7 February 2025
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Reply form

Consultation Paper on a draft RTS on the conditions for extensions of authorisation and the list of documents for applications for initial authorisations and extensions of authorisation under EMIR (Articles 14(6), 15(3), 17a(5) and 15a(2) of EMIR)

Responding to this paper

ESMA invites comments on all matters in the Consultation Paper and in particular on the specific questions in this reply form. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **7 April 2025.**

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Consultation Paper in this reply form.
- Please do not remove tags of the type <ESMA_QUESTION_EXTE_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- When you have drafted your responses, save the reply form according to the following convention: ESMA_EXTE_nameofrespondent.

  For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA_EXTE_ABCD.
- Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input - Consultations’.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings 'Legal notice' and heading 'Data protection'..

1. General information about respondent

Name of the company / organisation	European Association of CCP Clearing Houses
Activity	Central Counterparty
Are you representing an association?	☒
Country/Region	Belgium

2. Questions

Q1 Do you agree with the parameters to consider in relation to condition (a)? Are there any other parameters regarding condition (a) that should be considered?

<ESMA_QUESTION_EXTE_1>

Introduction

Despite the fact that this section is intended for the response to Q1, we would like to take the opportunity to introduce our response to the Consultation Paper.

EACH very much welcomes ESMA's swift work to consult on the new procedures so that the industry is able to benefit from them as soon as possible. We commend ESMA's efforts to expedite the procedures and exemptions outlined in EMIR.

While understanding the overall intention of ESMA and of the related draft EMIR 3 RTS to have approval procedures for the extension of CCP products and services that are leaner, clearer and not unduly complex, burdensome and disproportionate, EACH respectfully believes that the draft RTS fails to comply with such intention. On the contrary, EACH Members consider that the current draft RTS would make it more difficult, burdensome and potentially slower to have new CCP products approved. EACH Members particularly consider that the current version of the draft RTS would unfortunately lead to:

- **Slower procedures** - With the proposed wording of the draft RTS, we are afraid that the accelerated procedure under Article 17a and the exempted procedure under Article 15a would in practice not make procedures faster as their conditions are too restrictive.
- **Additional procedures to become the norm** - We think that the extension of authorisation subject to approval procedures would become the norm, even for products that do not bring any additional risk to CCPs. Minor extensions would mostly be classified as non-

material extensions and consequently also be subject to the process under Article 17a. Further, extensions that we would view as non-material would very likely be classified as material – as it is very likely that one of the conditions proposed will be met most of the time.

- **Unnecessary regulatory burden** - We believe that the list of conditions for exemption from authorization under Article 15a of EMIR is excessively cumulative and restrictive. Additionally, the linguistic finalization is from our point of view too narrow, leaving little room for cases that do not fit with the proposed criteria.
- **Unnecessary burdened governance** - The proposals regarding documentation requirements (e.g. assessment of the compliance of the new service or activity with relevant requirements set out in EMIR; the current ongoing supervision and the review process according to Article 21 EMIR are sufficient) are from our point of view far too extensive and go beyond the current regulatory requirements.. This requirement would add more governance, which will be disproportionate to the level of risk and is inconsistent with the objectives of an accelerated approach.

EACH considers that the above concerns unnecessarily jeopardise the parallel objective of making the EU more competitive[1]. The requirements for having a product approved would become far more onerous in the EU as opposed to other jurisdictions with similarly mature markets such as the UK, US and Switzerland. Therefore, we respectfully believe that a more reasonable approach is needed that increases the rigour to assess extensions of authorization compared to the status-quo but yet avoids the exacerbation of efforts required by the ESMA, NCAs and CCPs. To reach an outcome more aligned with the intended goal of EMIR 3, in our response below we suggest an approach that:

- Adequately balances the classification of extensions across material (Article 17) and non-material extensions (Article 17a) by loosening the extremely narrow parameterization of conditions for Article 17a(1) (see our response to Q1-Q5).
- Extends the scope of exemptions of authorization that would not fall under Article 17 and Article 17a procedures (see our response to Q6 and Q8-Q9).
- Significantly reduces the documentation requirements for extensions across all three classification types (material, non-material, exempted), while ensuring adherence to the proportionality principle on document requirements (see our response to Q19-Q20).

The proposed approach would still increase the number of extensions of authorizations subject to the Article 17/17a procedure when compared to the Article 15 procedure prior to the EMIR 3 review. Nevertheless, we believe the alternatively proposed approach would contribute to a more meaningful classification of extensions, consistent with the proportionality principle based on a risk-based outcome. The classification of extension applications would be more balanced across

[1] As included in the European Commission communication about the Savings and Investment Union (SIU).

the classification categories and would recognize the need for minor extensions of CCP services and activities. Consequently, this outcome would significantly ease the burden for extensions of services and activities for ESMA, NCAs and CCPs, while still resulting in a broader and more robust approach to extensions of authorizations compared to the current landscape, ultimately supporting the EMIR 3 goal of reducing unnecessary time to market and bolstering the competitiveness of EU CCPs.

In the following sections of our response we detail our concerns and alternative approach.

