27 January 2025

FIA response to ESMA Consultation Paper on Conditions on the Active Account Requirement (AAR) under Article 7a(8) of EMIR 3.0

Question 1: Are there any aspects of the AAR scope on which ESMA has based its quantitative analysis and its policy choices that ESMA should consider when detailing further?

Before addressing Question 1, we wanted first to thank ESMA for all the work and thought that they have put into the consultation paper, noting in particular that it has been produced quickly and provides helpful background for market participants into ESMA's thinking on a number of points.

In addition, in order to assist ESMA's reading of our response we thought it would be helpful to set out some terminology and how it is used in this response and to provide a summary of the key points in our response.

Terminology:

In our response we have tried to mirror the terminology used in EMIR 3.0 and the Consultation Paper but note that the use of the term "counterparty" is not always nuanced enough in the context of a clearing chain. As a result, please note that we use "clearing member" for the entity with the direct relationship with the CCP, we use "client" for the entity accessing clearing with the EU (European Union) CCP through another entity or entities and we use "counterparty providing clearing services" for a clearing member or client providing clearing services down the chain.

In the context of terminology, we also think that it is important to note that the active account is at the CCP level. This reflects practice but also EMIR 3.0 where the requirement in Article 7a(1) is to have an active account at a CCP.

Summary:

We welcome ESMA's approach on groups and understand that to mean that one entity in the group may fulfil the AAR. We recommend that the approach is tracked into the draft RTS (Q1).

Counterparties should not be required to have a more sophisticated interface for the AAR with an EU CCP than they already have with an EU CCP or Tier-2 CCP. We are uncertain why the proposal extends either to internal *policies and procedures* rather than internal *processes* or to financial resources (Q2).

We continue to be concerned that the requirement in Level 1 that is replicated in the Consultation Paper and the draft RTS for the account to be able to support a large flow of transactions from a Tier-2 CCP in a short period is based on a misunderstanding and ignores what will happen in practice. To rectify this misunderstanding, a reduction in the calculation of the threefold volume increase is needed. We welcome that the volume increase is set at the EU CCP level but are of the view that the fact that it is set at the EU CCP level could be further leveraged to facilitate a less burdensome process overall. We disagree with the proposal to assign a dedicated staff member (Q3).

We recommend to exclude clients from the stress-testing obligation altogether and that it would be proportionate to do so in accordance with the requirement in Article 7a(8) of Level 1. We think that there is a basis to facilitate excluding clients through Article 7a(4) of Level 1. We disagree with the 85% level and are concerned that the level of clearing activity being measured does not account for the fact that transferring positions between a systemically important Tier-2 CCP and an EU CCP is not possible as no interoperability arrangements between CCPs exist. We think that EU CCPs should play a greater role in the certification process to facilitate a less burdensome process overall. Finally, it needs to be clarified that stress-testing the operational conditions does not include testing financial resources (Q4).

We disagree with the differentiated frequency for the stress-testing depending on the counterparties' clearing activities. An annual stress test should be sufficient for all counterparties (Q5).

We broadly agree and thank ESMA for listening to industry concerns in relation to products with limited liquidity although we are of the view that there is an inconsistency in ESMA's approach to the number of "clearing services" represented by LCH SwapClear. We would suggest the de facto exclusion of options in relation to EUR STIRs, narrowing the maturities for EUR FRA, reducing the STIRs maturity buckets to two and an alignment of reference periods for EURIBOR and ESTR STIRs to the longer period (Qs 6 to 15).

We strongly disagree with the proposed reporting requirements, including the requirement to report margin and UTIs. In our view, the proposed requirements exceed the Level 1 mandate and introduce a level of complexity and cost which is wholly disproportionate leaving EU counterparties to deal with an even more fragmented compliance landscape and putting them at a competitive disadvantage. If the proposed reporting requirements are not changed, it will not be possible for counterparties to comply with some of them at all and it will not be possible for counterparties to comply with any of them within the required timeframes. We think that it is undesirable for regulation to require the impossible, especially when penalties and supervisory action are anticipated for non-compliance. We note that these points serve to highlight that the proposed reporting requirements are contrary to the objectives of the Commission to reduce the reporting burden and ensure EU firms' competitiveness. As a result, we strongly urge ESMA to consider alternative proposals and to continue to engage with the industry to ensure a reporting regime that is fit for purpose. We set out some alternative proposals in our response (Qs 16 to 19).

We agree in principle with the proposed approach for the reporting of the representativeness obligation but strongly oppose including UTIs (Q20).

We agree in principle with the goal of standardisation and harmonisation of the reporting arrangements and welcome the development of Level 3 guidance noting the potential timing

difficulties depending on when that Level 3 guidance is available. We note more broadly the impact of large scale reporting across EU participants on fixed dates and would suggest the introduction of a reporting window (Q21).

In general, we strongly recommend the AAR approach to follow the renewed ambitions of the EU competitiveness and burden reduction agenda.

Turning now to address Question 1.

Groups:

We welcome ESMA's approach articulated at paragraph 40 of the Consultation Paper on groups and understand their aim in a group context is to simplify the AAR as much as possible.

Paragraph 40 of the Consultation Paper suggests that the obligation to hold an active account with trades representative of the group activity could be fulfilled by one entity of the group. We understand paragraph 40 to mean that one entity in the group may fulfil the operational, representativeness and reporting requirements of the AAR on behalf of the broader group.

We would recommend that this approach is tracked into the RTS. There are a number of ways to achieve this, but one way is simply to make it clear for each obligation that the obligations can be satisfied at a group level. Taking Article 4 of the draft RTS as an example, insert a new paragraph 4 as follows:

"*A counterparty subject to consolidated supervision in the Union may fulfil the obligations in this Article 4 at a group level*."

In the event that we have misunderstood ESMA's approach, we would welcome clarity (including in the RTS) as to how the AAR applies to groups. In this context, we note and would ask ESMA to be cognisant of the fact that groups have different approaches to trading and clearing derivatives. Some of them may use the intragroup exemption and have one entity doing all the clearing with external counterparties and then entering back-to-back transactions with other entities within the group. In this case, there would only be one counterparty in scope for the AAR given the exclusion of intragroup transactions from the calculation in Article 7a(2) of EMIR 3.0. Other groups that do not use the intragroup exemption may have their subsidiaries as clients or have a clearing arrangement with a clearing member that is a non-group entity. In that case, and in the event that we have misunderstood ESMA's approach, one unintended consequence may be that all subsidiaries that trade the derivative contracts in scope for the AAR would have to fulfil the AAR even if they would not exceed the second clearing threshold set out in Article 7a(1) on an entity only basis. This is because Article 7(a)(2) requires them to consider all derivatives contracts in scope of the AAR that are cleared by that counterparty or by other entities within the group to which that counterparty belongs. This would not only distort competition between groups that have different approaches to their clearing activities but also lead to a stricter clearing regime for some of those entities. We do not think that this is the intention of the legislators given the EU's intensified focus and efforts to build up the Savings and Investments Union.

