

Brussels, 21 March 2022

EUROPEAN COMMISSION TARGETED CONSULTATION ON THE REVIEW OF THE CENTRAL CLEARING FRAMEWORK IN THE EU

EFAMA welcomes the opportunity to respond to the EC's targeted consultation on the EU's central clearing framework. We are pleased to find in this consultation document a fair reflection of the complexity of the CCP ecosystem and consistency with the issues raised in previous dialogues held with the European Commission. In that same spirit, we hope in our response to provide feedback that resonates with the EC's broader policy objectives while minimizing systemic risk and undue harm to our industry. The consultation is wide-ranging covering a breadth of areas such as expanding the scope of clearing participants and cleared products, capital requirements for clearing members, obligations to clear and active accounts, and expanding services by EU CCPs. We will provide our collective view here, and if relevant we may provide further quantitative evidence separately.

Overall, we encounter many areas which we agree are the right ones to analyse and which taken together could help enhance EU CCP attractiveness and reduce exposure to tier-2 CCPs. We would first like to provide some general observations relating to the consultation:

ESMA December 2021 report conclusions (EMIR 2.2 assessment): While reducing the size of EU exposures to tier-2 CCPs was one recommendation provided by the ESMA report, we felt that the majority of the recommended policy response pointed to reviewing the EMIR framework and ESMA's supervisory powers to better manage the systemic risk posed by exposure to UK tier-2 CCPs. It is therefore a question why measures impacting monetary policy implementation, intervention powers and enhanced powers by ESMA on tier 2 CCP recovery and resolution planning are not reflected here.

Broadening the scope of clearing participants and cleared products: We are not in favour of changing clearing thresholds for mandatory clearing, but we do consider that widening the scope of available products for voluntary clearing can contribute to increased clearing in the EU, provided that the CCP offering is globally competitive.

In parallel, we note that market participants increasingly realise the benefits of central clearing and are clearing on a voluntary basis. There are product areas supported by EU CCPs, including the CDS market which was classified as systemically important by ESMA in its December 2021 report, which have seen major investments in the last few years, and where the improved products and services have resulted in major growth. Within the CDS market, EU CCPs have seen 30-40% growth year on year from 2020 to 2021. This trend coupled with the expiry of the Pensions Exemption and phase 6 of UMR will bring increased clearing volumes on CCPs clearing euro-denominated products.

Reduction targets/Obligation to clear in the EU/Active accounts: This is the area which poses the most problems for us. We appreciate the logic whereby mandated EU clearing would present the quickest path to expanding liquidity on EU CCPs. And yet, for reasons which we explain below, we feel

that mandating market participants to clear on EU CCPs is a blunt tool, and where the sum of the undesired effects outweigh the benefits of a regulation-led approach to reducing exposure to UK tier-2 CCPs. For this reason we reiterate that the optimal policy approach should be a combination of expanding EU CCP clearing with in-scope entities and products, natural growth as market participant behaviour matures, and a revised supervisory framework to address what may be a systemic risk that will diminish over time.

Problems with mandation-led measures:

- They deprive market participants of the choice of clearing venue, which today is a global choice, contingent on clearing costs, choice of currencies and products, and available liquidity.
- For asset managers, this has a direct impact in constraining our ability to perform our fiduciary duty toward our clients by clearing at the lowest-cost CCP offering the best product/currency offering in line with their portfolio composition.
- From a supervisory and systemic risk perspective, there would appear to be new risks emerging from splitting the Euro-denominated IRS liquidity pool in two, with the largest share outside the EU, and as a result of non-equivalence no further supervisory role for the ECB and ESMA.

Building EU CCP capacity- how do we want to get there? If it is the result of regulatory requirements, there is no incentive/effort by the CCPs to provide a globally competitive offering. They will receive minimum volumes regardless of how compelling their offering might be. If this were the case, they would at best, on the euro-denominated IRS market, attract 25% of global volumes (which is how much EU firms represent). The remaining 75% would be free to clear where the best conditions are available. The consultation asks for feedback on how to deal with the problem of a level playing field/split liquidity pools. Clearing mandation will almost certainly result in a non-market driven liquidity split, with likely important spreads between EU CCPs and the tier-2 UK CCPs. This will do nothing to attract more non-EU clearing, and put EU firms at a disadvantage. On the other hand, if EU CCPs are left to build their books organically, finding a niche and building on it, they will also draw non-EU clearing members and clients. And this has to be the desired outcome.

