



# ESMA Public Hearing

## Conditions of the Active Account Requirement

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# AAR – Operational conditions – Article 7a(3)

Condition (a): account is permanently functional.

ESMA draft RTS: *the counterparty is required to establish:*

- a **contractual arrangement** with an authorised CCP (directly or indirectly);
- **internal policies and procedures** to access the clearing services (directly or indirectly);
- **cash and collateral accounts**, with sufficient financial resources to meet participation requirements; and
- an **IT system** with connectivity to an authorised CCP (directly or indirectly).

Condition (b): counterparty has systems and resources to clear large volumes and flows from Tier 2+.

Condition (c): all new trades can be cleared in the account, at all times.

ESMA draft RTS: *the counterparty is required to:*

- set-up **internal systems** to support a large flow of transactions from positions held in a clearing service of substantial systemic importance assessing any potential legal and operational barriers;
- appoint at least **1 dedicated staff** with sufficient knowledge to support the proper functioning of the clearing arrangements at all times; and
- obtain a **written statement from an EU CCP** that the account has the operational capacity to clear up to **three times the notional amount outstanding** cleared for the previous 12 months.

# AAR – Stress-testing – Article 7a(4)

**Stress-testing:** The requirements shall be regularly stress-tested at least once a year.

**ESMA draft RTS:** *the counterparty is required to:*

- conduct **technical and functional tests** verifying the operational capacity and the functioning of the IT connectivity with the CCP (directly or indirectly); and
- obtain a written statement from an EU CCP (directly or indirectly) confirming that the account can withstand a substantial increase in outstanding and new clearing activity **of up to 85% of the total outstanding clearing activity in 5 business days for OTC derivatives and 2 for others.**

**Proportionality:** ESMA shall take into account the size of the portfolios of different counterparties.

**ESMA draft RTS:** *counterparties, with a notional amount outstanding cleared of:*

- **less than EUR 100 billion**, shall meet the stress-testing requirement **every year.**
- **more than EUR 100 billion**, shall meet the stress-testing requirement **every six months.**

## Questions related to the operational conditions

1. Do you agree with the proposed approach for condition (a)?
2. Do you agree with the proposed approach for conditions (b) and (c)?
3. Do you agree with the proposed approach for the annual stress-testing conditions (a), (b) and (c)?
4. 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?

## AAR – Representativeness obligation – Article 7a(3)&(4)

- “The counterparty [above EUR 6bn in notional amount outstanding cleared] shall clear in the active account trades which shall be **representative of derivative contracts** [...] that are cleared at a **clearing service of substantial systemic importance** pursuant to Article 25(2c).”
- “Counterparties shall clear, on annual average basis, **at least five\* trades** in each of the most relevant subcategories per class of derivative contracts and per reference period.”
- The assessment of the representativeness obligation shall be based on **subcategories**. For each class of derivative contracts, the number of subcategories shall result from the **combination of the different sizes of the trades and the maturity ranges**.
- The representativeness obligation **shall not apply to the provision of client clearing services**.
- ESMA is required in the draft RTS to define the **classes of derivatives**, the **maturity** and **trade size ranges** of the subcategories, the **number** of the most relevant subcategories and the **reference periods**.

\*“Where the resulting number of trades exceeds half of the total trades of that counterparty for the preceding 12 months, the representativeness obligation [...] shall be considered fulfilled where that counterparty clears at least one trade”

# Representativeness criteria

## ESMA draft RTS:

Category of derivatives (Article 7a of EMIR 3)	Classes of derivatives (max 3 per clearing service of substantial systemic importance)	Number of sub-categories (combination of max 4 maturities x max 3 trade sizes)	Number of most-relevant sub-categories (max 5)	Reference period	
				Counterparties with a notional clearing volume outstanding < EUR 100 billion per year (min 6 months)	Counterparties with a notional clearing volume outstanding > EUR 100 billion per year (min 1 month)
EUR OTC IRD	Fixed-to-float interest rate swaps (IRS)	12	5	6 months	1 month
	Forward rate agreement (FRA)	12	5	6 months	1 month
	Overnight index swaps (OIS)	12	5	6 months	1 month
PLN OTC IRD	Fixed-to-float interest rate swaps (IRS)	1	1	12 months	12 months
	Forward rate agreement (FRA)	1	1	12 months	12 months
EUR STIR	ETD with an underlying of 3 months interest rate referenced in Euribor	4	4	6 months	1 month
	ETD with an underlying of 3 months interest rate referenced in €STR	4	4	12 months	6 months

## Questions related to the representativeness criteria

- 1. Do you agree with the proposed classes of derivatives for EUR OTC IRD? PLN OTC IRD? EUR STIR?**
- 2. Do you agree with the proposed maturity and trade size ranges for each class of derivatives in EUR OTC IRD? PLN OTC IRD? EUR STIR?**
- 3. Do you agree with the proposed reference periods for EUR OTC IRD? PLN OTC IRD? EUR STIR referenced in Euribor and in €STR?**

# AAR – Reporting requirements – Article 7b

- **Reporting**: a counterparty subject to the AAR shall calculate its activities and risk exposures in the relevant categories of derivatives and report every six months to its competent authority the information necessary to assess their compliance with the AAR.
- The counterparties shall use the information reported under Article 9 where relevant. The reporting shall also include a demonstration to the competent authority that the legal documentation, IT connectivity and internal processes associated to the active accounts are in place.
- **ESMA draft RTS**: *the counterparty is required to report information on:*
  1. *its ‘activities and risk exposures’ in the relevant derivative contracts for the AAR;*
  2. *how it meets the operational conditions and their stress-testing; and*
  3. *how it meets the representativeness obligation (if applicable).*
- EMIR 3 does not include a mandate for an Implementing Technical Standard (ITS) for ESMA to further specify the data standards and the formats as it is normally the case for reporting regimes. **ESMA may therefore decide to adopt further guidance in the future.**



# Questions related to the reporting requirements

- 1. 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?**
  - a) 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?
  - b) Do you consider that including reporting on Unique Trade Identifiers (UTIs) would provide valuable information from a supervisory perspective?
- 2. Do you agree with the proposed approach for the reporting of the operational conditions?**
- 3. Do you agree with the proposed approach for the reporting of the representativeness obligation?**
- 4. Do you agree with the proposed approach to standardise the reporting arrangements under the active account requirement?**

**Any other questions?**



# ESMA

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