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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 | SIX x-clear AG |
| Activity | Central Counterparty |
| Are you representing an association? |[ ]
| Country/Region | Switzerland |

**Introduction**

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

<ESMA\_COMMENT\_TATC\_1>

We would like to express our appreciation for the work ESMA has dedicated to the current consultations, and the clear desire to implement a solid operating framework for CCPs and their users. We welcome the opportunity to contribute to this by offering our views on how these measures can be further strengthened.

SIX x-clear AG is incorporated in Zürich Switzerland, operates a branch in Oslo, Norway, and is a fully owned subsidiary of the SIX Group. The latter comprises the following regulated businesses: Swiss Stock Exchange, the Swiss CSD (SIS), the Swiss RTGS system for CHF (SIC), and the Swiss Trade Repository. SIX also encompasses a financial information/Data business and a FinTech-innovation centre.

SIX x-clear AG is regulated by the Swiss Financial Regulator, FINMA, as well as the Swiss National Bank (SNB), and is recognised by ESMA to provide services into the EU/EEA.

SIX x-clear AG offers Central CounterParty (CCP) clearing services covering an extensive number of European instruments (equities, exchange traded funds (ETFs) and equity derivatives) across a large range of European trading venues. As a CCP it helps strengthen utilisation of financial market liquidity and reduces credit risk. It achieves this by stepping in as intermediary between trading counterparties, netting their exposures and trades and securing the outstanding residual risk by taking appropriate high quality liquid assets as collateral.

The clearing services are provided in a large range of European currencies (e.g. CHF, DKK, EUR, GBP, SEK and NOK) as well as US Dollars. Settlement is performed in an equally wide range of European securities settlement and payment systems, with collateral in a range of Central Securities Depositories (CSDs), and payment systems.

SIX x-clear AG provides clearing services across a broad set of European instruments, for a large number of European-based Members, and 85% of our volumes originate from the EU. As a Third Country CCP (TC CCP), active in these European markets (i.e. EU, Norway and Switzerland), we understand the importance of a robust oversight framework.

SIX x-clear AG has interoperability arrangements with two other EU CCPs: LCH Ltd (UK) and EuroCCP (NL). This provides users with a choice of CCP and enables competitive conditions for clearing services. This has led to lower clearing costs, market dynamism and enhanced financial market resilience (through substitutability).

The interoperability model is used for cash equities and ETFs, and are bilateral arrangements supported by asset class specific default waterfalls. It should be noted that that the interoperability arrangement for equity derivatives will cease from December 2019. These links are approved by the relevant national competent authorities on all sides, and residual risks are secured through additional prefinanced collateral. Some 50% of the EU/EEA/Swiss cleared transactions now flow across such interoperability arrangements, and about 75% of the total European trade venues are now open to competitive clearing. As a result of the clearing choice given to financial institutions, and their desire to embrace this choice, it is vital that providers of such services are able to operate on a level playing field, under equal conditions, so to avoid any distortion in market dynamics which could damage the competitive landscape. As a result of this we believe equal treatment should form part of any oversight assessment of systemic criticality, not just of any single CCP but of all such entities in unison.

Equities issuance and trading, and subsequent finality through clearing and settlement, is an essential component of a sound and vibrant economy. As the costs for accessing these have gone down over the years, to the benefit of those wishing to raise funds or seek returns on investment, the margins for suppliers have been sharply compressed for this asset segment. Simultaneously the regulatory compliance costs have risen significantly, and for CCP entities with turnover in the range of EUR 20 – 30 mio p.a. (such as for SIX x-clear and its primary competitors) additional costs at the levels envisaged in these consultations, can become an existential issue. We therefore strongly recommend that fees and charges be assessed by clearing segment and proportionate to CCP operating income (stemming from EU activities).

ESMA should also be cognisant of the fact that third country national competent authorities may also take note of the processes proposed and levels of fees suggested in these consultations. As a result they may seek to adjust their own regimes to reflect the increased level of oversight necessary and adjust the fee levels accordingly. It should not be forgotten that EU CCPs also operate in third country jurisdictions. We would expect third country national competent authorities to be reciprocally engaged (in any collective activities by authorities), and potentially apply similar tiering, charging and equivalence assessment regimes.

