

Final Report

Draft RTS on the elements to be considered when a CCP establishes its admission criteria and assesses the ability of NFCs acting as clearing members to meet margin requirements and default fund contributions

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1 Executive Summary

Reasons for publication

Regulation (EU) No 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 (EMIR 3), which has amended Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 (EMIR), has, among other things, also amended Article 37 of EMIR on 'Participation Requirements'.

Article 37(1) of EMIR now provides that a CCP is required to establish, where relevant per type of product cleared, the categories of admissible clearing members and the admission criteria, upon the advice of the risk committee pursuant to Article 28(3) of EMIR. Such criteria ought to be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Criteria that restrict access are permitted only to the extent that their objective is to control the risk for the CCP. In addition, Article 37(1a) of EMIR now provides that a CCP can accept non-financial counterparties (NFCs) as clearing members only if those NFCs are able to demonstrate how they intend to fulfil the margin requirements and default fund contributions, including in stressed market conditions, and restricts the provision of client clearing services by an NFC only to NFCs belonging to the same group as that NFC.

ESMA, after consulting EBA and the ESCB, is mandated under the new Article 37(7) of EMIR to develop draft Regulatory Technical Standards (RTS) further specifying the elements to be considered when a CCP: (a) establishes its admission criteria referred to in Article 37(1) of EMIR, and (b) assesses the ability of NFCs acting as clearing members to meet margin requirements and default fund contributions referred to in Article 37(1a) of EMIR. When developing the draft RTS, ESMA is required to take into account: (a) the modalities and specificities through which NFCs might, or already do, access clearing services, including as direct clearing members in sponsored models; (b) the need to facilitate prudentially sound direct access of NFCs to CCP clearing services and activities; (c) the need to ensure proportionality; and (d) the need to ensure an effective management of risks. ESMA is required to submit those draft RTS to the European Commission within 12 months of EMIR 3 entry into force.

ESMA conducted a public consultation on the draft RTS from 9 October 2025 until 5 January 2026, and received 13 responses, one of which was confidential. In addition, ESMA also

held a public hearing on the draft RTS on 20 November 2025, which was attended by a variety of stakeholders. The final draft RTS presented in this Final Report take into account the feedback received through the public consultation and the public hearing.

In accordance with Article 37(7) of EMIR, the draft RTS have been developed in consultation with EBA and the ESCB. In accordance with Article 10(1) of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 (ESMA Regulation), ESMA also sought the advice from the Securities and Markets Stakeholder Group (SMSG).

Contents

This Final Report presents the final draft RTS prepared by ESMA. Section 4 outlines the requirements proposed by ESMA with regard to the elements to be considered when a CCP establishes its admission criteria. Section 5 sets out the requirements proposed by ESMA with regard to elements to be considered when a CCP assesses the ability of NFCs acting as clearing members to meet margin requirements and default fund contributions. Finally, Section 6 contains all the relevant annexes (Annex I provides the legislative mandate for the development of the draft RTS; Annex II contains the cost-benefit analysis; Annex III includes the advice of the SMSG; Annex IV provides the list of respondents to the public consultation; and Annex V contains the final draft RTS).

Next Steps

This Final Report, including the final draft RTS presented in Annex V, will be submitted to the European Commission. The European Commission has three months to decide whether to adopt the RTS in the form of a Commission Delegated Regulation. Following the adoption, they are then subject to non-objection by the European Parliament and the Council.

2 Legislative references and abbreviations

CCP	Central counterparty
CCPRRR	Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 ¹
CP	Consultation Paper
CRD IV	Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC ²
CRR	Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ³
CSD	Central securities depository
Delegated Regulation (RTS) 153/2013	Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties ⁴
DORA	Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011 ⁵
EBA	European Banking Authority

¹ OJ L 22, 22.1.2021, pp. 1–102.

² OJ L 176, 27.6.2013, pp. 338–436.

³ OJ L 176, 27.6.2013, pp. 1–337.

⁴ OJ L 52, 23.2.2013, pp. 41–74.

⁵ OJ L 333, 27.12.2022, pp. 1–79.

EMIR	Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ⁶
EMIR 3	Regulation (EU) No 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 ⁷
ESCB	European System of Central Banks
ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC ⁸
FC	Financial counterparty
IFD	Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU ⁹
IFR	Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 ¹⁰
MiFID II	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ¹¹
NCA	National competent authority

⁶ OJ L 201, 27.7.2012, pp. 1–59.

⁷ OJ L, 2024/2987, 4.12.2024.

⁸ OJ L 331, 15.12.2010, pp. 84–119.

⁹ OJ L 314, 5.12.2019, pp. 64–114.

¹⁰ OJ L 314, 5.12.2019, pp. 1–63.

¹¹ OJ L 173, 12.6.2014, p. 349-496.

NFC

Non-financial counterparty

RTS

Regulatory Technical Standards

SMSG

Securities and Markets Stakeholder Group

3 Introduction

1. Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 (EMIR 3), which has amended Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 (EMIR), was published in the Official Journal of the EU on 4 December 2024 and entered into force on 24 December 2024. EMIR 3 has, among other things, amended Article 37 of EMIR on CCPs' participation requirements.
2. Article 37(1) of EMIR provides that a CCP is required to establish, where relevant per type of product cleared, the categories of admissible clearing members and the admission criteria, upon the advice of the risk committee pursuant to Article 28(3) of EMIR. Such criteria are required to be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Furthermore, criteria that restrict access are permitted only to the extent that their objective is to control the risk for the CCP.
3. Pursuant to Article 37(5) of EMIR, a CCP may only deny access to clearing members meeting the admission criteria where duly justified in writing and based on a comprehensive risk analysis.
4. According to Article 37(6) of EMIR, a CCP may impose specific additional obligations on clearing members, such as the participation in auctions of a defaulting clearing member's position. However, such additional obligations need to be proportional to the risk brought by the clearing member and cannot restrict participation to certain categories of clearing members.
5. As regards membership of CCPs and clearing houses in a CCP, Article 37(1) of EMIR stipulates that the admission criteria are to ensure that CCPs or clearing houses cannot be clearing members, directly or indirectly, of the CCP. This is without prejudice to interoperability arrangements under Title V of EMIR or the conduct of the CCP's investment policy in accordance with Article 47 of EMIR.
6. As regards non-financial counterparties (NFCs), in accordance with Article 37(1a) of EMIR:
 - a. a CCP can accept NFCs as clearing members only if those NFCs are able to demonstrate how they intend to fulfil the margin requirements and default fund contributions, including in stressed market conditions.
 - b. an NFC acting as a clearing member of a CCP may provide client clearing services only to NFCs belonging to the same group as that NFC and may keep accounts at

the CCP only for assets and positions held for its own account or the account of those NFCs.

- c. The national competent authority (NCA) of a CCP that accepts NFCs as clearing members is required to regularly review the arrangements established by the CCP to monitor that the condition under the first subparagraph of Article 37(1a) of EMIR is met. In addition, the CCP's NCA is required to report on an annual basis to the college referred to in Article 18 of EMIR on the products cleared by those NFCs, their overall exposure and any identified risks.
 - d. Furthermore, ESMA may issue an opinion or a recommendation on the appropriateness of such arrangements following an ad hoc peer review.
7. With regard to clearing members that clear transactions on behalf of their clients, Article 37(3) of EMIR provides that:
 - a. Such clearing members are required to have the necessary additional financial resources and operational capacity to perform this activity.
 - b. The CCP's rules for such clearing members must allow it to gather relevant basic information to identify, monitor and manage relevant concentrations of risk relating to the provision of services to clients.
 - c. Such clearing members are required to, upon request, inform the CCP about the criteria and arrangements they adopt to allow their clients to access the services of the CCP.
 - d. Responsibility for ensuring that clients comply with their obligations remains with such clearing members.
8. Pursuant to Article 37(2) of EMIR, a CCP is required to ensure that the application of the admission criteria is met on an ongoing basis and is obliged to have timely access to the information relevant for such assessment. In addition, the CCP is required to conduct, at least once a year, a comprehensive review of compliance with Article 37 by its clearing members. Furthermore, the CCP must inform its NCA of any significant negative development regarding the risk profile of any of its clearing members determined in the context of the CCP's ongoing assessment or any other assessment with similar conclusion, including any increase in the risk that any of its clearing members brings to the CCP, which the CCP considers to have the potential of triggering a default procedure.

9. In accordance with Article 37(4) of EMIR, a CCP is required to have objective and transparent procedures for the suspension and orderly exit of clearing members that no longer meet the admission criteria.
10. In accordance with 17b(1) of EMIR, ESMA and the College are required to adopt respective opinions on any draft decision, report or other measure by the relevant NCA in relation to Article 37 of EMIR.

Article 37

Participation requirements (as amended by EMIR 3)

1. A CCP shall establish, where relevant per type of product cleared, the categories of admissible clearing members and the admission criteria, upon the advice of the risk committee pursuant to Article 28(3). Such criteria shall be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and shall ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Criteria that restrict access shall be permitted only to the extent that their objective is to control the risk for the CCP. **Without prejudice to interoperability arrangements under Title V or the conduct of the CCP's investment policy in accordance with Article 47, the criteria shall ensure that CCPs or clearing houses cannot be clearing members, directly or indirectly, of the CCP.**

1a. A CCP shall accept non-financial counterparties as clearing members only if those non-financial counterparties are able to demonstrate how they intend to fulfil the margin requirements and default fund contributions, including in stressed market conditions.

The competent authority of a CCP that accepts non-financial counterparties as clearing members shall regularly review the arrangements established by the CCP to monitor that the condition under the first subparagraph is met. The CCP's competent authority shall report on an annual basis to the college referred to in Article 18 on the products cleared by those non-financial counterparties, their overall exposure and any identified risks.

A non-financial counterparty acting as a clearing member of a CCP may provide client clearing services only to non-financial counterparties belonging to the same group as that non-financial counterparty and may keep accounts at the CCP only for assets and positions held for its own account or the account of those non-financial counterparties.

ESMA may issue an opinion or a recommendation on the appropriateness of such arrangements following an ad hoc peer review.

2. A CCP shall ensure that the application of the criteria referred to in paragraph 1 is met on an ongoing basis and shall have timely access to the information relevant for such assessment. A CCP shall conduct, at least once a year, a comprehensive review of compliance with this Article by its clearing members.

The CCP shall inform the competent authority of any significant negative development regarding the risk profile of any of its clearing members determined in the context of the CCP's assessment referred to in the first subparagraph or any other assessment with similar conclusion, including any increase in the risk that any of its clearing members brings to the CCP, which the CCP considers to have the potential of triggering a default procedure.

3. Clearing members that clear transactions on behalf of their clients shall have the necessary additional financial resources and operational capacity to perform this activity. The CCP's rules for clearing members shall allow it to gather relevant basic information to identify, monitor and manage relevant concentrations of risk relating to the provision of services to clients. Clearing members shall, upon request, inform the CCP about the criteria and arrangements they adopt to allow their clients to access the services of the CCP. Responsibility for ensuring that clients comply with their obligations shall remain with clearing members.

4. A CCP shall have objective and transparent procedures for the suspension and orderly exit of clearing members that no longer meet the criteria referred to in paragraph 1.

5. A CCP may only deny access to clearing members meeting the criteria referred to in paragraph 1 where duly justified in writing and based on a comprehensive risk analysis.

6. A CCP may impose specific additional obligations on clearing members, such as the participation in auctions of a defaulting clearing member's position. Such additional obligations shall be proportional to the risk brought by the clearing member and shall not restrict participation to certain categories of clearing members.

11. The new Article 37(7) of EMIR now requires ESMA, after consulting EBA and the ESCB, to develop draft RTS to further specify the elements to be considered when a CCP:
 - a. establishes its admission criteria referred to in Article 37(1) of EMIR;
 - b. assesses the ability of non-financial counterparties acting as clearing members to meet margin requirements and default fund contributions referred to in Article 37(1a) of EMIR.
12. Furthermore, when developing the draft RTS, ESMA is required to take into account:
 - a. the modalities and specificities through which NFCs might, or already do, access clearing services, including as direct clearing members in sponsored models;
 - b. the need to facilitate prudentially sound direct access of NFCs to CCP clearing services and activities;
 - c. the need to ensure proportionality;
 - d. the need to ensure an effective management of risks.
13. ESMA conducted a public consultation on the draft RTS from 9 October 2025 until 5 January 2026, and received 13 responses (seven responses from respondents representing CCPs; three responses from respondents representing clearing members/sell-side; three responses from respondents representing clients/buy-side/NFCs), one of which was confidential. In addition, ESMA also held a public hearing on the draft RTS on 20 November 2025, which was attended by a variety of stakeholders. The final draft RTS presented in this Final Report take into account the feedback received through the public consultation and the public hearing.
14. In parallel, in accordance with Article 37(7) of EMIR, ESMA has consulted the EBA and the ESCB in the preparation of the draft RTS. Moreover, as required by Article 10(1) of the ESMA Regulation, ESMA also sought advice from the SMSG.

Article 37

Participation requirements (as amended by EMIR 3)

7. ESMA, after consulting EBA and the ESCB, shall develop draft regulatory technical standards to further specify the elements to be considered when a CCP:

(a) establishes its admission criteria referred to in paragraph 1;

(b) assesses the ability of non-financial counterparties acting as clearing members to meet margin requirements and default fund contributions referred to in paragraph 1a.

When developing those draft regulatory technical standards, ESMA shall take into account:

(a) the modalities and specificities through which non-financial counterparties might, or already do, access clearing services, including as direct clearing members in sponsored models;

(b) the need to facilitate prudentially sound direct access of non-financial counterparties to CCP clearing services and activities;

(c) the need to ensure proportionality;

(d) the need to ensure an effective management of risks.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 25 December 2025.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

4 RTS on the elements to be considered when a CCP establishes its admission criteria

4.1 Introduction / Overall approach

ESMA initial proposal

15. As per Article 37(1) of EMIR, a CCP shall establish, where relevant per type of product cleared the categories of admissible clearing members and the admission criteria, upon advice of its risk committee. Article 37(7) mandates ESMA to further specify in an RTS the elements to be considered when a CCP establishes its admission criteria. When developing those RTS, ESMA is required to take into account, among other, the need to ensure proportionality and an effective management of risks.
16. In the draft RTS presented in the CP, ESMA proposed that in order to establish its admission criteria, the CCP should conduct a comprehensive assessment of the potential risks posed to it by its clearing members and ensure the admission criteria properly reflect the risks identified. This assessment should include, inter alia, an evaluation of whether clearing members possess sufficient financial resources and operational capacity to meet the obligations arising from participation in the CCP.
17. Article 37(7) of EMIR requires ESMA, when developing the draft RTS, to take into account, among other things, the need to ensure an effective management of risks. In addition, Article 37(1) of EMIR also stipulates that admission criteria that restrict access are permitted only to the extent that their objective is to control the risk for the CCP. Furthermore, other risks and considerations may also affect clearing members' financial and operational capacity and ability to meet the obligations arising from their participation in the CCP. Therefore, as part of this assessment, it was proposed that the CCP should also consider other risks posed to it by its clearing members, e.g. risks related to anti-money laundering and counter-terrorist financing; legal risks such as any potential conflict of laws or inability of the CCP to enforce its rules, in particular where clearing members are established outside the EU; and the legal and procedural implications of national insolvency frameworks.
18. ESMA also proposed that since the provision of client clearing services by clearing members carries additional financial, operational and other risks, some additional elements should be considered regarding such clearing members. The same applies where the CCP offers sponsored models. As regards sponsored models, ESMA proposed that the CCP, in addition to the risks posed by clearing members in sponsored models, should also consider the additional risks it holds in relation to the sponsors (i.e. the entity sponsoring the clearing member in a sponsored model) when setting the criteria for this type of membership.

