Final FIA response, 22 March 2022

Targeted consultation on the review of the central clearing framework in the EU

General questions

Question 1. In the sections below, throughout this document, a range of possible options are presented which could support enhancing the attractiveness of clearing at EU CCPs, thus reducing reliance of EU participants on Tier 2 third-country CCPs, focusing on both the supply side and the demand side of clearing services. Please indicate which ones are the most effective in your view in contributing to the objectives:

	1 (very effective)	2 (rather effective)	3 (neutral)	4 (rather not effective)	5 (not effective)	Don't know – No opinion – Not applicable
Broadening the scope of clearing participants	☐	☒	☐	☐	☐	☐
Broadening the scope of products cleared	☐	☐	☐	☐	☒	☐
Higher capital requirements in CRR for exposures to Tier 2 CCPs	☐	☐	☐	☐	☒	☐
Exposure reduction targets toward specific Tier 2 CCPs	☐	☐	☐	☐	☒	☐
Macroprudential tools	☐	☐	☐	☐	☒	☐
Obligation to clear in the EU	☐	☐	☐	☐	☒	☐
Active account with an EU CCP	☐	☐	☐	☐	☒	☐

	1 (very effective)	2 (rather effective)	3 (neutral)	4 (rather not effective)	5 (not effective)	Don't know – No opinion – Not applicable
Hedge accounting rules	☐	☒	☐	☐	☐	☐
Use of post- trade risk reduction services	☐	☒	☐	☐	☐	☐
Fair, reasonable, non-discriminatory and transparent (FRANDT) commercial terms for clearing services	☐	☐	☐	☐	☒	☐
Measures to expand the services by EU CCPs	☐	☒	☐	☐	☐	☐
Payment and settlement arrangements for central clearing	☒	☐	☐	☐	☐	☐
Segregated default funds	☐	☐	☐	☒	☐	☐
Enhancing funding and liquidity management conditions	☐	☒	☐	☐	☐	☐
Interoperability	☐	☐	☐	☐	☒	☐
Other	☐	☐	☒	☐	☐	☐

Please specify to what other option(s) you refer in your answer to question 1:

Question 1.1 Please explain your response to Q1, setting out the reasons and providing an assessment of costs and benefits of each option. In your answers please also take into account costs and benefits for the real economy:

FIA[1] and its members welcome the opportunity to provide feedback on the European Commissions' (Commission) targeted review of the EU central clearing framework.

[1] FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as

We support any initiatives to incentivize market participants to clear via the development of competitive, efficient, resilient, financial market infrastructure globally and in the EU - enabling innovation will be key for the long-term success of EU CCPs.

FIA strongly recommends the Commission to take into account international practices and continue the co-ordination of cross-border clearing and capital frameworks at an international level. Global consistency is key, and any issues are best addressed at a global level, and without discriminating depending on the location of the CCP or the relevant clearing member.

Any restrictive measures directed at EU market participants could set EU market participants at a competitive disadvantage compared to international peers if they cannot provide clearing and market making services to international clients clearing on other CCPs in third-country jurisdictions.

In line with FIA's advocacy position and suggestions to improve the clearing offering at EU CCPs, we emphasise that healthy competition and access to alternative liquidity pools at a range of CCPs are highly desirable for the market. They provide for competition and market resiliency and provide alternative strengths. Market-led initiatives provide better outcomes for customers than any intervention based on restrictive measures, and have been shown to be achievable i.e. in the cleared IRS and CDS markets, and demonstrate that viable clearing alternatives already exist in the European clearing ecosystem.

FIA recommends that EU CCPs should expand their existing product coverage to offer all EU currencies, with a focus on increasing liquidity on primary globally cleared currencies. Further development, enhancements and investments could be made to OTC derivatives platforms and testing platforms.

Encouraging EU public authorities to voluntarily clear EUR denominated derivatives on EU CCPs would support the build-up of liquidity. Some EU agencies (like the debt management agencies of EU Member States) and public banks are significant market players and their participation would increase liquidity and confidence in EU CCPs.

The implementation of the clearing obligation for pension scheme arrangements (PSAs) after June 2022[2] *could also bring liquidity to EU CCPs, subject to a proper risk assessment of the potential consequences for pension funds (and for the clearing members that would need to support them). In addition, development of the European repo market will be required to provide adequate access to cash to cover variation margin calls, particularly in stressed market conditions.*

Due to the issues in moving legacy positions to another CCP due to the higher cost and increased risk of closing and re-opening the cleared position on another market, as further discussed later in our responses, the initial focus should be on opportunities to incentivise clearing of new transactions on EU CCPs.

Harmonization of differing EU legal frameworks for cross-border activity would be helpful. EU CCPs require complex and divergent legal structures to ensure enforceability of their rules in a default situation.

technology vendors, law firms and other professional service providers. FIA's mission is to: support open, transparent and competitive markets, protect and enhance the integrity of the financial system, and promote high standards of professional conduct. As the principal members of derivatives clearinghouses worldwide, FIA's clearing firm members play a critical role in the reduction of systemic risk in global financial markets.

[2] Unless extended by a further year, as recommended by ESMA, https://www.esma.europa.eu/press-news/esma-news/esma-recommends-clearing-obligation-pension-funds-start-in-june-2023

Today, Tier 2 third-country CCPs (TC-CCPs) are an integral part of the EU CCP supervisory framework and important contributors to EU financial stability, are directly subject to EMIR requirements with unlimited jurisdiction of the European Court of Justice (ECJ) in respect of ESMA decisions. Also, due to the financial reforms in the wake of the 2008 global financial crisis, the core elements of the global financial and clearing system are more resilient than before the financial crisis.

FIA and its members remain convinced that EMIR 2.2 provides European authorities with an effective mechanism and the tools to supervise and oversee systemically important TC-CCPs, which are global clearing houses by their very nature. EMIR 2.2 provides for a finely balanced solution designed for joint supervision of Tier 2 TC-CCPs. This shared oversight is the most optimal outcome for financial stability, supervisors, markets and market participants[3]. Regulatory and supervisory co-operation is a critical component of any cross-border market, as Interest Rates Swaps (IRS), Metals, Energy, etc. are traded in global markets.

Any bifurcation of the market as a result of forcing liquidity away from Tier 2 TC-CCPs to EU CCPs will result in a weakened system from a systemic risk perspective, creating additional default management risks[4]. This risk is elevated in times of market stress due to the concentration of positions on CCPs with lower liquidity pools and fewer clearing members subject to the same economic cycle. Therefore, FIA remains convinced the best way to manage financial stability risks is to prevent fragmentation of derivatives markets and their oversight by instead relying on the enhanced recognition tools for TC-CCPs in EMIR 2.2 and robust cooperation between EU supervisory authorities and the host state authorities of TC-CCPs.

We do not support mandatory changes, such as extending the scope of the clearing obligation in the EU to new entities or new products unless there is a market driven rationale for such an extension, or compelling clearing to take place via an EU CCP, as that would result in the EU diverging from global regulatory standards and departing from the principles of mutual recognition and harmonization.

As a general observation, the EC's consultation on the review of the central clearing framework in the EU presents an opportunity to enhance the approach to industry consultation and engagement with all financial market participants, with increased transparency of the policy decision process. We therefore encourage the Commission to further engage in ongoing discussions with the industry and provide sufficient time for all stakeholders to feedback on any proposals.

