European Association of CCP Clearing Houses

EACH Response – ESMA consultation on CCP participation requirements under EMIR 3

January 2026

European Association of CCP Clearing Houses AISBL (EACH), Avenue des Arts 6, 1210 Brussels

1. Executive Summary

The European Association of CCP Clearing Houses (EACH) represents the interests of Central Counterparties (CCPs) in Europe since 1992. CCPs are financial market infrastructures that significantly contribute to safer, more efficient and transparent global financial markets. EACH currently has 19 members from 14 different European countries. EACH is registered in the European Union Transparency Register with number 36897011311-96.

EACH appreciates the opportunity to respond to the ESMA consultation[1] on EMIR 3 draft RTS on CCP participation requirements. We particularly welcome that the draft RTS preamble seeks to give CCPs the flexibility to adapt conditions to their participants. We believe that existing CCP admission criteria generally function well and therefore emphasise the importance of calibrating which issues this draft RTS is trying to address, before considering elements which will add significant burden onto CCPs and their clearing members without clear benefits.

The feedback shared in this consultation response covers the following key EACH points:

- **Support the adaptive risk-based approach proposed by ESMA and suggests tweaks to its implementation**: We agree with recital 2 of the draft RTS, which outlines that a CCP should tailor its admission criteria to its specific risks and the risk profile of the type of product cleared, the type of membership, and/or the type of clearing member. This accounts for the risks associated with a clearing member varying significantly across different markets and activities. For instance, participation requirements for non-financial counterparties (NFCs) may be tailored on the basis of the market segment (e.g. by limiting such participation to commodity markets). However, we believe that the draft RTS does not reflect this flexibility explicitly enough in the articles themselves. To address this, we suggest:
    - **Article 1** to specify that if a CCP designs a membership type that eliminates a certain risk, the **respective conditions outlined in the RTS need not be part of the admission criteria for that membership type**. As part of this, ESMA could require each CCP to assess the applicability of every criterion contained in the RTS for each membership type. Such a risk-oriented approach would allow for CCPs to:
        - Set stricter access criteria where desired, to mitigate certain risks from clearing members and;
        - Limit risk by designing restrictive membership types or restricting access to certain products. For example, a CCP may require pre-funded trades, which removes settlement risk and collateral needs.
- **Avoid overly extensive and unrealistic criteria**: We note that, cumulatively, the list of criteria that a CCP shall consider is extensive and many of the criteria would be difficult for a CCP to verify. For example, to truly verify compliance with the operational

[1] https://www.esma.europa.eu/sites/default/files/2025-10/ESMA91-1505572268-4364_Consultation_Paper_EMIR_3_draft_RTS_on_Participation_Requirements.pdf

conditions, a full on-premises audit including potentially of suppliers would be required. This would not only be very costly, but it would also be of limited added value, as most clearing members are subject to their own operational resilience criteria that are already audited both internally and externally. Accordingly, we understand that it is sufficient if a CCP outlines in its conditions that a clearing member must comply with the operational requirements and that the clearing member must confirm compliance via a due diligence questionnaire. **A CCP should not be forced to become a quasi-regulator of its clearing members.** Especially where clearing members are regulated financial institutions, they are already subject to extensive requirements and supervision regarding their risk management framework, internal control system and operational resilience. It should therefore not be up to the CCP to review such elements in depth or even audit compliance.

- **Complement rather than duplicate the CCP risk management framework:** The draft RTS in its current form includes elements that are covered in the risk management framework of the CCP and should not be addressed via the admission criteria. For example, during the onboarding phase of clearing members, the CCP cannot assess the future portfolio of a clearing member or the relative importance of client activity in comparison to proprietary clearing. Such risks are however sufficiently covered in a CCP's risk management framework, which reacts to any changes in the risk profile of a CCP, and should therefore not be covered as part of the admission criteria.

We detail these three suggestions in the subsequent sections of our response to the individual questions of the consultation.

We would like to stress that addressing the above issues is of vital importance for CCPs as the proposal as it currently stands would unfortunately lead to an unnecessary increase in burden for CCPs and their clearing members.

2. Questions and Answers

Q1: Do you agree with the suggested elements with regard to fair and open access and transparency? Should the CCP consider other elements? Please justify your response and provide evidence. (Article 1)

EACH appreciates the intention to promote flexibility and proportionality, and we would like to highlight the following additional considerations. We believe that ESMA should ensure that the proposed provisions:

- **Ensure clear requirements** for clearing members under all circumstances; and
- **Prevent divergent interpretations by CCPs and supervisory authorities** regarding both the definition of participation requirements and the assessment of compliance, thereby safeguarding a level playing field.

