Securities and Markets Stakeholder Group

Advice to ESMA

SMSG advice to ESMA on its Consultation Paper on the conditions of the Active Account Requirement

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1 Executive Summary

The SMSG welcomes the opportunity to offer its advice to ESMA in relation to its Consultation Paper (CP) on the Conditions of the Active Account Requirement (AAR). The SMSG expresses its general support for the European Commission's (ECs) objectives of improving the attractiveness of EU CCPs, enhancing resilience, and reducing excessive reliance on the non-EU clearing ecosystem. The SMSG notes the importance of clearing and post-trade as an integral part of the Capital Markets Union (CMU) and the Savings and Investments Union (SIU).

The SMSG highlights areas requiring further clarification, such as terminology inconsistencies both within this framework and with other legal frameworks, as well as instances where the proposed level 2 text exceeds the level 1 mandate. We also express concerns that some of the suggested rules may impose excessive costs relative to their expected benefits.

The SMSG observes that clarifications provided in the CP, such as those regarding the AAR requirement, should be consistently presented through appropriate regulatory measures. This includes incorporating them primarily in the Regulatory Technical Standard (RTS) and, when appropriate, at Level 3 or through Q&As, given that a CP does not possess legal status.

The SMSG highlights that the forthcoming RTS should be balanced and consider the ECs objectives to enhance the competitiveness of EU capital markets, minimize unnecessary

burdens and costs, and promote simplification by avoiding unnecessary and duplicate reporting.

The SMSG comments on the AAR scope and suggests that ESMA reconsider its position on the calculation methodology for the 85% threshold considered for exemption. The SMSG also notes that the level 1 text does not mandate ESMA to establish a 12-month lookback period and provides arguments against introducing such a lookback period

The SMSG recommends that stress testing rules be made more proportionate, and the stress testing exercise be conducted annually instead of biannually. Additionally, proposals are made to streamline reporting processes to prevent excessive costs and other burdensome requirements. Furthermore, comments are provided on aligning these rules more closely with prevailing market practices.

The SMSG offers comments and proposals on most questions in the CP, for further detail we refer to the full text of this advice.

2 Introductory remarks

1. The SMSG welcomes the opportunity to offer its advice to ESMA in relation to its Consultation Paper (CP) on the Conditions of the Active Account Requirement (AAR). The SMSG would like to start by expressing its general support for the European Commission's (ECs) objectives of improving the attractiveness of EU CCPs, enhancing resilience, and reducing excessive reliance on the non-EU clearing ecosystem. Clearing and post-trade financial services are an integral part of the Capital Markets Union (CMU) and Savings and Investments Union (SIU) and an essential component for achieving the target of liquid, efficient and cost-effective financial markets in the EU, with lower levels of systemic, credit and operational risks.

2. Against this background, the SMSG is supportive of the conditions of the AAR developed in the Level 1 text of EMIR 3. However, while it is correctly indicated in the CP that the AAR scope is set at level 1, and thus not part of ESMA's mandate under Article 7a, covered in the draft Regulatory Technical Standards (RTS), or subject to consultation, the SMSG note that there are certain unclear descriptions in the CP regarding the scope of the requirements, which should be addressed. The SMSG also considers that there are inconsistencies between the scope specified in the level 1 regulation and the proposal in the CP, and that parts of the proposal go beyond the level 1 mandate.

3. The SMSG also notes the importance of the forthcoming RTS being balanced and giving appropriate consideration to the European Commission's objectives to increase the competitiveness of EU capital markets, reduce unnecessary burdens and costs, and foster simplification including by avoiding unnecessary- and double-reporting.

4. Finally, one cannot ignore the context surrounding the CP, and notably the fact that the equivalence decision for UK CCPs (Commission Implementing Decision (EU) 2022/174) will come to an end on 28 June 2025. The SMSG takes good note of the decision recently announced to extend this equivalence decision until 30 June 2028. The SMSG welcomes both the content of this decision and its timing, as (i) it is announced sufficiently ahead of the June deadline to provide market participants with appropriate visibility and avoid creating uncertainty or stress in the underlying market, and (ii) it makes it possible to avoid interactions with the review clause in EMIR 3 Level 1 under which ESMA is required to provide a report on the effectiveness of the AAR as soon as 25 June 2026.