I. Scope of clearing participants and products cleared

(a) Clearing obligation for PSAs

Question 1. What measures (legislative or non-legislative) do you think would be useful in order to make clearing in the EU more attractive for PSAs?

We note that ESMA in its latest report to the European Commission on the clearing obligation for PSAs recommends a further one-year extension to June 2023 of the temporary exemption from that obligation. This reflects a number of remaining challenges faced by PSAs if they were required to increase their volumes of cleared derivatives. We understand that PSAs have expressed concerns about clearing capacity limits, limits that clearing members may wish to set in light of PSAs' large and directional portfolios, and PSAs' ability, especially in stressed market conditions, to source cash

[3] https://www.fia.org/resources/fia-releases-principles-cross-border-regulation

[4] https://www.ceps.eu/ceps-publications/setting-eu-ccp-policy-much-more-than-meets-the-eye/

required for margin calls. Clearing capacity limits would only be exacerbated if PSAs are expected to restrict in any way their use of Tier 2 CCPs for clearing.

From the perspective of clearing members, enhancing access to clearing in the EU for PSAs and other end-users will be challenging in the absence of regulatory capital reforms to facilitate the provision of client clearing services and to facilitate collateral transformation. Such measures should be appropriately addressed at a global level and without discriminating depending on the location of the CCP or the relevant clearing member.

As noted in the [FIA/ISDA response to ESMA's first report on central clearing solutions for PSAs](https://www.fia.org/sites/default/files/2020-06/CO%20PSA%20FIA-ISDA%20final.pdf)[5] we consider that a central bank backed collateral transformation service would still be required to ensure PSAs' access to liquidity in stressed market conditions. This is particularly the case as PSAs tend to have large directional portfolios and will need to meet higher margin calls when there are adverse market movements and enhanced liquidity demands.

A measure that could contribute to facilitating PSAs to meet margin calls would be extension of the operating hours of TARGET2 and TS2, expected in November this year. Currently, margin calls made after the end of those operating hours need to be met by payments in USD. See also our response to section III (Measures towards CCPs) (b)].

Question 2. How could the current offer by EU CCPs, including the direct/sponsored access models which were designed to also specifically address central clearing issues for PSAs, be further improved and/or facilitated?

As explained further in the response to Section I(b), Question 9 below, we do not consider that the further development of direct/sponsored access models, in the EU or elsewhere, would have a significant impact in alleviating central clearing issues for PSAs, including capacity constraints on access to client clearing services. Such models are more likely to be suitable for the largest and most sophisticated clients, although access for some smaller clients may be facilitated under the models in certain circumstances.

Therefore, there is room for the further improvement of existing sponsored access models. For smaller clients the lowering of clearing fees by the CCP could be considered. Also, FIA members suggest exploring the increase of margin requirements for sponsored access clients, to allow for a reduction of the default fund contribution for the sponsoring clearing member. The impact on the client should be limited because such reduction could enable clearing members to lower their fees to the client. We also support the notion that exploring new models should not add additional risk to the system.

Question 4. 1. What are the advantages of the model from a clearing member perspective?

Sponsored clearing models can reduce clearing members' credit risk (as, unlike under the principal model, CCPs have a direct contractual claim against the client for margin and other payments, other than default fund contributions).

Sponsored clearing models also reduce the balance sheet impact of providing client clearing services for clearing members. This can positively impact clearing members' leverage ratio freeing up some capacity for clearing members to provide client clearing services. However, as sponsored

[5] https://www.fia.org/sites/default/files/2020-06/CO%20PSA%20FIA-ISDA%20final.pdf

clearing models do not affect clearing members' RWA, their balance sheet impact is limited and, as such, sponsored clearing models in isolation are unlikely to free up sufficient clearing member capacity to sufficiently improve the offering for pension schemes. Exceptions are models whereby the sponsor no longer guarantees the sponsored transactions to the CCP.

Question 5. (For banks/clearing members) How could your capacity to offer collateral transformation services to PSAs be improved? Have you identified any barriers or regulatory elements that would need to be improved to facilitate such offer?

From the perspective of clearing members, enhancing access to clearing in the EU for clients including through offering collateral transformation services, will be challenging in the absence of regulatory capital reforms to facilitate the provision of client clearing services and to facilitate collateral transformation. Such measures should be appropriately addressed at a global level and without discriminating depending on the location of the CCP or the relevant clearing member.

(b) More clearing by private entities that do not access CCPs directly

Question 9. How do you consider the offer of direct/sponsored access models in the EU relative to what is offered in other third countries?

Please explain you answer providing, where possible, quantitative evidence and examples.

As a general comment, direct/sponsored access models are not widely in use anywhere for derivatives clearing. They are more likely to be suitable, if at all, for larger and/or more sophisticated clients, due to operational, credit, risk and liquidity capabilities. They are also more likely to be used for repo than for derivatives, due to enabling the dealer facing the client to achieve balance sheet offsets, resulting in leverage efficiencies for bank-affiliated repo dealers.

Regarding other capital issues, the general understanding is that sponsored access models do not significantly reduce RWAs for a sponsor bank (unless it no longer guarantees the sponsored transactions to the CCP), hence limiting the capacity to act as sponsoring client service provider.

We do not consider that the further development of direct/sponsored access models for derivatives clearing, in the EU or elsewhere, would have any material impact in alleviating current capacity constraints on access to client clearing services. There is also a risk that access models that expand CCP membership and make it more heterogenous could weaken the concept of risk mutualisation and adversely affect the resilience of CCPs. Any reduction in default fund contributions for a sponsoring client service provider should be reflected in increased margin requirements for the sponsored client.

For client clearing of derivatives, the key drivers for capacity constraints are the regulatory capital costs applying to clearing firms. Measures to alleviate this issue at a global level would be much more effective in making client clearing more accessible than seeking to develop new direct/sponsored access models, which would likely be relevant only to the largest and most sophisticated clients that can in any event clear their transactions with clearing firms without undue constraint or cost.

These issues are addressed in more detail in the FIA's response to the BCBS, CPMI, IOSCO Discussion Paper on Client Clearing: Access and Portability.[6]

Question 12.1 Collateral transformation services provided by banks are often used by clients to meet liquidity needs related to margin calls. How do you consider the treatment of repos/reverse repos under the [Capital Requirements Regulation](): do you think there is room for better encouraging banks to provide collateral transformation services to their clients which clear in the EU?

☒ Yes

☐ No

☐ Don't know / no opinion / not applicable

Question 12.1 How could that be achieved while at the same time properly catering for the risks of repo transactions?

Please explain your answer providing, where possible, quantitative evidence and/or examples including on the potential costs and benefits:

An improved calibration of the capital requirements framework would support more collateral transformation services: A more favourable capital treatment for repo/reverse repo could stimulate repo intermediation by banks and clearing agents. Also, one could consider a new, separate exposure class for pension funds, which could lower risk weights for these exposures significantly and improve the alignment with the actual risks these exposures pose to banks acting as clearing members.

The major regulatory hurdle to the continuity of collateral transformation activities is the introduction of the Standardised Approach (SA) for credit risk purposes: under CRR III, most repos will carry a 100% SA RW. The impact on matched books within intermediating institutions is too large to be ignored.