> We therefore agree with recital 2 of the draft RTS, which outlines that **a CCP should tailor its admission criteria to its specific risks and the risk profile** of e.g. the type of product cleared, the type of membership, and the type of clearing member. For instance, participation requirements for non-financial counterparties (NFCs) may be tailored on the basis of the market segment (e.g. by limiting such participation to commodity markets).

However, we believe the **draft RTS does not reflect this flexibility explicitly enough** in the articles themselves. To address this, we suggest:

- **Article 1** to specify that **if a CCP designs a membership type that eliminates a certain risk, the respective conditions outlined in the RTS need not be part of the admission criteria for that membership type**. To ensure CCPs consider all ESMA criteria, ESMA could require each CCP to assess the applicability of every criterion contained in the RTS for each membership type. Such a risk-oriented approach would allow for CCPs to:
    - Set stricter access criteria where desired, to mitigate certain risks from clearing members and;
    - Limit risk by designing restrictive membership types or restricting access to certain products. For example, a CCP may require pre-funded trades, which removes settlement risk and collateral needs.

We would also like to stress that, when defining participation requirements, the **objective of strengthening the EU's overall competitiveness** should be duly taken into account.

Q2: Do you agree with the suggested elements with regard to the clearing member's financial resources? Should the CCP consider other elements? Please justify your response and provide quantitative evidence. (Article 2)

EACH appreciates ESMA's objective of ensuring robust financial soundness of clearing members. For this purpose, CCPs already perform comprehensive credit assessments deploying internal and independent models. While we strongly **support the principle that CCPs should consider financial resources as part of admission criteria**, we have concerns regarding elements of the proposed criteria that are detailed below.

As drafted, **paragraph 1 seems to confuse the objective of admission criteria with the ongoing risk management framework** of a CCP. The admission criteria should focus on verifying that a clearing member meets the necessary standards for onboarding, rather than applying continuous or forward-looking assessments.

For example, a clearing member will not individually be tested according to the outlined criteria via forward-looking, scenario-based tests as part of the admission process. Furthermore, a CCP only gains visibility into clearing member's current positions after onboarding and cannot reasonably predict their future exposures. Accordingly, such factors

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should not be considered during onboarding or annual assessment and should remain with the CCP's comprehensive and ongoing risk management processes.

The CCP's risk management framework, including margining, stress testing, and default management, protects against these scenarios on an ongoing basis. Margin add-ons, for example, can address increased wrong-way risk dynamically. Hence, the references to scenarios and the corresponding sub-points should be removed from paragraph 1, and the criteria for a period check of participation requirements should be clearly distinguished from those for the initial check.

We agree that the member's credit worthiness assessment shall be based either on information provided by the clearing member or publicly available sources. However, the current wording 'where necessary' seems to suggest that it would be preferable to receive information from the client directly. However, if documents are publicly available (e.g. financial statements) it is operationally less burdensome for the CCP and clearing member alike, if the CCP uses the public information. We would therefore suggest **removing the wording 'where necessary'**.

In addition, the **language that the credit-worthiness assessments shall not fully rely on external opinions' should be amended**. While in the majority of cases this is reasonable, for membership types that are designed to significantly limit the risk a member can pose to the CCP while providing broad industry access, it should be clear via amended wording that it is acceptable to rely on external credit ratings. For example, the European Commodity Clearing (ECC) Direct Clearing Participant (DCP) model sets strict trading limits for clearing members, which must provide sufficient collateral to cover any activity within the respective limit. As a result, ECC has a high level of protection against losses from DCP clearing members, which in turn enable ECC to provide companies broader access to trading and clearing. Such access will be particularly relevant under the EU Emission Trading Scheme (EU ETS2), once this goes into effect in 2028. Considering that approximately 11,000 companies will be subject to the scheme, allowing a proportionate and risk adequate admission approach will be crucial.

We also would like to **highlight the limitations on how comprehensively a CCP can assess the specified criteria**. For **paragraph 2**, it is challenging for the CCP to continually verify access to reliable credit, liquidity, and foreign exchange facilities. Although a CCP can ask a clearing member to confirm the existence of these facilities, it cannot reliably determine if they remain available or have already been used elsewhere.

Furthermore, we agree that a CCP should consider both the support a clearing member receives from its group and any potential liabilities involved. However, when it comes to operational reliance, **it should be made clear that a CCP does not need to carry out detailed reviews of internal group outsourcing arrangements.** Instead, it should suffice for a CCP to ensure that clearing members have adequate risk management processes for both internal and external outsourcing. We would therefore suggest that the RTS should clarify that CCPs should not be required to continuously verify that the clearing member has access to these facilities.

