Alternative Investment Management Association

AIMA SUMMARY

of ESMA's Final Report on
Draft Technical Standards for the Regulation on
OTC Derivatives, CCPs and Trade Repositories

February 2013

Alternative Investment Management Association

Executive Summary

The Level 1 text of the EU's Regulation on OTC derivatives, central counterparties and trade repositories (EMIR), required the European Securities and Markets Authority (ESMA) to deliver to the European Commission (the Commission) its final report on a number of draft technical standards by no later than 30 September 2012. Following a public consultation process, ESMA published such final report (the Final Report) on 27 September 2012.

On 19 December 2012, the Commission endorsed ESMA's draft regulatory technical standards and implementing technical standards contained within the Final Report with one exception. The exception relates to a technical standard on colleges for central counterparties (CCPs) (Article 18 of EMIR, Annex III of the draft regulatory technical standards) since the Commission has concerns as to the legality of some of the proposed provisions. ESMA has been asked to redraft the standard, which will be adopted at a later stage.

These draft regulatory technical standards and implementing technical standards represent a substantial portion of the Level 2 measures which ESMA was mandated to develop, although Level 2 measures relating to the territorial scope of EMIR and margin requirements for non-cleared trades remain to be finalised.

On 20 December 2012, ESMA published a consultation paper on Level 3 guidelines concerning CCP interoperability. These guidelines seek to clarify obligations for national competent authorities in relation to their assessment of applications from CCPs to enter into interoperability arrangements. AIMA responded to this consultation.

This AIMA Summary details the regulatory technical standards and implementing technical standards adopted by the Commission, dealing respectively with:

1. Regulatory technical standards:

   i. on capital requirements for CCPs;
   ii. on requirements for CCPs;
   iii. on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties (NFCs), risk mitigation techniques for non cleared OTC derivatives contracts;
   iv. on the minimum details of the data to be reported to trade repositories (TRs);
   v. specifying the details of the application for registration as a TR; and
   vi. specifying the data published and made available by TRs and operational standards for aggregating, comparing and accessing the data.

2. Implementing technical standards:

   i. on requirements for CCPs;
   ii. on the minimum details of the data to be reported to TRs; and
   iii. specifying the details of the application for registration as a TR.

Next Steps

Following adoption of regulatory technical standards by the Commission, the European Parliament and Council have one month in which to raise objections. On this occasion, the European Parliament sought a one month extension to this period, to 19 February 2013. Despite a motion from ECON that the Parliament object to two RTS, this proposal with withdrawn before a vote was taken. As a result, the timetable is now:

- **late February 2013** - the RTS are published in the Official Journal and formally 'come into force' (which is different from coming into effect) 20 days later;
- **late Q1 2013** - requirements relating to the timely confirmation, mark-to-market valuation of trades and notifications for NFCs breaching clearing thresholds come into effect;
- **Q3 2013 -** the reporting requirements for credit default swaps (CDS) and interest rate swaps (IRS) come into effect (if a TR has registered before 1 April 2013);
- **late Q3 2013 -** the rules on portfolio reconciliation, compression and dispute resolution come into effect; and
- **1 January 2014 -** the reporting requirements for OTC derivative asset classes other than CDS and IRS come into effect (if a TR has registered before 1 October 2013).

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A. Introduction

1. Background

The Level 1 text of the EU's Regulation on OTC derivatives, central counterparties and trade repositories (EMIR), required the European Securities and Markets Authority (ESMA) to deliver to the European Commission (the Commission) its final report on a number of draft technical standards by no later than 30 September 2012.

Following a public consultation process, ESMA published its final report (the Final Report) on 27 September 2012. Its contents are as follows:

Parts I to IV	Feedback received in response to the proposals contained within the ESMA consultation paper published on 26 June 2012 (the June Consultation Paper) and ESMA's response to certain specific points raised.
Annex I	References to the relevant Articles under EMIR which provide the legislative mandate for ESMA to develop draft technical standards.
Annexes II to VIII	The draft regulatory technical standards (Draft RTS) and draft implementing technical standards (Draft ITS) (together with the Draft RTS, the Draft TS).

On 19 December 2012, the Commission endorsed the Draft TS. Ordinarily, the European Parliament (the Parliament) and the Council of the European Union (Council) each has one month from the date of Commission's endorsement in which to raise objections to the Draft TS. In this instance, Parliament and Council have obtained a one month extension, until 19 February 2013. See also Part C, 'Next Steps', below.

2. High level view of ESMA's final position

The following provides a broad overview of the key points in the Draft TS. See Part B, 'ESMA's draft technical standards' below for further detail.

a. Indirect clearing

The obligation for clearing members and clients to provide indirect clearing arrangements to indirect clients has been removed and the responsibilities for participants which choose to provide indirect clearing arrangements have been tempered. In particular ESMA has:

- removed the obligation for assets and positions of an indirect client to be ported following the failure of a client or a clearing member. Clearing members are now only required to have a 'credible arrangement' in place to: (i) transfer the assets and positions of an indirect client to an alternative client or clearing member subject to an indirect clearing agreement; or (ii) allow for the prompt liquidation of those assets or positions; and
- removed the requirement for clearing members to manage indirect clients' positions for at least 30 days following the failure of a direct client.

b. Publication on the register

ESMA will publish the competent authority's notification of a product for clearing on its website as part of its public register. The Draft TS do not, however, provide for the publication on ESMA's website of a negative decision against clearing a particular class of OTC derivatives.

c. Calculating the clearing threshold

ESMA has relaxed its position on which types of OTC derivatives contracts will be considered to be within the scope of the 'hedging exemption' (and, therefore, will not be counted in the calculation as to whether the clearing threshold amount has been exceeded) to include those entered into for the purpose of 'proxy hedging', portfolio hedging arrangements and those that relate to employee benefits e.g., stock options. ESMA has also reaffirmed its position that the clearing threshold amounts should be set with reference to a gross notional figure, not a market value.

d. Intra group exemption

The notification which a non-financial counterparty (NFC) is required to provide for the purpose of its application for the intra group exemption should be provided on a *per* counterparty basis. The obligation to notify may be delegated to another entity e.g., the NFC's head office. The NFC may not, however, provide one notification in respect an entire group. ESMA acceded to industry requests for the notification not to include information regarding intra group credit limits.

e. Central counterparty resourcing and buyside representation

A central counterparty (CCP) and its affiliated entities are permitted to share resources. However, a CCP should have, at a minimum, its own chief risk officer, chief technology officer and chief compliance officer.

