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| 23 October 2020 |

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| Response form for the Consultation Paper on RTS on conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and conditions under which changes to the models and parameters are significant under EMIR |
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| Date: 23 October 2020 |

Responding to this paper

ESMA invites responses to the questions set out throughout its Consultation Paper on RTS on conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and conditions under which changes to the models and parameters are significant under EMIR.

Responses are most helpful if they:

* respond to the question stated;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all responses received by 16 November 2020.

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:

* Insert your responses to the questions in the Consultation Paper in the present response form.
* Please do not remove tags of the type <ESMA\_QUESTION\_RTS1549\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
* 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.
* When you have drafted your response, name your response form according to the following convention: ESMA\_RTS1549\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_RTS1549\_ABCD\_RESPONSEFORM.
* 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”

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly indicate by ticking the appropriate checkbox on the website submission page if you do not wish your contribution to be publicly disclosed. 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 “Data protection”.

Who should read the Consultation Paper

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

# General information about respondent

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| --- | --- |
| Name of the company / organisation | European Commodity Clearing AG |
| Activity | Central Counterparty |
| Are you representing an association? |  |
| Country/Region | Germany |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_RTS1549\_1>

European Commodity Clearing is an EMIR authorized central counterparty (CCP) and a subsidiary of Deutsche Börse Group. European Commodity Clearing (ECC) is a central clearing house which specialises in energy and commodity products.

European Commodity Clearing appreciates the opportunity to provide feedback to ESMA’s consultation on the conditions which require an extension of authorisation for a CCP and conditions which require validations of CCP’s changes to models and parameters by the NCA and ESMA.

European Commodity Clearing ffully supports the overall aim of increasing coherence of supervisory practices, and we think that Articles 15 and 49 EMIR are important elements in this respect. To support a common understanding of the scope of Art. 15 and Art. 19 EMIR and related regulatory processes, our comments would be threefold.

First, the scope of the extension procedures needs to be clear and only cover additional services or activities not covered by the existing authorization or validation. In the context of Art. 15 EMIR, these procedures should only apply where a CCP intends to offer a service or perform an activity that is not covered by the existing authorisation and comes with such material risks for the CCP that a formal license extension procedure under Art. 15 is the only suitable option to ensure that the intended service or activity does not diminish the requirement that the CCP is “safe and sound” (cf. recital 49 of EMIR). Similarly, Art. 49 EMIR procedures should only apply in case of changes to the CCP’s models and parameters that are so substantial that, taking into account these changes, the outcome of the initial authorization procedure could be affected.

Second, we would like to highlight the importance to find the right split between the criteria and indicators to allow for an efficient operational adaption of the CCP and enable it to fulfil its role as a neutral risk manager for financial markets. To achieve this, the right balance needs to be struck between ensuring supervisors have an adequate view on the CCPs’ service offering and, at the same time, avoid unnecessarily broad list of criteria which would create cumbersome processes and distract the CCP focus from its core mandate**.**

Third, our final comments relate to the proposed processes for consulting the college under both procedures. We would recommend clear and efficient timelines for the process to decide whether an Art. 15 or 49 EMIR procedure is triggered, but also for the following procedures under Art. 15 and 49 EMIR themselves. Limiting the amount of time necessary for launching new services is key to spur innovation and competition within the EU, but also on global markets where EU CCPs enter into competition with CCPs from other jurisdictions which may benefit from faster processes. We believe this time factor to be even more crucial for the Art. 49 EMIR procedure where CCPs need to be able to react quickly to ensure proper risk management, especially in times of crisis. We also recommend a clarification of how NCAs shall consider the views expressed by the College members, how the CCP shall notify any changes to the NCA and that the NCA’s final assessment is decisive be also included the RTS.

We trust that our comments are seen as a useful contribution and remain at the disposal of ESMA for any questions and additional feedback

<ESMA\_COMMENT\_RTS1549\_1>

1. Do you agree with ESMA’s proposed approach to divide conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation (under Article 15 of EMIR) into criteria, which would be subject to a more simplified college consultation procedure, and into indicators, which would be subject to a more extensive college consultation procedure, or would you propose a different approach? Please provide reasons for your answer.