CCPs already maintain robust frameworks and perform credit risk assessments on an ongoing basis to manage clearing members' risk. However, **this draft RTS extends these responsibilities into areas more typically suited to prudential supervisors or rating agencies**. Whilst EACH agrees that financial resource considerations are important, especially in case the clearing member has access to membership types with few or no limitations (e.g. access to all markets including derivative markets where relevant, ability to offer client clearing, etc.) we believe that these requirements should remain proportionate and aligned with the CCP's role. Specifically, **conditions in Article 2 should not oblige CCPs to duplicate prudential obligations already imposed on regulated entities** and should instead allow flexibility so that lower-risk models benefit from reduced requirements.

Q3: Do you agree with the suggested elements with regard to the clearing member's operational capacity? Should the CCP consider other elements? Please justify your response and provide evidence. (Article 3)

EACH agrees that clearing members should maintain adequate operational capacity to ensure the safe and efficient functioning of clearing services, and appreciates the flexibility and design given by ESMA in the draft RTS preamble.

We however believe that the **proposed requirements in Article 3 should be applied in a proportionate and risk-based manner**, as the current proposals could unnecessarily lead to a huge impact in terms of costs and staffing at CCPs. Specifically, we recommend a staggered approach: clearing members that are already subject to regulatory requirements, such as DORA (Digital Operational Resilience Act)[2] in the EU, should not be subject to additional operational criteria defined in the participation requirements of CCPs. These entities are already required to meet stringent operational resilience standards enforced by competent authorities. Additional verification by CCPs would be duplicative, burdensome and would not provide meaningful risk mitigation.

The requirements currently outlined in paragraphs 1-5 should therefore only be applicable to clearing members that are not subject to DORA or comparable requirements. For those counterparties (e.g. NFCs), however, a proportionate approach should be established. While clearing members should confirm operational capacity in their due diligence questionnaires a CCP cannot verify operational capacity for clearing members on an ongoing basis. For example, verifying IT system readiness or resilience would potentially require on-site inspections. While CCPs already have the capability to perform such inspections, they are carried out on a sample basis. To maintain proportionality, we **recommend removing paragraphs 2-4**, and **amending paragraph 5** as detailed below, as they introduce unnecessary prescriptiveness and are challenging to implement in practice.

Regarding **paragraph 2**, CCPs already confirm a clearing members' ability to interact effectively with CCP systems during onboarding. This is achieved by granting access to a

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R2554

simulation environment, which allows members to test connectivity and confirm readiness before going live. In addition, clearing members are required to confirm that their systems are operational and that they will inform the CCP in case of any changes. However, the requirement in paragraph 2 seems to suggest that a CCP should become part of the IT change process of its clearing members and potentially of independent software vendors (ISVs). However, **the responsibility of compliance should *not* be shifted from clearing members to CCPs**. The confirmation of compliance submitted by clearing members should be sufficient. Furthermore, considering that CCPs may have hundreds of clearing members, this would be overly burdensome and also not necessary. CCPs already offer their simulation environment that clearing member can use to self-assess the functioning of their systems. We would therefore suggest the **removal of this paragraph**.

Similarly, with respect to operational resilience and backup arrangements outlined in **paragraph 3**, the approach should be to obtain confirmation from members via our due diligence questionnaires that they have such facilities in place and that they conduct their own tests. **Requiring the CCP to actively verify these backup systems would introduce immense operational complexity**. As such, we also suggest the **removal of this paragraph**.

As drafted, **paragraph 4** may suggest that CCPs have to conduct exams of clearing members' staff and review their training plans. Instead, it should be sufficient that a clearing member confirms that is has sufficient resources and trained staff. For this, paragraph 1 d) suffices, and we suggest **removing this paragraph**.

Regarding **paragraph 5**, there too a proportionate approach should apply: **CCPs should obtain confirmation from clearing members that appropriate policies and procedures are in place**, for example through due diligence questionnaires or contractual obligations, **but should not be required to review or validate** the content of these documents. The current wording suggests CCPs must review their clearing members' internal risk management procedures, which could be burdensome and of limited benefit, especially given existing regulatory requirements. We would suggest **editing to wording to avoid such implication**.