SA will be used for calculations of Output Floor, Large Exposures and, last but by no means least, for active participants of collateral transformation activities, Leverage Ratio. Credible estimations suggest RWA will increase up to around 8 times when switching from internal model-based approach (IMA) to SA.

The room for better encouraging banks to provide collateral transformation services could be achieved by taking due consideration of:

• the maturities of most repo transactions: 85% have an outstanding maturity below 3 months (source: ICMA survey, December 2021).

• The collateral being used for most repos: 90%+ of combined share of European collateral is in the form of government securities (source: ICMA survey, December 2021).

We would encourage regulators to introduce specific RW% given specific maturity buckets applicable to repos. Indeed, RW% in function of horizon is already in place in the current CRR for trade finance (or bank exposures): the lower the duration of the exposure, the lower the RW%, all

[6] https://www.fia.org/sites/default/files/2022-01/FIA%20Response%20to%20Review%20of%20Margining%20Practices.pdf

else equal. A 20% RW for repos below 3 months would be in line with other SA RW in place for trade finance or bank exposure.

As already noted, any such regulatory capital reforms would appropriately be addressed at a global level, and without discriminating depending on the location of the CCP or the relevant clearing member.

Question 13. How could EMIR or other legal texts be amended so that direct access to CCPs is facilitated so that smaller banks or end users are less dependent on the limited number of client clearing service providers?

As noted in response to Question 9 above, direct/sponsored access models would not be likely to be suitable for smaller banks or end users, which would need, for example, to have the operational capacity to use these models and directly manage their margin calls and exposures with the CCP in real-time. If direct access to a CCP requires a guarantee from a sponsoring clearing member, that does not assist in creating greater capacity for clearing firms to provide client clearing services. If direct access means that smaller, less sophisticated entities can become clearing members without a sponsor guarantee, that could seriously impact the resilience of the CCP, including insofar as the CCP relies on default fund contributions of clearing members, and relies on clearing members to participate in an auction process to unwind positions of a defaulting clearing member. As noted in other responses, access to client clearing services is unlikely to be improved without also improving liquidity in the market, particularly in stressed market conditions. However, this will be difficult to implement in the absence of regulatory capital reforms to facilitate collateral transformation which, as we note in other responses, should be addressed at a global level.

Question 14. Is there a need to adjust the trading rules to make it more attractive for private entities to trade on trading venues with central clearing arrangements?

☐ Yes

☐ No

☐ Don’t know / no opinion / not applicable

Please explain your answer to question 14:

Question 15.: Is there a need to amend/recalibrate UCITS counterparty exposure limits (Articles 50(1)(g) (iii) and 52 and of Directive 2009/65/EC) to distinguish cleared versus non-cleared, cleared at a Tier 2 versus other CCPs?

☒ Yes

☐ No

☐ Don’t know / no opinion / not applicable

Question 15. 1. Please explain the reasons providing, where possible, quantitative evidence and examples.

Please also consider/explain any impact on investor protection:

The current counterparty exposure limits for derivatives in the UCITS Directive were set before the development of clearing of OTC financial derivatives transactions by UCITS. We note that in May 2015 ESMA issued an Opinion (2015/ESMA/880) proposing that the UCITS Directive be amended so that the counterparty limits in article 52(1)(b) with respect to the counterparty to an OTC derivatives transaction should no longer apply with respect to cleared OTC derivatives, which should instead be treated in the same way as exchange-traded derivatives. We agree with the ESMA Opinion.

The ESMA Opinion notes that, if the UCITS Directive is amended, UCITS may still need to apply some counterparty risk limits to CCPs and to clearing members with respect to cleared OTC and ETD positions, depending on (for example) the type of segregation arrangement. ESMA also considers that exposures to third country CCPs that are not recognised by ESMA should be treated in the same way as uncleared derivatives. However, the Opinion acknowledges that all EU-CCPs and third country CCPs recognised by ESMA are subject to stringent requirements, and contribute to lowering systemic risk.

We see no justification for requiring UCITS to distinguish, for the purposes of counterparty exposure limits, between exposures to Tier 2 CCPs and other CCPs that are authorised or recognised by ESMA.

(c) Encourage clearing by public entities

Question 6. To what extent do you think that the participation of public entities would add to the attractiveness of central clearing in the EU?

As part of the Pittsburgh summit in 2009, G20 countries committed to encouraging market participants to clear, and in that spirit, we believe public entities should be encouraged to clear. There is nothing unique about public entities that prevents them from clearing. Rather, as clearing is intended to reduce risk and increase operational efficiency, it should be in the interest of public entities to do so.

We note that public entities may be disincentivised to clear because, under EMIR, they are currently exempted not just from clearing but also from regulatory margining of uncleared OTC derivatives. Any reconsideration of the exemption of public entities from EMIR may wish to consider whether to remove the exemption in its entirety. However, if the Commission is considering removing the exemption from EMIR, in whole or in part, as opposed to encouraging greater voluntary clearing by EU public entities, it should take into account that this would be a departure from international practice and create inconsistency.

If public entities were to clear, they would likely be most suited to clearing as clients of general clearing members, although they could also clear directly with the CCP.

Public sector entity clearing would bring liquidity to EU CCPs. It may also encourage others in the market to clear on a voluntary basis, further increasing liquidity at EU CCPs. EU central banks including the ECB, national treasuries and public banks are significant market players and their participation would be likely to increase liquidity and confidence in EU CCPs.

However, we note that certain public entities may only trade low volumes in derivatives. Therefore, any clearing obligation should be subject to thresholds, as is currently the case for financial counterparties and non-financial counterparties in the EU, and consideration would need to be given to whether hedging transactions are to be exempted when calculating whether the thresholds are exceeded, as is the case for non-financial counterparties.

Question 2.1 What are the benefits of public entities to centrally clear?

Potentially, better risk management of exposures. However, if public entities continued to be exempted from the requirement for margining of uncleared transactions, it may be less costly for them to transact on an uncleared basis, compared to voluntarily clearing OTC derivatives transactions. The benefits from availing themselves of the uncleared margin exemption may therefore outweigh the benefits to public entities of centrally clearing.

Furthermore, when an entity trades bilaterally it introduces an imbalance in the market because the counterparty is usually obliged to clear its hedging transactions. Therefore, generally, we would expect that bringing public entities into clearing would result in a more balanced market.

Question 2.2. What are the costs and other drawbacks of public entities to centrally clear?

As noted above, public entities are not currently required to margin uncleared OTC derivative transactions, so having to post initial and variation margin on transactions that became subject to mandatory clearing could introduce a significant new cost for the derivatives activities of public entities.

A potential cost, from the perspective of EU dealers, of public entities being required to clear is that if third country public entities trade with EU financial counterparties and EU non-financial counterparties above the clearing threshold, those trades would become subject to the clearing obligation in the EU, whereas they may continue to be exempt from the clearing obligation in the jurisdictions in which the third country public entities are based. If the third country public entity does not want to clear its trades, it could choose to cease trading with EU dealers, putting EU dealers at a competitive disadvantage and driving liquidity outside the EU.

Question 3.1 Starting from which volumes would it be attractive for public entities to consider to centrally clear?

Please explain your answer providing, where possible, quantitative evidence and examples, including on the potential costs and benefits:

As noted in our response to Question 1, certain public entities may only trade low volumes of derivatives. Therefore, any clearing obligation should be subject to thresholds, as is currently the case for financial counterparties and non-financial counterparties in the EU.