Requests for stronger buyside representation on the risk committee and board of the CCP were rejected by ESMA.

f. Margin - confidence intervals

The Draft TS make a distinction between the higher confidence levels of OTC derivatives (99.5%) and other financial instruments (99%). However, the Draft TS recognise that some OTC derivatives are, in fact, more liquid than certain "thinly traded on exchange derivatives". ESMA has, therefore, introduced some flexibility for CCPs to persuade competent authorities that, if some OTC derivatives possess the same risk characteristics of some listed products and those risks are properly mitigated, a lower confidence interval (of 99%) could be adopted.

g. 'Skin in the game'

ESMA has amended its Draft TS to require 25% (instead of 50%) of the CCP's total capital resources to be used before the margin of non-defaulting clearing members is used.

h. Exposure and collateral reporting

Despite industry concerns, the requirement for counterparties to report exposures to trade repositories (TRs) was maintained in the Draft TS. ESMA continues to believe that the reporting of such information is vital for the monitoring of systemic risk by those authorities with access to the TRs' store of information (see Part B, 'ESMA's draft technical standards'). NFCs below the clearing threshold will not be required to report mark-to-market (MTM) valuations. Counterparties must also report information on collateral, including the type and amount of the collateral.

i. Start date of reporting obligations

ESMA has now opted for phase in periods for parties to satisfy their reporting obligations, with different periods attributed to different asset classes. Credit derivative and interest rate derivative contracts are required to be reported first, followed by other derivative contracts six months later. Collateral reporting requirements are due to enter in into effect six months after that.

B. ESMA's draft technical standards

1. Indirect clearing arrangements (Article 4 of EMIR and Annex II, Chapter II of the Draft TS)

Article 4(3) of EMIR provides that financial counterparties (FCs) and NFCs subject to the clearing obligation may satisfy the obligation to clear a certain class of derivatives under an indirect clearing arrangement provided that such arrangement does not increase counterparty risk and the counterparty's assets and positions benefit from the segregation optionality under Article 39 of EMIR (i.e., the choice of either individual or omnibus account segregation) and from the porting mechanism under Article 48 of EMIR.

Under Article 4(4), ESMA is required to specify the types of indirect contractual arrangements which would meet the indirect clearing arrangement requirements under Article 4(3).

Generally, the Draft TS have moved away from the more prescriptive requirements put forward in the June Consultation Paper and provide that:

- it is no longer a mandatory obligation on clearing members to provide indirect clearing services. However, if they are prepared to facilitate indirect clearing, this must be done on reasonable commercial terms;
- clearing members who facilitate indirect clearing, and clients through which indirect clearing is carried out, must put in place a "credible mechanism" for the porting of indirect clients' assets and positions to an

alternative non-defaulting clearing member (this requirement replaces the more burdensome obligation proposed in the June Consultation Paper);

- whilst ESMA still requires clearing members to publicly disclose the general terms of indirectly cleared contracts, this would now be without prejudice to the confidentiality of such contracts;
- the contractual terms between an indirect client and a client of a clearing member should be agreed in consultation with the clearing member (under ESMA's original proposals, clients were permitted to define these terms without such consultation);
- only clients, and not the clearing members, are required to guarantee the obligations of indirect clients towards clearing members (to the extent that such obligations arise from the indirect clearing arrangement);
- clearing members are no longer required to directly manage the positions of their indirect clients for at least 30 days following the failure of a direct client.

2. Notification from the competent authority to ESMA when a CCP is authorised to clear (Article 5(1) and Annex II, Chapter III of the Draft TS)

Under Article 5 of EMIR, a competent authority must notify ESMA when it authorises a CCP to clear a class of OTC derivatives. As well as specifying the information required to be included in such notification, the Draft TS now provide that ESMA will publish the competent authority's notification on its website as part of its public register. Despite industry requests, however, the Draft TS do not provide for the publication on ESMA's website of a negative decision to clear a particular class of OTC derivatives. ESMA notes that, in the absence of a public consultation and publication of draft regulatory technical standards (RTS) by ESMA (within the time given to ESMA to produce these draft RTS under Article 5(2) of EMIR), it would be obvious that a negative decision had been reached and so there would be no need to publish this decision.

ESMA has also included recitals in the Draft TS which state that, where estimations are used in a competent authority's notification, there should be a clear indication of the assumptions made.

3. Criteria to be assessed by ESMA under the clearing obligation procedure (Article 5(4) of EMIR and Annex II, Chapter IV of the Draft TS)

Article 5(4) of EMIR sets out the criteria which ESMA must consider when producing the draft RTS to determine which class of OTC derivatives should be subject to clearing. Despite many responses to the June Consultation Paper, ESMA made few changes to its original proposals. Taking the Draft TS and the requirements under Article 5(4) together, the relevant criteria are as follows:

- **degree of standardisation of the contractual terms and operational processes of the relevant class of OTC derivatives** – is common legal documentation used (such as master netting agreements, definitions and confirmations)? Are the product trade processing and lifecycle events managed in a standardised way across the relevant class of OTC derivatives?;
- **volume and liquidity of the relevant class of OTC derivatives** – are the margins proportionate to the risk that the clearing obligation intends to mitigate? What is the historical stability of the liquidity of the particular class through time? What is the likelihood that liquidity would remain sufficient in the case of a default of a clearing member?; and
- **availability of fair, reliable and generally accepted pricing information in the relevant class of OTC derivatives** – is the information necessary to correctly price the contracts easily accessible to the counterparties on a reasonable commercial basis, including once the clearing obligation is in force? In response to stakeholders' concerns regarding the length of the look-back period to assess the availability of prices, the Draft TS have extended the look-back period from "12 months" to "at least 12 months".

4. ESMA's duty to establish, maintain and keep up to date the public register on its website (Article 6(4) of EMIR and Annex II, Chapter V of the Draft TS)

Article 6(4) of EMIR requires ESMA to provide a public register - available on its website - which, among other things, identifies the classes of OTC derivatives which are subject to the mandatory clearing obligation. In response to industry concerns, ESMA has clarified that the level of detail required on the public register would depend on the particular class of OTC derivative and should enable the proper identification of a particular class of OTC derivative subject to the clearing obligation without seeming to encompass other products. ESMA, has removed the requirements to specify the calculation and business day convention, however, it has agreed to add a reference to the settlement currency of the cleared OTC derivative contract on the public register.

5. Access to trading venues (Article 8 of EMIR and Annex II, Chapter VI of the Draft TS)

Article 8 of EMIR requires trading venues to provide trade feeds, upon request, to any CCP authorised to clear OTC derivatives contracts traded on that trading venue. Access to the trading venue may only be granted where it does not require interoperability or threaten the smooth and orderly functioning of markets, in particular due to liquidity fragmentation.

The Draft TS include provisions whereby the test for liquidity fragmentation set out in the June Consultation Paper – namely, whether market participants are being prevented from trading with another because no clearing arrangement was available to which both had access – remains unchanged, despite industry concerns regarding its scope.