<ESMA\_QUESTION\_RTS1549\_1>

* We fully support the overall aim of increasing coherence of supervisory practices. The application of Art. 15 EMIR has shown to be an important part of this. Thus, the aim to clarify what should constitute an extension of services and what is not will be key to achieving this aim. As such, we welcome ESMA’s efforts in this direction.
* Art. 15 EMIR addresses the situation where a CCP wishes to extend its business to additional services or activities not covered by the initial authorization. As a correct understanding of the scope of a CCP’s authorization under EMIR is essential to ensure compliance with EMIR and the described regulatory processes, the scope of such authorization needs to be defined as easily and clearly as possible. Against this background, it should be ensured that the criteria match the original legal purpose of Art. 15 being “*additional services or activities not covered by the initial authorization*”. From our point of view, it is important to clarify in the RTS that Art. 15 EMIR can only be launched for a new activity or service not covered in the existing authorization, be it active or not.
* In principle, the two-step approach suggested in the consultation paper makes sense. However, since the presence of a criterion automatically triggers a procedure under Art. 15 EMIR without any room for further differentiation based on the materiality of the case at hand, it should be made sure that the list of criteria is rather narrow and only covers criteria where it is evident that their presence gives rise to such risks that make it necessary to address these risks in an Art. 15 EMIR procedure. This is only the case where a CCP intends to offer a service or perform an activity that comes with such material risks for the CCP so that a formal license extension procedure under Art. 15 EMIR is the *only* suitable option to ensure that the intended service or activity does not diminish the requirement that the CCP is “safe and sound” (cf. recital 49 of EMIR).

<ESMA\_QUESTION\_RTS1549\_1>

1. Do you agree with ESMA’s proposed list of criteria for an extension of authorisation (under Article 15 of EMIR) or would you propose to change/add/delete any of the criteria or specify certain criteria further? Please provide reasons for your answer.

<ESMA\_QUESTION\_RTS1549\_2>

In order the strike the right balance between appropriate supervisory oversight and efficient processes, we would recommend limiting the list of criteria to the new asset classes as outlined by ESMA and to new models of execution (ETD vs. OTC).

Referring to the proposed RTS, we want to highlight the following points:

* Re. Art. 2 (a) and (b) - Intention to offer a new category of financial instruments or a new type of execution: We agree with the proposal. Both points appear to be in line with established practice of requiring Art. 15 EMIR when extending to new asset classes or models of execution (ETD vs. OTC) where the CCP is not already licensed to provide these services.
* Re. Art. 2 (c) - Intention to offer new settlement or delivery mechanism: This point should not be a criterion for the purposes of Art. 15 EMIR as not all new settlement or delivery mechanisms or links to securities settlement systems, CSDs or payment systems expose the CCP to new material risks. Given the CCPs authorization is not limited with regards to changes in such processes, this should as such not be subject Art. 15 EMIR. Relevant changes in this context should rather be captured by the Art. 49 EMIR process.
* Re. Art. 2 (d) - Service or activity referencing a new currency:
  + For ‘contracts referencing a new currency’: The provision appears broad and unnecessarily restrictive to us. The proposal implies that a CCP currently clearing FX Futures on a large number of currencies would have to go through an Art. 15 EMIR process for every additional currency it wants to extend its offering with, regardless of whether or not the extension adds new or novel risk characteristics to the CCP. We propose to remove ‘contracts referencing a new currency’ from the criteria and to move it to the list of indicators in order that a more nuanced assessment is possible.
  + For ‘new payment currencies’: From a risk perspective, similar concerns apply as some currency extensions are very minor in nature.

<ESMA\_QUESTION\_RTS1549\_2>

1. Do you agree with ESMA’s proposed list of indicators for an extension of authorisation (under Article 15 of EMIR) or would you propose to change/add/delete any of the indicators or specify certain indicators further? Please provide reasons for your answer.

<ESMA\_QUESTION\_RTS1549\_3>

Referring to the proposed RTS, we want to highlight the following points:

* Re Art. 3 (a) - Adapting a CCP’s risk management framework taking into account specific features of the contract: This indicator could introduce moral hazard and create a negative incentive on the CCP to avoid adapting its risk framework in order not to trigger this indicator. The incentive should be on the CCP to adapt the risk framework as best as possible to reflect addition of new products or services. In this context, we would recommend removing this indicator altogether or, as a fallback, considering it in the list of indicators for Art. 49.