We take our operating mandate and license extremely seriously given the systemic nature of our business activities, the parties and values involved, and the impact our services have on the efficient operation of financial markets. We sincerely hope our feedback is assessed, together with those of our peers, and we remain available to engage with you to explore these options further, in the interest of well-functioning European financial markets.

<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>

Once a TC CCP requests access to the EU market the European Commission will assess the level of TC CCP’s national regulatory frameworks equivalence with EU regulations. Where all such frameworks are based on internationally agreed standards, such as those of CPMI-IOSCO and the Financial Stability Board, they should result in the same outcomes. We strongly recommend that ESMA leverages such previous filings and assessments and where such assessments are positive, there should be a possibility to make any additional assessment more precise, and thus more efficient.

We understand the need for and welcome a well-balanced assessment of the standing and risk of any particular CCP in terms of systemic criticality for a set of users, a market or the EU as a whole, or indeed for any other country in which the CCP is active.

However, the outlined proposal for assessing systemic criticality of TC CCPs seems to differ for EU and TC CCP. Intervention of this nature is likely to have an important impact on the market dynamics and could fundamentally alter the relationships between any two such entities. The proposed additional tiering, comparable compliance assessment and charges (at the levels suggested), imposes higher costs and additional administrative burdens on TC CCP relative to EU based CCPs. Where such CCPs compete for the same business ( i.e. interoperate) regulators should be mindful of the potential negative effects this could have and the subsequent unintended consequences which could result by altering the competitive conditions. Therefore a level playing field is not only desired but is a prerequisite to ensure competition is not distorted through market intervention, and as a result, competing CCPs should be assessed according to the same standards.

Additionally, the dynamic nature of the market needs to be considered, specifically in relation to indicators 3 & 5, as there could be swift transfers of values and volumes between CCPs during any year. Such a transfer can be dramatic, especially if it involves one of the larger players, as a quite small number of entities represent a large portion of overall volumes, especially in the equities world.

The range of criteria and indicators is very comprehensive, but to such a degree that it becomes impossible ex ante to determine if a CCP will be classified as Tier 1 or 2. This has important but negative implications for drafting a business case for offering clearing services into the EU market. A straightforward guiding metric, such as if the CCP’s values in cleared EU instruments and for EU members served, which exceed certain percentage thresholds of the EU market segment turnover and or the CCP’s membership would be a very helpful indicator for such investment assessments.

<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>

Although CCPs are regulated entities, and are subject to stringent FMI oversight and regulation, it is understandable that national security, financial market stability and entity integrity concerns stemming from operational resilience and cyber risks figure in any oversight assessment. Adherence to international guidance and standards regarding operational risks and cyber risks, (such as the G7 Fundamental Elements of Cyber Security and CPMI-IOSCO’s Guidance on Cyber Resiliency for FMIs), as matched with EU guidelines, could be good basis. However cyber resilience of itself is unlikely to be a reliable indicator of the systemic importance of an operator as any assessment of systemic importance would need to take into account many factors in parallel.

<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>

 We generally agree with the proposal.

<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>

We generally agree with the proposal.

<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>

See also our comment below to question 6.

This is a particularly important indicator. Where CCPs interoperate in certain asset segments, such as in equities & ETFs, users have a choice of CCP, regardless of the trade venue on which it gets best execution, place of settlement and, in many cases, for one and the same instrument when these are tradable across multiple trading venues. This is beneficial for porting, in case of a CCP member default, and thus provides substitutability and thus mitigates some of the systemic risks.

<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>

Where CCPs interoperate in certain asset segments, such as is the case for a significant number of equities & ETFs CCPs, the competitive conditions would be distorted if all the CCPs serving such segments were classified differently. If this occurred it could have negative effects on CCP competition which could subsequently have negative effects on users of these services.

<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>

See our introductory comments and answer to question 1.

<ESMA\_QUESTION\_TATC\_7>