Question 3.2 Do you see any opportunities to facilitate central clearing for public entities with small clearable volume?

Please explain your answer providing, where possible, quantitative evidence and examples, including on the potential costs and benefits:

We expect that public entities with small clearable volumes would encounter the same difficulties in accessing the services of a clearing service provider as financial counterparties with small clearable volumes, which was recognised in the context of EMIR REFIT as justifying a clearing exemption for small FCs.

Question 4. Which public entities should centrally clear in your opinion? Why?

In principle, all public entities should be encouraged to clear all their clearable transactions, as this would give a strong message and could potentially lead to a substantial increase in cleared volumes in the EU.

(d) Broaden the product scope of the clearing obligation

Question 1. Is the range of products currently subject to the clearing obligation wide enough while safeguarding financial stability?

☒ Yes

☐ No

☐ Don't know / no opinion / not applicable

Question 1.1. Please explain your answer to question 1 providing, where possible, quantitative evidence and examples:

As noted in the Consultation Document, EMIR already sets out procedures for the EU authorities to consider and consult on any proposal for a class of derivatives to become subject to the clearing obligation, having regard to (among other things) the volume, liquidity and standardisation of the relevant class of OTC derivatives.

It seems that imposing a clearing obligation for additional products could only be justified where the relevant product is already highly liquid and is already being cleared in substantial volume at a number of CCPs. Seeking to extend the clearing obligation to a product in order to try and develop additional clearing volume in that product could have impacts that would be prejudicial to market and financial stability. For example, some smaller market participants may become unable to use a particular product for hedging purposes because of inability to access clearing of that product

In general, FIA believes that any decision to extend the scope of products subject to the clearing obligation should be coordinated at international level in order to ensure international consistency.

If the clearing obligation under EMIR is extended to products that are not subject to mandatory clearing elsewhere, this could drive trading in those products away from EU markets.

Question 3. Does EMIR allow enough products to be subject to the clearing obligation?

☒ Yes

☐ No

☐ Don't know / no opinion / not applicable

Question 3.1 Please explain your answer to question 3 providing, where possible, quantitative evidence and examples:

As noted in the Consultation Document, EMIR already sets out procedures for the EU authorities to consider and consult on any proposal for a class of derivatives to become subject to the clearing obligation, having regard to (among other things) the volume, liquidity and standardisation of the *relevant class of OTC derivatives. It does not seem that any change to the current provisions of EMIR in this respect is necessary or desirable.*

Question 4. If a product is available for clearing but not subject to an obligation are there instances where you would still choose to trade bilaterally?

☐ Yes

☐ No

☒ Don't know / no opinion / not applicable

Question 5. In light of the EMIR framework for the clearing obligation, is the definition of OTC derivatives in EMIR clear enough?

☐ Yes

☒ No

☐ Don't know / no opinion / not applicable

Question 6.1. Do you see any situation where it could have undue consequences, for example with regards to the determination of the thresholds for the clearing obligation?

☒ Yes

☐ No

☐ Don't know / no opinion / not applicable

Under EMIR, an exchange-traded derivative (ETD) still falls within the definition of OTC derivative unless the exchange is a regulated EU market or a third country market that has been determined as equivalent in accordance with art 2(2a) of EMIR. Notwithstanding the fact that all ETDs will be cleared, the ETDs that are traded on exchanges other than EU regulated markets and "equivalent" venues still count towards determining whether the clearing threshold has been exceeded (unless, in the case of a non-financial counterparty, the ETD has been entered into for hedging purposes).

It is not appropriate to treat any ETDs as being relevant to the clearing threshold calculation, as they do not create any bilateral uncleared exposure to a counterparty, which is what should be relevant to assessing whether an entity should be considered to have sufficient uncleared OTC derivatives exposures to justify having the clearing obligation apply to it.

Question 6.1 Please specify the possible situations it could have undue consequences providing, where possible, quantitative evidence and examples:

The lack of equivalence vis a vis third-country regulated markets means that all transactions executed on them are regarded as OTC derivatives for the purposes of EU EMIR. This has a number of consequences for non-financial counterparties (NFC-s) and small financial counterparties (SFCs) under EMIR and other pieces of financial regulation, including a determination of whether an EU counterparty is an NFC+ or FC+ (or whether a third-country entity is an undertaking that would be *an FC+ or an NFC+ if it were established in the EU). The impact is particularly relevant for the client classification exercise.*

The result is that third-country counterparties are disincentivised from dealing with EU market makers/sellside firms in OTC derivatives at all. This adversely impacts EU market makers/sellside entities.

EU entities are disincentivised from dealing on third-country regulated markets (like ICE and LME) and this adversely impacts EU consumers, since the lack of ability of EU energy companies to trade on ICE/LME is likely to contribute to higher prices for EU consumers. These issues are addressed in more detail in a joint trade association position letter to Commissioner McGuinness signed by FIA .[7]

In addition, the approach to the calculation of the clearing threshold under EMIR (and in particular the inclusion of centrally cleared OTC derivatives as well as physically settled exchange traded derivatives in the threshold calculation) results in more onerous outcomes for EU NFCs than under OTC derivatives regimes in other jurisdictions. FIA therefore supports the call by EFET for a substantial increase in the EMIR clearing threshold for commodities to a level comparable with thresholds in non-EU jurisdictions. [8]

Question 6. Is the procedure to determine whether a non-financial counterparty should be subject to the clearing obligation under Article 10 clear enough?

☐ Yes

☐ No

☒ Don't know / no opinion / not applicable

Please explain how it should be clarified providing, where possible, quantitative evidence and examples:

Question 6.1 How should intragroup transactions be taken into account in the procedure?

First, as regards how intra-group transactions are taken into account in the first place in determining whether a group is NFC+ or NFC- (and therefore whether the EU entities in the group are subject to the clearing obligation at all). Currently (as spelled out in the ESMA Q&As on EMIR), if there is an intra-group transaction that is not a "hedging transaction", both sides of the transaction need to be counted, and therefore the total contribution to the group-level threshold is twice the notional of the contract. It would be helpful if only the notional needs to be counted.

Secondly, where EU entities in a group are subject to the clearing obligation, intragroup transactions are an essential part of centralised risk management for a group which operates on a cross-border basis, which in turn allows EU entities in that group, and financial markets, to remain competitive. Intragroup transactions are also a key part of implementing mandatory clearing requirements, as not every firm in a group can become a clearing member of the relevant CCPs. If the temporary

[7] https://www.fia.org/sites/default/files/2020-12/Equivalence%20under%20EMIR%202a.-20201130.pdf

[8] https://www.fia.org/resources/fia-and-isda-submit-response-esma-discussion-paper-clearing-thresholds-under-emir

*derogations are allowed to expire without being replaced by equivalence decisions in all key jurisdictions, this will result in increased costs and operational burdens for EU firms while also resulting in trapped assets***.**

As the current intragroup derogation in relation to the clearing and margin obligations is set to expire in June 2022, FIA and other trade associations have urged the Commission to (i) adopt equivalence decisions as a matter of urgency in relation to all jurisdictions that have implemented clearing obligations and/or margin obligations in line with the G20 commitments, and (ii) extend the current intragroup derogation from clearing (and margin) requirements for a further 3 years for all jurisdictions where an equivalence decision is not available. These issues are described in more detail in a joint trade association letter.[9]

If the EU applies the clearing obligation (and margin requirements) to cross-border intragroup transactions it will be an outlier in comparison with other major jurisdictions. The clearing obligations of other key jurisdictions (including other G20 jurisdictions) provide exemptions for transactions between affiliates. In this regard, we have previously asked the European Commission to consider – for the purpose of future revision of EMIR Level 1 - whether it continues to be appropriate for EMIR to require OTC derivatives transactions between affiliates to be cleared through a CCP or whether it would be appropriate to amend EMIR Level 1 to provide a permanent exemption for transactions which qualify as intragroup transactions.