Re. Art. 3 (b) (i) and (ii) - Adapting a CCP’s operational or organizational structure in regard of different time zones and working hours: These two points should not be indicators for the purposes of Art. 15 EMIR because they do not give rise to any additional risks for the CCP that go beyond ensuring that sufficiently qualified staff is available to conduct the CCP’s activities during the envisaged extended working hours (which is not materially different from the obligation to ensure sufficient staffing during the current CCP working hours).

* Re. Art. 3 (b) (iii) - Implementing of a new structure of margin accounts: The indicator ‘implementation of a new structure of margin accounts‘ is formulated too vaguely to help concretizing Art. 15 EMIR. This will lead to considerable uncertainty when applying this indicator in practice, for both the NCAs and the CCPs.
* Re Art. 3 (c) - Offering contracts which cannot be liquidated in the same manner or together with existing contracts: Similar to Art. 3 (a), this indicator may create an incentive for the CCPs to determine that contracts can be liquidated in the same manner or together with other existing contracts. We would welcome a clarification of this indicator avoiding this false incentivisation.

Re Art. 3 (d) - Adopting new or different methods for obtaining prices: It is unclear what is meant by ‘methods for obtaining prices’, i.e. whether this does refer to methodology only or also entails change of data source (for instance switch of data vendor). If switching data vendor for one or more instruments ultimately used for settlement or margining required full analysis for submission to NCA and potentially lead to Art. 15 processes, it would be counterintuitive for at least these two reasons:

Firstly, no new products or services are being introduced when CCP decides to use new or different methods for obtaining prices so if anything this change would rather fit Art. 49 process than Art. 15 process.

Secondly, this indicator may result in impeding the CCP operational management where the CCP may have to respond to changing market environment and vary the ways in which it obtains prices used either for margining or settlement purposes. It appears excessive to involve NCA, not to mention ESMA and EMIR college. It is important to mention that even relatively small CCPs typically use tens of data sources and methods for obtaining prices, depending on risk factors, instruments, model purpose, etc.

Alternatively, it might make sense to specify materiality thresholds, for example extension affecting products covering more than 50% of Open Interest.

Re Art. 3 (e) (i) - Taking into account extension of the range of maturities: One could question setting the exact value or whether a relative threshold would suffice. However, the key question is actually whether a CCP extending the maximum maturity of its single stock future, for example, from 1 year to 3 years is something that both NCA and the EMIR college should analyse. If ESMA has a specific concern with a particular type of maturity extensions, we would recommend addressing those more specific concerns in order to avoid a situation where this point alone will generate several requests every quarter.

* Re Art. 3 (e) (ii) - Taking into account the introduction of new option exercise styles: We understand that this point would refer to the first introduction of a new option exercise style to the CCP and not to subsequent introduction of certain option exercise styles for other products. For example, CCP might list 300 products with American Exercise Style and 200 products with European exercise style. We would understand that listing another product with either of those exercise style would not be a trigger for Art. 3 (e) (ii). A respective clarification by ESMA would be highly appreciated.
* Re Art. 3 (f) (i) - Introduction of new derivates of similar profile but referencing new index/benchmark: We would welcome a clarification that this indicator would not be triggered when contracts are modified to refer to similar benchmarks or fallback rates as part of the IBOR reform. Otherwise, all EU CCPs would be deemed requiring an extension of authorisation for complying with the Benchmarks Regulation.
* Re Art. 3 (f) (ii) - Currencies with different levels of transferability or different pegging regimes: We notice that this point stands in contradiction to the criterion in Art. 2(d) which would result in automatic Art.15 procedure for any ‘contracts referencing a new currency (…)’. Art. 2 (d), when applied to contracts referencing new currencies, is both wider and stricter than indicator Art 3 f (ii) and thus the specific part of ‘currencies with different levels of transferability or different pegging regimes’ appears redundant. Having said that and in line with our comment regarding 2 (d), we see indicator outlined in Art. 3 (f) as more appropriate formulation and would recommend removing criterion 2 (d).
* Re Art. 3 (f) (ii), (iii), (iv) - Additionally some parts of Art. 3 (f) e.g. “different credit worthiness” or “securities with different seniority” appears extremely granular without bringing material help in assessing whether the CCP is exposed to more risk. We believe this risks creating extremely long processes for validation without material benefit.

