

General remark on the implementation of the new calculation methodology

We appreciate that Article 5 of EMIR 3.0 clearly states that the changes to the clearing thresholds under Article 4(a) and Article 10 shall not apply until the entry into force of the regulatory technical standards (RTS) that are the subject of this consultation paper. We would like to take the opportunity to request that ESMA clarifies explicitly that market participants can apply without further delay the EMIR 3.0 changes to the calculation methodology (clearing vs. uncleared OTC derivatives) upon the publication of the RTS amending the existing RTS on the clearing thresholds (CTs). This clarification is needed to create legal certainty and because any further transitional implementation period would delay unnecessarily the application of the new threshold calculation method:

- At first, non-financial firms are aware of the new calculation method and can prepare and perform accordingly calculations already by today, so that any additional implementation period seems not necessary.
- Secondly, we understand that under the current pre-EMIR 3.0 position, and in line with OTC Answer 2 of ESMA's Questions and Answers on the Implementation of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR), most market participants make calculations every 12 months on 17 June (the day EMIR Refit came into force) by reference to the 12 month period ending on that date ("calculation period") in order to determine their classification for the next following 12 month period. If the publication of the RTS on the amended clearing thresholds appears during such a calculation period, market participants should be able to apply the new calculation method already for the current calculation period. If market participants are forced to apply the new method only for the following calculation period, then the former calculation method pre-EMIR 3.0 (OTC derivatives vs. exchange traded derivatives) would continue to limit EU firms' ability to trade on 3rd country cleared exchange markets for an even longer period of time (as transactions entered over these markets are deemed OTC derivatives). This would put EU non-financial firms at a competitive disadvantage vis-a-vis 3rd country firms.