
**EACH Response – ESMA consultation on
CCP collateral and certain aspects of
investment policy and highly secure
arrangements for the deposit of financial
instruments**

April 2026

Introduction

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 on draft RTS amending Commission Delegated Regulation (RTS) 153/2013 in relation to public guarantees, public bank guarantees and commercial bank guarantees as collateral and in relation to certain aspects of investment policy and highly secure arrangements for the deposit of financial instruments¹.

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

- **Concentration limits** – EACH Members agree with ESMA’s suggestion that it is **not necessary to prescribe specific concentration limits**. Concentration limits directly prescribed in the RTS may, in fact, not be sufficiently flexible to deal with risks or developments which arise or are identified in the future. The decisions regarding the calibration of concentration limits should, therefore, lie with the CCP.
- **Beneficiaries** – EACH Members consider that the Draft RTS should **not restrict the beneficiary structure to a single beneficiary**. Specifically, we support allowing both CCP as sole beneficiary, *and* CCP and clearing member as joint beneficiaries. This flexibility is essential to reflect how guarantees are actually used in practice.
- **Type of account** – In line with the EMIR requirements related to other types of collateral, we suggest **removing the requirement** mandating the set-up of individually segregated accounts. We respectfully do not see why this type of collateral merits such a distinction and most importantly, we believe the CCP should be able to consider the best way to operationalise the application of bank guarantees as far as accounts are concerned. Suggesting a particular type of account in the RTS runs the risk of bank guarantees remaining unused.
- **Identification of the default of a non-financial client** – EACH **does not support mandating CCPs** to implement an internal mechanism to identify the default of a non-financial client. Introducing a CCP level detection mechanism would create a duplication of control processes and operational inefficiencies as well as unnecessary complexity, as CCPs lack access to the necessary real time information streams that clearing members already maintain.
- **Provision of critical services for the functioning of a CCP** – EACH **questions the provisions** stating that commercial bank guarantees and bank guarantees issued by a publicly owned bank cannot be issued by “an entity whose business involves providing services critical to functioning of the CCP”. We respectfully believe that this prohibition

¹ <https://www.esma.europa.eu/sites/default/files/2026-02/ESMA91-1505572268-4513- Consultation Paper - Guarantees as CCP Collateral and CCP Investment Policy.pdf>

does not appear legally backed, as the Draft RTS do not provide a definition of “critical services”, and do not clearly demonstrate the risks that such prohibition would solve.

- **CCP investment possibilities & DLT** – EACH very much **welcomes ESMA’s proposal** to include the EU, the Bank for International Settlements, and the International Monetary Fund as eligible issuers under CCP investment policies. Also, EACH Members would like to put forward some proposals to **further expand the range of investment possibilities** for CCPs. Moreover, EACH Members would like to seize the opportunity of this consultation to introduce our proposals to further modernise the **collateral framework** in light of evolving market structures and **digital innovation**.
- **Definition of public bank** – EACH broadly agrees with ESMA’s proposed approach to address the current lack of a definition of “public bank” in EMIR. From EACH’s perspective, it is important that any definition of “public bank” is **sufficiently clear, objective and operationally workable**, while at the same time reflecting the diversity of public banking institutions across jurisdictions.

Questions and Answers

Q1. Do you agree that the existing provision on concentration limits should apply to guarantees and as such Article 42 should be amended to provide legal clarity on this?

Yes, EACH Members agree that the **existing provision on concentration limits should apply to guarantees**. CCPs would therefore be able to apply certain maximum thresholds to bank guarantee acceptance, e.g. a given percentage of the margin requirement of a clearing member could be fulfilled with bank guarantees (the remaining with cash or other EMIR eligible collateral assets), and/or the total accepted bank guarantee stock must be diversified from the CCP perspective with the use of concentration limits on issuing banks.

Q2. Do you agree with the inclusion of the level of collateralisation of the guarantee as a criterion for the CCP to consider when establishing concentration limits?

Yes, EACH Members **agree** with the inclusion of the level of collateralisation of the guarantee as a criterion for the CCP to consider when establishing concentration limits.

Q3. Do you agree with the inclusion of the new criteria (e) in paragraph 3 of Article 42, so that the CCP can consider the activity of the non-financial client when setting concentration limits?

Yes, EACH Members **agree** with the inclusion of the new criteria (e) in of Art. 42(3), so that the CCP can consider the activity of the non-financial client when setting concentration limits. This may be particularly suitable for those CCPs where non-financial clients, due to their activity, intervene in the derivative market for hedging rather than speculative purposes. This may allow CCPs to tolerate, for instance, a greater share of guarantees for hedging purposes.

Q4. Shall there be specific concentration limits established for guarantees provided by non-clearing members, given these exposures are not considered in the Stress Test?