3 Simplification, definitions, and clarifications

5. One important (but at times forgotten) aspect of simplification is to make sure that a terminology is consistent within its own as well as vis-à-vis other legal frameworks. To avoid unnecessary costs and negative impacts on competition, it is also important to consider prevailing, well-functioning (and often international) market practices. In a clearing context, it is therefore important to make a clear distinction between concepts relating to *outstanding positions* as compared to *new transactions*.

6. *Outstanding positions* result from past transactions, constitute a stock, and are linked to the notion of market risk (where the value of open positions of clients may vary with market conditions) and counterparty risk (open positions which mark mutual obligations between a clearing member and a clearing house).

7. *New transactions* form a flow of new contracts which may add to or reduce open positions.

8. The distinction between outstanding positions and new transactions is clear in the Level 1 text where, in article 7a, the stock of open positions is referred to as “positions” and “notional clearing volume outstanding”, and the flow of new transactions is referred to as “transactions”, “trades” and “derivative contracts”.

9. However, in the CP and the RTS other terms are also used which blur this distinction. As an example, the term “outstanding clearing activity in the relevant derivative contracts” is used, where “outstanding” seems to indicate that the concept relates to open positions. Similarly, the terms “activity” and “derivative contracts” are used, while they rather seem to link to the volume of new transactions.

10. This said, both *outstanding positions* and *new transactions* give rise to operational risks, e.g. related to the ability of a clearing house and its clearing member to process margins, integrate the flow of new transactions, etc.

11. The SMSG against this background stresses the need for clarity and recommends that the wording used by the draft RTS be reviewed and aligned, in the cases above as well as other potential places, with that of the Level 1 text.

12. Similarly, where clarifications are addressed in the CP, e.g. in respect to the AAR requirement, it is important (as a CP does not have any legal status) that such clarifications are also presented in a consistent manner and by regulatory means, first and foremost in the RTS, but also when convenient at Level 3 or via Q&As. This is particularly important for the STIRs in scope of the AAR.

4 Responses to questions in consultation paper

Question 1: Are there any aspects of the AAR scope on which ESMA has based its quantitative analysis and its policy choices that ESMA should consider detailing further?

13. Within the analysis of the scope in term of products and counterparties it is clarified (para 27) that: “ICEU STIR derivatives for euro denominated products should be considered as OTC derivatives under Article 2a of EMIR, since the European Commission has not adopted an implementing act determining that the relevant third-country market complies with legally binding requirements which are equivalent to the requirements laid down in Title III on regulated markets of Directive 2004/39/EC10 and that it is subject to effective supervision and enforcement in that third country on an ongoing basis.”

14. In the absence of an EC implementing act as set out above, the SMSG notes the importance of avoiding potential unintended consequences for EU Non-Financial Counterparties (NFCs) and Final Clients of clearing services.

15. With reference to p. 15 of the CP the SMSG also stresses the importance of ESMA closely monitoring the development of alternative clearing services in the EU, given their implications for the requirement on counterparties to hold an active account at an EU CCP and the need to offer a full range of liquid products to NFCs in EU.

16. When it comes to the 85% threshold that is considered for exemption under article 7a.5. of the Regulation, the SMSG considers that ESMA must reconsider its position on the calculation methodology. Section 3.4 requires ‘85% of counterparties' derivative contracts’ to be measured using the gross notional value of the aggregate month-end average position over the previous 12 months. With this lookback period, firms recently transitioning to exclusively clearing on an EU CCP would not qualify for the exemption. Consequently, they would still need to establish systems for dual-CCP clearing, stresstesting, and reporting, potentially encouraging firms to adopt a dual-CCP strategy and forego the exemption altogether.

