**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 | SIX Group |
| Activity | Central Counterparty |
| Are you representing an association? |  |
| Country/Region | Europe |

# 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>

As ESMA notes, the ‘scope of the AAR is not part of ESMA’s mandate under Article 7a since it is set at level 1 and is therefore not covered in the draft Regulatory Technical Standards (RTS) nor subject to consultation.’ On the whole, SIX agrees with the scope on which ESMA has based its quantitative analysis. However, we question whether the minimum number of trades required by the AAR effectively meets the European Commission's goal of mitigating systemic risk posed by EU clearing members and clients' exposure to systemically important third-country central counterparties (Tier 2 CCPs). This raises concerns that the minimum trade requirement under the AAR might be increased in the future. Further clarification regarding any potential future increase would be advantageous for all market participants. This would enable counterparties within scope to optimize their strategic planning processes to accommodate any future obligations or intentions to clear within the eurozone.

<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>

We agree that the approach outlined for Condition (a) should sufficiently demonstrate the opening of an account, either directly or indirectly, at a CCP. The final step of any onboarding is the opening of the necessary accounts (operating, margin and collateral) to register the Member’s activities. The Margin and Collateral accounts must be funded with the minimum required amounts before a Member can become operative. The opening of the accounts is confirmed to the Member and could serve as documentation as suggested by ESMA under Condition (a).

<ESMA\_QUESTION\_AAR\_02>

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

<ESMA\_QUESTION\_AAR\_03>

Conditions (b) and (c) require counterparties to have the systems and resources to handle large volumes of contracts and transactions in a short period. Therefore, it should be the counterparty's responsibility to provide the necessary certifications demonstrating their administrative capacity, as they will be managing the closing of positions in one CCP and the opening in another.

In this context, the CCP should not be responsible for assessing and executing tests to certify the counterparties' capability to manage an increase of three times the notional outstanding cleared over the previous 12 months, although SIX would be happy to support and confirm successful testing.

Additionally, while the proposed impact of three times may simplify calculations, it is an extreme scenario and may not be realistic.

Finally, Article 2.1(b) of the RTS requires at least one person with the necessary knowledge to support the operation of the arrangements. While we agree that knowledgeable and skilled personnel are essential for performing the necessary tasks, it should be the counterparty's responsibility to manage their personnel.

<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>

There may be two different scenarios for testing condition (a):

* If the member is active in the CCP, testing is not required as the counterparty is already connected and operational.
* If the member is not active, a minimum test should be conducted to ensure connectivity.

Regarding testing conditions (b) and (c), we have several concerns. Firstly, the test appears to be conducted by the CCP, which may not align with the intended purpose, as the counterparty should demonstrate its ability to handle increased volumes and transactions in a short period.

Additionally, there should be a guideline to ensure harmonization among counterparties and CCPs, where CCPs do not bear the primary responsibility for testing, allowing participants to proactively engage.

Finally, the testing period should be brief, as such testing is time-consuming for a significant portion of staff across all entities.

We agree that the exercise should not be a "pass or fail" test, but there must be remediation measures in place if the test results are unsatisfactory; otherwise, the exercise would be meaningless.

<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>

SIX does not agree with the differentiated frequency for stress-testing, as it requires CCPs to conduct multiple tests. We do not see the necessity for conducting two tests for certain members. The stress test should be annual for all counterparties. The testing will be carried out by the CCPs, which entails significant time and dedicated personnel for preparing, executing, certifying, and reporting the tests.

<ESMA\_QUESTION\_AAR\_05>

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

<ESMA\_QUESTION\_AAR\_06>

Yes, these are in line with expectations.

<ESMA\_QUESTION\_AAR\_06>

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

<ESMA\_QUESTION\_AAR\_07>

Yes, these are in line with expectations.

<ESMA\_QUESTION\_AAR\_07>

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

<ESMA\_QUESTION\_AAR\_08>

Yes, these are in line with expectations.

<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>

Yes, SIX agrees with the proposed maturity and trade size ranges for each class of derivatives in EUR OTC IRD.

<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>

Yes, SIX agrees with the proposed maturity and trade size ranges for each class of derivatives in PLN OTC IRD.

<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>

Yes, SIX agrees with the proposed maturity and trade size ranges for each class of derivatives in EUR STIR.

<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>

Yes, SIX agrees with the proposed number of most relevant subcategories for each clearing service of substantial systemic relevance. No further granularity is required.

