**Reply** **form**

Consultation Paper on a draft RTS on the conditions for extensions of authorisation and the list of documents for applications for initial authorisations and extensions of authorisation under EMIR (Articles 14(6), 15(3), 17a(5) and 15a(2) of EMIR)

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 **7 April 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\_EXTE\_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\_EXTE\_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_EXTE\_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 | Cboe Clear Europe N.V. |
| Activity | Central Counterparty |
| Are you representing an association? |  |
| Country/Region | Netherlands |

Cboe Clear Europe N.V. (CCE) appreciates the opportunity to provide feedback on the draft RTS on the conditions for ex-tensions of authorisation and the list of documents for applications for initial authorisations and extensions of authorisation under EMIR (Articles 14(6), 15(3), 17a(5) and 15a(2)).

CCE acknowledges the efforts to address industry concerns as undertaken by the EU Commission and ESMA in the EMIR 3.0 review to provide clarity and legal certainty through amendments to the level 1 text and the introduction of RTS. However, CCE believes that certain aspects of the draft RTS conflict with the core intent of the EMIR review to enhance the attractiveness of Euro-pean markets and clearing in general. CCE believes that more could be done to better align with this intent. A central concern is that, as written, the RTS will not improve the timing to market for CCP changes but will instead increase complexity and create disincentives to change and innovation.

We would welcome a stronger alignment between the RTS and efforts currently focusing on regulatory simplification under the CMU and SIU umbrella, which gives the EU the opportunity to streamline approval processes, governance and oversight arrangements allowing market infra-structures to develop market driven solutions more quickly and help drive economic growth.

While responses to each question are described in more detail below, CCE believes that the three elements outlined in this section could significantly improve the application of EMIR 3.0. These changes would greatly reduce the regulatory burden without compromising the management of financial stability risks:

1. CCE’s concern is that the criteria included in the draft RTS will mean that almost all extensions into new services/activities will need to undergo the regular extension approval procedure under Article 17 of EMIR because very few, if any, extensions into new services/activities will meet the high bar that has been set for an accelerated procedure under Article 17a of EMIR or the even higher bar for use of the exemption proposed under Article 15a of EMIR. For entities that are under continuous supervision by oversight authorities by virtue of the various supervisory tools available (e.g. assessments, onsite inspections, regulatory reporting), this seems disproportionate. CCE respectfully makes a number of suggestions in its responses below to enable the RTS to better align with the core intent of the EMIR review to enhance the attractiveness of European markets and clearing in general.
2. The draft RTS further compounds the complexities of the regulatory analysis (and therefore regulatory procedures) by for example framing the conditions using negative, rather than affirmative, criteria. Another example is the inclusion of criteria around a CCP’s risk profile, which would also trigger a procedure under Article 49 or Article 49a of EMIR. As such an outcome would increase regulatory burden, we would welcome the ability to combine the application procedures and information to be provided such that it is not duplicative and a CCP undergoing an approval procedure under Article 17 or Article 17a of EMIR will not also need to submit an application under Article 49 or Article 49a of EMIR.
3. In addition, CCE respectfully expresses concern around the requirement in Article 12(4) of the draft RTS for any application submitted for an extension to an existing authorisation to be accompanied by a document approved by the board of the applicant CCP certifying the accuracy and veracity of all the documents submitted in accordance with EMIR. We believe the inclusion of this requirement goes beyond the mandate included in EMIR and does not acknowledge that EMIR (through level 1 and existing level 2 text) already requires CCPs to have robust governance arrangements in place whereby the board is held responsible for the activities and management of the CCP. Requiring such a certification process is extremely prescriptive and is not in the spirit of reducing regulatory burden and improving time to market. CCE respectfully requests that Article 12(4) of the draft RTS be deleted.

# Questions

1. Do you agree with the parameters to consider in relation to condition (a)? Are there any other parameters regarding condition (a) that should be considered?

<ESMA\_QUESTION\_EXTE\_1>

In respect of Article 2(a) of the draft RTS, we respectfully disagree that a change from physically settled to cash settled, and vice versa, should be classified as a significant adaptation of the CCP’s operational structure and would suggest instead that: (i) a change from cash settled to physically settled be subject to an accelerated procedure under Article 17a of EMIR and included under Article 7 of the RTS; and (ii) a change from physically settled to cash settled be exempted under Article 15a.

