EFAMA
European Fund and Asset Management Association

CONSULTATION REPLY

Brussels, 27 January 2025

ESMA CONSULTATION PAPER ON CONDITIONS OF THE ACTIVE ACCOUNT REQUIREMENTS

Q1 Are there any aspects of the AAR scope on which ESMA has based its quantitative analysis and its policy choices that ESMA should consider detailing further?

Thresholds for the CO and the AAR

EFAMA welcomes ESMA's confirmation that the AAR's 'second condition' threshold is aligned with the current clearing obligation threshold for OTC interest rate derivatives (EUR 3 billion in gross notional value). We also support ESMA's clarification that the ongoing review of the new clearing obligation calculation methodology will not lead to substantial changes, preserving the prudent coverage of the clearing obligation (as per recital 9 EMIR 3.0). Small financial counterparties, such as many UCITS and AIFs, have very limited activity in derivatives and do not pose a systemic threat to financial stability. Such counterparties should thus not be burdened with an updated clearing obligation that automatically triggers the maintenance of clearing accounts and reporting obligations.

Equally, counterparties that choose not to perform calculations under Art. 4a, but voluntarily clear all of their positions on an EU CCP, should be exempt from the active account requirements, i.e. operational and reporting. A column could be added in our proposal for an extended notification template (see Annex II), where the clearing counterpart self-certifies that they do not perform calculations and voluntarily clear all their in-scope derivative contracts on EMIR Article 14 authorised CCP.

85% exemption

The exemption foreseen for firms clearing 85% or more of their derivatives activity on an EU CCP is an important incentive to bring more clearing onto EU CCPs. However, as currently drafted, Section 3.4 foresees that *'85% of counterparties derivative contracts'* be measured in gross notional value of the aggregate month-end average position for the previous 12 months. We believe applying a 12-month lookback period for counterparties to benefit from this exemption is unhelpful and does not incentivise firms to move their clearing to an EU CCP. With a 12-month lookback requirement, when the AAR comes into force, if firms had only recently started to shift their positions to exclusively clear on an EU CCP, they would fail to qualify for the exemption. This would mean that the entire set-up for monitoring trades across 2 CCPs, stress-testing and reporting would nevertheless have to be put in place, therefore making it more likely that a clearing entity would support a dual-CCP clearing strategy in the future, foregoing the available exemption.

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Most importantly, Level 1 of the EMIR 3.0 text for ESMA does not suggest a lookback period. It seeks to provide an exemption to counterparties that are *'already clearing'* a significant amount on an EU CCP. In this sense, according to Recital 13, the rationale of this exemption is to allow market participants to gradually adopt this 'novel' requirement. Such a migration, we know, will require a complex reallocation of clearing activity. Few counterparties that today clear most of their trades at a Tier 2 CCP will be able to move significant enough volumes of clearing into the EU in such a short time frame for them to benefit from this exemption. This becomes especially challenging for buy-side firms, given that they are mainly small counterparties with limited clearing activity whose onboarding may not be the priority of clearing brokers if bottlenecks occur following significant migration activity into EU CCPs.

We respectfully suggest the modification below so that the 85% exemption will be functional and a viable option.

We are aware that alternative proposals may exist on how to operationalise the 85% exemption; however, we insist on a 12-month transition period. This is simply a function of anticipating the lead times required to close out positions and re-open them on an EU-CCP while acting in the best interest of the client (i.e. minimising profit-and-loss impact and tax implications).

- FC+/NFC+ subject to AAR and wishing to benefit from the exemption could (i) notify the NCAs/ESMA of their intention to use it (as of June 25, 2025) and (ii) would have to demonstrate over the following 12 months (transitional period) that the switch is underway. Ultimately, a snapshot of their positions as of the end of June 2026 will demonstrate that 85% of their clearing activity is performed at EU CCP(s).

  The notification of their intention to benefit from the exemption could be accompanied by a commitment/written statement from the counterparties that they will reach the 85% threshold by the end of June 2026.

Moreover, it would be beneficial if ESMA clarified that the 85% exemption also applies to the representativeness obligation. A counterparty already clearing such a high proportion of its relevant derivative transactions will most likely automatically meet the representativeness obligation, making monitoring its clearing activity and performing the reporting obligations redundant and overly burdensome.

Scope of representativeness

Clarifications of the EUR 6bn thresholds triggering representativeness obligations are welcome, but further details would be appreciated: the RTS should clarify which 12-month period must be used for the first application of EUR 6bn and EUR 100 bn thresholds (we believe this should be aligned with the period used for the clearing thresholds calculations).

Notification timeline for opening active account

We recognise that ESMA has already published an Active Account Requirement Notification Template. Although the notification template was only made available late December, asset managers are endeavouring to submit notifications in the quickest timeframe possible.

