



European Securities and
Markets Authority

FSMA_2017_12-1

Guidelines

Access by a CSD to the transaction feeds of CCPs and trading venues

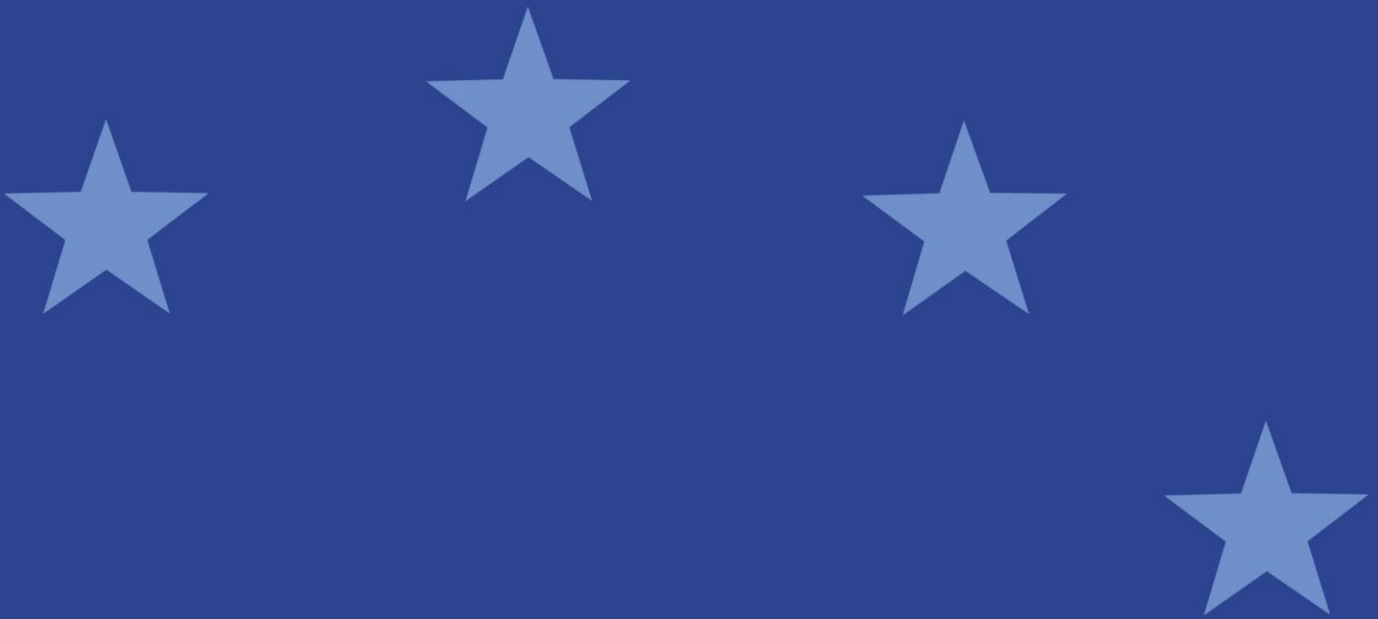


Table of Contents

1	Scope.....	3
2	Definitions	4
3	Purpose.....	5
4	Compliance and reporting obligations.....	6
4.1	Status of the guidelines	6
4.2	Reporting requirements.....	6
5	Guidelines	7
5.1	Legal risks.....	7
5.2	Financial risks	7
5.3	Operational risks	8

1 Scope

Who?

1. These guidelines apply to competent authorities of CCPs and trading venues.

What?

2. These guidelines apply in relation to risks to be taken into account by a CCP or a trading venue when carrying out a comprehensive risk assessment following a request for access to the transaction feed of the CCP or of the trading venue.

When?

3. These guidelines apply from the date that is two months after their publication on ESMA's website in all official languages of the EU.