In response to Q1 ("Do you agree with the parameters to consider in relation to condition (a)? Are there any other parameters regarding condition (a) that should be considered?"):

We have concerns about the parameters to consider in relation to condition (a). Point a. of condition (a) is from our point of view too narrowly drafted and in addition leaves substantial room for interpretation of the term 'contracts with the same risk characteristics'. Instead, we propose the definition of such term based on the derivative classes already defined in legislation and practice, such as the ESMA register[2], e.g., equity, debt, interest rates, credit, etc.

Regarding Article 2.b).1, we would not consider a change in the novation mechanisms as requiring a significant adaptation of the CCP's operational structure and would suggest instead that: (i) a change from novation to open offer, which could introduce more risk to the CCP, could be considered a change subject to an accelerated procedure under Article 17a of EMIR and included under Article 7 of the RTS; and (ii) a change from open offer to novation, which is a more conservative step that decreases risk, be exempted under Article 15a of EMIR.

We would also suggest the RTS to clarify that condition (a) is fulfilled in case of an extension of the CCP Clearing hours that would significantly impact the IT batches or the CCP's collateral management schedule.

<ESMA_QUESTION_EXTE_1>

Q2 Do you agree with the parameters to consider in relation to condition (b)? Are there any other parameters regarding condition (b) that should be considered?

<ESMA_QUESTION_EXTE_2>

Due to the fact that some CCPs have liquidation groups with margin netting sets, condition (b) of Article 3 as currently written may create a perverse incentive for risk management. In particular, it

[2] ESMA70-148-2567 List of Central Counterparties authorised to offer services and activities in the Union

may disincentivise CCPs to segregate the default fund, an important risk tool to appropriately allocate the risk exposure to clearing members that generate them. Additionally, as splitting of a portfolio is a key part for hedging/auctioning in default management, the new requirement could also disincentivize CCPs to introduce products that enhance its capacity to manage a default.

We would therefore suggest deleting condition (b) of Article 3.1.
<ESMA_QUESTION_EXTE_2>

Q3 Do you agree with the parameters to consider in relation to condition (c)? Are there any other parameters regarding condition (c) that should be considered?

<ESMA_QUESTION_EXTE_3>

EACH Members generally welcome the clear and straightforward proposal made by ESMA regarding condition (c). We however raise some targeted concerns.

While the distinction between OTC and exchange traded has been made clear, we are concerned about the lack of clarity and potentially too narrow interpretation of the term 'contracts'. In case 'contracts' was to be interpreted more narrowly than suggested above, this could potentially capture large set of product introductions into the scope of Article17 and either slow down or deter the CCP from introducing them. For these reasons, we recommend referring to a category already used when maintaining ESMA register[3], e.g., equity, debt, interest rates, credit, etc..

More specifically, with regard to:

- **Point a. of Article 4.1** – Deleting point a. of Article 4.1 as we do not see this as a material new contract specification. While this may have an impact on operations, we do not consider this as a material impact.

- **Point b. of Article 4.1** - Even if the term 'contracts' is clarified as proposed above, point b. would mean that a CCP clearing futures and options on several classes of financial instruments as well as futures on one other class of financial instruments, would need to apply for a full authorisation process in order to clear options in that class. We therefore suggest editing the wording of the Article to replace 'to existing contracts' with 'to types of derivatives being already cleared by the CCP'.

- **Point c. of Article 4.1** – This point appears to be difficult to understand and leaves space for interpretation. We would therefore propose reformulating as 'The CCP intends to clear

[3] ESMA70-148-2567 List of Central Counterparties authorised to offer services and activities in the Union

contracts that do not require introduction of new liquidity or payments arrangements due to settlement in a new currency.' The text should clearly specify that contracts which involve settlement in a new currency but do not require introduction of new liquidity or payment arrangements are considered to be non-material.

<ESMA_QUESTION_EXTE_3>

Q4 Do you agree with the parameters to consider in relation to condition (d)? Are there any other parameters regarding condition (d) that should be considered?

<ESMA_QUESTION_EXTE_4>

- **Points a) and b)** - We strongly believe that the conditions should only be relevant for clearing new contracts with a higher risk, i.e. when the CCP already clears contracts referencing underlyings issued by corporates, then the introduction of contracts referencing underlyings issued by sovereigns should be considered exempted from authorisation.

  We therefore suggest reformulating the text as follows: 'the CCP intends to clear contracts that reference underlying issued by corporate issuers, where it currently only clears these contracts referencing underlying issued by sovereign or any public sector entity'.

- **Point c)** – EACH believes that in the spirit of proportionality the introduction of a new risk factor should not be a material contract change and rather subject to an accelerated procedure.

- **Point d)** – We strongly believe that the introduction of a new currency is not a material change if it fits the existing risk framework and does not introduce new settlement risk.

  We would therefore suggest editing the text as follows: 'the CCP intends to clear contracts that do not reference as underlying new currencies involving de-pegging or convertibility risks, where it does not already clear as underlying any currency with the same risk *and where it fits the existing risk framework and does not introduce new settlement risk*.'