Similarly, in respect of Article 2(b) of the draft RTS, we would not consider a change in the novation mechanisms as requiring a significant adaptation of the CCP’s operational structure. This is largely a legal matter and the adaptation of a CCP’s operational structure would be non-material. We would suggest instead that: (i) a change from novation to open offer, which could introduce more risk to the CCP, could be considered a change subject to an accelerated procedure under Article 17a of EMIR and included under Article 7 of the RTS; and (ii) a change from open offer to novation, which is a more conservative step, be exempted under Article 15a of EMIR.

<ESMA\_QUESTION\_EXTE\_1>

1. Do you agree with the parameters to consider in relation to condition (b)? Are there any other parameters regarding condition (b) that should be considered?

<ESMA\_QUESTION\_EXTE\_2>

In respect of Article 3(1) of the draft RTS, we believe the draft RTS suggests a cumulative approach to the parameters, whereas EMIR 3 in Article 17a(1)(b) provides that contracts liquidated in the same manner as ***or*** together with contracts already cleared by the CCP to be treated as non-material extensions. Article 3(1) of the draft RTS requires that ***both*** of these conditions are met. We therefore propose that the ‘and’ between points a. and b. of Article 3.1 of the draft RTS be replaced by an ‘or’.

<ESMA\_QUESTION\_EXTE\_2>

1. Do you agree with the parameters to consider in relation to condition (c)? Are there any other parameters regarding condition (c) that should be considered?

<ESMA\_QUESTION\_EXTE\_3>

In respect of Article 4(1)(a) of the draft RTS, we respectfully disagree that a change in respect of clearing contracts traded OTC where a CCP only clears contracts that are not traded OTC, and vice versa, should require a regular extension approval procedure under Article 17 of EMIR, or even an accelerated approval procedure under Article 17a of EMIR. If this type of change were to bring a material new risk or significant increase of the CCP’s risk profile, it will be captured under other criteria.

In respect of Article 4(1)(b) of the draft RTS, we observe that where a CCP already clears a type of options instrument and wishes to introduce a new type of options instrument, we would consider such an extension of services or activities to fall under an accelerated procedure under Article 17a of EMIR and included under Article 7 of the RTS. We would therefore welcome that clarification in Article 4(1)(b) of the draft RTS.

Likewise, in respect of Article 4(1)(c) of the draft RTS, we would consider clearing contracts that involve settlement in a new currency as not rising to the level of being material such that it would require a regular extension approval procedure under Article 17 of EMIR, and should be a change approved under the accelerated procedure under Article 17a of EMIR. While we appreciate the improved clarity of the proposed criteria, we likewise do not see the introduction of new liquidity or payment arrangements as factors that would warrant subjecting clearing contracts that involve settlement in a new currency to a regular extension approval procedure under Article 17 of EMIR. We would consider this as a change to be approved under the accelerated procedure under Article 17a of EMIR.

<ESMA\_QUESTION\_EXTE\_3>

1. Do you agree with the parameters to consider in relation to condition (d)? Are there any other parameters regarding condition (d) that should be considered?

<ESMA\_QUESTION\_EXTE\_4>

We are of the view that the clearing of contracts that reference an underlying issued by sovereign issuers, where the CCP only clears these contracts referencing underlying issued by corporates, and vice versa, as set out in Article 5(1)(a) of the draft RTS, should not trigger a regular extension approval procedure under Article 17 of EMIR and suggest that in the spirit of proportionality, only the move from sovereign to corporates should require an accelerated procedure under Article 17a of EMIR and be included under Article 7 of the draft RTS. The reverse, which would be clearing contracts referencing sovereign issuers, where the CCP already clears these contracts referencing underlying issued by corporates, could be exempted under Article 15a of EMIR.

In respect of Article 5(1)(c) of the draft RTS, we respectfully disagree that a CCP intending to clear contracts that reference a new risk factor type as primary underlying would need to apply for a regular extension approval procedure under Article 17 of EMIR and suggest that in the spirit of proportionality it be subject to an accelerated procedure under Article 17a of EMIR and included under Article 7 of the draft RTS. Furthermore, this is an example of the added complexity as described in our introduction where the draft RTS includes criteria around a CCP’s risk profile, which could trigger a procedure under Article 49 or 49a of EMIR.