2 Definitions

4. Unless otherwise specified, terms used in these guidelines have the same meaning as in Regulation (EU) No 909/2014. In addition, the following definitions apply:

<i>EC</i>	European Commission
<i>ESMA</i>	European Securities and Markets Authority
<i>EU</i>	European Union
<i>Regulation (EU) No 909/2014</i>	Regulation (EU) No 909/2014 of the European Parliament and of the Council on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation No 236/2012
<i>Regulation (EU) No 1095/2010</i>	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

3 Purpose

5. The purpose of these guidelines is to specify the risks to be taken into account by a CCP or a trading venue when carrying out a comprehensive risk assessment following a request for access to the transaction feed of the CCP or of the trading venue.

4 Compliance and reporting obligations

4.1 Status of the guidelines

6. This document contains guidelines issued under Article 16 of Regulation (EU) No 1095/2010. In accordance with Article 16(3) of Regulation (EU) No 1095/2010, competent authorities and financial market participants must make every effort to comply with guidelines and recommendations.
7. Competent authorities to whom these guidelines are addressed should comply by incorporating them into their supervisory practices.

4.2 Reporting requirements

8. Competent authorities to whom these guidelines are addressed must notify ESMA whether they comply or intend to comply with these guidelines, with reasons for non-compliance, within two months after their publication on ESMA's website in all official languages of the EU to CSDR.Notifications@esma.europa.eu. In the absence of a response by this deadline, competent authorities will be considered as non-compliant. A template for notifications is available from the ESMA website.

5 Guidelines

9. Where, in accordance with Article 53(3) of Regulation (EU) No 909/2014, a CCP or a trading venue carries out a comprehensive risk assessment following a request for access by a CSD, and when the competent authority of the CCP or of the trading venue assesses the reasons for refusal to provide services by the CCP or by the trading venue, they should take into account the following risks resulting from such a provision of services:
- (a) legal risks;
 - (b) financial risks;
 - (c) operational risks.

5.1 Legal risks

10. When assessing legal risks following a request for access to trading feed by a CSD, the CCP or the trading venue, and its competent authority should take into account at least the following criteria:
- (a) The CSD does not provide the information needed to assess its compliance with the rules and legal requirements for access of the receiving party, including the legal opinions or any relevant legal arrangements that demonstrate the ability of the CSD to meet its obligations towards the receiving party;
 - (b) The CSD does not provide the information, including legal opinions or any relevant legal arrangements, needed to assess its ability to ensure, in accordance with the rules applicable in the Member State of the receiving party, the confidentiality of information provided through the transaction feed;
 - (c) In the case of a CSD established in a third country, either of the following:
 - i. the CSD is not subject to a regulatory and supervisory framework comparable to the regulatory and supervisory framework that would be applicable to the CSD if it were established in the Union, or
 - ii. the rules of the CSD concerning settlement finality are not comparable to those referred to in Article 39 of Regulation (EU) No 909/2014.

5.2 Financial risks

11. When assessing financial risks following a request for access to trading feed by a CSD, the CCP or the trading venue, and its competent authority should take into account at least the following criteria:
- (a) The CSD does not hold sufficient financial resources to fulfil its contractual obligations towards the receiving party;
 - (b) The CSD is not willing or able to finance any customised component required to enable access in accordance with Article 53(1) of Regulation (EU) No 909/2014, to the extent that this is not a discriminatory access condition.

5.3 Operational risks

12. When assessing operational risks following a request for access by a CSD, the CCP or the trading venue, and its competent authority, should take into account at least the following criteria:

- (a) The CSD does not have the operational capacity to settle the securities transactions cleared by the CCP or executed on the trading venue;
- (b) The CSD is not able to demonstrate that it can adhere to and comply with the existing risk management rules of the receiving party or it lacks the necessary expertise in that regard;
- (c) The CSD has not put in place business continuity policies and a disaster recovery plan;
- (d) The granting of access requires the receiving party to undertake significant changes of its operations that would affect the risk management procedures and would endanger the smooth functioning of the trading venue or CCP, such as the implementation of ongoing manual processing by such parties.