EACH Members agree with ESMA's suggestion that it is **not necessary to prescribe specific concentration limits**, applying the same rationale that applied in RTS 153/2013², i.e. concentration limits directly prescribed in the RTS may not be sufficiently flexible to deal with risks or developments which arise or are identified in the future. The decisions regarding the calibration of concentration limits should, therefore, lie with the CCP.

Additionally, a uniform, CCP-level concentration limit could be insufficiently risk-sensitive and may inadvertently penalise well-diversified or low-risk client structures. Finally, imposing specific concentration limits may:

- discourage clearing members from offering alternative risk mitigation arrangements to clients;
- potentially increase costs or barriers to access for clients, without a commensurate reduction in systemic risk.

Q5. Is ESMA's understanding correct? Are there other essential features of the guarantees that should be highlighted?

EACH Members would like to underline that, while we agree with the description of the use of guarantees included in Sections 18 and 19, we consider that the **content of Section 20 does not fully represent the reality** as follows:

1. Clarification in recital about use of guarantees by non-financial clients

- **Background** – EACH welcomes the clarification under Sections 18 and 19 of the consultation, making clear that a CCP may also accept commercial bank guarantees, public bank guarantees and public guarantees from financial clearing members for the collateralization of non-financial clients of such clearing members to whom a CCP has no direct initial and ongoing exposure. As this has been the intention of adapting Art. 46 EMIR, this clarification provides much needed regulatory certainty.
- **Suggestion** – For the sake of this regulatory and legal certainty, we would also like to suggest that a corresponding clarification be included in the draft RTS (e.g. as a new recital (3)).

2. ESMA's understanding of the functioning of bank guarantees for which the principal is a client of a clearing member

- **Background** – In our view, while not part of the draft RTS, the wording of Section 20 of the consultation could be edited to fully reflect what we understand is the reality.
 - Firstly, we would like to point out that the statement that "*the CCP has only a contractual relationship with the clearing member (not with the*

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0153-20160615>

client)” is often true, but not universally so (e.g. in case of sponsored access models).

- Secondly, we see no regulatory reasons for limiting the security purpose of the guarantee to the default of the clearing member vis-à-vis the CCP (*“In case of a client default alone, [...], the guarantee should not be executed by the CCP unless the default of the client causes the clearing member to default on its obligations to the CCP”*).

Such a restriction would significantly devalue guarantees as collateral, as the key factor in the market’s acceptance of guarantees as collateral is that, in the event of a client default, the clearing member can also satisfy its claims from that collateral. Otherwise, the clearing member cannot offset the value of the guarantee against client’s collateral. Therefore, clients would have to provide separate collateral for their relationship with the clearing member in addition to the guarantee and the whole arrangement would make no economic sense for the clients.

Moreover, the client’s default vis-à-vis the clearing member is (indirectly) provided for as a security purpose under Section 23 of the consultation and Annex I, Section 2 para. 1 lit. (ab), Section 2 para. 3 lit. (c) as well as Annex I Section 2a para. 1 lit. (ab) of the draft RTS, via the indirect route of a *“transfer clause”* in favour of the clearing member.

We see no advantage in taking this indirect route via such a *“transfer clause”*; on the contrary, we believe it would add additional legal complexity. It should **also be possible to execute the guarantee** – without the transfer of the beneficiary – **in the event of a default by the client** (i.e. the principal). Thereby, it must merely be ensured that the clearing member can only be satisfied from the guarantee if it has fully settled the CCP’s relevant claims. However, this can be achieved in various ways (other than via a *“transfer of the beneficiary from the CCP to the clearing member”*) that have already been successfully implemented internationally and within Europe (e.g. enforcement only by the CCP (*“pass-through”*), or enforcement by the clearing member only upon presentation of the original signed cover sheet of the guarantee (*“second beneficiary”*) etc.). In this regard, the draft RTS should be designed in a principles-based manner and should not prescribe one specific implementation method.

Furthermore, in the context of the beneficiaries of the bank guarantee, EACH Members are of the opinion that the Draft RTS should **not restrict the beneficiary structure to a single beneficiary**. Specifically, we support allowing:

- **CCP as sole beneficiary, and**
- **CCP and Clearing Member as joint beneficiaries.**

This flexibility is essential to reflect how guarantees are actually used in practice. In the case of a general clearing member (GCM) model, the clearing member has exposure to the client but may have no direct claim on the guarantee if only the CCP is beneficiary. Therefore, having the clearing member as co-beneficiary ensures the structure actually works in practice. Clearing members may also be uncomfortable facilitating guarantees if they are not beneficiaries, because they intermediate the risk but would lack direct protection. This flexibility is also closely linked to capital allocation considerations. We invite regulators to take into account the potential capital costs associated with guarantees issued for a single beneficiary (i.e. solely the CCP), as such structures can be significantly more capital intensive for clearing members. In some cases, clearing members may be required to hold additional capital against guarantees posted by underlying client where CCP is a sole beneficiary. As a result, clearing members may be reluctant to offer guarantees to clients or may pass on the associated costs, reducing the attractiveness and practical usability of guarantees for end users. Additionally, due consideration must be given to regulation in other key jurisdictions. For instance CFTC regulation (1.43 Letters of credit as collateral) imposes conditions that effectively require futures commission merchants (FCMs) – or their bankruptcy trustee/FDIC – to also be able to draw on the guarantee, which a CCP-only beneficiary structure would prevent, thus restricting the available options and making it impossible for clients using FCMs as clearing member to use guarantees.