We would invite ESMA to consider this first notification as a one-off exercise to be then streamlined into a 6-monthly notification template with an expanded scope. This approach underpins our proposal for a revised reporting methodology that retains all the necessary reporting fields that AAR gives rise to while minimising duplication in reporting and streamlining the timing. Given the differences in the notification templates (the one issued on 24 December 2024 versus our proposal for a modified template outlined in Annex II of this document), there may well be some differences in the results reported in January 2025 and

what is reported in the June 2025 notification. We are thinking here specifically of the impact of the modified 85% exemption provisions (see our section on the 85% exemption above).

We therefore propose that the notification deadline be set for 24 June 2025 on a going-forward basis. This timing aligns with:

1. The submission of results from the clearing obligation calculations under the current EMIR Refit cycle.

2. The date on which the Active Account Requirement enters into force and the first batch of active accounts is expected to be opened.

This alignment would streamline compliance efforts and reduce unnecessary operational burdens for counterparties.

Counterparty belonging to a group subject to consolidated supervision in the Union

We request confirmation that counterparties within a group subject to consolidated supervision, with zero trades in paragraph 6 derivatives, will not be required to open an active account, even though the group-level calculation may exceed the threshold. This was confirmed previously by the European Commission and should be clarified in the RTS as well. Otherwise, these EU entities would be greatly penalised and would have to invest heavily in IT build and the related operational change processes, while these entities do not trade in-scope products but are captured by the group.

While the clarification in paragraph 40 of the ESMA CP—the obligation to hold an active account with trades representative of the group activity could be fulfilled by one entity of the group, similarly to the clearing obligation—is helpful for many counterparties, it is important to note that this 'centralised treasury' model is not practical for smaller counterparties. Therefore, it must be clarified that counterparties with zero trades in paragraph 6 derivatives are not required to open an active account under any circumstances.

Moreover, we consider that the AAR does not impact third-country entities (TCEs), as these are not directly subject to the clearing obligation under EMIR. Recital 12 of EMIR 3.0 states that *'Third-country entities that are not subject to the clearing obligation under Union law are not subject to the obligation to maintain an active account'.* It should be clarified that TCEs are not individually subject to AAR when trading in-scope products with EU counterparties.

Treatment of STIRS

Our understanding from paragraph 32 of the ESMA CP is that, as STIRs cleared on a regulated market are excluded from the CO calculation, a counterparty with > EUR 3 billion in gross notional value in STIRs on a regulated market but below the clearing thresholds in any relevant asset class (i.e. EUR IRS + PLN IRS < EUR 3 billion), will fall out of scope of the AAR.

We request confirmation of this point and suggest amending the text of paragraph 32 to 'will fall out of the obligation to hold an AA in the EU' for added clarity.

Q2 Do you agree with the above approach for condition (a)? Are there other requirements that ESMA should consider for meeting condition (a)?

Article 1(c) of the draft RTS, which requires 'cash and collateral accounts with sufficient financial resources to meet the obligations arising from the direct or indirect participation in an authorised CCP', should be removed from the final version.

From a management company perspective, sufficient clearing limits for each fund are already a condition precedent to accessing clearing services under a clearing agreement with a Clearing Member (CM). This process inherently involves establishing credit lines between the clearing client and the broker, whether at an EU CCP or a TC CCP. These arrangements are a fundamental part of central clearing and are already governed by the existing regulatory framework, which ensures prudent risk management by CCPs and their clearing members.

As such, Article 1(c) is redundant and risks introducing additional obligations on counterparties that go beyond the intent of the Level 1 text.

Please see Annex I, which contains the recommended amendments to the draft RTS.

Q3 Do you agree with the above approach for conditions (b) and (c)?

CCP Certification

We agree that CCP certification is the appropriate approach, provided the responsibility for producing such a written statement remains between the CCP and the clearing broker.

However, we believe certain safeguards should be put in place to ensure that CCPs provide these certificates transparently, efficiently and fairly. These safeguards are crucial for clearing clients, who often have limited visibility on the process and deserve fair and equitable treatment.

Please see Annex I, which contains the recommended amendments to the draft RTS.

Q4 Do you agree with the proposed approach for the annual stress-testing conditions (a), (b) and (c)?

We believe that stress testing, including the simulation of the 85% increase in total outstanding activity for the active account, should be conducted **between the Clearing Member (CM) and the CCP**. This approach ensures that the responsibility remains with entities directly involved in managing clearing risk, without placing unnecessary operational burdens on counterparties.

Please see Annex I, which contains the recommended amendments to the draft RTS.

Q9 Do you agree with the proposed maturity and trade size ranges for each class of derivatives in EUR OTC IRD?

Given that the classes align with the clearing obligation (fixed-to-float / OIS / FRA), it would make sense for the maturity buckets to align, so OIS should go up to 3 years, not 5 years.

Q11 Do you agree with the proposed maturity and trade size ranges for each class of derivatives in EUR STIR?

We support reducing this to 2 maturity buckets (below and above 1 year).

Q15 Do you agree with the proposed reference periods for EUR STIR referenced in Euribor? Do you agree with the proposed reference periods for EUR STIR referenced in €STR?