<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>

Yes, SIX agrees with the proposed reference periods for EUR OTC IRD. The granularity of the reference periods also seem sufficient, however, SIX questions if the notional clearing volumes could be manipulated if the reference period is limited to one month.

<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>

Yes, SIX agrees with the proposed reference periods for PNL OTC IRD. Both the granularity and reference periods for PLN IRD appear adequate.

<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>

Yes, SIX agrees with the proposed reference periods for EUR STIR. The granularity of the reference periods also seem sufficient, however, SIX again questions if the notional clearing volumes could be manipulated if the reference period is limited to one month. Furthermore, consistency between the two underlying benchmark rates used to derive reference periods would be appreciated to reduce the operational burden on market participants.

<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>

Given that clearing members and clients subject to the clearing obligation and the AAR are already required to report their derivatives under Article 9 of EMIR to trade repositories, we believe it would be highly beneficial to avoid duplicating information that has already been submitted and instead maximize the use of existing regulatory reporting streams.

We consider that duplicated reporting frameworks could lead to inefficiencies and increased costs, affecting not only market participants but also competent authorities, and ultimately the industry as a whole. Additionally, extensive reporting requirements may further deter firms from clearing Interest Rate Derivative (IRD) products in European CCPs.

<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>

The suggested information on margin activity in the AAR reporting requirements is valuable for ensuring that ESMA has visibility over the activity under the AAR, particularly to confirm that accounts have been opened, are operational, and comply with the stipulated quantitative metrics. These are effective supervisory measures, given the six-monthly reporting requirement to the competent authority, with penalties for non-compliance.

However, it should be considered that extensive reporting requirements may further deter firms from clearing Interest Rate Derivative (IRD) products in European CCPs.

Furthermore, we request that ESMA propose harmonized dates and reporting requirements, including data standards and formats. Additionally, using a risk parameter like Initial Margin (rather than Variation Margin) would provide a more accurate measure of risk migration and subsequent mitigation of systemic risk from Tier 2 CCPs to the Union.

<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>

Given that clearing members and clients subject to the clearing obligation and the AAR are already required to report their derivatives under Article 9 of EMIR to trade repositories, we believe it would be highly beneficial to avoid duplicating information that has already been submitted and instead maximize the use of existing regulatory reporting streams.

We consider that duplicated reporting frameworks could lead to inefficiencies and increased costs, affecting not only market participants but also competent authorities, and ultimately the industry as a whole. Additionally, extensive reporting requirements may further deter firms from clearing Interest Rate Derivative (IRD) products in European CCPs.

Nevertheless, incorporating the Unique Transaction Identifier (UTI) could be essential for ESMA and the competent authorities to cross-reference the information in this report with that already reported to trade repositories. In this context, we consider the UTI to be the most appropriate criterion for establishing this linkage.

<ESMA\_QUESTION\_AAR\_18>

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

<ESMA\_QUESTION\_AAR\_19>

The proposed approach for reporting operational conditions is a good supervisory measure to ensure compliance, given the six-monthly reporting requirement to the competent authority.

However, we would like to raise the concern that the proposed measures may have a material impact on operations and may affect capacity. Furthermore, and as stated above, extensive reporting requirements may further deter firms from trading Interest Rate Derivative (IRD) products in European CCPs.

<ESMA\_QUESTION\_AAR\_19>

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

<ESMA\_QUESTION\_AAR\_20>

Referencing SIX’s response to Question 16, we recommend that, where possible, maximum use be made of existing EMIR regulatory reporting streams to fulfill these new reporting requirements. The objective should be to minimize any additional costs and new operational demands for market participants.

<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>

Standardizing the reporting arrangements will ensure consistency and comparability of data across different market participants, which is essential for effective monitoring and supervision. Additionally, it will reduce the reporting burden on market participants by providing clear guidelines.

However, as mentioned in our previous responses, SIX emphasizes that it would be beneficial to avoid duplicating information that has already been submitted and instead maximize the use of existing regulatory reporting streams. We believe that duplicated reporting frameworks could lead to inefficiencies and increased costs, impacting not only market participants but also competent authorities, and ultimately the industry as a whole. Additionally, extensive reporting requirements may further deter firms from clearing Interest Rate Derivative (IRD) products in European CCPs.

<ESMA\_QUESTION\_AAR\_21>