- **Point e)** – EACH Members strongly believe that the intention to clear contracts that involve accessing a new type of liquidity resource as referred to Article 33(1) of Regulation (EU) 153/2013 (RTS 153) should not require a regular extension approval procedure under Article 17 of EMIR. The liquidity resources set out under RTS 153 are resources that CCPs are permitted to resort to under EMIR and a change in that composition should be exempted under Article 15a of EMIR. Furthermore, the fact that the intention to clear contracts that involve new liquidity needs linked to exposure to a new category of entity as referred to under Article 32(4) of RTS 153 should also not require a regular extension approval procedure under Article 17 of EMIR and should be exempted under Article 15a. CCPs are already required under EMIR to manage such liquidity exposures in the normal course and have approved liquidity frameworks in place to do so.

We note that the recital does not contain the ESMA considerations that led to these parameters and hence in some cases they appear rather arbitrary. We would therefore kindly request a recital to clarify the considerations that led ESMA to propose these parameters.
<ESMA_QUESTION_EXTE_4>

Q5 Do you agree with the parameters to consider in relation to condition (e)? Are there any other parameters regarding condition (e) that should be considered?

<ESMA_QUESTION_EXTE_5>

In respect of Article 6(a) of the draft RTS, while the Level 1 text does not allow for significant deviation unless amended, we would suggest that establishing a link with a new securities settlement system, CSD with different risk characteristics to existing ones or payment system which the CCP does not use, be subject to an accelerated procedure under Article 17a of EMIR and included under Article 7 of the draft RTS.

In respect of Article 6(b) of the draft RTS, we would suggest that introducing settlement or payment in commercial bank money where the CCP currently uses central bank settlement or payment does not warrant a regular extension approval procedure under Article 17 of EMIR and should be subject to an accelerated procedure under Article 17a of EMIR and included under Article 7 of the draft RTS.
<ESMA_QUESTION_EXTE_5>

Q6 Do you agree with the proposed list of typical extensions that could be considered in principle to fall under the accelerated procedure under Article 17a of EMIR? Would you propose to add/remove/modify/further specify any?

<ESMA_QUESTION_EXTE_6>

EACH has serious concerns that the proposed list of typical extensions that could be considered in principle to fall under the accelerated procedure of Article 17a of EMIR includes a number of changes currently not requiring an extension of authorisation approval that according to such list would be unnecessarily subject to the more burdensome accelerated procedure.

We respectfully believe that the proposed list represents the most striking indication that the types of initiatives that were not in scope of the approval procedure due to low significance under EMIR 2.2, would with EMIR 3 and this RTS be included into the scope of approval procedures. We note that should these cases of non-material changes be introduced into RTS, it will have the opposite effect to the stated intention of changes to approval procedures brought in EMIR 3. Instead of classifying product introductions that were previously deemed material extensions of authorisation into the bucket of accelerated procedures, EMIR 3 would have instead move many of the

activities that did not require an extension of authorization approval into the scope of the accelerated procedures.

In general, we consider that all the below activities should be exempted changes instead of typical extensions that could be considered in principle to fall under the accelerated procedure under Article 17a.

We have particular concerns with the following typical extensions of services and activities under Article 7 of the draft RTS, such as:

- **Point a) of Article 7** - The CCP would already be clearing the risk factors and liquidity arrangements of IRS and currency A, and all it would be doing is putting those together under the same instrument. In particular, clearing IRS in "currency A" when already clearing IRS in other currencies and already handling payments in "currency A" would represent an ordinary product launch where the CCP does not need to adapt its policies and procedures and would not even require an accelerated procedure; We therefore suggest deleting point a) of Article 7.
- **Point b) of Article 7** - The extension of a product's trading time zone is a BAU process for CCPs that already have well established intraday/overnight risk management processes. The CCP systems and personnel will continue monitoring risk for the new time zones and will issue margin calls as appropriate. We therefore suggest deleting point b) of Article 7.
- **Point c) of Article 7** – Regarding the example of clearing covered bonds, when already clearing corporate bonds in the same currency, we firstly believe that the distinction between covered and unsecured bonds does not appear to result from conditions in the EMIR or other regulations. Secondly, the condition is further narrowed down with the wording 'when already clearing corporate bonds in the same currency' instead of 'when already clearing corporate bonds and the introduction does not require new liquidity or payment arrangements'. We therefore suggest deleting point c) of Article 7.
- **Point d) of Article 7** – The proposed extension of clearing equity futures in "Currency C" when already clearing equity futures in other currencies, and already handling payments in "currency C" is to us an extension that falls well into the existing frameworks of the CCP and does not introduce new risks or need for new liquidity arrangements which would qualify for an exempted change and should therefore not be included within the scope of approval processes under accelerated procedure. We therefore suggest deleting point d) of Article 7.
- **Point e) of Article 7** – The proposed extension of clearing equity options in "Currency C" when already clearing equity options in other currencies, and already handling payments in "Currency C" is to us an extension that falls well into the existing frameworks of the CCP and does not introduce new risks or need for new liquidity arrangements which would qualify for an exempted change and should therefore not pulled into the scope of approval processes under accelerated procedure. We therefore suggest deleting point e) of Article 7.
- **Point g) of Article 7** – Regarding the possibility for clearing foreign exchange futures on a new currency pair without pegging/convertibility risks and not generating payments in a

new currency, when already clearing foreign exchange futures, EACH Members strongly believe that adding a new currency pair with all the additional caveats included can only be an exempted extension for a CCP which already clears foreign exchange futures. We therefore suggest deleting point g) of Article 7.

