

Final Report

Regulatory Standards on the requirements for Post-Trade Risk Reduction services for the purpose of the clearing obligation exemption under EMIR

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References, definitions, acronyms

Algorithm	The pre-agreed rules of the PTRR exercise, including methods and algorithms
CCP	Central Counterparty
CDR 2017/567	Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions
CDR 2022/1855 or CDR on EMIR Reporting	Commission Delegated Regulation (EU) 2022/1855 of 10 June 2022 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards specifying the minimum details of the data to be reported to trade repositories and the type of reports to be used
CO	Clearing Obligation
CP	Consultation Paper
ESMA	European Securities and Markets Authority
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
EMIR 3	Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets
The Commission	The European Commission
ESMA 2020 PTRR service Report	ESMA Report to the Commission on PTRR services with regards to the clearing obligation 10 November 2020 ESMA 70-156-3351
FITRS	Financial Instruments Transparency System
FR	Final Report
IOSCO PTRRS Report	IOSCO Final Report on PTRRS: sound practices for consideration FR/10/24 November 2024

Markets in Financial Instruments Directive II or MiFID II	Directive 2014/65/EU of the European Parliament and the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
Markets in Financial Instruments Regulation or MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012
MiFIR Review	Regulation (EU) 2024/791 of the European Parliament and of the Council of 28 February 2024 amending Regulation (EU) No 600/2014 as regards enhancing data transparency, removing obstacles to the emergence of consolidated tapes, optimising the trading obligations and prohibiting receiving payment for order flow
MiFIR Exemptions	The exemption provided by Article 31 of MiFIR from the derivative trading obligation, the transparency requirements and the best execution verification for transactions resulting from PTRR exercises
MiFIR DA amending CDA 2017/567	Commission Delegated Regulation (EU) [.../...] amending Delegated Regulation (EU) 2017/567 as regards the obligation to provide market data on a reasonable commercial basis, the determination of what constitutes a liquid market for equity instruments, and the definition of and disclosure for post-trade risk reduction services
PTRR	Post Trade Risk Reduction
PTRR exemption	The exemption provided by Article 4b of EMIR to the clearing obligation for transactions resulting from PTRR exercises
PTRR ID	The PTRR Identifier described in Article 7 of the CDR on EMIR Reporting
RTS	Regulatory Technical Standards
PTRR run or run	A single, distinct session of a PTRR exercise where the Algorithm is launched to process data and calculate risk-mitigation results
SBR	Simplification and burden reduction
TFEU	Treaty of the Functioning of the European Union

1 Executive Summary

Reasons for publication

On 4 December 2024, EMIR 3 was published in the Official Journal of the European Union and entered into force 20 days after publication. EMIR 3 sets out, amongst others, measures to improve the attractiveness of EU cleared markets, to enhance the resiliency of the EU clearing system and to reduce excessive reliance on third-country CCPs.

EMIR 3 introduces an exemption from the CO for transactions resulting from PTRR services, subject to certain requirements. To further specify the requirements and conditions for such an exemption, EMIR 3 gives ESMA a mandate to develop draft RTS.

ESMA published a CP in February 2026 that covered the EMIR mandate for the RTS on the PTRR service exemption. In addition, the CP included some considerations as regards the transactions to be recorded for the purposes of the exemption introduced by the MiFIR Review from the transparency requirements, the derivative trading obligation and best execution requirement regarding PTRR services.

The FR takes into account the feedback received during the public consultation.

Contents

The FR starts with an introduction in Section 2, which provides information on the EMIR 3 framework and the work carried out by ESMA on PTRR services, including the EMIR 3 mandate for the RTS. Section 3 covers the legal provisions applicable to PTRR services, both under EMIR and MiFIR, and in section 4 the FR presents ESMA's final proposal for the draft RTS under EMIR.

The final proposal for the draft RTS specifies the requirements regarding PTRR services and their resulting transactions eligible for the CO exemption, including compression, portfolio rebalancing and basis risk optimisation. It sets out the common conditions on market risk neutrality and risk reduction, it further defines the obligations that PTRR service providers should meet, and it details the requirements on transparency, Algorithms, execution, controls, record-keeping and monitoring of the exemption.

As the feedback received was broadly supportive of the proposal outlined in the CP, only limited adjustments to the initial draft RTS were necessary for drafting the final proposal. In other words, the final draft RTS corresponds largely to the proposal presented in the CP. Furthermore, ESMA recalls that the initial proposal for the draft RTS was developed taking into account current practices and the experience gained during the start of the exemption regime that followed the entry into application of EMIR 3 on 24 December 2024. In line with

the broader SBR objectives, the draft RTS further specify and clarify the conditions and safeguards set forth in Level 1 (EMIR), without introducing unnecessary changes where the regulatory objectives were already met via current practices or existing requirements, thereby minimising potential regulatory implementation costs. The requirements laid out in the draft RTS thus build on current market practices and the previous assessments conducted by the relevant supervisory authorities of the providers of PTRR services included in ESMA's public register.

In addition, the final proposal for the draft RTS confirms the approach proposed in the CP of taking into account the provisions already applicable to PTRR service providers and users under MiFID, MiFIR and EMIR. For example, the draft RTS consider that pursuant to EMIR the PTRR service providers need to be MiFID authorised firms and thus avoid new requirements when the applicable MiFID provisions are sufficient to ensure compliance with the EMIR requirements for the purposes of the PTRR exemption (e.g. conflicts of interest).

Section 5 deals with MiFIR, and in particular, it presents some considerations as regards the transactions to be recorded for the purposes of the exemption under MiFIR for PTRR services.

Finally, Section 6 includes the annexes with (i) the list of all questions formulated in the consultation; (ii) the EMIR 3 mandate; (iii) the cost and benefit analysis for the draft RTS; (iv) the feedback to the consultation paper, and (v) the draft RTS.

Next Steps

ESMA submitted the FR to the European Commission on 9 October 2026. In accordance with Article 10 of ESMA Regulation¹, the Commission has three months to decide whether to endorse the proposed RTS.

¹ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing the European Securities and Markets Authority (OJ L 331, 15.12.2010, p. 84–119), [here](#)

2 Introduction

1. In December 2024, Regulation (EU) 2024/2987 amending EMIR (EMIR 3) was published in the Official Journal and entered into force 20 days after publication. EMIR 3 forms part of the EU's broader initiatives to enhance the efficiency, resilience and attractiveness of EU clearing markets and reduce excessive reliance on third-country CCPs.
2. Article 4b of EMIR 3 introduced a conditional exemption from the clearing obligation for transactions resulting from post-trade risk reduction (PTRR) services. PTRR services – such as portfolio compression, portfolio rebalancing and basis risk optimisation – aim to reduce risks in derivatives portfolios through non-price-forming transactions, without altering the market risk profile of the portfolios concerned.
3. The exemption seeks to facilitate the use of PTRR services while ensuring that these activities do not lead to circumvention of the clearing obligation (PTRR exemption). It entered into force with EMIR 3 on 24 December 2024.
4. The same Article 4b of EMIR 3 mandates ESMA to develop Regulatory Technical Standards (RTS) specifying the requirements and conditions under which PTRR services may benefit from the clearing obligation exemption.
5. Given the immediate entry into force of Level 1 on 24 December 2024, while the RTS are being developed, an interim period, where the PTRR exemption is in force without the RTS further specifying its requirements being applicable, is currently ongoing (PTRR launch)².
6. In addition, a few months before EMIR 3 entered into force, on 28 March 2024, the MiFIR Review amended Article 31 of MiFIR to expand the exemption, previously applicable to compression, from the transparency requirements, the trading obligation and the best execution requirements, to a broader range of PTRR services.
7. The new Article 31 of MiFIR contains a mandate for a Delegated Act for the EC to specify a) the PTRR services for the purpose of the exemption and b) the transactions to be recorded under the same provision.
8. In November 2025, the EC published a Delegated Act to specify the PTRR services for the purpose of the exemption, as required by point (a) of the mandate in Article 31 of MiFIR ('MiFIR DA amending CDR 2017/567')³.

² Following this launch, it should be noted that ESMA has published and maintains the related Register of PTRR service providers, pursuant to article 4b, paragraph 5 of EMIR.

³ https://eur-lex.europa.eu/eli/reg_del/2026/482/oj/eng

9. On 26 February 2026, ESMA published a CP to cover the mandate under EMIR for the RTS on the PTRR exemption. In addition, the CP presented some considerations on transactions to be recorded for the purposes of the exemption introduced by the MiFIR Review from the transparency requirements, the derivative trading obligation and best execution requirements regarding PTRR services⁴.
10. The analysis and proposal described in the CP were based in particular on information collected regarding PTRR services during a roundtable organised by ESMA on PTRR services⁵, and based on the additional experience and knowledge developed during EMIR 3's PTRR launch. Furthermore, the CP content also leveraged on the IOSCO Final Report on PTRR services⁶ on sound practices for consideration.
11. The consultation closed on 20 April 2026. ESMA received 4 responses to this open consultation. Although this is a rather small number compared to other public consultations, these responses gave relevant insights and covered the entire spectrum of concerned entities, as they provided feedback from the perspective of providers, users as well as CCPs. In addition, in accordance with paragraph 1 of Article 10 and Article 37 of the ESMA Regulation, ESMA in parallel requested the advice of the Securities and Markets Stakeholder Group (SMSG). The SMSG has not provided any comments.
12. ESMA has analysed the feedback received during the public consultation. The feedback was broadly supportive of the proposal and ESMA has made only marginal adjustments to its initial proposals accordingly. This final report summarises the feedback for each part of the draft RTS and the considerations on the MiFIR record keeping obligation, (i) the original proposal from the consultation, (ii) the received feedback, and (iii) ESMA's conclusion and next steps.

⁴https://www.esma.europa.eu/sites/default/files/2026-02/ESMA74-1049116226-877_-_Consultation_Paper_on_post_trade_risk_reduction_services_RTS_Exemption_CO.pdf

⁵ On 21 October 2024, ESMA held a roundtable to collect up-to-date information on the PTRR services from a range of users, providers and CCPs in view of the RTS to be drafted pursuant to the EMIR mandate.

⁶ In November 2024, IOSCO published a Final Report on PTRR services on sound practices for consideration (IOSCO PTRRS Report).

For completeness, as regards regulatory initiative outside the European Union on PTRR services, in April 2025, the FCA Published the Policy Statements on the derivative trading obligation and PTRR services (PS25/2)⁷, following a Consultation launched in July 2024 (CP24/14) (see CP pg. 11). In addition, on 16 of June 2026, the U.S. Commodity Futures Trading Commission (CFTC) issued the CFTC Staff Letter No. 26-20, providing a no-action position regarding PTRR services. The no-action relief relates to portfolio rebalancing and basis risk optimisation. In particular, it introduces some no-action relief for market participants regarding traditional trade execution requirements (trading on a designated contract market or SEF) and mandatory clearing (see [CFTC Staff Issues No-Action Letter for Swap Post-Trade Risk Reduction Services | CFTC](#)).

3 Legal framework

3.1 PTRR services

13. In the CP, ESMA analysed the legal framework for PTRR services both in EMIR and MiFIR. Readers will find the detailed description and analysis in the CP, but for ease of reference, a succinct summary is included below.

EMIR

14. As regards EMIR, the CP recalled that before EMIR 3, EMIR Level 1 did not regulate PTRR services directly, although some Level 2 provisions already referred to them.
15. In particular, Article 14 of the CDR 149/2023 required certain counterparties to assess portfolio compression. In addition, Article 7 of the CDR on EMIR Reporting required reporting entities to identify transactions resulting from PTRR exercises, assign a PTRR identifier, and report the type of PTRR technique used.
16. To this end, Table 2 in the Annex of CDR on EMIR Reporting described the different types of PTRR services to be reported, notably portfolio compression without a third-party service provider, portfolio compression with a service provider or a CCP, Portfolio Rebalancing/Margin management and other portfolio PTRR services.
17. The CP also analysed Article 4b of EMIR 3, introducing the PTRR exemption, and more in detail i) requirements for a PTRR exercise to be exempted from the CO; ii) the requirements for the PTRR service providers; and iii) the notification process for the competent authority who has authorised the PTRR service provider as an investment firm to notify the name of the PTRR service provider to ESMA.
18. The mandate for ESMA to further specify the elements and requirements set out in Article 4b of EMIR 3 for the purposes of the PTRR exemption is reported in the next section.

MiFIR

19. As regards MiFIR, the CP recalled that MiFIR Article 31 provided an exemption for transactions resulting from compression from the derivatives trading obligation, the

transparency requirements and the best execution verification⁷ and the relevant record keeping and publication obligations through an APA.

20. The CP also briefly described Commission Delegated Regulation 567/2017 (CDR 567/2017) which indicated (a) the conditions for transactions resulting from portfolio compression to be exempted from the DTO under MiFIR and (b) the information to be published through an APA, under Article 31 of MiFIR.
21. Secondly, it explained how the MiFIR Review amended Article 31 to extend the exemptions foreseen for compression to transactions deriving from all types of PTRR services, deleted the requirement to make public the outcome of the transactions, while maintaining the record keeping obligation.
22. It was also noted that Article 2(1)(47) of MiFIR which defines portfolio compression has not been amended and remains in force.
23. In November 2025, pursuant to Article 31 of MiFIR, the EC published the MiFIR DA amending CDR 2017/567⁷ to specify the PTRR services for the purpose of the exemption⁸.
24. The table below summarises the main provisions applicable to PTRR services following EMIR 3 and the MiFIR Review.

FIGURE 1: SUMMARY OF MAIN PROVISION APPLICABLE TO PTRR SERVICES

	EMIR	MiFID/MiFIR
Exemptions	CO	DTO, Transparency and Best Execution
Record keeping for PTRR service providers	Information on transactions entered into as part of the PTRR exercise, the transactions resulting from the PTRR exercise either as modified transactions or as new transactions	Only for transactions not already recorded or reported according to EMIR

⁷ Recital 27 of MiFIR indicates that the trading obligations “should not apply to the components of non-price forming post-trade risk reduction services which reduce non-market risks in derivatives portfolios including existing OTC derivatives portfolios in accordance with [EMIR] without changing the market risk of the portfolios. In addition, while it is appropriate to make specific provision for portfolio compression, this Regulation is not intended to prevent the use of other post-trade risk reduction services”.

⁸ https://eur-lex.europa.eu/eli/reg_del/2026/482/oj/eng

	and the overall change in the risk of the different portfolios included in the PTRR exercise	
Reporting users	Obligations set forth in the CDR on EMIR Reporting	N/A
L2	ESMA - RTS on requirements for the PTRR Exemption	MiFIR DA amending CDR 2017/567

3.2 ESMA's mandate for the draft RTS

Article 4b(6) of EMIR:

ESMA shall develop draft regulatory technical standards to further specify the elements and requirements set out in paragraphs 3 and 4 and the following other conditions or characteristics of PTRR exercises:

- (a) what constitutes market risk neutrality in a PTRR exercise;
- (b) the required risk reduction in submitted portfolios;
- (c) the possible inclusion of mixed portfolios containing both cleared and uncleared transactions in the same PTRR exercise and the conditions under which such inclusion would be allowed;
- (d) requirements regarding the management of the PTRR exercise;
- (e) requirements for different types of PTRR services;
- (f) the process for monitoring the application of the exemption granted; and
- (g) the criteria to apply when assessing whether the clearing obligation is circumvented.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 25 December 2025.

20. As regards the mandate, ESMA noted in the CP that in line with the SBR objectives, the draft RTS would build on and formalise certain existing market practices. This approach

takes into account the industry's experience with safeguards around the use of PTRR services, while minimising potential regulatory implementation costs.

4 The Draft RTS on PTRR services

4.1 The PTRR exercise

4.1.1 Identification of PTRR services

4.1.1.1 Proposal in the CP

25. ESMA noted in the CP that MiFIR, EMIR, the DA amending CDR 2017/567, and the IOSCO PTRR service Report consistently identify some common distinctive features of PTRR services. Such features are the risk reduction through market-risk-neutral and non-price-forming transactions, and the performance of the exercise by a third party through the use of an Algorithm on an “all-or-nothing” basis.
26. On this basis, ESMA proposed to identify PTRR services as services that aim to achieve a reduction of the risk in each of the derivatives portfolios subject to the exercise, by using transactions that do not contribute to price formation and that are market-risk neutral. They are provided by a third-party through the use of an Algorithm and on an all-or-nothing basis.
27. Point e of the mandate in Article 4b of EMIR 3 requires ESMA to specify the requirements for the different types of PTRR services. To this end, in the CP, ESMA firstly described the characteristics of the main PTRR services in use today, taking into consideration the applicable provisions. On the basis of the identified features, ESMA then provided a description of the different types of services in Articles 1 to 3 of the draft RTS, as specified in the following paragraphs.