For the reasons above, we suggest amending the wording of the RTS as follows:

- **Suggestion #1** – We recommend amending the wording of Annex I Section 2 para. 1 lit. (ab) of the draft RTS to:

“commercial bank guarantees issued to guarantee a non-financial client, shall ensure that the clearing member can only be satisfied from the guarantee if he has fully settled the CCP’s relevant claims;”

- **Suggestion #2** – We recommend amending the wording of Annex I Section 2 para. 3 lit. (c) of the draft RTS accordingly to:

“public bank guarantees issued to guarantee a non-financial client shall ensure that the clearing member can only be satisfied from the guarantee if he has fully settled the CCP’s relevant claims;”

- **Suggestion #3** – We recommend amending the wording of Annex I Section 2a lit. (ab) of the draft RTS accordingly to:

“public guarantees issued to guarantee a non-financial client shall shall ensure that the clearing member can only be satisfied from the guarantee if he has fully settled the CCP’s relevant claims;”

Q6. Do you agree with the conditions proposed by ESMA? Please provide your views specifically for each condition (a), (b), (c) and (d).

EACH Members broadly agree with conditions (a), (b) and (d), but **question the content of condition (c).**

The Draft RTS introduce a requirement for guarantees to be posted in individually segregated accounts, with a clear and unambiguous link to the corresponding covered portfolio. It can be assumed that this measure could materially increase both cost and operational complexity for market participants.

On the one hand, **segregated account structures** contribute to enhanced **transparency**, facilitate the **clear attribution of collateral**, and support **robust risk-management processes**. On the other hand, in the some jurisdictions like the US, individually segregated accounts cannot be made available to a significant class of non-financial counterparty (NFC) clients due to legal, rather than practical or operational, concerns. The segregation regime under US laws and CFTC rules to which futures commission merchants (FCMs) are subject is not compatible with individual client-level segregation. Accordingly, individually segregated accounts cannot be offered to NFC clients clearing through FCMs, whether by the FCM or the relevant CCP. The practical effect is that the individually segregated account requirement would systematically **exclude this class of NFC client** from using guarantees as collateral altogether. In addition, individually segregated accounts are **rarely used in practice** by NFC clients that can in principle access such accounts, due to individually segregated accounts entailing materially higher **operational, legal and administrative costs** than omnibus accounts. Individually segregated accounts also **cannot be established at short notice**, which limits their practicality in stressed market conditions, where liquidity relief would be most needed.

Furthermore, recital 4 of the draft RTS relies on the non-fungible nature of bank guarantees as the rationale for requiring them to be posted to an individually segregated account:

"Considering the specific contractual constructions of public guarantees, public bank guarantees and commercial bank guarantees cannot be commingled with collateral from other clearing members of clients, therefore, when non-financial clients provide this type of guarantees as collateral, they should be posted to individually segregated accounts".

However, the **fungibility of an instrument is distinct from the question of what account structure should govern its use**. EMIR permits a variety of highly liquid collateral instruments to be posted in omnibus accounts and does not require such instruments to be non-fungible. As a result, in practice, collateral posted to both omnibus accounts and individually segregated accounts includes instruments that are not fungible with one another (such as bonds from different issuers). The non-fungibility of an instrument at the point of posting is not relevant to the structure of the account into which it is placed, nor the rules that govern how collateral in that account may be used in a default scenario.

Guarantees posted by a client as collateral may be drawn by the CCP only in the event of a clearing member default, and not upon the default of the individual client posting the guarantee. Where an underlying client defaults but the clearing member remains solvent and continues to meet its obligations, the CCP would not draw on the guarantee. In the event of a clearing member default, the guarantee would be accessed as part of the overall default management close-out process, alongside all other collateral attributable to clients whose positions are not successfully ported. In this context, use of guarantees by the CCP to manage a default should not be restricted.

While it would be pertinent for such collateral to be identifiable at the point of acceptance such that the guarantee may be accepted to cover positions of an NFC, EMIR does not explicitly require segregation of such collateral. The identifiability requirements embedded in the draft RTS (e.g. Annex I, Section 2(1)(a) which requires guarantees to be issued to guarantee a specific NFC client) would allow CCPs to ensure that guarantees are, at the point of acceptance, accepted to cover positions of NFC clients which are contained in an omnibus account, which in our view would act as a sufficient control.

Furthermore, mandating individual segregation solely for the purpose of guarantee posting would force a CCP to build and maintain an entirely separate account infrastructure for a subset of collateral, creating a two-tier system that is operationally inefficient and disproportionate to the risk being addressed.