Scope:

The recitals to EMIR 3.0 make it clear that EMIR 3.0 is intended to address perceived weaknesses in the existing regulatory framework for cleared derivatives. In addition, the vast majority of new vanilla interest rate derivative transactions (often quoted to be in the region of 95%) are cleared, with the remainder falling outside the scope of mandatory clearing.

With this in mind, in respect of paragraph[s 46 and] 47 of the Consultation Paper, it should be made clear that only cleared derivatives are in scope. The complexity of including uncleared derivatives in the calculation is:

(1) disproportionate to the costs involved; and

(2) inconsistent with the stated aims of EMIR 3.0.

Question 2: Do you agree with the above approach for condition (a)? Are there other requirements that ESMA should consider for meeting condition (a)?

Counterparties should not be required to have a more sophisticated interface for the AAR with an EU CCP than that they already have in place either with an EU CCP or with a Tier-2 CCP. We elaborate on this further below. Provided that it is understood that there should not be any additional or different legal documentation, internal processes or IT requirements as a result of the AAR, we generally agree with the approach subject to the points outlined below and to our response to the questions in Section 6 of the Consultation Paper.

Many counterparties already have open accounts at EU CCPs in the AAR in-scope products. Further, counterparties providing clearing services generally have well-established processes and documentation for onboarding clients and developed IT connectivity for clients. Counterparties should be able to use existing internal processes and legal documentation for setting up accounts and onboarding clients, where relevant, and existing IT connectivity for accessing the accounts. Additional or different internal processes, legal documentation or IT requirements should not be introduced as a result of the AAR. This would otherwise generate additional cost and burden without any corresponding benefit since it ought to be sufficient for counterparties to demonstrate that they have access to an EU CCP without the need for prescriptive rules to specify this. We note that this will be the case for counterparties that are able to use the 85% exemption, and we see no reason for a distinction between counterparties that can use the exemption and those that cannot. We note and welcome support for this approach in Recital (3) of the draft RTS and paragraph 60 of the Consultation Paper.

We are uncertain why the requirement extends to internal policies and procedures. Article 7a(3)(a) of EMIR 3.0 refers to internal ***processes*** associated to the account being in place, which we consider to be distinct from the written policies and procedures supporting those processes. As noted above, counterparties already have internal processes for setting up accounts, onboarding clients, where relevant, and accessing the accounts. They should therefore be able to use existing processes instead of having to establish entirely new policies and procedures for accessing accounts – potentially just at one particular CCP and for a subset of clients that are in scope of the AAR. We do not agree that internal policies and procedures should be part of the requirement and would recommend that the wording in Article 1(b) of the draft RTS is amended to track Article 7a(3)(a) of Level 1 and refer instead to internal processes.

We are uncertain why the requirement includes cash and collateral accounts "with sufficient financial resources".[1] We note that there is no reference to financial resources in Article 7a(3)(a) of Level 1. We also note at paragraph 67 of the Consultation Paper support for the fact that the "operational capacity" should not include financial resources. We acknowledge that paragraph 67 of the Consultation Paper supports the approach for Article 7a(3)(b) and (c) but are concerned that this support should be equally applicable in the context of Article 7a(3)(a). See further our comments in response to Question 4, Operational Conditions.

Finally, we would ask ESMA to note that IT connectivity between counterparties providing clearing services and their clients varies and depends on the clients and their requirements. For example, some clients prefer simply receiving a pdf-statement from the counterparty providing clearing services to them. Again, counterparties already have IT connectivity or internal processes for providing relevant information. They should therefore be able to use existing processes instead of having to establish new connectivity.

Question 3: Do you agree with the above approach for conditions (b) and (c)?

Threefold volume increase:

Summary

We welcome that the threefold volume increase is set at the EU CCP level but are of the view that the fact that it is set at the EU CCP level could be leveraged more to facilitate a less burdensome process overall. We elaborate on this further together with proposals to achieve this below and in the Certification Process section.

We continue to be concerned that the requirement in Level 1 that is replicated in the Consultation Paper and the draft RTS for the account to be able to support a large flow of transactions from a Tier-2 CCP in a short period is based on a misunderstanding and ignores what will happen in practice. We elaborate on this further below and suggest a mitigant.

EU CCP level

It is welcome that the threefold volume increase is set at the EU CCP level. However, we disagree with the proposal to have a threefold stress-test based on an individual counterparty's account. In our view, there is no real difference from an operational capacity perspective between the clearing accounts of different individual counterparties, and we understand the testing is limited to operational matters. It would therefore make more sense for this requirement to be satisfied at an EU CCP level, rather than an individual account level. This approach would avoid questions of how this requirement is satisfied in respect of omnibus accounts. It would also mean that the EU CCP could provide a single certification directly to the National Competent Authority (NCA) and ESMA that accounts at the EU CCP are able to withstand a threefold increase without the CCP having to certify this on a per account basis or the CCP having to provide the certification to each clearing member providing clearing services to forward to its clients only for them then all to report to their NCA. This would be

[1] Draft RTS, Article 1(c)

very cumbersome. See further below in the Certification Process section for our suggestions in relation to this.

Large flow of transactions from a Tier-2 CCP

The requirement for a threefold volume increase ignores the fact that transferring open positions between a systemically important Tier-2 CCP and an EU CCP is not possible. Currently, there is no interoperability between derivatives CCPs, nor is there any other transfer mechanism available to migrate existing cleared derivatives open positions from one CCP to another.

Instead, new trades would need to be executed, involving:

(1) closing out open positions at the Tier-2 CCP by executing new offsetting trades at that CCP; and

(2) opening equivalent new trades to be cleared at an EU CCP.

In addition, these trades would likely stem from complex portfolios with varying contract terms that would need to be unwound at one CCP and reopened at another, adding complexity. There is no guarantee that counterparties would be able or willing to replicate the original bespoke contracts, especially if they are not directly impacted by the AAR.

