Reply Form

**to the Consultation Paper on Draft technical standards amending Regulation (EU) 149/2013 to further detail the new EMIR clearing thresholds regime**

Responding to this Consultation Paper

ESMA invites comments on all matters in this Consultation Paper and in particular on the specific questions summarised in Annex 1. 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 **16 June 2025.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

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\_CPCT\_0>. 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\_CP1\_ CPCT\_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP1\_ CPCT\_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* 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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Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘[Data protection](https://www.esma.europa.eu/about-esma/data-protection)’.

**Who should read this paper?**

All interested stakeholders are invited to respond to this consultation paper. In particular, responses are sought from financial and non-financial counterparties entering into OTC derivative transactions, as well as from central counterparties (CCPs).

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | RWE |
| Activity | Other |
| Are you representing an association? |  |
| Country / Region | Germany |

# Questions

1. Do you agree that the aggregate thresholds should only be set for those asset classes subject to the CO i.e. IRDs and credit derivatives? If not, please elaborate.

<ESMA\_QUESTION\_CPCT\_1>

**Yes, we agree** that aggregate thresholds should only apply to those asset classes currently subject to the clearing obligation, namely interest rate derivatives (IRDs) and credit derivatives.

<ESMA\_QUESTION\_CPCT\_1>

1. Do you agree with ESMA’s proposal to maintain the aggregate thresholds at the current level i.e. 3 billion EUR for IRDs and 1 billion EUR for credit derivatives? If not, please elaborate.

<ESMA\_QUESTION\_CPCT\_2>

**Yes, we support ESMA’s proposal** to maintain the current aggregate threshold levels of EUR 3 billion for interest rate derivatives and EUR 1 billion for credit derivatives.

<ESMA\_QUESTION\_CPCT\_2>

1. Do you agree with the proposed uncleared thresholds? If not, please elaborate, explain for which asset class(es) and, where possible, provide supporting data and elements.

<ESMA\_QUESTION\_CPCT\_3>

**We do not agree with the proposed reduction in uncleared thresholds for any of the asset classes.** At a minimum, the currently applicable thresholds should be maintained across all asset classes, including interest rate derivatives, credit derivatives, equity derivatives, and commodity derivatives. We believe the reduction of thresholds would have disproportionately negative effects on non-financial counterparties (NFCs), energy market functioning, and the EU’s energy transition objectives.

We caution against relying solely on the idea that the new thresholds should result in a comparable population of clearing-obligated counterparties as under the previous methodology. While ESMA notes that this continuity aligns with Recital 9 of EMIR 3, this must not be the only consideration for threshold calibration.

Other regulatory objectives under EMIR, including credit risk mitigation, market liquidity, and macroeconomic context (notably inflation), must also be taken into account:

* There is no evidence that a reduction of EUR 1 billion in the threshold would materially improve the resilience of the financial system
* On the contrary, overly low thresholds may undermine the availability of bilateral hedging, restrict corporate risk management strategies, and reduce minimum liquidity in crucial parts of the real economy derivatives markets
* Furthermore, thresholds originally calibrated in 2012/2013 do not reflect current inflationary conditions or the increased notional sizes required to hedge economically equivalent exposures

We recommend maintaining the current thresholds at a minimum for all asset classes, including:

1. Commodity derivatives:

We do not agree with ESMA’s proposed reduction of the uncleared threshold for commodity derivatives from EUR 4 billion to EUR 3 billion. We strongly recommend maintaining the current EUR 4 billion threshold at a minimum, and ideally increasing it in line with market realities.

Our concerns are grounded in several key areas:

1. Absence of systemic risk in the commodity derivatives market:
   * EMIR’s objective is to mitigate systemic financial risk. There is no evidence that commodity derivatives activity by non-financial counterparties poses such a risk.
   * The Financial Stability Board (FSB) and ESMA’s own data confirm that NFCs operating in this space are not systemically significant.
2. Inflation and market volatility:
   * Since 2012, inflation and volatility in energy markets have drastically reduced the effective tradable volume permitted under the threshold. For example, the EUR 3 billion threshold enabled trading of approximately 70 TWh in 2012, but only 11 TWh by 2022.
   * These figures are drawn from the Frontier Economics study, commissioned by Energy Traders Europe, which analyzed the effect of price inflation on the usability of the clearing threshold in commodity markets.
   * The study recommends increasing the threshold to at least EUR 12 billion to reflect these changes and ensure meaningful trading capacity.