We therefore consider it important to reflect both dimensions. A neutral and balanced assessment would therefore acknowledge that while the segregation requirement may impose significant practical challenges, while also providing certain structural advantages.

Suggestions

We kindly suggest that it should be at **the discretion of a CCP** if the aims and benefits of segregated accounts, such as clear attribution or enforceability, can be ensured in alternative operational ways or if segregated accounts are a pre-condition. We therefore suggest either removing 1(aa) under Annex I, Section 2 or not detailing the type of account as follows:

*'(aa) When the commercial bank guarantee is issued to guarantee a non-financial client, it must be posted **in way that allows its execution in line with this RTS**.~~to an individually segregated account at the name of the non-financial client.~~*

Q7. In relation to condition (c), do you agree with ESMA proposal? If not, is it in your opinion legally and practically feasible that guarantees are posted to an omnibus account?

Please see our **response to Q6**.

Q8. Is there any other condition you consider would be necessary in relation to the extension of the use of guarantees to guarantee non-financial clients? E.g. should it be

mandated that CCPs have in place a mechanism to identify the default of a non-financial client?

EACH **does not support mandating CCPs** to implement an internal mechanism to identify the default of a non-financial client. In fact, the default of an individual client per se, which does not involve the default of the clearing members, does not trigger any action from the CCP regarding the collateral posted by it.

In a general clearing member (GCM) model, the responsibility for monitoring and identifying a client default lies with the clearing member, who is the direct counterparty of the CCP and contractually responsible for all obligations arising from its clients' positions. ESMA acknowledges that guarantees are issued for non-financial clients of clearing members, meaning that the CCP has no direct relationship with these clients and therefore no operational visibility into their creditworthiness, payment behaviour, or internal risk triggers.

Introducing a CCP level detection mechanism would create a **duplication of control processes** and **operational inefficiencies** as well as **unnecessary complexity**, as CCPs lack access to the necessary real time information streams that clearing members already maintain.

Moreover, the CCP's risk exposure materialises only if a client default leads to the clearing member defaulting towards the CCP, a relationship reaffirmed in ESMA's explanations of the guarantee structure. **For these reasons, mandating CCPs to detect client defaults would be disproportionate, inefficient, and misaligned with the established clearing architecture.** The existing model - where clearing members remain fully responsible for identifying and notifying CCPs of client defaults - should be preserved.

Q9. Do you agree with ESMA's proposal to require that there are a credit rating and reliable financial data on the guarantor available for the CCP to use in its internal assessment?

Yes, EACH Members agree that there are credit rating and reliable financial data on the guarantor available for the CCP to use in its internal assessment.

However, EACH **questions** the provisions, included in **point 1(f)(ii) and point 3(h)(ii) of Section 2 of the Draft RTS**, stating that commercial bank guarantees and bank guarantees issued by a publicly owned bank cannot be issued by *"an entity whose business involves providing services critical to functioning of the CCP, unless that entity is an EEA central bank or a central bank of issue of a currency in which the CCP has exposures"*.

This prohibition does, in fact, **not appear legally backed**, as the Draft RTS do not provide a definition of "critical services", and do not clearly demonstrate the risks that such prohibition would solve. Furthermore, EACH Members consider that such provision:

- does not rely on **CCP-specific risk assessments**, and removes flexibility even where risks could be well managed;

- does not recognise that being a service provider does **not inherently increase the guarantee risk**;
- would unnecessarily **limit the pool of guarantors**: major global banks (e.g. large clearing/settlement banks) are often exactly the institutions capable of issuing guarantees, as well as “critical service” providers;
- among the universe of potential guarantors, the ones with the best credit rating tend to be the ones that also supply services to CCPs. The proposed prohibition therefore runs the risk of having the unintended consequence that the **credit worthiness of the guarantors that can be used decreases**.

Finally, it should be taken into account that **bank recovery and resolution frameworks** are designed to ensure continuity of critical services, even in distress, therefore demonstrating that the two risks (service continuity vs guarantee performance) are separable.

Q10. Do you consider that the direct access of a public guarantor to real-time gross settlement systems such as T2 should be a requirement for public guarantors? Please provide evidence or reasoning to support your response.

From a CCP risk management and liquidity protection perspective, **direct access to a real time gross settlement (RTGS) system such as T2 is highly desirable** and should be an absolute requirement.

Only a direct RTGS access avoids settlement and liquidity timing risks when a CCP must rapidly enforce a guarantee in a default scenario. Alternatives e.g. routing through a separate payment agent would introduce operational complexity and potential delays, and substantially increase risks since payment agents may default. The lack of the RTGS access is one of the key liquidity risks associated with public guarantees. A fast, final, irrevocable payment mechanism is essential for resilience of CCPs and the whole clearing system.

