

Response Form to the Consultation Paper

Draft Technical advice to the European Commission on fees charged to Tier 1 Third-Country CCPs under EMIR

Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. 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 **8 December 2023**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

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:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA_QUESTION_CCPFEES_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. 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.
4. When you have drafted your response, name your response form according to the following convention: ESMA_CCPFEES_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_CCPFEES_ABCD_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open consultations" "Consultation on the review of Tier 1 CCP fees").

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 heading '[Data protection](#)'.

Who should read this paper?

This consultation is looking for feedback from third-country CCPs, market participants and authorities.

General information about respondent

Name of the company / organisation	SIX x-clear AG
Activity	Central Counterparty
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Switzerland

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_CCPFEES_00>

SIX operates the financial market infrastructure for the Swiss and Spanish financial centres, catering to a broad international client base. As such SIX encompasses the two Central Counterparties ('CCPs') SIX x-clear AG ('SIX x-clear') and BME Clearing SA. With ESMA's decision dated 23 March 2016, SIX x-clear was recognized as a third country CCP ('TC CCP') under Article 25 EMIR. Prior thereto, the European Commission declared the Swiss regulatory framework as equivalent to EMIR on 13 November 2015. In March 2022, SIX x-clear's recognition was renewed in accordance with Article 25 EMIR and SIX x-clear was determined as a Tier 1 third country CCP by ESMA.

SIX x-clear thanks the European Securities and Markets Authority ('ESMA') for the opportunity to provide feedback to the consultation paper on Draft Technical Advice to the European Commission on fees charged to Tier 1 Third-Country CCPs under EMIR.

SIX x-clear welcomes the EU's dedication to open markets and competition and recognising the importance of cross-border CCP services. We are convinced that cross-border cooperation plays a key role in guaranteeing financial stability, competition and open markets in line with Capital Markets Union (CMU) targets. The EU's CCP tiering approach based on the principle of deference to the third country CCP's home regulator depending on the importance of a CCP for the stability of the European financial markets, provides an efficient manner for CCPs to access the EU Market. This minimises the administrative burden on CCPs active across multiple jurisdictions while ensuring risks are appropriately managed.

While SIX x-clear in general agrees with the proposed changes to the framework set out in the fees delegated regulation, SIX x-clear is of the opinion that the proposed fee structure could be revised along the following lines:

- The Level of fees should not add unjustifiably large costs to incoming CCPs wishing to continue providing services to both EU markets and clients.
- The overall fees charged for Tier 1 CCPs as a whole should not go beyond the overall expenses actually incurred by ESMA.
- Timing of the announcement of annual fees: Considering industries budgeting process, which usually starts in August, SIX x-clear would be grateful if the annual fees for the coming year could be announced in early summer.
- SIX suggests only applying the incentive measure mentioned under question 6 if the CCP does not deliver its audited financial statement after several reminders.

<ESMA_COMMENT_CCPFEES_00>

Questions

Q1 Do you agree with the proposal to introduce different annual fees levels based on the Tier 1 CCPs global turnover?

<ESMA_QUESTION_CCPFEES_01>

In principle, SIX agrees with the introduction of a proportionate fee collection reflecting the differences in size and activity across Tier 1 CCPs and the corresponding different level of ESMA scrutiny. The tiering mechanism in place today should already take account of the differing activity of CCPs in the EU and the related oversight this requires, however, we understand that more granularity may be warranted for both Tier 1 and Tier 2 CCPs.

We also agree that the cumulatively levied fees should correspond to the overall expenses incurred by ESMA in relation to the oversight of Tier 1 CCPs. However when considering the weighting for Group 2 and 3 Tier 1 CCPs, it seems that the collectively levied fees will be higher than this total cost incurred by ESMA and therefore go against the cost-based principle. Once ESMA has use of these additional funds, the fear is that these will be used for additional Tier 1 supervisory activity and will gradually increase the total cost base.

Considering ESMA's reliance on the CCP's home authority for the oversight of Tier 1 CCPs, SIX x-clear asks ESMA to clarify how the fees structure reflects the extent to which it will rely on the expertise of the home regulator and why higher supervisory fees are justified.