Reference: Frontier Economics – Review of the EMIR Clearing Thresholds for Commodities (May 2022): <https://www.frontier-economics.com/media/5804/frontier-economics-review-of-the-emir-clearing-thresholds-for-commodities.pdf>

1. Impact on energy transition and private investment:
   * Commodity derivatives, including non-risk reducing OTC contracts such as virtual power purchase agreements (vPPAs), are critical to financing renewable energy projects.
   * Lower thresholds may constrain energy market participants’ ability to support these investments, limiting the effectiveness of the EU’s broader climate and industrial policy agenda.
   * The current criteria for defining risk reducing derivatives (hedging), combined with the proposed low clearing threshold, prevent energy market participants to offer cash-settled Power Purchase Agreements (known as virtual PPAs), e.g. a financial swap between an energy market participant and a renewable energy producer aiming to hedge the latter’s market risks. These virtual PPAs are used as means of investment financing since they secure the renewable energy producer a fixed margin for its produced power quantities which is a material condition for a credit institution financing the project. Energy firms cannot offer virtual PPAs as this would quickly consume the energy firms’ EMIR clearing threshold as these often are not a hedge for these firms. *(for more details please refer to our answer to question 9)*
2. International competitiveness:
   * The U.S. allows non-financial entities to engage in unlimited hedging and up to USD 8 billion in non-hedging OTC activity, measured over a 12-month rolling period.
   * In contrast, under EMIR, exposures count against the threshold for the full duration of the contract, creating a significant competitive disadvantage for EU firms.
   * Exchange rate effects: The euro has depreciated significantly against the U.S. dollar since 2013 (from 1.39 to 1.04), which further erodes the real value of the threshold and should be factored into any recalibration.
3. Risk management practices:
   * OTC commodity derivatives, while unmargined under EMIR, are typically collateralized via credit lines and managed under strict internal risk frameworks.
   * The commodity derivatives market represents less than 1% of overall derivatives notional exposure in the EU, making systemic disruption highly unlikely.
4. Interest rate derivatives (IRD):

The current clearing threshold levels for IRD should be maintained to account for cases where hedging transactions can unintentionally transition into speculative status under regulatory definitions. While corporates – including those in the energy sector – typically enter into IRDs strictly for hedging purposes, there are real-world scenarios where the economic hedge loses its direct link to the underlying exposure. As a result, the derivative may no longer qualify as risk-reducing under Art. 10 RTS, despite the absence of speculative intent.

A practical example: Companies often engage in interest rate swaps (IRS) to hedge the discounting risk of future cash flows from long-term contracts such as physical power purchase agreements (PPAs). These future inflows are subject to valuation volatility due to interest rate fluctuations. An IRS is used to lock in the present value of such cash flows. However, if the underlying position disappears (e.g., a PPA is terminated early or significantly restructured), the hedge loses its economic anchor. Even though the IRS remains in place and was originally entered into for hedging, it now lacks a direct risk-reducing relationship to an existing exposure. From a regulatory perspective, this may reclassify the position as speculative.

This reclassification is not a result of trading intent but stems from the natural evolution of business risks. Corporates may keep the derivative position open to avoid immediately realising a loss or due to uncertainty about the reinstatement or replacement of the underlying exposure. Thus, IRDs that were initially prudent risk management tools may count against the clearing threshold due to events outside the company’s control.

At the same time, maintaining the current clearing threshold is essential because the notional value of IRDs has increased significantly in recent years due to inflation. This has caused higher nominal hedge volumes – not due to increased trading activity, but simply to maintain the same level of economic protection.

It is also important to highlight that the effective threshold can be lower in practice than it appears: although the threshold for interest rate derivatives is set at €3 billion, the actual notional exposure might be only €1.5 billion from a market participant’s perspective, in particular in the following case: In the typical set-up an energy market participant (EMP) belongs to a corporate group and would enter into an interest rate derivative with the treasury department placed at group center, which then externalizes the derivative. Although EMIR 3 implemented the entity approach, according to ESMA’s Q&A on EMIR implementation [ESMA70-1861941480-52], a non-privileged derivative entered into by the corporate group as described above contributes two times (corporate group treasury vs EMP and corporate group treasury vs group-external counterparty) to the clearing threshold. Lowering this threshold any further would limit corporates’ ability to manage legitimate financial risks.

Lowering the threshold would disproportionately affect corporates with long investment horizons, such as those in the renewable energy sector. These companies must hedge large, multi-year interest rate exposures during the construction and financing phases of capital-intensive projects. Restricting their ability to enter or maintain economically sound hedges may undermine financial stability and investment incentives, in direct contradiction to the EU Green Deal goals.

