**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.

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# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | European Fund and Asset Management Association (EFAMA) |
| Activity | Investment Services |
| Are you representing an association? |[x]
| Country/Region | Belgium |

# 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>

**Thresholds for the CO and the AAR**

EFAMA welcomes ESMA’s confirmation that the AAR's ‘second condition’ threshold is aligned with the current clearing obligation threshold for OTC interest rate derivatives (EUR 3 billion in gross notional value). We also support ESMA’s clarification that the ongoing review of the new clearing obligation calculation methodology will not lead to substantial changes, preserving the prudent coverage of the clearing obligation (as per recital 9 EMIR 3.0). Small financial counterparties, such as many UCITS and AIFs, have very limited activity in derivatives and do not pose a systemic threat to financial stability. Such counterparties should thus not be burdened with an updated clearing obligation that automatically triggers the maintenance of clearing accounts and reporting obligations.

Equally, counterparties that choose not to perform calculations under Art. 4a, but voluntarily clear all of their positions on an EU CCP, should be exempt from the active account requirements, i.e. operational and reporting. A column could be added in our proposal for an extended notification template (see Annex II), where the clearing counterpart self-certifies that they do not perform calculations and voluntarily clear all their in-scope derivative contracts on EMIR Article 14 authorised CCP.

**85% exemption**

The exemption foreseen for firms clearing 85% or more of their derivatives activity on an EU CCP is an important incentive to bring more clearing onto EU CCPs. However, as currently drafted, Section 3.4 foresees that *‘85% of counterparties derivative contracts’* be measured in gross notional value of the aggregate month-end average position for the previous 12 months. We believe applying a 12-month lookback period for counterparties to benefit from this exemption is unhelpful and does not incentivise firms to move their clearing to an EU CCP. With a 12-month lookback requirement, when the AAR comes into force, if firms had only recently started to shift their positions to exclusively clear on an EU CCP, they would fail to qualify for the exemption. This would mean that the entire set-up for monitoring trades across 2 CCPs, stress-testing and reporting would nevertheless have to be put in place, therefore making it more likely that a clearing entity would support a dual-CCP clearing strategy in the future, foregoing the available exemption.

Most importantly, Level 1 of the EMIR 3.0 text for ESMA does not suggest a lookback period. It seeks to provide an exemption to counterparties that are *‘already clearing’* a significant amount on an EU CCP. In this sense, according to Recital 13, the rationale of this exemption is to allow market participants to gradually adopt this ‘novel’ requirement. Such a migration, we know, will require a complex reallocation of clearing activity. Few counterparties that today clear most of their trades at a Tier 2 CCP will be able to move significant enough volumes of clearing into the EU in such a short time frame for them to benefit from this exemption. This becomes especially challenging for buy-side firms, given that they are mainly small counterparties with limited clearing activity whose onboarding may not be the priority of clearing brokers if bottlenecks occur following significant migration activity into EU CCPs.

We respectfully suggest the modification below so that the 85% exemption will be functional and a viable option.

We are aware that alternative proposals may exist on how to operationalise the 85% exemption; however, we insist on a 12-month transition period. This is simply a function of anticipating the lead times required to close out positions and re-open them on an EU-CCP while acting in the best interest of the client (i.e. minimising profit-and-loss impact and tax implications).

* FC+/NFC+ subject to AAR and wishing to benefit from the exemption could (i) notify the NCAs/ESMA of their intention to use it (as of June 25, 2025) and (ii) would have to demonstrate over the following 12 months (transitional period) that the switch is underway. Ultimately, a snapshot of their positions as of the end of June 2026 will demonstrate that 85% of their clearing activity is performed at EU CCP(s).

The notification of their intention to benefit from the exemption could be accompanied by a commitment/written statement from the counterparties that they will reach the 85% threshold by the end of June 2026.

Moreover, it would be beneficial if ESMA clarified that the 85% exemption also applies to the representativeness obligation. A counterparty already clearing such a high proportion of its relevant derivative transactions will most likely automatically meet the representativeness obligation, making monitoring its clearing activity and performing the reporting obligations redundant and overly burdensome.

**Scope of representativeness**

Clarifications of the EUR 6bn thresholds triggering representativeness obligations are welcome, but further details would be appreciated: the RTS should clarify which 12-month period must be used for the first application of EUR 6bn and EUR 100 bn thresholds (we believe this should be aligned with the period used for the clearing thresholds calculations).

