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 | European Fund and Asset Management Association (EFAMA) |
| Activity | Trade Association |
| Are you representing an association? |[x]
| Country / Region | Bulgaria |

# 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>

We agree that the aggregate thresholds should only be set for those asset classes subject to the CO (i.e. 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>

We agree with the proposal to maintain the aggregate thresholds at the current level.

<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>

EFAMA has carefully reviewed the thresholds for uncleared derivative positions proposed by ESMA in its Consultation Paper (CP). Our assessment concludes that, contrary to the commentary set out in the CP (i.e. paragraphs 31 and 32), the proposed thresholds would increase the number of entities falling within the scope of the clearing obligation. This change would particularly affect entities that are considered small financial counterparties under the current regime. For this reason, EFAMA strongly opposes the thresholds as currently proposed and urges ESMA to revise them.

The core aim of EMIR is to mitigate systemic risk through enhanced transparency, reduced counterparty risk, and strengthened operational resilience — all implemented with due regard to proportionality. Indeed, EMIR Refit introduced new provisions and amended existing concepts to reinforce the proportionality and appropriateness of regulatory requirements, especially for smaller financial counterparties. Many UCITS and AIFs fall into this category and have only limited derivatives activity. As such, they do not pose the same level of systemic risk to financial stability as large derivatives users.

It is appropriate to recalibrate the revised clearing threshold regime proposed by ESMA, given that it would bring a significant number of small-sized financial counterparties, such as small investment funds, within the scope of the clearing obligation. Imposing compulsory central clearing on these small, highly regulated funds is difficult to justify from a systemic-risk perspective. Notably, ‘uncleared’ does not imply ‘uncollateralised’. These funds are already subject to robust collateral obligations under EMIR margining rules, providing a substantive risk-mitigation buffer independently of central clearing.

Moreover, introducing a two-fold calculation methodology, particularly if this is further segregated by instrument, will significantly increase operational complexity for counterparties. The idea of introducing an obligation on financial counterparties to calculate simultaneously their positions in uncleared and aggregate OTC should be considered in the broader context of the EU’s agenda for simplicity and competitiveness. Any changes to the clearing thresholds introduced by ESMA should not be overlooked in terms of their operational impact on firms, especially regarding internal processes and systems used to monitor trading activity, calculate derivatives positions, and ensure compliance with the clearing obligation.

Considering that the proposed thresholds increase the likelihood of bringing small financial counterparties into the scope of the clearing obligation—while offering no additional value in terms of financial stability—it becomes especially disproportionate, from a policy standpoint, to impose increased operational costs and complexity on the entire market by requiring two separate clearing calculations. This complexity is further compounded by the fact that the calculation of uncleared positions applies to one set of asset classes, while a separate aggregate position calculation applies to a different set of asset classes.

Firms have already implemented the necessary systems and processes to calculate their positions across derivative asset classes. Introducing new thresholds should not result in significant costs related to system upgrades or operational adjustments. The same consideration applies to monitoring the Active Account Requirement (AAR), which we view as intrinsically linked to the clearing obligation. Being subject to the clearing obligation is a key determinant in establishing whether a counterparty falls within the scope of the AAR.

**Interest Rate and Credit Rate Derivatives**

We consider that the clearing threshold (CT) values for interest rate and credit derivatives should be set at the same level as the thresholds currently in place for these asset classes under the existing calculation methodology. Therefore, we suggest that the CT for these asset classes in *uncleared* OTC derivatives be set at EUR 3 billion and EUR 1 billion, respectively.

We believe this approach best aligns with the intention of Recital 9, which requires ESMA, when recalibrating the CTs, to ensure that such changes do not lead to substantial alterations in the scope of the clearing obligation (CO). Given that ESMA has proposed maintaining the current *aggregate* threshold for these asset classes (which applies only to financial counterparties), we believe it is reasonable to assume that the current prudent coverage of the CO is preserved. Moreover, this approach best reflects the provision in Recital 9 that empowers ESMA to set an aggregate clearing threshold only ‘if needed’.