Compression

28. As regards compression, ESMA noted that Article 2(47) of MiFIR contains a definition of “portfolio compression” which continues to apply under the new regime. The MiFIR definition of “portfolio compression” identifies the main features of compression i.e. 1) the reduction of the notional amount in a portfolio through 2) the replacement or termination of transactions.
29. Similarly, the definition of “compression with a third-party service provider or a CCP” in the CDR on EMIR Reporting refers to an exercise reducing the notional amount, the number

of transactions or “*otherwise harmonise the terms, by wholly or partially terminating trades and commonly to replacing the terminated derivatives*”.

30. As a result, ESMA proposed to identify compression in Article 1 of the draft RTS, in line with Article 2(47) of MiFIR, as a PTRR service characterised by 1) the reduction of the notional amount in a portfolio through 2) the replacement or termination of transactions.

Portfolio rebalancing and its possible combination

31. Similarly, in the CP it was noted that the CDR on EMIR Reporting identifies the main features of portfolio rebalancing by the reduction of counterparty risk accompanied by an increase of the notional amount in a portfolio through the addition of offsetting transactions.
32. On this basis, Article 2 of the draft RTS, in line with CDR on EMIR Reporting, identifies portfolio rebalancing, as a PTRR exercise which aims at reducing the counterparty risk, through the addition of offsetting transactions and resulting in the increase of the notional amount in a portfolio.

Basis risk optimisation

33. As regards basis risk optimisation, in the CP, ESMA noted that the industry identifies the objective of this service as the reduction of basis risk in hedged portfolios. In particular, basis risk optimisation intends to reduce the exposure arising from mismatching cash flows between the hedging instruments and the hedged instruments⁹. Similarly to portfolio compression and portfolio rebalancing, this service reduces second order risk e.g., in this case, the residual basis/fixing mismatches in a hedged portfolio, without changing the overall market risk of the portfolio.
34. On the basis of this consideration, ESMA proposed to identify in the draft RTS, basis risk optimisation as a PTRR service that reduces basis risk in hedged portfolios by introducing non-price forming trades and in which no existing trade in the portfolio is terminated or replaced and the notional is increased rather than decreased.

FIGURE 2: MAIN FEATURES OF THE DIFFERENT TYPES OF PTRR SERVICES

⁹ Many instruments used for hedging, such as interest-rate swaps, imply periodic payments and change of exposure over time, which is why misalignments may accumulate over time. Basis risk optimisation reduces the risk that derives, for example, from the accumulation of misaligned fixing dates or expiry dates (fixing risk), by introducing non-price forming trades; furthermore, as a result of a basis risk optimisation, no existing trade in the portfolio is terminated or replaced and the gross outstanding notional of the submitted portfolio is increased rather than decreased.

	Compression	Portfolio Rebalancing	Basis risk optimisation
Objective	Reduces number of transactions	Generates new off-setting transactions	Adds equal and opposite technical transactions to neutralise the second order fixing risk in hedged portfolios
Notional	Reduced	Increased	Increased
Risk reduced	Operational and counterparty risk	Counterparty risk	Fixing risk and basis risk

Other PTRR services

35. Despite point g of Article 4b(3) of EMIR 3 identifying as eligible services for the PTRR exemption compression, portfolio rebalancing and basis risk optimisation, or a combination thereof, ESMA in the CP proposed to investigate what “other PTRR services” could be, given future possible developments of these services.
36. In particular, after noting that the CDR on EMIR Reporting includes a definition of “other portfolio PTRR services”,¹⁰ ESMA concluded that other types of PTRR services may include any other services falling under the general description provided of PTRR services (see paragraph 26), but which do not qualify as compression, portfolio rebalancing, basis risk optimisation or a combination thereof.
37. As a result, ESMA proposed to consider compression, rebalancing and possibly basis risk optimisation, as examples of PTRR services and to not exclude other portfolio PTRR services which may be developed over time.
38. In this respect, ESMA asked in the consultation to indicate whether other types of PTRR services, beyond compression, portfolio rebalancing and basis risk optimisation, may exist and indicated it remained open to consider new types of PTRR services in the future.

¹⁰ In the CP ESMA noted that the CDR on EMIR Reporting identifies as “Other Portfolio PTRR services” services which present the characteristic features of PTRR services and do not qualify as the other services listed in the CDR on EMIR Reporting (notably compression or portfolio rebalancing).

4.1.1.2 Feedback

39. The feedback from respondents supported the proposal on the identification of the features of the different types of PTRR services. One respondent fully agreed with ESMA's definition and analysis of portfolio compression, portfolio rebalancing, and basis risk optimisation.
40. A few respondents however argued that the description of portfolio rebalancing and basis risk optimisation are overly restrictive because they do not allow for trades in the portfolio to be terminated or replaced. They pointed out that both services may require terminating trades from previous runs to avoid unnecessary notional.
41. To support their stance, they noted point g of Article 4b(3) of EMIR allows combinations of compression, rebalancing and optimisation, and that ESMA in the CP indicates that in some cases rebalancing can be combined with compression (e.g. where on top of the addition of trades, some trades are then terminated to achieve the desired risk reduction, including in terms of notional and number of trades).
42. Based on these considerations, these respondents proposed to eliminate the references to the absence of termination or replacement of trades in Article 2 on Portfolio rebalancing and Article 3 on basis risk optimisation of the draft RTS, as follows.

"Article 2

Portfolio rebalancing

Transactions resulting from a portfolio rebalancing are eligible for the exemption from the clearing obligation set out in Article 4b of Regulation (EU) No 648/2012 when in the PTRR exercise counterparty risk is reduced in an existing portfolio of trades by adding new non-price forming trades ~~and where no existing trade in the portfolio is terminated or replaced~~ and the notional is increased rather than decreased.

Article 3

Basis risk optimisation

Transactions resulting from a basis risk optimisation are eligible for the exemption from the clearing obligation set out in Article 4b of Regulation (EU) No 648/2012 when in the PTRR exercise basis risk is reduced in an existing portfolio of hedged trades by adding non price forming trades ~~and where no existing trade in the portfolio is terminated or replaced~~ and the notional is increased rather than decreased."

43. In addition, some respondents expressed being in favour of the qualification of compression, rebalancing and basis risk optimisation as examples of PTRR services, as it

allows for future developments of the services. They also suggested reflecting in the recitals that ESMA remains open to considering additional PTRR services in the future.

44. With regard to the existence of other types of PTRR services, the respondents indicated they do not identify additional PTRR services at this stage that should be expressly covered by the exemption. They however stressed that the market continues to evolve and that new services may emerge over time. As a result, they expressed support for focusing on portfolio compression, rebalancing and basis risk optimisation, while allowing for flexibility.

4.1.1.3 ESMA's assessment and final approach

45. ESMA acknowledges the support for the draft RTS proposal on the identification of the different types of the PTRR services.
46. As regards the suggestion to eliminate the references to the absences of termination or replacement in the description of portfolio rebalancing and basis risk optimisation of trades in Article 2 and 3 of the draft RTS respectively, ESMA makes the following considerations.
47. First of all, the descriptions of the different types of services in the draft RTS aim to identify and distinguish the features of each type of PTRR service, including by comparison with one another. It is thus, important for such a description to focus on the objective of the type of service at issue and the main means through which that objective is achieved.
48. Consistently, the descriptions of portfolio rebalancing and basis risk optimisation identify the type of risk the service aims to reduce (counterparty credit risk and basis risk, respectively) the way this result is achieved (the addition of non-price forming trades) and relevant effects on the notional (increase).
49. In this context, termination or replacement of trades may occur in practice as ancillary and purely administrative actions (i.e. housekeeping) but are not the main means through which the objective of the service is achieved. Consistently, the notional amount in portfolio rebalancing and basis risk optimisation increases rather than decreases. As a result, termination or replacement of trades may occur in portfolio rebalancing and basis risk optimisation, but they do not qualify as distinctive features for these types of PTRR services and thus shall not be mentioned in the service description.
50. Secondly, it is worth recalling that to ensure consistency, the description of portfolio rebalancing in Article 2 of the draft RTS is derived from the definition of Portfolio Rebalancing/Margin management in field 39 Table 2 of CDR on EMIR Reporting¹¹. An

¹¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1855&from=EN>

amendment to the description of portfolio rebalancing in the draft RTS would create a divergence with the definition of the CDR on EMIR Reporting leading to interpretative doubts on the concept of portfolio rebalancing under EMIR.

51. In light of the above, ESMA maintains the description of portfolio rebalancing and basis risk optimisation contained in Article 2 and 3 of the draft RTS respectively, as presented in the CP.
52. For completeness, ESMA recalls that EMIR 3 includes under eligible exercises for the purposes of the PTRR exemption the combination of compression, portfolio rebalancing or basis risk optimisation. As a result, transactions resulting from exercises which present all identifying features of more than one type of PTRR service described in Article 1, 2 or 3 of the draft RTS may also benefit from the exemption to the CO when the conditions are met.
53. Aside from how these services are defined in the regulation, it should also be mentioned that ESMA supports the idea that in practice a portfolio rebalancing exercise or a basis risk optimisation could include, or be coupled with, a compression to “clean up” the book, i.e. what we refer to above as housekeeping and achieve a reduction of the inventory of (offsetting) trades.
54. Lastly, the draft RTS specify the elements and the requirements set forth in Article 4b of EMIR for the purposes of the PTRR service exemption. As a result, they are limited to the requirements for the purposes of the PTRR service exemption and thus cannot be open ended and contain ESMA’s views on the possibility to consider new types of PTRR services in the future.

4.1.2 Market risk neutrality

4.1.2.1 Proposal in the CP

55. In the CP, ESMA proposed for the draft RTS to clarify that the concept of market risk neutrality in a PTRR exercise means no change or close to no change, when within reasonable tolerances, in the market risk of each portfolio before and after the exercise.
56. Furthermore, ESMA noted that currently variations of market risk within small tolerances are considered market risk neutral, but there is no hard threshold (e.g. a specific figure) to limit the maximum tolerances for this purpose. Furthermore, tolerances for market neutrality may depend on the portfolio subject to the exercise and the limits set by participants to the PTRR exercise.

57. To collect more information on the range of tolerances currently in use and the possibility of thresholds, ESMA invited market participants to indicate how tolerances are currently set in a PTRR exercise and asked their opinion on whether some criteria could be set to define appropriate risk tolerances to ensure market neutrality.
58. Regarding the requirements for the exercise to be market risk neutral, ESMA proposed to require the PTRR service providers to limit the application of tolerances by users within a range which broadly ensures market risk neutrality, and thus reject any excessive tolerances set by users which do not meet market risk neutrality.
59. In addition, to enhance compliance with the market risk neutrality requirement, ESMA set forth certain specific obligations regarding how the PTRR service provider should operate (see section 4.2)¹².

4.1.2.2 Feedback

60. All respondents supported the proposal on market risk neutrality, agreeing that PTRR exercises should preserve overall market risk before and after the exercise, subject to limited tolerances.
61. Many respondents expressed support for the recognition of the possibility to allow very small risk changes where necessary in portfolio compression exercises, while highlighting that PTRR exercises are however market risk neutral overall.
62. One respondent requested further clarity on the definition of market risk, the metrics for assessing neutrality and the adequacy of tolerances, to avoid divergent metrics or thresholds leading to inconsistent application across the industry. This respondent suggested to adopt DV01 (a standard risk measure in derivatives risk management practices, i.e. the sensitivity, the change in value, to a 1bp move) as an appropriate metric for assessing market risk neutrality considering its wide use across the industry.
63. As regards tolerances, some respondents confirmed that participants typically set minimal tolerances before each PTRR run, such as delta risk tolerances for compression and

¹² As regards market risk neutrality, the draft RTS (i) require the PTRR service providers to design and set the rules, including the methodologies and the algorithm used in pre-scheduled run in a way that the PTRR exercise achieves market risk neutrality; (ii) mandate for all type of PTRR services the use of tolerances, as already required for compression by Article 17 of CDR 2017/563 and (iii) require PTRR service providers to check that the proposal resulting from the application of the rules, methodologies and algorithms in each exercise complies with the requirements on market risk neutrality. Furthermore, to facilitate checks by the competent authorities on the market risk neutrality of the PTRR exercise, the draft RTS include an obligation for the PTRR service provider to include in the records displaying “the overall change in the risk of the different portfolios”, mandated by Article 4b paragraph 4 of EMIR, information displaying that the result of the PTRR exercise is market risk neutral

counterparty credit exposure tolerances for rebalancing, and that both the provider's Algorithm and participants check that the outcomes remain within those limits.

64. No suggestion was made on the introduction of additional criteria to set tolerances in the draft RTS. Some respondents expressly indicated they do not support adding further criteria, considering that the requirement for minimal tolerances is sufficient and favoured maintaining flexibility for providers to calibrate the tolerances by service type and portfolio composition.
65. One respondent, despite supporting ESMA's approach to keep tolerances minimal, acknowledged the difficulty of setting maximum levels at this stage. It suggested that ESMA review tolerances after the RTS has been in force to assess whether they remain minimal and consistent with market-risk neutrality. If significant divergence or overly permissive settings emerge, ESMA could consider more specific tolerances or supervisory expectations.
66. In addition, two respondents requested to delete from Article 5 of the draft RTS the obligation for providers to ensure tolerances do not significantly affect overall portfolio market risk. The reasons supporting this request are as follows: (i) as tolerances are required to be minimal, they should typically not affect participants' overall exposure; (ii) providers would not be able to "ensure" the absence of a significant impact on market participants' overall portfolio given their lack of visibility on the firms' full portfolios. As a result, they propose amending Article 5(2) of the draft RTS as follows

"Article 5

Market risk neutrality

2. A PTRR service provider shall ensure that the tolerances set by ~~the all~~ participants in the PTRR exercise are minimal. ~~and do not affect significantly the overall exposure of their portfolios towards market risk.~~ "

4.1.2.3 ESMA's assessment and final approach

67. Acknowledging the strong support for the proposal, ESMA maintains the text of Article 5(1) of the draft RTS on market risk neutrality as presented in the CP.
68. As regards Article 5(2) of the draft RTS, ESMA acknowledges the concern raised by respondents that PTRR service providers may lack visibility over participants' overall portfolios. As a result, ESMA proposes to amend Article 5(2) of the draft RTS to specify that the portfolio to be considered by the PTRR service provider as regards market risk neutrality of the exercise are those submitted to the PTRR exercise.

69. The amendments are the following

“Article 5

Market risk neutrality

A PTRR service provider shall ensure that the tolerances set by ~~the all~~ participants in the PTRR exercise are minimal, and do not affect significantly the overall exposure of ~~their the submitted~~ portfolios towards market risk. “

70. In addition, ESMA stands ready to consider further guidance on risks metrics (including DV01) if after the entry into force of the RTS, a need for greater consistency in the metrics used by providers to quantify risk emerges.

4.1.3 Risk reduction, and the non-price forming nature of the PTRR exercise

4.1.3.1 Proposal in the CP

General remarks

71. In the CP, ESMA reported on how the different types of PTRR services aim to reduce different types of secondary risks and how methodologies and algorithms applied in the PTRR exercises (also collectively referred to as the ‘Algorithm’) to reduce risk to the maximum possible extent.

72. In this context, ESMA highlighted that the changes brought to the portfolio by the PTRR exercise may increase certain types of risks toward specific counterparties, despite reducing the risk inherent to the portfolio overall, and stressed the importance for the participants to the PTRR exercise to indicate their preferred risk tolerances.

73. Furthermore, in the CP ESMA explained that in a PTRR exercise, participants submit the data regarding their portfolio, together with their preferred risk tolerances. On the base of which the Algorithm elaborates a proposal (the “Exercise Proposal” used to perform a dry run). The Exercise Proposal is submitted to clients who can decide whether to accept it or not. Only in case of acceptance, the transactions proposed by the Algorithm are executed. After every run, participants receive a performance report with the exercise results (the “Exercise Performance Report”).

Risk reduction

74. As regards risk reduction, ESMA proposed to clarify in point a of Article 4(2) of the draft RTS that the requirements set forth in the draft RTS on risk reduction need to apply to all the participants to a PTRR exercise.
75. Furthermore, point b of the same Article subjects the increase in a specific type of risk or toward a specific counterparty which may occur in a PTRR exercise to (i) a reduction of the overall risk in the portfolios, (ii) the increase in risk being in line with the tolerances set by the participants to the PTRR exercise.

