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Additional Information

Level 1 Regulation
Regulation 648/2012 - OTC derivatives, central counterparties and trade repositories (EMIR) - CCPs

Topic
EU-CCPs

Additional Legal Reference
The new article 7a(1) EMIR (as issued by (EU) 2024/2987)

Subject Matter
AAR threshold calculation

Question

According to the new article 7a(1) EMIR (as issued by (EU) 2024/2987) the obligation to hold an active account according to the second condition is that a Financial counterparty subject to clearing obligation exceeds the clearing threshold in any of the categories of derivative contracts referred to in paragraph 6 of this Article, in an individual category listed in that paragraph or on aggregate across all categories listed in that paragraph.

Is it only cleared paragraph 6 contracts that should be measured against the clearing threshold according to the second condition? If so, should contracts cleared with EU CCP's, such as Nasdaq Nordiq or Eurex, or third country markets for which there are equivalence decisions granted, such as Chicago Mecantile Exchange (CME) which is relevant for STIR contracts, be excluded?

ESMA Answer

27-02-2025

Original language

For the purpose of the second AAR condition, counterparties should assess only the contracts referred to in Article 7a(6) against the 3 billion EUR clearing threshold.

However, as the clearing thresholds are defined for OTC contracts, the treatment is different between EUR OTC IRD / PLN OTC IRD and EUR STIR.

For EUR OTC IRD and PLN OTC IRD, all products within these categories must be included in the calculation against the clearing threshold, irrespective of where they are traded and cleared (as clarified by ESMA in paragraph 24 of its Final Report on AAR)

For STIR:

1. EUR STIR contracts traded on a third-country market which has not been deemed equivalent by the European Commission (for example ICE Futures Europe in the UK) should be considered as OTC derivatives and should therefore included in the calculation.

2. Conversely, EUR STIR derivatives traded and cleared either within the EU or on third country markets that have been granted equivalence by the European Commission (e.g. CME in the US) should not be treated as OTC derivatives and should therefore be excluded from the calculation.