<ESMA\_QUESTION\_RTS1549\_3>

1. : Would you change certain criteria into indicators or vice-versa (under Article 15 of EMIR)? Please provide reasons for your answer

<ESMA\_QUESTION\_RTS1549\_4>

In consideration of our answers to the questions above, we would welcome a recategorization as follows:

* Re Art. 2 (c) - Intention to offer a new settlement or delivery mechanism or service: We would welcome this criteria to be downgraded to indicators. In all of these cases, it is not evident that the sole presence of any of these points automatically leads to material risks for the CCP that may only be addressed in Art. 15 EMIR procedure.
* Re Art 2 (d) - Intention to offer a service/perform activity referencing new currency: We would appreciate a review for the reasons mentioned above as it appears unnecessarily restrictive. Furthermore, we believe there is overlap to Art. 3 f (ii). In line with our comment regarding 2 (d), we see indicator 3 (f) as more appropriate formulation and would recommend removing criterion 2 (d) or to move this to an indicator such that a more nuanced assessment is possible.

<ESMA\_QUESTION\_RTS1549\_4>

1. Do you agree with ESMA’s proposed procedures for consulting the college (under Article 15 of EMIR) or would you propose different procedures? Please provide reasons for your answer.

<ESMA\_QUESTION\_RTS1549\_5>

* We generally agree with the procedures described in the consultation paper, which should allow for profound and efficient decision making. Against this background, we would like to highlight one point regarding the suggested decision making process:
  + The timelines of the process of determining whether an Art. 15 EMIR procedure (resp. Art. 49 EMIR procedure) is triggered are not specified in the proposed RTS (which is a deviation from ESMA’s current opinion on Art. 15 / 49 EMIR that contains clear time frames in para. 16 et seq. of the opinion). Given that the set of indicators is very wide, it is expected that far more operational changes will fall under the process of determining relevance and thus CCPs should have clarity on the timelines. For example, if a CCP performs quarterly recalibration of haircuts and as a result of recalibration one of the quantitative indicators is triggered, the CCP should have clarity whether to put its operational process on hold and if so what is the likely timeline that risk management procedures are suspended.
  + As the identification of whether Art.15 EMIR should be triggered or not is only the beginning of a potentially much lengthier process, we would welcome if ESMA could shorten this procedure to the shortest extent possible, whilst ensuring quality review for the NCA and the EMIR college. For example, it is not clear to us why the EMIR college needs to be consulted if the NCA finds that the criteria are met. The criteria are straight forward and the NCA should have the power to trigger directly Art. 15 EMIR.
  + More generally, we would also welcome shorter timelines for the assessment of the extension of services itself. Launching new products and clearing services has a key competitive dimension for CCPs. Limiting the amount of time necessary for their launch is key to spur innovation and competition within the EU, but also on global markets where they enter into competition with other jurisdictions which may benefit from faster processes.
* Further, we believe a clarification regarding the following points would improve the suggested process:
  + It is not spelled out in the consulted standards what should be the process for NCA to be notified about the changes by the CCPs and what information the NCA needs to assess whether a criteria or indicator is triggered. A clarification in this regard would contribute transparency of the process.
  + The consultation paper clarifies that while the views expressed by the members of the college have to be considered by the NCA, the final decision is left with the NCA. We would appreciate if this clarification could also be added to the proposed RTS.

<ESMA\_QUESTION\_RTS1549\_5>

1. Do you agree with ESMA’s proposed approach to divide conditions under which changes to the models and parameters are significant (under Article 49 of EMIR) into criteria, which would be subject to a more simplified college consultation procedure, and indicators, which would be subject to a more extensive college consultation procedure, or would you propose a different approach? Please provide reasons for your answer.