Furthermore, counterparties providing clearing services are unable to guarantee in all cases to provide such clearing services – the availability of such services for a particular client will depend upon internal risk policies and frameworks, and specifically that the transactions will fall within the credit lines available to the client in question. This will be further complicated by regulatory and capital specific regimes applicable to the counterparties providing clearing services in question. For legacy trades, particularly those with long dated contracts and significant initial margin requirement, this becomes even more challenging. There would need to be willing counterparties to take on/clear these trades as relevant at the systemically important Tier-2 CCP and the EU CCP.

This is a process which is subject to many dependencies, many of which the counterparty has no influence over, especially if large volumes and stress scenarios are involved. It needs detailed preparation, sufficient liquidity on both sides and may not be done within only one month, depending on the portfolio.

We assume that part of the intention behind Article 7a(3)(b) is to ensure that counterparties can effectively migrate their positions to an EU CCP if there were to be an issue with a Tier-2 CCP (e.g., it becomes subject to resolution or insolvency). In such a scenario, it is highly unlikely that counterparties would seek to migrate their positions on a transaction-by-transaction basis. Instead, counterparties would transfer the overall risk position to the EU CCP, which may involve far fewer transactions than the number of transactions maintained at the Tier-2 CCP that gave rise to that position risk in the first place.

On this basis, we would strongly recommend that this reality is reflected in the RTS. We recognise the need to respect Level 1 but would suggest that a "large flow of transactions from positions" could instead refer to a migration of the overall risk position, not each individual transaction and that this should be reflected by a reduction in the calculation of the threefold volume increase.

Dedicated Staff Member:

We disagree with the proposal to assign a dedicated staff member and would propose deleting this requirement in its entirety or, if that is not acceptable to ESMA, in the alternative replacing it with assigning a team instead of an individual. We elaborate further below.

Assigning a dedicated staff member is excessive and not practical and also not proportional to the size and complexity of the counterparty. Many counterparties have sophisticated three lines of defence business control models and it is unlikely that a single person will be responsible for all relevant business processes concerning derivatives clearing. Furthermore, it would be highly unlikely that any single person would be "dedicated" to this role. Responsible staff may also change frequently between reporting periods. In addition, it creates a "key function holder" type of role which raises questions. For example, what kind of requirements does this function holder have to fulfil, what skills are required, what training will need to be provided and how customised to each specific CCP, what level of seniority is expected by ESMA, what time-zone coverage is required and what personal liabilities may arise from this role. Introducing a 6-month time factor into this mix further exacerbates these issues. Finally, we are not aware that this type of obligation has been introduced in Level 2 without an explicit mandate in Level 1 (as, in our view, is proposed here) in any other part of the EU financial services regulatory framework, and we do not see why this approach should be adopted in this context.

We would therefore propose deleting this requirement and suggest it is sufficient that counterparties should be able to demonstrate the proper functioning of the clearing arrangements at all times. However, if the requirement to have a dedicated staff member is ESMA's interpretation of the requirement in Article 7a(3)(b) of Level 1 to have resources available to be operationally able to use the account, we suggest that counterparties should be allowed to appoint a team instead of an individual. This would reduce the dependence on a single individual and provide a human resource pool with various skills, expertise and seniority. If the requirement is retained, however, we would welcome clarity on the questions raised above.

Certification Process:

The certification process is unnecessarily cumbersome and should be fulfilled by the EU CCP directly to the relevant NCAs and ESMA as further elaborated on below.

As a general point, we note that the draft RTS impose a number of obligations on counterparties (e.g., to obtain written statements from EU CCPs, to conduct stress-testing with the EU CCP) without specifying any equivalent and opposite obligation on the CCPs. This raises two important questions, and we would be interested in ESMA's response to them:

(1) how will counterparties be able to discharge their regulatory obligations in circumstances where they are unable to comply given the dependency on CCP measures/actions; and

(2) what action can NCAs take against CCPs that fail to operate stress-tests, issue statements etc.

More broadly, the certification process seems unnecessarily cumbersome with clearing members and clients providing clearing services providing certification from the CCP down the chain. As a result of this and the difficulties raised through the questions above, we would suggest that the certification process is made as useful as possible to as many counterparties as possible such that the relevant NCAs and ESMA require the relevant certification from the EU CCPs directly. We note that the requirement is for the counterparties to provide the certification to the relevant NCA, and for the relevant NCA subsequently to provide it to ESMA. A pragmatic approach, however, would be for the EU CCP to submit the written statements directly to the relevant NCAs and ESMA via the central database that ESMA is required to establish. Since ESMA and the NCAs co-chair the supervisory college, where representatives of such have direct access to the database as well, the reporting can effectively be done simultaneously. To address the fact that Level 1 places this obligation on "Financial counterparties and non-financial counterparties", we would suggest that this could be overcome by onboarding documentation providing that the counterparty delegates this obligation to the CCP.

We note that this was the subject of some discussion at the ESMA Open Hearing on the AAR on 20 January 2025 and would be happy to be involved in any ongoing dialogue with ESMA and the EU CCPs in terms of what the EU CCPs can provide.

Question 4: Do you agree with the proposed approach for the annual stress-testing conditions (a), (b) and (c)?

Condition (a)

We partly agree with the proposed approach for stress-testing condition (a).

We understand that the purpose of condition (a) is to ensure that the active account is permanently functional. We are concerned about the role of clients in the stress-testing as clients are not usually involved in these processes.

In the context of client clearing, the active account will be held at the EU CCP and administered by a clearing member of the EU CCP. The client should only be required to demonstrate to its competent authority that it has a clearing arrangement, internal processes and a technical connection with its clearing member for the provision of an active account as required by Article 1 of the draft RTS and subject to our comments in response to Question 2. Clients should not be required to conduct stress tests, given:

(1) the various IT connectivity that may exist between clearing members and their clients, as described in our answer to Question 2; and

(2) that stress-testing the IT connectivity between the clearing member and the client will not demonstrate that the active account is permanently functional, as the active account is maintained at the CCP.

It should therefore suffice that the stress-testing is done between the clearing member (as the administrator of the client accounts) and the EU CCP. Article 7a(4) of Level 1 prescribes that the "requirements" shall be regularly stress tested. It does not specify that they need to be tested by a particular counterparty. As a result, we think that it is open to ESMA to exclude clients from the stress-testing obligations. Further we think that it would be proportionate to do so in accordance with the requirement in Article 7a(8) of Level 1.

Conditions (b) and (c)

We have concerns with the proposed approach for conditions (b) and (c) for the following reasons:

Clients:

We think that clients should be excluded from the stress-testing obligations. Article 7a(8) of Level 1 direct ESMA to take a proportionate approach to the development of the RTS.