We believe keeping the reference periods the same for EURIBOR and ESTR is preferred from a complexity standpoint.

Q16 Do you agree with the proposed approach for the reporting of the activity and risk exposures of the counterparty subject to the active account requirement?

For questions 16 to 21, we propose to extend the AAR notification template currently available on ESMA's website in order to streamline and simplify the overall operational burden placed on counterparties. Please see Annex II for our proposal on extending the existing template.

We note again that clearing entities will be notifying if they are in scope of the AAR using the template currently available on ESMA's website. However, we propose that on a going-forward basis, this template be modified to reflect our suggested amendments in order to streamline reporting requirements (see Annex II of this document). Counterparties could thus use the modified template to notify ESMA if they fall in scope of the AAR again in June 2025 and then use it as a tool to fulfil the reporting requirements related to the AAR on a going-forward basis.

From our perspective, it is critical to keep the reporting only to the necessary fields that are currently not reported on. As asset managers, we do not always have a full view of a client's activities if that is a multiple-manager account. In such cases, the client will have to build a view of their overall exposure for the purposes of AAR compliance by receiving data from multiple asset managers. This is further complicated by the fact that sometimes a single fund will use multiple clearing members and CCPs. For this reason, we suggest that the reporting requirements be streamlined and minimised strictly to the necessary fields.

Therefore, we would like to propose an alternative, more streamlined approach to reporting the activity and risk exposures of counterparties subject to the active account requirement.

The additional reporting requirements, as they stand, will significantly increase the operational burden for EU market participants. We strongly recommend leveraging existing reporting obligations under EMIR Refit rather than introducing new, redundant reporting requirements.

Firstly, the proposed reporting is overly complex and unnecessary, particularly in light of Article 9 EMIR reporting. Most of the reporting fields outlined in Table 1 of Annex II of the consultation paper are redundant, as counterparties already report this information to their Trade Repository under Article 9 EMIR. ESMA and NCAs already have access to this data on an aggregate basis, making the obligation to resubmit it duplicative. In fact, this is recognized in the Consultation Paper itself in para. 164 of the CP, where the ability to cross-reference with the tables under Delegated Regulation 2022/1855 is highlighted.

Such a requirement undermines the objectives of EMIR Refit, which aim to simplify and streamline counterparties' reporting obligations. The reporting requirements, as embodied in the 3 tables referred to in Article 7 of the ESMA RTS, run counter to the EC's objective to reduce the administrative burden for companies by minimising duplicative data requests and fostering data re-use.

It would be particularly contradictory if counterparties were required to manually extract, reformat and resubmit the same reporting information they already submit in an automated manner to their TRs. Given the lack of standardisation when compared to current Art. 9 reporting, this additional reporting would be of limited value given that it wouldn't generate automated and comparable reports from different jurisdictions. As a reminder, the use of automated and simplified processes is also a stated goal of the EC regarding reporting requirements[1]. In Annex III of our response we provide a table which cross-references Article 9 reporting and what is required under the proposed ESMA RTS.

[1] Factsheet_CWP_Burdens_10.pdf

Moreover, we believe that NCAs and ESMA would have access to the information required in Table 1 of Annex II of the consultation paper if they retrieved data connected to the counterparty's LEI.

Furthermore, we strongly discourage ESMA from requiring counterparties under the AAR to report their activities and risk exposures using both gross and net notional amounts as per the proposed table 2 titled 'risk exposure metrics'. Under Article 9 EMIR, counterparties already report all trades on a gross notional basis, meaning this data is readily available in their trading systems and can be repurposed for the purposes of Article 7b EMIR.

Therefore, we urge ESMA to remove the data fields requiring notional values from Table 2, specifically:

- **Field 3: Buyer-side notional**
- **Field 4: Seller-side notional**

These fields impose additional complexity on market participants without providing any meaningful supervisory value. Moreover, we note that none of this information is explicitly required in the Level 1 text nor is it directly linked to compliance with the active account requirement, making its purpose difficult to understand.

Q17 Do you consider that including information on margin activity in the AAR reporting requirement would provide valuable information on the activities and risk exposures of the counterparty?

Reporting aggregate values of Initial Margin (IM) and Variation Margin (VM) appears excessive and provides little additional supervisory value. This would introduce a completely new reporting requirement for management companies, that today do not hold this information in their trading systems. Clearing clients are required to post IM and VM amounts to the CCP via their clearing broker for the underlying funds. However, these amounts are netted and will include margin for other derivative positions, in addition to the designated categories of derivatives. As a result, they would have no means of repurposing or easily extracting this data from existing reporting processes. This creates an unnecessary operational burden without clear justification or added value.

Q18 Do you consider that including reporting on Unique Trade Identifiers (UTIs) would provide valuable information from a supervisory perspective?

We consider that it is not useful to add UTIs to this reporting. This information is already provided to TRs and would be redundant with Article 9 reports. Also, we do not see the value of listing each trade for the supervisory of active accounts.

