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| Response Form to the Consultation Paper  |
| ESMA fees for Third-Country CCPs under EMIR 2.2 |

**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\_TCTC\_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\_TCTC\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_TCTC\_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**

This consultation is looking for feedback from third-country CCPs, market participants and authorities.

**General information about respondent**

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| --- | --- |
| Name of the company / organisation | LME Clear Limited |
| Activity | Central Counterparty |
| Are you representing an association? |[ ]
| Country/Region | UK |

**Introduction**

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

<ESMA\_COMMENT\_TCTC\_1>

The London Metal Exchange (“**LME**”) is a UK-based European Union (“**EU**”) Regulated Market for the trading of derivatives based on 14 underlying metals. The LME is a US Dollar market, with all of its contracts denominated in USD (and more than 95% of transactions settled in this currency).

LME Clear Limited (“LME Clear”) is the dedicated clearing house for the LME market. Launched in 2014, it was designed and built in consultation with the market to provide cost-efficient, EMIR compliant clearing services, using cutting edge technology. Six of LME Clear’s 45 clearing members are based in the EU; these contribute approximately 6% of total cleared volume.

LME Clear welcomes the opportunity to respond to this ESMA Consultation Paper on “*Fees for Third-Country CCPs under EMIR 2.2*”.

As a UK CCP supporting global trade in metal, LME Clear recognises the importance of initiatives aimed at removing barriers from the cross-border provision of financial services whilst ensuring this does not introduce increased risk into domestic financial markets. LME Clear’s six EU members form an important and valued part of its membership base. As LME Clear prepares for the UK’s withdrawal from the EU, it has always been a key priority to ensure continued access to its clearing systems for its EU members.

For the reasons described in LME Clear’s response to the “*Tiering*” and “*Comparable Compliance*” Consultation Papers (i.e. given LME Clear provides clearing services in a US Dollar market to a relatively small number of EU-based clearing members, and the consequent lack of systemic importance to the financial stability of the EU (or one or more of the Member States)) we consider LME Clear falls firmly into Tier 1 territory. However, we make some general observations on the proposed wider fee structures below to assist ESMA as it finalises its technical advice on Fees.

* The application and ongoing supervisory fees proposed within the Consultation Paper are high relative to those charged to TC-CCPs in other jurisdictions. By way of comparison, LME Clear’s annual fees to the Securities and Futures Commission (“SFC”) of Hong Kong are HK$10,000 (approximately €1,132) and to the Ontario Securities Commission (“OSC”) in Canada CAD10,000 (approximately €6,700). For the FINMA in Switzerland there is no ongoing supervisory fee payable. Similar levels are charged (if at all) for applications. As a matter of fact, the proposed fees (even at Tier 1 level) are also considerably higher than the LME pays as an overseas exchange in the jurisdictions in which it has a licence.
* LME Clear supports the principle of the proposed application of reductions in fees for entities that have been granted Comparable Compliance status. Of the two options put forward in the paper, LME Clear believes that the discount should reflect the level of Comparable Compliance evidenced on a CCP-by-CCP basis (rather than a flat rate).
* However, as LME Clear notes in its response to the Comparable Compliance consultation, it remains unclear what the implications for supervision of Tier 2 TC-CCPs will be once Comparable Compliance is granted. As such, and given the general principle of the level of fee reflecting the supervisory resource used, we find it hard to understand what appropriate levels of staffing would look like for ESMA (and therefore the total amount recoverable in supervisory fees required). This in turn makes it difficult to objectively support a fee level without the corresponding information regarding supervisory approach and level of resource required for those entities that have been granted Comparable Compliance status (versus those that haven’t).
* The Consultation Document also refers to fees applicable to TC-CCPs that are already Recognised, and those that are applying for Recognition for the first time. Further clarity is required to ensure the proposed transitional arrangements for TC-CCPs applying for Recognition is understood (in particular in the interests of ensuring that EU members can continue to manage their risk through UK CCPs irrespective of whether Brexit occurs before or after the implementation of EMIR 2.2).