<ESMA\_QUESTION\_RTS1549\_6>

* Referring to our answer to question 1, we highly appreciate ESMA efforts in increasing coherence regarding application of Art. 49 and believe this will be an important element of increasing consistent application of EMIR.
* Overall, the suggested approach makes sense. However, since the presence of a criterion automatically triggers a procedure under Art. 49 EMIR without any room for further differentiation based on the materiality of the case at hand, it should be made sure that the list of criteria is rather narrow and only covers criteria where it is evident that their presence gives rise to such risks that make it necessary to address these risks in an Art. 49 EMIR procedure.
* The purpose of Art. 49 EMIR is to safeguard the EMIR provisions on the initial authorization of a CCP so that the CCP’s models and parameters (which have been originally assessed by the NCA, ESMA and the EMIR college as part of the authorization procedure) are only substantially amended after a validation by the NCA, ESMA and the EMIR college took place. Consequently, the Art. 49 EMIR procedure should only be applied to changes to the CCP’s models and parameters that are so substantial that the outcome of the initial authorization assessment could be affected.

<ESMA\_QUESTION\_RTS1549\_6>

1. Do you agree with ESMA’s proposed list of criteria for significant changes to the models and parameters (under Article 49 of EMIR) or would you propose to change/add/delete any of the criteria or specify certain criteria further? Please provide reasons for your answer.

<ESMA\_QUESTION\_RTS1549\_7>

Referring to the proposed RTS we want to highlight the following points:

* Re Art. 7 (a) - Decrease or increase of total pre-funded financial resources: Quantitative criteria have a tendency to be unduly limiting in some circumstances. However, we feel that the formulation of threshold at the level of total pre-funded resources is the reasonable choice. Having said that, the word “change” on its own is not sufficiently specific and could imply change due to various reasons (from methodology change, through change due to volatile markets to change due to new trades by the member). Without further specification in the RTS, one would have to assume all of the above to ensure compliance. Further we would appreciate clarification on whether total pre-funded financial resources include, but are not limited to margin requirements, default fund and skin-in-the-game.
* Re Art. 7 (b) - Structure or structural elements of the margin model changed: This is a reasonable criterion as it refers to significant model changes.
* Re Art. 7 (c) - Introduction, removal or amendment of new margin modules: It is generally a reasonable formulation. However, the description of impact is unclear which appears to be a circular reference. We recommend to change the respective portion ‘(…) which leads to a decrease/increase *of total margin requirement* greater than +/- 10% at CCP level’. This way the nominator is the delta of total margin requirement arising due to the change (respectively introduction or removal), denominator is the total margin requirement and 10% is the relative threshold.
* Re Art. 7 (d) - Change in calibration of core EMIR margin parameters: This appears to be a reasonable criterion.

Re Art. 7 (e) - Change in methodology used to compute portfolio offsets: This criterion is unclear and could be very broad brush. On the one hand, the indicator mentions change to methodology of computing portfolio offsets. This would in fact appear to be a reasonable place to end. The following specifications introduce confusion. For example, the methodology itself might introduce thresholds below which no offset is granted and above which offset is granted. This leaves the question if data leads to migration from below the threshold to above the threshold (with no change to the methodology of providing offsets) is this mere action a potential significant model change. We would appreciate, if ESMA could clarify.

Re Art. 7 (f) – Introduction of different option to satisfy the anti-procyclicality requirement: This appears to be a reasonable criterion.

Re Art. 7 (g) - Introduction, change or removal of stress test scenarios: It does not appear clear how this criteria fits with the (regulatory required) annual recalibration of the stress testing model. EMIR RTS requires the CCP (with prescribed governance roles of Risk Committee and the Board) to review its stress testing on at least an annual basis. This would lead to at least one model change trigger a year arising just from Art. 7 (g). Thus, the criterion should refer to “significant change in the methodology to create and calibrate stress test scenarios” instead of amendment of specific single stress scenarios (events).

The quantitative trigger are of particular concern:

10% of default fund (as opposed to 10% of pre-funded resources) is a low threshold as the default fund is effectively driven by the differential between cover-2 stress testing losses and the IM. For CCPs where the majority of the risk is collateralized by the potential defaulter (i.e. in IM collateral), Default Funds will consequently be low and 10% changes will be triggered very easily for even the small changes to stress testing frameworks.