Moreover, the revised EMIR 3 methodology does not reduce the population of in-scope transactions. Most corporates use bilateral OTC derivatives under ISDA agreements with CSAs, which remain fully within the scope of threshold calculations. As a result, even after EMIR 3, a lower threshold would continue to penalise corporates for maintaining hedges that are economically justified but may no longer qualify as risk-reducing in a technical sense.

Finally, the newly introduced entity approach does not matter in practice, as the external risk management activities in FX and IRS and external commodity hedging and trading activities are centralized and hence performed by one group entity and not spread across several entities the group.

In conclusion, preserving the current threshold levels is essential to avoid disincentivising prudent risk management and to reflect the practical realities of corporate hedging strategies in volatile markets.

1. Credit and equity derivatives: These instruments remain essential for managing counterparty exposure, portfolio risk, and equity-linked obligations. Lowering thresholds may impose disproportionate burdens without improving systemic risk oversight.

**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 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 changes to the calculation methodology (clearing vs. uncleared OTC derivatives) upon the publication of the regulatory technical standards (RTS) amending the 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 (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.

<ESMA\_QUESTION\_CPCT\_3>

1. Do you agree with ESMA’s proposal not to introduce in the RTS separate thresholds for the various commodity derivatives sub-asset classes at this stage? If not, please elaborate.

<ESMA\_QUESTION\_CPCT\_4>

**Yes, we agree with ESMA’s proposal** not to introduce separate clearing thresholds for individual commodity derivatives sub-asset classes at this stage.

Maintaining a single, aggregated threshold for all commodity derivatives is the most practical, proportionate, and operationally sound approach, particularly in the context of how commodity markets function and how energy firms manage risk. Fragmenting the commodity derivatives threshold into sub-asset classes would be operationally burdensome, economically distortive, and difficult to supervise. The current aggregated approach better aligns with market practices, enables more effective risk management, and supports the resilience and competitiveness of EU energy and commodity markets. We therefore support ESMA’s proposal and recommend maintaining a single, aggregated threshold for commodity derivatives.

Key reasons for supporting ESMA’s current proposal in detail:

1. Real-world trading and risk management practices:

* Market participants active in commodity trading, particular in energy, typically engage across multiple commodity sub-classes (e.g. power, gas, coal, oil, emissions).
* Risk management is conducted on a portfolio basis, not in isolated asset class silos. Fragmenting the threshold into separate sub-asset classes would undermine these integrated hedging strategies and reduce risk mitigation efficiency.

1. Increased compliance burden without proportional benefit:

* Introducing multiple thresholds would significantly increase the operational and compliance complexity for non-financial counterparties, especially where transactions span multiple sub-asset classes or are difficult to classify.

1. Negative impact on market liquidity and resilience:

* Market participants would need to monitor consumption of each sub-threshold separately and may reduce or withhold trading in certain commodities to avoid breaching thresholds, potentially leading to withdrawal of liquidity and impairing market functioning.
* This could have systemic implications for EU commodity markets, particularly in the energy sector, which is central to the EU’s decarbonisation and affordability goals.

1. No clear systemic risk justification:

* The current aggregated threshold already captures overall exposure effectively.
* There is no evidence that separating commodity classes would better serve EMIR’s objective of identifying and containing systemic risk.

1. Supervisory and regulatory challenges:

* National competent authorities would be required to monitor compliance across multiple sub-asset classes, significantly increasing supervisory complexity without clear risk mitigation benefits.
* The lack of consistent and granular transaction data further complicates this task.

<ESMA\_QUESTION\_CPCT\_4>

1. Do you agree with ESMA’s proposal to have in the fifth bucket only commodity and emission allowance derivatives? Or do you consider that commodity derivatives should be singled out as a stand-alone category and another category for emission allowance derivatives introduced? Please elaborate.

<ESMA\_QUESTION\_CPCT\_5>

Yes, we **support ESMA’s proposal to maintain a combined fifth bucket** that includes both commodity derivatives and emission allowance derivatives, as this approach is justified on several grounds:

1. Alignment with market practice:

* Market participants currently calculate clearing thresholds across OTC derivatives defined under Sections C(4), C(5), C(6), C(7), and C(10) of Annex I to MiFID II.
* A combined bucket reflects how energy and commodity trading activities are structured and managed in practice.

1. Operational simplicity and efficiency:

* Prevents the need for duplicative classification systems and avoids the creation of parallel processes for threshold calculations.
* Reduces reconciliation burdens, minimizes fragmentation, and avoids duplicated compliance efforts.

1. Risk management coherence:

* Emission allowances are often directly linked to commodity pricing (e.g., CO₂ price fluctuations impact power and gas).
* Energy market participants frequently use emission allowance derivatives as part of integrated hedging strategies across their commodity portfolios.
* Splitting these instruments into separate buckets could artificially silo risk and reduce the effectiveness of holistic hedging approaches.