Ultimately, whilst acknowledging and agreeing with the policy objective of focusing resource on those entities that pose greatest risk to the financial stability of the EU, we note that CCPs are global in their outlook and operation and will consider regulatory fees on a jurisdiction-by-jurisdiction basis. This will include performing cost-benefit analyses ahead of accessing any new jurisdiction, comparing the potential revenue that can be earned against the cost of doing business there. LME Clear therefore cautions that, in developing the regime, ESMA needs to ensure the EU does not become prohibitively expensive or unattractive to do business in.

LME Clear remains committed to serving its global membership and would welcome the opportunity to discuss directly the proposals contained in this paper with ESMA at its convenience.

<ESMA\_COMMENT\_TCTC\_1>

**Questions**

1. : Do you agree with the proposed one-off fees for initial recognition for Tier 2 TC-TC CCPs? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_TCTC\_1>

Notwithstanding the general description of cost allocation in the consultation document, given the general principle of the level of fee reflecting the resource used we find it hard to quantify what appropriate levels of staffing would look like for ESMA (and therefore the total amount recoverable in application fees required) without understanding further the details and intensity of the application process.

LME Clear does note however that the fees proposed for Tier 2 recognitions are significantly higher than for other jurisdictions in which LME Clear has third country CCP licences.

<ESMA\_QUESTION\_TCTC\_1>

1. : Do you agree with the proposed one-off fees for initial recognition for Tier 1 TC-TC CCPs? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_TCTC\_2>

Notwithstanding the general description of cost allocation in the consultation document, given the general principle of the level of fee reflecting the resource used we find it hard to quantify what appropriate levels of staffing would look like for ESMA (and therefore the total amount recoverable in application fees required) without understanding further the details and intensity of the application process.

LME Clear does note however that the fees proposed for Tier 1 applications are significantly higher than for other jurisdictions in which LME Clear has third country CCP licences.

<ESMA\_QUESTION\_TCTC\_2>

1. : Do you agree with the payment by a Tier 1 TC-CCP that becomes Tier 2 TC-CCP of the difference between the two fees? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_TCTC\_3>

As a general principle it would make sense to pay the *difference* upon moving from Tier 1 to Tier 2. However, please note LME Clear’s comments around the level of each proposed fee in its response to Q1 and Q2.

<ESMA\_QUESTION\_TCTC\_3>

1. : Do you agree with the approach for determining the fees in 2019 for recognised or applicant TC-CCPs? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TCTC\_4>

LME Clear agrees with this approach.

<ESMA\_QUESTION\_TCTC\_4>

1. : Do you agree with the approach for determining the fees in 2020 and until end of transition period for recognised or applicant TC-CCPs? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TCTC\_5>

LME Clear agrees with this approach.

However, we note that the Consultation Document refers to fees applicable to TC-CCPs that are already Recognised, and those that are applying for Recognition for the first time. Further clarity is required to ensure the proposed transitional arrangements for TC-CCPs applying for Recognition is understood (in particular in the interests of ensuring that EU members can continue to manage their risk through UK CCPs irrespective of whether Brexit occurs before or after the implementation of EMIR 2.2).

<ESMA\_QUESTION\_TCTC\_5>

1. : Do you prefer Option A or Option B as an approach towards establishment of fees and discounts for comparable compliance? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TCTC\_6>

LME Clear supports the principle of the proposed application of reductions in fees for entities that have been granted Comparable Compliance status. Of the two options put forward in the paper, LME Clear believes that the discount should reflect the level of Comparable Compliance evidenced on a CCP-by-CCP basis rather than a flat rate – e.g. option B.

However, it remains unclear what the implications for supervision of Tier 2 TC-CCPs will be once Comparable Compliance is granted. As such, and given the general principle of the level of fee reflecting the supervisory resource used, we find it hard to understand what appropriate levels of staffing would look like for ESMA (and therefore the total amount recoverable in supervisory fees required). This in turn makes it difficult to objectively support a method of calculation without the corresponding information regarding supervisory approach and level of resource required for those entities which have been granted Comparable Compliance status (versus those that haven’t).