19. However, ESMA, in its CP, also reminded stakeholders that, as provided in Article 37(1) of EMIR, admission criteria that restrict access are permitted only to the extent that their objective is to control the risk for the CCP. Accordingly, ESMA highlighted that CCPs should not unduly restrict access unless properly justified based on risk considerations.

Feedback from respondents

20. Respondents representing CCPs generally expressed concerns that the proposals are overly prescriptive, risk duplicating supervisory functions, and could misalign onboarding processes with ongoing risk management frameworks. They broadly agreed with the importance of transparent and robust admission standards, but argued that the draft RTS blur the distinction between initial eligibility assessments and continuous monitoring, thereby placing disproportionate operational and compliance burdens on CCPs. They stressed that existing frameworks for participation requirements already function effectively and that additional detailed prescription offers limited risk management benefit.

21. Additionally, respondents representing CCPs argued that the draft RTS would compel them to perform quasi prudential and supervisory roles, particularly through scenario based onboarding assessments, extensive legal and regulatory reviews, and intrusive scrutiny of clearing members' operational and IT systems. These respondents emphasised that these responsibilities belong to NCAs and that CCPs lack both the mandate and visibility to undertake such functions. They advocated instead for proportionate, risk-based approaches, relying on targeted legal opinions, attestations, operational testing, and established margining and stress testing frameworks.

22. Furthermore, respondents representing CCPs also cautioned against requirements that would undermine confidential risk methodologies, impose unworkable obligations relating to client clearing transparency (particularly for omnibus account structures) and constrain the flexibility of sponsored access models by mandating overly rigid contingency arrangements. They called for clearer recognition of different membership types, access models, and product categories, arguing that criteria should not be universally applied where they are not relevant to the CCP's risk exposure.

23. Overall, respondents representing CCPs requested a recalibration of the draft RTS to maintain CCP discretion, safeguard operational feasibility, and preserve a clear separation between risk management responsibilities and regulatory supervision.

24. Respondents representing clearing members/sell side broadly supported the objectives of fair, non-discriminatory and transparent access to CCP membership, but consistently emphasised that transparency must be coupled with equivalent prudential and risk standards across all participant types, including non-banks/NFCs. However, they warned against duplicating prudential or operational assessments already covered by existing

regimes such as CRR/CRD IV, IFR/IFD, MiFID II, EMIR and DORA, and stressed that CCP admission criteria should remain focused on CCP specific risk management outcomes.

25. These respondents strongly favoured tailoring requirements by product, service and membership type, enabling calibrated approaches such as portfolio limits or targeted additions aligned with expected exposures and default management obligations. While supportive of the operational and governance framework in the draft RTS, they underscored that CCPs should not assume a supervisory enforcement role, especially where regulated entities are already subject to established oversight.
26. As regards clearing members that provide client clearing services, respondents representing clearing members/sell side supported additional safeguards (particularly for non-bank/NFC clearing members), including capital buffers, robust margining, and strong governance standards equivalent to those applied to banks. They highlighted the importance of timely client level data, intraday margining processes, and managing CCP specific concentration risks, while reaffirming that clearing members remain fully responsible for their obligations to the CCP.
27. On sponsored clearing models, respondents representing clearing members/sell side broadly agreed with the draft RTS but called for clearer contingency planning for sponsor default, a more explicit division of responsibilities between the sponsor and the sponsored clearing member, and transparency tools to support liquidity planning. They emphasised that the combined sponsor–sponsored clearing member arrangement should deliver risk outcomes equivalent to a traditional clearing member.
28. Respondents representing clients/buy side/NFCs supported fair and open access to CCP membership but stressed the need for proportionality. They warned that overly rigid or prescriptive admission frameworks risk creating barriers to entry, limiting competition and deterring smaller or specialised firms from direct clearing. They argued that admission criteria should account for the size, complexity, diversification and purpose of a participant’s activity, especially where NFC clearing is linked to hedging commercial exposures.
29. These respondents also strongly favoured transparent and predictable access processes, including clear publication of criteria and written, reasoned refusals. They supported robust risk, operational and governance standards but opposed duplication of prudential or supervisory oversight, arguing that CCPs should focus on CCP specific risks and rulebook compliance, rather than replicating existing regulatory regimes (e.g., banking supervision, DORA). In addition, they stressed the importance of proportionality, with operational and governance expectations tailored to the scale and nature of the clearing activity.

30. On clearing members that provide client clearing services, respondents representing clients/buy side/NFCs recognised the additional complexity and supported baseline expectations such as segregation and portability. However, they cautioned against prescriptive additional safeguards that do not clearly reduce risk and emphasised the need for model neutral approaches that reflect actual CCP account structures, particularly where full client visibility is not feasible.
31. For sponsored access models, respondents representing clients/buy side/NFCs favoured flexibility over mandatory structures such as backup sponsorship arrangements. They supported clear principles, well defined roles and responsibilities, standardised documentation, and safeguards that ensure resilience under stress, while preserving participant autonomy in contingency planning.
32. Please also see more detailed summaries in the relevant sections below.

ESMA assessment of feedback

33. ESMA acknowledges the breadth and quality of feedback received from respondents representing CCPs, clearing members, and clients. Respondents broadly supported the objectives of fair, transparent, and non-discriminatory access to CCP services, while raising concerns regarding proportionality, duplication, and operational feasibility. ESMA has carefully considered these comments, and is, however, of the view that several concerns reflect an overly narrow interpretation of, and/or insufficient clarity of the drafting of, the draft RTS (as presented in the CP). ESMA has therefore restructured, redrafted and streamlined the draft RTS (as presented in this Final Report) and provided further explanations, clarification and examples in order to increase overall clarity and to provide for further flexibility and proportionality of the requirements.
34. In particular, the draft RTS now contain (i) a dedicated Article on Financial Counterparties (FCs) which sets out the elements concerning FC clearing members with regard to financial resources, operational capacity and other risks, including specific provisions relating to FC clearing members that provide client clearing services; (ii) a dedicated Article on Non-financial Counterparties (NFCs) which sets out the elements concerning NFC clearing members with regard to financial resources, operational capacity and other risks, including specific provisions relating to NFC clearing members that provide client clearing services (to other entities of their own group); (iii) an Article on general provisions which covers the requirements on non-discriminatory, fair and open access and transparency and which applies in respect of both FC and NFC clearing members; and (iv) a specific Article on sponsored models which sets out the elements concerning clearing members in sponsored models and sponsors and which applies in respect of both FCs and NFCs.

35. While respondents argue that the draft RTS are overly prescriptive and risk duplicating supervisory responsibilities, ESMA would like to emphasise that robust admission standards are a core component of CCP risk management, not a substitute for prudential supervision by NCAs.
36. At the same time, ESMA wishes to clarify that the draft RTS do not require CCPs to replicate prudential supervision or to opine on compliance by their clearing members with sectoral legislation (e.g. CRR/CRD, IFR/IFD, DORA). As such, the draft RTS have never sought to transfer supervisory functions to CCPs. Rather, their objective has always been to clarify the minimum elements the consideration of which CCPs are expected to reflect when setting their own admission criteria in order to satisfy themselves that clearing members can meet CCP specific obligations, including under stressed conditions, including margin calls, default fund contributions, operational continuity, and default management participation, thus reinforcing their responsibility to manage the risks they mutualise.
37. ESMA would, therefore, also like to re-emphasise that the draft RTS do not set the admission criteria themselves, but only the elements that a CCP should reflect in its admission criteria. Furthermore, the draft RTS do not set how the CCP should assess participation eligibility or compliance by clearing members with its admission criteria. Instead, the CCP retains the flexibility to decide how the elements set out in the draft RTS are reflected in its admission criteria, as well as how it assesses participation eligibility and compliance by its clearing members with such criteria, provided that it complies with the principles of fair and non-discriminatory access.
38. 'Evidence/assessment methods' such as targeted legal opinions, attestations, questionnaires, operational testing – explicitly referenced by respondents to the consultation – are already widely used by CCPs and are fully compatible with the draft RTS. The RTS do not mandate intrusive or duplicative reviews or any particular evidence/assessment methods.
39. The draft RTS thus preserve CCP flexibility to calibrate their admission criteria (using the elements set out in the draft RTS), as well as their assessment methods, based on membership category (e.g. clearing members that only clear their own transactions; clearing members that also provide client clearing; clearing members in sponsored models; sponsors sponsoring clearing members in sponsored models, etc.), product type, counterparty type (e.g. FCs; NFCs) and the corresponding risk materiality, explicitly embedding proportionality.
40. In other words, a CCP is permitted to set different admission criteria (as well as assessment methods) for different membership categories, different products cleared/different clearing services, as well as different counterparty types, as long as any differences are justified by

risk considerations. The CCP is also permitted to restrict access, where this is proportionate, justified based on risk considerations, alternatives are considered, and such restrictions are documented.

41. Regarding the requirement that CCPs need to justify and document any access restrictions and consider alternatives, this is not meant to create additional burdens for CCPs, but instead to ensure proportionality and balance the need to facilitate access by smaller or specialised firms to central clearing with prudent risk management.
42. In this context, ESMA is also of the view that transparency is key: transparent, well-articulated, and proportionate criteria are more likely to facilitate access than opaque or discretionary processes. The draft RTS thus also strengthen predictability through requiring CCPs to publish their admission criteria, application procedures and timelines, the information to be provided by clearing members in the application process, as well as a summary of risk-based rationales for any additional requirements imposed on any specific membership category or any counterparty type including the conditions under which access may be restricted.
43. CCPs should also maintain documentation evidencing eligibility assessments performed, including decisions to accept, conditionally accept, or reject clearing members. However, for the avoidance of doubt, CCPs are not expected to publish such documentation.
44. ESMA notes the feedback from clearing members highlighting the importance of equivalent prudential and risk standards across different categories of clearing members, in order to prevent regulatory arbitrage and preserve confidence in CCP membership. ESMA agrees that fairness in access must be compatible with the maintenance of a level playing field and robust risk standards. The draft RTS therefore seek to ensure that admission criteria adequately reflect the risks posed by different participant types while recognising that a one size fits all approach does not work in this situation.
45. ESMA also acknowledges concerns regarding a perceived blur between initial eligibility assessments and ongoing monitoring. However, the draft RTS recognise that initial admission and continuous risk management are intrinsically linked.
46. Initial assessments necessarily require an evaluation of how a prospective participant would perform under stress, how it would interact with margining, default management, and operational frameworks, and whether its risk profile can be adequately managed on an ongoing basis. This does not imply continuous re-performance of onboarding checks but rather ensures that admission decisions are grounded in realistic assumptions about future risk exposure. However, ESMA would also like to recall that Article 37(2) of EMIR explicitly requires CCPs to ensure that the application of the admission criteria is met on

an ongoing basis and to conduct, at least once a year, a comprehensive review of compliance with Article 37 of EMIR by their clearing members.

47. ESMA also recognises concerns regarding the protection of confidential risk methodologies and client clearing transparency, particularly in omnibus structures. The draft RTS do not require disclosure of proprietary models or methodologies, nor do they mandate full client level transparency where this is structurally infeasible.
48. Instead, the draft RTS focus on an outcome-based approach: CCPs must be able to demonstrate that risks associated with their clearing members and clearing/access models, including as regards client clearing arrangements and sponsored models, are identifiable, measurable, and manageable. Where certain data are unavailable or unobtainable, CCPs retain flexibility to apply conservative assumptions, alternative assessment methods and/or alternative safeguards.
49. Requirements set out in the draft RTS are therefore principle-based and intended to ensure credible resilience under stress, not to impose rigid structural solutions such as obligatory access to central bank liquidity facilities or mandatory backup sponsorship arrangements.
50. Feedback from all types of stakeholders highlighted the importance of clarity in roles and responsibilities within sponsored access models. ESMA agrees and considers that the draft RTS strengthen, rather than constrain, such models by ensuring that risk outcomes are equivalent to those of traditional clearing membership, without prescribing identical structures.
51. Similarly, for client clearing, the draft RTS recognise the additional complexity involved and do not seek to undermine existing account structures. Safeguards are targeted at CCP specific risks, including concentration, liquidity, and default management, while preserving clearing members' primary responsibility to the CCP.
52. In summary, while respondents correctly emphasise proportionality, discretion, and the avoidance of duplication, ESMA considers that the draft RTS comply with those notions and strike an appropriate balance between:
 - safeguarding CCP resilience and financial stability;
 - enabling fair, non-discriminatory access;
 - accommodating diverse business models and participant types; and
 - ensuring supervisory convergence across the Union.
53. Please also see more detailed feedback in the relevant sections below.

4.2 Transparent, Fair and Open Access

ESMA initial proposal

54. Article 37(1) of EMIR provides that the admission criteria need to be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP, and that criteria that restrict access are permitted only to the extent that their objective is to control the risk for the CCP.
55. With regard to this requirement, ESMA proposed, in its CP, that in order to establish non-discriminatory and objective admission criteria, the CCP should conduct a comprehensive assessment of the potential risks associated with its clearing members and ensure that the admission criteria properly reflect the risks identified, considering the various elements outlined in ESMA's CP, meaning that the CCP should tailor the criteria to its specific risks
56. ESMA further proposed that the CCP should also tailor the criteria to the risk profile of inter alia:
- a. the type of product cleared (i.e. the CCP may set different admission criteria for each clearing service);
 - b. the type of membership¹² (i.e. the CCP may set different admission criteria for clearing members that only clear their own transactions, compared to clearing members that also clear on behalf of their clients (including clients belonging to the same group)¹³, compared to clearing members in sponsored models, etc.);
 - c. the type of clearing member¹⁴ (i.e. the CCP may set different admission criteria for FC clearing members, compared to NFC clearing members, etc.)
57. Furthermore, with regard to the transparency requirement, ESMA proposed that CCPs should ensure that their admission criteria, as well as the CCP's rules and procedures, are publicly available (published on their website) and easily accessible, including in a language customary in the sphere of international finance, and that those publications are updated whenever the CCP makes changes to the criteria or its rules and procedures.

Feedback from respondents

¹² Please note that this concept is referred to as "membership category" in the final draft RTS (as presented in this Final Report).

¹³ In the case of NFCs, Article 37(1a), third subparagraph, of EMIR limits their client clearing possibilities only to other NFCs belonging to the same group.

¹⁴ Please note that this concept is referred to as "counterparty type" in the final draft RTS (as presented in this Final Report).