Likewise, in respect of Article 5(1)(e) of the draft RTS, the intention to clear contracts that involve accessing a new type of liquidity resource as referred to Article 33(1) of Regulation (EU) 153/2013 (RTS 153) should not require a regular extension approval procedure under Article 17 of EMIR. The liquidity resources set out under RTS 153 are resources that CCPs are permitted to resort to under EMIR and a change in that composition should be exempted under Article 15a of EMIR. Furthermore, the fact that the intention to clear contracts that involve new liquidity needs linked to exposure to a new category of entity as referred to under Article 32(4) of RTS 153 should also not require a regular extension approval procedure under Article 17 of EMIR and should be exempted under Article 15a. CCPs are already required under EMIR to manage such liquidity exposures in the normal course and have approved liquidity frameworks in place to do so. Requiring CCPs to undergo a regulatory approval procedure in these instances will hinder CCPs’ functioning and potentially add risk.

<ESMA\_QUESTION\_EXTE\_4>

1. Do you agree with the parameters to consider in relation to condition (e)? Are there any other parameters regarding condition (e) that should be considered?

<ESMA\_QUESTION\_EXTE\_5>

In respect of Article 6(a) of the draft RTS, while the level 1 text does not allow for significant deviation unless amended, we would suggest that establishing a link with a new securities settlement system, CSD or payment system which the CCP does not use be subject to an accelerated procedure under Article 17a of EMIR and included under Article 7 of the draft RTS.

In respect of Article 6(b) of the draft RTS, we would suggest that introducing settlement or payment in commercial bank money where the CCP currently uses central bank settlement or payment does not warrant a regular extension approval procedure under Article 17 of EMIR and should be subject to an accelerated procedure under Article 17a of EMIR and included under Article 7 of the draft RTS.

<ESMA\_QUESTION\_EXTE\_5>

1. Do you agree with the proposed list of typical extensions that could be considered in principle to fall under the accelerated procedure under Article 17a of EMIR? Would you propose to add/remove/modify/further specify any?

<ESMA\_QUESTION\_EXTE\_6>

We are of the view that almost all of the typical extensions that could be considered in principle to fall under the accelerated procedure set out under Article 7 of the draft RTS should be moved to Article 10 of the draft RTS, as these are changes that would not have a material impact on the CCP’s risk profile and should be exempted under Article 15a of EMIR.

Examples of changes that could be considered in principle to fall under the accelerated procedure under Article 17a of EMIR are changes identified under the following articles of the draft RTS and in our responses above:

* Article 2(a) of the draft RTS: the CCP intends to clear physically settled contracts where it only offers cash settlement for contracts
* Article 2(b) of the draft RTS: the CCP intends to clear contracts involving a change in the novation mechanisms from novation to open offer
* Article 4(1)(a) of the draft RTS: the CCP intends to clear contracts traded OTC where it only clears contracts that are not traded OTC, and vice versa
* Article 4(1)(c) of the draft RTS: the CCP intends to clear contracts that require the introduction of new liquidity or payment arrangements
* Article 5(1)(c) of the draft RTS: the CCP intends to clear contracts that reference a new risk factor type as primary underlying
* Article 6(a) of the draft RTS: the CCP establishes a link with a new securities settlement system, CSD or payment system which the CCP does not use; or changes from a direct to an indirect link
* Article 6(b) of the draft RTS: the CCP introduces settlement or payment in commercial bank money where the CCP currently uses central bank settlement or payment
* Article 7(f) of the draft RTS: the CCP already clears European style options and intends to clear American style options
* CCP intends to clear a financial instrument in a currency already handled in the case of non-deliverable or deliverable FX forwards, but the new currency pair has de-pegging/convertibility risk

<ESMA\_QUESTION\_EXTE\_6>

1. Do you agree with the procedure for the consultation of ESMA and the college on whether an application for an extension of authorisation qualifies to be assessed under the accelerated procedure under Article 17a of EMIR?

<ESMA\_QUESTION\_EXTE\_7>

No, the procedure for the consultation of ESMA and the college on whether an application for extension of authorisation qualifies to be assessed under Article 17a of EMIR does little to reduce the complexity of the regulatory procedures that apply to CCPs under EMIR. In our view, the proposed procedure, in the interest of protecting timelines, appears too loosely formulated to work effectively in practice.

