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.

**Data protection**

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 | Swedish Securities Markets Association (SSMA) |
| Activity | Trade Association |
| Are you representing an association? |  |
| Country / Region | Sweden |

# 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>

SSMA agrees

<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>

SSMA agrees but notice that this proposal aggregates cleared and uncleared, which could justify a higher threshold. There is also a link to active accounts for this proposal – see our general comments in Q10.

<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>

SSMA do not agree to this proposal. The main reason is that the thresholds will have an impact on the active account requirements and the scope of who will be affected by the AAR regime – see our general comments in Q10. It could also be difficult to correctly calculate volumes for uncleared derivatives. We therefore are of the strong opinion that the EUR 3 bn threshold should be kept.

<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>

SSMA agrees and do not want a lower threshold.

<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>

SSMA has no strong view but believes it is important not to introduce more complexity, which could lead to more burdensome implementations.

<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>

SSMA agrees.

<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>

SSMA agrees.

<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>

SSMA agrees.

<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>

SSMA do not think clarifications are needed.

<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>

SSMA believes that it is important that the EU simplification agenda is considered for all new regulations to avoid more complexity and costly implementations.

**General Comments**

We note that the uncleared thresholds also will be relevant with respect to the requirement to open an active account under Art 7.a.1 of EMIR 3; essentially the proposed rules mean that the threshold for the in-scope derivative contracts referred to in paragraph 6 of Art 7a is lowered from EUR 3bn to EUR 1.8bn. This is an unfortunate consequence that may have been overlooked when introducing the new active account requirement. Considering that the in-scope transactions are cleared, it would be more logical to apply the old threshold of EUR 3bn and not the new threshold which captures uncleared transactions. The application of the EUR 3bn threshold would also minimize the gap to the 6bn threshold that apply with respect to the representativeness obligation. In summary, we prefer if the EUR 3bn threshold is retained with respect to the requirement to open an active account.

SSMA also want to mention that we believe that it is unclear from EMIR 3.0 when market participants are expected to make calculations against the new thresholds. Our understanding is that Article 5 of EMIR 3.0 states that the changes to the clearing thresholds under Article 4(a) and Article 10 will not apply until the new RTS that are the subject to this consultation paper enter into force. Today most market participants under the current rules makes their calculation every 12 months in June. Since it is unclear when the new RTS will come into force and how it will affect both timing and calculations of the new thresholds, we think this should be clarified to avoid negative market impact. SSMA also see a risk that market participants will notice the changes first when they are published in Official Journal. We therefore also want to stress the fact that it is very important that market participants get sufficient time for this implementation.

**This question is not in the reply form**

**Q10: Do you have any comment on proposed new Article 11b? Do you consider other indicators should be monitored and assessed? If yes, please specify and if possible provide drafting suggestion**.

SSMA do not have any concrete suggestions to changed drafting. We believe it is good with a system where thresholds do not change too much and/or frequently over time. It is good if the thresholds can be kept rather stable over time.

<ESMA\_QUESTION\_CPCT\_10>