Question 6.2. Should the clearing thresholds be recalibrated based on cleared versus non-cleared rather than OTC versus ETD?

Yes – see our response to Section 1(d Q 5 above.)

Question 7. Should the thresholds for the clearing obligation continue to be linked to the application of margin requirements?

☐ Yes

☐ No

☐ Don’t know / no opinion / not applicable

Question 7.1 Please explain your answer to question 7 providing, where possible, quantitative evidence and examples including on potential costs and benefits:

We note this linking only applies with respect to non-financial counterparties, since all financial counterparties, including “small FCs” exempt from the clearing obligation, are subject to regulatory margining.

[9] https://www.fia.org/sites/default/files/2021-12/Industry-Urges-EU-to-Extend-Relief-for-Cross-Border-Intragroup-Transactions.pdf

II. Measures towards market participants

(a) Capital requirements in CRR and supervisory tools

Question 1. EMIR 2.2 introduced a difference between third-country CCPs which are Tier 1 and those that are Tier 2.

How could the greater systemic importance (and associated risks) of Tier 2 third-country CCPs be reflected in the context of banking rules and supervision?

We believe EMIR 2.2 provides European authorities with an effective mechanism and tools to supervise and oversee systemically important, third country CCPs. EMIR 2.2 provides a finely balanced solution designed for joint supervision of third country CCPs, which should be fully used and tested before any additional measures are introduced.

The actual management (as opposed to oversight) of CCP risks, particularly in a clearing member default scenario, are (and should be) controlled by the CCP in accordance with its rulebook. A CCP (including Tier 2 CCPs) is required to have clearly defined and transparent procedures for the management of risk, which specify the respective responsibilities of the CCP and its clearing members and are reviewed and supervised by regulators. The management of risk faced by clearing members, and exposure of the CCP to its clearing members, is best controlled by the CCP through calling for margin and contributions to the default fund.

Imposing additional supervisory or regulatory measures on clearing members of Tier 2 CCPs which are EU banks will not assist in mitigating risks faced by the CCP and/or risks to its clearing members, and will result in a competitive disadvantage for such banks not being able to offer competitive prices and offers for their activities with non-EU clients willing to clear on Tier 2 CCPs, but also with EU clients not subject to the EMIR clearing obligation. Such measure, without the above-targeted exemptions, would only penalize EU banks and will not serve the CMU objectives.

Limiting the exposure of a bank clearing member to any single CCP is already addressed through regulatory capital tools such as large exposure limits, and there seems no good prudential reason to differentiate between different types of CCP in this respect.

Furthermore, the envisaged capital requirements would not be in line with Basel rules insofar as Basel rules do not establish a different regime, in terms of capital treatment, depending on whether a CCP is a "Tier 1 CCP" or a "Tier 2 CCP", outside of the Qualifying CCP (QCCP) framework.

If any new capital measures were to be introduced for exposures of EU banks to Tier 2 CCPs, those should apply only to exposures attributable to the products with respect to which the Tier 2 CCPs have been identified as being of substantial systemic importance together with exemptions allowing EU banks to continue to offer market making and client clearing activities with non-EU clients (not subject to EMIR and able to clear on Tier 2 CCP) and to EU clients not subject to the EMIR clearing obligation.

Question 2. What changes in the legal framework could translate in banks increasing their clearing activities in EU CCPs?

We reiterate that we support any initiatives to incentivize market participants to clear via the development of competitive, efficient, resilient, financial market infrastructure globally and in the EU, but we would not support any changes in the legal framework to compel clearing activity to take place on EU CCPs.

Question 2.1 Please explain your response to answer Question 2, providing where possible quantitative evidence or examples, including on potential costs and benefits:

Question 3. How could a higher risk weight for excessive exposures to a Tier 2 CCP be designed given their systemic imprint?

	1 (strongly agree)	**2 (rather agree)**	**3 (neutral)**	**4 (rather disagree)**	**5 (strongly disagree)**	**Don't know – No opinion – Not applicable**
A higher risk weight for the portion of the exposure which is above a certain threshold	☐	☐	☐	☐	☒	☐
A higher risk weight for the overall exposure to the CCP concerned	☐	☐	☐	☐	☒	☐
A higher risk weight if there is evidence that no meaningful efforts are made to reduce the exposure	☐	☐	☐	☐	☒	☐
Other	☐	☐	☐	☐	☐	☐

Question 3.1 Please explain your answer to question 3 providing, where possible quantitative evidence and examples, including on potential costs and benefits:

As a general observation, this question does not identify what is considered an "exposure" and when such exposure would be considered "excessive". Nor does it distinguish between exposures to a Tier 2 CCP arising with respect to those products where ESMA has concluded that Tier 2 CCPs are of substantial systemic importance to the EU, and the broader range of products cleared by those CCPs, and whether those products are within the scope of mandatory clearing or not. Indeed, in view of margin netting and cross-currency netting, the determination of any exposure of a clearing member (as opposed to the gross notional positions) with respect to particular products is not straightforward. Seeking to reduce the positions of EU banks that are clearing members of Tier 2 CCPs in respect of products that are not of substantial systemic importance to the EU would be disproportionate and would seem to penalise such banks for no good reason as their non-EU and

EU clients will most likely prefer to use the services of non-EU banks, who would be able to offer access to Tier 2 CCPs without limit and without incurring additional costs.

It is imperative to avoid any unintended consequences and we would therefore like to highlight that there are no alternatives for London Metal Exchange (LME) and parts of ICE Futures Europe. It therefore requires an equivalence decision to be in place in relation to those markets where a suitable alternative in the EU is not available. The absence of an equivalence decision and UK CCP recognition would disable effective client position risk management on commodity and financial risk exposures.

Question 4. In light of the Commission strategy to reduce excessive reliance on Tier 2 third-country CCPs, what level could be appropriate in your view for the risk weight, to incentivise clearing members to consider other options than a Tier 2 CCP for clearing their derivatives?

We question why the level of capital that firms need to hold when clearing on a CCP should depend on the "recognition" status of the CCP (i.e., whether it is recognized as Tier 1 or Tier 2). A clearing member's credit risk against a CCP does not change depending on whether the CCP is classified as a Tier 1 or Tier 2 CCP (or is an authorised EU CCP). Further, the Basel framework does not provide any basis for introducing higher capital charges with respect to exposures to Tier 2 CCPs. Similarly, the treatment of a CCP as a "QCCP" for CRR purposes does not (and should not) distinguish between different categories of authorised/recognised CCPs.

Non-EU firms that are clearing members of a Tier 2 CCP, will not be subject to such charges. These charges would therefore negatively impact EU firms, which goes against the EU's aims to create a level playing field. Further, any capital charges imposed on EU clearing members clearing at Tier 2 CCPs would likely be passed onto the clients of those clearing members, impacting EU clearing members' ability to compete with third country competitors (who would not be subject to the same higher risk weighting) with respect to client business.