Q19 Do you agree with the proposed approach for the reporting of the operational conditions?

Firstly, regarding Article 8(1)(b), we find it unnecessary to require counterparties to report material changes to internal policies, systems, governance, and their ability to handle large transaction flows under different scenarios. The active account is, by definition, a standard clearing account, and reporting should be limited to confirming that proper clearing arrangements have been established through a clearing member at an authorised EU CCP, as these should be assumed to be able to provide adequate clearing services and be operationally fit for purpose. The breadth of interpretation for 'material changes' is very wide, leading to an onerous internal compliance exercise for no added value.

Secondly, regarding Article 8(1)(c)(i), the requirement to provide 'account statements for cash and collateral, including the account number and the aggregate amount of financial resources provisioned' is redundant. From a management company perspective, where a clearing agreement is already in place with a Clearing Member (CM), sufficient clearing limits for each fund are a condition precedent to accessing clearing services and demonstrate compliance with EMIR pre-trade clearing certainty requirements. Establishing a clearing account inherently involves setting credit lines between the clearing client and the broker, whether at an EU CCP or a TC CCP. This is a core feature of central clearing and part of the prudent risk management required of CCPs and their clearing members under the existing regulatory framework.

As such, requiring account statements is unnecessary and risks introducing additional obligations on counterparties beyond what is provided in the Level 1 text.

Furthermore, the requirement outlined in Article 8(1)(c)(ii) to report a 'dedicated' staff member names and contact details responsible for ensuring proper functioning is unnecessary and impractical. This responsibility lies with the company, not individual persons. Counterparties should instead certify that they have dedicated staff for this role, as described in the procedures they are required to establish. Requiring names would lead to frequent updates whenever staff change roles or leave the company, which is neither proportionate nor practical.

For these reasons, we believe Article 8(1)(b) and (c) should be removed from the draft RTS. These provisions are overly broad and ambiguous, and the remaining reporting obligations outlined in Article 8 would sufficiently fulfil the requirements mandated in the Level 1 text.

Please see Annex I, which contains the recommended amendments to the draft RTS.

Q20 Do you agree with the proposed approach for the reporting of the representativeness obligation?

We strongly question the approach to reporting the representativeness obligation outlined in Article 9 of the draft RTS. Specifically, we do not understand the requirement to report 'gross and net notional amounts cleared' for each subcategory and class of derivatives contracts at a TC CCP (Article 9(1)(b)) and an EU CCP (Article 9(1)(b)).

This information appears to overlap with reporting activities and risk exposures under Article 7b of EMIR, as addressed in Article 7 of the draft RTS. Repeating these requirements adds unnecessary complexity.

We propose a far simpler and more effective approach:

1. Supervisors should focus on gaining clear visibility of the volumes cleared by a counterparty at EU CCPs versus TC CCPs, focusing on gross notional amounts (see our response to Question 17).

2. Counterparties should only be required to report the number of trades in the relevant subcategories cleared at an EU CCP when subject to the representativeness obligation.

This streamlined approach would ensure compliance while avoiding unnecessary duplication and complexity.

Please see Annex I, which contains the recommended amendments to the draft RTS.

ABOUT EFAMA

EFAMA is the voice of the European investment management industry, which manages EUR 28.5 trillion of assets on behalf of its clients in Europe and around the world. We advocate for a regulatory environment that supports our industry's crucial role in steering capital towards investments for a sustainable future and providing long-term value for investors. Besides fostering a Capital Markets Union, consumer empowerment and sustainable finance in Europe, we also support open and well-functioning global capital markets and engage with international standard setters and relevant third-country authorities. EFAMA is a primary source of industry statistical data and issues regular publications, including Market Insights and the EFAMA Fact Book. More information is available at www.efama.org

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Annex I: EFAMA's Proposed Changes to the Draft RTS

COMMISSION DELEGATED REGULATION (EU) YYYY/XXXX of DD MM YYYY

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards specifying the operational conditions, the representativeness obligation and the reporting requirements of the active account requirement

(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[24] and in particular the fifth subparagraph of Article 7a(8) thereof,

Whereas:

(1) Regulation XX amending Regulation (EU) 648/2012 (2) seeks to address the financial stability risks associated with excessive exposures of Union clearing members and clients to Tier 2 CCPs that provide clearing services that have been identified by ESMA as clearing services of substantial systemic importance pursuant to Regulation (EU) 648/2012 by requiring certain financial counterparties and non-financial counterparties to hold active accounts and clear a representative number of transactions at CCPs established in the Union.

(2) In order to ensure that the active account contributes to the overarching objective of reducing excessive exposures to clearing services of substantial systemic importance, this Regulation specifies the operational conditions of the account, the details of the representativeness obligation and the reporting requirements for counterparties subject to the active account requirement.