- **Point h) of Article 7** – Regarding the possibility for clearing non-deliverable foreign exchange forwards on a new currency pair without pegging/convertibility risks and not generating payments in a new currency, when already clearing deliverable or non-deliverable foreign exchange forwards, EACH Members strongly believe that adding a new currency pair with all the additional caveats included can only be an exempted extension for a CCP which already clears foreign exchange futures. We therefore suggest deleting point h) of Article 7.

Given the conditions for non-material changes are already listed in Article 17a(1), we suggest below a proposal regarding typical extensions of services and activities that could be considered in principle to fall under the accelerated procedure:

- Article 2(a) of the draft RTS: the CCP intends to clear physically settled contracts where it only offers cash settlement for contracts
- Article 2(b) of the draft RTS: the CCP intends to clear contracts involving a change in the novation mechanisms from novation to open offer
- Article 4(1): the CCP already clears European style options and intends to clear American style options.
- Article 4(1)(a) of the draft RTS: the CCP intends to clear contracts traded OTC where it only clears contracts that are not traded OTC, and vice versa
- Article 4(1)(c) of the draft RTS: the CCP intends to clear contracts that require the introduction of new liquidity or payment arrangements
- Article 4(1)(c): the CCP intends to clear a financial instrument in a currency already used for clearing or payment by the CCP, in the case of non-deliverable or deliverable FX forwards, but the new currency pair has de-pegging/convertibility risk.
- Article 5(1)(c) of the draft RTS: the CCP intends to clear contracts that reference a new risk factor type as primary underlying
- Article 6(a) of the draft RTS: the CCP establishes a link with a new securities settlement system, CSD with different risk characteristics to existing ones or payment system which the CCP does not use; or changes from a direct to an indirect link
- Article 6(b) of the draft RTS: the CCP introduces settlement or payment in commercial bank money where the CCP currently uses central bank settlement or payment

<ESMA_QUESTION_EXTE_6>

Q7 Do you agree with the procedure for the consultation of ESMA and the college on whether an application for an extension of authorisation qualifies to be assessed under the accelerated procedure under Article 17a of EMIR?

<ESMA_QUESTION_EXTE_7>

While we generally agree with the procedure for consulting ESMA and the college on whether an application for an extension of authorization qualifies to be assessed under the accelerated procedure as per Article 17a of EMIR 3, we believe that this does little to expedite the streamlining of regulatory processes, reduce duplication or regulatory burden. We would therefore call for this whole process to be as smooth as possible within the framework provided by EMIR 3.
<ESMA_QUESTION_EXTE_7>

Q8 Do you agree with the list of conditions for the exemption from authorisation under Article 15a of EMIR? Should any other conditions be considered?

<ESMA_QUESTION_EXTE_8>

We consider the list of conditions for the exemption from authorisation under Article 15a of EMIR to be significantly too narrow as follows:

- **Excessive conditions** - The sheer number of seven conditions to be fulfilled represents an excessive burden on the possibility for an exemption to effectively apply. Furthermore, the number of conditions are defined in detail in two pieces of legislation: Article 17(a)(1) and then further specified in the RTS under Article 17a(5).
- **Typical extensions of services and activities**– As stated on our response to question 6, we consider the typical extensions of services and activities that could be considered in principle to fall under the accelerated procedure to be rather examples of activities that should be exempted from authorisations.
- **Issues with proposed conditions** - We have strong reservations with the following conditions:

    - **Condition b)** - A case could be made that a CCP introducing for the first time either European, American or Bermudan option exercise style should seek authorization. However, the presented example narrows it further to the use in 'equivalent existing derivative contracts'. We are concerned this narrow definition will (a) be open to interpretation and (b) is arbitrary and not justified by risk concerns as the CCP evidently is by then able to handle the respective exercise style in its risk framework.

      We therefore suggest deleting such condition.
    - **Condition c)** - This point is significantly extending the scope of approval procedures and appears to consider not only a binary distinction between secured and unsecured products but also extending the granularity where any variation in either seniority or collateralisation arrangements would require approval.

      We therefore suggest deleting such condition.
    - **Condition d)** – We would like to highlight two concerns we have with the proposed condition d):
        - **Geographical zones**:

- We consider that the reference to new geographical zones outsize of the EU is unclear as it may refer amongst other to new geographical zones in terms of membership, risk factors on cleared products or venue location, to give just some examples.

  Regardless of its meaning, we consider that extending existing services to new geographical zones where it would materially impact the CCP's risk profile will necessarily trigger another criteria and subject such change to an approval procedure. Where extending existing services to new geographical zones does not materially impact the CCP's risk profile, the CCP should be permitted to avail itself of the exemption. We therefore suggest removing the reference to geographical zones from condition d).

