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ESRB
European Systemic Risk Board
European System of Financial Supervision

ESRB response to ESMA consultation on the draft technical standards to further detail the new EMIR clearing thresholds regime

Background

The ESRB is pleased to provide its input to ESMA's consultation on the draft regulatory technical standards (RTS) that aim to further detail the new regime for clearing thresholds (CTs) under EMIR 3. This consultation follows the adoption of Regulation (EU) 2024/2987[1] (EMIR 3), which introduced changes to EMIR to reflect the broader policy objectives of reducing excessive reliance on third-country CCPs and strengthening the resilience of the EU clearing ecosystem. With regard to the CT regime, EMIR 3 changes the calculation and application of CTs in order to enhance the stability and efficiency of the EU's clearing framework. Notably, Article 4a(4) of EMIR 3 requires that ESMA, *"after having consulted the ESRB and other relevant authorities"*, develop draft RTS to specify the value of the CTs applicable to aggregate positions and to bilaterally cleared positions[2] where necessary to ensure the prudent coverage of financial counterparties under the clearing obligation.

The level of the CTs has several consequences. First, it determines the scope of counterparties that fall under the clearing obligation. This means that they have to use CCPs for clearing the vast majority of their OTC interest rate and credit derivatives. Since its inception, the ESRB has advocated for broad use of central clearing for derivatives to reduce counterparty risk in the markets.[3] Second, the level of the CTs determines the scope of counterparties that must use risk-mitigation techniques, including the exchange of margins, for their bilaterally cleared transactions. Third, it influences the scope of entities falling under the active account requirement.

The new regime introduced by EMIR 3 modifies the methodology that financial and non-financial counterparties must use to determine their positions relative to the CTs. Previously, counterparties had to calculate their positions in gross notional values on the basis of all OTC derivatives, regardless of whether they were centrally cleared or not. Under EMIR 3, this approach has been refined: financial counterparties (FCs) must now calculate their positions using both their aggregate OTC exposure (including centrally and bilaterally cleared positions) and, separately, their bilaterally cleared positions. Non-financial counterparties (NFCs) are only required to assess their bilaterally cleared positions. This shift in methodology reflects an intention to better align the clearing

[1] **Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets** (OJ L, 2024/2987, 4.12.2024).

[2] The consultation paper uses the term "uncleared", while the ESRB generally uses the term "bilaterally cleared" for non-CCP cleared transactions.

[3] See **Advice of the ESRB of 31 July 2012** submitted to ESMA.

obligation with systemic risk prevention by concentrating on exposures that remain outside the scope of central clearing.

Approach taken by ESMA

In recalibrating the CTs, ESMA aims to preserve the current level of market coverage under the clearing obligation and to avoid unintended shifts in the population of counterparties that would fall within its scope. To this end, ESMA has carried out an extensive data analysis using EMIR trade repository data, simulating threshold levels for bilaterally cleared positions that would broadly maintain the existing coverage of notional exposures and counterparties. In addition, ESMA has maintained the existing thresholds for aggregate positions of FCs in interest rate and credit derivatives – the two asset classes currently subject to the clearing obligation. The result of the proposed recalibration for the five asset classes is presented in Table 1.

Table 1: Current and proposed new clearing thresholds

Asset class	Current threshold	Proposed threshold for uncleared OTC derivatives
Interest rate derivatives	€3 billion	€1.8 billion
Credit derivatives	€1 billion	€0.7 billion
Equity derivatives	€1 billion	€0.7 billion
FX derivatives	€3 billion	€3 billion
Commodity derivatives	€4 billion	€3 billion

Source: ESMA consultation paper.

ESRB input to the consultation

The ESRB supports ESMA's general approach and the specific calibration of the clearing thresholds, and would encourage the use of a data update before finalisation. The proposed thresholds for bilaterally cleared positions represent a logical evolution of the framework. As the underlying analysis was carried out using data collected before the EMIR Refit reporting standards entered into force, however, the ESRB advises that ESMA reassess the calibration using post-Refit data before finalising the RTS. This would make it possible to reflect evolving market dynamics and to ensure that the proposed thresholds continue to capture the intended population under the new, more granular reporting regime and that no material distortions arise from the transition between reporting frameworks.

Furthermore, the ESRB welcomes ESMA's intention to keep the threshold framework simple and proportionate, particularly with respect to commodity derivatives. The ESRB supports ESMA's proposal to refrain from introducing more granular clearing thresholds for different commodity sub-classes at this stage, given the complexity this would introduce and the potential reduction in flexibility for market participants. Likewise, the choice to align the categorisation of asset classes with the EMIR Refit reporting fields – by renaming the fifth asset class as “commodity and emission allowance derivatives” – is a sensible step towards data consistency and operational clarity. When reviewing the thresholds in future cycles, however, ESMA should consider the emergence of new categories of contract, such as ESG- or crypto-related derivatives, once sufficient data become available under the revised reporting regime.

The ESRB proposes that further indicators triggering a review of the CTs be added. In line with insights gained from the energy price shock in 2022, EMIR 3 introduces a mechanism for an ad hoc review of the CTs. Article 10(4)(c) lists “significant price fluctuations in the underlying class of OTC derivatives” as an example of an indicator triggering such a review. The ESRB proposes that indicators triggering a review of the CTs should also include fluctuations in on-exchange prices, as the OTC and on-exchange markets are closely interconnected and prices are correlated.

Looking ahead, the ESRB believes that future reviews of the clearing thresholds would benefit from a greater focus on the growing systemic relevance of non-bank financial intermediaries (NBFIs) in derivatives markets. As market structure continues to evolve, particularly with increased derivatives activity by NBFIs, the thresholds may need to be lowered to ensure NBFIs are appropriately captured by the clearing obligation and related risk-mitigation requirements, such as the active account requirement (AAR) and bilateral margining. Regular monitoring of structural shifts in market participation will be essential for ensuring continued financial stability.

In conclusion, the ESRB supports ESMA’s proposed RTS and welcomes the structured, data-driven approach underpinning the consultation. The recalibrated CTs strike a sensible balance between continuity and adaptation to EMIR 3’s objectives. Going forward, it will be important to ensure that these thresholds are reviewed with up-to-date data and in light of evolving systemic risk factors, particularly the increasing role of NBFIs in derivatives markets.