It is difficult to explain the threshold of 50% individual default fund contribution. When combined with the overall 10% threshold, it remains unclear if any change which doesn’t trigger any of these thresholds is a change worth executing in the first place.

Apart from the very low thresholds, it is unclear how the RTS implements stress testing calibration methodologies. Many CCPs apply approved and validated models to calibrate their set of scenarios and their magnitude. This provides for a degree of objectivity. However, if the following criterion is being triggered as a result of existing methodology being applied to new data, this would effectively mean that the model is only applied as guidance and regular model execution may require ‘significant model change process’. This raises a more fundamental question which will be raised several times still: to what extent are CCPs in charge of their risk management operations and to what extent is that going to be dependent on the NCA and EMIR college. For example, if the approved and validated stress testing calibration model, results on 2021 with more scenarios and those scenarios increase in severity due to crisis, CCPs will be obliged not to apply its standard operating procedure but instead put them on hold pending regulatory decision. It raises questions about what happens if a member default occurs in the time interval between the CCP recalibrating its model and the time that it obtains regulatory approval to effect the changes, especially if the default was severe enough to exhaust the (unamended) default fund.

* Re Art. 7 (h) - Change in methodology applied to assess liquidity risk/monitor concentration risk: This criterion appears extremely restrictive. Most CCPs will have major liquidity risks in their home currencies with much lower liquidity risks arising in other currencies. The threshold means that a change in liquidity situation in those minor currencies will potentially trigger the Art. 49 EMIR process. Having that said we would suggest to limit the criteria to total liquidity needs and not individual currency level.
* Re Art. 7 (i) - Extension of eligible collateral with different risk profile: We would welcome clarification what “material differences in liquidity” means. While there are clear thresholds on other criteria, this appears unclear in comparison. Considering this subject is also covered by regular back testing of collateral haircuts, we would welcome to consider deleting the subpoints Art. 7 (i),i and Art. 7 (i),ii.
* Re Art. 7 (j) - Change in methodology applied to value/calibrate collateral or set concentration limits: The criterion leaves out other haircuts and models, such as other valuation models. We would welcome a clarification whether this was intentionally left out. Furthermore, while the criterion of change of total value of non-cash collateral appears overall reasonable, the threshold at the level of any single instrument appears excessive. A materiality threshold would be more appropriate to ensure focus on items which matter.

<ESMA\_QUESTION\_RTS1549\_7>

1. Do you agree with ESMA’s proposed list of indicators for significant changes to the models and parameters (under Article 49 of EMIR) or would you propose to change/add/delete any of the indicators or specify certain indicators further? Please provide reasons for your answer.

<ESMA\_QUESTION\_RTS1549\_8>

General comment: Assuming it to be an unintentional omission, Art. 8 does not mention change in methodology but simply ‘change’. It could happen that, like during corona crisis, IM of individual members increases by more than 10% due to increased market volatility (no changes on methodology side) – could ESMA clarify if a CCP should then freeze the amounts of margin requirements at their last level pending EMIR college assessment of Art. 49 EMIR relevance and potential Art. 49 EMIR process completion. The same comment applies to all Art. 8 sub-points and is thus not repeated.

Referring to the proposed RTS, we want to highlight the following specific points:

* Re Art. 8 (a) (iii) - Decrease or increase of total pre-funded financial resources: It is unclear what is meant by this proposed indicator. Typically, neither margins and especially not stress testing exposures are measured on the level of individual underlying; ‘class of financial instruments’ is a category which would require further clarifying but is also not widely used in CCP risk management to identify impacts.
* Re Art. 8 (a) (iv) - Decrease or increase of the margin requirements or stress test exposure: The threshold appears very low and concerns as voiced in our reply to Art. 7 (g) (see question 7) also apply here.

Re Art. 8 (b) - Decrease or increase of haircut due to changed methodology: Consistent with a comment on Art. 7 (j), assessing the change against overall value of collateral has some merit but observance of threshold at individual security level is unduly restrictive. The set of eligible securities of some CCPs exceed 10,000 securities and hitting the threshold for any of those securities would trigger an indicator even if overall impact is minor.