  Alternatively, we would suggest editing the related wording to state 'It does not imply an extension of the clearing services to new geographical zones outside the EU *so long as that extension leads to a material change in the CCP's processes* (…)

- **Clearing hours**:
  - We consider that an extension of clearing hours does not materially change the risk profile of a CCP. While the CCP would open its services longer to accommodate longer trading hours, the nature of margin models and other risk management calculation would remain the same. In particular, we consider that as long as batches are not impacted and collateral is collected at the usual time, there is no impact on the CCP risk model.
  - We therefore believe that the text of clearing hours wording in this condition should be edited to either remove the wording 'nor an extension of the CCP's clearing hours' or to qualify that it only applies 'as long as batches are not impacted and collateral is collected at the usual time'.

- **Condition e)** - EACH agrees with this condition.
- **Condition f)** - We are concerned about the special reference to currency as an underlying and specifically that it should trigger an approval procedure. We believe that adding a new currency as an underlying may be treated as exempted change as long as the related VM payment is done in a currency in which the CCP already generates payments (e.g. adding an underlying in JPY but the related VM or other payment generated being done in USD when the CCP is already making payments in USD). In this case, the framework remains and is not adapted, the risk model is fed additional market data and there are no new complexities. This could be the case for example of CCPs clearing derivatives on interest rate or foreign exchange. Please note that this is different from introducing payments in a new currency which is already covered in point e).

We would therefore suggest deleting condition f) as the payment generation condition is already covered under point e).

- **Condition g)** – While we agree with the fact that establishing an indirect link with a securities settlement system, CSD or payment system where the CCP currently only uses a direct link with that securities settlement system, CSD or payment system increases risk and therefore should be subject to an accelerated procedure, we do not agree with the 'vice versa' of the situation, as the latter would decrease risk.

  We therefore suggest that the introduction of a direct link with a securities settlement system, CSD or payment system where the CCP currently only uses an indirect link with that securities settlement system, CSD or payment system should therefore be subject to the exempted procedure.

- **Condition h)** – While we agree with the fact that introducing commercial bank settlement or payment where the CCP currently only uses settlement or payment in central bank money increases risk and therefore should be subject to an accelerated procedure, we do not agree with the 'vice versa' of the situation as the latter would decrease risk.

  We therefore suggest that the introduction of central bank settlement or payment where the CCP currently only uses settlement or payment in commercial bank money decrease risk and should therefore be subject to the exempted procedure.

<ESMA_QUESTION_EXTE_8>

Q9 Do you consider that any other extensions/situations should be captured under the exemption from authorisation under Article 15a of EMIR? If yes, could you please specify which exact extensions/situations?

<ESMA_QUESTION_EXTE_9>

Yes, EACH Members consider that the services and activities included under Article 7 of the draft RTS should be captured under the exemption. In addition, we include below some other extensions/situations that EACH Members agree should also be captured under the exemption from authorisation of Article 15a of EMIR:

- **Combination of characteristics of contracts already cleared** - If the CCP is proposing to extend clearing for a new contract that simply combines characteristics of other contracts already cleared, including the underlying reference asset/index of the contract. For instance:

  - Adding a new product where the underlying security is already known to the CCP, but not in conjunction with a product it is already authorised to clear (e.g. when the

CCP clears securities and futures, clearing futures on an underlying security that the CCP is already clearing should be exempted).

- Adding a new product where the underlying is an FX or interest rate where:
  - the CCP already clears FX products and the CCP already settles payments in relevant currencies (e.g. both nominal and quote currency in case of physically settled instruments); or
  - the CCP already clears FX or interest rate products with the same risk characteristics.
- Clearing of a new ISIN with the same characteristics of existing ISINs. For example, in the equities and bonds space, this should also allow new issuers to be accepted without regulatory approval as long as they meet the same risk characteristics as existing issuers.

- **New tenor**
  - The change proposed by the CCP adds more granularity or extends the maximum tenor to a class of financial instruments already covered by the CCP's authorisation. In order to appropriately respond to clients' demand, either as new hedging needs for emerging risks or investment opportunities, there is an expectation by market participants that CCPs act promptly, commonly over a few days only and, depending on market conditions, overnight. The prompt response is more pronounced when a product is traded bilaterally and cleared in a CCP. The risk management procedure expectation would therefore not be to wait for the timing foreseen by the accelerated procedure. If the introduction of the new tenor requires a change to the risk model, then the determining factor is the risk model change.
- **Type of settlement** - The change proposed by the CCP alters settlement from physical delivery to cash settlement, and the currency to be paid in is already cleared by the CCP.

<ESMA_QUESTION_EXTE_9>

Q10 Question for CCPs: Based on the proposals presented in this Consultation Paper, could you provide an estimate of the number of extensions of authorisation, implemented/applied for by your CCP over the past three years, that would have qualified for i) the standard procedure under Article 17 of EMIR, ii) the accelerated procedure under Article 17a of EMIR, iii) the exemption from authorisation ('BaU' changes) under Article 15a of EMIR?

<ESMA_QUESTION_EXTE_10>

EACH Members generally believe that compared to the current EMIR legislation where there is only the standard procedure and no need to submit approval, the introduction of the draft RTS as proposed would lead to a large shift of the current changes where there is no need to submit an approval towards the need to submit approvals under the 'Accelerated' procedure,. while the narrowly drawn conditions for extension to be subject to the accelerated procedure would also push some of the more involved non-objections into the scope of standard procedure.