(3) In order to ensure that the first operational condition is met and that the active account is permanently functional, counterparties should be required to demonstrate that they have established the legal and technical arrangements supporting the provision of clearing services in the relevant derivative contracts with an EU CCP, either directly or via a clearing member. These counterparties should report to their competent authorities the documentation required by EU CCPs, directly or indirectly via their clearing members, as part of their normal due diligence checks and their onboarding procedures when opening new clearing accounts, in order to avoid generating unnecessary costs and burden for the counterparties.

(4) In order to demonstrate that the second and third operational conditions are met and that the counterparties have available systems and resources so that they are operationally able to use the account for large volumes and flows of transactions from positions held at a clearing service of substantial systemic importance and that the account can clear all their new trades, counterparties should be able to demonstrate to the NCA that it they have the necessary internal systems and dedicated resources to monitor their exposures and the internal arrangements to allow them to use the account in case of a large increase in clearing volume~~, including by assessing any potential legal and operational barriers to this effect.~~ As the accounts are held directly or indirectly at the level of the CCP, the counterparties should request a written statement from the CCP that the account can withstand a threefold increase

in clearing activity, in order to ascertain that the account has the operational capacity to sustain a rapid and important increase of volumes and flows in the relevant derivative contracts from positions held in a clearing service of substantial systemic importance. The CCP must ensure to provide this statement transparently, efficiently and without additional costs to the counterparty.

(5) In order to demonstrate that the operational conditions have been stress-tested, counterparties should be required to run technical and functional tests on their IT connectivity with the authorised CCP, or with their clearing members and client providing client clearing services. Counterparties should also request a written statement from the CCP, directly or via a clearing member or client proving clearing services, that the account can withstand a substantial increase of 85% of the total outstanding clearing activity in the relevant derivative contracts within a short timeframe. In order to ensure a harmonised approach across EU CCPs, the total outstanding clearing activity in the relevant derivative contracts should be published on an annual basis by ESMA on its website in accordance with Article 6(2) of Regulation (EU) 648/2012. Stress testing must be conducted between the CCP and the clearing member without placing additional operational burdens on the counterparties.

Counterparties with a notional clearing volume outstanding of more than EUR 100 billion should be tested more frequently than less active counterparties, in order to ensure proportionality when stress-testing the operational conditions.

(6) In the case of client clearing, as the end-client of the clearing account may not be known to the CCP, the written statements should confirm that the client account can withstand the increase in clearing activity and have been stress-tested, regardless of the type of account. The transmission of the written statements to the end-client should be facilitated by the clearing members or the client providing clearing services to the client.

(7) In order to ensure that the active account requirement appropriately contributes to the overarching objective of reducing the excessive exposures to substantially systemic clearing services provided by third-country CCPs and that it is not dormant, certain counterparties should clear a minimum number of trades at an authorised CCP, which are representative of the derivative contracts cleared at the clearing services of substantial systemic importance.

(8) In order to determine the representativeness of those trades, up to three classes of derivative contracts have been selected for each clearing service deemed of substantial systemic importance. The determination of classes of derivatives per clearing service deemed of substantial systemic importance ensures that the accounts opened in the Union are representative, reflect the diversity of portfolios of the counterparties subject to the active account requirement clearing at substantially systemic CCPs and capture a maximum of classes of interest rate derivatives already subject to the clearing obligation. It avoids aggregating classes of derivatives into categories of derivatives which would risk commingling certain derivatives which do not share common and essential characteristics, while at the same time allowing that the related representativeness criteria be better tailored to each specific market, taking into consideration their size, liquidity and growth, as well as the level of activity of each clearing service deemed of substantial systemic importance in comparison to EU CCPs activity. Finally, this determination ensures a more flexible and future-proof approach, able to adapt to market developments and to the degree of systemic importance of third-country CCPs and whether the related financial stability risks for the Union or for one or more of its Member States are sufficiently mitigated.

(9) The ranges of maturities and trade sizes of the most relevant subcategories per classes of derivatives, as well as the number of most relevant subcategories and the durations of the reference period per clearing service deemed of substantial systemic importance, have also

been specified taking into account the specific characteristics of each class of derivatives. Counterparties should determine the most relevant subcategories depending on their clearing activity in each class of derivatives subject to the active account, in order to avoid forcing counterparties to clear certain derivative products in the Union, that they do not clear at a clearing service of substantial systemic importance.

(10) In order to ensure that competent authorities have the necessary information to assess compliance with the active account requirement, counterparties should calculate their activities and risk exposures in the relevant categories of derivatives and use the information reported under the reporting obligation. This report should also contain information allowing the competent authority to assess how the counterparties meet the operational conditions and the representativeness obligation of the active account requirement.

(11) Counterparties should report the required information to the competent authority every six months from the entry into force of the Regulation to ensure that the reporting periods do not overlap and can be consolidated to monitor the implementation and the effectiveness of the active requirement at Union level. By derogation, the first report shall cover the period as from which the counterparties become subject to the reporting requirements on the active account up to the next reporting date.