**Notification timeline for opening active account**

We recognise that ESMA has already published an Active Account Requirement Notification Template. Although the notification template was only made available late December, asset managers are endeavouring to submit notifications in the quickest timeframe possible.

We would invite ESMA to consider this first notification as a one-off exercise to be then streamlined into a 6-monthly notification template with an expanded scope. This approach underpins our proposal for a revised reporting methodology that retains all the necessary reporting fields that AAR gives rise to while minimising duplication in reporting and streamlining the timing. Given the differences in the notification templates (the one issued on 24 December 2024 versus our proposal for a modified template outlined in Annex II of this document), there may well be some differences in the results reported in January 2025 and what is reported in the June 2025 notification. We are thinking here specifically of the impact of the modified 85% exemption provisions (see our section on the 85% exemption above).

We therefore propose that the notification deadline be set for 24 June 2025 on a going-forward basis. This timing aligns with:

1. The submission of results from the clearing obligation calculations under the current EMIR Refit cycle.
2. The date on which the Active Account Requirement enters into force and the first batch of active accounts is expected to be opened.

This alignment would streamline compliance efforts and reduce unnecessary operational burdens for counterparties.

**Counterparty belonging to a group subject to consolidated supervision in the Union**

We request confirmation that counterparties within a group subject to consolidated supervision, with zero trades in paragraph 6 derivatives, will not be required to open an active account, even though the group-level calculation may exceed the threshold. This was confirmed previously by the European Commission and should be clarified in the RTS as well. Otherwise, these EU entities would be greatly penalised and would have to invest heavily in IT build and the related operational change processes, while these entities do not trade in-scope products but are captured by the group.

While the clarification in paragraph 40 of the ESMA CP—the obligation to hold an active account with trades representative of the group activity could be fulfilled by one entity of the group, similarly to the clearing obligation—is helpful for many counterparties, it is important to note that this 'centralised treasury' model is not practical for smaller counterparties. Therefore, it must be clarified that counterparties with zero trades in paragraph 6 derivatives are not required to open an active account under any circumstances.

Moreover, we consider that the AAR does not impact third-country entities (TCEs), as these are not directly subject to the clearing obligation under EMIR. Recital 12 of EMIR 3.0 states that *‘Third-country entities that are not subject to the clearing obligation under Union law are not subject to the obligation to maintain an active account’.* It should be clarified that TCEs are not individually subject to AAR when trading in-scope products with EU counterparties.

**Treatment of STIRS**

Our understanding from paragraph 32 of the ESMA CP is that, as STIRs cleared on a regulated market are excluded from the CO calculation, a counterparty with > EUR 3 billion in gross notional value in STIRs on a regulated market but below the clearing thresholds in any relevant asset class (i.e. EUR IRS + PLN IRS < EUR 3 billion), will fall out of scope of the AAR.

We request confirmation of this point and suggest amending the text of paragraph 32 to ‘will fall out of the obligation to hold an AA in the EU’ for added clarity.

<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>

Article 1(c) of the draft RTS, which requires ‘cash and collateral accounts with sufficient financial resources to meet the obligations arising from the direct or indirect participation in an authorised CCP’, should be removed from the final version.

From a management company perspective, sufficient clearing limits for each fund are already a condition precedent to accessing clearing services under a clearing agreement with a Clearing Member (CM). This process inherently involves establishing credit lines between the clearing client and the broker, whether at an EU CCP or a TC CCP. These arrangements are a fundamental part of central clearing and are already governed by the existing regulatory framework, which ensures prudent risk management by CCPs and their clearing members.

As such, Article 1(c) is redundant and risks introducing additional obligations on counterparties that go beyond the intent of the Level 1 text.

*Please see Annex I, which contains the recommended amendments to the draft RTS.*

<ESMA\_QUESTION\_AAR\_02>

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

<ESMA\_QUESTION\_AAR\_03>

**CCP Certification**

We agree that CCP certification is the appropriate approach, provided the responsibility for producing such a written statement remains between the CCP and the clearing broker.

However, we believe certain safeguards should be put in place to ensure that CCPs provide these certificates transparently, efficiently and fairly. These safeguards are crucial for clearing clients, who often have limited visibility on the process and deserve fair and equitable treatment.