Circumvention of the clearing obligation

76. ESMA in the CP also analysed the hypothetical case where transactions non-subject to the CO (e.g. certain non-standard calendars or other transactions attributes) are replaced with transactions subject to the CO (e.g. standard cleared swaps), with similar economic effect, but which would not be subject to clearing as benefitting from the PTRR service exemption from the CO.
77. In such a scenario, the use of the PTRR services would permit to shift the risk inherent to the portfolio from transactions not to be cleared to transactions to be cleared without triggering the clearing obligation, due to the use of the PTRR exemption. As a result, the firm would maintain its exposure, while avoiding clearing.
78. ESMA thus concluded that it is not only necessary that an overall risk reduction is achieved, but also that there is no increase in the uncleared risk, whereby uncleared risk is meant to be the risk deriving from bilateral transactions not cleared via a CCP.
79. As a result, ESMA proposed to draw the line between a legitimate and an illegitimate use of the exemption by considering whether the exercise brought any increase in the net uncleared risk. Point (c) of Article 4 of the draft RTS reflects this stance and thus requires the PTRR exercise to not increase the aggregate net uncleared risk in any of the portfolios submitted.
80. In addition, to enhance compliance with the mentioned risk reduction requirements, ESMA set forth certain specific obligations for the PTRR service provider in Chapter 3 of the draft RTS on the operating conditions for PTRR service providers (see section 3.4)¹³.

¹³ See for example point b of Article 7 of the draft RTS which requires the Algorithm to be set to achieve risk reduction as specified in Article 5 of the draft RTS; Article 11 of the draft RTS which provide for the PTRR service provider to require participants to set their tolerances level, and to make a proposal aligned with such tolerances, Article 12 of the draft RTS which require to brake down the content of the Exercise Proposal in a way that facilitates checks on the tolerances previously set, or point c of Article 15 on record keeping which requires a breakdown of how the different types of risks are reduced, in each of the portfolios submitted to the PTRR exercise, as a result of the PTRR exercise or kept within the tolerances expressed by the participants in the PTRR exercise.

81. In particular, Article 14(2) of the draft RTS requires the PTRR service provider to have in place governance controls and procedures to ensure compliance with the requirement on risk reduction.

Inclusion of mixed portfolios

82. In the CP, ESMA also made some considerations on the opportunity to exclude mixed portfolios from the PTRR services. In the ESMA 2020 PTRR service Report, it was suggested to limit the use of compression to uncleared portfolios, to avoid that the application of wide risk tolerances – necessary to accommodate the exercise on mixed portfolios – may lead to a risk increase.

83. With respect to such recommendation, ESMA noted that where the risk reduction is limited due to the application of wide risk tolerances, the run is unlikely to be accepted. Consistently, compression is currently performed either on cleared or uncleared portfolios to optimise risk reduction.

84. Furthermore, the risk reduction requirements introduced by the draft RTS may already prevent the use of wide tolerances.

85. As a result, in light of the new requirements applicable to PTRR service providers introduced by EMIR 3, ESMA did not consider it necessary to limit the type of portfolio which could be subject to the exercise.

Non-price forming nature of the PTRR exercise

86. In the CP, ESMA also noted that the features of PTRR services imply that transactions resulting from a PTRR exercise are non-price forming¹⁴. As the requirements introduced by EMIR 3 already ensure that transactions added in a PTRR exercise are non-price forming, ESMA expressed the view in the CP that there is no need to further specify the non-price-forming requirement in the RTS.

87. In addition to seek feedback on its proposal on risk reduction, ESMA invited market participants to provide views on the risk of possible circumvention of the CO through PTRR services, and on whether targeted safeguards, including on portfolio composition, would be needed to prevent such circumvention.

¹⁴ These features include: (i) the exercise's risk-reduction objective, rather than the reflection of buying and selling interests in response to market movements, as required by Article 4b(3)(b) of EMIR; (ii) the market risk neutrality requirement under Article 4b(3)(e) of EMIR; and (iii) the fact that PTRR transactions are generated according to pre-defined rules, rather than on the basis of bids, offers or negotiations, as set out in Article 4b(4)(a) of EMIR.

4.1.3.2 Feedback

Risk reduction

88. All respondents broadly supported ESMA's proposal that PTRR exercises should achieve an overall risk reduction for each participating portfolio. One respondent specified that if a firm's portfolio is submitted and does not get a result, the rest of the exercise should continue even though that firm does not receive a reduction in the overall risk of its portfolio.
89. The majority of respondents agreed also with the proposed conditions to achieve risk reduction without calling for additional criteria.
90. One respondent expressed the concern that the absence of any reference points (e.g. sensitivity-based measures, exposure-based metrics, or an acceptable suite of standardised measures) to measure risk may lead to an inconsistent application of the relevant requirements across providers. It thus recommends to specifically require a reduction of DV01 for each portfolio and name the risk types for which an increase of risk would be acceptable.

Circumvention of the clearing obligation

91. The feedback received in the consultation supported the proposed safeguard against a circumvention of the CO, namely the requirement for PTRR exercises to not increase the aggregate net uncleared risk.
92. One respondent asked ESMA to clarify the methodology for assessing the requirement for PTRR exercises to not increase the aggregate net uncleared risk. It reiterated the suggestion to use DV01 as a baseline metric and supplementing it with a monitoring of increases in uncleared notional. In addition, it suggested to introduce the regular monitoring of the increase of uncleared notional resulting from the use of PTRR services.
93. As regards the portfolio composition, the majority of respondents expressly indicated to not support adding any limits, and agreed with ESMA that existing risk-reduction, risk-neutrality and exercise constraints (e.g. mixed rebalancing runs constraints to prevent any increase in net uncleared risk) already prevent abuse.
94. Some respondents questioned the value of the "specific measures and targeted ongoing checks" that the PTRR service provider would be required to perform under Article 14 of the RTS noting that where all the ex-ante conditions that apply regarding PTRR exercises are met, the exemption legitimately applies and there can be no circumvention. They thus suggested an annual attestation of compliance as an alternative to unspecified ongoing checks.

95. They also note that ESMA and NCAs will be able to monitor how the exemption is used through EMIR Article 9 reporting. In that regard, they ask to clarify how the 'Clearing Obligation' field should be populated for PTRR transactions that benefit from the exemption.

4.1.3.3 ESMA's assessment and final approach

96. Given the strong support in the consultation for the proposal on risk reduction, ESMA maintains Article 4 of the draft RTS unchanged.

97. ESMA clarifies that the PTRR exercise is expected to reduce risk in all the portfolios participating in the PTRR exercise. As a result, ESMA confirms that if a participant drops out from the PTRR exercise because he does not get any risk reduction in the run, his portfolios are not considered in the assessments on whether risk reduction occurred in all portfolios in the PTRR exercise.

98. On the absence of any metrics to measure risk, as previously indicated, ESMA stands ready to consider further guidance (including DV01) if after the entry into force of the RTS, a need for greater consistency in the metrics used by providers to quantify risk emerges. In addition, ESMA points out that the draft RTS already requires the Exercise Proposal to indicate a breakdown of how the different risks are reduced and the variation of the counterparty risk (point d and e of Article 12 of the draft RTS respectively).

99. ESMA clarifies that to assess whether the PTRR exercises increase aggregate net uncleared risk a comparison between the net uncleared risk between the portfolios before and after the PTRR exercise would suffice.

100. In this regard, it is worth recalling that

- point f of Article 12 of the draft RTS requires the Exercise Proposal to display "*details on how the proposed output leads to no increase in the aggregate net uncleared risk in the portfolios submitted to the PTRR exercise*";

- point d of Article 15 of the draft RTS indicates that the Records to be kept by the PTRR provider shall include "*information showing that the PTRR exercise did not result in an increase in the aggregate net uncleared risk in the portfolio of any participant*". As indicated in the CP, for the purposes of this obligation the PTRR service provider can use the Exercise Performance Report.

101. As a result, both the Exercise Proposal and the Exercise Performance Report are expected to report whether the PTRR exercise leads to an increase in aggregate net uncleared risk. When these documents permit to easily establish that net uncleared risk

remained unchanged or diminished after the PTRR exercise the requirements set forth in Article 4 of the draft RTS can be considered to be met. A PTRR service provider can use DV01 to express quantification of risk, but as indicated above, ESMA preference is to not mandate any specific unit of measure as regards risk before the entry into force of the RTS.

102. As regards the suggestion to eliminate the obligation for the PTRR service provider to conduct controls on compliance with the risk reduction requirement, ESMA notes that ex-ante conditions may not alone guarantee compliance with the requirements set forth in Article 4b of EMIR, and controls are meant to be an additional safeguard to risk reduction requirement compliance.
103. For example, the obligation to design the Algorithm in a way to ensure that the PTRR exercise achieve risk reduction (point b of Article 7 of the draft RTS) may qualify as an ex-ante measure. To ensure that the output of the Algorithm is in line with the risk reduction requirement, regardless the Algorithm being set correctly, the PTRR service provider may arrange regular controls on the Exercise Proposal. In such a case, the controls are additional to the ex-ante conditions and contribute to compliance with the risk reduction requirements.
104. ESMA also recalls that Article 14 of the draft RTS describes how the compliance function should operate in case any infringement is detected. On the basis of these considerations, ESMA stance is to maintain the prescribed controls in Article 14 of the draft RTS, and to not replace them with a declaration of compliance on the basis of the existence of ex-ante conditions (on Article 14 of the draft RTS see also section 4.2.2 of this FR).
105. Lastly, ESMA clarifies that the entry into force of the draft RTS does not affect the rules on reporting described in the CDR on EMIR Reporting. In particular, PTRR transactions benefitting from the CO exemption should be reported flagging in the field dedicated to clearing¹⁵ that the derivative was not cleared. In such a case, the additional fields for the clearing details would not be populated.

¹⁵ Fields 7 and 13 (Clearing threshold) and field 16 (Clearing member) in Table 1, and fields related to Section 2f (clearing) and 152 (event type) of Table 2 in the Annex of the CDR on EMIR reporting

4.1.4 Independence of the PTRR service provider from the counterparties to the OTC derivative contracts included in the PTRR exercise

4.1.4.1 Proposal in the CP

106. Under point (a) of paragraph 3 of Article 4b of EMIR, in order to benefit from the CO exemption, PTRR service providers shall be entities authorised under MiFID II and are therefore required to comply with Article 23 of MiFID II on conflicts of interest. Article 23 of MiFID II requires investment firms to identify and to prevent or manage conflicts of interest between themselves, including any person directly or indirectly linked to them, and their clients. Where the arrangements put in place to prevent or manage such conflicts are not sufficient to ensure that risks of damage to clients' interests are prevented, investment firms must disclose the conflicts to the relevant clients.

107. In the CP, ESMA expressed the view that the MiFID II provisions on the conflicts of interest already constitute a solid basis for safeguarding the independence of PTRR service providers in the provision of the PTRR. Furthermore, ESMA notes that PTRR Algorithms generate their output on the basis of the portfolios submitted, without taking into consideration the identity of the participants. As a result, the outcome of the Algorithm should not be influenced by the participating entities.

108. However, given that general MiFID II policies on investment and ancillary services may not sufficiently address the specific features of PTRR services, Article 6 of the draft RTS requires PTRR service providers to include a dedicated section on PTRR services in their conflicts of interest policy. The section in the policy on conflicts of interest dedicated to the PTRR service is expected to a) describe any circumstances which constitute or may give rise to a conflicts of interest impacting one or more participants in the PTRR exercise; and b) specify the procedures to be followed and measures to be adopted in order to prevent or manage such conflicts.

109. Lastly, ESMA proposes that the PTRR service provider keep records of its conflicts of interest cases, to be shared with the authority.

4.1.4.2 Feedback

110. All respondents to the CP agreed with ESMA's proposed provisions of the draft RTS on conflicts of interest of the providers.

111. One respondent indicated that existing MiFID II requirements on conflicts of interest are sufficient and can be supported by appropriate internal policy and procedures to tailor the requirements to PTRR services. As recognised by ESMA, a PTRR provider may be part of a larger group that includes a CCP and participants to a PTRR exercise may also

have invested in the PTRR service provider. An overly restrictive definition of independence could limit risk reduction services to a subset of transactions and reduce the efficiency of PTRR services. The optimisation Algorithm is an objective function and does not discriminate based on the identity of the participant.

4.1.4.3 ESMA's assessment and final approach

112. ESMA acknowledges the broad support from the respondents to the provisions on conflicts of interest of the PTRR service providers as proposed in the CP.

113. Therefore, ESMA maintains its proposal for Article 6 of the draft RTS requiring providers to describe the circumstances which constitute or may give rise to a conflict of interest in the provision of the PTRR services, the procedures to be followed and measures to be adopted in order to prevent or manage such conflict and to keep records of possible conflicts of interests.

4.1.5 Participation and execution of a PTRR exercise

4.1.5.1 Proposal in the CP

114. As described in the CP, even before the adoption of EMIR 3, PTRR exercises were generally structured so that only entities that had initially submitted a portfolio to the exercise could participate, and so that the Exercise Proposal could only be accepted in full or rejected, without the possibility of partial acceptance. These two features have now been incorporated as requirements in points (c) and (d) of paragraph 3 of Article 4b of EMIR.

115. On the basis of these newly introduced requirements, ESMA specified in Article 9 of the draft RTS that the PTRR service provider shall, during the onboarding phase, clearly inform clients that the participation to the PTRR exercise is open only to entities that initially submitted a portfolio to the PTRR exercise. The same article of the draft RTS requires providers to specifically inform clients that each exercise participant shall either fully accept or reject the proposal, and that a partial execution of the proposed transactions is not allowed.

116. Such information on the functioning of the PTRR exercise should be included in a document (e.g., a rulebook) to be shared with clients and to be referred to in the contractual agreement.

117. With regard to the execution of a PTRR exercise, ESMA clarified in the CP that point h) of paragraph 3 of Article 4b of EMIR, which refers to the execution of an exercise on a bilateral or multilateral basis, means that a PTRR run may involve either two participants

or multiple participants. In this respect, such requirement is clear and self-explanatory and did not need to be further specified.

4.1.5.2 Feedback

118. Respondents to the CP agreed with ESMA's proposal on participation and execution of the PTRR exercise and on the information to be provided by PTRR service providers to their clients.

119. However, two respondents suggested amending paragraph 2 of Article 9 of the draft RTS on transparency. Respondents indicated that a specific participants' own risk reduction targets or management is generally not an input factor in the run. Thus, this wording might not be reflective of current market practice. Differently, the outcome of a run is always in line with participants' tolerances.

120. Therefore, the two respondents suggested replacing "*risk reduction targets or management*" with "*tolerances*" or deleting altogether the second subparagraph:

Article 9

Transparency

[...]

2. When providing information on the PTRR service, a PTRR service provider shall ensure that participants in the PTRR exercise are aware that:

(a) the exercise is open for participation only to entities that initially submitted a portfolio to the PTRR exercise; and

(b) each exercise shall be accepted in full, where applicable and, as a result the participant in the PTRR exercise shall not be able to choose which trades to execute under the PTRR exercise.

~~*When providing such information, the PTRR service provider shall specify that participants remain free to not take part to a run if the outcome is not in line with their risk reduction targets or management.*~~

OR

When providing such information, the PTRR service provider shall specify that participants remain free to not take part to a run if the outcome is not in line with their ~~risk reduction targets or management~~ tolerances.

4.1.5.3 ESMA's assessment and final approach

121. ESMA notes that the deletion of the second subparagraph of paragraph 2 of Article 9, as proposed by two respondents to the CP, would remove a safeguard for PTRR services participants in case the check and controls carried out by the provider fails to detect the non-compliance of the PTRR exercise output proposal with the participants' tolerances. Thus, ESMA is of the view that subparagraph 2 should not be deleted.
122. Differently, the proposed alternative amendment to take into account "*tolerances*" instead of "*risk reduction targets and management*", seems to better reflect the current market practice. In addition, tolerances should already include the risk reduction targets, as per paragraph 2 of Article 4 and point (b) of Article 11 of the draft RTS. With regard to participants' risk reduction management, it should also be already reflected by the tolerances set. Hence, it would be covered by the proposed amended wording.
123. ESMA agrees with the proposed amendment concerning the second subparagraph of paragraph 2 of Article 9 of the draft RTS and amended the text accordingly.

4.2 Operating conditions for the PTRR service providers

4.2.1 The Algorithm and the obligation to act in a reasonable, transparent and non-discriminatory manner

4.2.1.1 Proposal in the CP

124. In the CP, ESMA noted that, in order to ensure that PTRR service providers act in a reasonable, transparent and non-discriminatory manner, as required under point (a) of paragraph 4 of Article 4b of EMIR, the draft RTS should specify certain requirements relating to the conduct of the PTRR exercise and the functioning of the Algorithm.
125. ESMA clarified that the transparency requirement should be applied to the PTRR exercise as whole, and in particular to the rules governing a PTRR exercise and should not refer specifically or exclusively to the technical functioning of the Algorithm.
126. This approach is consistent with users' interest in understanding how the service operates, with a focus on the outcome generated by the Algorithm rather than on its underlying technical mechanism. Moreover, a different interpretation would risk conflicting with the proprietary nature of the Algorithm.
127. In line with this interpretation, Article 9 of the draft RTS requires providers to share with the clients the rules on the mode of operations of the exercise during the onboarding phase

and require them to ensure clients have a general understanding of how the Algorithm operates, so that its outcome is understandable.

