

## **NORM No. 14/2019**

### **for the application of the ESMA Guidelines on the management of central counterparty conflicts of interest and of the ESMA Guidelines on EMIR measures of anti-procyclicality margin for central counterparties**

Under the provisions of Art. 1 par. (2), art. 2 par. (1) letter a), art. 3 par. (1) letter b), art. 6 par. (2), as well as of art. 14 of Government Emergency Ordinance no. 93/2012 on the establishment, organization and functioning of the Financial Supervisory Authority, approved with amendments and completions by Law no. 113/2013, as subsequently amended and supplemented,

In accordance with Art. 16 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24<sup>th</sup> of November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No. 716/2009 / EC and repealing Commission Decision 2009/77 / EC,

Based on the provisions of art. 33 and art. 41 of Regulation (EU). No 648/2012 of the European Parliament and of the Council of 4<sup>th</sup> of July 2012 on OTC derivatives, central counterparties and trade repositories, as amended and supplemented,

Considering the provisions of art. 174 paragraph (1) and art. 234 letter a) of Law no.126 / 2018 regarding the financial instruments markets,

According to the deliberations of the meeting of the Board of Financial Supervisory Authority of 12<sup>th</sup> of June 2019,

The Financial Supervisory Authority issues this rule:

**Article 1** - The Financial Supervisory Authority shall apply the ESMA Guidelines on managing central counterparty conflicts of interest, as set out in Annex 1 and the ESMA Guidelines on EMIR Anti-Procyclicality Measures for Central Counterparties, envisaged in Annex 2.

**Art. 2.** - Annexes no. 1 and 2 are an integral part of this norm.

**Article 3** - This Norm shall be published in the Official Gazette of Romania, Part I and shall enter into force on the date of its publication.

**The Chairman of the Financial Supervisory Authority,**

**Leonardo Badea**

Bucharest, 12.06.2019

No. 14

**Guide**  
**on the management of central counterparty conflicts of interest**

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1 Acronyms

1. Except as otherwise provided, the terms defined in Regulation (EU) 648/2012 have the same meaning in this guide. In addition, the following definitions and acronyms apply:

CCP	Central counterparty authorized under Article 14 of the EMIR
RSTR CCP	The delegated regulation (EU) no. Commission Regulation (EU) No 153/2013 of

EC	19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards regulatory technical requirements for central counterparty requirements
EMIR	European Commission Regulation on European Market Infrastructure - Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 <sup>th</sup> of July 2012 on OTC derivatives, central counterparties and trade repositories
ESMA	European Securities and Markets Authority
ESMAR	Regulation (EU) No. No 1095/2010 of the European Parliament and of the Council of 24 <sup>th</sup> November 2010 establishing the European Supervisory Authority
EU	European Union
ANC	National Competent authorities
PFMI	CPSS-IOSCO Principles for Financial Market Infrastructures, April 2012, developed by the Payments and Settlement Systems Committee of the Group of Ten Central Banks (CPSS) and Technical Committee of the International Organization of Securities Commissions (IOSCO)

## 2 Fund and mandate

2. Under the EMIR, the CCP acts to serve the interests of their clearing members and clients. Consequently, the CCP has robust procedures and policies to prevent potential conflicts of interest and to address them if preventive measures are not sufficient. Articles 26, 28 and, most importantly, Article 33 of the EMIR and Articles 3, 5, 6 and 7 of the RRS CRC define the organizational norms that aim to achieve those objectives.

3. Article 33 of the EMIR lays down requirements for the management of conflicts of interest by the CCP. In particular, CCPs are required to have written organizational or administrative procedures in place to identify and manage any conflicts of interest that may arise between themselves and their clearing members or their clients known to them.

4. Where the CCP's organizational or administrative procedures for managing conflicts of interest are not sufficient to prevent the risk of prejudice of the interests of a clearing member or a client, the CCP are obligated to clearly describe to the clearing member or to the client general nature or sources of conflicts of interest before accepting new transactions from that clearing member.

5. Where the CCP is a parent undertaking or a subsidiary, all the circumstances that the CCP has or ought to be aware of and which may lead to a conflict of interest arising from the structure and activities of another entity in the group shall be taken into account. Written procedures include the circumstances constituting or likely to give rise to a conflict of interest which may harm the interests of one or more clearing members or clients and the procedures to be followed and the measures to be taken to manage such a conflict.