The complexity, cost and overhead of a stress-test will likely involve over 1000 counterparties, together with their associated clearing members as well as the CCP and should not be underestimated. Stress tests of this scale are almost unheard of and are unlikely to result in successful outcomes. The expense and administrative burden of such a test, constructed in this way, is disproportionate to the potential benefit.

Noting that clients access the CCP via a clearing member, and client trades/positions are recorded on the clearing member systems, we would recommend that CCP stress tests are limited to no more than CCPs and clearing members. Such an approach would cover all house and client trades under the scope of EMIR 3.0 and would provide assurance that the clearing eco-system is sufficiently robust. Given the clearing workflows for venue trades route from venue to CCP and on to the clearing member, this approach would capture the majority of the risk. We do not believe a further attestation from the client to its NCA that they have the systems, capacity to execute and record a stressed volume of activity is necessary or valuable.

From a practical perspective, clients do not engage in an end- to- end UAT (User Acceptance Testing) currently as it is too difficult to achieve. To require this in the AAR is, in our view, not achievable, will neither have any benefits nor will it make the clearing markets safer. More important is that the EU CCP can demonstrate that they have the ability to handle the volumes.

Please see also our comments in relation to Condition (a) above and in relation to the Certification Process below and our response to Question 5.

Clearing Activity:

The proposal requires the stress-test to "*simulate an increase of clearing activity in the relevant derivative contracts of up to 85% of the total outstanding clearing activity by counterparties subject to the AAR at EU and TC-CCPs*",

It is unclear from the proposal, however, how clearing activity is being measured for this purpose. We assume the intention is for it to be measured based on the number of open contract line items as this would align with the measurement of the 85% exemption test.

On the assumption that the intention is to measure clearing activity on the basis of open contract line items, we would flag again the general point noted in the Threefold Volume increase section of our response to Question 3 that transferring open positions between a systematically important Tier-2 CCP and an EU CCP is not possible as no interoperability arrangements exist between relevant CCPs. As a result, we do not think that it is correct to build a stress-test that references these positions in this way as the reality is that these positions will not be moved by transferring the open positions line item by line item.

A large scale “migration” of positions may only occur in the unlikely scenario that there is a stress event impacting a systemically important Tier-2 CCP. In this case, EU firms may seek to re-establish their positions held at the systemically important Tier-2 CCP into their active account at an EU CCP. However, and as noted above, this will not be achieved by transferring the open position line items from the systemically important Tier-2 CCP to the EU CCP.

Instead, EU firms will have to execute and clear new transactions by:

(1) closing out their open positions at the systemically important Tier-2 CCP; and

(2) re-establishing equivalent open positions at the EU CCP.

Considering that many firms will likely be impacted by a stress event at the same time, EU firms will not re-establish their positions line-item by line-item.

The reality is likely to be that they will re-establish their positions at a macro level (i.e. using 2yr, 5yr, 10yr and 30yr benchmark contracts) and then, over time, gradually refine their positions to the specificities of their prior positions.

By way of example, the risk that arises from a portfolio of 500 contracts might, in the short term, be hedged largely with a small number of benchmark trades. This would leave some small specific risks in the portfolio, but the overall level would be immaterial. Counterparties would then manage down these small idiosyncratic risks over time as market capacity permits.

To the extent that "clearing activity" at systemically important Tier-2 CCPs is built into the stress-test, the nuance of how that clearing activity could even manifest itself in an EU CCP needs to be addressed. Simply seeking to measure the open positions, line item by line item, at the systemically important Tier-2 CCP does not reflect reality.

We think that the stress-test should only cover an increase of new clearing activity, and we are concerned that the use of "outstanding" requires an assessment of the closing of the positions at the systemically important Tier-2 CCP. We do not believe that this is required by Level 1 and the position needs to be clarified.

We also believe it is sufficient for the stress test to cover the operational processes that relate to clearing, rather than the full end-to-end trading workflow including execution, affirmation, validation and routing. These operational processes already cover the full global trading volume, and the goal of EMIR 3.0 is to be sure that, if a high proportion of the resulting clearing activity moves to an EU CCP, that CCP and its clearing members can support this.

85% level:

The requirement under Article 7a(4) for stress-testing specifically relates to the operational obligations under Article 7a(3)(a), (b) and (c). The stress-test should relate to a level of clearing activity that correlates to the relevant operational conditions themselves and not the level at which the exemption from those operational conditions applies. We do not think that it is appropriate to pick a number from EMIR 3.0 that is unrelated.

We note that to satisfy Article 7a(3)(b) and (c) the active accounts have to withstand a threefold increase in clearing activity. We agree with and support ESMA's approach of seeking to harmonise the stress-test conditions. However, given the correlation between the stress-test and the relevant operational conditions, we would suggest that the level should be set in line with the volume increase the amount must be capable of withstanding under Article 7a(3)(b), noting our comments in this respect in response to Question 3.

CCPs set clearing limits for clearing members and clearing members must set limits[2] for clients that they are offering a clearing service to and so on. These limits are set from a good risk management perspective, and it would not be appropriate to change these through the AAR. We are concerned, however, that this impacts having a set level of clearing activity to assess the stress-testing against as the stress-testing should reflect the reality of the active account. Similarly, a number of regional banks and clients can only put in place transactions for hedging purposes. An unintended consequence of this should not be that transactions are generated for trading purposes, breaching the relevant banks/trading desk mandate.

Certification Process:

It is welcomed that this requirement is set at the CCP level, although we note that Article 3(1)(a) of the draft RTS imposes the obligation on counterparties to conduct the stress tests. This raises the same questions as noted in the Certification Process section of our response to Question 3. For the same reasons, we would suggest that ESMA and the relevant NCAs get the certification from the central database with the same mitigants as suggested in our response to Question 3.

[2] Commission Delegated Regulation (EU) 2017/589 of 19 July 2016, Article 26

Operational Conditions:

We request that the proposal clarifies that the stress-testing is limited to operational conditions and does not include any review of credit limits or financial resources. Article 7a(3)(a), (b) and (c) of Level 1 do not refer to financial resources. Article 7a(8) of Level 1 requires the RTS to further specify the requirements for Article 7a(3)(a),(b) and (c) and "the stress testing thereof". Paragraph 67 of the Consultation Paper in the context of condition (b) and (c) states that operational capacity should not include the financial resources of the clearing participant.

We would urge ESMA to clarify this in the RTS and avoid any implication that counterparties are required to have sufficient financial resources to meet the stress-testing requirements set out in Article 3 of the draft RTS.