58. As regards Question 1, respondents to the consultation generally supported the objective of non-discriminatory, transparent and objective admission criteria, while at the same time stressing the need for proportionality in a way that does not create de facto barriers to access.
59. Respondents representing CCPs generally argued that the draft RTS proposed by ESMA are overly prescriptive and risk conflating admission criteria (i.e. criteria assessed at onboarding) with ongoing monitoring and risk management and supervisory processes. They called for a clearer distinction between one-off onboarding assessments and ongoing risk monitoring, arguing that admission criteria should focus on baseline eligibility rather than evolving risk drivers.
60. In addition, these respondents emphasised that existing participation requirements do not exhibit material shortcomings that would justify the supposed level of prescription proposed by ESMA in the CP. They also cautioned that requiring CCPs to assess forward-looking portfolio risks, concentration or liquidity risks at the admission stage duplicates dynamic, continuous risk management processes already embedded in CCP operations.
61. Furthermore, while the respondents representing CCPs broadly supported transparency of admission criteria, they also stressed that disclosure obligations should not extend to confidential internal risk models, thresholds or limits, and proprietary methodologies as this could undermine effective risk management and commercial sensitivity.
62. Moreover, these respondents also underlined the importance of maintaining CCP discretion and proportionality, including the ability to differentiate criteria by product, service or membership category. They also suggested that the RTS should more clearly reflect the ability of CCPs to design membership types or access models that mitigate specific risks, with the consequence that elements not relevant for a given access model should not need to be reflected in admission criteria for that model.
63. Respondents representing clearing members/sell-side broadly agreed with the objective of fair, non-discriminatory and transparent access, but emphasised that transparency should be paired with robust and equivalent prudential standards across all clearing members. In other words, they argued that fairness requires ensuring that all clearing members, including non-banks/NFCs, meet comparable prudential expectations and risk standards to prevent regulatory arbitrage and protect trust in CCP membership.
64. At the same time, they argued that the RTS should avoid, where possible, duplicating prudential and operational resilience assessments already performed under CRR/CRD, IFR/IFD, MiFID II, EMIR and DORA. In their view, CCP admission should remain focused on CCP-specific outcomes relevant to CCP risk management and the mutualised nature of the default waterfall.

65. Respondents representing clearing members/sell-side also emphasised that admission criteria should be calibrated per product/clearing service and membership type (e.g. proprietary clearing versus client clearing).
66. In addition, as regards transparency, they argued that CCPs should update published criteria immediately when changes occur.
67. Respondents representing clients/buy-side/NFCs generally supported fair and open access but strongly emphasised proportionality and cautioned that rigid frameworks could undermine access and competition without clear risk benefits. They also echoed CCP concerns about over-prescription and supervisory overreach, warning that overly detailed admission criteria could act as barriers to entry.
68. Some of these respondents also specifically argued that CCPs should consider the size, complexity and diversification of a participant's book/activity, noting that smaller firms active in limited asset classes should not be subject to the same stringent requirements as large, diversified institutions. In this context, they noted that otherwise smaller or specialised firms may be discouraged from direct access and pushed into complex indirect arrangements.
69. In addition, respondents representing clients/buy-side/NFCs also called for clear publication of the admission criteria and for written, reasoned decisions when access is denied, arguing that this would improve predictability and comparability across CCPs and support confidence in open access.

ESMA assessment of feedback

70. ESMA welcomes the broad support expressed by respondents across stakeholder groups for the overarching objective of ensuring fair, non-discriminatory, transparent and objective access to CCPs. ESMA also takes note of the emphasis placed by respondents on proportionality, risk sensitivity and the avoidance of unnecessary barriers to access.
71. ESMA notes the concerns raised, in particular by CCP respondents, regarding a potential confusion between admission criteria and ongoing monitoring, risk management and supervisory processes. First, ESMA wishes to remind the CCP respondents that Article 37(2) of EMIR explicitly requires them to ensure that the application of the admission criteria is met on an ongoing basis and to conduct, at least once a year, a comprehensive review of compliance with Article 37 of EMIR by their clearing members.
72. In addition, the draft RTS are not intended to transform admission criteria into a substitute for continuous risk management. Rather, the objective is to ensure that admission criteria are sufficiently robust to assess whether an applicant meets the baseline conditions

necessary to participate safely in a CCP, taking into account the mutualised nature of clearing risk.

73. Furthermore, while admission assessments are, by definition, conducted at onboarding, ESMA considers it appropriate that such assessments reflect relevant risk factors that could reasonably materialise given the applicant's intended clearing activity. This does not imply a requirement to replicate dynamic, real time risk management processes at the admission stage, but rather to ensure that admission decisions are informed by an adequate understanding of the potential risk profile associated with participation.
74. ESMA notes the view, particularly from CCPs, that existing participation requirements have not demonstrated material shortcomings that would justify the proposed level of prescription. However, ESMA believes that the draft RTS are consistent with current practices and therefore do not create undue additional burdens. The RTS aim to establish a common minimum framework to promote consistent outcomes across CCPs, without preventing CCPs from applying additional requirements or tailoring the requirements based on their risk profile.
75. In this context, ESMA would also like to re-emphasise that the draft RTS do not set the admission criteria themselves, but only the elements that a CCP should reflect in its admission criteria. Furthermore, the draft RTS do not set how the CCP should assess participation eligibility or compliance by clearing members with its admission criteria. Instead, the CCP retains the flexibility to decide how the elements set out in the draft RTS are reflected in its admission criteria, as well as how it assesses participation eligibility and compliance by its clearing members with such criteria. 'Evidence/assessment methods' such as targeted legal opinions, attestations, questionnaires, operational testing (as requested by many respondents to the consultation) are fully compatible with the draft RTS.
76. Furthermore, CCPs are expected to calibrate their admission criteria (using the elements set out in the draft RTS), as well as their assessment methods, based on membership category (e.g. clearing members that only clear their own transactions; clearing members that also provide client clearing; clearing members in sponsored models; sponsors sponsoring clearing members in sponsored models, etc.), product type, counterparty type (e.g. FCs; NFCs) and the corresponding risk materiality. In other words, a CCP is permitted to set different admission criteria (as well as assessment methods) for different membership categories, different products cleared/different clearing services, as well as different counterparty types.
77. Moreover, where certain criteria are not relevant to a specific access model, CCPs are not expected to apply them mechanically. However, CCPs should be able to demonstrate that such differentiation is risk based and consistent with the objectives of fair and non-discriminatory access.

78. Furthermore, CCPs are also permitted to restrict access, where this is proportionate, justified based on risk considerations, alternatives are considered, and such restrictions are documented.
79. Therefore, ESMA does not share the view that the draft RTS are overly prescriptive, detailed or inconsistent with current practices, since flexibility, proportionality and calibration based on risk considerations are all concepts explicitly imbedded in the draft RTS.
80. With respect to concerns about duplication of prudential, liquidity, concentration or operational risk assessments already embedded in CCP risk management or in other regulatory frameworks (e.g. CRR/CRD, IFR/IFD, MiFID II, EMIR, DORA), ESMA emphasises that the draft RTS do not require CCPs to replicate assessments performed under other regimes or by competent authorities. Admission criteria should remain focused on CCP specific considerations, but CCPs must nevertheless be satisfied that an applicant's participation will not undermine the resilience of the clearing system, including the default waterfall.
81. ESMA agrees with respondents that transparency of admission criteria should not extend to the disclosure of confidential internal risk models or proprietary methodologies. The draft RTS are designed to require transparency at the level of principles, criteria and processes, rather than the publication of sensitive quantitative parameters or internal assessment methodologies.
82. The draft RTS require CCPs to publish their admission criteria, application procedures and timelines, the information to be provided by clearing members in the application process, as well as a summary of risk-based rationales for any additional requirements imposed on any specific membership category or any counterparty type including the conditions under which access may be restricted. This is to ensure that the admission criteria are fully transparent and non-discriminatory.
83. CCPs should also maintain (i) documentation regarding the risk rationale for restricting access in their admission criteria, alternatives considered and an assessment of the proportionality of the restriction; and (ii) documentation evidencing eligibility assessments performed, including decisions to accept, conditionally accept, or reject clearing members. However, for the avoidance of doubt, CCPs are not expected to publish such documentation.
84. ESMA therefore considers that the requirements set out in the draft RTS appropriately balance transparency, fair and non-discriminatory access and legal certainty for clearing members and the protection of commercially sensitive and risk critical information and the need to avoid unnecessary burdens for CCPs.

85. ESMA notes the feedback from clearing members highlighting the importance of equivalent prudential and risk standards across different categories of clearing members, in order to prevent regulatory arbitrage and preserve confidence in CCP membership. ESMA agrees that fairness in access must be compatible with the maintenance of a level playing field and robust risk standards. The draft RTS therefore seek to ensure that admission criteria adequately reflect the risks posed by different participant types as well as access models, while recognising that a one size fits all approach cannot work in this situation.
86. ESMA also takes note of the concerns expressed by client/buy-side respondents regarding the potential impact of rigid admission criteria on smaller or more specialised firms. ESMA agrees that admission criteria should take into account the size, complexity and scope of an entity's clearing activity. The draft RTS are intended to support proportionate access, including for participants active in limited asset classes, and does not mandate uniform requirements irrespective of risk profile.
87. ESMA has redrafted and restructured the relevant Article (Article 1 of the final draft RTS) and provided further explanations, clarification and specifications, in order to increase overall clarity and to provide for further flexibility and proportionality of the requirements and a more risk-sensitive approach. For the avoidance of doubt, ESMA would also like to clarify that the said Article applies in respect of both FC and NFC clearing members.

4.3 Sufficient Financial Resources

ESMA initial proposal

88. Article 37(1) of EMIR provides that the admission criteria that a CCP establishes shall ensure that clearing members have sufficient financial resources to meet their obligations arising from participation in a CCP.
89. ESMA proposed, in its CP, that a CCP should consider whether the clearing member possesses adequate financial resources to meet its obligations. In this context, ESMA clarified that it understood the relevant obligation to refer to the clearing member's capacity to meet settlement obligations, margin calls and default fund contributions in a timely manner. Accordingly, it was proposed that the CCP should consider the clearing member's financial capacity to fulfil margin requirements and default fund contributions, as well as the adequacy of the clearing member's available capital and liquid resources, for a range of scenarios causing increased and/or intraday margin calls, where applicable:
- a. During a market stress event, notably a period of high volatility;
 - b. Increase of the risks of the portfolios of the clearing member, due to an increase of activity, concentration, wrong way or liquidity risks;

- c. Increase of the individual risk of the clearing member, notably when this triggers additional margins;
- d. Result of the default management procedure, in accordance with Article 48 of EMIR, including participation of the clearing member to the auction of a defaulting clearing member's positions; and
- e. Participation of the clearing member to the recovery tools of the CCP.

90. In defining the admission criteria under the scenarios referred to above, ESMA proposed that the CCP should consider a range of relevant elements. In particular, the CCP should consider whether the clearing member has access to reliable credit, liquidity, and foreign exchange facilities that are commensurate with the scale and nature of its expected clearing activity. In this context, access to central bank liquidity facilities constitutes a key consideration.

91. ESMA also proposed that the CCP should consider whether the clearing member has sufficient capacity to access, in a timely manner, assets that meet the CCP's eligibility criteria for acceptable collateral.

92. In addition, ESMA considered that the creditworthiness of the clearing member constitutes another essential element of the admission criteria. Therefore, it was proposed that the assessment of creditworthiness should be based on information provided by the clearing member during a due diligence process, including audited financial statements, details on asset quality, loss-absorbing capacity, and the characteristics of its liabilities. This could be complemented by publicly available information, such as external credit ratings, share prices and credit default swap (CDS) spreads. However, in ESMA's view the credit risk assessment should not fully rely on external opinions.

93. Furthermore, where the clearing member may be required to absorb losses in its capacity as a clearing member—such as through the mutualisation of losses under the default waterfall, ESMA proposed that accordingly the clearing member's capacity to absorb losses should be given due consideration. Depending on the potential amounts that the clearing member might be contributing to the losses of the CCP through the waterfall, the CCP may consider whether higher capital may be required.

94. Moreover, where the clearing member forms part of a wider group, it was proposed that the CCP should also consider the reliability and availability of financial support from the group, insofar as such support would enhance the clearing member's capacity to meet its obligations. Additionally, the CCP should also consider the financial and operational dependence by the group on the clearing member, where this could negatively impact the clearing member's obligations towards the CCP.

Feedback from respondents

95. Respondents broadly agreed that admission criteria should ensure that clearing members are able to meet settlement obligations, margin calls and default fund contributions in a timely manner, including under stressed conditions.
96. Some respondents representing CCPs argued that several scenario-based elements proposed for admission criteria overlap materially with ongoing risk management tools, such as daily margining and, stress testing. They considered that requiring CCPs to perform forward-looking assessments at onboarding could create a quasi-prudential supervisory function for CCPs without clear risk-management benefits, particularly given the limited visibility CCPs have into members' activities outside the CCP. In their view, this task should remain with NCAs, while CCPs should be limited to perform high level creditworthiness checks. CCP respondents also highlighted practical limitations in verifying the continuing availability of group support and third-party facilities and stressed that access to central bank liquidity facilities should not operate as a binary admission condition.
97. Respondents representing clearing members/sell-side emphasised that all clearing members, including non-banks/NFCs, ultimately contribute to mutualised risk and should therefore meet robust liquidity and financial resilience expectations that deliver equivalent outcomes across participant types. They asked that CCPs be able to tailor criteria by product and membership type, including through portfolio limits, activity restrictions or calibrated additional requirements that are proportionate to expected exposures and default management obligations. One respondent cautioned against admission frameworks that replicate prudential supervision.
98. Some respondents representing clients/buy-side/NFCs supported a risk-sensitive approach that recognises that NFC clearing activity is often linked to hedging of commercial exposures and supported by underlying assets. These respondents therefore argued that the assessment should be proportionate, by considering the applicant's business model and the economic purpose of clearing activity, and they encouraged allowing alternative safeguards where they provide equivalent assurance of liquidity and creditworthiness under stress.

ESMA assessment of feedback

99. ESMA welcomes the feedback received in relation to clearing members' financial resources. While respondents broadly support the objective of ensuring that clearing members can meet settlement obligations, margin calls and default fund contributions under stressed conditions, several concerns were raised regarding proportionality, overlap with existing tools, and the respective roles of CCPs and competent authorities.

100. ESMA has carefully considered these comments, and is, however, of the view that several concerns reflect an overly narrow interpretation of, and/or insufficient clarity of the drafting of, the draft RTS (as presented in the CP). ESMA has therefore redrafted and restructured the relevant Article and provided further explanations, clarification and specifications, to increase overall clarity and to provide for further flexibility and proportionality of the requirements and a more risk-sensitive approach. The elements with regard to financial resources of FC clearing members are now set out in Article 2(1) of the draft RTS, together with elements concerning operational capacity of FC clearing members. For NFC clearing members, please see Section 5 below.
101. ESMA acknowledges concerns regarding a perceived blur between initial eligibility assessments and ongoing monitoring. While ESMA agrees that CCPs already use robust ongoing risk management tools, such as daily margining and stress testing, the draft RTS recognise that initial admission and continuous risk management while intrinsically linked also serve different purposes.
102. Relying solely on ongoing tools presupposes that vulnerabilities can be adequately identified and mitigated after admission. However, experience from past stress events has shown that weaknesses in liquidity arrangements or group support structures can materialise abruptly, leaving limited time for remediation once a clearing member is already active. Admission assessments therefore act as a first line of defence, reducing the likelihood that CCPs must rely on extraordinary measures or supervisory intervention at a later stage.
103. Admission criteria are inherently forward looking and ex-ante in nature; they aim to ensure that entities entering the clearing system are structurally capable of meeting their obligations across a range of plausible stress scenarios before risks are mutualised. Initial assessments necessarily require an evaluation of how a prospective participant would perform under stress, how it would interact with margining, default management, and operational frameworks, the nature/size of its expected clearing activity, and whether its risk profile can be adequately managed on an ongoing basis. This does not, however, imply continuous re-performance of onboarding checks, but rather ensures that admission decisions are grounded in realistic assumptions about future risk exposure.
104. However, ESMA would also like to recall that Article 37(2) of EMIR explicitly requires CCPs to ensure that the application of the admission criteria is met on an ongoing basis and to conduct, at least once a year, a comprehensive review of compliance with Article 37 of EMIR by its clearing members.
105. ESMA does not agree with the respondents that the draft RTS seek to transform CCPs into prudential supervisors. Rather, they recognise that CCPs are uniquely positioned to assess a clearing member's ability to meet obligations specific to the clearing context,

including default management responsibilities and intraday liquidity demands. The draft RTS focus narrowly on the risks that clearing members pose to the CCP and to other participants, rather than on their overall solvency or business sustainability. This role is consistent with CCPs' existing responsibilities under the regulatory framework and does not duplicate prudential supervision performed by competent authorities.