6. Pursuant to Article 16 of the ESMAR, ESMA is empowered to issue guidelines and recommendations to ensure the common, uniform and consistent application of Union law. ESMA considers it necessary to detail the above-mentioned rules and procedures on conflicts of interest for the CCP.

7. The purpose of this guide is to ensure the common, uniform and consistent application of the provisions of Article 33 of the EMIR and Articles 3, 5, 6 and 7 of the RSTR CCP. In order to prepare this guidance, ESMA also examined the regulations issued in respect of other market infrastructures, in particular CSDs, and the actual rules published by the CCP.

### 3 Field of application

To whom?

8. This Guideline applies to the national competent authorities supervising central counterparties.

What applies?

9. This Guideline applies to the rules and procedures that the CCP establishes for conflicts of interest under Article 33 of the EMIR.

When applied?

10. This Guideline shall apply within two months of publication on the ESMA website in all official EU languages.

### 4 Compliance and reporting obligations

#### 4.1 Status of the guide

11. This document is a guide issued in accordance with Article 16 of the ESMAR. In accordance with Article 16 paragraph (3) of the ESMAR, competent authorities and financial market participants, the CCP in this case must make every effort to comply with the guidelines.

12. The competent authorities to which the Guidelines apply shall comply, including them in their supervisory practices, and monitor compliance by CCPs with them.

#### 4.2 Reporting requirements

13. The competent national authorities (NCA) to whom this guidance is addressed must inform ESMA of compliance with, or intends to comply with, the guidelines, giving reasons in the event of non-compliance, within two months of the publication of the guide on the ESMA website in all official EU languages at [euccp@esma.europa.eu](mailto:euccp@esma.europa.eu).

14. To this end, the CCP shall report to its own NCA, in a clear and detailed manner, if it complies with this guide.

15. In the absence of an answer by this deadline, NCA will be deemed not to comply. A notification model is available on the ESMA website.

### 5 Guide

#### 5.1 Clarifying the concept of conflict of interest

16. A conflict of interest exists where the interests of an interested party interfere with the interests of the CCP, the interests of the clearing members of a CCP or the interests of a client, when the client is known by the CCP, of its objectivity to take the decision or the decision-making processes to be followed in the course of its professional duties.

17. CCP should consider possible conflicts of interest at least in the following relationships:

- i. between the CCP and another entity in the group;
- ii. between the CCP and any interested party holding at least one holding above the thresholds set out in Article 31 of the EMIR;
- iii. between the CCP and a company in which a member of the board of directors or a member of the committee performs other functions;
- iv. between the CCP and the client of a clearing member, which the CCP knows;

- v. between the CCP, a data provider, a liquidity provider, a custodian bank, a settlement bank, a paying agent, a nostro agent or any other service provider to the CCP;
- vi. between the CPC and the related financial market infrastructure, such as a trading venue, a payment system, a securities settlement system, a central securities depository, a trade repository;
- vii. between the CCP and an interoperable CCP;
- viii. between the CCP and a clearing member;
- ix. between the CCP and a relevant person.

18. A person to be considered relevant shall include:

- i. CCP staff (board members, directors, managers and employees), as well as persons with close relationships, such as their family members, i.e. direct relatives or alliances up to the second degree, and people dependents or those who share the same household permanently
- ii. any person who is not or not related to the staff (as described above) but who is involved in the work of the CCP, such as members of the risk committee, members of the remuneration committee, the members of the default payment management group, any other members of the Committee, consultants, external advisers, agents, contract staff or subcontractors.

19. The CCP should define a period of time in which it is assumed that potential conflicts of interest or conflicts of interest will continue to take effect after the cessation of the conflict. The CCP may define different time periods depending on the type of conflict situation envisaged or the relevant person concerned.

## 5.2 Organizational Procedures

### 5.2.1 The principle of the need to know

20. CCP must clearly implement organizational procedures that aim to at prevent the undue exchange of confidential information or the inappropriate use of confidential information within the CCP, for example:

- i. CCP must ensure that confidential information which, if known, would lead to conflicts of interest are shared according to the need-to-know principle;
- ii. CCP must implement the necessary delimitations in the organization chart to ensure a clear separation of workflows;
- iii. access to the IT system must be protected by the use of appropriate security and confidentiality measures.