ESMA has clarified that although it does not prescribe interoperability as a solution to liquidity fragmentation, this should not be interpreted as a prohibition on interoperability *per se*.

6. Non-financial counterparties, the hedging definition and the clearing threshold amount (Article 10 of EMIR and Annex II, Chapter VII of the Draft TS)

Under Article 10(1) of EMIR, an NFC shall become subject to the clearing obligation where it has entered into OTC derivatives contracts which exceed the clearing threshold amount. OTC derivative contracts which are objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity of the NFC will not be not counted in the threshold (this provision is commonly referred to as the 'hedging exemption').

The Draft TS provide further detail on the kinds of OTC derivative contracts which would be considered as "objectively measurable as reducing risks...", and the values of the clearing threshold amount. Taking each element in more detail:

a. "Objectively measurable as reducing risks..."

ESMA has relaxed its position as set out in its June Consultation Paper and now accepts that the following should be considered as being within the scope of the hedging exemption (and, therefore, not counting in the calculation as to whether the clearing threshold amount has been exceeded):

- OTC derivative contracts entered into for the purpose of 'proxy hedging' (i.e., risk reduction by entering into a closely correlated instrument rather than an instrument directly related to the exact risk);
- OTC derivative contracts entered into as part of a portfolio hedging arrangement;
- OTC derivative contracts concluded in order to offset hedging contracts;
- stock options and OTC derivatives contracts related to employee benefits;
- OTC derivative contracts which reduce risks related to the acquisition of a company; and
- OTC derivative contracts which reduce credit risk.

The scope of what is considered as "objectively measurable as reducing risks..." has also been amended. Reference is now made to hedging activities carried in the "normal course of its business" rather than "ordinary course of its business". This is to avoid the implication that anything other than hedging activities performed on a day-to-day basis are considered to be outside of scope for the purposes of the hedging exemption. ESMA was not, however, persuaded by requests to include OTC derivative contracts considered as hedging contracts under Generally Accepted Accounting Principles (GAAP) for the purposes of the hedging exemption.

b. Values of clearing threshold amount

The Draft TS set out the gross notional values of the clearing threshold amounts as follows:

- EUR 1 billion for OTC credit derivative contracts;
- EUR 1 billion for OTC equity derivative contracts;
- EUR 3 billion for OTC interest rate derivative contracts; and
- EUR 3 billion for OTC foreign exchange derivative contracts.

ESMA confirmed that threshold amounts are to be set in terms of gross notional value and rejected calls from both industry and the European Systemic Risk Board (ESRB) to use a net MTM value or gross market value, respectively. ESMA also rejected industry requests that exceeding the threshold for one class of OTC derivatives should not automatically trigger the clearing thresholds of all other classes of OTC derivative contact.

7. Risk-mitigation techniques for OTC derivatives contracts not cleared by a CCP (Article 11 of EMIR and Annex II, Chapter VII of the Draft TS)

Under Article 11(1) of EMIR, NFCs and FCs which enter into OTC derivative contracts not cleared by a CCP are required to use techniques to mitigate both counterparty credit and operational risks. These techniques should, at the very least, include timely confirmation of the terms of the relevant OTC derivative contracts and a formalised process to reconcile portfolios, to manage associated risk and to identify disputes between parties at an early stage and resolve them, and to monitor the value of outstanding contracts. The Draft TS provide further details on these 'risk mitigation techniques'.

a. Timely confirmation requirements with respect to the terms of non-centrally cleared OTC derivatives

ESMA has reiterated its intention to continue to distinguish between (i) FCs and NFCs above the clearing threshold on the one hand and (ii) NFCs below the clearing threshold on the other. The aim is for confirmation to take place no later than the business day following execution for the former and no later than two business days following execution for the latter, although the Draft TS do propose phase in periods as per particular product classes:

- **for FCs and NFCs above clearing threshold**:
  - the terms of credit default swaps (CDS) and interest rates swaps (IRS) concluded until 28 February 2014, should be confirmed by the end of the second business day following execution. Those concluded after that date should be confirmed by the next business day following execution;
  - the terms of equity swaps, foreign exchange swaps, commodity swaps and all other derivatives (except those CDS and IRS described above) concluded: (i) until 31 August 2013, should be confirmed by the end of the third business day following execution; (ii) between 31 August 2013 and 31 August 2014 should be confirmed by the end of the second business day following execution; and (iii) after 31 August 2014 should be confirmed by the end of the next business day following execution.

- **for NFCs below the clearing threshold**:
  - terms of CDS and IRS concluded: (i) until 31 August 2013, should be confirmed by the end of the fifth business day following execution; (ii) between 31 August 2013 and 31 August 2014, should be confirmed by the end of the third business day following execution; and (iii) after 31 August 2014 should be confirmed by the second business day following execution;
  - terms of equity swaps, foreign exchange swap, commodity swaps, and all other derivatives except those above, concluded: (i) until 31 August 2013, should be confirmed by the end of the seventh business day following execution; (ii) between 31 August 2013 and 31 August 2014 should be confirmed by the end of the fourth business day following execution; and (iii) after 31 August 2014 should be confirmed by the end of the second business day following execution.

ESMA decided against including a requirement for straight through processing (STP) in the Draft TS, stating that it was not part of ESMA's mandate to introduce this with "binding force" despite agreeing with the need to advance the clearing agenda in this direction.

b. Portfolio reconciliation requirements with respect to non-centrally cleared OTC derivatives

The frequency of which portfolio reconciliation must be performed depends on how many OTC derivative contracts are outstanding between counterparties.

- **For NFCs below the clearing threshold, portfolio reconciliation should be performed**:
  - quarterly, when there are more than 100 outstanding contracts; and
  - annually, where there are 100 or fewer.

- **For FCs and NFCs above the clearing threshold, portfolio reconciliation should be performed**:
  - every business day, where there are 500 or more outstanding contracts;
  - weekly, where there are between 51 and 499; and
  - at least quarterly, where there are 50 or fewer.

These requirements will enter into force six months after the entry into force of the Draft TS (see Part C, 'Next steps' below).

c. Portfolio compression requirements with respect to non-centrally cleared OTC derivatives

The Draft TS acknowledge that portfolio compression is not appropriate in all cases and that such compression is no longer put forward as a mandatory requirement for all non-centrally cleared OTC derivatives. However, ESMA

does advise that counterparties which have a portfolio of a certain size should analyse whether compression would be appropriate as a risk mitigation technique.

In order to prevent unintended conflict with accounting rules, ESMA has also removed the mandatory requirement to terminate offset OTC derivative contracts (discovered as a result of a portfolio compression exercise) on the day following execution of the fully offsetting OTC derivative contract.