The draft RTS attempts to establish clear criteria for determining when the accelerated procedure applies, which would enable both the CCP and its competent authority to conclude the appropriateness of such procedure. Recognizing that this would require a level 1 change, we suggest that for a truly accelerated procedure, only in the instance where the CCP and the NCA do not agree should the matter be escalated to ESMA and the college for input. This approach would accord with the stated goals of the EMIR 3.0 review and principles of proportionality.

<ESMA\_QUESTION\_EXTE\_7>

1. Do you agree with the list of conditions for the exemption from authorisation under Article 15a of EMIR? Should any other conditions be considered?

<ESMA\_QUESTION\_EXTE\_8>

In respect of Article 10(1)(b) of the draft RTS, we are of the view that only where the change in exercise style could introduce new risk to the CCP (e.g. European to American) should it be subject to the accelerated procedure under Article 17a of EMIR – otherwise a change in exercise style (e.g. American to European) should be exempt under Article 15a of EMIR as it would not have a material impact on the CCP’s profile.

We see Article 10(1)(c) of the draft RTS as significantly extending the scope of approval procedures and considering not only a binary distinction between secured and unsecured products but also extending the granularity where any variation in either seniority or collateralisation arrangements would require approval. In and of themselves, these changes are not sufficiently significant to trigger regulatory approval. We therefore suggest deleting such condition.

In respect of Article 10(1)(d) of the draft RTS, we are of the view that only an extension of the CCP’s clearing hours that would impact the CCP’s collateral management schedule should be subject to the accelerated procedure under Article 17a (assuming the conditions set out in Article 1 to 6 of the RTS are met); otherwise, an extension of the CCP’s clearing hours should be exempted under Article 15a of EMIR as it does not have a material impact on the CCP’s risk profile. Because the impact of an extension of the CCP’s clearing hours is an operational matter, we would suggest that an extension that would impact the CCP’s collateral management structure be a trigger under Article 2 of the draft RTS, as a change that requires a significant adaptation of the CCP’s operational structure.

In addition, the criteria around an extension of clearing services to new geographical zones outside the EU lacks sufficient clarity. While we understand ESMA’s mandate to monitor cross-border risks, we respectfully express the view that the regulatory procedures for extensions of services and activities should not be the place for ESMA to exercise such mandate. We respectfully note that there are other mechanisms and fora available for such purpose, including monthly reporting by CCPs and the newly established Joint Monitoring Mechanism. We therefore support removing it from Article 10(1)(d) of the draft RTS.

In respect of Article 10(1)(g) of the draft RTS, we note that establishing a direct link with a securities settlement system, CSD or payment system where the CCP currently only uses an indirect link with that securities settlement system, CSD or payment system should be exempted under Article 15a of EMIR, as it does not have a material negative impact on the CCP’s risk profile. The reverse which would be establishing an indirect link where the CCP currently only uses a direct link could be subject to an accelerated procedure under Article 17a of EMIR.

In respect of Article 10(1)(h) of the draft RTS, we are of the view that the introduction of a central bank settlement or payment should be exempted under Article 15a of EMIR, as it does not have a material negative impact on the CCP’s risk profile. Only where the CCP intends to move from central bank settlement or payment to the same in commercial bank money should the procedure be subject to an accelerated procedure under Article 17a of EMIR.

<ESMA\_QUESTION\_EXTE\_8>

1. Do you consider that any other extensions/situations should be captured under the exemption from authorisation under Article 15a of EMIR? If yes, could you please specify which exact extensions/situations?

<ESMA\_QUESTION\_EXTE\_9>

Yes, please refer to the response to Q8.

<ESMA\_QUESTION\_EXTE\_9>

1. Question for CCPs: Based on the proposals presented in this Consultation Paper, could you provide an estimate of the number of extensions of authorisation, implemented/applied for by your CCP over the past three years, that would have qualified for i) the standard procedure under Article 17 of EMIR, ii) the accelerated procedure under Article 17a of EMIR, iii) the exemption from authorisation (‘BaU’ changes) under Article 15a of EMIR?

