**Reply** **form**

Conditions of the Active Account Requirement

 Responding to this paper

ESMA invites comments on all matters in the Consultation Paper and in particular on the specific questions in this reply form. 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 **27 January 2025.**

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 this reply form.
* Please do not remove tags of the type <ESMA\_QUESTION\_AAR\_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 responses, save the reply form according to the following convention: ESMA\_AAR\_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_AAR\_ABCD.

* Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

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 publicly 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 headings ‘Legal notice’ and heading ‘[Data protection](https://www.esma.europa.eu/about-esma/data-protection)’..

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | AMF Italia – Associazione Intermediari Mercati Finanziari |
| Activity | Investment Services |
| Are you representing an association? |[x]
| Country/Region | Italy |

# Questions

1. Are there any aspects of the AAR scope on which ESMA has based its quantitative analysis and its policy choices that ESMA should consider detailing further*?*

<ESMA\_QUESTION\_AAR\_01>

With reference to paragraph 40 of the Consultation Paper, AMF Italia members would like ESMA to clarify certain implementation aspects of the AA obligation with respect to entities belonging to groups subject to consolidated supervision in the EU.

Firstly, in case two or more of such entities become subject to the AAR, our members believe it is unclear whether each of them is required to hold an active account or, alternatively, if such obligation could be also fulfilled by one entity only.

Secondly, our members would request ESMA to clarify whether intragroup transactions - not exempted from the clearing obligation - in relevant derivatives contracts are subject to the AAR. They acknowledge that, pursuant to Article 7a(2) of EMIR, infragroup transactions are to be excluded from the calculation so they would like to understand whether such exclusion applies also to the obligation to hold an AA.

As regards the assessment relating to the 85% threshold under Article 7a(5) of EMIR and paragraph 3.4.1 of the Consultation Paper, AMF Italia members would ask ESMA to specify the frequency of the relating calculation.

Furthermore, our members note that ESMA, in paragraph 43 of the Consultation Paper, provides that an exemption from, *inter alia*, “*the reporting requirements under Section 6 of this Consultation Paper*” is granted when the aforementioned 85% threshold is reached. However, it is not clear whether paragraph 5 of Article 7a of EMIR provides an exemption from any and all reporting obligations under Article 7b at the occurrence of such threshold. In fact, it expressly excludes the application of the “*additional reporting requirement referred to in Article 7b(2)*” while it is unclear if the reference contained therein to “*the requirement referred to in paragraph 4, fourth subparagraph, of this Article*” is to the general reporting obligation under Article 7b or to a different requirement. Therefore, for the avoidance of doubt, AMF Italia members would request ESMA to provide clarifications in this respect.

In detailing the AAR, and specifically the representativeness obligation, AMF Italia members would request ESMA to specifically address the scenario of a client clearing relevant derivative contracts at a given EU CCP via different clearing members. In such situation the client indirectly holds multiple clearing accounts at the same EU CCPs and it should be allowed to make reference to all those accounts to satisfy the ARR; in particular, it should be allowed to include all the transactions cleared across these accounts (in aggregate) in order to meet the representativeness requirements.

The above scenario is quite common in the indirect clearing panorama, where clients use different CMs to access the same CCP to diversify (counterparty and credit) risk, to manage the operational and financial limits imposed by each CM on the related clearing account and activity. In such situation, the clients should be allowed to aggregate the number of trades cleared in each accounts in order to satisfy the representativeness requirements. On the contrary, an excessive burden would be imposed on indirect clients where they were forced to elect only one of their accounts as AA and to concentrate in that account the clearing activity at the EU CCP. Such scenario would entail the risk of (A) losing the benefits of diversification among CMs; and (B) having difficulties in complying with the representativeness obligation given the limits on each account imposed by the relevant CM.

<ESMA\_QUESTION\_AAR\_01>

1. Do you agree with the above approach for condition (a)? Are there other requirements that ESMA should consider for meeting condition (a)?

<ESMA\_QUESTION\_AAR\_02>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_AAR\_02>

1. Do you agree with the above approach for conditions (b) and (c)?

<ESMA\_QUESTION\_AAR\_03>

In our members’ opinion, the wording “*assessing any potential legal and operational barriers to this effect*” should be removed from both articles 2(a) and 8(1)(b)(ii) of the RTS draft.

Particular concern is raised by the reference to the legal assessment because the wording is quite generic. Furthermore, the need to perform such assessment would predictably lead lots of counterparty to outsource the analysis to external legal counsels, with the related costs that such requirement would imply. This would affect, in particular, smaller counterparties.

<ESMA\_QUESTION\_AAR\_03>

1. Do you agree with the proposed approach for the annual stress-testing conditions (a), (b) and (c)?

<ESMA\_QUESTION\_AAR\_04>

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<ESMA\_QUESTION\_AAR\_04>

1. Do you agree with the differentiated frequency for the stress-testing depending on the counterparties’ clearing activities? Would you suggest any other way to take into account the proportionality principle?