The accelerated process is very much welcome, but we would have expected some submission currently falling under the full procedure to move towards the accelerated one, as opposed to what we expect under the current draft RTS for the changes currently not subject to an approval to become subject to the approval requirements under the accelerated procedure or even full procedure. EACH Members observe that the draft RTS does not shift CCP changes away from the regular procedure towards the accelerated procedure, which would be in line with the stated aims of EMIR 3 to streamline and accelerate time to market for new products. On the contrary, changes that the CCP would have not submitted for approval and may have agreed with their NCAs that require a notification, are under the draft RTS subject to a regular procedure under Article 17, which increases the burden of ESMA, NCAs and CCPs. Similarly, changes that the CCP would have considered as not requiring an extension of authorisation approval are under the draft RTS subject to an accelerated procedure under Article 17a, again increasing the burden of CCPs.
<ESMA_QUESTION_EXTE_10>

Q11 Do you agree with the proposed frequency for the reporting of the exemption from authorisation under Article 15a of EMIR?

<ESMA_QUESTION_EXTE_11>

No, we do not agree with the proposed frequency of reporting but note that the requirement introduced in EMIR 3 increases the reporting burden and thus the cost basis for the CCPs.

As evidenced by various initiatives undertaken by ESMA aimed at burden reduction[4], and in alignment with the thesis of the Draghi report[5] to enhance Europe's competitiveness and attractiveness, we propose a review of the frequency with which a CCP must notify to benefit from the authorization exemption.

We consider that a notification frequency every twelve months for exempted authorisations (i.e. authorisations of changes that are not material or subject to the accelerated procedure), along with communication to the authorities whenever the established conditions are no longer met, would be sufficient. The burden associated with a more frequent notification unnecessarily diminishes Europe's CCP attractiveness compared to other jurisdictions.
<ESMA_QUESTION_EXTE_11>

[4] e.g.: https://www.esma.europa.eu/press-news/esma-news/esma-contributes-simplification-and-burden-reduction

[5] https://commission.europa.eu/topics/eu-competitiveness/draghi-report_en

Q12 Are the general provisions in Chapter I (of Title III of the draft RTS) (language, certification, fees) appropriate and clear?

<ESMA_QUESTION_EXTE_12>

Yes, EACH agrees that the general provisions are broadly clear although have some strong concerns about the ones below.

Board Certification Requirement

EACH Members respectfully disagree with the requirement for the CCP's board to certify the accuracy and veracity of all the documents submitted in any application for authorisation or extension of existing authorisation.

We consider that by including a proposal for a board certification requirement, ESMA is overstepping the mandate it was given in EMIR Level 1. The concerns ESMA seeks to address are already addressed in both EMIR and local corporate law frameworks. EMIR contains detailed governance requirements for CCPs in both Level 1 and Level 2 (e.g., Articles 27 to 33 of EMIR, Articles 3 to 7 of RTS 153), which are approved at the time of a CCP's initial authorisation and are subject to ongoing oversight. Respective jurisdictional corporate law frameworks already designate a body with responsibility and liability for the legal entity. In other words, adequate governance and responsibility for the extensions proposed by CCPs are already in place. The proposed requirement to have the responsible body make a specific certification for each and every application is therefore duplicative, disproportionate and unnecessarily burdensome.

EACH Members therefore strongly support the removal of Article 12 paragraph 4 of the draft RTS as it results from our point of view in an unnecessary regulatory burden, and additionally in those jurisdictions that require or allow legal entities to have two boards (i.e. a Management Board and a Supervisory Board) would be simply problematic.

As an alternative, understanding ESMA's objective to ensure adequate governance and responsibility for the extensions proposed by CCPs, EACH Members propose including a requirement that any application contain language to the effect that the CCP completed its internal governance in respect of the application and the date on which that occurred. CCP governance arrangements are approved as part of their initial authorisation and are subject to annual and ongoing oversight. Such a confirmation should provide adequate comfort that those governance arrangements have been followed.

Language for the application

EACH Members agrees with the proposal of using a language customary in the sphere of international finance.

<ESMA_QUESTION_EXTE_12>

Q13 Is the requirement to submit an index and a correspondence table appropriate and clear?

<ESMA_QUESTION_EXTE_13>

EACH Members believe that such requirement is clear.
<ESMA_QUESTION_EXTE_13>

Q14 Are the documents and information required in relation to the identification of the applicant CCP clear? Would those be enough for competent authorities and ESMA to gain sufficient understanding about the applicant CCP as a company?

<ESMA_QUESTION_EXTE_14>

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<ESMA_QUESTION_EXTE_14>

Q15 Should applicant CCPs provide other documents under the general information requirements?

<ESMA_QUESTION_EXTE_15>

While EACH Members very much agree with the intention of Article 19 about 'Detection and prevention of money laundering and terrorist financing', we kindly request removing the refence to compliance with Directive (EU) 2015/849 as CCPs are not in the scope of such piece of the legislation and would support replacing it with a more general description of mechanisms and policies and procedures that adequately mitigate AML risks.
<ESMA_QUESTION_EXTE_15>

Q16 Are documents and information required to assess organisational requirements sufficiently clear and comprehensive? Should the applicant CCP provide other documents?