<ESMA\_QUESTION\_EXTE\_10>

In the timeframe that was available to us, we are able to provide the following data: in the last three years, CCE has requested its regulator to approve 3 extensions of authorisation and 8 model changes. While we understand the desire for data to substantiate the approach, we note that it is challenging to provide an accurate figure. We also note, that a lookback is not necessarily indicative of the future, particularly for CCPs that seek to grow and innovate. Based upon the lookback and in the spirit of bolstering clearing in the EU, CCPs may wish to extend their services and activities or make changes to facilitate such a goal. In this case, we believe the number of regulatory approval procedures in total could multiply to between 3 to 6 times as many procedures or even more, presupposing – and noting the complex and burdensome proposed draft RTS – that the CCP is able to assign unlimited time and personnel to this activity.

It is our view that the prescriptive language used in the draft RTS means that almost all extensions into new services/activities will need to undergo the regular extension approval procedure under Article 17 of EMIR because very few, if any, extensions into new services/activities will meet the high bar that has been set for an accelerated procedure under Article 17a of EMIR or the even higher bar for use of the exemption proposed under Article 15a of EMIR.

<ESMA\_QUESTION\_EXTE\_10>

1. Do you agree with the proposed frequency for the reporting of the exemption from authorisation under Article 15a of EMIR?

<ESMA\_QUESTION\_EXTE\_11>

Yes, the proposed frequency for the reporting of the exemption is appropriate, notwithstanding the limitation of the level 1 text.

<ESMA\_QUESTION\_EXTE\_11>

1. Are the general provisions in Chapter I (of Title III of the draft RTS) (language, certification, fees) appropriate and clear?

<ESMA\_QUESTION\_EXTE\_12>

We respectfully disagree with the requirement for the CCP’s board to certify the accuracy and veracity of all the documents submitted in any application for authorisation or extension of existing authorisation. We therefore strongly support the removal of Article 12 paragraph 4 of the draft RTS as it creates from our point of view an unnecessary regulatory burden.

By including a proposal for a board certification requirement, we believe ESMA goes beyond the mandate it was given in EMIR Level 1. Furthermore, the concerns we understand that ESMA seeks to address are already addressed in both EMIR and local corporate law frameworks. EMIR contains detailed governance requirements for CCPs in both Level 1 and Level 2 (e.g., Articles 27 to 33 of EMIR, Articles 3 to 7 of RTS 153), which are approved at the time of a CCP’s initial authorisation and are subject to ongoing oversight. Respective jurisdictional corporate law frameworks already designate a body with responsibility and liability for the legal entity. In other words, adequate governance and responsibility for the extensions proposed by CCPs are already in place. The proposed requirement to have the responsible body make a specific certification for each and every application is therefore duplicative, disproportionate and unnecessarily burdensome.

Understanding ESMA’s objective to ensure adequate governance and responsibility for the extensions proposed by CCPs, we would suggest as an alternative including a requirement that any application contain language to the effect that the CCP completed its internal governance in respect of the application and the date on which that occurred. CCP governance arrangements are approved as part of their initial authorisation and are subject to annual and ongoing oversight. Such a confirmation should provide adequate comfort that those governance arrangements have been followed.

Furthermore, it is unclear to us how asking CCPs to provide proof of payment of fees under national laws contribute to applicant CCPs demonstrating how they comply with relevant EMIR requirements, as set out in Article 15(3) of EMIR. In our view, Article 13 of the draft RTS should be removed.

<ESMA\_QUESTION\_EXTE\_12>

1. Is the requirement to submit an index and a correspondence table appropriate and clear?

<ESMA\_QUESTION\_EXTE\_13>

The requirement is clear. The submission of an index seems appropriate and reasonable, however the correspondence table adds to the regulatory burden of the CCP.

<ESMA\_QUESTION\_EXTE\_13>

1. Are the documents and information required in relation to the identification of the applicant CCP clear? Would those be enough for competent authorities and ESMA to gain sufficient understanding about the applicant CCP as a company?

<ESMA\_QUESTION\_EXTE\_14>

The documentation and information requested seem appropriate to enable identification of the applicant CCP and sufficient understanding about the applicant CCP as a company.

To note, the requirement for the telephone numbers of individuals as set out under subparagraphs a and b of Article 14 of the draft RTS, does not accord with the stated aim of the ‘central database’ as set out under Article 17c of EMIR, which is to ensure that all relevant authorities have the same information.