Q4: Do you agree with the suggested elements with regard to other considerations and risks? Should the CCP consider other elements? Please justify your response and provide evidence. (Article 4)

The licence of a clearing member is and should remain an essential part of the admission criteria of a CCP, as a regulated bank is subject to comprehensive requirements regarding its capital, risk management standards, operational resilience etc. Before onboarding, each clearing member undergoes thorough due diligence and a member's legal or financial history is key to a CCP's decision. We thereby **support paragraph 2**.

However, EACH has **concerns with Article 4(3),** which suggests that CCPs should consider the risk management framework and internal control systems of clearing members. **Regulated financial institutions, especially where the clearing member is a bank, are already subject**

to comprehensive risk management obligations under sectoral legislation and supervisory oversight, including internal and external audits. Requiring CCPs to duplicate these requirements would not add meaningful risk mitigation and CCPs should in particular not be required to review the internal risk control system of its clearing member. Otherwise, a CCP would become a quasi-regulator of its participants. We support that CCPs review the regulatory framework of jurisdictions that they onboard members from, especially if those jurisdictions are outside of the European Union and that clearing members confirm that they can and will fully comply with the clearing conditions. The requirement to consider the ability of the clearing member to fulfil and the CCP to enforce all obligations and legal requirements seems however excessively broad. Instead, **we recommend that a CCP considers in its admission criteria the general enforceability of its legal framework in the jurisdiction of the clearing member**, in particular regarding segregation models, obligation to deliver margins and contributions to the default fund, default management rules as well as porting mechanisms. Otherwise, if not specified, the requirement could lead to a significant increase of the cost of clearing due to the high legal cost.

Lastly, **the requirement to assess different legal systems is vague and unclear, creating uncertainty and scope for divergent interpretation among CCPs**. From the clearing members' perspective, this does not promote the intended transparency. With particular regard to the "legal capacity and ability" of the clearing member, Section 44 of the consultation document provides examples of considerations, many of which are not strictly legal in nature but instead relate to the fulfilment of guarantees and participation in default procedures – areas that are already governed by the CCPs' Rulebooks. Clearing members accept these Rulebooks, and failure to comply with their obligations entails the legal consequences of a contractual breach. We suggest that this **requirement to assess "legal capacity and ability" of the clearing member is removed as a whole**.

Q5: Do you agree with the suggested elements with regard to the specific risks of clearing members offering clearing services to clients? Should the CCP consider other elements? Please justify your response and provide quantitative evidence. (Article 5)

We respectfully disagree with ESMA's approach and **do not believe that a separate article for access criteria specifically for clearing members who offer client clearing is necessary, and therefore suggest its removal**. As noted, we think a CCP should determine if the RTS access criteria are relevant to each type of membership. For clearing members offering client clearing, such an evaluation would probably show that almost all conditions already apply. These include strict requirements related to financial resources, operational capacity, and the need to be a financial institution. However, the proposed criteria under article 5 appear to blur the distinction between the CCP's risk management framework and its access criteria.

In line with our answers to question 2, we **do not believe that a CCP should or that it even can assess the future activity of a clearing member as part of the onboarding**. A CCP will not be able to assess the relative significance of client versus proprietary clearing and, even if this would be checked, the proportions would be dynamic and could change quickly. If such

checks where part of the participation requirements, it is unclear how the CCP would be expected to react in regard to the clearing members' membership status in case the relative importance of client clearing changes. Therefore, it is up to the CCP's risk management framework to ensure that the risks associated with a clearing member's accounts, including client accounts, are dynamically managed. Capital requirements and margining are dynamically scaled to reflect the clearing member's overall exposure, which includes both proprietary and client positions. This approach ensures that clearing members have sufficient resources to meet margin obligations, including in the event of a client default. Accordingly, such condition should not be part of the participation requirements.

In addition, **clearing members that offer clearing services are financial institutions subject to stringent risk management requirements**. It therefore seems duplicative to require the CCP to consider the risk management framework of its clearing members and may also give the CCP a quasi-regulator status. Also, Article 37(3) of EMIR, which addresses client clearing requirements, applies directly to clearing members – not CCPs – and does not reference CCP admission criteria. Hence, **the RTS should not shift the responsibility to the CCP**.

Regarding **point (c)**, ESMA indicates that the proposed requirement should further support portability of client accounts. It is already customary that CCPs require identification of segregated clients at on-boarding. This ensures that valuable time is not lost during a clearing member default to heighten the chance of successful porting. However, it is **unclear how the requirement would support porting of clients in net omnibus segregated accounts (NOSA)**. As NOSA porting could only function at the aggregated account level, not the individual client, the individual identification by the CCP after a default would be of little value. In summary, and as mentioned above, we therefore suggest **removing Article 5** as we believe it is duplicative and therefore unnecessary.