We consider this to be the only approach that justifies the coexistence of both thresholds (in these specific asset classes) for uncleared and aggregate positions. By focusing on uncleared OTC positions, EMIR treats the aggregate threshold (which ESMA proposes to retain for interest rate and credit derivatives) as a ‘safety net’—ensuring that counterparties with large cleared portfolios also remain in scope of the CO. The contrary approach—preserving the current aggregate threshold while simultaneously applying new, lower thresholds for uncleared positions—would logically result in more counterparties being brought into the scope of the obligation. This would contradict ESMA’s own statement that expanding the scope is not the intention of the proposal.

**Equity and Commodity Derivatives**

We consider that lowering the uncleared position thresholds for equity and commodity derivative asset classes, which are not currently subject to a mandatory clearing obligation, is unjustified and lacks a proper assessment of the impact on smaller financial counterparties. Most trading in these asset classes already takes place in the uncleared space, with the remainder cleared on a voluntary basis. Despite the absence of a clearing mandate for these instruments, a significant reduction in the thresholds—namely, a 25% reduction for commodity derivatives and a 30% reduction for equity derivatives—would, in effect, result in a larger number of financial counterparties being brought within the scope of the clearing obligation. This is because counterparties need only exceed one clearing threshold to become subject to mandatory clearing, which currently applies to relevant interest rate and credit derivatives. As previously mentioned, we believe such an approach fails to respect the principle of proportionality and does not align with the position expressed in paragraphs 31 and 32 of the CP that a broader range of counterparties should not be brought into scope for the clearing obligation.

Considering the situation of small financial counterparties whose equity and commodity derivatives activity volumes are close to the proposed uncleared thresholds is especially relevant to calibrating the thresholds. These counterparties, until this point in time and under the current methodology, have rightly not been considered as contributing significantly to systemic risk or the financial stability of the Union in the same way that large derivative users do. Even if their activity was mainly or even exclusively in uncleared OTC (which would not be unusual considering the nature of these instruments), they would have remained under the clearing thresholds and thus out of scope of the clearing obligation. Suddenly bringing them into the scope of the clearing obligation under this new methodology is arbitrary and unnecessary.

We therefore urge ESMA to reconsider the calibration of these thresholds to ensure they remain proportionate and risk-based. Otherwise, there is a clear risk of capturing entities that do not pose systemic risk and for whom mandatory clearing would impose undue burden without a commensurate financial stability benefit.

**Foreign Exchange Derivatives**

We would like to recall an essential principle of EMIR applicable to FX derivatives, namely that FX is predominantly exposed to settlement risk rather than counterparty risk (Recital 19 of EMIR 648/2012). Against this background, we strongly support the removal of FX derivative contracts from the clearing threshold calculation, given the typically straightforward settlement mechanisms for such transactions, which result in a lower level of systemic risk posed by counterparties primarily using this derivative class. This practice aligns with the EMIR definition of hedging (Article 10 of Commission Delegated Regulation 149/2013). It also creates an unlevel playing field with NFCs, whose hedging transactions are not taken into account when assessing exposure against the clearing threshold.

We further believe that failure to remove FX derivative contracts from the calculation of the clearing threshold will disproportionately disadvantage those derivative counterparties that are primarily trading FX (for which there is no clearing mandate) and, due to exceeding this threshold, find themselves in-scope for the clearing of small positions in other asset classes far below their corresponding thresholds (often with limited appetite on the part of clearing members to facilitate such clearing relationships due to low anticipated clearing volumes). This scenario is exacerbated by positions in FX appearing large in absolute notional terms, given the calculation methodology (gross notional calculations and no netting by offsetting transactions).

We believe that removing FX Derivatives Contracts from the calculation of the clearing threshold will help preserve the proportionality of the clearing obligation, particularly given the high costs of maintaining access to the clearing broker and the CCP.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

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<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>

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<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>

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<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>

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<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>

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<ESMA\_QUESTION\_CPCT\_10>