Q11. Do you agree that public guarantees should be accompanied by a legal opinion confirming the effective representation of the guarantor, the validity of the guarantee and its enforceability?

EACH Members consider that accompanying a public guarantee by a legal opinion could be **useful** for a series of reasons:

- 1. Capacity (Effective Representation)** – A legal opinion helps verify that the public guarantor has the proper legal authority to enter into the guarantee. This includes confirming that:
 - The individuals acting on behalf of the public guarantor are duly authorised and have the power to legally bind the entity;
 - The issuance of the guarantee is not *ultra vires*, meaning it falls within the legal mandate and scope of activities assigned to the public guarantor under applicable laws, statutes, and internal rules;

- All necessary approvals, authorisations, and permits have been obtained from relevant supervisory authorities or governing bodies, ensuring the guarantee was properly authorized.
- 2. Validity** – The legal opinion also ensures that the guarantee and related agreements are legally valid and binding. In particular:
- The public guarantee creates enforceable payment obligations, allowing the beneficiary to demand payment on first request;
 - The contractual provisions, including those in the guarantee and the payment agent agreement, are recognised as legally effective under the chosen legal system;
 - The chosen governing law is valid and will be upheld by the jurisdictions relevant to both the public guarantor and the payment agent;
 - The parties involved cannot later challenge the agreement by contesting, revoking, withdrawing from it, or otherwise undermining its binding nature.
- 3. Enforceability** – Finally, the legal opinion confirms that the rights arising from the guarantee can be effectively enforced in practice:
- The beneficiary can pursue and enforce claims against the public guarantor and, where applicable, the payment agent (including via assignment);
 - The agreed jurisdiction and venue clauses will be recognized and upheld by the relevant courts;
 - There are no additional legal barriers to enforcement, such as special authorisation requirements, procedural delays, or waiting periods, beyond standard enforcement and insolvency rules.

However, we acknowledge that a legal opinion may **increase the cost** of the provision of the guarantee. We suggest that the CCP may have some **leeway to accept public guarantees** when they are **standardised and provided along with documentation** that clearly covers the capacity, validity and enforceability mentioned above.

Nevertheless, EACH Members consider that the legislation shall rather adopt an **outcome-based approach as opposed to a prescriptive one** that details the modality in which the CCP should obtain the legal opinion, as well as its content.

Q12. Do you agree that the conditions for commercial bank guarantees should explicitly foresee that the guarantor is a credit institution as defined in CRR?

Yes, EACH Members **agree with the proposed condition**. Requiring that bank guarantees be issued exclusively by credit institutions regulated under the Regulation (EU) No 575/2013³ (CRR) provides several **structural and risk management benefits** for the whole clearing system:

- 1. Clear legal certainty** – Limiting eligible guarantors to CRR regulated credit institutions establishes clear legal certainty regarding the nature of the guarantor as it removes

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0575>

ambiguity about what entities are eligible, ensuring that the CCP relies only on institutions subject to harmonised prudential requirements and supervisory scrutiny.

2. **Credit quality reassurance** – CRR regulated institutions are subject to stringent capital, liquidity, and risk management requirements. This regulatory regime ensures that such guarantors maintain robust capitalisation, governance, and liquidity positions, thereby lowering the probability that the guarantor itself becomes a source of systemic risk.
3. **Operational reliability** – CRR regulation contributes to operational reliability in default scenarios. CCPs depend on guarantees that can be executed within the liquidation period without regulatory or procedural impediments. CRR oversight promotes standardisation in banks' operational processes, including timely payment execution and integration into real time gross settlement systems. The restriction of the pool of guarantors to CRR regulated credit institutions reduces the legal and administrative risks that arise from entities operating outside harmonised EU banking regulation.

Q13. Do you agree that the possibility for CCP to accept uncollateralised bank guarantees should be specified in Section two of Annex I of RTS 153/2013?

Yes, **EACH Members agree** that the possibility for CCP to accept uncollateralised bank guarantees should be specified in Section two of Annex I of RTS 153/2013.

Q14. Do you agree with ESMA that the conditions applicable to commercial bank guarantees should also be applicable to public bank guarantees? Please specify in your answer whether any addition condition should be considered.

EACH **broadly agrees** with ESMA that, as a starting point, the conditions applicable to commercial bank guarantees should **also apply to public bank guarantees**, in order to ensure a consistent and risk-sensitive framework for CCPs.

At the same time, EACH considers it important to recognise that public banks may differ materially from commercial banks in terms of their legal basis, scope of permitted activities and governance structures. These specificities can give rise to **distinct legal, credit and liquidity risk considerations, which should be appropriately reflected in the applicable conditions.**

In this context, EACH supports the introduction of **additional, targeted conditions** for public bank guarantees where necessary, in particular with regard to:

- the legal enforceability of the guarantee under applicable public law frameworks;
- the reliability and timeliness of payment in a default scenario; and
- the availability of robust financial information enabling the CCP to perform an effective ongoing risk assessment.

