the total number and value of the settlement instructions categorised as follows:

(i) by types of financial instruments referred to in point (d)(i);

(ii) by country of the incorporation of the participant;

(iii) by country of incorporation of the issuer;

(iv) by settlement currency;

(v) by type of settlement instructions, as follows:

a. a free of payment (FOP) settlement instructions that consist of deliver free of payment (DFP) and receive free of payment (RFP) settlement instructions;

b. delivery versus payment (DVP) and receive versus payment (RVP) settlement instructions;

c. delivery with payment (DWP) and receive with payment (RWP) settlement instructions;

d. payment free of delivery (PFOD) settlement instructions.

(vi) for settlement instructions against payment, by whether the cash leg is settled in accordance with Article 40(1) of CSDR or in accordance with Article 40(2) of CSDR;

(i) the number and value of buy-in transactions referred to in Article 7(3) of CSDR

(j) the number and amount of penalties referred to in Article 7(2) of CSDR per participant;

(k) the total value of securities borrowing and lending operations processed by the CSD acting as an agent or as principal for each type of financial instruments referred to in point (d)(i);

(l) the total value of settlement instructions settled via each CSD link, from the perspective of the CSD as:(i) requesting CSD; (ii) receiving CSD.

(m) the value of guaranties and commitments received or provided by the CSD related to securities borrowing and lending operations;

(n) the value of treasury activities involving foreign exchange and transferable securities related to managing participants' long balances including categories of institutions whose long balances are managed by the CSD

(o) the number of reconciliation problems related to undue creation or deletion of securities in securities issues recorded in securities accounts centrally and not centrally maintained by the CSD referred to in Article 65(2);

(p) the mean, median, and mode for the length of time taken to remedy the error identified according to Article 65(2).



# CSDR sanctions

## CAs need to be able to apply at least the following administrative sanctions and other measures:

- ❑ a public statement which indicates the person responsible for the infringement and the nature of the infringement in accordance with Article 62;
- ❑ an order requiring the person responsible for the infringement to cease the conduct and to desist from a repetition of that conduct;
- ❑ withdrawal of the authorisations of a CSD;
- ❑ a temporary or, for repeated serious infringements, a permanent ban against any member of the institution's management body or any other natural person, who is held responsible, from exercising management functions in the institution;
- ❑ maximum administrative pecuniary sanctions of at least twice the amounts of the profit gained as a result of an infringement where those amounts can be determined;
- ❑ in respect of a natural person, maximum administrative pecuniary sanctions of at least EUR 5 million
- ❑ in the case of a legal person, maximum administrative pecuniary sanctions of at least EUR 20 million or up to 10 % of the total annual turnover of the legal person according to the last available accounts approved by the management body (on a consolidated level)

## Article 63 of CSDR

# Publication of sanctions – Article 62 CSDR

## CAs have an obligation to:

- ❑ publish on their official websites any decision imposing an administrative sanction or other measure for an infringement of CSDR without undue delay after the person sanctioned is informed of that decision.

The publication needs to include at least information on the type and nature of the infringement and the identity of a natural or legal person on whom the sanction has been imposed.

## Where the publication of the identity of the legal persons or of the personal data of the natural persons is considered by the CA to be disproportionate, or where publication jeopardises the stability of financial markets or an ongoing investigation, the CA can:

- ▶ delay the publication of the decision until the moment when the reasons for non-publication cease to exist;
- ▶ publish the decision on an anonymous basis, if such anonymous publication ensures effective protection of the personal data;
- ▶ not publish the decision at all in the event that the above options are considered to be insufficient to ensure:
  - ❑ *that the stability of financial markets would not be put in jeopardy;*
  - ❑ *the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.*

## Competent authorities inform ESMA of all administrative sanctions imposed but not published

# CSDR participants' obligations

## What are CSD participants?

- 'participant' means any participant, as defined in point (f) of Article 2 of Directive 98/26/EC in a securities settlement system

This is the Settlement Finality Directive – the definition is due to the fact that the primary service of a CSD is operating a securities settlement system ('settlement service').

Participants of CSDs are banks and large investment firms.

CSD participants need to apply the measures to address settlement fails from Article 7. of CSDR

*RTS on settlement discipline (still not published in the OJ)*

A CSD needs to impose participation requirements pursuant to Article 33. of CSDR

Such criteria shall be transparent, objective, and non-discriminatory so as to ensure fair and open access to the CSD with due regard to risks to financial stability and the orderliness of markets.

Criteria that restrict access shall be permitted only to the extent that their objective is to justifiably control a specified risk for the CSD.

# CSDR participants' obligations

## Article 38 of CSDR mandates that:

- ❑ A CSD shall keep records and accounts that enable any participant to segregate the securities of the participant from those of the participant's clients.
- ❑ A CSD shall keep records and accounts that enable any participant to hold in one securities account the securities that belong to different clients of that participant ('omnibus client segregation')
- ❑ A CSD shall keep records and accounts that enable a participant to segregate the securities of any of the participant's clients, if and as required by the participant ('individual client segregation').
- ❑ A participant shall offer its clients at least the choice between omnibus client segregation and individual client segregation and inform them of the costs and risks associated with each option.

## Why is the segregation requirement used?

EU has different securities holding systems that expose clients to different risks

Broadly:

- Direct holding systems
- Indirect holding systems

# CSDR participants' obligations

## Participants (account operators) hold client securities in a CSD (indirect and hybrid systems)

- ❑ This exposes the clients to the risk that the participant will default, or another client of the participant if omnibus account structures are used
- ❑ CSDR mandates that all CSDs and participants, regardless of holding system, give their clients a choice between omnibus and individual accounts in a CSD
- ❑ CSDR also mandates that client securities need to be recorded separately from the participant's securities (this was previously not the case in „pure” omnibus holding systems).
- ❑ The reasoning is similar to the EMIR segregation obligation

Direct holding systems already have individual account as a default option.

Article 38(5) of CSDR (“CSD and its participants shall provide individual clients segregation for citizens and residents of, and legal persons established in, a Member State where required under the national law of the Member State under which the securities are constituted as it stands at 17 September 2014. That obligation shall apply as long as the national law is not amended or repealed and its objectives are still valid.”),

**Thank you for your attention.**

**Questions?**