Question 5: Do you agree with the differentiated frequency for the stress-testing depending on the counterparties' clearing activities? Would you suggest any other way to take into account the proportionality principle?

We disagree. Article 7a(4) subparagraph 4 of EMIR 3.0 requires stress-testing to be done at least once a year. An annual stress-test should be enough for all types of counterparties. Adjusting the stress-testing frequencies for different counterparties would overly-complicate the process as the size of the counterparty's clearing activities will invariably change over time. Further, the conditions for complying with the operational conditions are not likely to change. It is therefore not required from a risk management perspective to have more frequent stress-testing than the minimum requirement in EMIR 3.0 stipulates.

We would also suggest that it is possible for clearing members to perform the testing on behalf of their clients in relation to the active account at the EU CPP and that clients should effectively be excluded from stress-testing as explained in more detail in our answer to Question 4.

Further, an annual stress-test is consistent with fire drills at CCPs which are conducted on an annual basis. Please see in addition our response to the questions in Section 6 below on the alignment of timings.

Question 6: Do you agree with the proposed classes of derivatives for EUR OTC IRD?

Before considering the specific classes ESMA has proposed, as a general comment and matter of principle, we would highlight an inconsistency in approach to the number of "clearing services" represented by LCH SwapClear.

ESMA's report under Article 25(2c) of EMIR[3] identified three clearing services as being of substantial systemic importance to the EU stating that "*In particular, the assessment identified three clearing services as being of substantial systemic importance to the EU or to one or more of its Members States. These are SwapClear of LCH Ltd for the clearing of interest rate derivatives denominated in euro and Polish zloty, as well as the Credit Default Swaps service (CDS) and the Short-Term Interest Rate Derivatives Service (STIR) of ICE Clear Europe, Ltd, in both cases for euro denominated products*". This approach is supported elsewhere in the

[3] ESMA91-372-1945 Assessment Report under Article 25(2c) of EMIR

report with LCH SwapClear being referred to as a "clearing service" and not separately as a clearing service for each of EUR and Polish Zloty with a conclusion that the SwapClear service is of substantial systemic importance for the financial stability of the EU as a whole in relation to certain EU currencies – i.e., for EUR and Polish Zloty. This interpretation also appears to be carried through to the Consultation Paper in paragraph 12.

Based on this it seems that the three clearing services are:

(1) IRD in Euro and Polish Zloty at SwapClear;

(2) CDS; and

(3) STIRs at ICE Clear Europe, with CDS no longer in scope currently due to the ICEU ceasing to clear CDS at the end of October 2023.

Recital 14 of EMIR 3.0 states "*To define the minimum number of derivative contracts that should be cleared through the active accounts, ESMA should identify up to three derivative classes amongst the derivative contracts belonging to the clearing services of substantial systemic importance*."

On that basis, we think that the approach should be to take up to three classes per clearing service with LCH SwapClear constituting one clearing service for that purpose. This results in up to three classes across LCH SwapClear for both EUR and Polish Zloty and up to three classes for STIRs at ICEU. Any other approach is inconsistent with the assessment of a substantially systemically important CCP and the clear wording adopted in Recital 14.

Aside from the general point above, we do not have any comments on the specific classes ESMA has proposed for EUR OTC IRD. We note that ESMA has selected classes already defined as part of the clearing obligation, and we would like to thank ESMA for that as this is helpful.

Question 7: Do you agree with the proposed classes of derivatives for PLN OTC IRD?

Please see our response to Question 6 for the general comment which applies equally here.

Aside from the general point, we agree with the simplicity of limiting classes to Fixed-to-Float and FRA, as the market lacks depth for additional categories. We thank ESMA for listening to the industry concerns in this respect.

We also welcome ESMA's approach referenced in paragraph 135 of the Consultation Paper where ESMA states that they want to avoid forcing counterparties to clear certain derivative products in the EU that they do not currently clear themselves, so that counterparties that clear zero trades in a reference period would equally have to clear zero trades at an EU CCP (that is, there is no AAR clearing obligation in relation to the relevant reference period).

Question 8: Do you agree with the proposed classes of derivatives for EUR STIR?

Please see our response to Question 6 for the general comment which applies equally here. In addition, by way of remediating the issue articulated below, we would suggest the de facto exclusion of options.

In order to reduce the cost of compliance and complexity in relation to STIRs, we would suggest addressing the scope of STIR products subject to the AAR. STIR futures comprise 28 Euribor instruments and 31 ESTR instruments. By including options (all maturities, types (vanilla and mid curves) and calls/puts) the scope of STIR products subject to the AAR increases to over 8000 instruments. In turn, this greatly increases the cost of compliance while being immaterial to financial stability and this has not been reflected in ESMA's cost benefit analysis. Furthermore, EU STIR options markets are completely illiquid, which means no price history exists with which to properly assess margins. In our view, all this should be weighed against the policy objective given that options are not explicitly required by EMIR 3.0. It should also be noted that there are significant differences between ICEU (UK) and Eurex (EU), who are the only two active EU and UK CCPs in this market. For example, there is wider strike range and granularity offered at ICEU compared to Eurex. Furthermore, ICEU are the only CCP to offer ESTR options on futures. This means that EU users of ICEU are unable to move activity to an equivalent service in the EU.

Question 9: Do you agree with the proposed maturity and trade size ranges for each class of derivatives in EUR OTC IRD?

We generally agree but would ask ESMA to consider narrowing the maturities for EUR FRA to reflect the shorter-term risk profile of these products. We also note that some maturity buckets appear challenging to meet, for instance 5Y+ for OIS which is outside of the clearing obligation and therefore more limited in terms of liquidity.

Question 10: Do you agree with the proposed maturity and trade size ranges for each class of derivatives in PLN OTC IRD?

We agree with the proposal and thank ESMA for recognising the need for flexibility given the very limited liquidity with PLN OTC IRD at EU CCPs.

Question 11: Do you agree with the proposed maturity and trade size ranges for each class of derivatives in EUR STIR?

We note and thank ESMA for taking into account the industry feedback not to have a trade size bucket.

However, we suggest introducing a more proportionate approach when it comes to maturity buckets and the representativeness requirements.

Futures are inherently connected through their expiration dates and the role of time spreads between calendar months. Practitioners tend to group risk by calendar year, whereby risk in the upcoming 4 quarterly months is assessed compared to the next (0–12-month, 13–24-

month, 25-month onwards). It is unnecessary to have 4 maturity buckets in a market that is structured in this way.