Re Art. 8 (c) - Decrease or increase of estimated or total liquidity: Consistent with our comment on Art. 7 (h), the lower threshold exacerbates the problems associated with reference to any of the currencies. It would be much more appropriate to refer to the overall liquidity needs for the purpose of establishing significance of the change.

* Re Art. 8 (d) - Change leads to introduction or modification: This indicator is too wide as it essentially includes all other risk-related activities of a CCP. It is difficult to imagine what change a CCP could perform in a risk area that would not trigger one of the points in Art. 8 (d). All the points are procedural and, if relevant, are captured by the other criteria and indicators. We therefore propose to remove this indicator. Note that the changes to margin methodology itself would be subject to assessment based on significance thresholds but changes to data inputs (e.g. switch from Bloomberg to Reuters), irrespective of their relative materiality or significance to the overall process, would potentially become at least candidates that the EMIR college will have to opine on. In particular, we would like to point out the following:

Art. 8 (d) (ii) states that “the introduction or modification of […] a pricing model” should serve as an indicator. It is not clear what this provision should cover.

Art. 8 (d) (iv): It is difficult to see relevance of any changes to procedures detecting pricing uncertainties to the topic of ‘significant model changes’ under EMIR that the NCA, ESMA and EMIR college would need to opine.

Re Art. 8 (e) - Development of new stress scenarios: Criteria and indicators covering credit stress testing with their bespoke thresholds already exist. If Art. 8 (e) is to remain then those indicators appear redundant as they include any introduction or modification of any stress scenarios. Mixing in very different risk categories is confusing: some of those elements of risk framework, like haircuts, have nothing to do with stress scenarios and are calibrated according to their own methodologies and covered by other criteria and indicators. Liquidity Stress Testing, while using scenarios, is also covered by its own thresholds. If any modification was to trigger Art. 8 (e) then those thresholds are, again, redundant. Lastly, topics of credit and counterparty risk or operational risk require clarification of what exactly should trigger an indicator and what should not. None of those categories use the term ‘stress scenarios’ and thus this point may not achieve its intended objective.

* Re Art. 8 (f) - Intention to offer new access model/clearing services to clearing members with different risk profile/characteristics: The scope is unclear from our perspective. It should read “access model for clearing members” to avoid confusion with trading venue access under Article 35 MiFIR or CSD access under Article 53 CSDR.

<ESMA\_QUESTION\_RTS1549\_8>

1. Would you change certain criteria into indicators or vice-versa (under Article 49 of EMIR)? Please provide reasons for your answer.

<ESMA\_QUESTION\_RTS1549\_9>

In consideration of our answers to the questions above, we would welcome a recategorization as follows:

* Re Art. 7 (e) - Change in methodology used to compute portfolio offsets: Based on our explanations on this article in question 7, we believe this criteria would be better placed as an indicator than a criteria.
* Re Art. 7 (j) - Change in methodology applied to value/calibrate collateral or set concentration limits: Based on our explanations to this article in question 7, we also propose to move (ii) to be an indicator since triggering an Art. 49 EMIR process based on such a granular criterion appears unreasonable.
* Re Art. 8 (d) - Change leads to introduction or modification: This indicator should be removed altogether (see in detail our reasoning outlined in our answer to question 8).
* Re Art. 8 (e) - Development of new stress scenarios: Based on our explanations on this article in question 7, we believe that this would be better placed as an indicator than a criteria.

<ESMA\_QUESTION\_RTS1549\_9>

1. Do you agree with ESMA’s proposal to extend the consultation with the college also to Article 49? Do you agree with the proposed procedures for consulting the college or would you propose different procedures? Please provide reasons for your answer.?

<ESMA\_QUESTION\_RTS1549\_10>

* Given the suggested processes for Art. 15 and 49 are identical, please see our answer to question 5.
* We would only like to reiterate the particular importance to specify timelines for the process for topics covered by Art. 49 EMIR in order to enable the CCP to implement changes necessary to make their contribution to financial market stability. It is vital that CCPs are able to react quickly without being encumbered during a crisis. In this light, we would suggest allowing for an emergency process for crisis management (under the NCA supervision) to enable the swiftest reaction possible – the EMIR college would then be informed on an ad hoc basis of the changes implemented.

<ESMA\_QUESTION\_RTS1549\_10>