These measures would have a similar effect to restricting access to Tier 2 CCPs for EU clearing members. This introduces additional risk for EU clearing members and their clients, and reduces the ability of clients to benefit from the efficiencies of margining on a portfolio basis at a single CCP.

It is also not clear how these proposals could be implemented from an operational perspective. It is not clear (for example) how, in practice, different capital charges could be applied to different currencies cleared by a single clearing member at a single CCP.

Question 5. How do you assess the risk that participants would relocate clearing to other third-country jurisdictions in case a higher capital requirement on excessive exposures to T2 CCPs is imposed?

There is a high risk of entities re-organising their activities so as to relocate clearing to other third-country jurisdictions, such as the UK and US, if a higher capital requirement is imposed on exposures to Tier 2 CCPs. Even if EU clearers would set up a separate entity in the UK (for example) to maintain access to UK CCPs, they would still face a large increase in capital requirements, at group level, creating an unlevel playing field. This could lead to weaker and more dependent EU capital markets.

There is also a risk that clients clearing at such Tier 2 CCPs may choose to clear via non-EU clearing members, who are not subject to higher capital charges and may consequently be able to offer more favourable pricing than their EU counterparts.

Question 6. Do you include in your operational risk framework scenarios including limitation of access/non-recognition of a third-country CCP, or activation of the EMIR 2.2 process under Article 25.2c (i.e. possibility of de- recognition of a third-country CCP or certain clearing services)?

☐ Yes

☐ No

☒ Don't know / no opinion / not applicable

Question 7. When would you consider that a clearing member's exposure (initial margin and default fund contributions) to a CCP be "excessive"?

The management of a crisis situation, i.e. default situation, is to be carried out in accordance with the CCP rulebook. A CCP is required to have clearly defined and transparent procedures for the management of risk, which specify the respective responsibilities of a CCP and its clearing members. Any actions to be taken in a crisis by the CCP, including the use of the CCP's default protections and default management processes, could impact the resilience of the CCP's clearing services and its resources that may be relied on for default management. Any such plans must be shared with all relevant authorities including ESMA, ECB and the Bank of England for UK TC-CCPs.

Therefore, and as noted in our response to Section II(a) Q1 above, we consider that the management of risk faced by clearing members, and exposure of the CCP to its clearing members, is best controlled by the CCP under its risk management processes, which already require focus on the largest clearing members.

Mandating a clearing member to reduce an exposure to one CCP and increasing its exposure to another CCP would likely increase costs and risks for the clearing member in light of reduction of netting benefits and potential new exposures to a CCP with fewer clearing members.

(b) Macroprudential tools

Question 1. The over-reliance on Tier 2 CCPs presents risks for the financial stability of the Union.

Do you think macroprudential tools should be considered to achieve the desired policy objectives, alongside or as a substitute for the use of micro- prudential tools?

☐ Yes

☒ No)

☐ Don't know / no opinion / not applicable

Question 1.1 Please explain your answer to question 1 in as much detail as possible:

We refer to our response on Section II a) above. We question whether the use of prudential measures, including macroprudential tools, targeted at EU market participants would reduce financial stability risks but could well increase such risks through market fragmentation and creation of smaller liquidity pools.

Question 2. Do you think a macroprudential buffer should be considered in light of this reliance/exposure?

☐ Yes

☒ No

☐ Don't know / no opinion / not applicable

Question 2.1 Please explain your answer to question 2 providing, where possible, evidence and examples, including on potential costs and benefits:

(c) Set exposure reduction targets

Question 1. If targets were to be set in some form or another, what do you think could be a reasonable target to achieve in terms of reduction of overall euro-denominated exposures of EU participants to Tier 2 third-country CCPs?

Question 1.1 Should exposures to systemic non-EU CCPs somehow be capped?

☐ Yes

☒ No

☐ Don't know / no opinion / not applicable

Question 1.2 Please explain your answer to question 1 and 1.1 providing, where possible, quantitative evidence and examples.

Please also indicate over what timeframe such reduction can be achieved:

Setting out a minimum percentage of euro-denominated derivatives volumes to be assigned to the EU CCP by an EU participant would not make sense for EU clearing firms given the fact that market making and client clearing activities are "client driven" activities. (). Imposing targets on EU market participants would rather drastically limit the ability of EU clearers and market makers to offer their services to their non-EU clients and EU clients not subject to the clearing obligation. Those clients will therefore prefer to clear with non-EU market participants, able to offer the clearing on both EU and non-EU CCPs. Any measures should therefore be aimed at incentivising EU participants to move their clearing volumes to EU CCPs rather than mandating it.

To address financial stability concerns, no caps or exposure reducing targets can and should be set as this would add additional stresses to the markets, especially in stressed market conditions.

(d) Level playing field

Question 1. How in your view could this issue be avoided?

Please explain your answer providing, where possible, quantitative evidence and examples including on potential costs and benefits:

Clearing of EU currency denominated transactions at EU CCPs should be achieved by voluntary, incentivised market driven solutions and client demand over a longer period. Relocation of EU *currency clearing by regulatory mandate will harm the growth of financial market infrastructure in the EU and result in negative financial, commercial, operational and risk consequences for EU clearing members and market participants and place EU clearing members at a competitive disadvantage. Any bifurcation or dislocation of the market will, more generally, result in weakened stability of the global financial system through fragmentation, reduced liquidity and greater concentration of risks. It would undermine the reputation of the EU as a fair and open market and could trigger retaliatory measures.*

Client demand is an important factor in determining the location of EUR clearing as it not only dictates the CCPs through which client business is cleared but also where house business is cleared when that house business relates to market-making activities. Therefore, although client clearing activity may appear to be smaller in volume than house account activity it represents a more important proportion when also linked to client-driven activity (i.e. when market making and client clearing activity are considered together). If EU clearing members are not permitted to clear at certain third country CCPs, clients (provided they are not subject to the clearing obligation) will likely choose to clear through a non-EU broker rather than switching CCPs, thus putting EU clearing members at a competitive disadvantage to their peers in other jurisdictions. It is therefore key that measures are aimed at incentivising clients and their clearing members to move activity across to the EU rather than preventing them using third country CCPs. Clients' decisions as to where to clear are based on multiple factors such as price, liquidity, risk, margin and operational efficiency and regulation.

We would also suggest that the Commission not limit its focus to EU currency denominated transactions as EU clearing members and their clients are parties to transactions in other currencies. It should be ensured that any measures taken with respect to transactions in EU currencies do not negatively impact transactions in these other currencies.

Requiring clearing of euro-denominated interest rate swaps to be moved to the EU via regulatory mandate would only apply to EU domiciled entities and would therefore result in a bifurcation of the market. According to London Stock Exchange Group (LSEG) data, EU entities account for only 27.1% of daily euro IRS liquidity numbers which may have been cleared on an EU CCP or a recognised third-country CCP.