1. Regulatory consistency:

* Supports the continued use of a shared classification system that aligns with existing EMIR Refit reporting frameworks (e.g., Field 11, Table 2 of Regulation 2022/1860).
* Minimizes the supervisory burden on national competent authorities by maintaining a clear and unified threshold structure.

Conclusion: Maintaining a combined bucket for commodity and emission allowance derivatives is practical, proportionate, and aligned with existing market and regulatory structures. We therefore fully support ESMA’s proposal.

<ESMA\_QUESTION\_CPCT\_5>

1. Do you agree with ESMA’s proposal not to introduce a sixth bucket for other derivatives at this stage? If not, please elaborate.

<ESMA\_QUESTION\_CPCT\_6>

**Yes, we agree with ESMA’s proposal** not to introduce a sixth clearing threshold bucket for “other derivatives” at this stage.

The derivatives markets potentially falling under such a bucket such as those linked to hydrogen or other emerging asset classes remain in an early phase of development. Trading volumes are currently limited, data is insufficiently robust, and classification standards are not yet established. As such, there is no clear evidence of systemic relevance that would justify a separate threshold.

Introducing a catch-all threshold prematurely would create uncertainty for market participants, impose new compliance burdens, and risk discouraging innovation. In particular, emerging markets often rely on early-stage trading activity to build liquidity and investor confidence. Subjecting these markets to a separate threshold before they mature could have a chilling effect on their development, running counter to the EU’s goals of financial innovation, energy transition, and capital market growth.

Moreover, from a risk management and supervisory standpoint, a sixth bucket would increase complexity for market participants and national competent authorities alike. Without a clear and widely accepted definition of what constitutes an “other derivative,” market participants would face ambiguity in classification, while regulators would face challenges in monitoring compliance and interpreting threshold breaches.

Given the dynamic nature of financial markets and the EU’s broader strategic objectives, we support a flexible, forward-looking approach that allows for the future introduction of new thresholds once sufficient data, market maturity, and regulatory clarity exist. For now, the current structure is both proportionate and appropriate.

<ESMA\_QUESTION\_CPCT\_6>

1. Do you agree with ESMA’s proposal not to introduce more granular thresholds for commodity derivatives based on ESG factors at this stage? If not, please elaborate.

<ESMA\_QUESTION\_CPCT\_7>

**Yes, we support ESMA’s proposal** not to introduce more granular clearing thresholds for commodity derivatives based on ESG factors.

The ESG-linked derivatives market is still in its infancy and lacks harmonized classification, robust trade data, and clearly defined regulatory standards. Without an agreed-upon taxonomy for what constitutes an ESG-linked derivative, any attempt to define thresholds based on ESG features would result in legal and operational uncertainty for market participants. Firms could face inconsistent interpretations, misclassifications, and elevated compliance costs.

Introducing ESG-based thresholds at this stage would also fragment market liquidity and complicate risk management frameworks. Many firms trade across a diverse portfolio of commodity derivatives, some of which may partially meet ESG criteria. Splitting thresholds could force artificial distinctions that do not reflect the economic reality of integrated hedging strategies, ultimately reducing the efficiency and effectiveness of risk mitigation practices.

It is also important to note that EMIR is a framework designed to manage systemic and counterparty risk. ESG objectives are more appropriately addressed through other EU-level instruments, such as the Renewable Energy Directive (RED II) and the Corporate Sustainability Reporting Directive (CSRD). Overlaying EMIR with ESG policy considerations could create regulatory overlap and dilute the focus on financial stability.

While supporting sustainability is a shared objective, introducing granular ESG thresholds under EMIR at this point would be premature and could generate unintended negative consequences for developing markets. We encourage continued monitoring of this space and support the idea of revisiting this issue in future reviews, once more mature ESG standards and classifications have emerged.

<ESMA\_QUESTION\_CPCT\_7>

1. Do you agree with ESMA’s proposal not to introduce more granular thresholds for commodity derivatives based on crypto-related features at this stage? If not, please elaborate.

<ESMA\_QUESTION\_CPCT\_8>

**Yes, we support ESMA’s proposal** not to introduce specific clearing thresholds for crypto-related commodity derivatives at this stage.

The crypto-derivatives market remains immature, highly volatile, and lacks consistent regulation and classification standards. Introducing separate thresholds now would add complexity without clear systemic risk justification and could create uncertainty around scope and compliance.