Looking at the current offering by EU CCPs, and the diverse clearing needs of our members driven by complexity of portfolios and client preferences, we can see major potential for improvement on EU CCP offerings (some of the points below also apply to UK CCPs).

- Broadening the range of available currencies to include G10 currencies as a minimum;
- Further streamlining of onboarding processes to better align with other CCPs;
- asset managers being offered greater visibility into EU CCP roadmaps/product service launches;
- CCPs offering price comparison tools to allow asset managers to look at the breakdown of costs: execution costs, clearing costs, clearing member costs;
- transparency into CCP margin models to improve system-wide risk management; and
- Ensuring regular review and recalibration of margin model parameters to minimise the risk of procyclicality (see below also)

This list is not exhaustive. There are other areas to explore for instance around clearing member concentration. EU CCPs could offer market participants the temporary ability to post IM and VM directly with the CCP in case of a clearing member failure.

Similarly, EU CCPs have a natural advantage with ECB access and the ability to accept a variety of instruments as collateral. Buy-side participants would find this an attractive feature: the CCPs' ability to convert high quality government bonds into cash for margining purposes. Specifically, such access to

central bank money by EU CCPs should therefore allow the payment of variable margin by clients in high quality securities.

In addition, the ability to post variable margins in high quality securities would:

- Enhance the competitiveness of EU CCPs
- Reduce the procyclicality risks associated with the payment of variation margins in cash, as witnessed by the market turmoil in March 2020, and as highlighted by new workstreams from the FSB and IOSCO in 2021.

Capital Requirements (higher risk weighting for exposure to Tier-2 CCPs)- Again here we would like to suggest an alternative approach that includes rewards for clearing on EU CCPs, i.e., capital relief for all clearing members EU and non-EU, rather than a punitive approach that singles out and harms EU firms. Higher capital requirements for exposure to Tier-2 CCPs would impact EU clearing members and their clients, creating an unlevel playing field with non-EU competitors.

In closing, we believe that the reduction of exposures to UK CCPs can be managed and encouraged, but that the selected policy options should not distort two features that are fundamental to the central clearing model: market liquidity and netting benefits. We believe that open EU markets that are dynamic and responsive in a global derivatives market, with the appropriate supervisory and regulatory cooperation, will ultimately benefit all market participants while providing the optimal management of systemic risk.

I. SCOPE OF CLEARING PARTICIPANTS AND PRODUCTS CLEARED

The discussions that took place in 2021 in the working group set up by the Commission as well as in ad hoc outreach meetings with market participants showed that one way to enhance the attractiveness of EU CCPs could be to widen the scope of clearing members and clients accessing CCPs as well as the products offered for clearing or required to be cleared. Under appropriate conditions, broadening the clearing obligation can bring benefits in terms of financial stability.

Article 1 EMIR currently defines the list of entities subject to its requirements. A number of entities such as central banks and debt management offices are excluded from the scope of EMIR. Article 89 also temporarily exempts Pension Scheme Arrangements ('PSAs') from the clearing obligation. This exemption will come to an end in June 2023 at the latest¹, after which PSAs will be required to clear.

In terms of products, point 7 of Article 2 EMIR gives a definition of the term OTC derivatives that is further on used throughout the text in particular in Articles 4 and 5 where the clearing obligation and the clearing obligation procedure are framed, delegating the task of defining the range of products subject to a clearing obligation to the European Commission, based on a draft to be developed by ESMA.

In order to enhance the liquidity in EU CCPs, which is perceived as a key factor by market participants, it is asked which additional products and entities could be subject to a clearing obligation and under what conditions, if any. The financial stability angle should also be kept in mind when answering to these questions. It should also be considered which potential measures could encourage PSAs to clear their transactions at EU CCPs².

Entities (such as funds) which have a similar profile to PSAs are also welcome to respond to the questions below.

¹ Pursuant to Article 85(2) EMIR, the end date of the exemption laid down in Article 89(1) EMIR may be extended twice, each time by one year.