128. Additionally, PTRR service providers are required to retain the Exercise Performance Reports, or equivalent information, for a specified period, ensuring that participants can provide such reports upon request by their competent authority when they conduct their assessment on potential circumventions of the CO pursuant to Article 4 of EMIR.
129. With respect to the requirement for PTRR service providers to act in a reasonable and non-discriminatory manner towards participants, the Algorithm should operate neutrally with regard to the participants submitting the portfolios. In other terms, the Algorithm is expected to produce the same outcome, upon the submission of the same portfolios with the same risk tolerances, regardless of the entity owning the portfolio. To ensure the good functioning of the Algorithm, Article 8 of the draft RTS requires PTRR providers to test it prior to its deployment or in case of any substantial update.
130. Furthermore, PTRR service providers are required by the second paragraph of Article 8 to prevent any external manipulation of the Algorithm or of the PTRR exercise in general through the adoption of adequate safeguards.

4.2.1.2 Feedback

131. The respondents to the CP agreed with ESMA's proposal on the obligations of the PTRR service providers concerning the Algorithm.
132. One respondent stressed that it would not support any regulatory requirement for PTRR service providers to share technical information about the Algorithm with participants. It considers such information to be proprietary and that a general regulatory disclosure obligation could create the potential for misuse. Therefore, it agrees with the current approach of the draft RTS requiring a high-level description of the Algorithm to clients.
133. The same respondent requested clarification on the meaning of the term "validate" as used in paragraph 2 of Article 12 of the draft RTS on the PTRR exercise output proposal.

4.2.1.3 ESMA's assessment and final approach

134. On the respondent's request for clarification of paragraph 2 of Article 12, ESMA notes that the term "*validate*" should mean "*to confirm*" that the exercise was accepted by all participants and that the resulting proposed transactions can be performed. It is worth noting that "*validate*" does not mean "*to perform*" the transactions, because the performance of the proposed transactions is generally carried out by PTRR participants. Furthermore, the meaning of the term "*validate*" should not be linked to the moment at

which the exercise becomes legally binding, as parties may agree to attach the legal effect to another moment e.g. the confirmation by the participant to the provider that it accepts the output proposal.

135. ESMA acknowledges that the term “*validate*” may not be sufficiently clear and amended Article 12(2) of the draft RTS to clarify its meaning:

Article 12

PTRR exercise output proposal

[...]

2. A PTRR service provider shall ~~only validate the PTRR exercise output~~ notify the participants in the PTRR exercise once all participants have agreed to the PTRR exercise output proposal, and within a pre-defined timeframe.

4.2.2 Organisational requirements, controls, criteria to apply when assessing whether the CO is circumvented and compliance

4.2.2.1 Proposal in the CP

136. In specifying the requirements of Article 4b of EMIR on the monitoring of the transactions resulting from the PTRR exercise and the criteria to apply when assessing whether the clearing obligation is circumvented¹⁶, ESMA proposed in Articles 13 and 14 of the draft RTS that PTRR service providers have a clear and formalised governance arrangement, including clear lines of accountability, and effective procedures to monitor the correct functioning of the PTRR exercise, and in particular of the Algorithm.
137. To ensure the impartiality of the checks to be conducted on the Algorithm, it is proposed for such arrangements to entail a separation of tasks and responsibilities between the staff running the PTRR exercises operations and the staff belonging to the control and/or compliance function.
138. Furthermore, to ensure adequate monitoring, and given the complexity of Algorithms, the draft RTS requires the compliance staff to have a general understanding of how the Algorithm operates and of how the PTRR exercises are conducted, they should also be in contact with the persons who have detailed technical knowledge of the Algorithm.

¹⁶ Point (f) of paragraph 4 and point (g) of paragraph 6 of Article 4b of EMIR.

139. The draft RTS also introduces a general obligation for the PTRR service providers to monitor and check that the output of each PTRR exercise complies with the requirements set forth in EMIR and in the draft RTS.
140. In particular, to avoid any possible misuse or circumvention of the CO, PTRR service providers should monitor that the PTRR exercise does not result in a circumvention of the CO. The criteria to be adopted by PTRR service providers to detect circumventions of the CO are whether the transactions resulting from a PTRR exercise result in an increase of uncleared net risk in the portfolios submitted to the PTRR exercise (see section 4.3.4 on the reasons for the adoption of this criterion to assess whether the CO is circumvented).
141. To prevent and detect any possible circumvention of the CO, providers should adopt specific measures and conduct ongoing targeted checks. For example, they should check that the Exercise Proposal complies with the risk reduction requirements set forth in the draft RTS, and, in particular, that the PTRR exercise does not result in an increase of the net uncleared risk in the participants' portfolios.
142. The staff responsible for monitoring the outcome of the PTRR exercise should report to the compliance function cases of non-compliance with the requirements set out in EMIR and the draft RTS. In turn, the compliance function should report such cases, in addition to cases of non-compliance identified on its own initiative, to the management body, which should take actions to prevent, to the extent possible, any possible attempts of misuse or circumvention of the CO.
143. Finally, the compliance function should produce yearly reports to the management body on the adequacy and effectiveness of the measures and procedures put in place to prevent any misuse or circumvention of the CO, as well as on any identified shortcomings and the remedial actions adopted.

4.2.2.2 Feedback

144. Concerning specific measures to detect possible misuse or circumvention of the CO, all four respondents to the CP supported the draft RTS and did not propose additional specific measures to detect misuse or circumvention of the clearing obligation. The shared view is that the existing safeguards – risk reduction, market risk neutrality within predefined tolerances, and the requirement not to increase uncleared risk – are already sufficient and proportionate.
145. One respondent added that it finds Article 14 of the draft RTS proportionate and effective, and welcomes the requirement for ongoing, targeted checks to prevent misuse or circumvention.

146. Two other respondents indicated that they do not see a need for additional measures, considering the existing conditions to be robust safeguards, and noted that EMIR Article 9 reporting also allows authorities to monitor the use of the exemption. To the contrary, they indicated that some of the requirements on the providers' organisation and governance, included in Articles 13 and 14, and on conflicts of interest, included in Article 6 of the draft RTS, may appear superfluous. They indicated that, since PTRR service providers operate under the status of MiFID investment firms, they are already subject to requirements on capital, governance, independence, product development and conflicts of interest.
147. A fourth respondent does not support adding other specific measures, it prefers the outcomes-based approach focused on no-increase in uncleared risk and asked for more clarity on the requirement to prevent external manipulation of PTRR exercises. It also noted that it would be impractical to require PTRR service providers to monitor the intention or behaviour of participants.

4.2.2.3 ESMA's assessment and final approach

148. ESMA acknowledges the broad support of the respondents to the CP to the organisational requirements, controls and criteria to apply when assessing whether the CO is circumvented as set out in the draft RTS.
149. ESMA does not believe that further clarification on the requirement to prevent external manipulation of PTRR exercises is needed, as it deems the requirements on no-influence over the result of the PTRR exercise (see section 4.1.4) and those on the independence of the PTRR service providers (see section 4.2.4) as sufficient to prevent external manipulation.
150. ESMA acknowledges the feedback from two respondents that PTRR providers are already subject to the MiFID II requirements on capital, governance, independence, product development and conflicts of interest as investment firms. However, Article 16 of MiFID II on organisational requirements cross-refers to Article 23 on conflicts of interest, which specifically concerns conflicts of interest arising in the provision of investment and ancillary services, which are different from PTRR services.
151. ESMA does not find that the requirements of Article 6 on conflicts of interests, Article 13 on organisational requirements and Article 14 on controls and compliance of the draft RTS are superfluous, as they aim at preventing risks specific to PTRR service providers. For instance, Article 6 requires providers to describe circumstances which constitute or may give rise to a conflict of interest in the provision of the PTRR services and the procedures to be followed and measures to be adopted in order to prevent or manage such conflict, Article 13 sets out specific controls on the Algorithm and Article 14 envisages ongoing checks to prevent the CO circumvention.

4.2.3 Requirements for PTRR services, the PTRR exercise elements and their management

4.2.3.1 Proposal in the CP

152. As for the general requirements for different PTRR services and the management of the exercise that shall be complied with by PTRR service providers¹⁷, as described in Article 10 of the draft RTS, the PTRR service agreement should set out the standard processes governing access to and participation in the PTRR exercise as well as the terms and conditions upon which the provider offers the PTRR service.
153. The contractual agreement should clearly specify the eligibility criteria for entities who wish to become PTRR exercise participants and the providers' procedure to carry out periodic due diligence reviews on the clients' eligibility.
154. Concerning the PTRR exercise, the contractual agreement should describe in a clear and transparent manner the PTRR exercise process and its legal effects, including identifying the point in time at which each PTRR exercise becomes legally binding and when the resulting transactions are entered into.
155. As part of the description of the process of the exercise, providers should explain how PTRR exercises are planned.
156. Once an entity has signed the contractual agreement and decides to take part in the PTRR exercise, it should submit the transaction data concerning its portfolio and the data on counterparties exposures. Data is submitted by participants, whether directly, notably in the case of uncleared transactions, or indirectly, in the case of cleared transactions where it is submitted on participants' behalf by CCPs.
157. To ensure the successful outcome of the PTRR exercise, Article 11 of the draft RTS requires PTRR providers to establish control measures to verify that the portfolios and the data provided are eligible for the PTRR exercise and to verify the integrity of the submitted data.
158. Furthermore, PTRR service providers should be able to set constraints in the Algorithm in order to keep the change in any risk factors within the tolerance levels set before the start of the exercise by the participants. Providers should also be able to verify that such constraints are complied with in the proposed output of the exercise.

¹⁷ Points (d) and (e) of paragraph 6 of Article 4b of EMIR.

159. At the same time, ESMA does not believe that the draft RTS should be prescriptive with regard to the tolerances' thresholds, as it is in the participants and the providers' interest to have low risk tolerances, which, again, are set to increase the efficiency of the PTRR exercise.
160. Concerning the proposed output of the exercise, Article 12 of the draft RTS requires PTRR service providers to make it available to participants without delay. The Exercise Proposal should include at least (a) identification of the counterparties included in the PTRR service; (b) change to the notional value of the derivatives; (c) change to the counterparty risk; (d) a breakdown of how different risks are reduced; (e) details on how compliance with the risk tolerance specified by the participants was ensured, including the variation of the notional value of the derivatives compared to the specified risk tolerance and the variation of the counterparty risk compared to the specified risk tolerance; and (f) the information detailing how the proposed output leads to no increase in the aggregate net uncleared risk in the portfolio.

4.2.3.2 Feedback

161. All those responding to this section of the CP agreed with ESMA's draft provisions on the requirements of the service agreement, the exercise elements and their management.
162. Two respondents, while agreeing with the proposal, suggested the following amendments.
163. With regard to Article 10 of the draft RTS, they proposed reflecting the argument presented on the identification PTRR services i.e., that an exercise may lead, at the same time, to termination and/or replacement of existing trades:

Article 10

PTRR service agreement

[...]

2. The agreement referred to in the first paragraph shall include all relevant legal documentation describing how and when derivatives submitted for inclusion in the PTRR service are terminated and/or replaced by other derivatives and how and when new derivatives are added, as applicable, as part of the PTRR exercise.

164. With regard to Article 11 of the draft RTS, the respondents' proposed amendment takes into account that PTRR service providers can only perform eligibility checks based on the information shared by market participants:

Article 11

Preliminary phase of the PTRR exercise

Prior to the execution of the algorithm, a PTRR service provider shall execute all of the following steps:

(a) verify the eligibility of the portfolios submitted by participants to providers for the PTRR exercise and the integrity of the submitted data, to the extent possible based on the information shared by market participants to the PTRR service provider; and [...]

165. With regard to Article 12 of the draft RTS, respondents proposed referring to the PTRR service agreement which specifies the process for acceptance of the output proposal, which might differ by type of service and to use the term “*accepted in full*” instead of “*agreed*” when referring to the acceptance of the PTRR exercise by the participants:

Article 12

PTRR exercise output proposal

[...]

2. A PTRR service provider shall only validate the PTRR exercise output once ~~all participants have agreed to the PTRR exercise output proposal and within a pre-defined timeframe.~~ it has been accepted in full by the participants in the PTRR exercise, according to the process set out in the PTRR service agreement.

4.2.3.3 ESMA’s assessment and final approach

166. Concerning the proposed amendment to Article 10 of the draft RTS, ESMA notes that this provision requires the relevant legal documentation to describe how and when derivatives submitted for inclusion in the PTRR service may be terminated, replaced or added, as part of a PTRR exercise. The use of “or” does not consider whether those actions are mutually exclusive or whether they cannot occur within the same PTRR exercise. Rather, Article 10 sets out a documentation requirement: it requires PTRR service providers to explain how such actions would be carried out, without prescribing that any particular action, or combination of actions, shall take place in a given PTRR exercise. However, ESMA acknowledges the feedback from respondents and clarified paragraph 2 of Article 10 of the draft RTS as follows:

Article 10

PTRR service agreement

[...]

2. The agreement referred to in the first paragraph shall include all relevant legal documentation describing how and when derivatives submitted for inclusion in the PTRR service are terminated ~~or~~, **how and when they** are replaced by other derivatives and how and when new derivatives are added as part of the PTRR exercise.

167. With regard to the proposed amendment to Article 11 of the draft RTS, ESMA agrees with the respondents that providers can only perform eligibility checks based on the information shared by market participants. ESMA included the wording “*based on the information provided by participants*” in Article 11 and it is of the view that such addition already limits the responsibility of the provider to the available information only. ESMA does not see any reasons to also include “*to the extent possible*”, as also suggested by the respondents.

168. ESMA amended point (a) of Article 11 of the draft RTS as follows:

(a) verify, on the basis of the information provided by the participants, the eligibility of the portfolios submitted for the PTRR exercise and the integrity of the submitted data; and [...]

169. Concerning the proposed amendment to Article 12 of the draft RTS, ESMA agrees with the respondents that the term “*accepted in full*” instead of “*agreed*” could be used to better align with point (c) of paragraph 3 of Article 4b of EMIR and agrees with adding a reference to the PTRR service agreement:

Article 12

PTRR exercise output proposal

[...]

2. A PTRR service provider shall notify the participants in the PTRR exercise once all participants have ~~agreed~~ accepted in full ~~to the PTRR exercise output proposal and within a pre-defined timeframe~~ and in accordance with the process set out in the PTRR service agreement.

4.2.4 No influence over the result of the PTRR exercise by participating entities

4.2.4.1 Proposal in the CP

170. As described in the CP, after submitting the data related to their portfolios and setting their tolerances, participants should not have any further form of control over the exercise's outcome; from that moment, it is the provider's responsibility to apply the Algorithm in a

reasonable, and non-discriminatory manner, and submit the proposed outcome to the participants.

171. As a safeguard from the influence over the outcome of the exercise, point (c) of paragraph 3 of Article 4b of EMIR introduced the requirement that an exercise shall be only accepted in full or not accepted at all, and in the latter case, the whole exercise fails. Participants shall not be able to choose which trades within the proposed output to execute under the PTRR exercise.
172. On the providers' side, after having received the data on the participants' portfolios and their tolerance levels and applied the relevant constraints to the Algorithm, it is their responsibility to run the exercise independently to generate an outcome that complies with the requirements of Article 4b of EMIR and to submit the proposed output of the exercise to the participants, without providing any advice.
173. The requirement, set out by point (d) of paragraph 4 of Article 4b of EMIR, for PTRR service providers to keep complete and accurate records of all transactions executed pursuant to a PTRR exercise is also an additional safeguard to ensure that participants are not influencing the outcome of the PTRR exercise. As described in section 4.4.6, these records shall be made available to competent authorities and ESMA when requested, allowing them to potentially identify any patterns that suggest influence by the participants over the outcome of the PTRR exercise.

4.2.4.2 Feedback

174. All respondents to the CP supported ESMA's view on the no-influence requirement over the result of the PTRR exercise by participating entities and did not believe that other safeguards should be considered.

4.2.4.3 ESMA's assessment and final approach

175. ESMA notes that the requirement that an exercise shall be accepted in full or not accepted at all, preventing participants to choose which trades to execute, is already envisaged in point (c) of paragraph 3 of Article 4b of EMIR. Thus, ESMA does not believe it should be further specified in the draft RTS.
176. ESMA also notes that the obligation to prevent any influence over the result of the exercise is reinforced by the provision of point (a) of paragraph 4 of Article 4b of EMIR, requiring PTRR providers to act in a reasonable, transparent and non-discriminatory manner.