106. ESMA recognises that CCPs may have limited visibility into clearing members' activities outside the CCP and that verifying the continuing availability of group support or third-party facilities can be challenging. For this reason, the draft RTS do not require exhaustive or intrusive assessments, but rather reasonable, risk based due diligence proportionate to the exposures generated by clearing activity.
107. Moreover, the reliance on group support or third-party facilities as part of an admission assessment is not new. CCPs already take such arrangements into account when assessing creditworthiness and liquidity risk. The draft RTS simply clarify that where such arrangements are material to a clearing member's ability to meet its obligations towards the CCP, the CCP should have sufficient assurance that they are credible, documented and operationally reliable. It is, however, up to the CCP to decide how this should be evidenced.
108. Similarly, regarding access to central bank liquidity facilities, the draft RTS do not prescribe such access as a binary admission condition. ESMA is aware that not every single clearing member has, or is legally capable of having, access to central bank liquidity facilities. Instead, the draft RTS simply recognise that access to reliable liquidity sources, whether central bank or commercial, is a relevant factor in assessing resilience under stress, while preserving flexibility for CCPs to reflect different arrangements in this regard in their admission criteria.
109. The concerns raised by clearing members/sell-side and clients/buy-side/NFC respondents regarding proportionality and risk sensitivity are well understood and largely aligned with the intent of the draft RTS. In this context, ESMA wishes to reiterate that the draft RTS explicitly expect CCPs to tailor their admission criteria by membership category, product type and counterparty type, and the corresponding risk profile, including through portfolio limits, activity restrictions, calibrated additional requirements or other alternative safeguards. This flexibility ensures that equivalent outcomes can be achieved without imposing uniform or bank-centric requirements on all clearing members and without unduly restricting access.
110. At the same time, it is important to underline that all clearing members contribute to mutualised risk and may be required to participate in default management. As such, differences in business models or economic purpose do not obviate the need for a minimum level of liquidity and financial resilience under stress. The draft RTS seek to strike

a balance by allowing alternative safeguards where these provide equivalent assurance, while maintaining a consistent baseline that protects the integrity of the clearing system.

111. Overall, in ESMA's view, the draft RTS are designed to enhance the resilience of central clearing in a proportionate and risk sensitive manner. They complement, rather than duplicate, existing supervisory and risk management tools, respect the respective roles of CCPs and competent authorities, and provide sufficient flexibility to accommodate different membership types and business models. By strengthening ex-ante safeguards, the draft RTS reduce the likelihood that weaknesses emerge only after risks have already been mutualised, thereby supporting the stability and credibility of the clearing ecosystem as a whole.

4.4 Operational Capacity

ESMA initial proposal

112. Article 37(1) of EMIR provides that the admission criteria that a CCP establishes shall ensure that clearing members have sufficient operational capacity to meet the obligations arising from their participation. ESMA conducted a Peer Review in 2022 focusing on the due diligence of clearing members¹⁵ and subsequently published a Supervisory Briefing on CCP's monitoring of operational capacity of clearing members under Article 37(2) of EMIR¹⁶ ('ESMA Supervisory Briefing'). In the aforementioned work, ESMA concluded that the CCP's membership criteria often include that clearing members are required to (i) have in place adequate IT systems, (ii) have access to relevant payment services and systems, (iii) possess the necessary resources and expertise to use the clearing services, and (iv) have in place adequate operational risk management and business continuity tools. ESMA therefore proposed that CCPs should consider these elements when establishing their admission criteria.

113. When considering whether the clearing member has in place adequate IT systems, ESMA proposed that the CCP should consider the technical capabilities of the clearing member. This includes the ability to appropriately connect to the CCP's systems, as well as the clearing member's ability to interact effectively with the CCP's communication platforms. Furthermore, the CCP should consider whether the clearing member has sufficient capacity to notify the CCP in a timely manner of any changes to its IT systems that may affect its operational performance.

¹⁵ [ESMA91-1505572268-3108 - 2022 CCP Peer Review on Due diligence of clearing members](#)

¹⁶ [ESMA91-1505572268-3611 - Supervisory Briefing on CCP's Ongoing Monitoring of Operational Capacity of Clearing Members](#)

114. In line with the ESMA Supervisory Briefing, when considering whether the clearing member has access to the settlement and payment systems and services necessary to perform its clearing functions, ESMA proposed that the CCP should consider whether the clearing member has access to relevant central bank liquidity facilities and/or commercial bank accounts, central securities depository (CSD) accounts or other settlement and payment systems. CCPs should also consider the effectiveness of the clearing member's back-up commercial bank accounts arrangements, as well as whether they are properly tested at least on an annual basis.
115. When considering whether the clearing member possesses the necessary resources and expertise to use the clearing services of the CCP, it was proposed that the CCP should consider the clearing member's staff's/representatives' knowledge and understanding of the CCP's rules and procedures, as well their ability to engage effectively with the CCP on an ongoing basis, any professional standards imposed on the clearing member's staff, and whether comprehensive training is provided to the clearing members' staff on the system and technical functioning of the relevant clearing activities. This includes interactions during due diligence processes and in case of incident management, or any other events that may affect the clearing member's ability to meet its obligations.
116. When considering whether the clearing member has appropriate operational risk management and business continuity arrangements in place, ESMA proposed that the CCP should consider the clearing member's relevant policies and procedures. The CCP should also consider whether the clearing member has sufficient capacity to promptly resolve incidents that could impair its ability to meet its obligations.
117. Furthermore, it was proposed that, where applicable, the CCP should consider whether the clearing member has capacity to perform physical settlement of the cleared transactions. The clearing members should have access to the accounts and to systems needed to ensure they can perform physical settlement of cleared securities transactions. In case of commodity derivatives, clearing members must likewise have capacity to deliver the underlying goods at maturity, typically by providing proof of availability, location, and quality through recognised storage or delivery arrangements.
118. Moreover, where the clearing member relies on third-party service providers (such as settlement agents, paying agents or IT service providers) to ensure it can fulfil its obligations towards the CCP, ESMA proposed that the CCP should consider whether these arrangements are robust under the scenarios referred to in the previous section.
119. Finally, Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector (DORA) sets out requirements in relation to digital operational resilience. Therefore, when evaluating ICT resilience and capacity of a clearing member, it was proposed that the CCP should

consider, where applicable, whether the clearing member complies with DORA in accordance with Article 2(1) of that Regulation. For the avoidance of doubt, where the clearing member is not subject to DORA, this should not automatically mean that the CCP can, in its admission criteria, automatically disqualify the entity from becoming a clearing member to the CCP.

Feedback from respondents

120. Respondents representing CCPs expressed concern that several provisions could place CCPs in the position of auditing clearing members' IT and business continuity arrangements (some of which would duplicate compliance assessment to DORA) and be involved in the clearing members' IT change management. Some emphasised that such responsibilities are supervisory in nature and operationally unworkable at scale. They favoured approaches based on due-diligence attestations, connectivity and operational testing (including use of simulation environments), and proportionate, sample-based reviews, combined with clear notification obligations for material changes that could affect operational performance.
121. Respondents representing clearing members/sell-side generally supported the core operational elements but did not advocate for CCPs to assume a supervisory enforcement role, notably where there are existing regulatory frameworks, such as DORA. They argued that, where clearing members are already subject to DORA, CCPs should be able to rely on that framework, while for other entities, CCPs should assess whether equivalent outcomes are achieved. Few respondents also requested that the RTS avoid overly restrictive wording in relation to physical settlement evidence in commodities markets and allow CCPs to specify acceptable proofs consistent with existing market practice.
122. Respondents representing clients/buy-side/NFCs aligned with CCPs in opposing duplicative operational checks in cases where there is an existing regulatory framework. One respondent supported strengthening operational capacity expectations but advocated that assessments should be outcomes-based and dynamic, including evidence of operational resilience metrics and continuous testing, and should consider the role of outsourced service providers. Another respondent emphasised proportionality, noting that operational requirements should reflect the scope of clearing activity and permissions (for example, proprietary clearing versus client clearing).

ESMA assessment of feedback

123. ESMA has carefully considered the feedback provided by respondents in relation to clearing members' operational capacity. While there is broad alignment across stakeholder groups on the importance of avoiding unnecessary duplication and ensuring proportionality, several aspects of the feedback have led ESMA to believe that the draft

RTS (as presented in the CP) were not clear enough resulting in misunderstandings regarding the intent, scope, and practical application of the proposed provisions. ESMA has therefore redrafted and restructured the relevant Article and provided further explanations, clarification and specifications, to increase overall clarity and to provide for further flexibility and proportionality of the requirements and a more risk-sensitive approach. The elements with regard to operational capacity of FC clearing members are now set out in Article 2(1) of the draft RTS, together with elements concerning financial resources of FC clearing members. For NFC clearing members, please see Section 5 below.

124. Respondents expressed concerns that certain provisions could place CCPs in a position akin to auditing clearing members' IT and business continuity arrangements or overseeing IT change management, potentially duplicating assessments conducted under existing frameworks such as DORA.
125. ESMA wishes to restate that the draft RTS are not intended to confer supervisory or enforcement responsibilities on CCPs, nor do they prescribe intrusive, member by member audits. Rather, they are designed to ensure that CCPs can satisfy themselves, on a proportionate and risk-based basis, that clearing members are operationally capable of meeting their obligations to the CCP and do not pose undue operational risk to the clearing system.
126. The draft RTS deliberately allow flexibility in how CCPs meet these requirements. Approaches cited by respondents, such as due diligence attestations, operational and connectivity testing (including simulations), sample-based reviews, and notification of material changes, are fully consistent with the draft RTS and are explicitly contemplated by their outcomes-based nature.
127. Respondents emphasised that CCPs should not be required to assume a supervisory enforcement role where clearing members are already subject to comprehensive regulatory regimes, notably DORA. ESMA believes that this principle is already embedded in the draft RTS. The framework does not require CCPs to reassess compliance, by clearing members, with DORA as such, nor to duplicate regulatory oversight. Instead, where clearing members are subject to DORA or equivalent regimes, CCPs can take this into account when forming their assessment of operational capacity. The RTS intentionally focus on outcomes relevant to the clearing relationship, not on formal regulatory compliance checks.
128. In this context, however, ESMA also wishes to recall that DORA only concerns ICT matters, while the requirements regarding operational capacity are broader.

129. Regarding comments on physical settlement evidence, the draft RTS do not seek to depart from established market practices. The intention is not to impose overly restrictive evidentiary requirements, but to ensure that CCPs retain sufficient assurance over settlement processes. The revised draft RTS make it clear that CCPs are allowed to define acceptable proofs in line with existing market conventions, provided the underlying operational risk is adequately addressed.

4.5 Other Considerations and Risks / Additional Elements

ESMA initial proposal

130. Other risks and considerations may also affect clearing members' financial and operational capacity and ability to meet the obligations arising from their participation in the CCP. Therefore, in order to achieve the objectives mentioned in the above sections concerning financial resources and operational capacity, and to ensure that risks posed to the CCP by its clearing members are identified and appropriately managed, ESMA proposed in its CP that the CCP should also consider other elements as described in this section.

131. In particular, it was proposed that a CCP should consider whether a clearing member holds a relevant authorisation or licence and is, consequently, subject to capital and prudential regulation and supervision, where applicable. Where clearing members are established outside the EU, the CCP should consider whether such clearing members are subject to comparable requirements, e.g. the CCP can consider whether equivalence has been granted under the relevant EU law or can obtain a legal opinion on the requirements applicable in that jurisdiction. For the avoidance of doubt, where the clearing member does not possess a financial services licence or is not subject to capital and prudential regulation and supervision, this should not mean that the CCP can, in its admission criteria, automatically disqualify the entity from becoming a clearing member to the CCP.

132. ESMA also proposed that the CCP should also consider any past or ongoing administrative, civil or criminal proceedings, sanctions or measures concerning a clearing member, other entities within the same group, or its key personnel, that may affect the clearing member's ability or capacity to fulfil its obligations towards the CCP, e.g. relating to financial services law, commercial law, anti-money laundering and counter-terrorist financing law, fraud or professional liability. Additionally, the CCP should consider any recent history of insolvency, restructuring, or comparable financial distress concerning a clearing member or other entities within the same group, that may affect the clearing member's ability or capacity to fulfil its obligations towards the CCP.

133. In addition, it was proposed that the CCP should consider the clearing member's risk management framework and internal risk control systems, ensuring that all risks associated

with the clearing member's clearing activities are adequately identified, monitored, and managed to prevent unmitigated risk exposure for the CCP and other clearing members of the CCP.

134. Furthermore, ESMA proposed that the CCP's rules should reflect all relevant legal obligations concerning clearing members stemming from their participation in the CCP (e.g. under EMIR and CCPRRR), including, where relevant, as regards the provision of client clearing services by the clearing members and as regards sponsored models.

135. In this context, the CCP should consider the legal capacity and ability of the clearing member to fulfil the obligations; verify the enforceability of such obligations and of its own rules (*vis-à-vis* the clearing member); and verify absence of any conflict of laws (e.g. in relation to insolvency law), in particular in respect of clearing members established outside the EU. Such assessment should include, for example, the clearing member's legal ability to participate in the default management process; to contribute to the default waterfall; to participate in recovery and resolution tools; to ensure appropriate segregation of client accounts/assets/positions and protection of such accounts/assets/positions in case of insolvency of the clearing member; to provide to the CCP the information required under Article 37(3) of EMIR (where applicable); the CCP's ability to perform e.g. audits and monitoring of the clearing member; and, in case of the clearing member's default, the CCP's ability to liquidate the proprietary positions of the clearing member, to transfer or liquidate the clients' positions of that clearing member as required under Article 48(4) of EMIR (where applicable), to ensure enforceability of collateral and netting rights; and verification that the contracts are legal, valid and binding on the clearing member. This could be done e.g. via a legal opinion by a law firm with expertise in the clearing member's jurisdiction's law. The CCP may further consider including in its clearing agreement with the clearing member provisions on subjecting the clearing member to the CCP's rules and submission by the clearing member to the jurisdiction of the CCP's choice in case of disputes.

136. Moreover, it was proposed that the CCP should also duly consider the existence and applicability of any resolution framework governing the clearing member, in particular where such a framework includes provisions aimed at ensuring the continued fulfilment of the clearing member's obligations towards the CCP.