17. The SMSG considers that applying a 12-month lookback period for counterparties to benefit from this exemption is unhelpful and does not incentivise firms to move their clearing to an EU CCP. Moreover, the SMSG sees no mandate in the Level 1 text for ESMA to establish a 12-month period in the Level 1 text, making it especially important to establish a workable solution that encourages firms to make use of the exemption. The 12-month lookback is punitive and contradicts the spirit of the Level 1 exemption, which is intended to reward counterparties willing to clear more than 85% of their trades on an EU CCP.

18. Finally, the SMSG understands from para 32 of the CP that, considering that STIRs cleared on a regulated market are excluded from the clearing obligation calculation, a counterparty with over EUR 3 billion in gross notional value in STIRs on a regulated market — but below the clearing thresholds in relevant asset classes (i.e. EUR IRS + PLN IRS < EUR 3 billion) — would fall outside the scope of the AAR. To ensure clarity on that topic, the SMSG suggests adding a Recital 1b in the projected RTS, that would read: "Because there is no clearing obligation for STIR contracts under EMIR, as these products are traded on a regulated market and are immediately cleared (as required under Article 29 of MiFIR), there may be situations where certain counterparties, which are not subject to the clearing obligation under EMIR for OTC IRD products in EUR and PLN, happen to clear EUR STIR above the clearing threshold. Such counterparties would fall out of the obligation to hold an active account in the EU".

Question 2: Do you agree with the above approach for condition (a)? Are there other requirements that ESMA should consider for meeting condition (a)?

19. Please refer to question 3.

Question 3: Do you agree with the above approach for conditions (b) and (c)?

20. The approach for condition (a), (b), and (c) generally seems consistent and proportionate with the guidelines provided by the level 1 text. It is however important that active accounts are transparently communicated, and that Clearing Members and Clients providing clearing services inform their NFCs and Final Clients about the option to clear their derivatives on EU CCPs. They should also provide this option under the same conditions and at no additional cost in their contractual offers.

Financial resources requirement

21. The SMSG welcomes the clarification in p. 67 of the CP regarding the condition referred to in Article 7a (3) point (a) of the Regulation, that "the 'operational capacity' should not include the financial resources of the clearing participant". The SMSG recommends that point c) of Article 1 in the draft RTS be modified so that "with sufficient financial resources to meet the obligations arising from the direct or indirect participation in an authorised CCP" is deleted from the text.

Staffing requirements

22. When it comes to the conditions referred to in Article 7a (3) points (b) and (c) of the Regulation, Article 2 of the draft RTS require “counterparties” (clearing members and clients of clearing services captured by the obligation) (a) to have internal systems and arrangements to support a “large flow of transactions”, (b) to “appoint at least one staff member” to support the functioning of the clearing arrangements and (c) to obtain from the CCP a written confirmation that the account can withstand a threefold increase of outstanding positions (compared with the average over the previous 12 months).

23. It should here be noted that the requirement to appoint a member of the staff to support the functioning of the clearing arrangement is inconsistent with the way most entities are organized. Instead of having one person dedicated to this task, entities will most likely have (several) teams contributing to the functioning and control of the active account. It may even create an operational risk to single out one person in this respect, in case of illness, personnel turnover, etc.

24. Accordingly, the SMSG recommends that ESMA modify point (b) e.g. by requiring that counterparties shall “provide a generic contact backed by sufficient knowledge to support the proper functioning of the clearing arrangements at all times”. Article 8.1.c) ii. of the projected RTS should also be modified accordingly.

Reporting of changes in internal policies, etc.

25. The SMSG considers that requiring counterparties to report material changes to internal policies, systems, governance, etc. is unnecessary. The AAA is a standard clearing account, and reporting should be limited to confirming that proper clearing arrangements are in place with an authorized EU CCP via a clearing member. Accordingly, the SMSG recommends that Article 8 (1)(c)(ii) be deleted.