177. Moreover, point (a) of paragraph 3 of Article 4b of EMIR already envisages that a PTRR exercise shall be conducted independently by the PTRR service provider acting as a third-party.
178. Finally, providers need to comply with the conflicts of interest requirements set out by MiFID II and to specifically ensure the suitability and the adequacy of the conflicts of interest policy with the PTRR services (see section 4.1.4). Article 6 of the draft RTS requires PTRR service providers to describe the circumstances which constitute or may give rise to a conflicts of interest in the provision of the PTRR services and the procedures to be followed and measures to be adopted in order to prevent or manage the conflicts.

4.2.5 Regularity of the compression exercise

4.2.5.1 Proposal in the CP

179. As described in section 3.3, new (offsetting) transactions are executed in the context of portfolio rebalancing exercises in order to reduce exposure to counterparties. Through the creation of new transactions, the counterparty risk is redistributed among the PTRR participants. However, this comes at the cost of new transactions being booked, increasing the participants' total number of transactions and, consequently, the total notional amount of the transactions in a portfolio may increase.
180. According to point (c) of paragraph 4 of Article 4b of EMIR, where PTRR exercises result in new PTRR transactions, providers shall undertake regular compression exercises. A compression exercise allows providers to (partially or fully) terminate existing transactions where offsetting matching transactions are identified or to conduct replacement transactions, within certain tolerances (see section 3.3). As a result, regular portfolio compression exercises may prove useful in reducing the number of newly created transactions as part of portfolio rebalancing exercises and their total notional amount.
181. Since the requirement to undertake regular compression exercises, where PTRR exercises result in new PTRR transactions, is already set out by point (c) of paragraph 4 of Article 4b of EMIR, ESMA did not specify it further in the draft RTS.

4.2.5.2 Feedback

182. The respondents to the CP agree with ESMA's proposal that there is no need to further specify the requirement for PTRR providers to undertake regular compression exercises where PTRR exercises result in new PTRR transactions.

4.2.5.3 ESMA's assessment and final approach

183. ESMA acknowledges the support of the respondents to the CP to its stance on regularity of the compression exercise and did not include further requirements in the draft RTS.

4.2.6 Record-keeping of transactions executed pursuant to a PTRR exercise

4.2.6.1 Proposal in the CP

184. As described in the CP, ESMA proposed to specify in the draft RTS the record-keeping requirements set out in point (d) of paragraph 4 of Article 4b of EMIR, with a view to facilitating checks on compliance with the market risk neutrality requirements. In particular, ESMA proposed in Article 15 of the draft RTS that PTRR service providers include in their records evidence that the result of the PTRR exercise is market risk neutral.

185. Similarly, to facilitate checks by the competent authority on the requirements on risk reduction set forth in the draft RTS, ESMA proposed that the records kept by the providers should further detail the change in the risk of the different portfolios by including (i) a breakdown of how the different types of risks are reduced as a result of the PTRR exercise or kept within the tolerances expressed by the participants to the PTRR exercise; and (ii) the information showing that the PTRR exercise did not result in an increase in the aggregate net uncleared risk in the portfolio of any participant.

186. Finally, to facilitate reconciliation between the data to be reported pursuant to the CDR on EMIR Reporting and the records to be kept by PTRR service providers, Article 15 of the draft RTS requires providers to include the PTRR ID set out in point (c) of Article 7 of the CDR on EMIR Reporting in the records to be kept by PTRR service providers.

187. To limit unnecessary regulatory burden on PTRR service providers, ESMA would encourage the use of the Exercise Performance Report to comply with the records keeping obligation set out in EMIR and in the draft RTS, provided that the required information is included. The Exercise Performance Report should be made available upon request, without undue delay, to the relevant competent authorities and to ESMA.

188. With regard to the means of data storage and the retention period, ESMA considered in the CP whether the RTS should be prescriptive. In the spirit of burden reduction, ESMA did not propose to be prescriptive with regard to the means of data storage.

189. Concerning the retention period, ESMA has observed that the existing PTRR service providers already retain transactions data for a long period of time, as they use it for recalibrations and developments of the Algorithm.

190. Therefore, Article 16 of the draft RTS requires a similar retention period to that required for trade repositories under paragraph 3 of Article 80 of EMIR. Also considering the current market practice, ESMA believes that this retention period is in line with the burden reduction objectives.

4.2.6.2 Feedback

191. The respondents to the CP supported ESMA position on record keeping and retention period. A respondent commented that the Exercise Proposal and the Exercise Performance Report should already contain the information included in Article 15 on record keeping of the draft RTS.

4.2.6.3 ESMA's assessment and final approach

192. ESMA acknowledges the support of the respondents to the CP to the provisions of the draft RTS on record keeping and retention period and decided to maintain Articles 15 and 16 of the draft RTS as proposed in the CP.

4.3 Process for monitoring the application of the PTRR exemption

4.3.1 Proposal in the CP

193. Point (f) of paragraph 6 of Article 4b of EMIR mandates ESMA to specify the process for monitoring the application of the exemption of PTRR transactions from the CO. The objective of this mandate is to outline the process for the competent authorities of PTRR service providers to conduct such monitoring.

194. In the CP, ESMA considered that the monitoring of the application of the exemption of PTRR transactions by the competent authority which authorised the PTRR service provider under MiFID II could be conducted through the assessment of information to be submitted by PTRR service providers. To this aim, the PTRR service provider should confirm its compliance with the requirements set out in paragraphs 3 and 4 of Article 4b of EMIR to its competent authority¹⁸.

¹⁸ It is worth noting that the monitoring of the application of the PTRR exemption by the PTRRS providers' competent authorities, does not affect the crucial role and responsibility of the PTRR service participants' competent authorities to monitor potential circumventions of the clearing obligation on the basis of Article 4 of EMIR. In particular, participants' competent authorities are expected to contact the competent authorities of PTRR service providers to cooperate and exchange information, and vice-versa, whenever there are grounds to suspect possible misuse or circumvention of the CO.

195. Paragraph 3 of Article 17 of the draft RTS sets out that, when submitting such confirmation, the PTRR service provider should submit to its competent authority a report describing:

- any changes in the provider's conflicts of interest policy and the records of any cases of conflict of interests, together with a description of how recorded conflicts of interests have been managed;
- any changes in the provider's rules and any material changes in methods and algorithms applied to provide the PTRR service and the methodologies to develop and test them;
- any changes to the provider's governance arrangement referred to in Article 13;
- the reports submitted by the staff responsible for monitoring the outcome of the PTRR exercise to the compliance function concerning cases of non-compliance with the requirements set forth in EMIR and in the draft RTS;
- the reports submitted by the compliance function to the management body, on the identification of any potential risks of misuse or circumvention of the clearing obligation;
- the annual reports submitted by the compliance function to the management body on the adequacy and effectiveness of the measures and procedures put in place to prevent any misuse or circumvention from the clearing obligation, as well as on any identified shortcomings and the remedial actions taken.

196. Competent authorities should be able to request from PTRR service providers any other information needed to carry out their assessment of compliance with paragraphs 3 and 4 of Article 4b of EMIR.

197. As regards the frequency of submission, paragraph 5 of Article 17 of the draft RTS requires PTRR service providers to submit the confirmation of compliance and the reports to their competent authorities annually or upon request.

198. In addition to the reports mentioned above, paragraph 6 of Article 17 of the draft RTS requires PTRR service providers to notify their competent authorities, without undue delay, whenever there is a material change or planned material change in policies, rules, methods, algorithms and governance arrangements or a case of non-compliance occurs in relation to any of the requirements of paragraphs 3 and 4 of Article 4b of EMIR.

4.3.2 Feedback

199. The respondents to the CP supported ESMA's proposed process for monitoring the application of the CO exemption.
200. Two respondents proposed amending point (b) of paragraph 3 of Article 17 of the draft RTS. Article 17 introduces the requirement for PTRR service providers to submit a yearly report to their NCAs, and point (b) of paragraph 3 requires information on *"any changes in the provider's rules, methods and algorithms used to provide the PTRR service referred to in Article 8 and in the methodologies to develop and test them"*.
201. These respondents suggested requiring only information on *"any material changes"* to be included in the yearly report. In their view, Algorithms are continuously fine-tuned to improve results for PTRR service users, but this does not mean there is a change in the fundamental structure of the Algorithms. Including all changes to the Algorithms regardless of materiality would overload the yearly report with information. Instead, the report should only include material changes, as a summary of those already reported on an ongoing basis under paragraph 6 of Article 17 of the draft RTS:

Article 17

Process for monitoring the application of the exemption

[...]

3. When confirming compliance pursuant to paragraph 2 of this Article, the PTRR provider shall submit a Report including: [...]

(b) any material changes in the provider's rules, methods and algorithms used to provide the PTRR service referred to in Article 8 and in the methodologies to develop and test them; [...]

4.3.3 ESMA's assessment and final approach

202. ESMA agrees with the view expressed by the two respondents in relation to point (b) of paragraph 3 of Article 17 that changes to the Algorithms included in the yearly report should be material, otherwise they might overload the yearly report with superfluous information. However, the amendment proposed by the respondents to point (b) would have an impact not only on changes to the methods and Algorithm but also on changes to the providers' rules adopted to provide a PTRR service.
203. Therefore, ESMA amended point (b) by distinguishing changes in the provider's rules from changes in methods and Algorithms. While changes in methods and Algorithms

should be reported if they are material, changes in the provider's rules should always be relevant for monitoring purposes, hence always reported:

Article 17

Process for monitoring the application of the exemption

[...]

3. When confirming compliance pursuant to paragraph 2 of this Article, the PTRR provider shall submit a Report including:

(b) any changes in the provider's rules and any material changes in the methods and algorithms applied to provide a PTRR service referred to in Article 8 and in the methodologies to develop and test them;

5 Considerations on the transactions to be recorded for the purpose of the exemptions under MiFIR

5.1 Proposal in the CP

204. Article 31 of MiFIR extends the exemptions from transparency, DTO and best execution requirements to OTC derivative transactions resulting from PTRR services.

205. Paragraph 4 of Article 31 of MiFIR empowers the Commission to specify a) the eligible PTRR services and b) the transactions to be recorded by PTRR service providers.

206. The MiFIR DA amending CDR 2017/567, pursuant to point a) of such mandate identifies compression, rebalancing and basis risk optimisation as eligible PTRR services.

207. ESMA in the CP provided considerations to support the Commission on the record-keeping aspect of the mandate, namely the transactions to be recorded by PTRR service providers for the purposes of the exemption under MiFIR.

208. In particular, to allow the competent authorities to have an overview of the PTRR exercise, as previously prescribed by Article 18 of CDR 2017/569 for compression, ESMA in the CP recommended for the transactions to be recorded under MiFIR to include for each exercise at least:

a) the list of derivatives submitted to the PTRR exercise;

b) the list of derivatives changed or terminated during the PTRR exercise; and

c) the list of derivatives added or used to replace previous derivatives.

209. In addition, ESMA pointed to the importance of including in the records the information from which compliance with the requirements contained in the new Article 16a of CDR 2017/567 for the MiFIR exemptions can be checked (market risk neutrality, the risk reduction objective of the PTRR exercise and the non-price forming nature of the transactions used to perform the PTRR exercise).

210. As this information is expected to be included in the Exercise Proposal and Exercise Performance Report, in order to pursue the SBR objective, ESMA recommended allowing the PTRR service providers to use these documents to comply with the MiFIR record-keeping obligation, provided they contain the information needed for competent authorities to verify compliance with CDR 2017/567 for MiFIR exemptions.

5.2 Feedback

211. The feedback from the consultation was supportive of the recommendation on record keeping under MiFIR.

212. Some respondents expressly agreed that records should capture the market risk neutrality of the PTRR exercise, its risk reduction objective, and the non-price-forming nature of the transactions used.

213. Lastly, the respondents did not express any concerns with ESMA's suggestion that the Exercise Proposal or the Exercise Performance Report could be used to meet MiFIR record-keeping requirements.

5.3 ESMA's assessment and final approach

214. ESMA would recommend the Commission to enable the PTRR service providers to use the Exercise Proposal or the Exercise Performance Report for the purposes of complying with the record keeping obligation of Article 31 of MiFIR, provided that they display market risk neutrality, the risk reduction objective of the PTRR exercise and the non-price forming nature of the transactions used to perform the PTRR exercise

6 Annexes

6.1 Annex I – Summary of questions

Q1: Do you agree with the description and analysis of PTRR services, portfolio compression, portfolio rebalancing, and basis risk optimisation? If not, why?

Q2: Do you know other types of PTRR services? Please elaborate.

Q3: Do you agree with ESMA proposal on market risk neutrality? If not, why?

Q4: Can you please provide information on how are tolerances usually set in a PTRR exercise, and what is their level, if possible? Do you think some criteria should be set to identify appropriate risk tolerances?

Q5: Do you agree with ESMA analysis and proposal on risk reduction by PTRR services? Do you think any additional criteria should be used to determine risk reduction in PTRR services?

Q6: Do you agree with ESMA proposal relating to the safeguards to avoid a circumvention of the CO? Would you add specific limitations regarding the composition of the portfolios subject to the exercise (e.g. uncleared portfolios only for compression)? Please justify your answer.

Q7: Do you agree with ESMA proposal on the independence of the provider from the parties to the OTC derivatives contracts included in the exercise?

Q8: Do you agree with ESMA proposal on the information to be provided to clients?

Q9: Do you agree with ESMA proposal on the obligations of the PTRR service providers concerning the Algorithm?

Q10: Do you think that the draft RTS should require PTRR service providers to adopt other specific measures to detect potential misuse or circumvention of the CO?

Q11: Do you agree with the proposal regarding the requirements of the PTRR service agreement, the PTRR exercise elements and their management? Do you think that any requirements should be added or removed?

Q12: What do you think of the possibility of adding derivatives eligible for termination or reduction after the PTRR exercise output proposal? Should this possibility be introduced, do you think it would enable PTRR participants to influence the outcome of the exercise?

Q13: Do you think that other safeguards concerning the obligation not to influence the result of the PTRR exercise should be considered in the RTS?

Q14: Do you see the need to further specify in the draft RTS the requirement for PTRR providers to undertake regular compression exercises where PTRR exercises result in new PTRR transactions as set out in point (c) of paragraph 4 of Article 4b of EMIR?

Q15: Can you confirm that the Exercise Proposal and the Exercise Performance Report contain the described information, and, in particular, the information required by the record keeping obligations under EMIR and the draft RTS? If this is not the case, please describe their content, highlighting the data which is missing in comparison to what is requested by EMIR and the draft RTS.

Q16: Do you agree with the draft RTS proposal on record keeping, including the proposed retention period?

Q17: In addition to the requirements described in the proposal, is there any other requirements which you would consider necessary to be further specified in the RTS? If yes, please detail the requirement and provide arguments supporting your answer.

Q18: Do you agree with the recommendation made regarding record keeping under MiFIR?

6.2 Annex II – Legislative mandate to develop technical standards

Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets

[...]

6. ESMA shall develop draft regulatory technical standards to further specify the elements and requirements set out in paragraphs 3 and 4 and the following other conditions or characteristics of PTRR exercises:

- (a) what constitutes market risk neutrality in a PTRR exercise;
- (b) the required risk reduction in submitted portfolios;
- (c) the possible inclusion of mixed portfolios containing both cleared and uncleared transactions in the same PTRR exercise and the conditions under which such inclusion would be allowed;
- (d) requirements regarding the management of the PTRR exercise;
- (e) requirements for different types of PTRR services;
- (f) the process for monitoring the application of the exemption granted; and
- (g) the criteria to apply when assessing whether the clearing obligation is circumvented.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 25 December 2025.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

6.3 Annex III – Cost-benefit analysis

1. This section sets out ESMA's cost-benefit analysis of the draft RTS specifying the requirements for PTRR services for the purpose of the CO exemption under Article 4b of EMIR.
2. The analysis is qualitative in nature. This reflects the specific nature of the mandate, the limited number of entities currently providing PTRR services, and the fact that the draft RTS largely specify conditions and safeguards already set out in Level 1. It also takes into account the feedback received to the public consultation, which was broadly supportive of ESMA's approach and did not identify significant additional costs arising from the proposals.
3. Given that paragraph 6 of Article 4b of EMIR requires ESMA to develop draft RTS, this CBA does not assess whether RTS should be developed. Rather, it assesses the incremental costs and benefits of the level of specification chosen by ESMA compared with the baseline scenario in which the Level 1 requirements would apply without further technical specification.