These requirements will enter into effect six months after the entry into force of the Draft TS (see Part C, 'Next steps' below).

d. Dispute resolution

FCs and NFCs must agree detailed processes and procedures for the identification, recording and monitoring of disputes and their timely resolution (including a specific process and procedure for disputes lasting longer than five days). FCs and NFCs must notify the relevant competent authority where a dispute lasts longer than 15 business days and is for an amount or value higher than EUR 15m.

These requirements will enter into effect six months after the entry into force of the Draft TS (see Part C, 'Next steps' below).

e. Marking-to-market and marking-to-model

FCs and NFCs above the clearing threshold are required to MTM the value of outstanding contracts on a daily basis. Where MTM is prevented by market conditions, a "reliable and prudent marking-to-model" may be used. Despite industry feedback to the contrary, the Draft TS stipulate that the model used should be approved as frequently as is necessary, and at least annually, by the Board of the FC or NFC.

f. Intra group exemptions

EMIR provides an exemption for intra group transactions in respect of the:

- mandatory clearing obligation; and
- risk mitigation technique requirements which apply to NFCs with respect to non-centrally cleared derivatives.

In respect of the latter, the NFC is required to notify the relevant competent authority of its intention to apply the exemption. Under the Draft TS, ESMA stipulates that such notification should be performed on a *per* counterparty basis and may cover all intragroup OTC derivative transactions exempt with respect to such counterparty.

The NFC may delegate the notification obligation to another entity e.g., its head office. The NFC may not, however, provide one notification in respect an entire group. The notification need not include information regarding intragroup credit limits. The Draft TS do not require an NFC to provide a legal opinion supplementing the notification, unless specifically requested by the relevant competent.

8. Recognition of a third country CCP (Article 25 of EMIR and Annex IV, Chapter II of the Draft TS)

Article 25 of EMIR sets out how it will allow 'third countries' to provide clearing services in the EU. In assessing whether a CCP established in a third country should be recognised for the purposes of clearing derivatives contracts subject to the mandatory clearing obligation under EMIR, the following conditions must be met:

- the third country CCP should be authorised and subject to effective supervision and enforcement to ensure full compliance with the prudential requirements applicable in the relevant third country;
- the jurisdiction of the third country CCP must have passed a Commission equivalence assessment; and
- the third country competent authority must have agreed an adequate supervisory cooperation arrangement with ESMA.

In order to assess a third country CCP's application for recognition under Article 25 of EMIR, the Draft TS require the third country CCP to provide ESMA with the:

- applicant's full legal name;
- segregation and portability services of the third country CCP;
- access requirements of the third country CCP;
- terms for suspension and termination procedures of the third country CCP; and

- default management process of the CCP.

Details of the application should be made available on the ESMA website.

9. Organisation requirements – general provisions (Article 26 of EMIR and Annex IV, Chapter III of the Draft TS)

Article 26 of EMIR sets out the organisation requirements which a CCP must fulfil. These fall into the following categories: (i) governance arrangements; (ii) compliance policy and procedures; (iii) information technology systems; (iv) reporting lines; (v) remuneration policy; (vi) disclosure of rules, governance arrangements and admission criteria; and (vii) audits. The Draft TS provide further details on each of these requirements.

a. Governance arrangements

The Draft TS provide that the sharing of resources between a CCP and other group entities is permitted. However, they stipulate that such sharing should be in accordance with EMIR's outsourcing provisions and a CCP should have its own:

- chief risk officer;
- chief technology officer; and
- chief compliance officer.

The Draft TS clarify that, whilst ESMA does not prohibit the board members of CCPs sitting on different boards, CCPs should adequately monitor potential conflicts of interest.

b. Reporting lines

The Draft TS clarify that the:

- risk management, compliance and audit functions must be independent from other functions of the CCP and must report directly to the Board; and
- chief risk officer may report to the Board either directly or through the Chair of the risk committee.

c. Compliance

The Draft TS conclude that:

- the use of legal opinions was supported but not required when identifying and analysing the soundness of the rules, procedures, contractual arrangements and potential conflict of laws issues; and
- there should be no restrictions upon who performs the function of the chief compliance officer, e.g., no exclusion of in-house legal counsel.

d. Disclosure

The Draft TS provide for an increased level of public disclosure from that which was prescribed in the June Consultation Paper such that CCPs are now required to disclose details of eligible collateral and haircut levels. Nonetheless, ESMA has provided that the disclosure of business secrets or of aspects which could put at risk the safety of the CCP - e.g., business continuity information - may be waived with the consent of the relevant competent authority. CCPs may also disclose such information in a way which prevents risks to the business secrecy or the safety of the CCP.

10. Record keeping requirements of the CCP (Article 29 of EMIR and Annex IV and V of the Draft TS)

Article 29(5) of EMIR mandates ESMA to develop draft regulatory technical standards specifying what information records are to be retained by the CCPs and draft implementing technical standards specifying the ir format of such information records.

a. General requirements

ESMA accepted industry concerns as to the proposal contained in the June Consultation Paper which would require CCPs to implement measures to prevent the manipulation or alteration of CCP records. The Draft TS now include wording such that market participants are required only to implement "appropriate measures to prevent unauthorised alteration of records". Alterations to CCP records are, therefore, permitted in some instances e.g., to correct manifest error.

b. Position records

ESMA accepted concerns regarding the significant cost of a requirement to record margin and default fund contributions on a trade by trade basis. The Draft TS therefore provide that margins and default fund contributions are recorded for each clearing member and client, if known to the CCP.

c. Business records

Despite industry protests, the Draft TS continue to stipulate that CCPs should maintain and make available records on: (i) the minutes of consultation groups with clearing members and clients; (ii) internal and external audit reports; and (iii) the relevant documents describing the development of new business initiatives.

d. Direct data feed

ESMA clarified that the requirement for a direct data feed only applied when requested by the competent authority and after six months from the request.

11. Business continuity policy of the CCP (Article 34 of EMIR and Annex IV, Chapter V of the Draft TS)

Key stipulations under the Draft TS include the:

- inclusion of a maximum two hour disaster recovery time for critical functions; and
- requirement for the business continuity strategy and policy to be approved by the Board of the CCP and be subject to ongoing independent review, the results of which should be reported to the Board of the CCP.