² In a [public letter to Commissioner McGuinness dated 19 October 2021, Pensions Europe](#) indicated that "PSAs are willing to continue actively reducing their exposures to UK CCPs, and open and hold active accounts within the EU based CCPs".

a) Clearing obligation for PSAs

PSAs under EMIR are subject to a temporary exemption from the central clearing obligation. The Commission extended the exemption until June 2022³. The objective of this section is to gather further insights into potential initiatives which could make it easier for PSAs to clear their transactions at EU CCPs.

Question 1. What measures (legislative or non-legislative) do you think would be useful in order to make clearing in the EU more attractive for PSAs?

The end of the clearing exemption for PSAs will bring additional liquidity to EU CCPs. To ensure a smooth transition, all measures that can help improve PSAs' access to cash for VM purposes must be explored.

There is already strong evidence of a *market-led* response to pension funds' needs in the EU CCP ecosystem. Both Eurex and LCH SA offer a sponsored clearing repo model, increasing the collateral transformation capacity necessary to source cash and meet VM calls.

RepoClear processed a record €195 trillion of nominal across 9.4 million trades during 2021 in LCH SA, representing increases of 15% and 29% respectively, compared to 2020.

A complementary measure would involve central banks offering an emergency liquidity tool in times of market stress for pension funds looking to transform high quality bonds into cash to meet VM calls.

b) More clearing by private entities that do not access CCPs directly

The clearing obligation under EMIR applies to a broad range of entities, including insurance companies, real economy firms (corporates, energy firms) and investment funds, most of which access the services of CCPs through a clearing member. The aim of this section is to gather a better understanding of the clearing activity of such entities and explore possible initiatives to encourage them to clear in EU CCPs.

The questions in this section are meant to be answered by all types of clearing participants, unless otherwise specified. **In the case of asset managers, they are requested to distinguish in their answers between Undertakings for Collective Investment in Transferable Securities (UCITS), Alternative Investment Funds (AIFs) and Money Market Funds (MMFs).**

Question 1 How do you usually approach a CCP for clearing your cash, derivatives and/or repo contracts?

- As a client of a clearing member (directly or indirectly)
- Through a direct/sponsored access model.
- Other – please explain.

³ [Commission Delegated Regulation \(EU\) 2021/962 of 6 May 2021 extending the transitional period referred to in Article 89\(1\), first subparagraph, of Regulation \(EU\) No 648/2012 of the European Parliament and of the Council, OJ L 213, 16.6.2021, p. 1.](#)

Question 2. Please describe your derivatives portfolio, providing both qualitative and quantitative information:

- interest rate derivatives
- credit derivatives
- foreign exchange derivatives
- equity derivatives
- commodity derivatives
- others.

Please describe in detail, specifying whether the derivatives are exchange traded or OTC.

Besides the swaps being mandated for clearing, voluntary clearing of swaps is gradually increasing especially for interest rate (incl. inflation) and credit derivatives.

Question 3. Do you currently clear at a CCP only derivatives subject to the clearing obligation under EMIR or also other types of derivatives?

- Only derivatives subject to the clearing obligation under EMIR
- Both derivatives subject to the clearing obligation under EMIR and other derivatives (specify whether OTC or ETD)
- Other (specify whether OTC or ETD)
- Don't know / No opinion

Question 3.1. Please specify whether these other derivatives are OTC or ETD (or both):

- OTC
- ETD

Question 3.2. If you also clear other OTC derivatives (i.e. not subject to the clearing obligation under EMIR or within the scope of MiFIR article 29), please explain which ones and provide information/data as to the notional amounts.

Please provide, where possible, this information per type of "other derivative".

IRS & CDS products not mandated for clearing as well as inflation swaps.

Question 5. How would you describe your client clearing relationship with a clearing member:

	Yes	No	Don't know – No opinion – Not applicable
a) in terms of offer of client clearing services, is it easy for you to find a clearing member to access a CCP?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Is it expensive?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) is it/would it be more difficult/expensive for	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

you to find a clearing member to access an EU CCP?			
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Question 5.1. Please explain your response to question 5 and provide, where possible, quantitative evidence and examples, including where possible an estimate of the costs under question 5 (b) and (c).