A calibrated approach that combines a common baseline of requirements with the possibility to address public-bank-specific risks would best support CCP resilience while allowing public

bank guarantees to remain a viable collateral option where their risk profile can be appropriately managed.

Q15. Do you agree with the proposed way to address the lack of definition of “public bank”?

EACH **broadly agrees** with ESMA’s proposed approach to address the **current lack of a definition of “public bank” in EMIR**. We also acknowledge the need for greater legal clarity and harmonisation across CCPs and Member States. From EACH’s perspective, it is important that **any definition of “public bank” is sufficiently clear, objective and operationally workable**, while at the same time reflecting the diversity of public banking institutions across jurisdictions. In particular, the definition should take into account the specific legal basis, ownership structure and scope of permitted activities of public banks, as these elements may materially affect their risk profile and the enforceability of guarantees.

Therefore, EACH supports an approach that:

- Anchors the definition in **clear legal and institutional criteria**, referring to the **existing EU framework** and taking into account objective criteria e.g. ownership and control, rather than relying solely on naming conventions or national classifications.
- Allows **CCPs to retain the ability to assess**, within their internal risk frameworks, whether a specific institution classified as a public bank meets the requirements for accepting its guarantees as collateral.

In fact, public banks should be considered as publicly owned or controlled credit institutions, according to the criteria set forth under banking regulation, which develop the same activities and are subject to same prudential supervision as commercial banks.

Q16. Do you agree with the proposed change concerning the conditions under which debt instruments can be considered highly liquid, bearing minimal credit and market risk (and hence considered as eligible financial instruments for the purpose of CCP investment policy).

Agreement with ESMA’s suggestions

Yes, EACH Members **agree with the proposed change**. In particular, we agree with ESMA’s proposal to **include the EU, the Bank for International Settlements, and the International Monetary Fund as eligible issuers** under CCP investment policies.

The EU in particular has become one of the biggest issuers and EU debt instruments have become well established and highly trusted. The omission of the EU as eligible issuer in the RTS 153/2013 is a clear indication that the current CCP investment policy rules are outdated. This omission is not surprising, as the EU has only recently started issuing large-scale joint debt in the context of the COVID 19 pandemic. However, it is not the only area of the investment policy requirements that ESMA should revise.

Additional suggestion for ESMA to consider that meet CCP risk management criteria

In order to remove unintended incentives from RTS 153/2013 and to reflect evolving market conditions while maintaining the same prudent regulatory coverage of CCPs' investment policies, **we also recommend the following amendments:**

1. Include derivative contracts to hedge interest rate risk

- Currently, CCPs are authorised to use derivatives to hedge currency risk within their liquidity frameworks, recognising the importance of mitigating exposures that could undermine financial stability. However, despite CCPs facing **comparable exposure** to both interest rate and currency risks, the use of interest rate derivatives remains prohibited under the existing rules.
- An **inclusion of derivative contracts used for hedging both currency and interest rate risks** in paragraph 2 Annex II as highly liquid financial investments would significantly improve a CCP's liquidity and secured investment management processes.

2. Increasing flexibility regarding time-to-maturity

- Point 1(c) of Annex II, which limits the average time-to-maturity of a CCP's investment portfolio to two years, warrants review. Given that eligible instruments under Annex II of RTS 153/2013 are already high-quality, highly liquid financial instruments that can be mobilised at any time, this hard quantitative cap is unnecessarily restrictive and generates material operational and systemic risks.

EACH does support **not imposing of a hard quantitative cap** on the average time-to-maturity of CCP investment portfolios, for the following reasons:

- **Market impact** – The two-year cap forces all EU CCPs to roll expiring positions within the same narrow time windows. Because the universe of eligible instruments is limited by definition, this simultaneous demand for short-term securities creates artificial, correlated market pressure - an unnecessary procyclical dynamic that leave no choice to CCP (even during market event) to amplifies volatility precisely during the rolling periods when market stability is most critical.
- **Structural breach-risk led to excessive conservatism** – In practice, CCPs cannot manage their portfolios at the two-year average; they must manage them well below it, to maintain a sufficient buffer against any inadvertent breach of the regulatory threshold. This creates a de facto constraint that is far more restrictive than the rule itself, undermining the intended flexibility of the investment framework and reducing portfolio efficiency without any corresponding risk benefit.
- **One-size-fits-all approach ignores CCP-specific contexts** – Each CCP operates in a distinct market environment, with different collateral compositions, liquidity profiles, and investment strategies. A single hard quantitative cap does not account for this diversity and may be appropriate for some CCPs while being unnecessarily binding for others.

EACH would support a **principles-based approach**, whereby the regulation establishes a clear obligation for each CCP to define, govern, and disclose its own quantitative limit on average time-to-maturity, as part of its investment policy framework. Specifically, EACH would welcome a **wording along the following lines**:

« CCP shall consider a weighted average time-to-maturity of its investment portfolio and shall define, in its investment policy, a quantitative limit on such average, together with the methodology and controls used to monitor and manage this risk. Such limit shall be subject to review and approval by the relevant National Competent Authority and/or the college of supervisors and not larger than 7 years. ».