*Please see Annex I, which contains the recommended amendments to the draft RTS.*

<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>

We believe that stress testing, including the simulation of the 85% increase in total outstanding activity for the active account, should be conducted **between the Clearing Member (CM) and the CCP**. This approach ensures that the responsibility remains with entities directly involved in managing clearing risk, without placing unnecessary operational burdens on counterparties.

*Please see Annex I, which contains the recommended amendments to the draft RTS.*

<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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<ESMA\_QUESTION\_AAR\_06>

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>

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<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>

Given that the classes align with the clearing obligation (fixed-to-float / OIS / FRA), it would make sense for the maturity buckets to align, so OIS should go up to 3 years, not 5 years.

<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>

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<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>

We support reducing this to 2 maturity buckets (below and above 1 year).

<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>

We believe keeping the reference periods the same for EURIBOR and ESTR is preferred from a complexity standpoint.

<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>

For questions 16 to 21, we propose to extend the AAR notification template currently available on ESMA’s website in order to streamline and simplify the overall operational burden placed on counterparties. Please see Annex II for our proposal on extending the existing template.

We note again that clearing entities will be notifying if they are in scope of the AAR using the template currently available on ESMA’s website. However, we propose that on a going-forward basis, this template be modified to reflect our suggested amendments in order to streamline reporting requirements (see Annex II of this document). Counterparties could thus use the modified template to notify ESMA if they fall in scope of the AAR again in June 2025 and then use it as a tool to fulfil the reporting requirements related to the AAR on a going-forward basis.

From our perspective, it is critical to keep the reporting only to the necessary fields that are currently not reported on. As asset managers, we do not always have a full view of a client's activities if that is a multiple-manager account. In such cases, the client will have to build a view of their overall exposure for the purposes of AAR compliance by receiving data from multiple asset managers. This is further complicated by the fact that sometimes a single fund will use multiple clearing members and CCPs. For this reason, we suggest that the reporting requirements be streamlined and minimised strictly to the necessary fields.

Therefore, we would like to propose an alternative, more streamlined approach to reporting the activity and risk exposures of counterparties subject to the active account requirement.

The additional reporting requirements, as they stand, will significantly increase the operational burden for EU market participants. We strongly recommend leveraging existing reporting obligations under EMIR Refit rather than introducing new, redundant reporting requirements.

Firstly, the proposed reporting is overly complex and unnecessary, particularly in light of Article 9 EMIR reporting. Most of the reporting fields outlined in Table 1 of Annex II of the consultation paper are redundant, as counterparties already report this information to their Trade Repository under Article 9 EMIR. ESMA and NCAs already have access to this data on an aggregate basis, making the obligation to resubmit it duplicative. In fact, this is recognized in the Consultation Paper itself in para. 164 of the CP, where the ability to cross-reference with the tables under Delegated Regulation 2022/1855 is highlighted.

Such a requirement undermines the objectives of EMIR Refit, which aim to simplify and streamline counterparties' reporting obligations. The reporting requirements, as embodied in the 3 tables referred to in Article 7 of the ESMA RTS, run counter to the EC’s objective to reduce the administrative burden for companies by minimising duplicative data requests and fostering data re-use.

It would be particularly contradictory if counterparties were required to manually extract, reformat and resubmit the same reporting information they already submit in an automated manner to their TRs. Given the lack of standardisation when compared to current Art. 9 reporting, this additional reporting would be of limited value given that it wouldn’t generate automated and comparable reports from different jurisdictions. As a reminder, the use of automated and simplified processes is also a stated goal of the EC regarding reporting requirements[[1]](#footnote-2). In Annex III of our response we provide a table which cross-references Article 9 reporting and what is required under the proposed ESMA RTS.

Moreover, we believe that NCAs and ESMA would have access to the information required in Table 1 of Annex II of the consultation paper if they retrieved data connected to the counterparty's LEI.

Furthermore, we strongly discourage ESMA from requiring counterparties under the AAR to report their activities and risk exposures using both gross and net notional amounts as per the proposed table 2 titled ‘risk exposure metrics’. Under Article 9 EMIR, counterparties already report all trades on a gross notional basis, meaning this data is readily available in their trading systems and can be repurposed for the purposes of Article 7b EMIR.

Therefore, we urge ESMA to remove the data fields requiring notional values from Table 2, specifically:

* **Field 3: Buyer-side notional**
* **Field 4: Seller-side notional**

These fields impose additional complexity on market participants without providing any meaningful supervisory value. Moreover, we note that none of this information is explicitly required in the Level 1 text nor is it directly linked to compliance with the active account requirement, making its purpose difficult to understand.