(12) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(13) ESMA has cooperated with the European Banking Authority (EBA), the European Insurance and Occupational Pension Authority (EIOPA) and the European Systemic Risk Board (ESRB) and consulted the members of the European System of Central Banks (ESCB) before submitting the draft technical standards on which this Regulation is based. In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) (3), ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:

CHAPTER I OPERATIONAL CONDITIONS

Article 1

Conditions on the IT connectivity, the internal processes and the legal documentation related to the active account

In order for the counterparties subject to the obligation set out in Article 7a(1) of Regulation (EU) No 648/2012 to meet the condition referred to in Article 7a(3), point (a), of Regulation (EU) No 648/2012, the counterparties shall establish:

a) a contractual arrangement with an authorised CCP, a clearing member or a client providing client clearing services in the categories of derivative contracts referred to in Article 7a(6) of Regulation (EU) No 648/2012 at an authorised CCP;

b) internal policies and procedures to access the clearing services of an authorised CCP, directly or indirectly via a clearing member or a client providing client clearing services;

~~c) cash and collateral accounts, with sufficient financial resources to meet the obligations arising from the direct or indirect participation in an authorised CCP; and~~

d) an IT system with connectivity to an authorised CCP, a clearing member or a client providing client clearing services.

Article 2

Conditions on the operational capacity of the counterparty to support a large increase in outstanding and new clearing activity and a large flow of transactions in a short period of time

1. In order for the counterparties subject to the obligation set out in Article 7a(1) of Regulation (EU) No 648/2012 to meet the conditions referred to in Article 7a(3), points (b) and (c) of Regulation (EU) No 648/2012, the counterparties shall:

a) set up internal systems to monitor the counterparty's exposures and the internal arrangements to support a large flow of transactions ~~from positions held in a clearing service of substantial systemic importance pursuant to Article 25(2c) under different scenarios assessing any potential legal and operational barriers to this effect;~~

b) ~~appoint at least one staff member with sufficient knowledge to support the proper functioning of the clearing arrangements at all times; and~~ ensure dedicated staff with sufficient knowledge to support the proper functioning of clearing arrangements; and

c) obtain from the authorised CCP, directly or indirectly via a clearing member or a client providing client clearing services, a signed written statement confirming that the account of the counterparty has the operational capacity to clear up to three times the notional outstanding cleared for the previous 12 months in the derivative contracts referred to in Article 7a(6) of Regulation (EU) No 648/2012.

2. The written statement referred to in paragraph 1, point (c), shall confirm that the increase of clearing activity can take place on both the house and client accounts within one month.

3. If the counterparty referred to in paragraph 1 is a client of a clearing member or a client providing clearing services connected to an authorised CCP, the counterparty shall request that the written statement referred to in paragraph 1, point (c), for the client account be transmitted by its clearing member or client providing client clearing services where relevant.

Article 3

Stress-testing of the operational conditions of the active account

1. Counterparties subject to the obligation set out in Article 7a(1) of Regulation (EU) No 648/2012 shall:

a) conduct technical and functional tests verifying the operational capacity and the functioning of the IT connectivity with the CCP, directly or indirectly, with the clearing member or client providing client clearing services in accordance with Article 1, point (d); and

(c) request from the authorised CCP, directly or indirectly via a clearing member or a client providing client clearing services, a signed written statement that the account of the counterparty has the capacity to withstand a substantial increase in outstanding and new

clearing activity of up to 85% of the total outstanding clearing activity of the counterparties in the derivative contracts referred to in Article 7a(6) of Regulation (EU) No 648/2012, published on ESMA's website in accordance with Article 6(2) of Regulation (EU) No 648/2012.

2. The increase in clearing activity referred to in paragraph 1, point (b), shall take place on both the house and client accounts within the following time horizons:

a) five business days for OTC derivatives; and

b) two business days for financial instruments other than OTC derivatives.

3. The stress-tests referred to in paragraph 1, point (b), shall take place:

a) annually, for counterparties referred to in paragraph 1, with a notional clearing volume outstanding of less than EUR 100 billion in the derivative contracts subject to the obligation referred to in Article 7a(6) of Regulation (EU) No 648/2012; and

b) every six months, for counterparties referred to in paragraph 1, with a notional clearing volume outstanding of more than EUR 100 billion in the derivative contracts subject to the obligation referred to in Article 7a(6) of Regulation (EU) No 648/2012.

4. If the counterparty referred to in paragraph 1 is a client of a clearing member or a client providing clearing services connected to an authorised CCP, the counterparty shall request that the written statement referred to in paragraph 1, point (b), on the client account be transmitted by its clearing member or client providing client clearing services where relevant.

5. The written statement referred to in paragraph 1, point (b), shall confirm that the stress-testing has been run at the same time for all accounts of counterparties referred to in paragraph 1 clearing the derivative contracts subject to the obligation referred to in Article 7a(6) of Regulation (EU) No 648/2012 at the authorised CCP.