For larger asset managers, finding a clearing broker (clearing member) is easier than for smaller asset managers with less attractive clearing volumes or clients (e.g. PSA) with highly directional and long-dated exposure.

Question 6. Do you select where to clear or do you rely on the advice of your clearing member?

- I select where to clear
- I rely on the advice on my clearing member
- Don't know / no opinion / not applicable

Question 6.1 What considerations are relevant in your choices where to clear?

- have own preferences linked to specific elements (price/liquidity at a certain CCP, other),
- considerations around other elements of the ecosystem in which a CCP operates
- considerations on diversification/concentration of risks in relation to the CCP used
- Other
- Don't know / no opinion / not applicable

Question 6.2 Please explain in as much detail as possible your response to question 6.1 and provide, where possible, quantitative evidence and examples.

The key drivers for choosing where to clear are:

- Depth of liquidity in currencies and products.
- Economics of the trade and cost advantages.
- Trading efficiencies: trading in blocks allows access to a broader set of liquidity providers and aids best execution.
- Netting margin efficiencies: netting across currencies and products is significant and presents cost advantages.
- Quality of service
- Platform connectivity.
- Set-up surrounding the counterparty (clearing broker)

Question 8. Are you a direct member at a CCP in a direct/sponsored access model?

- Yes
- No
- No, but I am considering it

Don't know / no opinion / not applicable

Question 9. How do you consider the offer of direct/sponsored access models in the EU relative to what is offered in other third countries?

Please explain you answer providing, where possible, quantitative evidence and examples.

The direct access model in third countries, that we are aware of, is only supported for repo clearing. There is at present no direct/sponsored access for OTC derivatives.

In times of market stress, the roles of sponsors and sponsored members are not clear, particularly in respect of the immediate obligations to meet intra-day margin requirements.

It would make sense to analyse further the transparency of CCP sponsored models to understand if these provide the necessary certainty and clarity to improve market confidence in sponsored models.

Whatever the cleared asset class it is important to weigh the benefits versus the costs and operational challenges associated with connecting to sponsored access models.

Question 12. Collateral transformation services provided by banks are often used by clients to meet liquidity needs related to margin calls. How do you consider the treatment of repos/reverse repos under the Capital Requirements Regulation⁴: do you think there is room for better encouraging banks to provide collateral transformation services to their clients which clear in the EU?

Yes

No

Don't know / no opinion

Question 12.1. If you answered yes to question 12, how could that be achieved while at the same time properly catering for the risks of repo transactions? Please explain your answer providing, where possible, quantitative evidence and/or examples including on the potential costs and benefits.

There is definitely room for improvement as far as buy-side access to repo markets in times of stress, as the recent Covid crisis demonstrated. The International Capital Market Association noted in their 2020 report on the European repo market that during the COVID crisis the demand for repo increased by both banking and non-banking entities. And while the overall amount of repo activity increased in the market, the experience of the interbank repo market was very different to the repo market that was accessible to the buyside entities and there were strains in the market. In particular the increase demand for cash from the repo markets by buyside were not met by the supply from the banks.

We therefore fully support policy measures that can help broaden repo-market access to non-bank entities by:

1. Bank capital rules: the EU could consider whether the bank capital rules are calibrated appropriately to support a robust and well-functioning repo market. Banks need to be incentivised to support the functioning of repo markets in periods of market stress, allowing

⁴ [Regulation \(EU\) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation \(EU\) No 648/2012, OJ L 176, 27.6.2013, p. 1–337.](#)

banks to act more fully as a transmission mechanism for central bank liquidity. Indeed there have been some reports on the impact of bank capital rules on the repo market.

2. Support the development of repo-clearing for non-bank entities: We encourage the participation of non-bank entities within cleared repo markets to maximise their access to the liquidity that repo markets provide. While this has started to happen, this is only available for larger clients and its use is limited due to the need to use a sponsored access clearing model which is only supported by a small number of clearing member service providers. We encourage further developments of this to allow more non-banking entities to be able to participate in cleared repo transactions.