Furthermore we would like to point out that the level of fees should not add unjustifiably large costs to incoming CCPs wishing to continue providing services to both EU markets and clients. Over the last 5 years, SIX x-clear's regulatory fees have increased by 33% and are expected to increase further. This increase has been accompanied by more stringent CCP regulation leading to increased use of internal resources to ensure compliance with CCP regulation. Coupled with resources needed for the implementation of regulatory projects this means that smaller CCPs have very limited resources left to invest in growth and development projects, hampering competition.

<ESMA_QUESTION_CCPFEES_01>

Q2 Do you agree that the relevant turnover should be based on audited figures of the Tier 1 CCP's worldwide revenues from clearing services for the financial year n-2?

<ESMA_QUESTION_CCPFEES_02>

Yes.

<ESMA_QUESTION_CCPFEES_02>

Q3 Do you agree with the proposed thresholds and weighting factors to calculate Tier 1 CCPs annual fees?

<ESMA_QUESTION_CCPFEES_03>

While SIX agrees with the proposed thresholds, as stated under Q1, we do not agree with the weighting factors. However when considering the weighting for Group 2 and 3 Tier 1 CCPs, it seems that the collectively levied fees will be higher than this total cost incurred by ESMA and therefore go against the cost-based principle. Once ESMA has use of these additional funds, the fear is that these will be used for additional Tier 1 supervisory activity and will gradually increase the total cost base.

Considering ESMA's reliance on the CCP's home authority for the oversight of Tier 1 CCPs, SIX x-clear asks ESMA to clarify how the fees structure reflects the extent to which it will rely on the expertise of the home regulator and why higher supervisory fees are justified.

<ESMA_QUESTION_CCPFEES_03>

Q4 Do you agree that the Tier 1 CCPs annual fee framework should include a maximum and a minimum amount?

<ESMA_QUESTION_CCPFEES_04>

SIX agrees that the Tier 1 CCPs annual fee framework should include a maximum amount as this avoids undue burden on Tier 1 CCPs who only have a limited activity in the EU. In general though, SIX strongly urges ESMA to limit its cumulatively levied fees to the overall expenses incurred by ESMA in relation to the oversight of Tier 1 CCPs.

<ESMA_QUESTION_CCPFEES_04>

Q5 Do you agree with the proposed amounts for the maximum and minimum annual fees for Tier 1 CCPs?

<ESMA_QUESTION_CCPFEES_05>

The originally calculated fee for Tier 1 CCPs was calculated at 50'000 EUR. This has since increased for all Tier 1 CCPs based on the cost-base fee principle. Compared to the originally estimated calculation the threshold of 250'000 EUR seems an excessive increase. We are however aware that this would only occur in extraordinary circumstances. Should such an extraordinary circumstance occur, we would ask ESMA to justify such a drastic increase and show how and why the fees have increased in such a manner. Furthermore, considering ESMA's reliance on the CCP's home authority for the oversight of Tier 1 CCPs, SIX x-clear asks ESMA to clarify how the fees structure will reflect the extent to which it will rely on the expertise of the home regulator and why higher supervisory fees are justified.

Finally, we would like to emphasise, that the level of fees should not add unjustifiably large costs to incoming CCPs wishing to continue providing services to both EU markets and clients.

<ESMA_QUESTION_CCPFEES_05>

Q6 Do you agree that an incentive mechanism should be implemented to ensure that ESMA is able to compute the fees for a given year?

<ESMA_QUESTION_CCPFEES_06>

While it seems justified that an incentive be put in place to ensure CCPs comply with their regulatory requirements, automatically charging Tier 1 CCPs the fee for Group 3 seems excessive. We would suggest that such a measure only be implemented if the CCP does not deliver its audited financial statement after several reminders.

Regarding timing we would also request that Considering SIX' budgeting process, which usually starts in August, SIX x-clear would be grateful if the annual fees for the coming year could be announced in early summer.

<ESMA_QUESTION_CCPFEES_06>