In such a scenario, a forced relocation would sever the supervisory oversight that EU authorities would otherwise have had over third country CCPs offering clearing services in euro-denominated, euro-collateralised products to non-EU market participants and result in the perceived systemic risk being increased rather than reduced. EU regulatory authorities would only have 100% control over 27.1% of the EUR Swaps market but ESMA and ECB would lose joint supervisory oversight of the remaining 72.9% of the EUR Swaps market. That represents a loss of critical oversight. Any bifurcation or dislocation of the market will also result in a weakened system from a systemic risk perspective, creating additional default management risks. This risk is elevated in times of market stress due to the concentration of positions on EU CCPs with lower liquidity pools and fewer clearing members subject to the same economic cycle.

A forced relocation also introduces financial stability risks as there is currently no transfer mechanism to migrate existing cleared derivatives positions from one CCP to another. Complex bilateral contracts with very different tenors at third-country CCPs would have to be unwound and entered into bilaterally anew – at a time of market stress due to the number of trades and counterparties that would be impacted by a clearing relocation mandate – and reopened in EU CCPs. There is no guarantee that market participants could, or would want to, take on existing bespoke contracts, particularly those who would be otherwise unaffected by a clearing relocation mandate. Significant positions with initial margin associated with long-dated contracts would require a willing buyer and *receiver at both the existing CCP and an EU CCP. EU firms alone cannot support this process and could be forced into fire sales.*

Due to the issues in moving legacy positions to another CCP due to the higher cost and increased risk of closing and re-opening the cleared position on market (as outlined above), the initial focus should be on opportunities to incentivise clearing of new transactions on EU CCPs.

Competitive, efficient EU CCP product offerings should be developed to grow liquidity over a longer sustainable period of time, so that benefits outweigh the costs and risks of transferring legacy positions to EU CCPs.

Question 2. In what ways can the clearing of Union currency-denominated derivatives be made obligatory or incentivised to take place in EU CCPs?

Please explain your answer providing, where possible, quantitative evidence and examples including on potential costs and benefits:

Market participants should be incentivised to clear via the development of competitive, efficient, resilient, financial market infrastructure in the EU. It is suggested that the following measures could be taken to improve liquidity on EU CCPs:

- *Encourage EU CCPs to offer all EU denominated currencies and increase their product offerings to reflect those offered by third country CCPs.*
- *While having regard to appropriate risk management measures, encourage EU CCPs not to apply concentration limits to posting of EU securities as collateral and consider reducing some current haircuts on securities and to increase some Additional Margin thresholds.*
- *Extension of TARGET2 settlement system, such that an EU CCP would not need to make any intra-day calls in non-EU currencies.*
- *Focus on increasing liquidity in primary global cleared currencies at EU CCPs.*
- *OTC derivatives clearing platforms require appropriate development and enhancements like porting of Initial Margin (IM) and positions, which e.g. at some CCPs is automatic whereas NPV is handled manually. Furthermore, there is a need to develop bespoke risk management tools to replicate third country CCP market leaders, e.g. incremental IM calculations and an overall need to improve testing environments and make them more accessible.*
- *EU hedge accounting rules in some EU jurisdictions, including France and Spain, minimize the ability to transfer positions as firms have to hold to maturity to get benefits. Recent accounting rule changes in Germany should be reflected in other jurisdictions.*
- *EU CCPs developing their post-trade compression services by working with vendors as well as market participants.*
- *Encourage EU public authorities to clear EUR denominated derivatives on EU CCPs. EU central banks including the ECB, national treasuries and public banks are significant market players and would increase liquidity and confidence in EU CCPs.*
- *Implementation of the clearing obligation for pension scheme arrangements (PSAs) could bring significant liquidity to EU CCPs and also attract non-EU counterparties, subject to a proper risk assessment of the potential consequences for pension funds. In addition,*

development of the European repo market will be required to provide adequate access to cash to cover variation margin calls.

- *Default management firedrill monitoring at times when firedrills are run in parallel at multiple CCPs: to ensure effective liquidity level encourage and monitor EU CCP to introduce valid BID only if sufficient liquidity is present on the market in that specific moment in particular during times of crisis.*
- *Improve exchange-traded offerings on EU CCPs via the following measures:*
    - *EU CCP to offer other STIR futures currencies alongside Euribor to achieve cross currency netting benefits.*
    - *Develop and enhance STIR trading functionality to handle options and more complex futures strategies e.g. strips, packs, bundles.*
    - *Review EU regulatory hurdles to make it easier for third country market makers and liquidity providers to access EU exchanges.*

Question 3. With specific reference to question 2, how could end clients which are not subject to the CRR be incentivised?

Please explain your answer providing, where possible, quantitative evidence and examples including on potential costs and benefits:

(e) Facilitate transfer of contracts from outside the EU

Question 1. Should a permanent exemption be granted allowing for a novation of legacy trades without triggering any EMIR requirements?

☒ Yes It may help

☐ No

☐ Don't know / no opinion / not applicable

Question 4.1 Please explain your answer to question 4 providing, where possible, quantitative evidence and examples, including on potential costs and benefits:

There is no explanation in the Consultation Document as to how it is envisaged that intragroup transactions could be used to facilitate a reduction in exposures to Tier 2 CCPs. We note that intragroup transactions are typically not cleared and, consequently, are not priced and structured so as to be cleared. Any new requirement for intragroup transactions to be cleared would simply increase collateral and funding costs for firms managing intragroup risk, thus diverting resources from more productive uses in the real economy.

Further, depending on the booking models used by market participants, it may not be possible for such trades to be cleared.

Question 5. What are in your view/experience the difficulties around legacy portfolio transfers?

As it is not possible to simply transfer legacy portfolios between CCPs, market participants are required to trade out of their portfolio at one CCP and re-establish the same portfolio at another CCP. This introduces the issue that the market participant is reliant on third parties to take the other side of their trades in other to facilitate trading out of positions at the original CCP and into positions at the new CCP.

(f) Obligation to clear in EU

Question 1/ In your view should Article 5 be amended?

☐ Yes, so that for new contracts the clearing obligation can only be fulfilled through authorised EU CCPs and/or recognised 'Tier 1 CCPs'

☒ No

☐ Don't know / no opinion / not applicable

What do you think would be the pros and cons and costs and benefits of your preferred approach?

Please also specify for what asset classes and currencies:

Question 1.1 Please explain your answer to question 1 providing, where possible, quantitative evidence or examples, including on potential costs and benefits:

Please indicate what could be an appropriate period to move towards this new regime:

Any obligation to satisfy the clearing obligation by clearing through an authorised EU CCP would create an unlevel playing field, with non-EU market participants able to clear at UK and EU CCPs.

In addition, such a requirement and removing their access to i.e. UK CCPs will deny EU entities a degree of risk diversification and resiliency for clearing certain products in the event of system outages. Creating a structure of EU systemic reliance on a single CCP by cutting access to alternatives would be detrimental to financial stability and resiliency.

There are also ongoing concerns around liquidity of euro-denominated products at EU CCPs during times of market stress or disruption, thereby creating yet another point of stress (in particular for long dated swaps and larger trade sizes).
There is also no guarantee that market participants could, or would want to, accept a transfer of existing bespoke contracts such as long-dated contracts, particularly those who would be otherwise unaffected by a mandate. Significant positions with initial margin associated with long-dated contracts would require a willing buyer and receiver i.e. at both the TC-CCP and an EU CCP. EU firms alone cannot support this process and could be forced into fire sales.

(g) Active account

Question 6. What would be the pros and cons, the costs and benefits of imposing an obligation to open an active account and setting a regulatory level of activity in it?