137. In addition, ESMA proposed that the CCP should also consider other risks posed to it by its clearing members, e.g. risks related to anti-money laundering and counter-terrorist financing and whether the clearing member has sufficient anti-money laundering procedures in place.

Feedback from respondents

138. Respondents representing CCPs generally agreed that legal, compliance and broader risk considerations are relevant but argued that the draft RTS go beyond what is feasible or appropriate for CCP due diligence.
139. They also cautioned against requirements that could be interpreted as obliging CCPs to map and continuously monitor the entirety of a clearing member's domestic legal and regulatory framework or to conduct extensive assessments of clearing members' internal risk control frameworks, arguing that such an approach would be disproportionate and could shift supervisory responsibilities onto CCPs.
140. These respondents stressed that CCPs should focus on enforceability of their own rules and default management processes (e.g. netting, collateral enforceability, portability mechanisms and conflict-of-law outcomes), typically supported by targeted legal opinions, rather than assessing a clearing member's entire regulatory, legal or risk management framework.
141. In addition, respondents representing CCPs requested clarity that reliance on formal declarations, legal opinions and supervisory information is acceptable and that assessments should be risk-based and proportionate.
142. Respondents representing clearing members/sell-side broadly supported strong risk management and governance standards, particularly for non-bank/NFC clearing members offering client clearing. They emphasised that clearing members that offer client clearing should be subject to prudential and risk management standards equivalent to banks, especially where they trade on own account in addition to providing client clearing services.
143. In addition, some respondents representing clearing members/sell-side agreed that authorisation and prudential supervision can be relevant indicators, but emphasised that CCPs should be able to rely on existing supervisory regimes for regulated financial institutions and should not be expected to review or audit proprietary internal policies already subject to supervision and audit. These respondents also highlighted confidentiality constraints, in particular for third-country entities, and called for proportionate information requests.
144. Respondents representing clients/buy-side/NFCs generally supported including broader risk considerations such as AML/CFT and governance.
145. In addition, while these respondents supported verification of authorisation and legal capacity, they argued that CCPs should not be required to duplicate supervisory oversight. Instead, they emphasised that CCPs should focus on whether a clearing member can comply with the CCP rulebook rather than mapping broader regulatory regimes, especially

for NFCs or third-country entities. They also cautioned against blanket exclusion of entities solely due to the absence of prudential licensing where robust internal compliance exists, and argued instead for a risk-based approach.

ESMA assessment of feedback

146. ESMA acknowledges the concerns raised by the respondents to the consultation. ESMA has carefully considered these comments, but believes that the draft RTS do not impose disproportionate or impracticable obligations on CCPs, nor transfer supervisory responsibilities away from competent authorities. Instead, ESMA is of the view that several concerns reflect an overly narrow interpretation of, and/or insufficient clarity of the drafting of, the draft RTS (as presented in the CP). ESMA has therefore redrafted and restructured the relevant Article and provided further explanations, clarification and specifications, to increase overall clarity and to provide for further flexibility and proportionality of the requirements and a more risk-sensitive approach. These additional elements, i.e. elements with regard to other risks (e.g. legal risks), in respect of FC clearing members are now set out in Article 2(2) of the draft RTS. For NFC clearing members, please see Section 5 below.
147. While some respondents expressed concern that the draft RTS could be interpreted as requiring comprehensive mapping and continuous monitoring of a clearing member's entire domestic legal, regulatory or risk management framework, this is not the intention of the draft RTS. The requirements are designed to ensure that CCPs have a sufficiently robust understanding of those legal, compliance and risk factors that are material to the safe operation of the clearing relationship and to the CCP's ability to manage a member default and enforce its rulebook, and as such do not require continuous and/or comprehensive mapping and/or monitoring of the clearing member's entire framework.
148. For instance, the draft RTS seek to ensure that CCPs can reasonably satisfy themselves that clearing members are able, in practice and on an ongoing basis, to comply with the CCP's rulebook, including default management, collateral, netting and portability arrangements. This is consistent with existing international standards, which require CCPs to understand and manage risks arising from their participants without duplicating supervisory functions. Furthermore, ESMA believes that this is also consistent with current market practices.
149. The draft RTS do not detract from the central importance of legal enforceability of CCP rules and default management processes. On the contrary, when it comes to legal risks, the enforceability of the CCP's rulebook is at the forefront, with focus on legal certainty, including netting enforceability, collateral arrangements, conflict of law outcomes and portability mechanisms. Targeted legal opinions remain an appropriate and, in many cases, primary means of demonstrating enforceability and are consistent with current market

practices. The draft RTS do not mandate broader or open-ended legal mapping exercises beyond what is necessary to assess material risks to the CCP.

150. In addition, the draft RTS do not require CCPs to conduct supervisory style reviews or audits of clearing members' internal control or risk management frameworks. Competent authorities remain responsible for prudential supervision and ongoing oversight of regulated entities. Similarly, the draft RTS do not require CCPs to review clearing members' confidential or proprietary internal policies already subject to supervision and audit.

151. Respondents also requested clarity on permissible reliance mechanisms/methods of proof. ESMA wishes to clarify that the draft RTS allow CCPs to rely on a range of credible and proportionate sources of information and proof methods, including formal declarations, internal or external legal opinions, publicly available supervisory information and confirmations from competent authorities, where appropriate, all of which are consistent with current market practices and should not create additional burdens. CCPs are not expected to independently verify or replicate assessments already performed by supervisors.

152. ESMA is of the view that the views expressed by buy-side/client/NFC respondents are aligned with the core approach of the draft RTS. The draft RTS do not seek to impose blanket exclusions based solely on the absence of a particular prudential authorisation. Instead, it requires CCPs to apply a risk-based assessment focused on the clearing member's ability to meet its obligations under the CCP rulebook. This approach allows for appropriate consideration of alternative risk mitigants and robust internal compliance arrangements, while avoiding duplication of supervisory oversight. This is also consistent with addressing the concerns expressed by the sell-side/clearing member respondents. In other words, the draft RTS provide for comparable, yet proportionate, outcomes and safeguards regarding all clearing members, irrespective of their legal form and/or type of licence.

4.6 Clearing Members offering Clearing Services to Clients

ESMA initial proposal

153. Article 37(3) of EMIR provides that clearing members offering client clearing services shall have the necessary additional financial resources and operational capacity to perform this activity. In this context, ESMA proposed in its CP that CCPs should ensure that their admission criteria for clearing members that offer client clearing services, in addition to the considerations set out in the sections above, also duly reflect the incremental risk arising from the provision of client clearing services.

154. In establishing such admission criteria, it was proposed that CCPs should undertake a comprehensive assessment of the risks related to the clearing member's client clearing activity. This assessment should, inter alia, consider the relative significance of the client clearing activity in relation to the clearing member's overall clearing operations, as well as the clearing member's financial capacity to meet margin requirements in the event of client default.
155. In addition, ESMA proposed that CCPs should consider whether clearing members have implemented a robust risk management framework capable of effectively identifying, monitoring, and mitigating risks associated with client clearing.
156. In accordance with Article 37(3), the CCP's rules for clearing members shall allow it to gather relevant basic information to identify, monitor and manage relevant concentrations of risk relating to the provision of services to clients. In this context, ESMA proposed that CCPs should consider whether clearing members possess the operational capability to provide timely and accurate information enabling the CCP to identify the underlying clients associated with positions recorded in client accounts. ESMA argued that this would also facilitate the portability of client positions in case of the default of that clearing member.
157. As explained in the previous section, it was proposed that the CCP should also consider whether clearing members, in particular those that are established outside the EU, have legal ability to comply with the applicable legal requirements stemming from their participation in the CCP (e.g. under EMIR and CCPRRR) and with the CCP's rules, including as regards the provision of client clearing services by the clearing members, e.g. in relation to segregation and default procedures (Articles 39 and 48 of EMIR) or in relation to the provision of information to the CCP (Article 37(3) of EMIR); and verify the enforceability of its rules and absence of any conflict of laws in this regard.
158. Finally, ESMA suggested that the CCP's rules should reflect that, as required by EMIR, a clearing member bears the full responsibility for discharging all the financial obligations vis-à-vis the CCP arising from that participation (e.g. margin requirements and default fund contributions), including in relation to its clients' positions and activity (please also see the previous section above).

Feedback from respondents

159. Respondents representing CCPs generally questioned whether a separate, standalone set of criteria for client clearing is necessary, noting that the relative importance of client clearing versus proprietary clearing can change over time and is already captured through ongoing risk management tools such as margining, capital frameworks, and member-specific add-ons.

160. Respondents representing CCPs also expressed concerns that the draft RTS imply that CCPs should have full visibility of all clients across all models, which they argued is operationally infeasible and inconsistent with omnibus account structures. They considered that individual client identification is relevant for individually segregated accounts, whereas portability of net omnibus accounts operates at an aggregated level. They, therefore, called for model neutrality and flexibility across different client clearing arrangements.
161. Respondents representing clearing members/sell-side strongly supported additional safeguards for client clearing, particularly for non-bank/NFC clearing members. They argued that minimum capital buffers and robust margining are essential to mitigate heightened risks posed by non-bank/NFC clearing members that provide client clearing services and to protect the clearing ecosystem.
162. However, these respondents recommended that CCP assessments focus on residual CCP-specific elements not already addressed under existing prudential frameworks. They highlighted in particular the timeliness and accuracy of client-level data and processes relevant to intraday margining and portability, as well as the management of CCP-specific concentration risks.
163. Respondents representing clearing members/sell-side also stressed that clearing members remain responsible for meeting obligations vis-à-vis the CCP and that the draft RTS should not transfer that responsibility to CCPs.
164. Respondents representing clients/buy-side/NFCs generally recognised that client clearing introduces additional layers of operational and risk-management complexity and supported minimum expectations around segregation and portability.
165. However, these respondents also generally argued that risks from client clearing are already dynamically managed and cautioned against prescriptive additional criteria. In this context, they emphasised proportionality and the need to avoid requirements that would restrict access without demonstrable risk reduction.
166. In addition, respondents representing clients/buy-side/NFCs cautioned that requirements implying full visibility of all underlying clients may not be feasible in omnibus structures and advocated a model-neutral approach that allows CCPs to calibrate expectations in line with their existing account structures and default management plans.

ESMA assessment of feedback

167. ESMA takes note of the feedback and concerns received in relation to clearing members that provide client clearing services. ESMA has carefully considered these comments, but believes that several concerns reflect an overly narrow interpretation of,

and/or insufficient clarity of the drafting of, the draft RTS (as presented in the CP). ESMA has therefore redrafted and restructured the relevant provisions and provided further explanations, clarification and specifications, in order to increase overall clarity and to provide for further flexibility and proportionality of the requirements and a more risk-sensitive approach. In particular, as requested by the respondents to the consultation, ESMA has removed the separate Article on clearing members that provide client clearing services from the draft RTS and integrated the relevant elements under the Article on FC clearing members – Article 2 of the draft RTS. For NFC clearing members, please see below Section 5.

168. ESMA believes that, while the relative significance of client clearing and proprietary clearing may evolve over time, client clearing introduces distinct structural, legal, and operational risks that are not fully captured by general risk management tools alone. Margining frameworks, capital requirements, and member specific add-ons are primarily calibrated to cover credit exposure and default risk at clearing member level; they do not, in isolation, ensure the effective segregation, portability, and continuity of client positions in stress or default scenarios.
169. Article 37(3) of EMIR explicitly recognises that client clearing adds operational and risk management complexity and provides that clearing members that clear transactions on behalf of their clients are required to have the necessary additional financial resources and operational capacity to perform this activity. ESMA is, therefore, of the view that additional and/or specific elements regarding client clearing are warranted to ensure that these specific risks are consistently and transparently addressed. Furthermore, this approach is consistent with current market practices, i.e. CCPs already generally have stricter admission requirements for general clearing members (i.e. clearing members that also clear on behalf of clients).
170. At the same time, the draft RTS are designed to be principles based and proportionate, avoiding prescriptive requirements where risks are already adequately mitigated through other arrangements.
171. In addition, the draft RTS do not require CCPs to have full, granular visibility of all underlying clients across all clearing models. The objective is to ensure that CCPs have access to information that is necessary and sufficient to support effective risk management, intraday margining (where applicable), credible portability arrangements in a default and EMIR legal requirements.
172. Accordingly, the draft RTS are model neutral and explicitly allow CCPs to align their arrangements with their existing account structures, legal frameworks, and default management processes. It does not mandate a single clearing model nor undermine the viability of omnibus account structures.

173. In addition, and consistent with respondents' feedback, the elements set out in the draft RTS are explicitly focused on residual, CCP specific risks. In particular, the draft RTS place emphasis on: the clearing member's ability to meet the CCP's margin requirements even in the case of default of its client(s); the clearing member's ability to manage the risks associated with its client clearing activities; the clearing member's capacity to comply with the CCP's rulebook and the CCP's ability to enforce its rulebook vis-à-vis that clearing member (e.g. in relation to portability arrangements); and the identification and management of CCP specific concentration risks arising from client clearing activities as required by Article 37(3) of EMIR. This targeted approach avoids unnecessary duplication while ensuring that CCPs can rely on clearing members' client clearing arrangements in stressed conditions.
174. ESMA does not believe that the draft RTS transfer responsibility from clearing members to the CCP. The draft RTS are very clear that clearing members remain fully responsible for their contractual and regulatory obligations vis à vis the CCP (including in respect of their client clearing activities), including margin payments, default fund contributions, and operational compliance.
175. The role of the CCP under the draft RTS is limited to assessing whether clearing members' client clearing arrangements meet minimum expectations necessary for the CCP to manage its own risks and to execute default management and portability processes effectively. This assessment function is consistent with the CCP's existing risk management responsibilities and does not alter the fundamental allocation of liability or accountability.
176. Furthermore, ESMA is also of the view that the draft RTS address the concerns expressed by the sell-side/clearing member respondents. In other words, the draft RTS provide for comparable, yet proportionate, outcomes and safeguards regarding all clearing members that provide client clearing services, irrespective of their legal form and/or type of licence.
177. Overall, ESMA believes that the draft RTS strike a balanced approach: they recognise the diversity of client clearing models and existing risk management frameworks, while establishing clear, proportionate expectations to address CCP specific risks that are linked to clearing members that provide client clearing services.

4.7 Sponsored Models

ESMA initial proposal

178. In recent years, CCPs have introduced sponsored models, thereby enabling a broader range of counterparties, including buy-side institutions, to obtain direct access to clearing

services. ESMA explained in its CP that it understands sponsored models as models whereby a 'clearing member in sponsored model'/'sponsored clearing member'¹⁷, while remaining fully responsible for discharging all the financial obligations towards the CCP arising from that participation, uses the services of another entity ('sponsor'¹⁸) to perform certain of these responsibilities. These responsibilities may include, inter alia, contributions to the default fund, participation in recovery tools, and involvement in default management procedures. At present, ESMA is aware that such models are available at two EU CCPs and nearly solely for centrally cleared repurchase agreement (repo) transactions.

179. When defining their admission criteria for clearing members (in sponsored models), ESMA proposed that CCPs should, in addition to the considerations set out in the sections above, also duly consider the specific risks associated with sponsored models when establishing the admission criteria for clearing members using this model.