As a result, we recommend reducing the STIR maturity buckets to two as follows, 0-12-month and 12+month.

Question 12: Do you agree with the proposed number of most relevant subcategories for each clearing service of substantial systemic relevance? Do you think this should be set at a more granular level (ie per class of derivatives)?

We agree with ESMA's proposal but our proposal in Question 11 should automatically reduce the number of maturity ranges for the EUR STIR market and would automatically decrease the number of most relevant subcategories for this specific market.

Question 13: Do you agree with the proposed reference periods for EUR OTC IRD? Do you think the reference periods should be set a more granular level (ie class of derivatives)?

We broadly agree with ESMA while noting ESMA defined the maximum provided by Level 1. However, we would appreciate further details with respect to how the reference periods should be applied as this remains unclear.

Question 14: Do you agree with the proposed reference period for PLN OTC IRD? Do you think that the reference periods should be set a more granular level (ie class of derivatives)?

We agree with ESMA's proposal which takes into account the very limited liquidity of EUR PLN at EU CCPs and thank ESMA for recognising this.

Question 15: Do you agree with the proposed reference periods for EUR STIR reference in Euribor? Do you agree with the proposed reference periods for EUR STIR referenced in ESTR?

We note that there is a mismatch, due to product liquidity difference, between the proposed reference periods for EURIBOR and ESTR STIRs. This would be operationally difficult to manage. Our preference would be to align the reference periods for both categories to the longer reference period.

Question 16: 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?

We strongly disagree with the proposed reporting requirements, including the requirement to report margin and UTIs. In our view, the proposed requirements exceed the Level 1 mandate and introduce a level of complexity and cost which is wholly disproportionate leaving EU counterparties to deal with an even more fragmented compliance landscape and putting them at a competitive disadvantage. If the proposed reporting requirements are not changed, it will

not be possible for counterparties to comply with some of them at all and it will not be possible for counterparties to comply with any of them within the required timeframes. We think that it is undesirable for regulation to require the impossible, especially when penalties and supervisory action are anticipated for non-compliance in Article 7b(3) of Level 1. We note that these points serve to highlight that the proposed reporting requirements are contrary to the objectives of the Commission to reduce the reporting burden and ensure EU firms' competitiveness.

As a result, we strongly urge ESMA to consider alternative proposals and to continue to engage with the industry to ensure a reporting regime that is fit for purpose.

We set out a proposed alternative proposal below before turning to highlight issues with timing specifically and to elaborate in more detail on the issues raised above.

Alternative Proposal

Notifications:

We do not think that counterparties should be required to supply any data to facilitate verification of whether the counterparty exceeds the clearing threshold in Article 4a(3) or Article 10(3) of EMIR. We understand from the Open Hearing that ESMA believes this data is needed in order to verify whether counterparties are subject to the first condition in Article 7a(1), that the counterparty is subject to the clearing obligation. Article 7b(1) requires counterparties to report "in the categories of derivative contracts referred to in paragraph 6 of [Article 7a]..". We do not think that that includes any other derivative contract, including for the purposes of the calculation against the clearing thresholds to determine application of the clearing obligation.

If ESMA disagrees, we would point out that Article 4(a)(3) and Article 10 simply anticipate a notification to the relevant NCA and ESMA and, as far as we are aware, these notifications do not include the need to report any specific data. Further, OTC Answer 2 of the ESMA Q&A confirms that this is a one off notification (assuming no change in classification status following the notification). Counterparties in scope for the AAR will have already complied with this notification requirement.

If a notification without supporting data is sufficient for the relevant NCAs and ESMA to rely on for establishing whether a counterparty is subject to the clearing obligation, we cannot see any reason why they require supporting data in the context of the AAR. Instead, we would suggest that they require a written statement from the counterparty confirming that it has complied with its notification requirement under Article 4(a)(3) or Article 10(3), as applicable, and it is not entitled under Article 4(a)(3) or Article 10(3), as applicable to update the notification. We note the timing inconsistency in this in that the test under Article 4(a)(3) and Article 10(3), as applicable is annual [see OTC Answer 2 of the ESMA EMIR Q&A) and the AAR reporting is 6 monthly. We would ask that ESMA recognises this duplication and require the written statement on an annual basis only.

In any event, this alternative proposal should remove uncleared derivatives from the scope of the AAR reporting requirement and so has the benefit of greatly reducing the requirement and mitigating a number of the issues detailed below.

Data reported under Article 9 of EMIR:

We think that the relevant NCAs and ESMA ought to be able to monitor counterparties' compliance with the AAR based on transaction data already reported by counterparties in

accordance with Article 9 of EMIR and data that can be derived from such transaction data. We consider it to be more efficient, more consistent and more cost effective for ESMA and the NCAs to develop their own systems that can generate the data required to assess compliance with the AAR based on reported transaction data, rather than each individual counterparty needing to develop its own systems and processes. We note the sentence in Article 7b(1) of Level 1 that allows "*the counterparties*" to "*use the information reported under Article 9 where relevant*". Notwithstanding this unfortunate use of words, we would urge EMSA to consider this in the spirit in which we understand it was intended as supported by Recital 17 and not require the counterparties "use" of the data already reported to require it to be actually reported again.

This proposal again has the benefit of greatly reducing the scope of the AAR reporting requirement and alleviating a number of the issues detailed below.

Gaps:

We acknowledge that even if both of these proposals are accepted, there may be data that ESMA still requires. We do not think that is a reason not to implement these proposals and would be happy to continue to work with ESMA to remedy the gaps.

In identifying gaps, however, we think that it is important to consider the structure of the market, and also that the product offerings of CCPs globally are a matter of public record, such that the full set of CCPs that offer clearing of EUR IRD, PLN IRD and EUR STIRs is well known and easily verifiable.

We understand from the Open Hearing that it is feasible for ESMA to obtain information from Authorised CCPs, and Recognised CCPs to the extent they have been classified as Tier-2. Information gathering from third-country Tier-1 CCPs is more constrained.

However, as of today, in EUR IRD we are only aware of one third-country Tier-1 CCP that offers this service, namely CME. CME has an estimated market share of significantly less than 1%, and which we understand is predominately driven by the activities of non-EU clients. Indeed, ESMA, in classifying CME as Tier-1 CCP, has already concluded that the activity in this CCP is not significant to the EU.

While we recognise the theoretical validity of a desire to capture 100% of all activity from which to assess the market, the scale of the proposed implementation required to capture this additional <1% of the global activity, most of which is not of an EU nexus, is vastly disproportionate.

