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#### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2021) 3817 final
Subject:	ANNEX to the COMMISSION DELEGATED REGULATION (EU) .../... supplementing Regulation (EU) No 648/2012 by specifying the conditions under which the commercial terms for clearing services for OTC derivatives are to be considered to be fair, reasonable, non-discriminatory and transparent

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Delegations will find attached document C(2021) 3817 final.

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Encl.: C(2021) 3817 final



Brussels, 2.6.2021  
C(2021) 3817 final

ANNEX

**ANNEX**

**to the**

**COMMISSION DELEGATED REGULATION (EU) .../...**

**supplementing Regulation (EU) No 648/2012 by specifying the conditions under which the commercial terms for clearing services for OTC derivatives are to be considered to be fair, reasonable, non-discriminatory and transparent**

## ANNEX

1. Transparency of the on-boarding process
  - 1.1. The clearing service provider publishes on its website a description of the process leading to the agreement on contractual terms and setting up operational processes for clearing services ('on-boarding process'). The description includes the following:
    - (a) the different steps of that process;
    - (b) the estimated timeline to complete the different steps of that process;
    - (c) a form to request a proposal from the clearing service provider to become a client ('form for a request for proposal'), as set out in point 2;
    - (d) the key documentation that the prospective client is to submit to the clearing service provider together with the form for a request for proposal.
  - 1.2. Prospective clients have a choice whether or not to use the form for a request for proposal set out in point 2, or any other form of request for proposal.
  - 1.3. A clearing service provider that decides not to make a proposal in reply to the request for proposal informs the prospective client thereof without undue delay.
2. Form for a request for proposal
  - 2.1. The form for a request for proposal includes the following:
    - (a) information about the prospective client:
      - (i) legal name;
      - (ii) legal entity identifier (LEI);
      - (iii) whether the prospective client is a financial or non-financial counterparty and whether it is subject to the clearing obligation in accordance with Articles 4a or 10 of Regulation (EU) No [648/2012](#);
      - (iv) the sector of activity;
    - (b) information about the documentation that the prospective client is to provide to the clearing service provider as part of the on-boarding process;
    - (c) information about the OTC derivative contracts concerned, including whether those contracts are subject to the clearing obligation in accordance with Article 4 of Regulation (EU) No [648/2012](#);
    - (d) any information or documentation that is to be provided by the prospective client to the clearing service provider to enable the clearing service provider to make a well-informed and detailed proposal on the following:
      - (i) the scope of any clearing service in terms of OTC derivative contracts;

- (ii) the fees, costs and discounts;
- (iii) the result of the assessment referred to in Article 25 of Delegated Regulation (EU) 2017/589;
- (iv) the contractual terms and conditions;
- (v) the collateral accepted;
- (vi) the applicable haircuts;
- (vii) the criteria for acceptance of orders;
- (viii) the conditions for the suspension of any clearing services or the liquidation or close out of any positions;
- (ix) the conditions for the termination of the agreement for the provision of clearing services;
- (x) IT requirements.

### 3. Disclosure of commercial terms

3.1. A proposal made by the clearing service provider in reply to a complete request for proposal includes, in a clear and structured manner, the following:

- (a) the information referred to in the following provisions:
  - (i) Article 38(1) of Regulation (EU) No 648/2012;
  - (ii) Article 39(7) of Regulation (EU) No 648/2012;
- (b) the terms and conditions under which the clearing service provider offers its clearing services, including terms and conditions which are specific to the prospective client;
- (c) the collateral accepted;
- (d) the applicable haircuts;
- (e) the criteria for acceptance of orders;
- (f) the conditions for the suspension of any clearing services or the liquidation or close out of any positions;
- (g) the conditions for the termination of the agreement for the provision of clearing services;
- (h) any applicable IT solutions and requirements.

### 4. Risk control assessment

- 4.1. The clearing service provider makes an assessment of the prospective client or the client in accordance with Article 25 of Delegated Regulation (EU) 2017/589.
- 4.2. The clearing service provider informs the prospective client or the client of the outcome of the assessment referred to in point 4.1.

Where that outcome is negative, the clearing service provider informs the prospective client or the client, upon request, of the main reasons for the negative assessment and of the criteria laid down in Article 25(1) of Delegated Regulation (EU) 2017/589 which have not been fulfilled.

## 5. Commercial terms

- 5.1. The commercial terms for the provision of clearing services agreed between the clearing service provider and the client are laid down in writing, are clear and complete and cover all the essential terms and conditions for the provision of the clearing services.

## 6. Fees and pass-on costs

- 6.1. Fees, prices and discounts are transparent and based on objective criteria.
- 6.2. Information is provided in the commercial terms about any fees charged to the client which pass on costs related to the provision of clearing services ('pass-on costs').
- 6.3. All fees, prices, discounts and pass-on costs, as agreed between the clearing service provider and the client, are clearly specified in the commercial terms.

## 7. Refusal of clearing orders, suspension, liquidation or close out of client positions and notice periods

- 7.1. The clearing service provider cannot refuse the client's request for clearing of an OTC derivative contract ('clearing order') that fulfils the agreed conditions and criteria for the acceptance of such orders, unless such refusal is reasonable and duly justified, in which case the clearing service provider, upon request, provides the client with the reasons for refusal in writing.
- 7.2. The clearing service provider can only suspend clearing services, liquidate or close out positions of the client where the agreed conditions and criteria for such suspension, liquidation or close-out are fulfilled, unless such suspension, liquidation or close out is reasonable and duly justified, in which case the clearing service provider, upon request, provides the client with the reasons for doing so in writing.
- 7.3. The client is informed, at least six months in advance, unless a shorter notice period is reasonable and duly justified, of the following:
  - (a) the termination of the agreement of the provision of clearing services;
  - (b) any material change to the terms and conditions under which the clearing service is provided.