The obligation under Article 19 of the draft RTS should be redrafted so as not to refer to the AMLD. This because the AMLD does not include CCPs in its scope and national law transposing AMLD most likely does not either, recognizing that some Member States may have chosen to include CCPs within the scope of their implementing rules.

<ESMA\_QUESTION\_EXTE\_14>

1. Should applicant CCPs provide other documents under the general information requirements?

<ESMA\_QUESTION\_EXTE\_15>

No.

<ESMA\_QUESTION\_EXTE\_15>

1. Are documents and information required to assess organisational requirements sufficiently clear and comprehensive? Should the applicant CCP provide other documents?

<ESMA\_QUESTION\_EXTE\_16>

Yes, the documents and information required to assess organisational requirements are comprehensive and clear. No further documents should be required.

<ESMA\_QUESTION\_EXTE\_16>

1. Are documents and information required to assess conduct of business requirements sufficiently clear and comprehensive? Should the applicant CCP provide other documents?

<ESMA\_QUESTION\_EXTE\_17>

We are of the view that the requirement under Article 31(h) of the draft RTS does not accord with the principle of proportionality. CCPs will already be required to demonstrate compliance with Article 38 of EMIR and Article 61 of RTS 153/2013 and a separate document describing the arrangements pursuant to which the CCP complies with such EMIR Articles is redundant.

<ESMA\_QUESTION\_EXTE\_17>

1. Are documents and information required to assess prudential requirements sufficiently clear and comprehensive? Should the applicant CCP provide other documents?

<ESMA\_QUESTION\_EXTE\_18>

The required documentation and information is reasonably clear, although we query whether the level of documentation and information required is proportionate and reasonable.

<ESMA\_QUESTION\_EXTE\_18>

1. Are documents and information required to assess an extension of authorisation, under Article 17 of EMIR, sufficiently clear and comprehensive? Should the applicant CCP provide other documents?

<ESMA\_QUESTION\_EXTE\_19>

We respectfully believe that the proposal in the draft RTS is extremely broad in its scope and excessive in its documentation requirements. The proposal would de facto mean that an extension of authorisation has almost equivalent application requirements compared to the initial authorization request as per EMIR Art. 14. This disregards the principles of proportionality and the fact that CCPs face ongoing supervision and EMIR Art. 17a(3) allows competent authorities to rely on the EMIR Art. 21 assessment to the extent the proposed extension of activity or service does not result in a change to or affect that part of the assessment. Further, given the broad scope definition for material extensions, we expect a larger number of extensions being classified as material, as one of the narrow conditions will be met in most cases. Moreover, extensions of services and activities that in the previous EMIR framework did not require an extension of authorisation approval would mostly be classified as non-material extensions and would consequently also be subject to the Art. 17a process. Further, the excessive assessment requirements for all classifications of extensions would lead to a significantly increased burden for extensions that would affect CCPs, NCAs as well as ESMA. Overall, the proposed approach would lead to an impact in the opposite direction to the intended goal of EU Commission when originally proposing changes which materialized in EMIR 3, namely the acceleration of the approval procedures and increased global competitiveness of EU CCPs, as well as Capital Markets Union and Savings and Investments Union efforts to bolster the European capital markets.

If the draft RTS is not changed in this respect, CCPs could be deterred from expanding the clearing offering of the CCP, given the heightened burden around obtaining regulatory approvals. This threatens to stifle innovation in the post-trading sector, as potential extensions of applications would then be either postponed or not pursued as not justified given the high-required efforts for an application.

While we agree that a high-level business plan and timeline is not an unreasonable ask, we are surprised by the level of granularity proposed in Articles 45(b) and (c) of the draft RTS, which in addition require an explanation of the expected demand for the new service or activity, the reasons for its introduction and how it aligns with the CCP’s strategic goals, the primary market participants who will use the new service or activity, the expected transaction volumes, potential market size and growth forecasts, key project risks and mitigating measures. The requirements, which are overly prescriptive, seem to suggest that such matters are informing regulatory approval decisions, which risk diluting the statutory duties of the board.