<ESMA\_QUESTION\_AAR\_05>

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<ESMA\_QUESTION\_AAR\_05>

1. Do you agree with the proposed classes of derivatives for EUR OTC IRD?

<ESMA\_QUESTION\_AAR\_06>

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1. Do you agree with the proposed classes of derivatives for PLN OTC IRD?

<ESMA\_QUESTION\_AAR\_07>

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<ESMA\_QUESTION\_AAR\_07>

1. Do you agree with the proposed classes of derivatives for EUR STIR?

<ESMA\_QUESTION\_AAR\_08>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_AAR\_08>

1. Do you agree with the proposed maturity and trade size ranges for each class of derivatives in EUR OTC IRD?

<ESMA\_QUESTION\_AAR\_09>

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<ESMA\_QUESTION\_AAR\_09>

1. Do you agree with the proposed maturity and trade size ranges for each class of derivatives in PLN OTC IRD?

<ESMA\_QUESTION\_AAR\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_AAR\_10>

1. Do you agree with the proposed maturity and trade size ranges for each class of derivatives in EUR STIR?

<ESMA\_QUESTION\_AAR\_11>

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<ESMA\_QUESTION\_AAR\_11>

1. Do you agree with the proposed number of most relevant subcategories for each clearing service of substantial systemic relevance? Do you think this should be set at a more granular level (i.e. per class of derivatives)?

<ESMA\_QUESTION\_AAR\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_AAR\_12>

1. Do you agree with the proposed reference periods for EUR OTC IRD? Do you think the reference periods should be set at a more granular level (i.e. class of derivatives)?

<ESMA\_QUESTION\_AAR\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_AAR\_13>

1. Do you agree with the proposed reference period for PLN OTC IRD? Do you think that the reference periods should be set at a more granular level (i.e. class of derivatives)?

<ESMA\_QUESTION\_AAR\_14>

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<ESMA\_QUESTION\_AAR\_14>

1. Do you agree with the proposed reference periods for EUR STIR referenced in Euribor? Do you agree with the proposed reference periods for EUR STIR referenced in €STR?

<ESMA\_QUESTION\_AAR\_15>

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<ESMA\_QUESTION\_AAR\_15>

1. Do you agree with the proposed approach for the reporting of the activity and risk exposures of the counterparty subject to the active account requirement?

<ESMA\_QUESTION\_AAR\_16>

With reference to the content of paragraph 165 of the Consultation Paper, our members would like ESMA to clarify if the information outlined in Table 2 of the draft RTS should be provided and transmitted also by all the subsidiaries of the group to which the reporting counterparty belongs. If not, they would like ESMA to confirm that the reporting obligations lies only on the group entity/ies subject to the ARR, which shall include in the report also Table 2 information relating to any subsidiaries. Finally, in case two or more entities of the same group are subject to the reporting obligation, our members would like to understand whether such obligation could be fulfilled by one of them (also on behalf of the other entity/ies) or if separate reports are to be drafted and transmitted to the NCA by each involved entity of the group.

<ESMA\_QUESTION\_AAR\_16>

1. Do you consider that including information on margin activity in the AAR reporting requirement would provide valuable information on the activities and risk exposures of the counterparty?

<ESMA\_QUESTION\_AAR\_17>

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<ESMA\_QUESTION\_AAR\_17>

1. Do you consider that including reporting on Unique Trade Identifiers (UTIs) would provide valuable information from a supervisory perspective?

<ESMA\_QUESTION\_AAR\_18>

Our members believe that including UTIs for the relevant derivative contracts subject to the AAR would result in a further burden for reporting counterparties with no tangible benefit for competent authorities given that such data is already accessible by them via the reporting under article 9 of EMIR.

<ESMA\_QUESTION\_AAR\_18>

1. Do you agree with the proposed approach for the reporting of the operational conditions?

<ESMA\_QUESTION\_AAR\_19>

Our members acknowledge that the reporting obligations under Article 7b apply every six months irrespective of the fact that a change has effectively occurred from one report to the other. In order to alleviate reporting burdens upon counterparties, AMF Italia members would suggest to specify that, in case no change has occurred from the previous report, then counterparties may just confirm the information provided in the report previously transmitted, without needing to produce a report setting out the same information already provided with respect to the previous 6-month period.

<ESMA\_QUESTION\_AAR\_19>

1. Do you agree with the proposed approach for the reporting of the representativeness obligation?

<ESMA\_QUESTION\_AAR\_20>

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<ESMA\_QUESTION\_AAR\_20>

1. Do you agree with the proposed approach to standardise the reporting arrangements under the active account requirement?

<ESMA\_QUESTION\_AAR\_21>

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<ESMA\_QUESTION\_AAR\_21>