21. Employees entitled to receive confidential information should be reminded that information should be kept confidential internally and externally and that they should not use that information for their own benefit or for the benefit of a third party. If confidential information is shared with

subcontractors or consultants, the legal procedures between the CCP and that entity or person must ensure that they are subject to the same obligation, which must be reminded.

22. All stakeholders involved in the risk committee and in the default payment management groups who have access to confidential information should be subject to strict confidentiality obligations and, if necessary, sign an agreement specific confidentiality.

#### 5.2.2 Rules of conduct

23. CCP must take the necessary measures for its personnel and for any person who, although not part of its staff, is involved in the work of the CCP, as described in paragraph 18.

24. For the purpose of:

- i. to act impartially and in good faith in the interest of the CCP in a transparent and consistent manner with the EMIR and all applicable regulations;
- ii. to avoid, if possible, and to be aware (have understanding) of potential areas of conflict of interest; to declare any situation in which they have, or may have, a direct or indirect interest which conflicts with the interests of the CCP and to comply with any appropriate mitigation measures that may be imposed by the CCP in the given circumstances.

25. CCPs must ensure that they can apply disciplinary measures to personnel who violate the above requirements as well as other actions equivalent to other entities or persons who violate them.

26. CCP must:

- i. adopt norms on the limitation of the number of contracts or mandates that members of the board of directors and executive directors may have and which are relevant to conflicts of interest in accordance with the applicable law;
- ii. not to designate external auditors who have a financial, business, employment or other direct or indirect relationship with the CCP - including the provision of additional services other than audit services - of which an objective, reasonable and informed third party may conclude that the auditor's independence is compromised;
- iii. require staff to communicate to the Chief Compliance Officer any personal interest and any interest of close family members as referred to in point 18 (i) that conflicts or may conflicts with the interests of the CCP at the time taking over the tasks or when the situation changes and at least once a year. The Chief Coordinator of Compliance must also be notified when there is no longer any conflict of interest;
- iv. request to any member of the staff or any person described in paragraph 18 (ii) who intends to conduct, simultaneously with his / her work within the CCP, any potentially incompatible external activities with the responsibilities assumed under the CCP to obtain prior approval from his / the



Chief Compliance Officer, in accordance with the internal rules of the CCP, before accepting the new commitment for another entity.

### 5.2.3 Gifts

27. The policy of a CCP must contain clear norms on the acceptance of gifts, regardless of their form, for example gifts, incentives, preferential treatment, entertainment, hospitality received by any relevant person from clearing members, customers, trading venue, central securities depository, trade repositories, data providers, liquidity providers or any other service providers, subcontractors or other persons or entities whose interests might conflict with the CCP.

28. CCP must set a reasonable threshold or framework to assess the value of gifts in order to determine whether the recipient is allowed to accept or store the gift. If there is any doubt as to the value of the gift, the coordinator of the compliance function must decide on the actual value.

### 5.2.4 Ownership of financial instruments

29. CCP should adopt policies defining the ownership rules for the financial instruments of its personnel, for example, shares, bonds or any other securities giving the right to acquire such securities, which may create conflicts of interest.

30. CCP must adopt strict rules to limit or monitor the investments made by its staff. CCP must request prior approval and / or restrictions to invest and divest in financial instruments that could generate conflicts of interest, such as those issued by competitors, clearing members, customers, financial institutions and service providers, and CCPs may consider exclusion periods or restrictions from engaging in transactions involving the securities of CCP entities, for example, in the month of publication of financial results or ad hoc.

31. CCP can adapt its norms according to the type of person involved and circumstances in order to ensure their accuracy and effectiveness. For example, if the investments are wholly delegated to an investment company or an OPCVM or an AFIA, they may be exempted from the prior approval of the CCP and any restrictions, as well as from the obligation to disclose information when the CCP considers it suitable.

32. Direct investments made by any staff member shall be communicated to the Chief Compliance Officer or to any other person or any other relevant body for that purpose. Portfolio reporting must be made at least at the time of hiring or appointing any staff member and must be updated annually. Any transaction executed with the respective financial instruments must be reported to the Chief Compliance Officer.

### 5.2.5 Training

33. CCPs must ensure that their personnel are adequately trained in their obligations and in the applicable conflict of interest procedure.

34. Training should clarify the notion of conflict of interest, staffing obligations and related penalties, the declaration procedure and the conflict resolution procedure and, in general, the applicable rules.

