

The International Swaps and Derivatives Association, Inc. (“ISDA”) has prepared this explanatory memorandum to provide a high-level, factual overview of the timeframes for the transfer of information for cleared derivatives transactions that are concluded between counterparties as set out in RTS 26 to MiFIR¹ for users of the ISDA/FIA Cleared Derivatives Execution Agreement (the “CDEA”).

This explanatory memorandum focuses on the timeframes applicable to cleared derivatives transactions concluded between counterparties on a bilateral basis, which may impact users of the CDEA who are subject to the requirement of RTS 26 of MiFIR. The timeframes applicable to cleared derivatives transactions concluded on a trading venue are outside the scope of this explanatory memorandum.

THIS EXPLANATORY MEMORANDUM IS NOT INTENDED TO CONSTITUTE LEGAL OR PROFESSIONAL ADVICE AND DOES NOT PURPORT TO BE AND SHOULD NOT BE CONSIDERED A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES OR CONSIDERATIONS IN CONNECTION WITH THE REVISED MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MiFID II) . DERIVATIVES MARKET PARTICIPANTS SHOULD EVALUATE THE INFORMATION CONTAINED IN THIS EXPLANATORY MEMORANDUM IN THE CONTEXT OF THEIR OWN SPECIFIC SITUATION AND REGULATORY OBLIGATIONS AND CONSULT WITH ANY LEGAL AND OTHER ADVISOR THEY MAY CONSIDER APPROPRIATE. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR OTHER DOCUMENTATION MAY BE PUT.

1) Background

Article 29(2) of MiFIR requires trading venues, clearing members and central clearing houses (“CCPs”) to have in place effective systems, procedures and arrangements to ensure that cleared derivatives transactions are submitted and accepted for clearing as quickly as technologically practicable.

Article 29(2) of MiFIR defines ‘cleared derivatives’ as (i) all derivatives which are required to be cleared pursuant to the clearing obligation under Article 29(1) of MiFIR or pursuant to the clearing obligation under Article 4 of Regulation (EU) 648/2012 (“EMIR”) and (ii) all derivatives which are otherwise agreed by the relevant parties to be cleared.

¹ Commission Delegated Regulation (EU) 2017/582 of 29 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and Council (‘MiFIR’) with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing and published in the EU Official Journal on 31 March 2017

The European Securities and Markets Authority developed regulatory technical standards pursuant to Article 29(3) of MiFIR to further specify requirements to ensure that cleared derivatives transactions concluded on either a bilateral basis or on a trading venue are submitted and accepted for clearing as quickly as technologically practicable using automated systems.

RTS 26 will apply from 3 January 2018.

II) Overview

Article 4 of RTS 26 establishes new timeframes for the transfer of information for cleared derivatives transactions that are concluded between counterparties on a bilateral basis. These timeframes are explained in more detail below.

These timeframes may require the processing of cleared derivatives transactions entered into on a bilateral basis to take place within a shorter time period than may be currently contemplated by the provisions of the CDEA or by established market practice. This may help counterparties to a transaction become aware much more quickly after submission of whether a transaction is accepted or rejected for clearing.

Market participants should make themselves aware of these timeframes and of the respective obligations of the relevant CCP, clearing members and the counterparties to a cleared derivatives transaction entered into on a bilateral basis to provide certain information to other parties within these compressed timeframes.

Market participants should also make themselves aware of the requirements for cleared derivatives transactions entered into on a bilateral basis that are not accepted for clearing, including the timeframes for the resubmission of transactions that have been rejected for clearing due to a clerical or technical problem. These requirements are also explained in more detail below.

III) Timeframes for transfer of information²

The timeframes set out in Article 4 of RTS 26 are as follows:

Evidence of conclusion timeframe

Clearing members are required to obtain evidence from their clients of the conclusion timeframe of a transaction submitted for clearing.³

² It is assumed for the purposes of the timeframes set out below that Article 4(4) of RTS 26 is not relevant.

³ Article 4(1)(c) of RTS 26

Clearing members are required to ensure that counterparties to a transaction that has been concluded with the intention that it will be submitted for clearing send certain information to the relevant CCP within 30 minutes from the conclusion of the transaction.⁴

The relevant CCP is required to detail in its rules the information it needs from counterparties to a cleared derivatives transaction and the format in which that information shall be provided.⁵

Transmission of information from CCP to clearing member

The relevant CCP is required to send the above information to its clearing member within 60 seconds of having received such information from the counterparties to the relevant transaction.⁶

Clearing member acceptance

The clearing member receiving the information from the relevant CCP is required to accept or not accept the transaction to which the information relates within 60 seconds of having received the relevant information from the CCP.⁷

CCP acceptance

The relevant CCP is required to accept or not accept the clearing of the relevant transaction within 10 seconds from receipt of its clearing member's acceptance or non-acceptance of such transaction.⁸

CCP non-acceptance

Where the relevant CCP does not accept a transaction for clearing, the CCP is required to inform its clearing member of such non-acceptance on a real-time basis.⁹

The relevant clearing member shall then inform the relevant counterparty to the relevant transaction of such non-acceptance as soon as the clearing member is informed by the CCP.¹⁰