Current market volumes are limited, and existing EMIR risk mitigation measures are sufficient. A future review may be appropriate once the market is more developed and regulatory frameworks are in place, but for now, maintaining a unified approach is the most proportionate course of action.

<ESMA\_QUESTION\_CPCT\_8>

1. Do you consider clarifications should be included in Article 10 of Commission Delegated Regulation (EU) No 149/2013? If yes, please specify and if possible, provide arguments and drafting suggestions.

<ESMA\_QUESTION\_CPCT\_9>

**Yes, we believe important clarifications should be introduced in Article 10** to reflect current market realities and ensure a harmonized interpretation across Member States—particularly in relation to the treatment of virtual power purchase agreements (vPPAs). The following clarification will enhance regulatory consistency, reduce legal uncertainty, and ensure EMIR remains supportive of the EU’s energy transition and climate finance objectives.

We propose to include virtual power purchase agreements (vPPAs) as risk-reducing instruments:

* Cash-settled Power Purchase Agreements (known as virtual PPAs, vPPAs), e.g. a financial swap between an energy market participant and a renewable energy producer aiming to hedge the latter’s market risks, are used as means of investment financing since they secure the renewable energy producer a fixed margin for its produced power quantities which is a material condition for a credit institution financing the project.
* Hence, vPPAs are long-term financial contracts that play a critical role in enabling renewable energy investments.
* As a consequence, vPPAs should be treated as commercial risk reduction instruments when structured to mitigate price risk for counterparties.
* Their contribution to the clearing threshold calculation should reflect their actual risk profile rather than their notional value alone.
* Under current interpretations, vPPAs - despite being structured to reduce price and volume risks for the renewable investor - may not qualify as risk-reducing for the executing energy firm, resulting in a disproportionate consumption of clearing threshold capacity.
* The Frontier Economics EMIR Study (<https://www.frontier-economics.com/media/5804/frontier-economics-review-of-the-emir-clearing-thresholds-for-commodities.pdf>) underscores the importance of vPPAs in meeting EU Green Deal and energy transition objectives and highlights that the current hedging exemption is not fit-for-purpose in the context of such arrangements. As vPPAs are often high in notional value and long-dated (10–15 years), they significantly inflate clearing threshold calculations - despite posing no systemic risk - if not treated as risk-reducing because they need to be considered for their entire lifetime as opposed to a 12-months period from the date of their execution (as is the case under the Dodd Frank Act in the US). The EMIR Study calculates that a single large-scale offshore wind park with a contracted capacity over 12 years of more than 900 MW would lead to an EMIR CCT usage of € 3 billion and hence a further large-scale vPPA could not be accommodated by a single NFC- under the current CCT.
* Additionally, these contracts often serve as a substitute for physical infrastructure investments by energy market participants. Structurally, they mirror the risk profile of direct energy procurement or physical power purchase agreements, without involving grid access or ownership. In this way, they enable competition, flexibility, and cost-effective participation in the energy transition.

We therefore propose that Article 10 be amended to reflect the following key principle:

Recognition of structured hedging arrangements, such as vPPAs, as risk-reducing when they directly relate to commercial activity or energy production risks.

Suggested minor *drafting addition* to Article 10 (1) of the CDR 149/213:

“*An OTC derivative contract shall be objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group, when, by itself or in combination with other derivative contracts, directly or through closely correlated instruments, it meets one of the following criteria:*

1. *it covers the risks arising from the potential change in the value of assets, services, inputs, products, commodities, commodity derivatives or liabilities that the non-financial counterparty or its group owns, produces, manufactures, processes, provides, purchases, merchandises, leases, sells or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the normal course of its business*.

*[*…]

1. *it covers the risk arising from the potential change in the value of electricity generation from renewable energy sources that are reasonably expected to occur in the ordinary course of business.”*

<ESMA\_QUESTION\_CPCT\_9>

1. Do you consider other indicators should be monitored and assessed? If yes, please specify and if possible provide drafting suggestion.

<ESMA\_QUESTION\_CPCT\_10>

**Yes, we support** **ESMAs proposal** to use of macroeconomic and market-based indicators to guide future threshold reviews.

However, we recommend that ESMA avoids reducing thresholds as part of future reviews. Due to the long-term nature of many commodity derivatives (e.g. vPPAs), lower thresholds would create “cliff-edge” effects that could force non-financial counterparties into NFC+ status mid-contract or lead to early contract exits and counterparty uncertainty.

Furthermore, ESMA should incorporate competitive impacts into Article 11b. When reviewing thresholds, ESMA should consider the impact on market functioning, liquidity, private investment in energy infrastructure, and the EU’s global competitiveness.

<ESMA\_QUESTION\_CPCT\_10>