Rules on outstanding positions

26. The SMSG understands from para 68 to 75 of the CP that the threefold increase of outstanding positions with the EU CCP is linked to the idea that such an increase would bring the share of EU CCPs in open positions to levels close to 85%, that would (i) ensure that the reliance vis-a-vis non-EU CCPs is no longer of systemic importance and (ii) be consistent with the 85% level that grants exemption from the AAR.

27. While acknowledging the rationale behind this approach, the SMSG considers that, given that the share of EU CCPs is quite different from one entity to the next, ESMA should rather require that CCPs provide a general certification, rather than a certification for each concerned entity. P. 1.c) of Article 2 of the draft RTS could then be redrafted to read “obtain from the authorised CCP a signed written statement confirming that it has the operational

capacity to clear up to 85% of the notional outstanding for the concerned counterparties in the derivatives contracts referred to in Article 7a(6) of Regulation (EU) No 648/2012.".

28. If ESMA still decides to leave the requirement at the level of each counterparty, then the SMSG recommends that:

    - another requirement should be added, to ensure that the authorised CCP provides the required signed written statement (i) with no undue delay and (ii) for free, and

    - for a more straightforward and pragmatic approach, it should be made possible for counterparties to delegate to the CCP to transmit the written statements via the central database that ESMA is mandated to establish.

Question 4: Do you agree with the proposed approach for the annual stress-testing conditions (a), (b) and (c)?

29. The SMSG in general agrees with the proposed approach for the annual stress-testing conditions (a), (b), and (c), with the central role and responsibility entrusted directly to EU CCPs:

    - stress tests should be run directly by and at the level of EU CCPs,

    - stress tests should not be envisaged as a "pass of fail" requirement by ESMA and NCAs, since their purpose is to highlight potential risks arising from stressed conditions, that should go beyond EMIR compliance requirements, and

    - certification by EU CCPs should be part of the on-boarding procedure.

30. The SMSG considers that the wording of Article 3 of the draft RTS related to "Stress-testing of the operational conditions of the active account" creates confusion between expectations on outstanding positions and expectation on flows. The SMSG hence recommends that the text be covered by the abovementioned review of terminology.

31. Further, the SMSG notes that in case of an extreme event that would jeopardize the access of EU financial institutions to a third country clearing service of a systematic importance, an EU clearing member would most likely from a practical point of view seek to reduce its outstanding position vis-à-vis the concerned CCP, not by concluding a large number of individual transactions targeting each single outstanding position, but rather by concluding a limited number of macro-hedge transactions, transferring most of the risk to the EU CCP. Following this, the CCP would most likely clear all new transactions with the EU CCP.

32. Accordingly, the SMSG recommends that p. 1.(c) of Article 3 instead be indexed 1.(b) of Article 3 in the draft RTS, with the new wording "request from the authorised CCP, directly

or indirectly via a clearing member or a client providing client clearing services, a signed written statement that the account of the counterparty has the capacity to withstand a substantial increase (i) in outstanding position of up to 85% of the total outstanding position of the counterparty and (ii) in the volume of new transactions of up to 100% of the volume of transactions of the counterparty in the derivative contracts referred to in Article 7a(6) of Regulation (EU) No 648/2012.". The SMSG notes that such statement could require the authorized CCP to receive indications from the counterparties subject to the obligation set out in Article 7a (1) regarding the magnitude of the increase (in outstanding positions and in volumes) that would be needed.

33. Similarly to Article 2, the SMSG recommends that another requirement be added, to ensure that the authorised CCP provides the required signed written statement (i) with no undue delay and (ii) for free.

34. As noted above, the SMSG also welcomes the statement in p. 81 of the CP that "ESMA would not envisage this stress-testing exercise as a 'pass or fail' requirement, as the scenarios used in the stress-test may go beyond the requirements enshrined in EMIR". The SMSG recommends that ESMA integrates this statement in Article 3.