6.3.1 Baseline scenario

4. For the purposes of this CBA, the baseline scenario is the application of Article 4b of EMIR (and thus with an exemption framework already applying) without the further specifications contained in the draft RTS. This baseline is used as an analytical counterfactual to assess the incremental effects of the draft RTS, and not as an alternative to ESMA fulfilling its mandate.
5. Under Article 4b of EMIR, PTRR exercises may benefit from the CO exemption only where the relevant Level 1 conditions are met. These include, among others, requirements relating to the independence of the PTRR service provider, risk reduction in each submitted portfolio, acceptance of the exercise in full, participation only by entities that initially submitted a portfolio, market risk neutrality, the non-price-forming nature of the transactions, and the form of the service as compression, rebalancing, optimisation or a combination thereof.
6. In the absence of further technical specifications through the RTS, market participants and competent authorities would rely directly on these Level 1 requirements. This would limit additional implementation costs in the short term, but it would provide less legal certainty and could result in divergent approaches to key concepts such as market risk neutrality, risk reduction, the inclusion of mixed portfolios, the prevention of circumvention of the CO, record-keeping and monitoring.

6.3.2 Technical options on the level of specification of the RTS

7. In developing the draft RTS, ESMA considered the appropriate level of technical specifications. The main options are summarised below.

Option	Description	Main benefits	Main limitations
Option 1 Minimal specification	The RTS would narrowly specify the Level 1 requirements, leaving most practical aspects to market practice and supervisory assessment.	Lower immediate implementation costs and greater flexibility for providers and participants.	Less legal certainty, greater risk of divergent supervisory approaches and weaker harmonisation of safeguards.
Option 2 Prescriptive specification	The RTS would introduce detailed requirements, such as fixed quantitative thresholds, prescribed risk metrics, detailed Algorithm requirements, additional portfolio restrictions or prescribed reporting formats.	Greater comparability and more uniform implementation across providers and authorities.	Higher implementation costs, reduced flexibility and risk of over-prescriptiveness, particularly where existing market practice already provides relevant safeguards.
Option 3 Targeted and proportionate specification	The RTS specify the core safeguards needed for the safe use of the exemption while building on existing requirements, market practices and documentation.	Legal certainty, supervisory convergence and targeted safeguards, while limiting unnecessary burden.	Some limited one-off and ongoing costs for providers, participants and competent authorities.

8. ESMA selected Option 3. This option provides a harmonised framework for the application of the PTRR service exemption, while preserving the flexibility needed to accommodate different types of PTRR services, portfolio compositions and operational models.

6.3.3 Assessment of the preferred option

Benefits

9. The preferred option is expected to provide several benefits.

- It enhances legal certainty by clarifying how the conditions in Article 4b of EMIR should be applied in practice. This is particularly relevant for concepts such as market risk neutrality, risk reduction, no increase in aggregate net uncleared risk, the functioning of the PTRR exercise, and the monitoring of the exemption.
- It supports supervisory convergence by providing competent authorities with a common framework to assess compliance by PTRR service providers, including through the annual confirmation of compliance and the reporting of relevant changes, non-compliance events and remedial actions.

- It strengthens safeguards against the misuse or the circumvention of the CO by requiring, in particular, that the PTRR exercise reduces overall risk in each submitted portfolio and does not increase aggregate net uncleared risk in any of those portfolios.
- It facilitates the use of PTRR services by providing a clearer and more predictable regulatory framework. This may support a broader use of PTRR services and their associated benefits in terms of risk reduction, operational efficiency and resilience of OTC derivatives markets.
- It limits unnecessary burden by avoiding overly prescriptive regulatory requirements, such as mandatory quantitative thresholds, mandatory use of a specific risk metric, disclosure of proprietary Algorithmic details or overly detailed reporting formats.

Costs to regulators

10. The preferred option may entail limited costs for competent authorities. These costs relate primarily to the review of confirmations of compliance submitted by PTRR service providers, the assessment of reports on changes to conflicts of interest policies, rules, methods, Algorithms and governance arrangements, and cooperation with other competent authorities where necessary.
11. These costs are expected to be limited and proportionate. The monitoring process builds on the role already assigned to competent authorities under Article 4b of EMIR and relies on information that PTRR service providers should be able to maintain as part of their ordinary business and compliance processes.

Compliance costs

12. PTRR service providers may face limited one-off and ongoing compliance costs. One-off costs may arise from reviewing and updating conflicts of interest policies, service agreements, client information documents, governance arrangements, Algorithm testing methodologies, control frameworks and record-keeping processes. Ongoing costs may arise from maintaining records, carrying out controls, preparing annual confirmations and reports, notifying material changes or non-compliance events, and ensuring that the information provided to participants remains adequate.
13. These costs are expected to be limited for several reasons. First, PTRR service providers are required under Level 1 to be authorised investment firms and are therefore already subject to relevant organisational, governance and conflicts of interest requirements. Second, the draft RTS build on existing market practices and documentation used in PTRR exercises, including the Exercise Proposal and the Exercise Performance Report, where those documents contain the information required by the RTS. Third, the draft RTS avoid imposing additional prescriptive requirements where the regulatory objectives can be achieved through existing arrangements or outcome-based safeguards.

Costs to other stakeholders

14. PTRR participants may incur limited costs where they need to review contractual documentation, operational processes or internal procedures to align with the final RTS. These costs are expected to be limited, as the draft RTS primarily impose obligations on PTRR service providers and the main requirements applicable to participants are already embedded in Level 1, including the requirements to submit portfolios, set tolerances and accept or reject the exercise proposal in full.

15. No significant costs to other stakeholders have been identified.

Proportionality, simplification and burden reduction

16. The preferred option is proportionate because it focuses on the elements necessary to ensure the safe application of the PTRR exemption and the prevention of misuse or circumvention of the CO. It avoids introducing requirements that would duplicate existing MiFID, MiFIR or EMIR obligations, and it preserves flexibility for PTRR service providers and participants to design processes adapted to different PTRR services, portfolio compositions and operational models.

17. The approach is also consistent with SBR objectives. The draft RTS clarify the applicable safeguards without introducing unnecessary changes where the relevant objectives are already met through current market practices or existing regulatory requirements.

6.3.4 Summary assessment by policy area

18. The table below summarises the expected costs and benefits of the preferred option by main policy area. This structure avoids duplicating the article-by-article analysis in the body of the Final Report while still identifying the main regulatory choices and their expected impacts.

Policy area	Preferred approach	Expected benefits	Expected costs
Requirements for PTRR exercises	Specify market risk neutrality, risk reduction, no increase in aggregate net uncleared risk and the main features of eligible PTRR services.	Greater legal certainty, clearer safeguards against circumvention of the clearing obligation and more consistent supervisory assessment.	Limited implementation costs to align internal procedures, documentation and controls with the specified requirements.
Operating conditions for PTRR service providers	Specify targeted requirements on transparency, conflicts of interest, Algorithms, testing, service agreements, exercise proposals, governance and controls.	Improved transparency for participants, enhanced governance and controls, and reduced risk of misuse or discriminatory outcomes.	Limited costs to review policies, agreements, control frameworks and internal governance arrangements.
Record-keeping and monitoring	Specify the information to be retained, allow reliance on	More efficient supervisory monitoring, easier verification	Limited ongoing costs for keeping records,

	existing documentation where sufficient, and establish a process for annual confirmation and reporting to competent authorities.	of compliance and better evidence of market risk neutrality and risk reduction.	preparing annual confirmations and notifying material changes or non-compliance events.
Overall level of specification	Adopt a targeted and proportionate RTS rather than minimal or highly prescriptive specifications.	Balances legal certainty and supervisory convergence with flexibility and burden reduction.	Some incremental compliance and supervisory costs, expected to be outweighed by the benefits of a clear and harmonised framework.

6.3.5 Conclusion

19. Overall, ESMA considers that the benefits of the preferred option outweigh the expected costs. The draft RTS provide a harmonised and proportionate framework for the use of the PTRR service exemption, enhance legal certainty and supervisory convergence, support the safe use of PTRR services, and introduce targeted safeguards against the misuse or the circumvention of the CO.
20. At the same time, the draft RTS limit additional burden by building on existing requirements, current market practices and existing documentation used in PTRR exercises. The preferred option is therefore considered proportionate and consistent with ESMA's simplification and burden reduction objectives.

6.4 Annex V – Feedback on the consultation paper

Q1: Do you agree with the description and analysis of PTRR services, portfolio compression, portfolio rebalancing, and basis risk optimisation? If not, why?

21. All respondents to this question supported the proposal. More in details, one respondent fully agreed with ESMA's definition and analysis of portfolio compression, portfolio rebalancing, and basis risk optimisation.
22. Two respondents broadly supported ESMA's approach, which treats compression, rebalancing and basis risk optimisation as examples of PTRR services without excluding future services. They stressed that PTRR services continue to evolve and therefore favour a principles-based framework that can accommodate new service types. They also proposed reflecting in the recitals ESMA's statement that ESMA stands ready to consider additional PTRR services in future (paragraph 104 consultation paper).
23. They however argued that the draft definitions of portfolio rebalancing and basis risk optimisation are overly restrictive because they state that no existing trade in the portfolio may be terminated or replaced. It should be deleted, as rebalancing may require terminating trades from previous runs to avoid unnecessary notional, and combined PTRR exercises may also involve terminating existing trades. They noted that this is consistent with Article 4b(3)(g) of EMIR, which allows combinations of compression, rebalancing and optimisation, and with paragraph 89 of the consultation paper, where ESMA recognised that some trades may be terminated to achieve risk reduction.
24. More in details, the amendment suggested is the following:

"Article 2

Portfolio rebalancing

Transactions resulting from a portfolio rebalancing are eligible for the exemption from the clearing obligation set out in Article 4b of Regulation (EU) No 648/2012 when in the PTRR exercise counterparty risk is reduced in an existing portfolio of trades by adding new non-price forming trades and where ~~no existing trade in the portfolio is terminated or replaced~~ and the notional is increased rather than decreased.

Article 3

Basis risk optimisation

Transactions resulting from a basis risk optimisation are eligible for the exemption from the clearing obligation set out in Article 4b of Regulation (EU) No 648/2012 when in

the PTRR exercise basis risk is reduced in an existing portfolio of hedged trades by adding non price forming trades and where ~~no existing trade in the portfolio is terminated or replaced and~~ the notional is increased rather than decreased.

ESMA staff proposal:

25. ESMA staff recalls that the description of rebalancing outlined in Article 2 of the draft RTS is in line with field 39 Table 2 of CDR on EMIR Reporting (CDR 2022/1855) on Portfolio Rebalancing/Margin management. Furthermore, the aim of the descriptions of the different types of services contained in the draft RTS is to identify the distinguishing features of each type of PTRR service, including by comparison with one another (e.g., compression). As a result, ESMA staff proposes not to take on-board the drafting suggestion by the two respondents to delete the reference regarding trades termination in the description of rebalancing and basis risk optimisation. However, it is proposed to highlight in the Final Report that a termination of trades can take place in the combination of such types of exercises with compression.

Q2: Do you know other types of PTRR services? Please elaborate.

26. The three respondents to this question did not identify additional PTRR services that should be expressly covered by the exemption at this stage, but they stressed that the market continues to evolve and that new services may emerge over time.
27. Two respondents supported keeping the current focus on portfolio compression, rebalancing and basis risk optimisation.
28. Another respondent likewise noted no further services at present and welcomed flexibility for ESMA to recognise future innovation, and suggested to clarify this in a recital.

Q3: Do you agree with ESMA proposal on market risk neutrality? If not, why?

29. The proposal on market risk neutrality received support and all 4 respondents agree that PTRR exercises should preserve overall market risk before and after the exercise, subject to limited tolerances.
30. Three respondents fully supported the proposal, including the possibility of allowing very small risk changes where necessary in portfolio compression exercises. They stressed that the PTRR exercises are however market risk neutral overall.
31. One respondent broadly agreed with the approach, but asked ESMA to provide more specificity on the definition of market risk and metrics used to assess neutrality, as well as the adequacy of tolerance levels. Such guidance would avoid the risk of different providers

may apply materially different metrics or thresholds, leading to inconsistent outcomes and potential avenues for misuse.

32. Recognising the difficulties associated with prescribing specific tolerance limits, this respondent suggested ESMA to review the adequacy of the tolerances chosen by the PTRR service users after a certain period following the implementation of the RTS and, if required, consider setting limits.
33. In addition, it suggested to use DV01 as metric for determining market risk neutrality. The suggestions follow the remarks that DV01 is widely used across the industry, well-understood, and appropriate for determining whether risk has increased or decreased following a PTRR exercise.

ESMA staff proposal:

34. ESMA's staff proposes to maintain the proposal on market risk neutrality as presented in the consultation paper. In addition, it is proposed to consider any further elaboration on risks metrics (including DV01) once NCAs have more information on the PTRR service exercises and the metrics used across providers to quantify risk.

Q4: Can you please provide information on how are tolerances usually set in a PTRR exercise, and what is their level, if possible? Do you think some criteria should be set to identify appropriate risk tolerances?

35. All four respondents favoured the proposal and did not suggest adding any criteria to identify appropriate risk tolerances. One respondent however proposed to review how tolerances are set after the entry into force of the RTS, whereas two other respondents suggested to delete the second part of Article 5 indicating that PTRR service provider shall ensure that the tolerances set by all participants in the PTRR do not affect significantly the overall exposure of portfolios. The following paragraphs report the reply of the participants more in details.
36. One respondent supported ESMA's approach that tolerances should remain minimal, and acknowledging the difficulty in prescribing maximum tolerance levels, did not propose specific numerical criteria at this stage. Given the importance of maintaining genuine market-risk neutrality, it suggested however ESMA to carry out a review after the RTS has been in force for some time to assess whether tolerances are minimal and aligned with the intended risk-neutrality standard. If the review were to show significant divergence or the emergence of overly permissive tolerance settings, this could provide an evidence-based foundation for considering more specific tolerances or clearer supervisory expectations in the future.

37. Two respondents explained that participants normally pre-define minimal tolerances ahead of each PTRR run, with examples including delta risk tolerances (compression) and counterparty credit exposure tolerances (rebalancing), and that both the provider's Algorithm and participants themselves check compliance.
38. They did not support adding further criteria for appropriate risk tolerances, arguing that the existing requirement for tolerances to be minimal is sufficient, and proposed deleting the RTS wording requiring providers to ensure tolerances do not significantly affect overall portfolio market risk. This is because i) tolerances are required to be minimal, the consequence is that they should typically not affect participants' overall exposure (ii) providers would not be able to "ensure" the absence of a significant impact on market participants' overall portfolio given their lack visibility of firms' full portfolios. As a result, they propose amending Article 5 (2) as follows

"Article 5

Market risk neutrality

2. A PTRR service provider shall ensure that the tolerances set by the participants in the PTRR exercise are minimal" ~~and do not affect significantly the overall exposure of their portfolios towards market risk.~~

39. One respondent noted that participants provide tolerances for each PTRR run and that the service provider's Algorithm ensures outcomes remain within those limits. It does not consider it necessary for the RTS to set additional criteria for appropriate risk tolerances, as the requirement that tolerances be minimal already constrains them, and it favours leaving flexibility for providers to calibrate tolerances depending on the type of PTRR service and the composition of each client portfolio.

ESMA staff proposal:

40. On the one hand, ESMA's staff recalls that the aim of the provisions regarding market risk neutrality is to give an indication of what is meant by market risk neutrality in the context of PTRR services. On the other hand, ESMA's staff acknowledges PTRR service providers lack of visibility on the participants' overall portfolio. As a result, ESMA staff proposes to maintain the last sentence of Article 5 but i) to delete "overall", and ii) to specify the portfolio to be considered by the PTRR service provider is the one submitted to the PTRR exercise. The change would result in the following provision

"Article 5

Market risk neutrality

A PTRR service provider shall ensure that the tolerances set by ~~the~~all participants in the PTRR exercise are minimal, ~~and do not affect significantly the~~overall exposure of ~~their~~the ~~submitted~~ portfolios towards market risk”.

Q5: Do you agree with ESMA analysis and proposal on risk reduction by PTRR services? Do you think any additional criteria should be used to determine risk reduction in PTRR services?

41. Overall, all four respondents broadly supported ESMA’s proposal that PTRR exercises should achieve an overall risk reduction for each participating portfolio, and none oppose the proposal.
42. One respondent also supported the approach but requested further clarification to ensure consistent application and avoid circumvention. In particular, it remarked that the interpretation of “*overall risk*” remains open, and expressed the concern that the absence of any reference points (e.g., sensitivity-based measures, exposure-based metrics, or an acceptable suite of standardised measures) may create a risk of inconsistent application across providers. It thus recommended to specifically require a reduction of DV01 for each portfolio and name the risk types for which an increase of risk would be acceptable. In addition, it reiterated the suggestions to review the implementation of the thresholds after the entry into force of the RTS.
43. The other three respondents agreed with the proposed conditions without calling for additional criteria. One of them nevertheless emphasised that if a firm’s portfolio is submitted and does not get a result, the rest of the exercise should continue and qualify as a PTRR exercise even though that firm does not receive a reduction in overall risk of its portfolio.