3. Removing unintended incentives from Art. 45 (2) regarding cash deposits

- In its current form, Art. 45(2) of RTS 153/2013 has the **unintended consequence** of pushing **CCPs to withdraw cash from their central bank deposits** in order to fund collateralized cash deposits at non-central bank institutions. The resulting practice undermines the article's intent to maximize the security of CCP cash deposits and instead leads CCPs to reduce their holdings in central banks, the most secure depositories.
- According to EMIR Art. 47(4), CCPs can maintain their cash deposits either at central banks or, alternatively, under other "highly secure arrangements" specified in Art. 45 of RTS 153/2013. Art. 45(2), in turn, requires a CCP to have 95% of overnight cash held with institutions other than central banks to be collateralized. However, CCPs inevitably must accept unsecured investments as part of their usual operations. For instance, a CCP may not be able to securely invest funds stemming from late settlement or a late margin call if the respective repo market is no longer available and the CCP has no access to the respective central bank. As a result, to stay within the 95% collateralisation rate for non-central bank overnight deposits, a CCP may be forced to withdraw funds from the central bank to invest these in another active repo market in order to counterbalance the unsecured investments. Consequently, instead of enhancing security, Art. 45(2) may lead to CCPs to shift funds from the most secure form of deposits – central bank deposits – to other deposit types.
- The unintended incentives under the current requirements may also be demonstrated based on a hypothetical scenario: under the current requirement, a CCP may choose to have zero funds deposited at a central bank. In this case, 95% of the CCPs total cash would have to be collateralised while 5% of the CCPs total cash could be deposited unsecured with a commercial bank. Such a CCP would have little incentive to deposit any funds at a central bank since the more cash the CCP would deposit at the central bank, the more it would need to collateralise its non-central bank deposits. If the same CCP deposited 50% of its cash at a central bank, it could now only deposit 2.5% of its total cash unsecured with a commercial bank.

- These unintended incentives could be easily resolved by **requiring CCPs to either collateralise or hold at a central bank 95% of their total cash deposits**. A respective amendment of the regulatory requirement would maintain the same degree of security as is currently in place – i.e. at most a CCP could deposit 5% of its total cash unsecured at a commercial bank – while not leading CCPs to withdraw central bank deposits in order to counterbalance unsecured investments.

4. Adding covered bonds and corporate bonds

- **Covered bonds**

- Given the typically low market risk and, thanks to dual recourse and the resulting high solvency seniority, low credit risk of covered bonds, we encourage ESMA to clarify that they can qualify as highly liquid financial instruments.
- Covered bonds are also considered as High-Quality Liquid Assets (HQLA) in the Liquidity Coverage Ratio (LCR) calculations related to bank liquidity requirements, under CRR.
- Furthermore, with reference to Art. 9(14) of the CCP Recovery and Resolution Regulation (CCP RRR), CCPs have the possibility to invest the amount held in excess of the floor for the so-call second skin in the game (SSITG), in other types of assets than those referred to under Article 47(1) of EMIR. Art. 3(4) of the related RTS (EU) 2023/8406⁴.
- Furthermore, certain regions may have a limited market of sovereign debt available for CCP investments. Expanding highly liquid financial instruments to include covered bonds would increase investment space for CCPs.

- **Corporate bonds**

- While understanding that liquidity risks related to corporate bonds need to be taken into account, further diversifying the range of investments available to CCPs by including corporate bonds would prove beneficial to CCPs by reducing their reliance on government bonds, potentially increasing their financial performance while mitigating concentration risk. Additionally, corporate bonds often offer higher yields compared to government securities of similar maturity.
- To make corporate bonds an adequate investment option, EACH suggests that the requirements that corporate bonds should comply with may include the following:
 - **High liquidity**, allowing rapid and efficient trading to meet CCPs' operational needs. This would make corporate bonds comparable to government securities. Bonds issued by large, well-established companies are usually highly liquid;
 - **High-quality**, such as investment-grade bonds, which have minimal credit risk, making them safe and stable.

⁴ https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202302175

5. Adding state bodies other than central banks as entities falling under highly secured arrangements for the deposit of financial instruments and cash

- Currently, CCPs may only deposit financial instruments and cash with central banks or with credit institutions that meet the criteria of Art. 44(1) (for financial instruments) or Art. 45(1)(b) (for cash). CCPs cannot make deposits with EU member states' bodies performing similar functions as central banks as further defined in Art. 1(4)(a) EMIR, even though such bodies are arguably highly secure.
- Adding such entities under Art. 44(1) and Art. 45(1)(b) respectively, would **increase the flexibility for CCPs' deposits** while maintaining the **high security** standards for such deposits.
- Finally, the exposure created by such deposits equals the exposure of investing into the debt of the respective state, e.g. buying a government bond, as in essence, the deposit creates exposure to the state. Hence, such deposits should be considered as equivalent to an arrangement that ensures the collateralisation of the cash for the purpose of the calculation outlined in Art. 45(2).