Question 5: Do you agree with the differentiated frequency for the stress-testing depending on the counterparties' clearing activities? Would you suggest any other way to take into account the proportionality principle?

35. The SMSG considers that technical, operational, contractual and financial conditions subject to the stress tests are unlikely to change within 6 months. With reference to the proportionality principles and not to incur more burdens than necessary, the SMSG recommends that stress tests not be conducted more frequently than once a year except in exceptional situations e.g. in a financial crisis.

36. For the sake of proportionality, the SMSG recommends that stress-testing should be differentiated between counterparties with notional volume outstanding below or above the EUR 100 billion threshold in the derivative contracts subject to the obligation referred to in Article 7a (6) of Regulation (EU) No 648/2012.

Question 6: Do you agree with the proposed classes of derivatives for EUR OTC IRD?

37. The SMSG is aware that, prior to the publication of the Consultation Paper, there were debates with regards to:

- the number of categories, notably to understand, on the ground of the wording of Article 7a.6. of the Regulation, whether EUR IRS and PLN IRS should be considered as the same category or two different categories,

- the number of classes, as the wording was unclear as to whether ESMA was asked to set 3 classes per category or 3 classes amongst all categories.

38. The difference could have been substantial for concerned counterparties, as shifts in interpretation could have led to very meaningful differences in outcomes, with requirements for most active counterparties potentially moving from the need to clear at least 900 to the need to clear at least 2,700 transactions per annum at an authorized CCP.

39. The SMSG considers that, notwithstanding requirements for some adjustments detailed in the answers to the following questions, ESMA's proposal (that is to say the combination of classes, categories, maturity and size buckets) reaches a globally reasonable balance, with a maximum requirement set at 1,190 transactions per annum.

Question 7: Do you agree with the proposed classes of derivatives for PLN OTC IRD?

40. The SMSG does not have any comments to this question.

Question 8: Do you agree with the proposed classes of derivatives for EUR STIR?

41. The SMSG notes that futures are intrinsically connected through time to expiry and the role time spreads between calendar months. Practitioners here tend to group risk by calendar year, whereby risk in the upcoming 4 quarterly months is assessed compared to the next, e.g. 0–12-months, 13–24-months, 25 months onwards. As a result, it is unnecessary to have 4 buckets in a market which is structured the way it is today. To reduce complexity and align the rules with prevailing market practice, the SMSG recommends that ESMA reduces the STIR maturity buckets to 2, i.e. 0-12m and 12+m.

Question 9: Do you agree with the proposed maturity and trade size ranges for each class of derivatives in EUR OTC IRD?

42. The SMSG does not have any comments to this question.

Question 10: Do you agree with the proposed maturity and trade size ranges for each class of derivatives in PLN OTC IRD?

43. The SMSG does not have any comments to this question.

Question 11: Do you agree with the proposed maturity and trade size ranges for each class of derivatives in EUR STIR?

44. The SMSG considers that the complexity and cost of compliance in relation to STIRS could be reduced by addressing the scope of STIR products subject to the AAR. STIR futures comprise 28 Euribor instruments and 31 ESTR instruments. The addition of options on (all) maturities, types (vanilla, mid curves), and calls/puts, will increase the scope to 8000+

instruments. The substantial increase in the cost of compliance must here be weighed against the policy objective, especially as options are not explicitly required by EMIR 3.0.

45. In connection herewith the SMSG notes that there are significant differences between ICEU (UK) and Eurex (EU), which are the only EU and UK CCPs active in this market. As an example, ICEU currently offers a wider strike range and granularity than Eurex. ICEU is also currently alone in offering ESTR options on futures. In practice such differences mean that EU users of ICEU would, as of today, be unable to move activity to an equivalent service in the EU.

46. To address these concerns regarding burden and complexity, the SMSG recommends that ESMA excludes options from the scope of the RTS.

Question 12: Do you agree with the proposed number of most relevant subcategories for each clearing service of substantial systemic relevance? Do you think this should be set at a more granular level (i.e. per class of derivatives)?