<ESMA_QUESTION_EXTE_16>

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<ESMA_QUESTION_EXTE_16>

Q17 Are documents and information required to assess conduct of business requirements sufficiently clear and comprehensive? Should the applicant CCP provide other documents?

<ESMA_QUESTION_EXTE_17>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_EXTE_17>

Q18 Are documents and information required to assess prudential requirements sufficiently clear and comprehensive? Should the applicant CCP provide other documents?

<ESMA_QUESTION_EXTE_18>

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<ESMA_QUESTION_EXTE_18>

Q19 Are documents and information required to assess an extension of authorisation, under Article 17 of EMIR, sufficiently clear and comprehensive? Should the applicant CCP provide other documents?

<ESMA_QUESTION_EXTE_19>

We respectfully believe that the proposal in the draft RTS is extremely broad in its scope and excessive in its documentation requirements. The proposal would de facto mean that an extension of authorisation has almost equivalent application requirements compared to the initial authorization request as per EMIR Article 14. This disregards the principles of proportionality and the fact that CCPs face ongoing supervision and EMIR Article 17a(3) allows competent authorities to rely on the EMIR Article 21 assessment to the extent the proposed extension of activity or service does not result in a change to or affect that part of the assessment.

Further, given the broad scope definition for material extensions, we expect a larger number of extensions being classified as material, as one of the narrow conditions will be met in most cases. Moreover, extensions of services and activities that in the previous EMIR framework did not require an extension of authorisation approval would mostly be classified as non-material extensions and would consequently also be subject to the Article 17a process. Further, the excessive assessment requirements for all classifications of extensions would lead to a significantly increased burden for extensions that would affect NCAs, ESMA and CCPs. Overall, the proposed approach would lead to an impact in the opposite direction to the intended goal of EU Commission when originally

proposing changes which materialized in EMIR 3, namely the acceleration of the approval procedures and increased global competitiveness of EU CCPs, in line with the European Commission's communication about the Savings and Investments Union[6] aimed to bolster the European capital markets.

If EMIR RTS were not to be largely changed in this respect, CCPs could be deterred from expanding the clearing offering of the CCP, given the heightened burdens around obtaining regulatory approvals. This threatens to stifle innovation in the post-trading sector, as potential extensions of applications would then be either postponed or not pursued as not justified given the high-required efforts for an application.

We therefore propose some further clarity below around some of the provisions in Article 45 (similar to what we propose in Article 46) of the RTS, to avoid misinterpretation around the amount of documentation required. We believe that the intention of Article 45 is that only those documents that have been changed as a result of the proposed extension of service should be submitted in the application. Further clarifying this in the RTS text would promote equal application across CCPs and jurisdictions, to ensure a level playing field.

Further to the proposed list of required information of Article 45, we suggest the following:

- **Point b)** - We understand that NCAs and ESMA want to understand the new service or activity that the CCP plans to introduce. While we agree it is reasonable to provide a description of the contracts and classes of (non-)financial instruments covered by the proposed extension, in our view the business plan with its associated information remains the responsibility of the CCP and should not inform any regulatory approval decisions. Further, internal CCP view on potential market size and growth forecasts of the new service or activity as well as market participants that intend to use the new service or activity are proprietary information of the CCP and should likewise not inform any regulatory approval decisions given there are many factors that determine market size, market participant uptake, etc. Therefore, we propose to provide only a description of the contracts and classes of (non-)financial instruments covered by the proposed extension removing the requirements for providing a business plan, market size and growth forecast.
- **Point c)** - We believe that NCAs and ESMA want to understand the planned timeline and uncertainties of the extension implementation. While we agree with providing high-level milestones on the extension implementation, in our view it remains the responsibility of the CCP to continuously identify, assess and manage project risks and mitigations of the extension implementation, which require continuous adjustment to various dependencies,

[6] https://finance.ec.europa.eu/publications/commission-unveils-savings-and-investments-union-strategy-enhance-financial-opportunities-eu_en

including market participant readiness and regulatory approvals. This process begins prior to the official application date and continues thereafter so that at the application date only a snapshot could be provided anyway. Therefore, we propose to provide only high-level milestones of the extension implementation without any further requirement.

- **Point d)** - We are concerned that the requirements to assess the extension against the relevant requirements of the regulation lead to a duplication of work for NCAs, ESMA and the CCP as EMIR Article 21 already requires a full review and evaluation of the CCP complying with regulation at an annual frequency. Furthermore, EMIR Article 17a(3) permits the CCP's competent authority to rely on part of the assessment previously made pursuant to EMIR Article 21 to the extent that the application for extension will not result in a change or otherwise affect the previous assessment for that part.