ESMA staff proposal:

44. ESMA’s staff proposes to analyse and reassess the need for further indications on risk metrics and tolerances once NCAs have more information on the PTRR service exercises.

Q6: Do you agree with ESMA proposal relating to the safeguards to avoid a circumvention of the CO? Would you add specific limitations regarding the composition of the portfolios subject to the exercise (e.g. uncleared portfolios only for compression)? Please justify your answer.

45. Respondents broadly supported ESMA’s proposed safeguards against circumvention of the clearing obligation and agreed that PTRR exercises should not increase aggregate net uncleared risk.

46. One respondent supported the requirement for PTRR exercises to not increase aggregate net uncleared risk, but asked ESMA to clarify the methodology for assessing this. It proposed explicitly recognising DV01 as a baseline metric and supplementing it with monitoring of increases in uncleared notional. In addition, it suggested ESMA to regular monitoring of whether there is an increase of uncleared notional resulting from the use of PTRR services.
47. Three respondents did not support adding specific portfolio-composition limits, arguing that existing risk-reduction, risk-neutrality and exercise constraints (e.g., mixed rebalancing runs constraints to prevent any increase in net uncleared risk) already prevent abuse.
48. In addition, two respondents questioned the value of the “*specific measures and targeted ongoing checks*” that PTRR service providers would be required to perform under article 14 of the RTS noting that where all the ex-ante conditions that apply on PTRR exercises are met, the exemption legitimately apply and there can be no circumvention. They thus suggested an annual attestation of compliance as an alternative to unspecified ongoing checks.
49. They also noted that ESMA and NCAs will be able to monitor how the exemption is used through EMIR Article 9 reporting. In that regard, they ask to clarify how the ‘Clearing Obligation’ field should be populated for PTRR transactions that benefit from the exemption.

ESMA’s response:

50. ESMA staff proposes to reassess the need of further indications on risk measures once NCAs have more information the PTRRS exercises. In the meanwhile, the Final Report includes some clarifications or examples on how to assess that the exercise does not increase aggregate net uncleared risk (e.g., comparison before and after the exercise using the same metrics).
51. In addition, it is proposed to maintain in the draft RTS the obligation to conduct checks to avoid any circumvention of the clearing obligation. In this respect, the Final Report provides some examples of such checks (e.g., checks on the proposal made by the Algorithm as regards risk reduction).

Q7: Do you agree with ESMA proposal on the independence of the provider from the parties to the OTC derivatives contracts included in the exercise?

52. The respondents to this question agreed with ESMA’s proposed provisions on independence of the provider.

53. One respondent indicated that existing MiFID requirements on conflicts of interest are sufficient and can be supported by appropriate internal policy and procedures to tailor the requirements to PTRR services. As recognised by ESMA, a PTRR provider may be part of a larger group that includes a CCP and participants to a PTRR exercise may also have invested in the PTRR service provider. An overly restrictive definition of independence could limit risk reduction services to a subset of transactions and reduce the efficiency of PTRR services. The optimisation Algorithm is an objective function and does not discriminate based on the identity of the participant.

Q8: Do you agree with ESMA proposal on the information to be provided to clients?

54. Two respondents suggested amending paragraph 2 of Article 9 on Transparency. The requirement under the second subparagraph of paragraph 2 of Article 9 that the PTRR service provider shall specify *“that participants remain free to not take part to a run if the outcome is not in line with their risk reduction targets or management”* might not be reflective of current practice. A specific participants’ own risk reduction targets or management is not an input factor in the run. Differently, the outcome will always be *“in line with participants’ tolerances”*. These respondents suggested replacing risk *“reduction targets or management”* with *“tolerances”* or deleting the second subparagraph:

Article 9

Transparency

[...]

2. When providing information on the PTRR service, a PTRR service provider shall ensure that participants in the PTRR exercise are aware that:

- (a) the exercise is open for participation only to entities that initially submitted a portfolio to the PTRR exercise; and*
- (b) each exercise shall be accepted in full, where applicable and, as a result the participant in the PTRR exercise shall not be able to choose which trades to execute under the PTRR exercise.*

~~*When providing such information, the PTRR service provider shall specify that participants remain free to not take part to a run if the outcome is not in line with their risk reduction targets or management.*~~

OR

*When providing such information, the PTRR service provider shall specify that participants remain free to not take part to a run if the outcome is not in line with their **tolerances**.*

ESMA's response:

55. While deleting this subparagraph would remove a safeguard for PTRRS participants, its amendment, taking into account "*tolerances*" instead of "*risk reduction targets and management*", seems to better reflect the current market practice. In addition, tolerances should already reflect risk reduction targets, as per paragraph 2 of Article 4 of the draft RTS. With regard to participants' risk reduction management, it should also be already expressed by the tolerances set. Hence, it would be covered by the proposed amended wording.

Q9: Do you agree with ESMA proposal on the obligations of the PTRR service providers concerning the Algorithm?

56. The respondents to this question agreed with ESMA's proposal.

57. One respondent stressed that they would not support any regulatory requirement for PTRR service providers to share technical information about the Algorithm with participants. They consider such information to be proprietary and that a general regulatory disclosure obligation could create the potential for misuse. They agree with the current approach requiring a high-level description of the Algorithm to clients.

58. The same respondent asked a clarification as to what is meant in paragraph 2 of Article 12 of the draft RTS on the PTRR exercise output proposal by "*validate*", as it does not appear elsewhere in the ESMA consultation.

59. Two respondents flagged erroneous cross-references in Article 7 (Rules of the PTRR exercise, including methods and Algorithms) which should be amended as follows: (a) *it is market risk neutral, as specified in Article 4 **5** of this Regulation*; (b) *it achieves risk reduction, as specified in Article **4 5** of this Regulation*.

ESMA's response:

60. On the request for clarification of paragraph 2 of Article 12, the term "*validate*" should mean "*to confirm*" that the exercise was accepted by all participants and that the resulting proposed transactions can be performed. It is worth noting that "*validate*" does not mean "*to perform*" the transactions, because the performance of the proposed transactions is generally carried out by participants. Furthermore, the meaning of the term "*validate*" should not be linked to the moment at which the exercise becomes legally binding, as parties may agree to attach the legal effect to another moment e.g., the confirmation by the participant that it accepts the output proposal. ESMA, in the Final report, amended paragraph 2 of Article 12 to clarify its meaning.

Q10: Do you think that the draft RTS should require PTRR service providers to adopt other specific measures to detect potential misuse or circumvention of the CO?

61. All four respondents supported the draft RTS and do not propose additional specific measures to detect misuse or circumvention of the clearing obligation. The common view is that the existing safeguards – risk reduction, market risk neutrality within predefined tolerances, and the requirement not to increase uncleared risk – are already sufficient and proportionate.
62. One respondent supported the proposal as proportionate and effective, and welcomed the requirement for ongoing, targeted checks to prevent misuse or circumvention.
63. Two respondents did not see a need for additional measures, considering the existing conditions to be robust safeguards, and noted that EMIR Article 9 reporting also allows authorities to monitor use of the exemption.
64. Another respondent did not support adding other specific measures, it supported the outcomes-based approach focused on no increase in uncleared risk, and asked for more clarity on the requirement to prevent external manipulation of PTRR exercises. It also noted that it would be impractical to require PTRR service providers to monitor the intention or behaviour of participants.

Q11: Do you agree with the proposal regarding the requirements of the PTRR service agreement, the PTRR exercise elements and their management? Do you think that any requirements should be added or removed?

65. The respondents to this question agreed with ESMA's proposal.
66. Two respondents, while agreeing with the proposal, suggested the following amendments.
67. With regard to Article 10, they proposed reflecting the points made on exercises that may lead to termination or replacement of existing trades:

Article 10

PTRR service agreement

[...]

2. The agreement referred to in the first paragraph shall include all relevant legal documentation describing how and when derivatives submitted for inclusion in the PTRR service are terminated and/or replaced by other derivatives and how and when new derivatives are added, as applicable, as part of the PTRR exercise.

68. With regard to Article 11, the proposed amendment takes into account that PTRR service providers can only perform eligibility checks based on the information shared by market participants:

Article 11

Preliminary phase of the PTRR exercise

Prior to the execution of the algorithm, a PTRR service provider shall execute all of the following steps:

(a) verify the eligibility of the portfolios submitted by participants to providers for the PTRR exercise and the integrity of the submitted data, to the extent possible based on the information shared by market participants to the PTRR service provider; and [...]

69. With regard to Article 12, they proposed making a reference to the PTRR service agreement which specifies the process for acceptance of the output proposal, which might differ by type of service:

Article 12

PTRR exercise output proposal

[...]

2. A PTRR service provider shall only validate the PTRR exercise output once ~~all participants have agreed to the PTRR exercise output proposal and within a pre-defined timeframe.~~ it has been accepted in full by the participants in the PTRR exercise, according to the process set out in the PTRR service agreement.

ESMA's response:

70. Concerning the proposed amendment to Article 10 of the draft RTS, ESMA notes that this provision requires the relevant legal documentation to describe how and when derivatives submitted for inclusion in the PTRR service may be terminated, replaced or added, as part of a PTRR exercise. The use of "or" does not consider whether those actions are mutually exclusive or whether they cannot occur within the same PTRR exercise. Rather, Article 10 sets out a documentation requirement: it requires PTRR service providers to explain how such actions would be carried out, without prescribing that any particular action, or combination of actions, shall take place in a given PTRR exercise. However, ESMA acknowledged the feedback from respondents and clarified paragraph 2 of Article 10 of the draft RTS.

71. Concerning Article 11, ESMA welcomed the proposal to include “*based on the information provided by participants*” as it limits the responsibility of the providers to the available information only.

72. Concerning Article 12, ESMA agreed that a reference to the “*process set out in the PTRR service agreement*” should be made and that the term “*accepted*” instead of “*agreed*” should be used to better align with the EMIR text.

Q12: What do you think of the possibility of adding derivatives eligible for termination or reduction after the PTRR exercise output proposal? Should this possibility be introduced, do you think it would enable PTRR participants to influence the outcome of the exercise?

73. The respondents to this question agreed that such possibility should not be included. The ability to add new trades would risk undermining the provision that participants shall either accept or reject all trades within the proposal.

Q13: Do you think that other safeguards concerning the obligation not to influence the result of the PTRR exercise should be considered in the RTS?

74. The respondents to this question did not think that other safeguards should be considered.

Q14: Do you see the need to further specify in the draft RTS the requirement for PTRR providers to undertake regular compression exercises where PTRR exercises result in new PTRR transactions as set out in point (c) of paragraph 4 of Article 4b of EMIR?

75. The respondents to this question did not see the need to further specify the requirement for PTRR providers to undertake regular compression exercises where PTRR exercises result in new PTRR transactions.

Q15: Can you confirm that the Exercise Proposal and the Exercise Performance Report contain the described information, and, in particular, the information required by the record keeping obligations under EMIR and the draft RTS? If this is not the case, please describe their content, highlighting the data which is missing in comparison to what is requested by EMIR and the draft RTS.

76. A respondent confirmed that the Exercise Proposal and the Exercise Performance Report contain the described information.

77. The other two respondents agreed with ESMA’s approach.

Q16: Do you agree with the draft RTS proposal on record keeping, including the proposed retention period?

78. The respondents to this question agreed with ESMA’s proposal.

Q17: In addition to the requirements described in the proposal, is there any other requirements which you would consider necessary to be further specified in the RTS? If yes, please detail the requirement and provide arguments supporting your answer.

79. The respondents to this question have not identified any other requirements to be specified in the RTS.
80. To the contrary, two respondents indicated that some of the requirements on the providers' organisation and governance, as set out in Article 13 and 14, and on conflicts of interest, as set out in Article 6 of the draft RTS, may appear superfluous. They indicated that PTRR service providers operate under the status of MiFID investment firms, which makes them already subject to requirements on capital, governance, independence, product development and conflicts of interest. However, they did not indicate the specific requirements that they deem superfluous.
81. Moreover, these respondents propose amending point (b) of paragraph 3 of Article 17 of the draft RTS. This point introduces a requirement for PTRR service providers to submit a yearly report to their NCAs including information on *"any changes in the provider's rules, methods and algorithms used to provide the PTRR service referred to in Article 8 and in the methodologies to develop and test them"*. They suggested amending this subparagraph, requiring only information on *"any material changes"* to be included in the yearly report. In their view, Algorithms are continuously fine-tuned to improve results for PTRRS users, but this does not mean there is a change in the fundamental structure of the Algorithms. Including all changes to the Algorithms regardless of materiality would overload the yearly report with information. Instead, the report should only include material changes, as a summary of those already reported on an ongoing basis under paragraph 6 of Article 17 of the draft RTS:

Article 17

Process for monitoring the application of the exemption

[...]

3. When confirming compliance pursuant to paragraph 2 of this Article, the PTRR provider shall submit a Report including: [...]

(b) any material changes in the provider's rules, methods and algorithms used to provide the PTRR service referred to in Article 8 and in the methodologies to develop and test them; [...]

ESMA's response:

82. ESMA clarified in the Final Report how Article 6 on conflict of interests, Article 13 on organisational requirements and Article 14 on controls and compliance of the draft RTS include provisions pertaining specifically to PTRRS providers.
83. Based on the respondents' input, point (b) of paragraph 3 of Article 17 was broken down to distinguish changes in the provider's rules from changes in methods and Algorithms. While changes in methods and Algorithms should be reported if they are material, changes in the provider's rules should always be relevant for monitoring purposes, hence always reported.

6.5 Annex VI – Draft technical standards further specifying the requirements for PTRR services with regards to the exemptions from the CO

COMMISSION IMPLEMENTING REGULATION (EU) .../...

of XXX

laying down regulatory technical standards supplementing Regulation (EU) 648/2012 of the European Parliament and of the Council with regard to the exemption of the transactions resulting from PTRR services from the clearing obligation

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 ⁽¹⁹⁾, and in particular Article 4b, thereof,

Whereas:

- (1) Regulation (EU) No 648/2012 has been amended by Regulation (EU) 2024/2987 of the European Parliament and of the Council ⁽²⁰⁾. Those amendments have, inter alia, introduced an exemption from the clearing obligation for OTC derivative contracts that are initiated and concluded as a result of an eligible post-trade risk reduction ('PTRR') exercise ('PTRR transaction') carried out pursuant to paragraph 2 to 4 of Article 4b Regulation (EU) No 648/2012. To provide clarity and legal certainty to the participants of PTRR exercises and to PTRR service providers, it is necessary to further specify the requirements contained in such provisions.
- (2) In particular, considering that PTRR services should take the form of compression, rebalancing or optimisation or a combination thereof for the purposes of the exemption laid down in Article 4b of Regulation (EU) No 648/2012, it is necessary to identify the main features and the objectives of such types of PTRR services. To enhance clarity, the term "basis risk optimisation" is used in this Regulation to refer to "optimisation".

¹⁹ OJ L201, 27.7.2012, p.1

²⁰ OJ L, 2024/2987, 4.12.2024

- (3) In addition, it is important to determine what constitute market risk neutrality in a PTRR exercise and the required risk reduction in submitted portfolios. In particular, it is important to specify that market risk neutrality would mean that the PTRR exercise does not change, or changes only within the small tolerances set by the participants in the exercise, the market risk of the portfolios submitted to the PTRR exercise. Similarly, it is important to clarify that a PTRR exercise achieves risk reduction when the overall risk of each portfolio submitted to the PTRR exercise is reduced, while certain specific risk types contributing to the overall risk, such as the counterparty risk, may increase within the tolerances that are set by participants in the exercise. Furthermore, to avoid any circumvention of the clearing obligation, it is important for the PTRR exercise to not increase the aggregate net uncleared risk in any of the portfolios submitted to the PTRR exercise, whereby uncleared risk would mean the risk deriving from bilateral transactions not cleared via a CCP.
- (4) To ensure that a PTRR service provider is independent from the participants in the PTRR exercise, a PTRR service provider, when complying with its obligation to establish a conflicts of interest policy under Directive (EU) 2014/65, should pay special attention to the circumstances which constitute or may give rise to a conflict of interest in the provision of the PTRR services. This could be for example the case where one of the participants in the PTRR exercise is an entity that is part of the same group as the PTRR service provider.
- (5) When establishing its conflicts of interest policy regarding the PTRR service, the PTRR provider should consider that disclosure of specific conflicts is a measure of last resort to be used only where the organisational and administrative arrangements established by the PTRR service provider to prevent or manage its conflicts of interest are not sufficient to ensure that the risks of damage to the interests of the participants in the PTRR exercise are prevented. Thus, the conflicts of interest policy should not over rely on disclosure, and adequately consider effective organisational and administrative arrangements to appropriately prevent and manage conflicts of interest.
- (6) In order to give to participants in the PTRR exercise all necessary information, in the process which leads to the conclusion of the service agreement (onboarding), PTRR service providers should describe to clients the mode of operation of a PTRR exercise, highlighting the actions which they are required to perform in the PTRR exercise.
- (7) To ensure transparency regarding the PTRR exercise, including as regards to the rules, methods and algorithms used in a pre-scheduled run, PTRR service providers should, without being compelled to reveal any intellectual property, explain to participants in the PTRR exercise how the outcome of the PTRR exercise is generated. For the same reason, PTRR service providers should provide participants in the PTRR exercise with information on the outcome of each PTRR exercise they participate to in a durable medium as defined in point 62 of Article 4(1) of Directive (EU) 2014/65, for example by making available the exercise performance report and be available to explain the information contained therein.