180. In order to meet the requirement for transparent and objective admission criteria in accordance with Article 37(1) of EMIR, and in line with Article 5(2) of RTS 153/2013 for clear and comprehensive rules, ESMA also proposed that the CCP should consider appropriate drafting of its rules to ensure they are clear on the delineation of responsibilities between the clearing member (in sponsored models) and the sponsor, reflecting that the clearing member (in sponsored models) bears the full responsibility for discharging all the financial obligations vis-à-vis the CCP arising from that participation (e.g. margin requirements and default fund contributions), including in case of failure or default of the sponsor. The CCP should also consider appropriate drafting to ensure that its rules clearly state that netting between the positions of different clearing members (in sponsored models) or between the positions of a clearing member (in sponsored models) and its sponsor should not be allowed. Please also see the relevant section above.

181. In particular, it was proposed that CCPs should consider whether clearing members (using a sponsored model) have established robust arrangements with their sponsors, with delineated responsibilities, ensuring that such arrangements remain effective at all times, including under stressed market conditions and in the event of default of another clearing member. CCPs should also consider whether such arrangements do not contradict or alter the delineation of responsibilities set out in CCP's rules and the clearing member's (in sponsored models) full responsibility for discharging all the financial obligations towards the CCP arising from that participation.

¹⁷ The commercial designation of such clearing members may differ and can include terms such as 'sponsored member' or 'ISA Direct clearing member'.

¹⁸ The commercial term for the entities offering such services may differ and can include terms such as 'agent member' or 'clearing agent'.

182. Moreover, ESMA proposed that CCPs should consider whether clearing members (in sponsored models) have contingency measures in place, such as back-up sponsorship arrangements or the capacity to independently fulfil all relevant obligations in the absence of or in case of default of the sponsor. Such contingency solutions and arrangements should be subject to testing by the CCP.
183. Finally, given the critical role played by sponsors in the functioning of these models, it was proposed that CCPs should conduct a comprehensive assessment of the associated risks and establish appropriate admission criteria specific for sponsors, ensuring that sponsors have sufficient financial resources and operational capability to meet their obligations under the sponsored model framework. The CCP should consider whether the admission criteria established for sponsors are comparable to those for clearing members that provide client clearing services. The CCP should also consider whether the sponsor is also already a clearing member of the CCP.

Feedback from respondents

184. Respondents representing CCPs generally expressed their support for sponsored access models as a means to broaden access to central clearing. However, these respondents argued that CCPs should focus only on contractual elements directly relevant to CCP risk exposure and that contingency arrangements should remain at the discretion of sponsors and sponsored clearing members. In particular, they cautioned against mandating backup sponsorship arrangements and argued that contingency solutions may include other options, such as orderly liquidation where appropriate.
185. Respondents representing CCPs also noted that CCPs are typically not party to bilateral commercial agreements between sponsor and sponsored clearing member and warned against intrusive review of those contracts beyond elements directly relevant to the CCP's risk exposure.
186. Respondents representing clearing members/sell-side generally agreed with the draft RTS in relation to sponsored models, but recommended explicit contingency planning for sponsor default, including how margining, communications and potential porting would continue. In addition, they would favour clearer allocation of responsibilities between sponsors and sponsored clearing members.
187. Furthermore, respondents representing clearing members/sell-side emphasised that the combined sponsor–sponsored clearing member arrangement should deliver outcomes equivalent to those expected of a clearing member. Moreover, these respondents argued that transparency tools supporting liquidity planning are particularly important for sponsored clearing members.

188. Respondents representing clients/buy-side/NFCs generally argued for flexibility in sponsored models and opposed mandatory back-up sponsor requirements. They argue that sponsored clearing members should retain autonomy in determining contingency strategies, consistent with EMIR's treatment of client arrangements.

189. Some respondents representing clients/buy-side/NFCs also supported the development of clear principles for sponsored access arrangements and emphasised the importance of unambiguous delineation of responsibilities between the sponsor and the sponsored clearing member.

190. In addition, they called for standardised documentation and for safeguards demonstrating that sponsorship arrangements remain effective under stress.

ESMA assessment of feedback

191. ESMA takes note of the feedback received in relation to sponsored models. The feedback received reflects a broad consensus on the value of sponsored access models in expanding access to central clearing. However, several respondents raise concerns regarding the appropriate scope of CCP involvement, contingency planning, and contractual oversight. While these concerns are noted, ESMA is of the view that some of them stem from misunderstandings and/or unclear drafting of the draft RTS (as presented in the CP). ESMA has provided additional clarifications in this Final Report and draft RTS and believes that they strike a necessary and proportionate balance between flexibility and the need to safeguard CCP resilience, market integrity, and continuity of clearing.

192. The elements with regard to sponsored models, in relation to both sponsored clearing members and sponsors, are set out in Article 4 of the draft RTS. For the avoidance of doubt, ESMA would also like to clarify that the said Article applies to both FCs and NFCs.

193. ESMA fully agrees that CCPs should primarily focus on elements directly relevant to their risk exposure. ESMA therefore finds it important to clarify that the draft RTS do not seek to intrude into purely commercial aspects of bilateral arrangements between sponsors and sponsored clearing members. Instead, they require CCPs to have sufficient visibility over key contractual provisions insofar as they may materially affect the CCP's ability to manage risk, ensure default management, enforce its rulebook and maintain orderly clearing under stress.

194. Given that sponsored access structures inherently alter the traditional risk transmission chain, CCPs cannot rely solely on indirect assurances. Limited and targeted checks in relation to the arrangements between clearing members in sponsored models and their sponsors, restricted to provisions affecting default management, margining, termination rights, and continuity, are both justified and necessary to ensure that CCPs can meet their

obligations under EMIR. This approach does not amount to intrusive supervision of commercial contracts but rather reflects prudent risk governance.

195. Respondents from CCPs and buy-side participants also argue against mandating back-up sponsorship arrangements, emphasising flexibility and autonomy. ESMA finds it important to clarify that the draft RTS do not impose a single prescribed contingency solution, nor do they require a standing back-up sponsor in all cases. Instead, they establish an expectation that CCPs should consider whether credible, pre-defined contingency arrangements exist and are operationally viable.
196. Experience from past market stress events demonstrates that the absence of ex-ante contingency planning can exacerbate disruption and impede orderly resolution. Articulated and documented contingency strategies enhance preparedness without removing discretion as to the specific solution adopted.
197. Feedback from clearing members/sell-side appropriately highlights the need for clear allocation of responsibilities and for sponsored arrangements to deliver outcomes equivalent to those expected of a clearing member. The draft RTS explicitly support this objective. Sponsored access should not result in a dilution of risk management standards, nor should it create ambiguity as to who is responsible for margin provision, default management actions, or communications in a stress scenario. Clear delineation of responsibilities is therefore a necessary condition for functional equivalence.
198. Importantly, the draft RTS focus on the performance of sponsored access arrangements under stress. Demonstrating that arrangements remain effective in adverse scenarios is essential to ensure that sponsored access contributes to, rather than detracts from, the robustness of central clearing.
199. ESMA wishes to reiterate that the draft RTS do not seek to constrain innovation or impose rigid structures on sponsored access models. Rather, they establish minimum expectations to ensure that such models operate safely, transparently, and in a manner consistent with EMIR's core principles. The requirements relating to contingency planning, responsibility allocation, and limited contractual checks are proportionate responses to the specific risks introduced by sponsored access and are essential to maintaining confidence in central clearing during periods of stress.

5 RTS on the elements to be considered when a CCP assesses the ability of NFCs acting as clearing members to meet margin requirements and default fund contributions

5.1 Introduction

200. Article 37(1a) of EMIR foresees that CCPs should accept NFCs as clearing members only if they are able to demonstrate how they intend to fulfil the margin requirements and default fund contributions even in stressed market conditions.

5.2 Access to reliable liquidity

ESMA initial proposal

201. ESMA initial proposal was to apply the same elements to admission criteria that can be generally addressed to all entities, irrespectively of whether they are FCs or NFCs. However, recognising that in some instances some admission criteria, which would have been established according to the elements set out by ESMA, might not be relevant for, or applicable to NFC, ESMA suggested the possibility that CCP use alternative arrangements that can efficiently mitigate any risks posed by the NFCs, ensuring that the NFC are able to still participate as a clearing member in a prudentially sound. Indeed, some NFCs might have sufficient resources (not only financial but also staff and experience in risk management) and might be sufficiently sophisticated to be able to participate as clearing members in a prudentially sound manner. This should not mean however that any NFC could participate as clearing member in a CCP, especially when the conclusion of the assessment by the CCP does not provide sufficient assurance that the NFC will be able to meet margin requirements and default fund contributions even in stressed market conditions.

202. One of the elements which might represent a difficulty in the case of NFCs is the access to reliable liquidity and in particular to a central bank liquidity facility. In such situations ESMA proposal was to allow the CCP to based its admission criteria based on different elements, allowing for:

- a. Higher level of or even full collateralisation;

- b. Limitation on the volumes that the NFC can clear for its own account as well as for other entities of the group it belongs to (without that limit representing a *de facto exclusion from participation*);
- c. Limitation on the type of product or the segment in which the NFCs might act as clearing members; and
- d. Offering specific models adapted to the profile of these clearing members, such as the sponsored model.

Feedback from respondents

203. Some respondents highlighted that safeguards for liquidity are necessary across all member types and that proportionality is essential but must not compromise CCP resilience and CCPs need flexibility to tailor admission and risk models. However, while NFCs favoured lighter and proportionate requirements, clearing members preferred stricter equivalence to supervised institutions.

204. CCPs broadly emphasised the need for flexible admission models tailored by product type, membership category and risk profile. According to these respondents it is important that CCP have the ability to apply alternative criteria for NFCs, avoiding a rigid obligation to comply with all elements in Articles 1 to 6 of the draft RTS submitted to consultation. CCPs have also suggested changes to Article 7 to clarify that alternative elements are substitutes, not additions, to FC related requirements.

205. Clearing members and other respondents have also supported proportionality in the application of admission criteria. However, they argue that safeguards must remain functionally equivalent to those required of supervised institutions. For these respondents, proportionality must not lower resilience, as any default would be mutualised across CCPs.

206. NFCs responding to the consultation have also supported proportionality and warned that combining FC requirements with additional NFC specific requirements could create de facto exclusion for NFCs. This exclusion would increase concentration of risks among a few credit institutions.

207. In relation to alternatives to reliable liquidity, clearing members stressed that this is fundamental especially under stress. Therefore, they suggested stringent requirements for NFCs to avoid increased mutualised risk. Clearing members insisted that alternative arrangements for NFCs must still be equivalent in outcome to supervised entities.

208. CCPs generally supported a flexible set of liquidity safeguards allowing them to tailor requirements by entity type.

209. One respondent supported liquidity stress tests at both participant and CCP levels and recommended defining acceptable liquidity commitments and testing liquidity buffers.
210. NFCs supported liquidity safeguards in principle but warn that rigid standards may become barriers to access clearing. Furthermore, they highlighted that during the energy crisis, NFCs did not default, and liquidity was managed despite extreme margins.
211. In relation to risk management by NFCs, CCPs supported allowing NFCs as clearing members, provided adjusted risk controls are permitted. They stressed the importance of alternative due diligence approaches for NFCs lacking bank level regulatory data. Clearing members insisted on the need to achieve equivalent resilience result to that obtained through requirements applied to FC. NFCs reminded that they use clearing to hedge genuine commercial exposures, not to intermediate for clients, which affects their risk profile.
212. CCPs further emphasised that Article 7 should unambiguously allow CCPs to require: full collateralisation, restricted product eligibility, trading limits and enhanced reporting for NFCs. NFC encouraged broader collateral acceptance for NFCs (e.g., uncollateralised bank guarantees).
213. Finally, CCPs suggested that Article 7 is redrafted to avoid interpreting NFC measures as additional, potentially creating cumulative burdens and asked for a clarification that the CCP membership ban in Article 37(1) of EMIR (which indicates that “CCPs or clearing houses cannot be clearing members, directly or indirectly, of the CCP”) does not apply to the regulated activities of “cross-CCP” transactions between a CCP and a Capacity Allocation and Congestion Management central counterparty.

5.3 Absence of financial services authorisation/licence

ESMA initial proposal

214. Another element that could result in an admission criterion with which an NFC might not be able to comply is the requirement to have a relevant authorisation or licence and be subject to capital and prudential regulation and supervision. In this case, in order to avoid that such admission criterion automatically disqualifies an NFC from becoming member of a CCP, ESMA suggested that CCPs might consider other aspects of the NFCs to complement its assessment of whether the NFC participation can be assured in a prudentially sound manner. ESMA suggested that CCPs consider whether the NFC’s activity is regulated in the jurisdiction where the NFC is based, whether the NFC has any obligation to comply with any registration requirements or sectoral regulation.

Feedback from respondents

- 215.** Similarly to responses to question 7, across respondents, there is broad support for allowing CCPs to consider alternative elements when assessing NFCs not subject to prudential requirements. However, views diverge on how far flexibility should go. Some respondents emphasised systemic risk and the need for equivalent safeguards between FCs and NFCs, while others stress proportionality and the risk of de facto exclusion when applying to NFCs the same requirements applied to FCs.
- 216.** In relation to the recognition of sectoral regulatory frameworks, CCPs have strongly supported recognising existing sector-specific regimes (e.g., CACM, emissions trading, energy market oversight) as acceptable alternative supervisory frameworks, highlighting that this is something which is already done in particular in relation to wholesale energy markets. They stress however, that requiring CCPs to fully map all sectoral rules would be disproportionate, but these frameworks can still inform risk assessment. Their preference is hence to focus on the EU framework applicable to wholesale energy markets.
- 217.** Some stakeholders have suggested a number of alternative criteria that CCPs could use, when assessing the admission of a NFC. These include: demonstrated internal risk management frameworks proportionate to activity; third-party attestation of operational and financial soundness; documented governance, AML/CFT controls, stress-testing capability; proven ability to meet margin calls and satisfy CCP obligations. Furthermore, CCPs have stressed that they must be able to retain discretion to design risk-based membership criteria.
- 218.** Finally, several respondents warn against a “big bang” implementation, emphasising that CCPs and CMs need phased timelines to adjust systems, governance, legal arrangements, and risk models to new requirements resulting from this draft RTS.

5.4 ESMA assessment of feedback and proposal in relation to NFCs

- 219.** Having regard to the feedback received, ESMA sees that the proposal to apply to NFCs acting as clearing members the same elements that those foreseen for FC, with limited exceptions should be improved with a more tailored approach to NFCs. In particular, several stakeholders asked that criteria be better calibrated to NFCs so that the requirements do not represent a de facto exclusion for them. Other respondents have also requested that the outcome of the elements to be considered by CCPs when setting admission criteria for NFCs ensure that the system is not exposed to increased systemic risk. Many respondents have also required clarity and legal certainty, highlighting some confusion and uncertainty with respect to which specific elements to be considered for the

admission criteria for FCs would apply to NFCs. CCPs have also indicated that they already take into account the specificities of NFCs in certain clearing models.