  As an alternative, we propose that only the relevant aspects of the regulation that are affected by the extension are assessed by the CCP at the point of the extension application. The remaining aspects can be reviewed by the NCA as part of the annual review and evaluation according to EMIR Article 21.
- **Point e)** - Consistent with point d., within the list of documents required for a license extension, information and results should be limited to those affected by the extension only and take into account the annual assessment performed under EMIR Article 21 and the reliance permitted under EMIR Article 17a(3). We therefore would appreciate clarity that this is what is meant by "in relation to the extension".
- **Point f) -** We suggest removing requirement f) as CCPs are only notified as a system under Directive 98/26/EC (SFD) at the time of the initial authorisation. The SFD does not cater for a framework for extensions of that designation in relation to new services or activities.

<ESMA_QUESTION_EXTE_19>

Q20 Are documents and information required to assess an extension of authorisation through the "accelerated procedure", under Article 17a of EMIR, sufficiently clear and comprehensive? Should the applicant CCP provide other documents?

<ESMA_QUESTION_EXTE_20>

We respectfully believe that the scope of the required documentation through the changes that are submitted under the accelerated and material procedure has the potential to far exceeding the requirements for material extensions subject to the Article 15 procedures prior to the review of EMIR 3. As a result, we would expect a significantly increased burden for extensions through the accelerated and material procedures, which would affect NCAs, ESMA and CCPs.

Such increase in the burden for extensions would have the opposite effect to the intended objective of EMIR 3 and rather i) increase regulatory burden and ii) increase the overall time for changes, as CCPs would need to prepare what we respectfully believe are pieces of information irrelevant for the authorisation product or service extension, leading to a substantial increase in the time

CCPs need to prepare an extension request and therefore nullifying the potential benefits that having a shorter timeline as included in EMIR 3 could bring.

As detailed below, we therefore believe that the proposed list of documents in the draft RTS contravenes the proportionality conditions enshrined in Article 1(14) of EMIR 3.

If the proposed EMIR 3 RTS were not to be largely changed in this respect, CCPs could be incentivised to postpone or not pursue non-material changes given the high required efforts for an application. This threatens to stifle innovation, as well as sound and robust risk management.

We therefore propose some further clarity below around some of the provisions in Article 46 (similar to what we propose in Article 45) of the RTS, to avoid misinterpretation around the amount of documentation required. We believe that the intention of Article 46 is that only those documents that have been changed as a result of the proposed extension of service should be submitted in the application. Further clarifying this in the RTS text would promote equal application across CCPs and jurisdictions, to ensure a level playing field.

As highlighted above, we consider the list of required information of Article 46 to be significantly too broad and excessive. Our specific response is:

- **Point b)** - Consistent with points (b) and (c) of our response to Article 45(1) in Q19, the provided information should be limited only to a description of the contracts and classes of non-financial instruments covered by the proposed extension (point b.) and to high-level milestones of the extension implementation only (point c.). This is particularly crucial for changes that are proposed under the accelerated procedure, as in these cases the requirements would be unnecessarily burdensome.

  In case ESMA is concerned about the number of applications authorities will receive, we would strongly encourage a reflection on the calibration of thresholds as indicated in our responses to this consultation, as regulatory validation is only a small fraction of efforts with pursuing new initiatives.

  We note that in line with competitive business practices, many initiatives do not materialize and are subsequently abandoned a few years later. This is actually a very natural entrepreneurial way of pursuing new opportunities.

  CCPs themselves have a vested interest in not wasting their own or their regulators' time. The hurdles for getting a new service/activity approved being already so high, CCPs do not initiate a regulatory procedure lightly. It can happen that take up of a product is not as successful as originally anticipated but this should not keep CCPs from making efforts to innovate.
- **Point c)** - While we agree with an assessment of the proposed extension of authorization against the classification criteria to increase ex-ante certainty of significance classification, we would like to refer to our responses to questions 1 to 6 above. These would improve

the classification and consequently also facilitate the effective assessment against these criteria for the NCAs, ESMA and the CCP.

- **Point d)** - Consistent with point (d) of our response to Article 45(1) in Q19, we are concerned that the requirements to assess the extension against the relevant requirements of the regulation that are impacted by the extension:
    - Lead to a duplication of work of NCAs, ESMA and the CCP as EMIR Article 21 already requires a full review and evaluation of the CCP complying with regulation at an annual frequency.
    - Do not take into account EMIR Article 17a(3), which permits the CCP's competent authority to rely on part of the assessment previously made pursuant to EMIR Article 21 to the extent that the application for extension will not result in a change or otherwise affect the previous assessment for that part.
    - Are unclear given the wording 'concise description of how the applicant CCP achieves compliance with those requirements including the legal references of those requirements'.
- **Point e)** Regarding:
    - **Policies and procedures that change** - Consistent with point d., within the extension application the list of policies and procedures should be limited to those directly affected by the extension only. In addition, EACH Members suggest clarifying under point e) that it is a 'written declaration listing ***the titles*** of which policies…' as we understand that the intention of the regulator is not to have the CCPs include the full content of the policies.
    - **Policies and procedures that do not change** - We strongly oppose to the requirement for including references to policies and procedures that do not change as we believe it is an example of unnecessary burden. Given that CCPs would already be informing authorities about what changes, we see it as a totally unnecessary regulatory burden to also list the ones that do not change.

<ESMA_QUESTION_EXTE_20>