47. The SMSG does not have any comments to this question.

Question 13: Do you agree with the proposed reference periods for EUR OTC IRD? Do you think the reference periods should be set at a more granular level (i.e. class of derivatives)?

48. The SMSG does not have any comments to this question.

Question 14: Do you agree with the proposed reference period for PLN OTC IRD? Do you think that the reference periods should be set at a more granular level (i.e. class of derivatives)?

49. The SMSG does not have any comments to this question.

Question 15: Do you agree with the proposed reference periods for EUR STIR referenced in Euribor? Do you agree with the proposed reference periods for EUR STIR referenced in €STR?

50. The SMSG supports that classes, subcategories, maturity and trade size ranges are derived from statistics on derivatives traded and cleared in relevant CCPs, considering liquidity and potential growth. Nevertheless, for simplicity and to reduce unnecessary burden, the SMSG recommends aligning the representativeness periods for both Euribor and ESTR to the period proposed for ESTR.

51. While some NFCs and Final Clients of clearing services may see benefits in being able to use active accounts of EU CCP for derivatives at least for EUR denominated asset classes, this should be weighed against the costs for market- and infrastructure providers.

Question 16: Do you agree with the proposed approach for the reporting of the activity and risk exposures of the counterparty subject to the active account requirement?

52. The SMSG has considered the proposed approach against the objectives of proportionality, competitiveness, and burden reduction. From this perspective, the SMSG has reservations with regards to the reporting requirements expressed in Article 7 to Article 10 of the projected Regulatory Technical Standards. The SMSG notes that several requirements are not mandated by Level 1, and/or overlap and/or duplicate existing reporting requirement. While this leads to increased costs for the market participants, it may ultimately also lead to unusable data for ESMA.

53. The SMSG considers that reports required under article 7 of the draft RTS will be excessively numerous. Considering at least 1,000 accounts with at least 1 third-country CCP and 1 EU CCP, the clearing nature and 25 “most relevant” sub-categories (5 for fix-to-float EUR IRS, etc.) leads to ESMA receiving more than 100,000 reports every semester. Aside from potential errors, the usability of these reports will be further reduced by the fact that they will not be additive, whether for a given period between reporting counterparties, or across periods for a given counterparty, because of the variability of the most relevant subcategories.

54. Accordingly, the SMSG urges ESMA to simplify the reports required on aggregate thresholds for assessing compliance with the active account (Article 7 of the projected RTS).

55. Notably, the SMSG considers that the report should not be required for those entities that spontaneously opt for the most demanding representativeness levels, for entities that commit to clearing at least 1,190 transactions per annum across the various categories of derivatives with an authorized CCP:

Category	Class	Maturities (a)	Sizes (b)	Number of points in the matrix (c)=(b)*(a)	Max number of representative points (d) = min (5 ; (c))	Reference period (e)	Number of reference periods (f) = 12 / (e)	Max number of transactions per point and reference period (g)	Max number of transactions		
									Per Class (h) = (d) * (f) * (g)	Per Category	Total
EUR IRD	EUR Fixed-to-Float	4	3	12	5	1 month	12	5	300	900	1,190
	EUR OIS	4	3	12	5		12	5	300		
	EUR FRA	4	3	12	5		12	5	300		
PLN IRD	PLN Fixed-to-Float	1	1	1	1	12 months	1	5	5	10	
	PLN FRA	1	1	1	1		1	5	5		
EUR STIR	Euribor STIR	4	1	4	4	1 month	12	5	240	280	
	€str STIR	4	1	4	4	6 months	2	5	40		

56. Against this background, the SMSG stresses the importance of ascertaining that reporting and other requirements are considered both from a usefulness perspective, and a cost perspective.

Question 17: Do you consider that including information on margin activity in the AAR reporting requirement would provide valuable information on the activities and risk exposures of the counterparty?