⁴ Article 4(1)(d) of RTS 26

⁵ Article 1(2) of RTS 26

⁶ Article 4(2) of RTS 26

⁷ Article 4(2) of RTS 26

⁸ Article 4(3) of RTS 26

⁹ Article 4(5) of RTS 26

¹⁰ Article 4(5) of RTS 26

IV) Treatment of cleared derivatives transactions not accepted for clearing

Where a cleared derivatives transaction concluded between counterparties on a bilateral basis is not accepted by the CCP, the treatment of the transaction will be subject to the agreement entered into between the counterparties.¹¹

Where the non-acceptance is due to a technical or clerical problem, the cleared derivatives transaction can be submitted for clearing once more within one hour from the previous submission in the form of a new transaction but with the same economic terms, provided that both counterparties have agreed to the second submission.¹²

V) Potential changes in the interaction between clearing members and non-clearing members

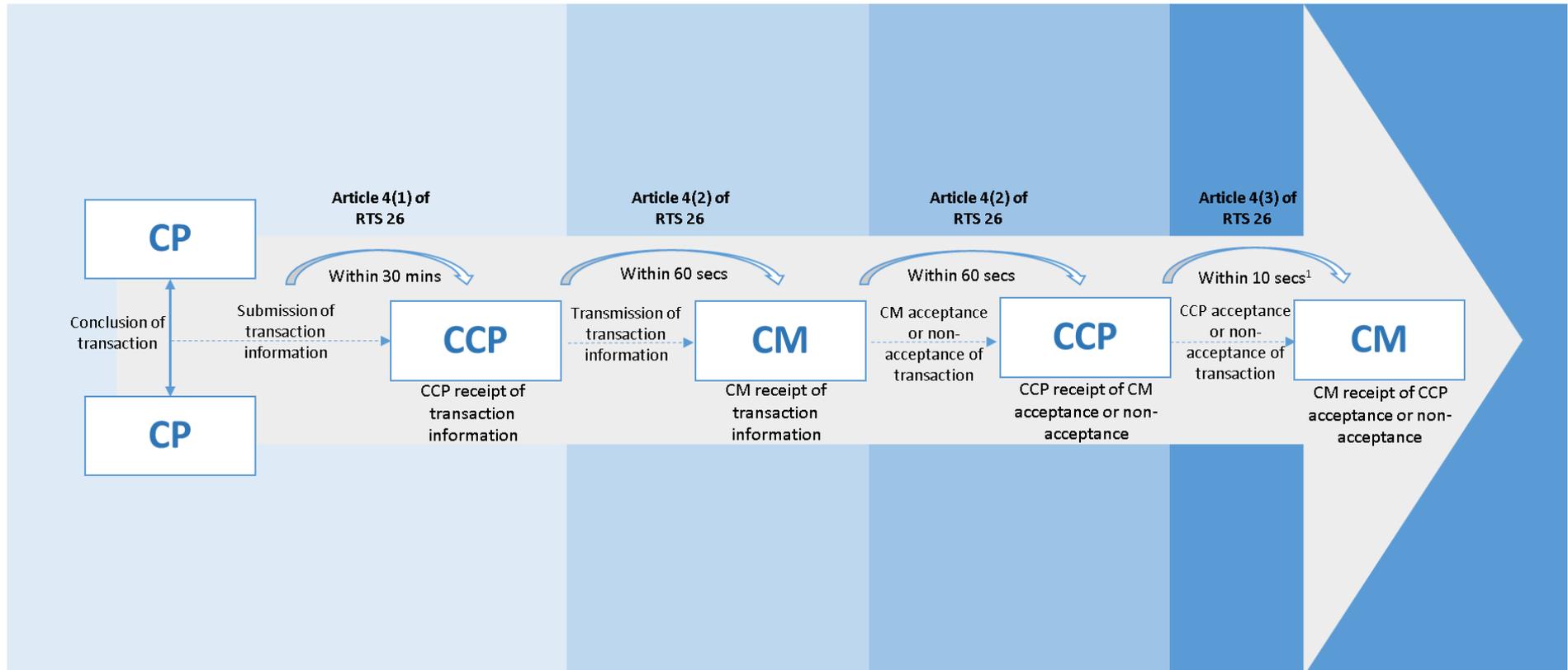
ISDA understands that as a consequence of clearing members' efforts to implement processes and procedures aimed at demonstrating compliance with RTS 26, non-clearing members may find that they are asked to provide information or take certain steps which have not been requested previously. For example, non-clearing members may be requested to ensure prompt submission of certain trading information within 30 minutes of execution of a cleared derivatives transaction pursuant to Article 4(1) of RTS 26. They may also be asked to provide certain information on trades which is not otherwise readily available to the relevant clearing member. These requests are likely to vary from clearing member to clearing member and non-clearing member to non-clearing member.

For a full understanding of whether these changes will have any of the effects contemplated in this note or any other consequences and the legal nature of such requests, effects and consequences, non-clearing members should speak to their clearing member and their own professional advisors.

¹¹ Article 5(2)(b) of RTS 26

¹² Article 5(3) of RTS 26

An illustrative example of how the timeframes under Article 4 of RTS 26 operate in respect of cleared derivatives transactions that are concluded between counterparties on a bilateral basis.



¹ Where the relevant CCP does not accept a transaction for clearing, the CCP is required to inform its clearing member of such non-acceptance on a real-time basis. The relevant clearing member shall then inform the relevant counterparty to the transaction of such non-acceptance as soon as the clearing member is informed by the CCP (Article 4(5) of RTS 26).