<ESMA\_QUESTION\_TCTC\_6>

1. : Do you agree with the proposed approach to calculate first-year fees for TC-CCPs under EMIR 2.2? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_TCTC\_7>

LME Clear agrees with the general principle of pro-rating fees to match the period in which it has been recognised (taking into account the application period).

<ESMA\_QUESTION\_TCTC\_7>

1. : Do you agree with the proposed approach for the calculation of annual fees? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TCTC\_8>

LME Clear agrees with the importance of predictability in the calculation of annual fees.

However, it remains unclear what the implications for supervision of Tier 2 TC-CCPs will be once Comparable Compliance is granted. As such, and given the general principle of the level of fee reflecting the supervisory resource used, we find it hard to understand what appropriate levels of staffing would look like for ESMA (and therefore the total amount recoverable in supervisory fees required). This in turn makes it difficult to objectively support a fee level without the corresponding information regarding supervisory approach and level of resource required for those entities that have been granted Comparable Compliance status (versus those that haven’t).

<ESMA\_QUESTION\_TCTC\_8>

1. : Do you agree with the proposed amount of annual   fees for Tier 1 TC-CCPs recognised under EMIR 2.2? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_TCTC\_9>

The ongoing supervisory fees for a Tier 1 CCP proposed within the Consultation Paper are high relative to those charged to TC-CCPs in other jurisdictions. By way of comparison, LME Clear’s annual fees to the Securities and Futures Commission (“SFC”) of Hong Kong are HK$10,000 (approximately €1,132) and to the Ontario Securities Commission (“OSC”) in Canada CAD10,000 (approximately €6,700). For the FINMA in Switzerland there is no fee payable.

<ESMA\_QUESTION\_TCTC\_9>

1. : Do you agree in setting an equal flat fee for Tier 2 TC-CCPs instead of using the turnover represented by revenues generated by the Tier 2 TC-CCP for the purpose of calculating the Tier 2 TC-CCP   fees? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TCTC\_10>

LMEC has no comment.

<ESMA\_QUESTION\_TCTC\_10>

1. : In case of considering use of revenues as more appropriate alternative, please detail whether you agree with the inclusion of (i) all revenues generated by the CCP, irrespective whether from clearing, treasury or membership linked to EU, such as those generated with regards to EU venues, EU counterparties, including their non-EU branches and non-EU subsidiaries, financial instruments, contracts and transactions cleared by the CCP where at least one of the currencies is ESCB currency or (ii) all revenues generated by the Tier 2 TC-CCP should be taken into account? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TCTC\_11>

N/A

<ESMA\_QUESTION\_TCTC\_11>

1. : Do you agree with the proposed fees for withdrawal of recognition of the TC-CCP? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TCTC\_12>

LMEC has no comment.

<ESMA\_QUESTION\_TCTC\_12>

1. : Do you agree with the proposal for the payment conditions of the applicable initial recognition fee under EMIR 2.2.? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_TCTC\_13>

LMEC has no comment.

<ESMA\_QUESTION\_TCTC\_13>

1. : Do you agree with the proposal for the payment conditions of the additional fee for comparable compliance? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_TCTC\_14>

LMEC has no comment.

<ESMA\_QUESTION\_TCTC\_14>

1. : Do you agree with the proposal to not reimburse TC-CCPs in case they decide to withdraw their application for recognition before recognition is granted? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TCTC\_15>

LMEC has no comment.

<ESMA\_QUESTION\_TCTC\_15>

1. : Do you agree with the proposal that TC-CCPs pay their annual   fees by 31 December of the year preceding the one for which the fees are due? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TCTC\_16>

LMEC has no comment.

<ESMA\_QUESTION\_TCTC\_16>

1. : Do you agree with the proposal that TC-CCPs pay the relevant withdrawal fee at the time of initiation of the process for the adoption of ESMA’s decision on withdrawal? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TCTC\_17>

LMEC has no comment.

<ESMA\_QUESTION\_TCTC\_17>

1. : Do you agree with the proposal for the timing of payment of the 2019 and 2020 fees? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TCTC\_18>

LMEC has no comment.

<ESMA\_QUESTION\_TCTC\_18>