Further, please note that due to current EMIR regulations applicable for UCITS, it would not be possible for UCITS funds to use the proceeds from transformation services for collateral/margin purposes. Hence, besides the a.m. aspects, regulatory action would be required to lift the restrictions for UCITS.

Question 15: Is there a need to amend/recalibrate UCITS counterparty exposure limits (Articles 50(1)(g) (iii) and 52 and of Directive 2009/65/EC) to distinguish cleared versus non-cleared, cleared at a Tier 2 versus other CCPs?

Yes

No

Don't know / no opinion

c) Encourage clearing by public entities

In the context of building domestic capacity and incentivising an expansion of central clearing activities in the EU, an issue identified relates to a lack of liquidity in EU-based CCPs and the possible role for public entities in addressing this problem. Market participants have suggested that the participation of national and supranational public bodies (e.g. multilateral banks, public banks managing state participations, debt management offices, central banks, other bodies) in EU-based CCPs could increase the liquidity pool available in those CCPs. The following questions aim at gaining a better understanding on how to achieve this goal.

Question 1. To what extent do you think that the participation of public entities would add to the attractiveness of central clearing in the EU?

Participation of public entities would increase the clearing volume within the EU and likely positively impact liquidity and pricing.

d) Broaden the product scope of the clearing obligation

In order for EU CCPs to remain competitive internationally, the range of clearing services they provide should be as broad as possible. The range of products available for clearing is not however a guarantee of their liquidity. Imposing a clearing obligation on certain products has proven to be a key driver to their liquidity, ensuring best execution and lower prices. We will look further on in this consultation as to how EU CCPs could more easily list additional products for clearing but in this section we will focus on which existing products could be given consideration for an extension of the clearing obligation. The procedure to determine which products should be subject to this obligation is currently specified in EMIR Article 5 and involves the European Commission, ESMA and the ESRB.

Question 1. Is the range of products currently subject to the clearing obligation wide enough while safeguarding financial stability?

- Yes
- No
- Don't know / no opinion / not applicable

Question 1.1 Please explain your answer to question 1 providing, where possible, quantitative evidence and examples:

Mandatory clearing should ideally be approached on a harmonized global level to ensure a level playing field amongst market participants and avoid disproportional requirements depending on the concerned region and market.

Question 2. Could additional products be subject to the clearing obligation?

	Yes	No	Don't know - No opinion - Not applicable
Equity derivatives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Repos	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other Interest Rate Derivatives (e.g. referring the new risk free rates)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other credit derivatives	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Foreign Exchange Derivatives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 4. If a product is available for clearing but not subject to an obligation are there instances where you would still choose to trade bilaterally?

- Yes
- No
- Don't know / no opinion / not applicable

Question 4.1 Please specify in which cases providing, where possible, quantitative evidence and examples, and explain the rationale to do so:

There are several aspects that have to be considered, that may point towards bilateral trading instead of clearing. These aspects comprise operational readiness (e.g. trading system readiness, interfaces to trading venues, account set-up, capabilities and connectiveness for the new product

at the clearing broker/member), economical viable conditions (e.g. costs, pricing, liquidity), legal readiness (e.g. contracts) and for institutional client accounts respective client acknowledgement. All of these aspects may not be given in all cases, hence resulting in bilateral trading.

Question 5. In light of the EMIR framework for the clearing obligation, is the definition of OTC derivatives in EMIR clear enough?

- Yes
- No
- Don't know / no opinion / not applicable

Question 5.1 Do you see any situation where it could have undue consequences, for example with regards to the determination of the thresholds for the clearing obligation?

- Yes
- No
- Don't know / no opinion / not applicable

Question 5.2 Please specify the possible situations it could have undue consequences providing, where possible, quantitative evidence and examples:

We would support excluding physically settled FX Forwards and Swaps (the “**FX Derivatives Contracts**”) from the clearing thresholds calculation, based on the same rationale under which they are excluded from variation margin requirements today. These are typically short-term transactions, they are not systemically important and are often used for hedging purposes.

Here we can look at the example of UCITS funds who together represent 52% of the population of entities subject to the clearing obligation (as compared to 5% for the NFCs). We find that FX Derivatives Contracts (FX Forwards, FX Swaps) are used for hedging operations to protect against currency risk, especially in conjunction with currency risk hedged share classes.