220. Having regard to the feedback received and the mandate in EMIR Article 37 to consider, inter alia, the ability of NFC clearing members to meet margin requirements and default fund contributions, ESMA has decided to separate and tailor the elements that CCPs should be able to consider when setting their admission criteria for NFCs. With this in mind, an Article 3 dedicated to NFCs has been drafted. This new Article 3 sets out a coherent NFC specific elements that CCPs may consider when setting their admission criteria applicable to NFCs covering financial resources, operational capacity and other risk.
221. In line with EMIR Article 37, the NFC provision focuses on the ability to meet initial and variation margin (including intraday) and default fund contributions, including under stressed market conditions. For NFCs, the RTS emphasises required equity capital, liquidity buffers, and the capacity to mobilise funds rapidly rather than mandating access to reliable credit, liquidity or FX facilities as a standalone criterion (compared to Article 2(1)(a)). This preserves outcome equivalence (i.e., timely settlement of obligations) while avoiding a de facto bank type requirement that many NFCs might not need or can obtain on a permanent basis.
222. Furthermore, the RTS requires assessment of any relevant licence or authorisation related to participation in wholesale energy markets. This replaces the FC oriented requirement for a financial services authorisation (Article 2(2)(a)), which is not generally applicable to NFCs.
223. NFCs must also have access to relevant settlement and payment services and systems, including back up arrangements. For NFCs in commodity markets, the RTS recognises the operational specificities of physically settled contracts by requiring, where relevant, evidence of access to physical delivery infrastructures for commodity spot contracts or commodity underlying cleared by the CCP. This ensures that NFCs engaging in derivative contracts with physical delivery can meet their obligations without introducing unnecessary barriers for NFCs whose activity is financially settled.
224. Article 3(1)(d) requires sufficient operational capacity to meet clearing obligations, including appropriate staffing, governance, systems, and documented internal controls consistent with the CCP's rulebook. This provision captures the substance of several operational elements listed for FCs, without importing each item verbatim. This provides clarity and proportionality for NFCs while ensuring that CCPs assess the same core capabilities needed for safe clearing.
225. The new Article 3 also takes into account the fact that NFCs can only provide clearing services to other companies belonging to the same group. Where an NFC clearing member

provides clearing services to other NFCs in the same group, CCPs must assess the NFC clearing member's capacity to meet margin requirements in the event of the default of those affiliated NFCs. This requirement targets the concentration and contagion risks that may arise in group clearing models, while keeping the scope focused and proportionate (i.e., without importing the full FC "client clearing" framework).

226. This approach preserves consistency of risk standards across clearing members, while ensuring proportionality and clarity for NFCs.

227. NFCs often rely on specialist third party providers. By cross referring to Article 2(1)(o), the RTS ensures CCPs consider the arrangements and oversight of outsourced obligations, including resilience of critical vendors, without imposing FC specific design or approval requirements.

228. Contrary to FCs, in the case of NFCs the RTS requires assessment of any relevant licence or authorisation related to participation in wholesale energy markets. This replaces the FC oriented requirement for a financial services authorisation (Article 2(2)(a)), which is not generally applicable to NFCs. Considering the feedback received to the public consultation, ESMA has also limited the possible licences available to NFCs to the EU framework applicable to wholesale energy market, which seems to be the only relevant in the case at stake.

229. To avoid duplication and to ensure consistent outcomes, Article 3 also cross refers to selected elements in Article 2.

230. With this new drafting ESMA is responding to the feedback received to the public consultation resulting in:

- a. Enhanced clarity and legal certainty for NFCs by presenting a stand alone set of elements that CCPs may consider when they set admission criteria for NFCs, with explicit, limited cross references to FC elements where alignment is necessary.
- b. Preservation of a robust risk management by requiring NFCs to evidence the ability to meet margin and default fund obligations under stress, access to settlement/payment systems, and fit for purpose operational capabilities, including for commodity delivery where relevant.
- c. Support of access to central clearing as clearing members for credit worthy NFCs, particularly in energy and commodities, without imposing bank like licensing or liquidity facility requirements that are not essential to the risk outcome.

- d. Consistency and convergence of CCP admission practices across the Union for NFCs and how it aligns with selected FC standards.

6 Annex

6.1 Annex I – Legislative mandate to develop RTS

Article 37

Participation requirements

1. A CCP shall establish, where relevant per type of product cleared, the categories of admissible clearing members and the admission criteria, upon the advice of the risk committee pursuant to Article 28(3). Such criteria shall be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and shall ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Criteria that restrict access shall be permitted only to the extent that their objective is to control the risk for the CCP. Without prejudice to interoperability arrangements under Title V or the conduct of the CCP's investment policy in accordance with Article 47, the criteria shall ensure that CCPs or clearing houses cannot be clearing members, directly or indirectly, of the CCP.

1a. A CCP shall accept non-financial counterparties as clearing members only if those non-financial counterparties are able to demonstrate how they intend to fulfil the margin requirements and default fund contributions, including in stressed market conditions.

The competent authority of a CCP that accepts non-financial counterparties as clearing members shall regularly review the arrangements established by the CCP to monitor that the condition under the first subparagraph is met. The CCP's competent authority shall report on an annual basis to the college referred to in Article 18 on the products cleared by those non-financial counterparties, their overall exposure and any identified risks. A non-financial counterparty acting as a clearing member of a CCP may provide client clearing services only to non-financial counterparties belonging to the same group as that non-financial counterparty and may keep accounts at the CCP only for assets and positions held for its own account or the account of those non-financial counterparties. ESMA may issue an opinion or a recommendation on the appropriateness of such arrangements following an ad hoc peer review.

2. A CCP shall ensure that the application of the criteria referred to in paragraph 1 is met on an ongoing basis and shall have timely access to the information relevant for such assessment. A CCP shall conduct, at least once a year, a comprehensive review of compliance with this Article by its clearing members.

The CCP shall inform the competent authority of any significant negative development regarding the risk profile of any of its clearing members determined in the context of the CCP's assessment referred to in the first subparagraph or any other assessment with similar conclusion, including any increase in the risk that any of its clearing members brings to the CCP, which the CCP considers to have the potential of triggering a default procedure.

3. Clearing members that clear transactions on behalf of their clients shall have the necessary additional financial resources and operational capacity to perform this activity. The CCP's rules for clearing members shall allow it to gather relevant basic information to identify, monitor and manage

relevant concentrations of risk relating to the provision of services to clients. Clearing members shall, upon request, inform the CCP about the criteria and arrangements they adopt to allow their clients to access the services of the CCP. Responsibility for ensuring that clients comply with their obligations shall remain with clearing members.

4. A CCP shall have objective and transparent procedures for the suspension and orderly exit of clearing members that no longer meet the criteria referred to in paragraph 1.

5. A CCP may only deny access to clearing members meeting the criteria referred to in paragraph 1 where duly justified in writing and based on a comprehensive risk analysis.

6. A CCP may impose specific additional obligations on clearing members, such as the participation in auctions of a defaulting clearing member's position. Such additional obligations shall be proportional to the risk brought by the clearing member and shall not restrict participation to certain categories of clearing members.

7. ESMA, after consulting EBA and the ESCB, shall develop draft regulatory technical standards to further specify the elements to be considered when a CCP:

(a) establishes its admission criteria referred to in paragraph 1;

(b) assesses the ability of non-financial counterparties acting as clearing members to meet margin requirements and default fund contributions referred to in paragraph 1a.

When developing those draft regulatory technical standards, ESMA shall take into account:

(a) the modalities and specificities through which non-financial counterparties might, or already do, access clearing services, including as direct clearing members in sponsored models;

(b) the need to facilitate prudentially sound direct access of non-financial counterparties to CCP clearing services and activities;

(c) the need to ensure proportionality;

(d) the need to ensure an effective management of risks.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 25 December 2025.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

6.2 Annex II – Cost-benefit analysis

6.2.1 Other considerations and risks / additional elements

Specific objective	The objective is to further specify the elements to be considered by CCPs when establishing their admission criteria.
Policy option 1	A first policy option would be to include a narrow list of elements strictly limited to clearing members' financial resources and operational capacity.
Policy option 2	A second policy option would be to include a slightly broader list of elements, including elements on additional risks which would supplement and complement the elements in relation to financial resources and operational capacity.
Preferred option	Policy option 2

Qualitative impact of the proposed policies	
Option 1	
Benefits / Drawbacks	This Option would involve CCPs having to consider a narrower list of elements when establishing their admission criteria. This would however also mean that certain risks, such as legal risks (e.g. conflict of laws, enforceability of the CCP's rulebook), which also affect clearing members' financial and operational capacity and ability to meet the obligations arising from their participation in the CCP, would not be included. This may result in certain risks posed by clearing members not being adequately reflected in the CCP's admission criteria.
Compliance costs	No compliance costs identified.
Supervision costs	No supervision costs identified.
Option 2	
Benefits / Drawbacks	This Option would ensure that CCPs consider a broader range of risks posed by clearing members in their admission criteria, such as legal risks, as these other risks and considerations may also affect clearing members'

	financial and operational capacity and ability to meet the obligations arising from their participation in the CCP and the CCP's ability to control the risk posed by clearing members. Such approach would thus ensure that the risks posed by clearing members are adequately identified and reflected in the CCP's admission criteria.
Compliance costs	While CCPs would need to consider a broader range of elements, than under Option 1, when establishing their admission criteria, based on ESMA's understanding, CCPs already reflect such elements (e.g. those related to legal risks, AML/KYC, etc.) in their admission criteria. Therefore, there should be no considerable increase in compliance costs with this Option compared to the status quo.
Supervision costs	Same as for compliance costs.

6.2.2 Collecting data on clearing member's exposure to other CCPs in the context of assessing the clearing member's financial resources

Specific objective	The objective is to provide the necessary elements to be considered by the CCP for assessing the clearing member's financial resources, when it establishes its admission criteria.
Policy option 1	A first policy option would be to include in the list of elements to be considered the total pre-funded default fund contributions and unfunded additional resources committed by the clearing member to other CCPs.
Policy option 2	A second policy option would be not to include this information.
Preferred option	Policy option 2

Qualitative impact of the proposed policies	
Option 1	
Benefits	This information would allow the CCP to improve its assessment by identifying any potential aggregate funded and unfunded exposures that

	could lead to excessive overall risk concentration and impact the clearing member's ability to meet its obligations.
Compliance costs	However, detailed data regarding a clearing member's exposures to other CCPs is commercially sensitive and may be regarded as confidential. Furthermore, the burden placed on clearing members to provide such information, and on CCPs to collect and analyse it, could be substantial relative to the expected benefits.
Supervision costs	Additionally, supervising the transfer of information from clearing members to the CCP, as well as monitoring the CCP's handling and storage of confidential data, would present a significant burden for the responsible authorities.
Option 2	
Benefits	This option avoids extra burden for CCPs and clearing members and still enables the CCP to perform its assessment using the other elements set out in the draft RTS.
Compliance costs	No compliance costs identified.
Supervision costs	No supervision costs identified.

6.2.3 Ensuring that the elements provided allow for the assessment of the ability of non-financial counterparties acting as clearing members to meet margin requirements and default fund contributions

Specific objective	Providing elements that allow CCPs to assess the ability of non-financial counterparties acting as clearing members to meet margin requirements and default fund contributions.
Policy option 1	Set one list of elements to be considered by CCPs when establishing participation requirements which apply equally to financial and non-financial counterparties.

Policy option 2	Set two separate lists of elements to be considered by CCPs when establishing participation requirements, one for financial counterparties and the other one for non-financial counterparties, including limited cross-references to elements to be considered when setting participation requirements for FCs when strict alignment could be needed.
Preferred option	Policy option 2

Qualitative impact of the proposed policies	
Option 1	
Benefits	Promotes consistency and simplicity in participation requirements. Easier comparability across counterparties. Reduces regulatory arbitrage.
Compliance costs	Potentially high for NFCs, as they may struggle to meet requirements designed for financial institutions. Could discourage NFC participation due to disproportionate burdens.
Supervision costs	Lower for supervisors due to uniform criteria. However, may require additional monitoring of NFCs that are struggling to comply.
Option 2	
Benefits	Tailored requirements improve relevance and feasibility for NFCs. Encourages broader participation by reducing entry barriers for NFCs. Enhances risk sensitivity of the framework. Limited cross-reference to elements to be considered when setting participation requirements for FCs facilitates alignment when strictly needed.
Compliance costs	Lower for NFCs due to tailored requirements. Higher for CCPs due to the need to manage two sets of criteria, although some identical requirements remain, limiting the costs of dual lists of elements.
Supervision costs	Moderate due to monitoring compliance with two distinct frameworks, although a number of elements remain the same for FCs and NFCs, which also ensures consistency and fairness.

6.3 Annex III – Advice of the Securities and Markets Stakeholder Group

In accordance with Article 10(1), third subparagraph, of the ESMA Regulation, ESMA has requested the advice of the Securities and Markets Stakeholder Group (SMSG) referred to in Article 37 of that Regulation. The SMSG has not provided any comment.

6.4 Annex IV - List of respondents to the consultation

	Respondent
1	ARGA Observatory
2	Cboe Clear Europe N.V.
3	Commodity Markets Council Europe – CMCE
4	Deutsche Börse Group
5	European Association of CCP Clearing Houses (EACH)
6	FIA
7	International Swaps and Derivatives Association (ISDA)
8	LSEG
9	LuxCMA – Luxembourg Capital Markets Association
10	SIX Group
11	SKDD-CCP Smart Clear d.d.
12	World Federation of Exchanges (WFE)

6.5 Annex V – Draft regulatory technical standards

COMMISSION DELEGATED REGULATION (EU) .../...

of [XXX]

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards further specifying the elements to be considered when a CCP establishes its admission criteria and assesses the ability of non-financial counterparties acting as clearing members to meet margin requirements and default fund contributions (Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories¹⁹, and in particular Article 37(7), third subparagraph, thereof,

Whereas:

- (1) As set out in Article 37(7) of Regulation (EU) No 648/2012, the European Securities and Markets Authority (ESMA), after consulting the European Banking Authority (EBA) and the European System of Central Banks (ESCB), is required to further specify the elements to be considered when a CCP (a) establishes its admission criteria referred to in Article 37(1) of Regulation (EU) No 648/2012; and (b) assesses the ability of non-financial counterparties acting as clearing members to meet margin requirements and default fund contributions referred to in Article 37(1a) of Regulation (EU) No 648/2012.
- (2) This Regulation leaves the CCP the flexibility to decide how the elements set out in this Regulation are reflected in its admission criteria, as well as how it assesses participation eligibility and compliance by its clearing members with such criteria, as it does not set out the CCP admission criteria themselves, but only the elements that a CCP should consider when establishing such admission criteria (including as regards non-financial counterparties) nor how the CCP should assess participation eligibility

¹⁹ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories; OJ L 201, 27.7.2012, pp. 1.

or compliance by clearing members with its admission criteria. Evidence and assessment methods such as targeted legal opinions (internal or external), attestations, questionnaires, operational testing, should therefore be permissible.