35. The CCP must regularly inform its staff. CCP must keep a record of the training activities undertaken and completed by staff.

36. Staff must confirm that they have become aware of the applicable rules.

### 5.2.6 Monitoring

37. Within its role of monitoring the compliance function, the CCP's board of directors should monitor the effectiveness of CCP's procedures for preventing and managing conflicts of interest. The Chief Compliance Officer should report significant cases as defined by the CCP to the Board in due time and the activities of the Chief Coordinator of the compliance function conducted during the year.

38. Policy on conflicts of interest should be reviewed at least by the Chief Coordinator of the Compliance function and by the Management Board, as appropriate, each year or earlier if significant changes are required.

39. The audit department should periodically assess the effectiveness of the conflict of interest policy and the global organization of the CCP that is related to it.

## 5.3 Additional measures for CCP belonging to a group

### 5.3.1 At group level

40. In the context of a group, the role of any entity on the board of directors that generates conflicts or has the potential to generate conflicts (such as the board of directors of the parent company, the board of directors of the CCP, the board of directors of the service provider ) must be clearly defined and delimited so as to avoid duplication of competences. Provision should be made for reserved issues which are dedicated to a CCP, particularly with regard to issues related to risk management.

41. If necessary, at the level of the group, a procedure must be adopted to deal fairly, independently and effectively with conflicts of interest between a CCP and other entities in the group.

#### 5.3.2 At the level of the board of directors of the CCP and the supervisory board

42. In order to guarantee the independence of a CCP in accordance with Article 3 of RSTR CCP, if appropriate, the CCP should designate additional independent board members in relation to regulatory requirements to counterbalance the number of group entity representatives.

43. In order to qualify as an independent board member, their relevant relationship, as described in paragraph 18 (i), should not include activities that generate a conflict of interest with respect to a CCP or its shareholders its majorities, its management or its clearing members.

#### 5.3.3 At the level of senior management of the CCP or the board of directors

44. If senior management (including executive directors) is shared with another entity in the group, a CCP must set up its board of directors or board of trustees from members to ensure independent management of the CCP's activities.

45. Significant decisions should be approved by the Board of Directors. For this purpose, a list of issues and / or criteria needs to be defined to identify the significant importance of the decision to be taken directly by the board of directors.

46. The responsibilities of senior management should be clearly defined, salaries, including premiums granted to senior management, must be fairly balanced in relation to the salaries offered by the other company in order to avoid any biased decisions. The Chief Compliance Officer, the board of directors or independent members of the board of directors should closely monitor possible conflicts of interest.

#### 5.3.4 At staff level

47. If, by virtue of an outsourcing agreement, a CCP staff carries out tasks for several entities in the group, the CCP shall adopt the following rules:

- i. The responsibilities, the distribution of working time and the hierarchical lines between entities must be clearly defined. The CCP must verify that the working time for performing the multiple functions within the different entities within the group does not exceed a full time;
- ii. The CCP must participate in the entire recruitment process and must have effective decision-making power in terms of staff selection, career progression or termination of relationships. CCP must have a clear organizational chart identifying shared resources.

48. The remuneration must be determined by the CCP in accordance with Article 8 of RSTR CCP. In particular, the salary, including premiums, of the staff concerned must be fairly balanced in relation to that awarded by the other society in order to avoid any decision or partial performance of the tasks. The level of premiums or any other financial advantage rewarding the performance of staff in executing their tasks must be assessed and ultimately decided by the CCP.

#### 5.3.5 When outsourcing to another entity in the group

49. If the service provider is part of the CCP, the CCP must take at least the following additional measures:

- i. the outsourcing of major activities to a group entity should be decided by the board of the CCP after advice from the risk committee has been sought, where appropriate;
- ii. the board of directors must define the requirements of the outsourced services to other entities in the group;
- iii. The CCP must verify whether the subcontractor has put in place adequate control procedures to avoid conflicts of interest on its part, especially where subcontractors provide a range of services to the CCP;
- iv. the outsourcing agreement must be executed under normal market conditions and must include provisions on the escalation procedure and the management of the withdrawal;
- v. Key performance indicators should be clearly defined and escalation and compliance mechanisms, such as sanctions, in accordance with standard market practices, should be established and implemented as necessary. The performance of the subcontractor must be reported to the board of directors;
- vi. if information technology is outsourced, clear rules should be defined to prioritize IT projects and requests for changes. Any request for amendment or project necessary for the CCP to comply with the Regulation or any request from the NCA must be implemented by the subcontractor in a timely manner.