Furthermore, the crossing of the FX threshold is problematic in other ways: it forces the clearing of small positions in other asset classes which in themselves are far below their relevant asset class threshold.

We would recommend the exclusion of FX Derivatives Contracts from the threshold calculation to reflect the above.

II. Measures towards market participants

c) Set exposure reduction targets

One option suggested by some stakeholders for reducing excessive reliance on Tier 2 CCPs could be to set targets for reducing the level of exposures.

For this section's questions, the sum of initial margins and default fund contributions could be considered as a metric for the level of exposures (please specify under each question if you use other metrics, which ones and why).

Question 1. If targets were to be set in some form or another, what do you think could be a reasonable target to achieve in terms of reduction of overall euro-denominated exposures of EU participants to Tier 2 third-country CCPs?

We appreciate the logic whereby mandated EU clearing would present the quickest path to expanding liquidity on EU CCPs. And yet we feel that mandating market participants to clear on EU CCPs is a blunt tool, and where the sum of the undesired effects outweigh the benefits of a regulation-led approach to reducing exposure to UK tier-2 CCPs.

Problems with mandation-led measures:

- They deprive market participants of the choice of clearing venue, which today is a global choice, contingent on clearing costs, choice of currencies and products, and available liquidity.
- For asset managers, this has a direct impact in constraining our ability to perform our fiduciary duty toward our clients by clearing at the lowest-cost CCP offering the best product/currency offering in line with their portfolio composition.
- From a supervisory and systemic risk perspective, there would appear to be new risks emerging from splitting the Euro-denominated IRS liquidity pool in two, with the largest share outside the EU, and as a result of non-equivalence no further supervisory role for the ECB and ESMA .

Question 2. What do you think could be a reasonable target for you to achieve in terms of reduction of euro-denominated exposure to Tier 2 third- country CCPs and over what timeframe?

If you are a clearing member, please consider both house and client-related exposures. Please explain.

We strictly oppose to any targets for EU firms to clear at EU CCPs. Given the current structure, this would create monopoly positions per product type benefitting existing CCPs and contradicting competition in terms of service quality and costs.

d) Level playing field

EMIR applies to entities established and authorised in the EU. As a consequence any requirement to clear partially or totally in EU CCPs could create an un-level playing field where non-EU market participants would continue to have access to third-country CCPs for all of their transactions, e.g. for the clearing of euro-denominated OTC derivatives while EU market participants would be restricted to using EU CCPs. Some stakeholders argue that this could lead to two pools of liquidity serving different interests, one being very local inside the Union and a more international and potentially more liquid one abroad. Furthermore, they argue that those EU market participants that would not be subject to specific requirements to clear inside the Union could choose to continue clearing outside.

Question 1. How in your view could this issue be avoided?

Please explain your answer providing, where possible, quantitative evidence and examples including on potential costs and benefits:

From a supervisory and systemic risk perspective, there would be new risks emerging from splitting the Euro-denominated IRS liquidity pool in two, with the largest share remaining outside the EU (25% cleared by EU firms, vs 75% cleared by non EU firms), and as a result of non-equivalence no further

supervisory role for the ECB and ESMA. Clearing mandate would also result in important spreads between EU CCPs and the tier-2 UK CCPs. This will do nothing to attract more non-EU clearing, and at the same time put EU firms at a disadvantage.

f) **Obligation to clear in EU**

EMIR 2.2 introduces a new category of third-country CCPs, 'Tier 2 CCPs'. Those CCPs are deemed systemically important to the financial stability of the Union or of its Member States. One could argue that adding more risk to those CCPs is by definition something that should be avoided. Currently Article 5 of EMIR states that the clearing obligation should be fulfilled through authorised EU CCPs or recognised third-country CCPs. Some stakeholders have suggested that a requirement should be imposed on EU participants to fulfil the clearing obligation only at EU CCPs and/or Tier 1 third-country CCPs. While such a requirement could be effective in promoting clearing at EU CCPs, it may also restrict market choice.

Question 1. In your view should Article 5 be amended?