We do not believe the additional information will be in any way impactful in EU policy making and/or supervisory decisions and does not warrant the additional reporting burden. As mentioned, over and above reporting details of each and every contract to our NCAs, the production, collation, aggregation and analysis of what is likely to be in excess of 200,000 reports annually is a disproportionate burden on the industry. Data quality, timing and other issues are likely to impact the accuracy of any conclusions.

Instead, sourcing basic information (such as DV01 ladders per account – as neither notional amount nor margin is a good and comparable measure of risk) directly from the EU-authorised and third-country Tier-2 recognised CCPs, as well as trade volumes per Sub-Category, is a much more simple process, and will likely produce more reliable and comparable numbers, even if the theoretical accuracy is only 99+% and not 100%.

ESMA should monitor proliferation of EUR clearing offers in third-country CCPs and should the take-up of such services be estimated to be higher than, say, 3% take steps to ask EU firms to report their activity in these CCPs. If the volume increase in one CCP is sufficient to make the overall analysis of market activity materially inaccurate, the Tier-1 status vs Tier-2 status of that CCP might need to be reconsidered.

Timing

We would draw ESMA's attention to a number of timing issues.

If the reporting regime for the AAR proceeds on the basis of the draft RTS, counterparties will be required to develop entirely new reporting system. This will take time, and counterparties will need much longer than the 6-months period envisaged by ESMA for the first submission of data to NCAs and ESMA. To put this in context, with EMIR Refit, the compliance date was 29 April 2024, but the Delegated Regulations were issued in June 2022 and the ESMA EMIR Guidance in December 2022. This was much more than 6 months before the compliance date. ESMA should consider this to the extent possible in the context of the first reporting date for the AAR.

Irrespective of whether the reporting regime for the AAR proceeds on the basis of the draft RTS, the RTS should make it clear when each six-month period starts and ends and should provide counterparties with a period in which to collate and process the trade data for the preceding six months. In other words, the due date for the reports should not occur immediately at the end of the relevant six-month period. The necessary data will not be immediately available, and counterparties will need time to compile, aggregate and verify the data before submission to the relevant NCAs. We would propose setting this period at three months. We would also encourage ESMA to be mindful of any public holidays when determining the end of the periods and the due date for reports.

Further, the requirements to report every six months data that may be collected over the previous twelve months introduces additional redundancy on reported data (six months of data will be reported two times). Any data that falls in this category should not be reported twice.

Finally, we are uncertain how the six- month reports link to any one- month reference period and welcome clarity in this respect.

Issues

Exceeding the Level 1 mandate:

EMIR 3.0 does not envisage such detailed reporting requirements for counterparties subject to the AAR. Article 7b(1) provides that the purpose of this reporting obligation is to assess counterparties' compliance with the AAR. The details that would need to be reported go far beyond what is necessary to make this assessment, particularly with regards to uncleared derivatives, margin and the requirement to provide trade-level data (UTI).

Disproportionate costs and complexity:

The proposed reporting framework places an excessive financial and operational burden on EU counterparties. These reporting requirements will require counterparties to develop entirely new reporting systems, especially to report both aggregated and transactional data. Our view is that transactional data should not be reported and aggregated data only should be reported. Additionally, many counterparties have recently undergone major revisions to their reporting systems to reflect the revised EMIR REFIT standards. These systems would

need to be revised again to implement these new requirements, taking additional time and resources. This would seem to run counter to the overall aims of EMIR 3.0, which includes reducing burdens for counterparties in order to enhance the attractiveness of clearing derivatives within the EU. This would also seem to run counter to the objectives of simplicity and EU competitiveness which is an important and much needed discussion within the EU. . For sell-side firms already facing multiple reporting requirements under EMIR and other regulatory regimes (e.g., MiFID II / MiFIR), this proposal adds redundancy without clear incremental benefit.

To elaborate further on the scale of this. Articles 4(2), 5(2) and 6(2) of the draft RTS refer to sub-categories. We are unsure what row 1 of Table 3 of Annex II of the draft RTS referring to "AAR Derivative Category" requires but on the assumption that row 1 does refer to sub-categories, this approach will produce a vast number of reports. There are:

(1) 25 different sub-categories;

(2) 2 reports per annum;

(3) at least 2, and possibly more CCPs; and

(4) as defined, 2 outcomes as to whether a trade is cleared or uncleared.

For each legal entity, this suggests not less than 168 reports per annum. With, for example, 1100 counterparties and groups in the EU, this suggests well in excess of 220,000 reports to be received and consolidated by ESMA each year, to be collated through the NCAs in each Member State.

We do not believe any such system can be effective, accurate and proportionate, and will have a significant overhead on EU firms in terms of competitiveness. Furthermore, we fail to understand how ESMA will aggregate such data to form any kind of meaningful picture of exposures. We believe that information on risk positions is best obtained directly from the CCPs.

Competitive disadvantage:

The additional costs and complexities may deter market participants from operating within the EU, pushing them to move derivatives trading activity, especially EUR, outside of the EU. This outcome directly contradicts the stated objectives of EMIR 3.0 of enhancing the attractiveness and competitiveness of EU derivative clearing arrangements.

Fragmented compliance landscape:

Many counterparties have already implemented reporting systems to comply with trade reporting under EMIR, including most recently the revised EMIR REFIT standards noted above. Adding another layer of reporting for the AAR risks fragmentation and duplication.

100 billion threshold:

We do not agree that counterparties that exceed the 100 billion threshold should be required to provide data to demonstrate that, as by definition, they will be complying with the most onerous requirements and the data does not serve any useful purpose. Instead, we would suggest that this should operate in a manner that is similar to the notifications in relation to the clearing thresholds under Article 4a(3) and Article 10(3) of EMIR and note that this is already

dealt with through the details required by the Active Account Notification published by ESMA in December 2024.

Margin:

We strongly believe that the inclusion of data on margin goes far beyond the mandate of Article 7b of EMIR 3.0 and will add a significant and disproportionate cost to the AAR reporting burden.

Further, IM information is not available at the level of granularity required by the draft RTS. Given the margin practices of CCPs, including with respect to margin offsets between different currencies and, in some cases, between products, the IM applicable to products covered by the AAR requirement is not a figure that is explicitly available to all counterparties. Short of replicating the CCPs margin model in full, which would be extremely disproportionate, counterparties have no way of reporting this figure.