### 5.4 Conflict of Interest Management Procedure

#### 5.4.1 Settlement procedure

50. If a conflict of interest identified or likely arises during the business relationship, it must be immediately and directly communicated to the Chief Compliance Officer and to any other person or any other relevant body by the member of staff in conflict of interest or any other staff member who is aware of the conflict of interest as soon as reasonably practicable.

51. CCPs should not require the submission of evidence of conflicts of interest before initiating an action. If it is not certain whether a situation constitutes an eventual or actual conflict of interest, the Chief Compliance Officer should be responsible for clarifying this situation.

52. A whistle-blower should not be blamed in any case if it discloses an actual conflict of interest or, where applicable, if it is possible under the applicable law.

53. Where investigations are necessary, the Chief Compliance Officer should be empowered to carry out such investigations. The person in conflict of interest must be heard during the trial. If the Chief Compliance Officer is not responsible for resolving the problem, the Chief Compliance Officer must provide to the decision maker a report containing an analysis of actual or potential conflicts of interest and, if considered that they are set up, recommendations for their resolution.

54. The CCP must clearly define who is responsible for the decision-making process on the existence of an actual or possibly actual conflict of interest and on the measures to be taken if they are different. Decisions must be taken by a person or body that has sufficient independence and authority to ensure compliance with its decisions. For this purpose, several persons or bodies can be defined according to their responsibilities, such as the head of the compliance function, hierarchical superior, executive directors, board of directors, independent members of the board of directors or chairman of the board administration or committees. In this respect, the chairman and / or independent members of the board of directors should be responsible if the conflict of interest concerns a member of the senior management or any other member of the board of directors.

55. The CCP must implement an escalation procedure in case of disagreement on the decision taken. The procedure must ensure that the case is treated in a short term. In the last stage, independent members of the board of directors can take the final decision.

#### 5.4.2 Settlement measures

56. CCP should consider at least the following remedies for potential or existing conflicts of interest:

- i. monitoring of the conflict by the relevant body or by a member of the staff, such as the board of directors or the hierarchical superior;
- ii. timely communication to the affected party, such as a clearing member (s) or a client (s) in accordance with Article 33 (2) of the EMIR;
- iii. excluding the staff member in conflict of interest from sensitive information;
- iv. restricting participation in discussions, negotiations, decisions or votes that may be subject to a conflict of interest;
- v. Exemptions and assignment to another staff member;

- vi. temporary or permanent exclusion of the member of the staff in conflict of interests in the board of directors, the committee, the relevant meeting, etc.;
- vii. disclosure to NCA.

57. The termination of the contract of a staff member in conflict of interests could be envisaged, if possible, in accordance with the applicable law.

#### 5.4.3 Follow-up procedure

58. The Chief Compliance Officer or the person or body defined in paragraph 54 must periodically check the conflict situation (i.e., conflict of interest / possible) and that mitigation measures are implemented. The person concerned must examine whether the measures are still necessary or need to be adapted. The frequency of the examination should be adapted to the particularities of the cases.

59. The Chief Compliance Officer or the person or body defined in accordance with paragraph 54 shall report annually to the board of directors the conflicts of interest that have arisen and any mitigating measures that have been taken.

60. In the event of a policy violation in conflict of interest, the CCP must report to the ANC any significant violation after the violation has been escalated and notified to senior management / board of the CCP and within 48 for hours.

#### 5.4.4 Register of conflicts of interest

61. CCP must implement processes and procedures to track and record:

- i. potentially or concrete interests that may conflict with the interests of the CCP;
- ii. investments in financial instruments held by personnel and any related transaction;
- iii. gifts received by staff who exceed the threshold and the decision relating thereto;
- iv. the different stages of the settlement procedure;
- v. resolution measures taken by the CCP;
- vi. examining the situation of conflicts of interest and monitoring the implementation of resolution measures;
- vii. training activities undertaken by staff.

62. The register must remain strictly confidential.

**GUIDE**  
**on EMIR measures of anti-procyclicality margin for central counterparties**

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I. Field of application

To whom?

1. The beneficiaries of this guide are the competent authorities designated under Article 22 of the EMIR that oversee CCPs authorized under Article 14 of the EMIR.