57. With reference to our response to question 16, the SMSG considers that the requirement to report margining activity would lead to a significant increase in the workload of counterparties, while at the same time not being necessary for the monitoring of compliance with the AAR, and further not being mandated by Level 1.

58. For these reasons, the SMSG recommends withdrawing the references to Initial Margins and to Variation Margins in Table 2 of Annex II.

Question 18: Do you consider that including reporting on Unique Trade Identifiers (UTIs) would provide valuable information from a supervisory perspective?

59. With reference to its response to question 16, the SMSG considers that while the reporting of UTIs would create an excessive workload for entities, it is not needed to ensure the strict monitoring of compliance with the active account requirement (as noted by ESMA in point 7.3.3.(a) of the cost and benefit analysis).

60. Further, the SMSG notes that UTIs are already reported under Article 9 of EMIR, and ESMA recognizes in para 166 of the CP that the reporting of UTI in the frame of the AAR would mostly “enable competent authorities to better perform their supervisory duties by verifying the information reported by counterparties under Article 7b against the reports submitted to trade repositories under Article 9.”.

61. Accordingly, the SMSG urges ESMA to withdraw the reference to the UTI both in Table 1 of Annex II and in Article 9.1.e. of the projected RTS.

Question 19: Do you agree with the proposed approach for the reporting of the operational conditions?

62. The SMSG refers to its response to question 16.

Question 20: Do you agree with the proposed approach for the reporting of the representativeness obligation?

63. The SMSG refers to its response to question 16.

Question 21: Do you agree with the proposed approach to standardise the reporting arrangements under the active account requirement?

64. The SMSG considers that, in a time of new and innovative technologies and IT architectures, any form of reporting required by CCP Participants, including Clearing

Members, Clients providing clearing services, and Final Clients, regarding clearing activities carried on derivatives electronically cleared on CCPs is useless, expensive, and a source of risk.

65. To elaborate further on the use of “useless” above, the SMSG questions the value-added of such reporting, since all information is available to ESMA and NCAs electronically on a regular basis or upon request directly from CCPs.

66. The exercise will also be expensive, since all information and relevant databases are at least duplicated and CCPs Participants are obliged to set up specific IT systems and operational processes for compliance that can be better managed through CCPs.

67. The reporting will also be a source of significant operational risk, and errors may occur that undermine the reliability of reported data.

68. Accordingly, the SMSG considers that conditions for AAR should not add reporting requirements for CCP participants, since ESMA and NCAs can access the same data directly from authorised CCPs with more flexibility. Standard periodic reporting is provided by CCPs on participants activities and aggregated statistics, and if needed ad hoc requests could be made for spot analysis or crisis management. This will result in lower costs, lower operational risk, and better data quality.

Data collection

69. The SMSG notes that information regarding a counterparty and its operational conditions can be collected by CCPs directly or indirectly through Clearing Members and Clients providing clearing services during the on-boarding process, together with the required certification already delegated to CCPs, and can be verified periodically alongside the stress tests.

70. The SMSG further notes that information about a counterparty’s representativeness obligation, activity and risk exposure can be collected and aggregated by CCPs directly or indirectly or through Clearing Members and Clients providing clearing services using data attached to cleared trades, data about counterparty’s margin calls and counterparty’s trading statistics.

71. The SMSG recommends that Unique Trade Identifiers (UTIs) should always be attached to any cleared trade so to be able to produce any reporting on a specific trade within and outside of the CCP. Similarly, the Legal Entity Identifier (LEI) should always be used to identify a Participant and its parent group so to produce any reporting on a specific counterparty or group.

72. Finally, the SMSG considers that using CCPs as trades and counterparty data repositories to be collected by ESMA and NCAs periodically or on an ad hoc basis would simplify regulatory supervision, reduce associated costs, avoid duplication of databases, reduce level of operational risk and improve data quality and reporting reliability.

This advice will be published on the Securities and Markets Stakeholder Group section of ESMA's website.

Adopted on 31 January 2025

[signed]	[signed]
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