12. Margin requirements required by CCPs (Article 41 of EMIR and Annex IV, Chapter VI of the Draft TS)

Under Article 41 of EMIR, the Draft TS are required to define the percentage confidence levels which margins are required to cover, the time horizon for the liquidation period and the time horizon for the look-back period.

a. Confidence interval

The Draft TS maintain the distinction made in the June Consultation Paper between OTC derivatives and other financial instruments, arguing that this is "appropriate and consistent with international standards" and that, generally speaking, OTC derivatives are characterised by less reliable pricing and shorter runs of historical data on which to base exposure estimations. ESMA does, however, recognise that some OTC derivatives are more liquid than some "thinly traded on exchange derivatives". It, therefore, has amended the Draft TS to allow CCPs to prove to competent authorities that: (i) if some OTC derivatives have the same risk characteristics of some listed products; and (ii) if those risks are properly mitigated, a lower confidence interval of 99% should be adopted.

b. Look-back period

ESMA has amended the look-back period (used to determine which period the confidence interval percentage should cover) from 'six months plus six months equally weighted' to a minimum one year look-back period to the extent that such period includes a full range of market conditions including stressed periods. The weighting given to different observations in the period is left to CCPs to determine.

A CCP has the following implementation options to cater for procyclicality:

- to implement a buffer of 25% of its minimum margin requirements, which can be used in stressed market conditions to avoid continuous margin calls;
- to assign a weighting of at least 25% to the stress observations considered in the look-back calculation period; or
- to ensure that margins are no lower than those calculated considering a 10 year look-back period.

c. Liquidation period

The Draft TS impose a five business day liquidation period for OTC derivatives and a two business day liquidation period for all other financial products.

Following the ESMA approach on confidence intervals, there is a degree of flexibility for highly liquid OTC derivatives. CCPs are allowed to use a shorter period for cleared OTC derivatives which have the same risk characteristics as derivatives executed on regulated markets, provided that such liquidation period is more appropriate than the five day period originally prescribed and at least two business days.

d. Portfolio margining

The Draft TS clarify that the limitations on portfolio margining were not intended to restrict full offsets or combinations which do not expose the CCP to any material risk. However, ESMA does restate that a 20% haircut on offsets is appropriate where such offsets are determined by mark-to-model calculations or rely on assumptions about future correlations. The Draft TS retain this offset haircut whilst removing the other restrictions as to how offsets are calculated.

Following feedback to the June Consultation Paper which criticised the limitation of the restriction on offsets to those financial instruments covered by the same default fund, ESMA has introduced an exemption to the extent that the CCP is able to demonstrate to the competent authority and its clearing members how it would allocate losses among different default funds.

13. Default fund of the CCP (Article 42 of EMIR and Annex IV, Chapter VII of the Draft TS)

Article 42(5) of EMIR requires ESMA, in cooperation with the European System of Central Banks (ESCB) and after consultation with the European Banking Authority (EBA), to develop draft RTS to specify the framework for defining the extreme but plausible market conditions to be used when defining the size of the default fund (so-called 'stress testing').

The Draft TS no longer include a requirement for the risk committee to review the results of the stress test every quarter and now provide that:

- a CCP shall conduct at least an annual review of the historical and hypothetical scenarios used in its stress tests, consulting with the risk committee where appropriate; and
- these scenarios should be reviewed more frequently where there has been a significant change in market conditions or a material change in the set of contracts cleared by the CCP.

14. Liquidity risk controls (Article 44 of EMIR and Annex IV, Chapter VIII of the Draft TS)

Under Article 44(2) of EMIR, ESMA is required to develop RTS to specify the framework through which CCPs manage liquidity risks generated by the default of at least the two clearing members to which a CCP has the largest exposure. Following comments, ESMA amended the Draft TS as follows:

- the Draft TS clarify that pre-arranged credit agreements with non-defaulting clearing members are considered liquid resources accessible to a CCP;
- different reporting obligations under the liquidity management process should arise for daily liquidity management in normal times and liquidity risk control in stressed times; and
- the reference to "same day liquidity" in the Draft TS - used to refer to a CCP's variation margin flow or settlement needs at the start of the day - is not intended to refer to intraday margin calls. The Draft TS now refer to "payment and settlement obligations in all relevant currencies as they fall due, including where appropriate intraday".

15. Default waterfall (Article 45 of EMIR and Annex IV, Chapter IX of the Draft TS)

Under Article 45(5) of EMIR, ESMA is required to develop RTS to specify the methodology for the calculation and maintenance of a CCP's own resources to be used in the default waterfall before the margin of non-defaulting clearing members is used (so-called 'skin in the game' (SIG)). The Draft TS have changed the SIG requirement from 50% to 25% of the CCP's total capital resources. When the CCP's SIG is used, the Draft TS provide that such an amount must be restored by the CCP as a component of the default waterfall within one month of its use.

16. Collateral requirements (Article 46 of EMIR and Annex IV, Chapter X of the Draft TS)

Article 46(3) of EMIR requires ESMA to develop RTS to specify the type of collateral that is considered highly liquid, the criteria to be considered when determining haircut levels and the conditions under which commercial bank guarantees could be acceptable forms of collateral for NFCs.

a. Range of eligible collateral

In the Draft TS, ESMA has recognised the need to balance the safety of the CCP against the overall availability of collateral. The Draft TS, therefore, provide that:

- units of funds should not be included as eligible collateral since the liquidity of the fund units is subject to the discretion of the fund manager;
- units in money market funds listed and traded on exchange would be considered as eligible collateral (assuming that they meet the other eligibility criteria) as they would fall under the definition of 'transferrable securities'; and
- in respect of cash collateral, unless a CCP is able to demonstrate that it can either manage the currency risk of the cash it accepts as eligible collateral, it may only accept the amount of cash needed to cover an exposure in a particular currency.

In the Draft TS, ESMA has avoided over reliance on credit ratings when referring to eligible collateral (in line with G20 policy).

b. Bank guarantees (permitted as eligible collateral for NFCs only)

Whilst ESMA has argued that allowing fully uncollateralised bank guarantees could result in an undue source of risk for CCPs, it also acknowledges industry's concern that a requirement for bank guarantees to be backed by financial instruments of the same quality as eligible collateral would be overly restrictive for NFCs. Balancing these factors, ESMA's original proposal which would have placed limitations on bank guarantees being used as eligible collateral has now been amended. The Draft TS provide that:

- other kinds of collateral backing the bank guarantees is permitted to the extent that such collateral is calculated in a conservative manner; and
- the CCP can promptly access the collateral backing the guarantee with no restrictions in the case of the simultaneous default of clearing member and bank guarantor.