What applies?

2. This guideline covers the implementation of the margin requirements for limiting pro-cyclicality under Article 41 of the EMIR, Article 10 and Article 28 of STR.

II. Legislative references and abbreviations

Legislative references

ESMA Regulation

Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24<sup>th</sup> of November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending

	Decision No. 716/2009 / EC and repealing Commission Decision 2009/77 / EC (J OL 331 15.10.2010 pag.84)
EMIR	Regulation (EU) No. No 648/2012 of the European Parliament and of the Council of 4 <sup>th</sup> July 2012 on OTC derivatives, central counterparties and trade repositories (J OL 201 15.10.2010 pag.1)
STR about CCP	The delegated regulation (EU) no. 153/2013 of the Commission of 19 <sup>th</sup> of December 2012 supplementing the Regulation (EU) No. 648/2012 of the European Parliament and of the Council as regards regulatory technical requirements for central counterparty requirements (J OL 52 23.02.2013, page 41)
Abbreviations	
APC Margin measures	Anti-pro-cyclical margin measures under Article 28 of STR
CCP	Central Counterparties authorized under Article 14 of the EMIR
Competent Authority / National Competent Authority (NCA)	An authority designated under Article 22 of the EMIR
EC	European Commission
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
ESMA	European Securities and Markets Authority
CERS	European Systemic Risk Board
STR	Regulatory technical standards for central counterparties, such as Delegated Regulation (EU) No 153/2013 of Commission of 19 <sup>th</sup> of December 2012 supplementing Regulation (EU) No. 648/2012 of the European Parliament and of the Council as regards regulatory technical requirements for central counterparty requirements

### III. Object

4. The purpose of this guide is to establish coherent, effective and effective supervisory practices within the European Financial Stability Mechanism (ESFS) and to ensure a common, uniform and



coherent application of Article 41 of the EMIR and Articles 10 and 28 of the STR in the context of limiting the pro-cyclicality of central counterparty margins.

#### IV. Compliance and reporting obligations

The status of the guide

5. In accordance with Article 16 paragraph (3) of the ESMA Regulation, the competent authorities should make every effort to comply with this guide.

6. The competent authorities to which the Guidelines apply shall comply by including them in their legal or supervisory frameworks, as appropriate.

Reporting requirements

7. Within two months of the publication date of the guide on the website of the European Securities and Markets Authority in all official EU languages, the competent authorities to which this Guide applies shall inform ESMA whether (i) does comply with (iii) does not comply with, but intends to comply with, or (iii) (iii) does not comply with and does not intend to abide by, the guide.

8. In the event of non-compliance, the competent authorities shall also inform ESMA within two months of the publication date of the guide on ESMA website in all official EU languages of the reasons for non-compliance with the guidelines.

9. A notification model is available on the ESMA website. Once completed, the model will be sent to ESMA.

#### V. Guide

##### V.1. Regular evaluation of procyclicality

10. Competent authorities should ensure that any central counterparty supervised by them defines quantitative margin assessment indicators, including margin increases, in the context of margin procyclicality. Central counterparties can define their own indicators and should assess in a holistic way short / long-term stability, and compare to market volatility, using indicators and conservative character of the margins (in general, central counterparties must take into account indicators to assess the stability, as well as the conservative nature of its margin requirements). For example, indicators are:

- Short-term stability can be measured using indicators such as margin changes over a defined time period or standard margin deviation;
- Long-term stability can be monitored through an indicator such as full margin over a defined period of time;

11. Competent authorities shall ensure that any central counterparty supervised by them implements the indicators in order to assess the procyclicality of its margin requirements on a regular basis and the potential procyclicality as a result of any significant proposals to revise its margin parameters, before such revisions are made. As part of the assessment, the central counterparty must consider the characteristics of its product offer and its membership, as well as its risk management practices.

12. If indicators show procyclical effects due to margin requirements, the competent authorities shall ensure that any supervised central counterparty reviews their implementation of the CPA margin measures and makes appropriate adjustments to its policies to ensure that these procyclical effects get the right solution.

13. The competent authorities should therefore ensure that any central counterparty supervised by them develops a policy of reviewing its CPA measures. The policy must specify at least:

- (a) the risk appetite for the procyclicality of its margins, such as the margin of tolerance for large margin increases;
- (b) the quantitative indicators it uses to assess the procyclicality of its margins;
- (c) the frequency with which the assessment is carried out;
- (d) the potential actions it can take to address the outcomes of the indicators; and
- (e) governance mechanisms that relate to the reporting of the results of the indicators and the approval of the actions it proposes for adoption in terms of results.

