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| Response Form to the Consultation Paper  |
| Draft technical advice on criteria for tiering under Article 25(2a) of EMIR2.2 |

**Responding to this paper**

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex III. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **29 July 2019.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_TATC\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_TATC\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_TATC\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open consultations” 🡪 “Consultation on Position limits and position management in commodities derivatives”).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper**

All interested stakeholders are invited to respond to this consultation paper. In particular, responses are sought from central counterparties (CCPs), clearing members and clients of clearing members.

**General information about respondent**

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| --- | --- |
| Name of the company / organisation | Minneapolis Grain Exchange, Inc. |
| Activity | Central Counterparty |
| Are you representing an association? |[ ]
| Country/Region | North-America |

**Introduction**

***Please make your introductory comments below, if any***

<ESMA\_COMMENT\_TATC\_1>

The Minneapolis Grain Exchange, Inc. (“MGEX”) would like to express its appreciation to the European Securities and Markets Authority (“ESMA”) for the opportunity to comment on this Consultation Paper on draft technical advice on criteria for tiering under Article 25(2a) of EMIR 2.2. MGEX is a U.S. designated contract market and Subpart C derivatives clearing organization, registered with and subject to the jurisdiction of the United States Commodity Futures Trading Commission. The Exchange was also recognized as a third-country central counterpary (“TC-CCP”) under Regulation (EU) No 648/2012 on September 28, 2016.

MGEX recognizes ESMA’s need to distinguish between TC-CCPs that are systemically important (or likely to become so) for the financial stability of the EU or one of its Member States and those that are non-systemic to the EU. In addition, MGEX agrees with and supports ESMA’s desire to evaluate TC-CCPs based on data rather than apply a one-size-fits-all approach. As described below, however, we are concerned that the information to be collected is both unnecessary in terms of the extent of data needed to assess systemic importance and achieve ESMA’s objectives, as well as unduly burdensome on smaller TC-CCPs.

<ESMA\_COMMENT\_TATC\_1>

**Questions**

1. : Do you generally agree with the proposed indicators (Indicators 1, 2, 3, 4 and 5) to further assess the nature, size and complexity of the CCP's business? Please elaborate and if you disagree with any specific indicator, please suggest an alternative one to measure the relevant criterion.

<ESMA\_QUESTION\_TATC\_1>

MGEX believes ESMA should focus on those indicators that evaluate a TC-CCP’s nexus to the EU or one of its Member States, particularly the TC-CCP’s potential impact on the financial stability of the EU, which aligns with the legislative intent of EMIR 2.2. MGEX generally views Indicators 2 and 3 as appropriate, but questions whether Indicators 1, 4, and 5 provide a relevant basis to assess a TC-CCP’s impact on the financial stability of the EU.

As it relates to Indicator 1, MGEX does not believe that assessing the ownership and business structure of a TC-CCP provides a meaningful indication of a TC-CCP’s systemic importance to the EU. Regardless of its ownership or corporate structure, CCPs are subject to regulatory obligations that ensure they maintain an appropriate risk management framework and financial and liquidity resources. Since a TC-CCP’s ownership and business structure does not change such CCP’s systemic importance to the stability of the EU, MGEX recommends ESMA remove Indicator 1.

Indicator 2, on the other hand, generally focuses appropriately on the nexus between financial instruments cleared by the TC-CCP and the EU. Specifically, this indicator considers whether cleared financial instruments are denominated in EU currencies, which could impact the financial stability of the EU. To further this objective, MGEX suggests ESMA clarify that the requests underlying criteria (i) and (iii) listed in Indicator 2 be answered with respect to financial instruments denominated in EU currencies.

MGEX similarly recognizes the significance of Indicator 3’s assessment of the value and volume of contracts cleared by a TC-CCP, which have a clear link to potential systemic impact, though we urge ESMA to narrow this consideration to contracts cleared for EU clearing members/market participants.

With respect to Indicator 4, MGEX believes the transparency and liquidity of a CCP’s markets are only relevant considerations when focusing on markets denominated in EU currencies. The transparency and liquidity of a market otherwise have limited usefulness in assessing the systemic importance of a TC-CCP to the stability of the EU, and MGEX recommends ESMA clarify and narrow Indicator 4 accordingly.

Finally, while Indicator 5’s focus on the risk profile of a TC-CCP is a logical consideration, MGEX believes such assessment is only necessary or relevant if ESMA first determines that a TC-CCP would likely be systemically important in the EU. The breadth of risks and information to be evaluated under this indicator would otherwise be an inefficient use of ESMA’s resources if the risk exposures are unlikely to be significant to the EU.

Overall, MGEX urges ESMA to simplify the process of assessing TC-CCPs by developing a type of threshold evaluation for initial use in categorizing CCPs. As currently proposed, ESMA would require an extraordinarily large amount of information to assess the systemic importance of a TC-CCP to the EU. Not only do some of the criteria to be considered fail to be indicative of systemic importance, it also appears wholly unnecessary for many smaller TC-CCPs that will require far less evaluation to classify as tier 1 or 2 CCPs. To both reduce this burden of supplying information on TC-CCPs and reviewing such data by ESMA, MGEX strongly urges ESMA to pre-evaluate the systemic importance of a CCP based on a few discrete criteria, such as the number of contracts denominated in EU currencies, total collateral (default funds and margins) held in EU currencies, and volume of cleared contracts. In the event that a TC-CCP may be systemically important in the EU after evaluating these threshold criteria, ESMA could then request further information to assess the other indicators before reaching a final decision regarding the classification of the TC-CCP. Doing so will allow ESMA to more efficiently categorize Tier 1 and Tier 2 TC-CCPs and will help reduce the otherwise relatively significant burden of producing the requested information on smaller TC-CCPs that are not systemically important to the financial stability of the EU.

<ESMA\_QUESTION\_TATC\_1>

1. : How would you envisage ESMA to consider risks and in particular cyber-risks in relation to the evaluation of systemic importance?

<ESMA\_QUESTION\_TATC\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TATC\_2>

1. : Do you generally agree with the proposed indicators (Indicators 6, 7, 8 and 9) to further assess the effect of a failure or disruption of the CCP? Please elaborate and if you disagree with any specific indicator, please suggest an alternative one to measure the relevant criterion.

<ESMA\_QUESTION\_TATC\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TATC\_3>

1. : Do you generally agree with the proposed indicators (Indicators 10 and 11) to further assess the CCP’s clearing membership structure? Please elaborate and if you disagree with any specific indicator, please suggest an alternative one to measure the relevant criterion.

<ESMA\_QUESTION\_TATC\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TATC\_4>

1. : Do you generally agree with the proposed indicator (Indicator 12) to further assess alternative clearing services? Please elaborate and if you disagree with any specific indicator, please suggest an alternative one to measure the relevant criterion.

<ESMA\_QUESTION\_TATC\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TATC\_5>

1. : Do you generally agree with the proposed indicators (Indicators 13 and 14) to further assess relationships, interdependencies, or other interactions? Please elaborate and if you disagree with any specific indicator, please suggest an alternative one to measure the relevant criterion.

<ESMA\_QUESTION\_TATC\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TATC\_6>

1. : Do you identify other benefits and costs not mentioned above associated to the proposed approach (option 3)? If you advocated for a different approach, how would it impact this section on the impact assessment? Please provide details.

<ESMA\_QUESTION\_TATC\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_TATC\_7>