ESMA has stipulated that the above restrictions on collateral which back bank guarantees will become effective three years after the entry into force of the Draft TS.

c. Concentration limits

The Draft TS provide that:

- the size of the CCP does not influence the collateral availability or the concentration limits;
- higher concentration limits are permitted in markets characterised by a large presence of NFCs where it is difficult to find different banks providing guarantees;
- no exceptions to concentration limits are afforded to sovereign bonds;
- when determining concentration limits, reference should be made to each clearing member in order to avoid the concentration of a particular type of collateral at a specific CCP; and
- in determining concentration limits, CCPs should assess the level of credit risk of financial instruments or of the issuer, based on a defined, internal, objective methodology. CCPs should not rely solely on credit ratings when undertaking a credit risk assessment. As with the criteria for determining eligible collateral, this is in line with G20 policy.

d. Other changes from the June Consultation Paper

The Draft TS also include a:

- recital stating that CCPs should consider the macro economic impact of their policies on global collateral availability;
- reference to eligible collateral being without "third party claims". This is further to an ESRB concern that collateral should not be subject to competing rights or voidable by insolvency laws; and
- reference to eligible collateral being "freely transferrable and without any regulatory or legal constraint" to ensure that cross border collateral can be used in a timely manner.

17. Investment Policy of the CCP (Article 47 of EMIR and Annex IV, Chapter XI of the Draft TS)

Article 47(8) of EMIR tasks ESMA with defining: (i) highly liquid financial instruments with minimal credit risk; (ii) highly secure arrangements for the deposit of cash and other assets; and (iii) the concentration limits for individual obligors, each in relation to the investment policy of the CCP. Key points to note in the Draft TS are that:

- ESMA has rejected calls to relax the criteria used to assess whether a financial instrument was sufficiently liquid and had minimal credit risk. ESMA stresses that, compared to the eligibility criteria applied to

collateral for clearing members, capital preservation and liquidity are of far greater concern with respect to the financial instruments in which CCPs invest. A more restrictive eligibility criteria is therefore justified;

- ESMA has removed 'low inflation risk' as a criterion by which a CCP can demonstrate that its investments have low credit risk;
- the Draft TS have not extended the average time to maturity of the portfolio of assets held by a CCP. ESMA has retained the two year limit on the basis that this figure was an average; CCPs would not necessarily be excluded from holding debt instruments with longer maturities than two years. The Draft TS, however, have excluded repo transactions from this requirement;
- language has been included as a recital in the Draft TS which reiterates that a CCP should invest only to cover its financial resources;
- a CCP is permitted to use derivatives to manage currency risk arising from its liquidity management framework. Board approval, however, is no longer required on a *per* transaction basis and, instead, is required only in relation to the derivatives usage policy of the CCP;
- not less that 95% of cash, calculated over an average period of one calendar month, should be deposited through arrangements which ensure the collateralisation of such cash with highly liquid financial instruments. This percentage as found in the Draft TS has been reduced from 98% and amended to become a monthly average rather than a fixed percentage to be met on a daily basis; and
- the re-use/re-hypothecation of financial instruments posted as margin or default fund contributions through title transfer is allowed where this is already permitted by EMIR.

18. Review of models, stress testing and back testing carried out by the CCP (Article 49 and Annex IV, Chapter XII of the Draft TS)

Under Article 49(4) of EMIR, ESMA is required to develop RTS to specify the: (i) types of tests (stress testing, back testing etc.) to be undertaken by a CCP for different classes of financial instruments and products; (ii) involvement of clearing members or other parties in those tests; (iii) frequency and time horizons of the tests; and (iv) key information which the CCP shall be required to publicly disclose on its risk management model and assumptions adopted in its stress testing.

a. Model validation and risk committee

- The Draft TS have strengthened the risk committee's advisory role in terms of the oversight of the margin calculation models and parameters, their methodologies and liquidity risk management framework.
- The Draft TS clarify that the requirement for a CCP to validate its models, its margin calculation models and parameters and its methodologies applies to all models, including models and methodologies to determine the margin levels in the case of portfolio margining.

b. Back testing and sensitivity testing and analysis

- To avoid any misinterpretation that the requirement to back test is related to positions only in the distant past, reference is made to current positions, rather than historical positions.
- The mandatory requirement to conduct sensitivity testing and analysis of a CCP's margin model against a number of confidence levels has been deleted. The Draft TS simply refer to the CCP considering a range of confidence intervals in their sensitivity analysis.
- The time horizon for back tests refers to a minimum of the most recent year or for such time as the CCP has been clearing the product.
- The Draft TS provide that margin coverage should be evaluated on a financial instrument and clearing member level. The CCP should also take into take into account portfolio margining effects to ensure that portfolio margin requirements are not inappropriately low.

c. Stress testing

A CCP is required to consider:

- potential losses arising from the default of a client which clears through multiple clearing members; and
- all client positions when assessing the impact of the default of a clearing member.

d. Disclosure

Whilst recognising the need for confidentiality in relation to the disclosure by a CCP of its margin requirement models, methodologies and the results of the stress testing, the Draft TS emphasise the need for a degree of transparency. The Draft TS do, however, clarify that CCPs are required to publicly disclose a high level summary of results, analysis and corrective actions.

e. Frequency of reverse stress testing

The Draft TS amend the June Consultation Paper proposal in respect of the frequency of reverse stress testing from monthly to quarterly.

f. Default procedures

The Draft TS no longer require a CCP to perform simulation exercises following the addition of a new type of contract being cleared by the CCP.

19. Obligation on counterparties to report to trade repositories (Article 9 of EMIR and Annex VI.I of the Draft TS)

Article 9 of EMIR sets out the obligations of CCPs to report to TRs registered under EMIR. Under Article 9(5), ESMA is required to develop RTS and implementing technical standards specifying the type, details, format and frequency of CCP reports to TRs.

a. Purpose of reporting to trade repositories

ESMA notes the widespread industry concern that there is a risk of duplication between the reporting obligations of EMIR and the reporting obligations under the Markets in Financial Instruments Directive (MiFID). The Draft TS state that ESMA seeks to ensure that data sets are aligned as far as possible. Furthermore, it is understood by ESMA that the reporting obligations under EMIR are more extensive in scope than those under MiFID i.e., satisfying the obligations under EMIR would necessitate the satisfaction of reporting obligations arising under MiFID.

b. Content of reporting under parties to the contract

The Draft TS have retained the data fields in the reports which specify whether the contract is directly linked to commercial activity or treasury financing and whether the contract is above the clearing threshold.

c. Format of reporting to trade repositories

In developing the requirements as to the format to be used in the report, the Draft TS prescribe certain methods of identifying legal entities, products and trades, as follows:

- the use of the Legal Entity Identifier (LEI) or an interim entity identifier to identify all NFCs, FCs, CCPs and beneficiaries when these are endorsed in the EU. If either a LEI or an interim entity identifier is not available, entities should be identified with a Business Identifier Code (BIC) already in place for counterparties to use;
- in the absence of a 'Unique Product Identifier', the Draft TS permit 'International Securities Identification Numbers', the 'Alternative Instrument Identifier' and the 'Classification of Financial Instruments Code' to be used as product identifiers; and
- where derivative contracts are reported separately by each counterparty, a Unique Trade Identifier (UTI) should be reported. This will allow for the pairing of contracts or 'trade matching'. This is particularly important when counterparties are reporting to two different TRs. Where such a UTI is not available, the counterparties have a responsibility to generate a UTI.