6. Removing "types of financial instruments" from the scope of concentration limits

- We suggest **deleting Art. 45(2)(b) of RTS 153/2013 (concentration limits)** as it does not bring added value, while if it is removed, the remaining requirements would sufficiently guarantee adequate concentration limits for the investments of CCPs.
- While concentration limits ensure diversification of investments, their application to "types of financial instruments" seem illogical for CCPs. This is because CCPs are limited to invest in debt securities that must adhere to strict criteria (as outlined in Annex II of the RTS). Debt securities themselves could only be broken down further into repos or direct investments. While CCPs may, in addition to debt securities, also invest into derivative contracts, these investments are only permissible as hedges and therefore their concentration is limited to only cover the corresponding risks.

Criteria to define high liquidity as well as minimal market and credit risk

As an additional consideration ESMA could ensure a consistent understanding of "high liquidity" and "minimal market and credit risk" by adopting the **criteria** proposed below:

- **High liquidity** – Publicly traded bonds shall generally be regarded as liquid (for either direct investment or via reverse repos or money market funds) that fulfil all of the following criteria:
 - No capital control mechanism for the relevant currencies in the jurisdictions or in the EU;
 - Bonds are accepted as collateral for overnight or repo facilities by the respective central bank for the above mentioned currencies.

Since the central banks serve as lender of last resort for the financial institutions of their jurisdiction, the central bank eligibility would ensure that there is always a way to

liquidate the bonds for financial institutions, hence they will usually act as natural buyers of these securities.

- **Minimal market risk** – We suggest referencing market risk to operational criteria, such as expected value at risk (over a holding period of x business days with a certain confidence interval) or a value sensitivity of a defined overnight interest rate and credit spread shift (e.g. 100 Bps). It should be stipulated that each CCP can define its own acceptable market risk level on a portfolio or exposure level and mitigate market risk of certain instruments by:
 - Applying concentration limits on investment or collateral portfolios (e.g. total exposure vs. a reverse repo counterparty);
 - Requiring additional haircuts for instruments with higher market risk or cross currency exposures.

These criteria should enable the CCP to invest into all liquid (as defined above) instruments that meet its risk bearing capacity which is defined individually based on its second skin in the game or other capital measures. The respective Draft RTS could therefore just state the minimum haircut levels for certain holding periods or risk constituents (e.g. minimum haircut for cross currency exposure).

Tokenisation and DLT

EACH Members would like to seize the opportunity of this consultation to introduce our proposals to further modernise the collateral framework under RTS 153/2013 in light of evolving market structures and digital innovation. Our proposals are the following:

1. **Classification of wCBDC as cash** – The current RTS 153/2013 wording does not clearly treat DLT-based central bank money as “cash collateral”, limiting CCPs’ ability to accept wCBDC even where it would provide central-bank-money settlement with strong risk mitigation. The RTS should therefore be amended to clarify that wCBDC can be classified as cash on a similar footing to central bank deposits (under existing safeguards).
 - **Proposal #1:** Amend RTS 153/2013 to clarify that wCBDC shall be classified as cash, giving CCPs regulatory certainty similar to central bank deposits, allowing CCPs to accept wCBDC as collateral.
2. **Technical corrections to RTS 153/2013** – Some of the cross-references in RTS 153/2013 are incorrect or outdated, and fixing them is important to preserve legal certainty.
 - **Proposal #2:** Update RTS 153/2013 references to align with ESMA Q&A, by correcting Art. 44(1)⁵ reference to Art. 43 instead of Art. 45.
3. **Eligibility of MiCA instruments as highly liquid collateral** – MiCA Regulation⁶ introduces new categories of crypto-assets which EMIR does not yet recognise as

⁵ Art. 44 of RTS (EU) No 153/2013: Highly secured arrangements for the deposit of financial instruments

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R1114>

eligible collateral; if brought into scope, this would and should not dilute CCP standards. CCPs should only accept MiCA instruments that meet the “highly liquid with minimal market and credit risk” criteria, are freely transferable and unencumbered, and have a demonstrably active outright sale or repo market with reliable access even in stress, while keeping existing risk controls unchanged (no special treatment for DLT vs non-DLT; and no wrong-way risk, e.g. not accepting a clearing member’s own e-money token as its collateral).

- **Proposal #3:** Amend Art. 39 of RTS 153/2013 to include crypto-assets; new Annex I Section 1a specifying liquidity, transferability, market depth, and issuer risk conditions.

Q17. Do you agree with the proposed change concerning the highly secure arrangements for the deposit of financial instruments posted as margins or as default fund contributions?

Yes, EACH Members **agree** with the proposed change.