CHAPTER II REPRESENTATIVENESS OBLIGATION

Article 4

Representativeness obligation for interest rate OTC derivatives classes in euro

1. Counterparties subject to the obligation set out in Article 7a(1) of Regulation (EU) No 648/2012, and clearing interest rate OTC derivatives in euro, shall clear at least the required minimum number of trades as set forth in the fifth subparagraph of Article 7a(4) in Regulation (EU) 648/2012 in each of the five most relevant subcategories at an authorised CCP for each class of derivatives in euro set out in Annex I of Commission Delegated Regulation (EU) 2015/2205[25].

2. For each class of derivatives referred to in paragraph 1, counterparties referred to in paragraph 1 shall identify the five most relevant subcategories in which they clear the most trades at a clearing service of substantial systemic importance pursuant to Article 25(2c) of Regulation (EU) No 648/2012. The five most relevant subcategories shall be selected, for each class of derivatives referred to in paragraph 1, among the subcategories set out respectively in Table 1, Table 2 and Table 3 of Annex I, and over the reference period referred to in paragraph 3.

3. The required minimum number of trades referred to in paragraph 1 shall be calculated based on a duration of the reference period of:

a) 1 month for counterparties with a notional clearing volume outstanding of more than EUR 100 billion in derivative contracts; and of

b) 6 months for counterparties with a notional clearing volume outstanding of less than EUR 100 billion in derivative contracts.

Article 5

Representativeness obligation for interest rate OTC derivatives classes in Polish zloty

1. Counterparties subject to the obligation set out in Article 7a(1) of Regulation (EU) No 648/2012, and clearing interest rate OTC derivatives in Polish zloty, shall clear at least the required minimum number of trades as set forth in the fifth subparagraph of Article 7a(4) in Regulation (EU) 648/2012 in the most relevant subcategory at an authorised CCP for each class of derivatives in Polish zloty set out in Annex I of Commission Delegated Regulation (EU) 2016/1178[26].

2. For each class of derivatives referred to in paragraph 1, counterparties referred to in paragraph 1 shall identify the most relevant subcategory in which they clear most trades at a clearing service of substantial systemic importance pursuant to Article 25(2c) of Regulation (EU) No 648/2012. The most relevant subcategory shall be selected for each class of derivatives referred to in paragraph 1 among the subcategories set out respectively in Table 4 and Table 5 of Annex I, and over the reference period referred to in paragraph 3.

3. The required minimum number of trades referred to in paragraph 1 shall be calculated based on a duration of the reference period of 12 months.

Article 6

Representativeness obligation for short-term interest rate derivatives classes in euro

1. Counterparties subject to the obligation set out in Article 7a(1) of Regulation (EU) No 648/2012, and clearing short-term interest rate derivatives in euro, shall clear at least the required minimum number of trades as set forth in the fifth subparagraph of Article 7a(4) in Regulation (EU) 648/2012 in each of the four most relevant subcategories at an authorised CCP for each class of derivatives in Table 6 set out in Annex I.

2. For each class of derivatives set out in Table 6 of Annex I, counterparties referred to in paragraph 1 shall identify the four most relevant subcategories in which they clear the most trades at a clearing service of substantial systemic importance pursuant to Article 25(2c) of Regulation (EU) No 648/2012. The four most relevant subcategories shall be selected, for each class of derivatives set out in Table 6 set of Annex I, among the subcategories set out in Table 7 of Annex I for derivatives refencing Euribor over the reference period referred to in paragraph 3 and among the subcategories set out in Table 8 of Annex I for derivatives refencing €STR over the reference period referred to in paragraph 4.

3. The required minimum number of trades referred to in paragraph 1 and referenced in Euribor shall be calculated based on a duration of the reference period of:

a) 1 month for counterparties with a notional clearing volume outstanding of more than EUR 100 billion in derivative contracts; and of

b) 6 months for counterparties with a notional clearing volume outstanding of less than EUR 100 billion in derivative contracts.

4. The required minimum number of trades referred to in paragraph 1 and referenced in €STR shall be calculated based on a duration of the reference period of:

a) 6 months for counterparties with a notional clearing volume outstanding of more than EUR 100 billion in derivative contracts; and of

b) 12 months for counterparties with a notional clearing volume outstanding of less than EUR 100 billion in derivative contracts.