14. The competent authorities shall ensure that any central counterparty supervised by them keeps records of the made review, including the calculated indicators, and the actions taken to resolve the findings in accordance with Article 12 of the STR.

#### V.2. Apply APC margin measures in case of all material risk factors

15. Competent authorities should ensure that any central counterparty supervised by them ensures that CPA margin measures apply to at least all material risk factors, potentially leading to major changes in margins, and would include price changes, currency changes, volatility implicit changes, maturity spreads and portfolio margin adjustments, as appropriate. For the avoidance of doubt, a central counterparty may apply CPA margin measures for a product or portfolio level as long as the implementation covers all the material risk factors used to calculate the margin.

16. Competent authorities shall ensure that any central counterparty supervised by them that chooses to apply a buffer margin pursuant to Article 28 (1) paragraph (a) of the STR for non-linear products such as options shall apply a buffer at the level risk factor instead of margin growth by 25%.

17. When implementing CPA margin measures at the risk factor level, a central counterparty may use different CPA margin measures for different risk factors or apply the same CPA margin measure at the level of all risk factors. If a central counterparty chooses to use the same CPA margin measure at the level of all risk factors, it can do so by applying the measure independently to each risk factor or by using scenarios with internal consistency across all risk factors.

#### V.3. Exhaustion of buffer margin pursuant to Article 28 (1) paragraph (a) of STR

18. The competent authorities shall ensure that any central counterparty supervised by them, which chooses to apply a buffer margin of at least 25% of the calculated margin, has to develop and maintain documented policies and procedures setting out the circumstances on the basis of which the buffer may be temporarily exhausted. Those policies and procedures shall specify at least:

- (a) the indicators and thresholds for which the Central Counterparty believes that margin requirements increase significantly, and which could ensure that the buffer margin is exhausted;
- (b) the conditions for restoring the buffer margin as a result of its exhaustion; and
- (c) the governance mechanism related to the exhaustion and restoration of the buffer margin.

#### V.4. The margin of tolerance under Article 28 (1) paragraph (c) of STR

19. Competent authorities shall ensure that any central counterparty supervised by them avoids using modelling procedures such as the application of different weights to the submissions during the retrospective period in order to reduce the effectiveness of using a historical retrospective period of 10 years for the calculation of the margin when applying of the CPA margin measure in Article 28 (1) paragraph (c) of STR.

20. The competent authorities shall ensure that any central counterparty supervised by them ensures that the margin is calculated in a manner that continues to meet the requirements set out in the EMIR and STR, including compliance with Articles 24, 26 and 27 of STR.

21. Competent authorities shall ensure that any central counterparty supervised by them also calculates the margin at the same frequency as regular margin calculation, unless the central counterparty is otherwise able to demonstrate that the threshold margin will remain stable over an extended period of time until the margin is recalculated.

#### V.5. Presentation of margin parameters information

22. Pursuant to Article 10 of the STR, the competent authorities must ensure that any supervised central counterparty publicly presents information about the models used to calculate the margin requirements. This disclosure must include at least the information below defined by the CCP for each margin model used:

- (a) confidence interval;
- (b) retrospective period;
- (c) the period of liquidation;
- (d) parameters and methodology used for the calculation of margin compensation under Article 27 of the STR;
- (e) information on the models used for the margin calculation, such as the quantitative methodology (e.g. the VaR model type), the approach for adjustments or additions to these models and their formula, and
- (f) the CPA margin measures adopted, and the methodology and parameters used to apply the selected CPA margin measures. In particular,

a central counterparty adopting Article 28 (1) paragraph (a) of the STR should present the buffer percentage above the margin requirements that have been collected and the conditions for exhaustion and recovery;

a central counterparty adopting Article 28 (1) paragraph (b) of the STR must present its approach to the drawing up of observations in the event of a crisis and the introduction of observations in the calculation of the margin requirements and

a central counterparty adopting Article 28 (1) paragraph (c) of the STR should present its approach to the calculation of the 10-year limit.

23. The information presented must be sufficiently detailed to allow replication of margin calculations and anticipation of large margin reviews.