<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>

Reporting aggregate values of Initial Margin (IM) and Variation Margin (VM) appears excessive and provides little additional supervisory value. This would introduce a completely new reporting requirement for management companies, that today do not hold this information in their trading systems. Clearing clients are required to post IM and VM amounts to the CCP via their clearing broker for the underlying funds. However, these amounts are netted and will include margin for other derivative positions, in addition to the designated categories of derivatives. As a result, they would have no means of repurposing or easily extracting this data from existing reporting processes. This creates an unnecessary operational burden without clear justification or added value.

<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>

We consider that it is not useful to add UTIs to this reporting. This information is already provided to TRs and would be redundant with Article 9 reports. Also, we do not see the value of listing each trade for the supervisory of active accounts.

<ESMA\_QUESTION\_AAR\_18>

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

<ESMA\_QUESTION\_AAR\_19>

Firstly, regarding Article 8(1)(b), we find it unnecessary to require counterparties to report material changes to internal policies, systems, governance, and their ability to handle large transaction flows under different scenarios. The active account is, by definition, a standard clearing account, and reporting should be limited to confirming that proper clearing arrangements have been established through a clearing member at an authorised EU CCP, as these should be assumed to be able to provide adequate clearing services and be operationally fit for purpose. The breadth of interpretation for ‘material changes’ is very wide, leading to an onerous internal compliance exercise for no added value.

Secondly, regarding Article 8(1)(c)(i), the requirement to provide ‘account statements for cash and collateral, including the account number and the aggregate amount of financial resources provisioned’ is redundant. From a management company perspective, where a clearing agreement is already in place with a Clearing Member (CM), sufficient clearing limits for each fund are a condition precedent to accessing clearing services and demonstrate compliance with EMIR pre-trade clearing certainty requirements. Establishing a clearing account inherently involves setting credit lines between the clearing client and the broker, whether at an EU CCP or a TC CCP. This is a core feature of central clearing and part of the prudent risk management required of CCPs and their clearing members under the existing regulatory framework.

As such, requiring account statements is unnecessary and risks introducing additional obligations on counterparties beyond what is provided in the Level 1 text.

Furthermore, the requirement outlined in Article 8(1)(c)(ii) to report a ‘dedicated’ staff member names and contact details responsible for ensuring proper functioning is unnecessary and impractical. This responsibility lies with the company, not individual persons. Counterparties should instead certify that they have dedicated staff for this role, as described in the procedures they are required to establish. Requiring names would lead to frequent updates whenever staff change roles or leave the company, which is neither proportionate nor practical.

For these reasons, we believe Article 8(1)(b) and (c) should be removed from the draft RTS. These provisions are overly broad and ambiguous, and the remaining reporting obligations outlined in Article 8 would sufficiently fulfil the requirements mandated in the Level 1 text.

*Please see Annex I, which contains the recommended amendments to the draft RTS.*

<ESMA\_QUESTION\_AAR\_19>

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

<ESMA\_QUESTION\_AAR\_20>

We strongly question the approach to reporting the representativeness obligation outlined in Article 9 of the draft RTS. Specifically, we do not understand the requirement to report ‘gross and net notional amounts cleared’ for each subcategory and class of derivatives contracts at a TC CCP (Article 9(1)(b)) and an EU CCP (Article 9(1)(b)).

This information appears to overlap with reporting activities and risk exposures under Article 7b of EMIR, as addressed in Article 7 of the draft RTS. Repeating these requirements adds unnecessary complexity.

We propose a far simpler and more effective approach:

1. Supervisors should focus on gaining clear visibility of the volumes cleared by a counterparty at EU CCPs versus TC CCPs, focusing on gross notional amounts (see our response to Question 17).
2. Counterparties should only be required to report the number of trades in the relevant subcategories cleared at an EU CCP when subject to the representativeness obligation.

This streamlined approach would ensure compliance while avoiding unnecessary duplication and complexity.

*Please see Annex I, which contains the recommended amendments to the draft RTS.*

<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>

1. [Factsheet\_CWP\_Burdens\_10.pdf](https://commission.europa.eu/system/files/2023-10/Factsheet_CWP_Burdens_10.pdf) [↑](#footnote-ref-2)