Uncleared derivatives:

We strongly believe the inclusion of uncleared derivatives goes far beyond the mandate of Article 7b of EMIR 3.0 and will add a significant and disproportionate cost to the reporting burden. We do not understand why detailed information on them adds value to any analysis on the impact of EMIR 3.0 on the clearing landscape in the EU. As noted above, Article 7b(1) requires counterparties to report "in the categories of derivative contracts referred to in paragraph 6 of [Article 7a]…". Uncleared derivative transactions are by definition not included in the mandatory clearing obligation and should not fall in the categories of contract referred to in Article 7a(6). We urge ESMA not to include uncleared derivatives in the AAR reporting regime.

In this context, we would draw to ESMA's attention that row 5 of Table 2 of Annex II in the draft RTS requires that IM data include data with respect to uncleared derivatives whereas row 6 of that Table does not specify that data on uncleared derivatives should be included in the context of VM.

Delegated reporting:

Counterparties often delegate reporting under Article 9. The proposed AAR reporting requirements do not take this into account in their treatment of the use of data reported under Article 9. Any counterparty that delegates Article 9 reporting will not have the systems to support the AAR reporting requirements.

Question 17: 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?

As noted in our response to Question 16, we strongly oppose including data on margin in the AAR reporting regime. We re-state the reasons below:

Exceeding the Level 1 mandate:

There does not appear to be any mandate in the Level 1 text for ESMA to require reporting of margining activity.

Duplication with existing obligations:

Counterparties already report margin activity under EMIR and other prudential requirements. Duplicating this reporting creates inefficiencies, increases compliance costs, and risks introducing inconsistencies in the reported data.

Limited supervisory value:

Margin activity data, while operationally significant, is unlikely to provide meaningful insights into systemic risk that cannot already be gleaned from other reported metrics. This information is also not relevant to the assessment of whether counterparties are in compliance with the AAR.

Scope:

Margin data is required in respect of both cleared and uncleared transactions. It is not clear how margin data, especially in respect of uncleared transactions is relevant in the context of the AAR.

Question 18: Do you consider that including reporting on Unique Trade Identifiers (UTIs) would provide valuable information from a supervisory perspective?

We strongly oppose including UTIs.

We believe that including UTI reporting in the AAR framework is redundant and inappropriate as UTIs are already reported under EMIR. Requiring this information again for AAR reporting adds no supervisory value but introduces duplication and additional operational complexity to report both aggregated and transactional data. We would instead suggest that data is provided only on an aggregated basis. This ought to be sufficient from a supervisory perspective given that transactional data is already available in Trade Repositories. Further, the purpose of the AAR reporting obligation is to monitor compliance with the AAR and not, as suggested by ESMA in paragraph 166 of the Consultation Paper, to help detect data quality issues.

In our view, it is highly unusual in respect to regulation to provide line by line data to NCAs on a business- as- usual basis to enable that authority to directly audit compliance with one particular regulatory requirement. Typically, we would expect regulated firms to implement an internal process to monitor compliance with ALL regulatory requirements, investigate control weaknesses and breaks, and to report regulatory breaches to their NCA accordingly. It is then for the NCA to work with the firm to investigate the breach and determine the correct remedies. We do not understand why this standard approach to regulatory compliance is set aside in this one instance.

As noted in cost-benefit analysis in paragraph 7.3.3 in Annex 3 of the Consultation Paper the option chosen goes beyond the actual information needed for the NCA to assess the AAR-requirement. With respect to the overall aim to increase the attractiveness of clearing in the European Union, we strongly urge ESMA to revisit policy Option 1 instead.

Question 19: Do you agree with the proposed approach for the reporting of the operational conditions?

We strongly oppose some elements of the proposed approach to reporting operational conditions for the following reasons:

Disproportionate burden:

Requiring counterparties to demonstrate and report on detailed operational conditions is excessive and goes much further than would be required to ascertain that counterparties are operationally able to clear derivatives at an EU CCP (especially for counterparties already actively clearing at EU CCPs). Smaller counterparties in particular may face a disproportionate burden to meet these requirements, further discouraging their participation in EU clearing.

Dedicated staff member:

We would reiterate our comments and suggested approach, as set out in our response to Question 3 under the heading Dedicated Staff Member.

Limited value for supervisory objectives:

The operational conditions to be reported on do not directly contribute to reducing systemic risk nor do they ensure the functionality of active accounts. The process of migrating position risk to another CCP is complex and cannot be completed quickly, and the market conditions may not be conducive to carrying out this process in an orderly and efficient manner.

Comparison with other jurisdictions:

Such detailed operational and reporting requirements are not mandated by other major jurisdictions, placing EU counterparties at a competitive disadvantage, which is diametrically opposed to the Commission's objectives in terms of simplicity and competitiveness.

Unclear scope and benefit:

It is not clear from the draft RTS which internal policies and procedures are intended to be captured by this obligation, and what matters ought to be addressed by those policies. It is also not clear what the purpose and value is of summarising such policies in the context of satisfying the operational requirements of the AAR. See also our response to Question 2.

Intermediation of clearing members:

Requiring clearing members to procure the required written statements from the CCP on behalf of their clients is operationally burdensome and unnecessary given that the certifications could be addressed by the CCP providing such statements directly to the regulator. See our answer to Question 3 for more detail.

Timing:

We note that Article 8(1)(d) of the draft RTS annexed to the Consultation Paper requires written statements confirming that the account has been stress tested in accordance with the requirements every 6 months. However, under Article 3(3), counterparties with a notional clearing volume outstanding of less than EUR 100 billion are only subject to the stress-testing requirements annually. Article 8(1)(d) should be amended to align with Article 3(3).

Question 20: Do you agree with the proposed approach for the reporting of the representative obligation?

We agree in principle with the proposed approach for the reporting of the representativeness obligation. However, we strongly oppose including UTI in this reporting for the reasons given in our response to Question 18.

In addition, we would welcome clarification on what “and at each clearing service of substantial systemic importance at third-country-CCPs and each EU CCP” means in this context.

Question 21: Do you agree with the proposed approach to standardise the reporting arrangements under the active account requirement?

We agree in principle with the goal of standardisation and harmonisation, and we welcome the development of Level 3 guidance to address data standards and formats for reporting. This Level 3 guidance is much needed. We note that ESMA does not indicate a possible date for the adoption of this Level 3 guidance. An indication in this respect would be very useful.

We would ask ESMA to be mindful of the impact on EU clearing members and EU CCPs when all in-scope clients will perform the same reporting (i.e., requesting the same certifications, stress testing etc.) at the same time, twice a year at fixed dates and we would therefore welcome a 3-month reporting window from these fixed dates.

We would also refer ESMA to our comments on timing, as set out in our response to Question 16.