- Yes, so that for new contracts the clearing obligation can only be fulfilled through authorised EU CCPs and/or recognised 'Tier 1 CCPs'
- No
- Don't know / no opinion / not applicable

Question 1.1 Please explain your answer to question 1 providing, where possible, quantitative evidence or examples, including on potential costs and benefits:

We can understand the appeal of a regulatory-led approach to accelerating the growth of liquidity on EU CCPs. Although when we examine the outcome of such an obligation from the viewpoint of different stakeholders, the costs outweigh the benefits.

Buy-side firms: starting with asset managers, restricting CCP choice will mean restricting the ability of firms to choose where to clear on the basis of pricing, and potential netting benefits. There is an added complexity in that some part of market positions would still remain at Tier 2 third-country CCPs, creating issues in terms of Basis evolution.

Non-EU firms: non-EU firms would retain the ability to choose where to clear depending on the needs of their clients, and composition of portfolio, leaving EU firms at a competitive disadvantage.

ECB/ESMA: diminished powers in terms of direct supervision and regulation of tier-2 CCPs in a market (Euro-denominated interest rate derivatives) where the majority of clearing, i.e. approximately 75% would still occur on third-country CCPs. For instance, we think about the ability of the ECB to request a Tier-2 CCP to open an overnight deposit account in exceptional situations. And the enhanced supervisory powers around the recovery and resolution of tier-2 CCPs as suggested by the ESMA report in December 2021.

International role of the Euro: related to the point above, with this effective cut-off from the largest pool of euro-denominated liquidity, we would predict that conducting monetary policy and managing disruptions in clearing services in a crisis would be more challenging without direct effective controls on tier-2 CCPs that continue to clear euro-denominated products?

g) Active account

In order to foster an increased usage of EU CCPs, market participants have showed an interest in the idea of maintaining an active account with an EU CCP for the products that are available inside and outside the EU.

Question 1. How would you define an active account?

Please explain your answer providing, where possible, quantitative evidence or examples, including on potential costs and benefits:

There are onboarding requirements and ongoing costs to maintaining active accounts at an EU CCP. We would tend to view the role of active accounts with the sole purpose of the emergency transfer of positions from non-EU CCPs to EU ones in the case of a systemic risk event.

We also recommend that a specific and detailed analysis is conducted to review the way such accounts could function and what would be the interactions between the various parties. Opening of accounts by end-user is not envisageable as it would mean thousands of new accounts, that would be very burdensome and costly. In case an omnibus account structure is used by the clearing member, it should be replicated for the active account set up with clear rules on allocation of exposures and notional amounts to each client of the clearing member.

Please specify to what other way(s) you refer in your answer to question 1:

5000 character(s) maximum

Question 1.1 Please explain your answer and provide, where possible, examples to illustrate your views:

5000 character(s) maximum

VII. Other issues

The Commission's services are interested in possible other matters that could potentially contribute to enhancing the attractiveness and efficiency of EU CCPs and clearing services that you may have encountered in the context of EMIR that might be important for the review.

a) Blockchain and Distributed Ledger Technology (DLT)

Question 1. Could blockchain and DLT be used in the field of clearing to improve the attractiveness and efficiency of EU CCPs and clearing markets?

- Yes
- No
- Don't know / no opinion / not applicable

b) Other issues

Please provide any further suggestions to improve the attractiveness and competitiveness of EU CCPs and clearing markets, as well as the robustness of EU supervisory arrangements in order of impact and priority. Please provide supporting evidence:

In order to improve the attractiveness and competitiveness of EU CCPs and clearing markets, allowing the payment of variable margins in securities would be a huge improvement to make EU CCPs more competitive vis-à-vis non-EU ones.

Another improvement would regard initial margins, with the extension of eligible collateral of cleared derivatives to the one eligible for OTC derivatives.



ABOUT EFAMA

EFAMA, the voice of the European investment management industry, represents 28 member associations, 58 corporate members and 24 associate members. At end Q1 2021, total net assets of European investment funds reached EUR 19.6 trillion. These assets were managed by more than 34,600 UCITS (Undertakings for Collective Investments in Transferable Securities) and almost 29,600 AIFs (Alternative Investment Funds). At the end of 2020, assets managed by European asset managers as investment funds and discretionary mandates amounted to an estimated EUR 27 trillion.

More information is available at www.efama.org

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