- (8) PTRR service providers should retain the information concerning the transactions executed pursuant to the PTRR exercise for a period of ten years. This requirement should allow participants in the PTRR exercise to retrieve such information when requested by their competent authorities for the purpose of monitoring the PTRR transactions exemption from the clearing obligation pursuant to Article 4 of EMIR.
- (9) In order to ensure legal certainty and operational transparency in the provision of PTRR services, it is essential that PTRR service providers enter into binding service agreements with PTRR service participants. These agreements shall clearly define the procedural framework and legal effects of each PTRR exercise.
- (10) To uphold the effectiveness of PTRR services, PTRR service providers should implement a robust preliminary phase prior to the execution of the algorithm. These preparatory steps are fundamental to ensuring that the PTRR exercise is conducted in a reasonable and non-discriminatory manner, and that the resulting transactions are aligned with the participants' risk tolerances.
- (11) To ensure transparency and alignment with participants' risk profiles, PTRR service providers should, following the execution of the algorithm, submit to each participant a comprehensive PTRR exercise output proposal.
- (12) As a part of its overall governance framework and decision-making framework, a PTRR service provider should have a clear and formalised governance arrangement, including clear lines of accountability, effective procedures for the communication of information and a separation of tasks and responsibilities. That arrangement should avoid key man dependency risk.
- (13) To uphold the integrity of the derivatives market and ensure adherence to the clearing obligation, PTRR service providers should ensure that PTRR runs fulfil the requirements set forth in article 4b of Regulation (EU) 648/2012. In particular, PTRR services should proactively mitigate any risk of circumvention of the clearing obligation by performing ongoing checks on the PTRR service exercise execution. The criteria to be applied by PTRR service providers to assess whether the clearing obligation is circumvented should be the increase of the aggregate net uncleared risk in the portfolio of any participant in a PTRR exercise, as set forth in point c) of Article 5 of this Regulation.
- (14) Relevant competent authorities need to have full access to records of the transactions executed pursuant to a PTRR exercise in order to be able to monitor the application of the exemption from the clearing obligation. For this purpose, given the specificities of PTRR services, records kept by PTRR service providers should include information on market risk neutrality, reduction of risks, compliance with the participants' risk tolerances and evidence that the exercise did not result in an increase in the aggregate net uncleared risk in any participants' portfolio.
- (15) The retention period for records of transactions executed pursuant to a PTRR exercise, which are to be maintained by PTRR service providers, should be aligned with the

retention period set out in Article 80(3) of Regulation (EU) No 648/2012 of the European Parliament and of the Council.

- (16) For the purposes of monitoring the application of the exemption granted, the process that competent authorities of PTRR service providers would follow should be based on an assessment of the provider's compliance with paragraphs 3 and 4 of Article 4b of Regulation (EU) No 648/2012 of the European Parliament and of the Council. This assessment should be carried out at least annually or when deemed necessary by the competent authority. Competent authorities of PTRR service providers may deem an assessment necessary where, for example, competent authorities of PTRR service participants share information with them indicating a potential circumvention of the clearing obligation or where providers' competent authorities are notified by providers that a case of non-compliance occurred.
- (17) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).
- (18) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council²¹.

HAS ADOPTED THIS REGULATION:

CHAPTER I

REQUIREMENTS FOR DIFFERENT TYPES OF PTRR SERVICES

Article 1

Compression

Transactions resulting from a compression exercise are eligible for the exemption from the clearing obligation set out in Article 4b of Regulation (EU) No 648/2012 when in the PTRR exercise two or more counterparties wholly or partially terminate some or all of the derivatives submitted by those counterparties for inclusion in the portfolio compression and replace the

²¹ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 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 (OJ L 331, 15.12.2010, p. 84).

terminated derivatives with other derivatives whose combined notional value is less than the combined notional value of the terminated derivatives.

Article 2

Portfolio rebalancing

Transactions resulting from a portfolio rebalancing are eligible for the exemption from the clearing obligation set out in Article 4b of Regulation (EU) No 648/2012 when in the PTRR exercise counterparty risk is reduced in an existing portfolio of trades by adding new non-price forming trades and where no existing trade in the portfolio is terminated or replaced and the notional is increased rather than decreased.

Article 3

Basis risk optimisation

Transactions resulting from a basis risk optimisation are eligible for the exemption from the clearing obligation set out in Article 4b of Regulation (EU) No 648/2012 when in the PTRR exercise basis risk is reduced in an existing portfolio of hedged trades by adding non price forming trades and where no existing trade in the portfolio is terminated or replaced and the notional is increased rather than decreased.

CHAPTER II

REQUIREMENTS OF THE PTRR EXERCISES

Article 4

Risk Reduction

1. PTRR exercises can be performed on portfolios containing both cleared and uncleared transactions, provided that the PTRR exercise achieves risk reduction, as specified in the following paragraph.

2. For the purposes of point b) of paragraph 3 of Article 4b of Regulation (EU) No 648/2012, risk reduction is achieved when the PTRR exercise fulfils all of the following conditions:

(a) it reduces the overall risk of each portfolio submitted to the PTRR exercise;

(b) specific types of risk contributing to the overall risk are increased only within the tolerances set by the participants to the PTRR exercise specifically for each exercise;

(c) it does not increase the aggregate net uncleared risk in any of the portfolios submitted to the PTRR exercise.

Article 5

Market risk neutrality

1. For the purposes of point e) of paragraph 3 of Article 4b of Regulation (EU) No 648/2012, a PTRR exercise is market risk neutral when before and after the PTRR exercise is performed the market risk of all the portfolios submitted to the PTRR exercise remains the same or within the tolerances set by the participants in the PTRR exercise.

2. A PTRR service provider shall ensure that the tolerances set by all participants in the PTRR exercise are minimal and do not affect significantly the overall exposure of their submitted portfolios towards market risk.

CHAPTER III

OPERATING CONDITIONS FOR PTRR SERVICE PROVIDERS

Article 6

Conflicts of interests

1. A PTRR service provider shall describe in a dedicated part of the conflicts of interests policy laid down in Article 34 of Commission Delegated Regulation (EU) 2017/565 the circumstances which constitute or may give rise to a conflicts of interest in the provision of the PTRR services and the procedures to be followed and measures to be adopted in order to prevent or manage such conflicts.

2. A PTRR service provider shall keep records of when, during the execution of the PTRR service, a conflict of interest as referred to in paragraph 1, may arise.

Article 7

Rules of the PTRR exercise, including methods and algorithms

A PTRR service provider shall design and set the rules of the PTRR exercise, including the pre-agreed rules, methods and algorithms used to run a PTRR exercise in a way that ensures that the PTRR exercise fulfils all of the following conditions:

- (a) it is market risk neutral, as specified in Article 5 of this Regulation;
- (b) it achieves risk reduction, as specified in Article 4 of this Regulation and;
- (c) it does not discriminate among participants in the PTRR exercise.

Article 8

Testing and safeguards

1. Prior to the deployment or substantial update of the rules, methods and algorithms used to provide a PTRR service, a PTRR service provider shall establish clearly delineated methodologies to develop and test the new rules, methods and algorithms.
2. A PTRR service provider shall adopt safeguards to prevent any external manipulation of the PTRR exercise.

Article 9

Transparency

1. Prior to the conclusion of the service agreement, a PTRR service provider shall describe to clients the mode of operations of a PTRR exercise, including the actions required in each step of the exercise to the counterparties to the PTRR transactions. The description shall contain enough information on the pre-established rules of the PTRR exercise, including methods and algorithms, to allow clients to understand how the PTRR service operates.
2. When providing information on the PTRR service, a PTRR service provider shall ensure that participants in the PTRR exercise are aware that:
 - (a) the exercise is open for participation only to entities that initially submitted a portfolio to the PTRR exercise; and
 - (b) each exercise shall be accepted in full and, as a result, the participant in the PTRR exercise shall not be able to choose which trades to execute under the PTRR exercise.

When providing such information, the PTRR service provider shall specify that participants remain free not to take part to a run if the outcome is not in line with their tolerances.

3. After the performance of a PTRR exercise, a PTRR service provider shall promptly transmit to participants in the PTRR exercise the information on the transactions executed pursuant to the PTRR exercise in a durable medium. The information shall include the content of the records to be kept by the PTRR service provider pursuant to Article 15 of this Regulation. A PTRR service provider shall retain such information for a period equivalent to the retention period referred to in Article 16 of this Regulation and, upon request, make it available in a durable medium to participants in the PTRR exercise.

4. A PTRR service provider shall provide a sufficient and reasonable level of information at the request of a participant in the PTRR exercise to explain the outcome of the PTRR exercise and to facilitate its understanding of how the pre-established rules of the PTRR exercise, including methods and algorithms used in the pre-scheduled run, take into account portfolios submitted to the PTRR exercise and tolerances set.

Article 10

PTRR service agreement

1. A PTRR service provider shall conclude a PTRR service agreement with the participants in the PTRR exercise. The agreement shall set out the PTRR service process and its legal effects, including the point in time at which each PTRR exercise becomes legally binding.

2. The agreement referred to in the first paragraph shall include all relevant legal documentation describing how and when derivatives submitted for inclusion in the PTRR service are terminated, how and when they are replaced by other derivatives and how and when new derivatives are added as part of the PTRR exercise.

Article 11

Preliminary phase of the PTRR exercise

Prior to the execution of the algorithm, a PTRR service provider shall carry out all of the following steps:

(a) verify, on the basis of the information provided by the participants, the eligibility of the portfolios submitted for the PTRR exercise and the integrity of the submitted data; and

(b) require each participant in the PTRR exercise to specify their risk tolerances including the potential exclusion of PTRR transactions with certain counterparties and the specification of limits regarding counterparty risk, market risk and cash payment tolerances.

Article 12

PTRR exercise output proposal

1. Following the execution of the algorithm, a PTRR service provider shall submit to each participant a PTRR exercise output proposal that includes the following information:

- (a) identification of the counterparties included in the PTRR service;
- (b) change to the notional value of the derivatives;
- (c) change to the counterparty risk;
- (d) a breakdown of how different risks are reduced;
- (e) details on how compliance with the risk tolerances specified by the participants was ensured, including the variation of the notional value of the derivatives compared to the specified risk tolerances and the variation of the counterparty risk compared to the specified risk tolerances; and
- (f) details on how the proposed output leads to no increase in the aggregate net uncleared risk in the portfolios submitted to the PTRR exercise.

2. A PTRR service provider shall notify the participants in the PTRR exercise once all participants have accepted in full the PTRR exercise output proposal within a pre-defined timeframe and in accordance with the process set out in the PTRR service agreement.

Article 13

Organisational requirements

1. A PTRR service provider shall establish controls and closely monitor the execution of the PTRR exercises, through a clear and formalised governance arrangement, setting out:

- (a) the procedures to monitor the PTRR exercise and the application of the rules, methods and algorithms used for that exercise; and
- (b) an allocation of tasks ensuring clear lines of responsibility, including a separation of tasks and responsibilities between the staff running the PTRR exercise and the staff running the supporting functions, in particular the risk and control as well as compliance function.

2. A PTRR service provider shall ensure that its compliance staff has a sufficient level of knowledge on the rules of the PTRR exercise, including methods and algorithms used for the exercise. The PTRR service provider shall ensure that its compliance staff can contact at any point in time throughout the execution of the exercise the staff responsible for running the

PTRR exercise, in particular the staff who have detailed technical knowledge of the rules of the PTRR exercise, including the methods and algorithms used to run the PTRR exercise.

Article 14

Controls and compliance

1. A PTRR service provider shall monitor and check that the outcome of each PTRR exercise complies with the requirements set forth in Article 4b of Regulation (EU) No 648/2012 and in this Regulation.
2. In particular, a PTRR service provider shall ensure that the proposal resulting from the application of the rules, methodologies and algorithms in each exercise complies with the requirements on market risk neutrality and risk reduction as laid down in Article 4 and 5 of this Regulation respectively through embedded checks.
3. A PTRR service provider shall adopt specific measures and conduct targeted ongoing checks, to ensure that the PTRR exercise does not result in the misuse or the circumvention of the clearing obligations. In order to detect circumventions of the clearing obligation, the PTRR service provider shall ensure that the PTRR exercise do not increase the aggregate net uncleared risk in the portfolio of any participant in a PTRR exercise.
4. Staff responsible for monitoring the outcome of the PTRR exercise shall report to the compliance function cases of non-compliance with the requirements set forth in Article 4b of Regulation (EU) No 648/2012 and in this Regulation. The compliance function shall assess that information, take appropriate action and record it.
5. The compliance function shall report to the management body, without undue delay, upon the identification of any potential risks of misuse or circumvention of the clearing obligation.
6. In addition, the compliance function shall report, at least annually, to the management body on the adequacy and effectiveness of the measures and procedures put in place to prevent any misuse or circumvention from the clearing obligation, as well as on any identified shortcomings and the remedial actions taken.

Article 15

Record keeping

In the records to be kept pursuant to point (d) of paragraph 4 of Article 4b of Regulation (EU) No 648/2012, a PTRR service provider shall include:

- (a) the PTRR ID referred to in Article 7 of Commission Delegated Regulation (EU) 2022/1855;
- (b) the information indicating that the result of the PTRR exercise is market risk neutral;
- (c) a breakdown of how the different types of risks are reduced in each of the portfolios submitted to the PTRR exercise as a result of the PTRR exercise or kept within the tolerances expressed by the participants in the PTRR exercise;
- (d) the information showing that the PTRR exercise did not result in an increase in the aggregate net uncleared risk in the portfolio of any participant.

Article 16

Retention period of records of transactions executed pursuant to a PTRR exercise

A PTRR service provider shall maintain the records referred to in point (d) of paragraph 4 of Article 4b of Regulation (EU) No 648/2012 for at least 10 years following the performance of a PTRR exercise.

CHAPTER IV

PROCESS FOR MONITORING THE APPLICATION OF THE EXEMPTION

Article 17

Process for monitoring the application of the exemption

1. To monitor the application of the exemption from the clearing obligation envisaged in Article 4b of Regulation (EU) No 648/2012, competent authorities of PTRR service providers shall assess the providers' compliance with paragraph 3 and 4 of Article 4b of Regulation (EU) No 648/2012, as set out in paragraph 5 of Article 4b of Regulation (EU) No 648/2012, second and fourth subparagraphs.
2. In order to enable their competent authorities to carry out the assessment referred to in the first paragraph, PTRR service providers shall confirm that they comply with the requirements of paragraphs 3 and 4 of Article 4b of Regulation (EU) No 648/2012 to their competent authorities.
3. When confirming compliance pursuant to paragraph 2 of this Article, the PTRR provider shall submit a report including:

(a) any changes to the provider's conflicts of interest policy and conflicts of interests occurred during the year and how they have been managed;

(b) any changes to the provider's rules and any material changes to the methods and algorithms applied to provide a PTRR service referred to in Article 8 and to the methodologies to develop and test them;

(c) any changes to the provider's governance arrangement referred to in Article 13; and

(d) the reports referred to in paragraphs 4, 5 and 6 of Article 14 of this Regulation.

4. Competent authorities may request from PTRR service providers any other information needed to carry out the assessments referred to in the first paragraph.

5. The confirmation described in paragraph 2 of this Article shall be submitted on an annual basis or upon request by the competent authority.

6. Whenever there is a material change or planned material change in policies, rules, methods, algorithms and governance arrangements or a case of non-compliance occurs in relation to any of the requirements of paragraphs 3 and 4 of Article 4b of Regulation (EU) No 648/2012, PTRR service providers shall, without undue delay, notify their competent authorities.

CHAPTER VI

FINAL PROVISIONS

Article 18

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission

The President

[For the Commission

On behalf of the President

[Position]