- (3) Consistently with the current practice, a CCP should calibrate its admission criteria and assessment methods, using the elements set out in this Regulation, per membership category, per product type and per counterparty type. In other words, a CCP is permitted to set different admission criteria, as well as different assessment methods, for different membership categories (e.g. the CCP may decide to set different criteria for clearing members that only clear their own transactions, compared to clearing members that clear transactions on behalf of their clients, or compared to clearing members in sponsored models, etc.), for different products cleared or different clearing services offered (e.g. the CCP may decide to set more stringent criteria for certain riskier products or riskier clearing services), as well as for different counterparty types (e.g. the CCP may decide to set different admission criteria for financial counterparties compared to non-financial counterparties, etc.); provided that the admission criteria remain non-discriminatory and risk-based, any differences are justified by risk considerations, and that any criteria that restrict access only do so in order to control risks for the CCP. The CCP may also tailor its admission criteria through portfolio limits, activity restrictions, calibrated additional requirements or other alternative safeguards and risk mitigants. This flexibility should ensure that equivalent, yet proportionate, outcomes can be achieved without imposing uniform or bank-centric requirements on all clearing members, irrespective of their legal form and type of licence, and without unduly restricting access.
- (4) In order to ensure transparency of the admission criteria as required by Article 37(1) of Regulation (EU) No 648/2012, as well as predictability and legal certainty for clearing members, a CCP should publish, and keep up to date, its admission criteria, application procedures and timelines, the information to be provided by clearing members in the application process, as well as a summary of risk-based rationales for any additional requirements imposed on any specific membership category or counterparty type or for any specific product type, including the conditions under which access may be restricted. Given the cross-border nature of clearing services and the international composition of clearing membership, it is necessary that the admission criteria established by CCPs are readily accessible and understandable to prospective and existing clearing members across the Union as well as other jurisdictions. It is therefore appropriate to require that CCPs publish their admission criteria, as well as the other afore-mentioned information, at least in a language customary in the sphere of international finance, without prejudice to the use of additional languages for legal or domestic purposes. This is also consistent with international standards which emphasise transparent disclosures to participants and authorities globally.
- (5) Furthermore, in order for competent authorities to be able to verify that the admission criteria of a CCP are fair, non-discriminatory and objective, where the criteria limit access to certain product types or for specific membership categories or counterparty types, the CCP should maintain documentation regarding the risk rationale, the alternatives considered, as well as an assessment of the proportionality of the resulting

restriction. For the same reasons, the CCP should also maintain documentation evidencing eligibility assessments performed, including decisions to accept, conditionally accept, or reject clearing members. However, for the avoidance of doubt, CCPs should not be expected to publish such documentation.

- (6) As regards the clearing members' access to the relevant settlement and payment services and systems, while not a requirement, access to central bank liquidity facilities, where applicable, should be considered a key factor. Where commercial bank accounts are used, the CCP should also consider the effectiveness of the clearing member's back-up arrangements.
- (7) As regards the clearing members' ability to timely settle any margin requirements and default fund contributions, this should include the capacity to meet intra-day margin calls and liquidity needs under extreme but plausible scenarios, including where relevant in respect of the clearing member's clients' positions. Those scenarios may include, in particular: periods of market stress, notably those characterised by high volatility; increases in the risks of the clearing member's portfolios, due to heightened activity, concentration, wrong-way or liquidity risks; increases in the individual risk of the clearing member, especially where such increases trigger additional margin requirements; the impact on the clearing member of a default management procedure in accordance with Article 48 of Regulation (EU) No 648/2012; and the clearing member's participation in the CCP's recovery tools.
- (8) As regards the clearing members' capital adequacy, the assessment performed by the CCP should be commensurate with the legal status of the clearing member. For instance, the CCP may perform different checks or set different indicators for clearing members that are credit institutions compared to clearing members that are insurance undertakings. For the avoidance of doubt, however, the CCP is not expected to assess or supervise the clearing member's compliance with any applicable prudential or capital requirements legislation.
- (9) As regards the clearing members' creditworthiness, this may be evidenced, as applicable, by audited financial statements, external ratings where available, credit default swaps or market-implied indicators, and leverage/liquidity ratios. The CCP's assessment, however, should not fully rely on external ratings.
- (10) As regards the clearing members' legal and financial history, the CCP should take into consideration any relevant past or ongoing administrative, civil or criminal proceedings, sanctions or measures involving a clearing member, its group entities or key personnel, where these could impair the clearing member's ability to meet its obligations, such as proceedings, sanctions or measures relating to financial services law, commercial law, anti-money laundering and counter-terrorist financing law, fraud or professional liability. Likewise, the CCP should assess any recent history of insolvency, restructuring, or comparable financial distress, concerning a clearing member or other entities within the same group that may affect the clearing member's ability or capacity to fulfil its obligations towards the CCP.

- (11) As regards the clearing members' legal capacity and ability to comply with the CCP's rules, any relevant conflict of laws and the enforceability vis-à-vis its clearing members of the CCP's rules, they are, in particular, important in respect of clearing members established outside the Union, where enforceability of key rights and obligations under Union law may depend on the legal framework in the clearing members' jurisdiction. Such assessment should include, for example, the clearing member's legal ability to participate in the default management process; to contribute to the default waterfall; to participate in recovery and resolution tools; to ensure appropriate segregation of client accounts, assets and positions, and protection of such accounts, assets and positions in case of insolvency of the clearing member; to provide to the CCP all relevant information, including information in relation to the clearing member's clients and client accounts; in case of the clearing member's default, the CCP's ability to liquidate the proprietary positions of the clearing member, to transfer or liquidate the clients' positions of that clearing member where applicable, and to ensure enforceability of collateral and netting rights; and verification that the contracts are legal, valid and binding on the clearing member. This could be done e.g. via a targeted legal opinion by a law firm with expertise in the clearing member's jurisdiction's law. For the avoidance of doubt, the CCP should not be expected to continuously monitor or map its clearing members' entire legal frameworks.
- (12) In any case, the CCP's rules should reflect all relevant legal requirements concerning clearing members stemming from their participation in the CCP, such as those under Regulation (EU) No 648/2012 and Regulation (EU) 2021/23²⁰, including, where relevant, as regards the provision of client clearing services by clearing members and as regards sponsored models. In this context, it should also be recalled that under Regulation (EU) No 648/2012, clearing members remain fully responsible for meeting all financial obligations vis-à-vis the CCP, including in relation to their client clearing activities and including as regards clearing members in sponsored models. CCPs' rules should thus reflect this requirement clearly, ensuring that the responsibilities of clearing members are not diluted or transferred to clients, sponsors or other third parties.
- (13) In order to facilitate the direct participation of non-financial counterparties in central counterparties while preserving the safety and resilience of the clearing system, this Regulation specifies elements that CCPs should consider when setting up admission criteria applicable to the participation of NFCs as clearing members. These elements take into account the specific characteristics of NFCs, who differ from financial counterparties in their business models, regulatory status and risk profiles. It is therefore appropriate that these elements are calibrated differently from those applicable to financial counterparties, while remaining aligned with the objectives of risk reduction and financial stability. The elements set out in Article 3 ensure a proportionate approach to admission by requiring NFCs to demonstrate a level of financial soundness, operational capability and risk management commensurate with

²⁰ Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132; OJ L 22, 22.1.2021, pp. 1–102.

the risks they may pose to CCPs, without subjecting them to requirements designed for regulated financial institutions. At the same time, the elements to be considered for admission criteria applicable to NFCs are designed to ensure that such counterparties are sufficiently robust and operationally capable so as not to introduce systemic risk or operational vulnerabilities to CCPs or to the clearing system as a whole.

- (14) A significant number of NFCs seeking direct participation in a CCP are active in electricity and gas markets and clear derivative contracts related to their physical commercial activities. It is therefore appropriate that the elements to be considered when establishing admission criteria take into account, where relevant, the specific features of participation in wholesale energy markets, including access to relevant settlement and payment systems, appropriate back-up arrangements, access to physical infrastructures for the delivery of commodities, as well as any relevant licences or authorisations required for operating in those markets.
- (15) In recent years, CCPs have introduced sponsored models, aiming at enabling a broader range of counterparties, including buy-side institutions, to obtain direct access to clearing services. In this context, sponsored models should be understood as arrangements whereby a “clearing member in a sponsored model” (“sponsored clearing member”), while remaining fully responsible for discharging all the financial obligations towards the CCP arising from that participation, uses the services of another entity (“sponsor”) to perform certain of these responsibilities. These responsibilities may include, inter alia, contributions to the default fund, participation in recovery tools, and involvement in default management procedures. The commercial terminology may differ across CCPs for both the clearing members in sponsored models, as well as for the sponsors: the commercial designation for clearing members in sponsored models may include terms such as “sponsored member” or “ISA Direct clearing member”; the commercial designation for sponsors may include terms such as “agent member” or “clearing agent”.
- (16) When defining their admission criteria for clearing members in sponsored models (both financial counterparties and non-financial counterparties), CCPs should, in addition to the general considerations applicable to all clearing members, also duly consider the specific risks associated with such models. Among other things, CCPs should consider whether clearing members in sponsored models have contingency measures in place, such as back-up sponsorship arrangements, the capacity to independently fulfil all relevant obligations in the absence or default of the sponsor, or any other contingency measures.
- (17) In addition, given the critical role played by sponsors in the functioning of sponsored models, CCPs should consider specific elements for sponsors, in particular, whether sponsors have sufficient financial resources and operational capability to meet their obligations under the sponsored model framework. In this context, the CCPs should consider whether its admission criteria for sponsors need to be comparable to those applicable to clearing members that provide client clearing services. For the avoidance of doubt, as regards clearing members in sponsored models, the CCP should not net the positions of different clearing members in sponsored models, or the positions of a clearing member in a sponsored model and its sponsor.

- (18) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (19) ESMA has developed the draft regulatory technical standards after consulting the EBA and the ESCB. In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)²¹, ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010.

²¹ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC; OJ L 331, 15.12.2010, pp. 84–119.

HAS ADOPTED THIS REGULATION:

Article 1

General principles

1. A CCP shall ensure that its admission criteria are commensurate with the potential risk exposure implied by the relevant membership category, product type and counterparty type, insofar as any differences are justified by the CCP to control its risks.
2. A CCP shall calibrate the corresponding minimum quantitative thresholds, qualitative conditions and risk-based tests per membership category, product type and counterparty type.
3. Where its admission criteria limit access to certain product types or for specific membership categories or counterparty types, the CCP shall document the risk rationale, the alternatives considered, and an assessment of the proportionality of the resulting restriction.
4. A CCP shall publish, at least in a language customary in the sphere of international finance:
 - (a) its admission criteria;
 - (b) the application procedures and timelines;
 - (c) the information to be provided by clearing members in the application process; and
 - (d) a summary of risk-based rationales for any additional requirements imposed on any specific membership category or counterparty type or for any specific product type including the conditions under which access may be restricted.
5. A CCP shall update the information referred to in paragraph 4 following any changes.
6. A CCP shall maintain documentation evidencing eligibility assessments performed, including decisions to accept, conditionally accept, or reject clearing members.

Article 2

Financial counterparties

1. A CCP shall reflect, in its admission criteria for financial counterparties acting as clearing members, consideration of the following elements in relation to the clearing member's financial resources and operational capacity:

- (a) the clearing member's access to reliable credit, liquidity, and, where relevant, foreign exchange facilities;
- (b) the clearing member's access to the relevant settlement and payment services and systems; and, in case of a clearing member using commercial bank accounts, any such back-up arrangements;
- (c) the clearing member's ability to timely settle any margin requirements and default fund contributions, including the clearing member's capacity to meet intra-day margin calls and liquidity needs under extreme but plausible scenarios; and, in case of a clearing member that provides client clearing services, the clearing member's capacity to meet these obligations in the event of the default of its clients;
- (d) the clearing member's capital adequacy and solvency indicators which shall be commensurate with the clearing member's legal status;
- (e) the clearing member's availability of capital buffers to absorb losses in case of a default management procedure by the CCP mutualising losses;
- (f) the clearing member's creditworthiness, the assessment of which shall not fully rely on external ratings;
- (g) the availability and reliability for the clearing member of any financial or operational support from its group, as well as the financial and operational dependence of the group on the clearing member where this could negatively impact the clearing member's obligations towards the CCP;
- (h) the clearing member's IT compatibility with the CCP's systems;
- (i) the adequacy of the clearing member's operational resources, including human resources, and expertise for the relevant clearing services of the CCP;
- (j) the clearing member's operational risk management policies and procedures and business continuity tools that are relevant in the context of the clearing member's participation to the CCP;
- (k) the clearing member's risk management framework and internal risk control systems to adequately identify, monitor and manage all risks associated with its clearing activities, including where relevant as regards the clearing member's client clearing activities and sponsorship activities, in order to prevent unacceptable risk exposure for the CCP and other clearing members at the CCP;

- (l) in case of a clearing member that provides client clearing services, the clearing member's operational capability to provide timely and accurate information in accordance with Article 37(3) of Regulation (EU) No 648/2012; and
- (m) the arrangements with third-party service providers to which the clearing member outsources some of its obligations towards the CCP.

2. A CCP shall also reflect, in its admission criteria for financial counterparties acting as clearing members, consideration of the following additional elements:

- (a) the clearing member's evidence of its respective financial services authorisation or licence;
- (b) the clearing member's legal and financial history;
- (c) the clearing member's legal capacity and ability to comply with the CCP's rules, including, where relevant, as regards the provision of client clearing services by the clearing member and as regards sponsored models;
- (d) the enforceability, vis-à-vis a clearing member, of the CCP's rules, including, where relevant, as regards the provision of client clearing services by the clearing member and as regards sponsored models;
- (e) any relevant conflict of laws, in particular in respect of a clearing member established outside the Union;
- (f) any resolution framework applicable to the clearing member, in particular where such a framework includes provisions aimed at ensuring the continued fulfilment of the clearing member's obligations towards the CCP; and
- (g) any other relevant risks posed to it by the clearing member, including risks related to anti-money laundering and counter-terrorist financing.

Article 3

Non-financial counterparties

1. A CCP shall reflect, in its admission criteria for non-financial counterparties acting as clearing members, consideration of the following elements in relation to the clearing member's financial resources and operational capacity:

- (a) the availability for the clearing member of sufficient financial resources to meet margin requirements and default fund contributions, including in stressed market conditions, having regard to required equity capital, liquidity buffers;
- (b) The clearing member's ability to timely settle initial and variation margin, including intra-day margins and liquidity needs under extreme but plausible scenarios;
- (c) In case of a clearing member that provides clearing services to non-financial counterparties belonging to the same group, the clearing member's capacity to meet margin requirements in the event of the default of the other non-financial counterparties belonging to the same group to which the clearing member provides clearing services;
- (d) the adequacy of the clearing member's operational resources to meet clearing obligations including appropriate staffing, expertise, governance arrangements, and documented internal controls capable of supporting clearing.
- (e) Elements set out in Article 2(1) points (b), (d), (e), (f), (g), (h), (j), (k), (l) and (m).

2. A CCP shall reflect, in its admission criteria for non-financial counterparties acting as clearing members, consideration of the following additional elements:

- (a) Any relevant licence or authorisation in relation to the clearing member's participation in wholesale energy markets;
- (b) Elements set out in Article 2(2) points (b), (c), (d), (e) and (g) of Article 2.

Article 4

Sponsored models

1. A CCP shall reflect, in its admission criteria, in addition to the elements set out in Articles 1 to 3 of this Regulation as applicable, consideration of the following elements:

- (a) the arrangements by the clearing member in a sponsored model with its sponsor, with delineated responsibilities, ensuring that such arrangements remain effective at all times, including under stressed market conditions and in the event of default of another clearing member; and
- (b) any contingency measures by the clearing member in a sponsored model, in the absence of or in case of default of its sponsor.

2. With respect to sponsors, a CCP shall reflect, in its admission criteria, consideration of the following elements:

- (a) the sponsor's financial resources and operational capability to meet its obligations under the sponsored model framework; and
- (b) whether the sponsor is also a clearing member of the CCP.

Article 5

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, DD MM YYYY.

For the Commission

The President

Signature