We respectfully disagree with the proposed requirement under Article 45(d) of the draft RTS for CCPs to perform a compliance assessment against all of EMIR each time it submits an application for extension under Article 17 of EMIR. We note that from the moment of authorisation, a CCP has an ongoing obligation to maintain compliance with EMIR requirements and such compliance is assessed at least on an annual basis in accordance with Article 21 of EMIR. Such obligation to comply with EMIR is not interrupted by virtue of a CCP wishing to extend services or activities. Furthermore, EMIR Art. 17a(3) permits the CCP’s competent authority to rely on part of the assessment previously made pursuant to Art. 21 of EMIR to the extent that the application for extension will not result in a change or otherwise affect the previous assessment for that part. This does not appear to be taken into account in the draft RTS.

The requirement under Article 45(1)(f) of the draft RTS should be removed, as it seems to imply that the CCP must separately seek permission to extend its system designation under the Settlement Finality Directive framework, which is not provided for by the framework. As such, this requirement will effectively prevent any application from being approved.

<ESMA\_QUESTION\_EXTE\_19>

1. Are documents and information required to assess an extension of authorisation through the “accelerated procedure”, under Article 17a of EMIR, sufficiently clear and comprehensive? Should the applicant CCP provide other documents?

<ESMA\_QUESTION\_EXTE\_20>

We respectfully believe that the proposed scope of documentation for accelerated and regular procedures far exceeds the requirements for material extensions subject to the Art. 15 procedures prior to the review of EMIR 3.0. As a result, we would expect a significantly increased burden associated with accelerated and regular procedures, which would affect CCPs, NCAs as well as ESMA.

Such increase in the burden for extensions into new services or activities would have the opposite effect to the intended objective of EMIR 3.0 and rather i) increases regulatory burden and ii) increases the overall time to market for such new services or activities, as CCPs would need to prepare what we respectfully believe are pieces of information irrelevant for the authorisation product or service extension, leading to a substantial increase in the time CCPs need to prepare an extension request and therefore nullifying the potential benefits that having a shorter timeline as included in EMIR 3.0 could bring.

As detailed below, we believe that the proposed list of documents in the draft RTS contravenes the proportionality conditions enshrined in Article 15(3) of EMIR.

If the draft RTS is not to be largely changed in this respect, CCPs could be incentivised to postpone or not pursue non-material changes given the high required efforts for an application. This threatens to stifle innovation, as well as sound and robust risk management.

In particular, the requirements under Article 46(1)(b) of the draft RTS for an accelerated procedure are disproportionate. Accelerated procedures are only available to extensions of a CCP’s business to additional services or activities that meet all of the conditions set out under Article 17a(1) of EMIR, and therefore, among others, does not result in the introduction of material new risks or significantly increase the CCP’s risk profile. Having to produce documentation as required under Article 46(1)(b) for these types of changes is unnecessarily burdensome.

We respectfully disagree with the proposed requirement under Article 46(1)(d) of the draft RTS for CCPs to perform a compliance assessment against all of EMIR each time it submits an application for extension under Article 17a of EMIR. We note that from the moment of authorisation, a CCP has an ongoing obligation to maintain compliance with EMIR requirements and such compliance is assessed at least on an annual basis in accordance with Article 21 of EMIR. Such obligation to comply with EMIR is not interrupted by virtue of a CCP wishing to extend services or activities. Furthermore, EMIR Art. 17a(3) permits the CCP’s competent authority to rely on part of the assessment previously made pursuant to Art. 21 of EMIR to the extent that the application for extension will not result in a change or otherwise affect the previous assessment for that part. This does not appear to be taken into account in the draft RTS.

We respectfully disagree with the requirement that CCPs provide a written declaration listing which policies and procedures change due to the new service or activity under Article 46(1)(e) of the draft RTS. Extensions that are eligible for an accelerated procedure concern additional services or activities that meet all of the conditions set out under Article 17a(1) of EMIR, and therefore, among others, do not result in the introduction of material new risks or significantly increase the CCP’s risk profile. If Article 46(1)(e) of the draft RTS is to remain, we would suggest clarifying that it is a ‘written declaration listing ***the titles*** of which policies…’ as we understand that the intention of the regulator is not to have the CCPs include the full content of the policies. Furthermore, we consider the requirement to include a written confirmation in respect of policies and procedures that ***do not change*** as a consequence of the new service or activity as an example of unnecessary burden. Finally, the last requirement contains no value as the NCA and ESMA do not have an overview of all policies and procedures of the CCP.

<ESMA\_QUESTION\_EXTE\_20>