CHAPTER III REPORTING REQUIREMENTS

Article 7

Reporting on aggregate thresholds for assessing compliance with the active account

1. Counterparties subject to the reporting obligation under Article 7(b) of Regulation (EU) 648/2012, shall ~~report every six months to competent authorities~~ every six months complete and submit to the competent authority [*EFAMA's Proposed Extension to the Active Account Notification Template].*

~~complete and accurate details on the derivatives contracts set outlined in Table 1 and Table 2 of Annex II. Counterparties shall report the details set out in Table 2 on an aggregated basis using the dimensions of the derivatives in Table 3 set out in Annex II.~~

2. For the purpose of this Article, the information reported under the previous paragraph ~~paragraph under Table 2 set out in Annex II~~ shall be reported at the level of the counterparty. ~~Where the counterparty belongs to a group subject to consolidated supervision in the Union in accordance with Article 7a(2) of Regulation (EU) 648/2012, the information outlined in Table 2 should also be reported at the levels of any subsidiaries, within and outside the EU.~~

Article 8

Reporting on the operational conditions of the active account

1. Counterparties subject to the obligation set out in Article 7a(1) of Regulation (EU) No648/2012 shall ~~report~~ every six months complete [*EFAMA's Proposed Extension to the Active Account Notification Template]* and submit it to the competent authority, attesting that:

~~a) a written statement by the counterparty confirming that:~~

i. a contractual arrangement has been signed with an authorised CCP or a clearing member or a client supporting the provision of clearing services for the categories of derivative contracts referred to in Article 7a(6) of Regulation (EU) No 648/2012, ~~and, where relevant, a description of any changes to the contractual arrangement since the last report; and~~
ii. the IT connectivity with an authorised CCP or a clearing member or client supporting the provision of clearing services is live and operational, and has been tested by

technical and functional tests verifying the operational capacity and functioning of the IT connectivity with the CCP, directly or indirectly, with the clearing member or client providing client clearing services in accordance with Article 3;

iii. Confirmation that the counterparty has dedicated staff to ensure the proper functioning of clearing arrangements.

~~b) a summary by the counterparty of any material changes since the last report to:~~

~~i. the internal policies and procedures for clearing the derivative contracts referred to in Article 7a(6) of Regulation (EU) No 648/2012; and~~

~~ii. the internal systems to monitor the counterparty's exposures and governance arrangements of the counterparty to support a large flow of transactions from positions held in a clearing service of substantial systemic importance pursuant to Article 25(2c) under different scenarios assessing any potential legal and operational barriers to this effect;~~

~~c) information on:~~

~~i. the account statements for cash and collateral, including the number of the account and the aggregate amount of financial resources provisioned; and~~

~~ii. the staff member at the counterparty, including the name and contact details, in charge of ensuring the proper functioning of the clearing arrangements at all times;~~

d) a copy of the written statements, signed by the authorised CCP, confirming that the account has:

i. the operational capacity to support a large increase in outstanding and new clearing activity in a short period of time in accordance with Article 2; and

ii. has been stress-tested in accordance with Article 3.

2. If the counterparty referred to in paragraph 1 is a client of a clearing member or a client providing clearing services connected to an authorised CCP, the counterparty shall request that the written statements referred to in point (d) paragraph 1 on the client account be transmitted by its clearing member.

Article 9

Reporting on the representativeness obligation

1. Counterparties subject to the obligation set out in Article 7a(1) of Regulation (EU) No 648/2012 shall report every six months to the competent authority information on:

a) the most relevant subcategories identified by the counterparty for each class of derivative contracts cleared at a clearing service of substantial systemic importance pursuant to Article 25(2c) of Regulation (EU) No 648/2012, and for each reference period, as defined in Articles 4 to 6 of this Regulation;

b) ~~the gross and net notional amounts cleared, and~~ the number of trades cleared, in each of the subcategories in accordance with Articles 4 to 6, per class of derivative contracts and per reference period at a recognised third-country CCP;

c) ~~the gross and net notional amounts cleared, and~~ the number of trades cleared, based on the average for the 12 previous months, in each subcategory in accordance with

Articles 4 to 6 per class of derivative contracts and per reference period at an authorised CCP;

d) the duration of the reference period in accordance with Articles 4 to 6 used for calculating the minimum required number of trades to meet the condition referred to in Article 7a(3), point (d), of Regulation (EU) No 648/2012; and

~~e) a list of Unique Trade Identifiers (UTIs) corresponding to the derivatives in scope of the representativeness criteria, where reported to the trade repositories under Article 9 of Regulation (EU) No 648/2012.~~

2. The counterparty referred to in paragraph 1 shall also report to the competent authority when the number of trades cleared in a subcategory of the derivative contracts referred to in Article 7a(6) of Regulation (EU) No 648/2012 exceeds half of that counterparty's total trades for the previous 12 months.

3. For the purposes of paragraph 1, counterparties should report points (b) and (c) of that paragraph for each class of derivatives using the relevant Tables 1 to 5 and Tables 7 to 8 set out in Annex I, as appropriate.

Article 10

Reporting arrangements from counterparties to competent authorities

1. Without prejudice to competent authorities requesting more frequent reporting pursuant to paragraph 3 of Article 7b of Regulation (EU) No 648/2012, counterparties shall submit reports to competent authorities on the last day of [January] and on the last day of [July] each year including in each report the information pertaining to the previous 12 months.

2. By derogation from paragraph 1, the first submission of data to competent authorities shall occur on the first reporting date falling no earlier than the six-months from entry into force of this Regulation and include information pertaining to the whole period going from entry into force to the reporting date.

Article 11

Entry into force and application

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, DD MM YYYY.