Under the Draft TS, counterparties must report the following:

- pricing, including information on:
  - the pricing/rate at which a derivatives contract is traded;
  - a derivatives contract's price multiplier; and
  - any up-front payments made under a derivative contract.
- information related to compliance with EMIR, such as:
  - the time of reporting to the TR;
  - the type of platform on which the contract was executed;
  - determining whether confirmation has occurred before reporting and, if so, whether it was by electronic means;
  - stating if there is an obligation to clear, whether the contract was cleared and, if cleared, when and by which CCP and clearing member the contract was cleared (if the counterparty is not itself a clearing member); and
  - stating whether the contract qualifies under the intra group transaction exemption;
- information describing a derivative contract within the relevant asset class including specific fields on commodity derivatives and energy derivatives;

- information on exposure. ESMA considers that this information is vital for those granted access to the TRs to monitor systemic risk. In requiring firms to calculate daily MTM valuations of contracts (as required under Article 11(2) of EMIR) this reporting obligation should be easy to fulfil. Parties not subject to the requirement to daily MTM, e.g., NFCs below the clearing threshold, will not be required to report MTM valuations. Parties which are subject to this reporting requirement will be required to report the absolute value of the contract on a daily basis; and
- information on collateral, including the type and amount of the collateral. Parties that post collateral on a portfolio basis may satisfy their reporting obligations by reporting on the same portfolio basis, provided that the portfolio is assigned a unique code.

d. OTC derivative contract reporting - start date for reporting to trade repositories

ESMA has opted for a phase-in period for parties to satisfy their reporting obligations, with different phase in periods attributed to different asset classes. Credit derivative and interest rate derivative contracts are required to be reported first, other derivative contracts six months later followed, finally, by the reporting of collateral which will commence six months after that.

Derivative contracts:

- outstanding on 16 August 2012 and still outstanding on the reporting start date should be reported on or before the date falling on the reporting start date (see below) + 90 days;
- outstanding on 16 August 2012 and closed on the reporting start date should be reported on or before the date which falls on the reporting start date + three years; and
- entered into on or after 16 August 2012 and closed on the reporting start date should be reported on or before the date which falls on the reporting start date + three years.

The 'reporting start date' referred to above is:

- in respect of credit derivative and interest rate derivative contracts - 1 July 2013 (provided a TR has registered for the particular product type before 1 April 2013). Where a TR has registered for the particular product type after 1 April 2013, firms must start to report within 90 days of the date of registration; and
- in respect of other derivative contracts - 1 January 2014 (provided a TR has registered for the particular product type before 1 October 2013). Where a TR has registered for the particular product type after 1 October 2013 firms must start to report within 90 days of the date of registration.

If no TR is registered for the particular product type by 1 July 2015, reports must be sent to ESMA.

20. Application for registration of trade repositories (Article 56 of EMIR and Annex VI.II of the Draft TS)

The Draft TS clarify that the requirement on the TRs to provide a three year business plan was relevant only during the process of a TRs application for registration and was not required to be updated on an annual basis. The Draft TS also confirm the details of the format which an application for registration of a TR should take. The application should be provided by way of an instrument which stores information in a durable medium and allows the unchanged reproduction of the information held. The applicant should also:

- assign a unique reference number to each document it submits in its application;
- clearly identify to which requirement a document relates;
- clearly explain and identify which requirements do not apply;
- include a covering letter with documents submitted, signed by the TR's senior management attesting to the accuracy of the information provided; and
- accompany any documents submitted with the relevant corporate legal documentation showing the accuracy of the information, including verification of any decisions taken at the board level.

21. Transparency and data availability of information at trade repositories (Article 81 of EMIR and Annex VI.III of the Draft TS)

The Draft TS have taken a functional approach when determining which authorities should be permitted access to data held by a TR. Access to such data would be determined on the basis of the relevant authority's competencies and the functions it performs. The level of details and type of aggregation in respect of the information provided to the relevant authorities will be determined by their respective mandate. The Draft TS, therefore, provide that:

- ESMA should not be restricted from accessing transaction level data, nor should it be restricted information which would aid its economic analysis/research and systemic risk monitoring and mitigation for financial stability purposes;

- the Agency for the Cooperation of Energy Regulators needs access to the TRs for purpose of monitoring wholesale energy markets; it is, therefore, granted access to the TRs as regards energy derivatives;
- supervisors and overseers of CCPs should be granted access to transaction level data on transactions cleared or reported for the purpose of the performance of their duties;
- competent authorities supervising venues of execution of reported contracts should have access to transaction data on contracts executed on those venues;
- authorities authorised under Article 4 of the Takeover Bids Directive (2004/25/EC) to supervise takeover bids should be given access to equity derivative transactions data reported to TRs where the underlying is either admitted to trading on a regulated market in their jurisdiction, or has its registered office within their jurisdiction;
- securities and market authorities responsible for investor protection in their respective jurisdiction should have access to transaction data on markets, participants, products and underlyings covered by their surveillance or enforcement mandate;
- the ESRB, ESMA, ESCB and entities such as national central banks and securities and markets authorities should have access to transaction data for all counterparties within their respective jurisdiction and for derivative contracts where the reference entity of the derivative contracts is within their respective jurisdiction or where the reference obligation is the sovereign debt of the respective jurisdiction;
- members of the ESCB should receive position data for derivative contracts in the currency issued by that member;
- the relevant entities listed in Article 81(3) of EMIR should receive access to all transaction data for the purpose of the supervision of the relevant counterparties;
- certain third-country authorities may also be granted access to certain information held by TRs where they have entered into an international agreement with the EU and the relevant authorities have entered into a cooperation agreement with ESMA.

In addition to making public the breakdown of the aggregate open positions per asset class, ESMA has also amended the Draft TS so that a breakdown of aggregate transaction volumes and values per class will also be published. ESMA has retained the original frequency of public disclosure put forward in the June Consultation Paper and states that weekly reporting should be adhered to as a minimum.

C. Next steps

Following submission by ESMA of the Draft TS to the Commission on 27 September 2012, the Commission endorsed the Draft TS (with one exception) without amendment on 19 December 2012. The exception relates to a technical standard on the specific point of colleges for CCPs (Article 18 of EMIR, Annex III of the Draft TS) since the Commission has concerns as to the legality of some of the proposed provisions. ESMA has been asked to redraft the standard, which will be adopted at a later stage.