Q6: Do you agree with the suggested elements with regard to sponsored models? Should the CCP consider other elements? Please justify your response and provide evidence. (Article 6)

We support the principle of robust governance for sponsored models but **recommend that the RTS avoid imposing mandatory backup sponsorship arrangements.** EMIR does not mandate backup clearing arrangements for clients, and the same principle should apply to sponsored models. Sponsored members should retain the flexibility to choose their preferred contingency approach, including the option to liquidate positions in the event of a clearing agent default. This is a valid and practical choice that aligns with current regulatory standards and market practice. Therefore, we suggest that it is **made clear that the language of Article 6 does not impose mandatory backup sponsorship arrangements**.

Q7: Do you agree with the suggested safeguards in relation to the access to reliable liquidity? Should ESMA consider other safeguards? Please justify your response and provide quantitative evidence. (Article 7a)

As previously outlined, we **support the flexible approach ESMA has chosen**, allowing CCPs to maintain admission criteria per product cleared, membership type and clearing member type. We would however appreciate if **this flexibility was reflected more explicitly** in the articles themselves, as outlined in our response to question 1. A CCP should be able to design access models that reduce the risk associated with an NFC to allow the CCP to **not reflect all elements set out in Articles 1 to 6** of the RTS in its participation requirements. Furthermore, the **1st paragraph of Article 7 should be changed** to clarify that the elements outlined in paragraphs (a) and (b) are alternative elements to the elements outlined in articles 1-6, instead of additional elements as it is currently stated. Regarding the specific elements outlined in Article 7, we welcome the flexibility to use alternative collateralisation arrangements for NFCs.

Article 38(45) of EMIR 3 allows CCPs to accept public or commercial bank guarantees to cover their exposure to non-financial counterparties or their NFC clients. It is unclear whether the use of such guarantees to cover margin requirements can be considered compliant with the requirement of "higher level or even full collateralisation" within the meaning of paragraph 65 of Section 4.7.3 of the consultation. **Clarity on this would be appreciated**.

Q8: Do you agree with the suggested alternative elements that a CCP could consider when an NFC is not subject authorisation or licencing requirements resulting in capital and prudential regulation and supervision? (Article 7b)

From a practical perspective, the **requirement to assess whether an NFC is subject to other regulatory frameworks, such as sector-specific regulations in energy markets, is reasonable and aligns with existing practices**. For example, certain NFCs active in power spot markets may fall under regulations such as the CACM Regulation[3], which includes operational and settlement requirements. Recognising these frameworks as part of the CCP's assessment avoids unnecessary duplication and supports market access while maintaining robust risk controls. In addition, ESMA should clarify in this Article that that the CCP membership ban does not apply to the regulated activities of "cross-CCP" transactions between a CCP and a CACM central counterparty[4], as such transactions are required under CACM[5]. It should be further understood that CCPs may design admission criteria that reflect the CACM requirement to provide efficient clearing and settlement arrangements avoiding unnecessary costs and reflecting the risk incurred.

Furthermore, in relation to NFCs we recommend that the wording "any prudential regulation and supervision" be **amended to read "any prudential regulation and/or supervision"**. Many NFCs hold trading licenses issued by their national energy authorities, which exercise a degree of supervision over them without imposing prudential requirements.

[3] https://eur-lex.europa.eu/eli/reg/2015/1222/oj/eng

[4] CACM Art. 2(42): 'central counter party' means the entity or entities with the task of entering into contracts with market participants, by novation of the contracts resulting from the matching process, and of organising the transfer of net positions resulting from capacity allocation with other central counter parties or shipping agents

[5] CACM Art. 68(1), 68(2), 68(3) and Art. 69

At the same time, the RTS should clarify that the **absence of such a regulatory framework should not automatically preclude NFC participation** or that this consideration may not be relevant for all markets or membership types. In fact, while as outlined above for some CCP membership types the consideration of other legal frameworks may be critical, for other membership types it may play no role. For example, for a membership type that provides corporate treasury functions limited access to the repo market, it is irrelevant which industry that respective corporate is active in. It should be particularly clear in this RTS that a CCP is not required to have a comprehensive understanding of the relevant legal system in order to (1) determine which legislation applies to the given activity and (2) assess and evaluate the applicable regulatory regime, especially if the clearing membership is not designed to cater to a particularly regulated market segment. If such an understanding was required, it would also remain unclear to what extent such other regulatory frameworks would be expected to be reviewed.