Ordinarily, Parliament and the Council have one month from the date of Commission endorsement in which to object to any standards. On this occasion, the European Parliament sought a one month extension to this period, to 19 February 2013. Despite a motion from ECON that the Parliament object to two RTS, this proposal with withdrawn before a vote was taken.

The Commission will now publish the RTS in the Official Journal in late February 2013 and these will come into force 20 days later. (Note that 'coming into force' is a formal step and does not mean that the provisions come into effect on that date). The Draft ITS are published in the Official Journal following endorsement by the Commission.

The key dates for 2013/2014 are:

Late Q1 2013	TS enter into force. The following apply: - notification rules on NFCs who breach the clearing thresholds; - timely confirmation requirements; and - MTM requirements
Q3 2013	Reporting starts for CDS and IRS if TR has registered before 1 April 2013
Late Q3 2013	Rules on portfolio reconciliation, compression and dispute resolution apply

1 January 2014	Reporting starts for non-CDS/IRS if TRs for relevant class registered before 1 October 2013

D. Outstanding Issues

ESMA's submission of the Draft TS to the Commission marks a significant milestone. The majority of the detail which ESMA was mandated to produce under EMIR has now been delivered. However, the following items remain outstanding:

- **RTS on the extra-territorial effect of EMIR**, i.e., those contracts considered to have a "direct substantial and foreseeable effect in the EU" or where it is "necessary or appropriate to prevent the evasion of any provision of EMIR" under Article 4 (Clearing Obligation) of EMIR. These RTS are likely to be produced against the backdrop of the ongoing discussions between regulators on the global regulatory framework of the derivatives markets;
- **RTS (to be produced in conjunction with the EBA) on the risk mitigation techniques for non-centrally cleared derivatives** under Article 11 (Risk-mitigation techniques for OTC derivative contracts not cleared by a CCP) of EMIR. These will cover collateral requirements for non-centrally cleared derivatives. ESMA and the EBA's delay in the production of these RTS has been agreed between the European Supervisory Authorities and the Commission to ensure that requirements under EMIR are consistent with international standards on margin requirements for non-centrally cleared derivatives currently being developed by the Basel Committee on Bank Supervision (BCBS) and International Organization of Securities Commissions (IOSCO). The consultation process for the formulation of these international standards closed on 28 September 2012. (see Part F, Useful links for AIMA members below for web-links to the relevant documents.); and
- **guidelines on interoperability between CCPs** – ESMA published a consultation paper on 20 December 2012, setting out proposed guidelines to clarify for competent authorities how they are to assess existing or new interoperability arrangements between CCPs. The consultation period closed on 31 January 2013, with ESMA's final guidelines due to be published towards the end of Q1 2013. AIMA has submitted its response to this consultation.

E. Key action points for AIMA members

On 22 November 2012, David Lawton, Director of Markets at the Financial Services Authority (FSA), delivered a speech in which he provided advice on what firms can be doing now to prepare for the incoming requirements under EMIR. This provides a helpful guide for AIMA members and is summarised as follows:

- **Establishing clearing arrangements:** If you are not a member of a CCP, you will need to enter into client clearing or indirect clearing arrangements with a broker. Client onboarding can often take several months and capacity will be severely constrained if there is a rush to sign up during 2013. This should be explored sooner rather than later.
- **Prioritise non-margin aspects of bilateral risk mitigation:** Operational risk management tools under EMIR will be amongst the first obligations arising under EMIR. Mandatory timely confirmation requirements are likely start around March 2013, with rules on dispute resolution and portfolio reconciliation and compression expected six months later.
- **Ensure connectivity with trade repositories:** Have you established connectivity with one or more TRs? If you plan to delegate reporting to a counterparty, you will need to ensure that its counterparties are willing to accept that responsibility.
- **Assess ability to comply with exemptions:** Any firms intending to rely on any of the exemptions from the EMIR requirements to clear for instance must ensure that they satisfy the necessary requirements e.g., check gross notional amounts for the purpose of the hedging exemption/clearing threshold breach. If you intend to rely on any intragroup exemptions, you will need to submit the necessary notification or application to the relevant competent authority.
- **Documentation:** Assess whether you need to amend your existing bilateral documentation, or enter into new documentation especially in respect of credit support documentation for new margin requirements
- **Operational framework/Segregation:** Do your existing operational processes conform with the new technical standards? Does your firm have appropriate segregation arrangements in place?

F. Useful links

Legislative texts

EMIR Level 1 Text	http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0001:0059:EN:PDF
EMIR Level 2 RTS and ITS	**Regulatory Technical Standards** Regulatory technical standards on capital requirements for central counterparties (December 2012) Regulatory technical standards on requirements for central counterparties (December 2012) Regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, risk mitigation techniques for OTC derivatives contracts not cleared by a CCP (December 2012) Regulatory technical standards on the minimum details of the data to be reported to trade repositories (December 2012) Regulatory technical standards specifying the details of the application for registration as a trade repository (December 2012) Regulatory technical standards specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data (December 2012) **Implementing Technical Standards** Implementing technical standards on requirements for central counterparties (December 2012) Implementing technical standards on the minimum details of the data to be reported to trade repositories (December 2012) Implementing technical standards specifying the details of the application for registration as a trade repository (December 2012)
ESMA Final Report (27 September 2012)	http://www.esma.europa.eu/content/Draft-technical-standards-under-Regulation-EU-No-6482012-European-Parliament-and-Council-4-J

Consultations and AIMA responses

ESMA Discussion Paper (February 2012)	http://www.esma.europa.eu/content/Draft-Technical-Standards-Regulation-OTC-Derivatives-CCPs-and-Trade-Repositories
AIMA response to the February Discussion Paper	http://www.aima.org/en/document-summary/index.cfm/docid/6E97FD1C-ECDF-4695-ABAF61F2F29F0F7D
ESMA Consultation Paper (June 2012)	http://www.esma.europa.eu/consultation/Consultation-Draft-Technical-Standards-Regulation-OTC-Derivatives-CCPs-and-Trade-Repo-0
AIMA response to the June Consultation Paper	http://www.aima.org/en/document-summary/index.cfm/docid/30EDDAC4-EE1C-462B-AD0913140A20A00D

ESMA Consultation Paper on interoperability arrangements for CCPS (December 2012)	http://www.esma.europa.eu/consultation/Consultation-Guidelines-establishing-consistent-efficient-and-effective-assessments-int
BCBS-IOSCO Consultative Document , 'Margin Requirements for non centrally cleared derivatives' (	http://www.bis.org/publ/bcbs226.pdf
AIMA response to BCBS-IOSCO Consultative Document , 'Margin Requirements for non centrally cleared derivatives'	http://www.aima.org/objects_store/aima_response_-_margin_requirements_for_nccd_-_28_sept_12.pdf

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