Any measure *considered by the Commission should be proportionate in its application. We believe that a mandatory active account would only benefit a single EU CCP, while there will be costs for all other EU market participants: The (mandatory) split of books and loss of netting benefits resulting from maintaining an additional active account with an EU CCP, and the potential loss in efficiency, will generate significant additional costs for them.*

Within the context of proportionality, the Commission should review and understand: (1) the impact this would have on the capacity of the Clearing Service Providers in order to onboard the number of accounts required, and; (2) the resources required for CSPs to maintain these accounts and their associated use of risk capacity as well as ongoing regular due diligence, etc.

In addition, imposing a mandatory requirement to open an active account does not, in all likelihood, result in the generation of significantly increased liquidity.

(h) Hedge accounting

Question 1. Should a harmonisation of the hedge accounting rules be considered across Member States in order to reduce the exposure to Tier 2 third-country CCPs?

☒ Yes

☐ No

☐ Don't know / no opinion / not applicable

Question 1.1 Please explain your answer providing, where possible, quantitative evidence or examples, including on potential costs and benefits:

The hedge accounting rules in some EU jurisdictions, including France and Spain, minimise the ability to transfer positions as firms have to hold trades to maturity to receive any benefits. Recent accounting rule changes in Germany should be reflected in other jurisdictions.

(i) Transactions resulting from Post Trade Risk Reduction

Question 1. In your opinion, to what extent could the current outstanding notional amount be reduced?

Post-trade risk reduction (PTRR) activities can mitigate a range of risks (counterparty, operational, basis risk and systemic risk). This includes compressing the notional amount of outstanding derivative transactions, notably uncleared transactions, between counterparties.

Statistics on the volume of PTRR activities are set out in ESMA's Report to the European Commission of November 2020[10] on post trade risk reduction services with regards to the clearing obligation which illustrates the importance of such activities in the market.

Could greater use of compression be done in CCPs and/or the bilateral space?

For cleared transactions, substantial compression activity, by CCPs themselves and through third-party services such as Tri-Optima, already takes place. There are greater challenges with respect to compression of bilateral uncleared transactions.

Please explain your answer providing, where possible, quantitative evidence or examples, including on potential costs and benefits:

As noted by ESMA, PTRR transactions cannot be clearable if the portfolio they derive from consists of uncleared transactions, as this would detach the replacement or rebalancing trade from the risk it is designed to reduce, for example in principle legacy trades cannot be compressed without an exemption from clearing. ESMA also notes that the market may, to some extent, use instruments that are not subject to the clearing obligation, to execute PTRR transactions in uncleared portfolios, however such PTRR services thereby become more complex and the products used less standardised, to avoid the clearing obligation. Also, by using more complex transactions, PTRR services become less accessible to some market participants.

Question 2. How should risk replacement trades resulting from Post Trade Risk Reduction services be treated with regard to the clearing obligation?

We agree with the conclusion of ESMA in its Report, that the benefits of allowing certain PTRR transactions to be exempted from the clearing obligation would reduce risk in the market, allow for legacy trades to be compressed, increase participation in PTRR services by a wider range of counterparties and overall reduce complexity in the market by using simpler trades for rebalancing.

Please explain your answer providing, where possible, quantitative evidence or examples, including on potential costs and benefits:

We refer to ESMA's analysis in its Report to the effect that, the positive effects of facilitating PTRR through an exemption from the clearing obligation outweigh any increased operational burden on market participants and regulators and (in case of portfolio rebalancing) any increase in gross risk in non-cleared netting sets. We note that, in its Report to the European Parliament and Council of April 2021 responding to the ESMA Report, the Commission concludes that the issues required further consideration, and that a more comprehensive assessment could feed into the general EMIR assessment report to be submitted by the Commission to the European Parliament and the Council by 18 June 2024. We hope that the Commission will be able to make an earlier proposal for action to facilitate the greater use of PTRR services.

Question 3. What would be the pros and cons, the costs and benefits of subjecting the risk replacement trades to the clearing obligation? In EU CCPs?

For uncleared portfolios, the lack of an exemption from the clearing obligation for replacement trades would deter the use of PTRR, with an adverse effect on the ability to reduce and manage risks.

[10] https://www.esma.europa.eu/sites/default/files/library/esma70-156-3351_report_on_ptrr_services_with_regards_to_the_clearing_obligation_0.pdf

Question 4. Are there measures that should be considered to facilitate the use of Post Trade Risk Reduction services to transfer trades to the EU, including cleared trades from Tier 2 third-country CCPs to EU CCPs?

☐ Yes

☒ No

☐ Don't know / no opinion / not applicable

Please explain your answer to question 4:

Compression of cleared trades is most effectively managed within the CCP at which the trades are maintained and there does not appear to be any good reason for measures to encourage replacement trades to be cleared at a different CCP.

(j) Fair, reasonable, non-discriminatory and transparent (FRANDT) commercial terms for clearing services

Question 1. Should the provision of client clearing services be further regulated so that clients are consistently offered the option to clear also at one EU CCP or incentivised to do so?

☐ Yes

☒ No

☐ Don't know / no opinion / not applicable

Question 1.1 Please explain your answer to question 1 providing, where possible, quantitative evidence and examples:

In previous comments on the FRANDT requirement, FIA indicated that it fully supports the policy objective of FRANDT in addressing the clearing access difficulties faced by counterparties with limited OTC derivatives trading activity. In our response, we considered it essential that the implementing rules were properly calibrated, tailored, balanced and targeted at the FRANDT objectives, such that they would not establish an unduly prescriptive and complex framework or undermine clearing firms' abilities to properly risk manage their clients.

To provide a competitive offering and to meet client demands, clearing firms will usually choose to offer to provide client clearing services on a number of different CCPs, in the EU and elsewhere. However, FRANDT should not be extended so as to compel a clearing firm to offer client clearing services for particular CCPs or products if the clearing firm has determined that it does not wish to offer that particular service, for example because that would not be cost-effective, or would give rise to risk-management concerns, or the firm faces regulatory capital constraints that require it to limit its client clearing offering. Such compulsion (which could only be applied to EU clearing firms) would go beyond the scope of article 4(3a) of EMIR, which makes clear that clearing members are not obliged to contract, and shall be permitted to control the risks relating to the clearing services offered. Any such compulsion could also undermine the FRANDT objectives, by making clearing firms reluctant to offer clearing services at all to EU clients.

Similarly, there should be no compulsion for clearing firms to offer any incentives to EU clients, or clients generally, to clear on EU CCPs, for example, lower charges. This would clearly go against *the FRANDT requirement to provide services on fair, reasonable and non-discriminatory terms, as well as potentially raising competition law issues.*

III. Measures towards CCPs

(a) Measures to expand the offer by EU CCPs

Question 1. How are EU CCPs impeded or slowed down, compared to their international peers, in bringing new products to clearing?

In which ways could EU CCPs be supported in expanding their range of clearing services?

The current European supervisory set-up for CCPs has proven to be efficient, maintaining market stability and integrity in times of market stress. However, the set-up for CCPs remains complex and at times unnecessarily operationally burdensome due to a heavy internal governance/review process which includes NCAs, the ESMA CCP Supervisory Committee and CCP college with often overlapping compositions. This can sometimes lengthen the time to launch new products and lengthens the time to market of such products and/or to implement minor service changes.

We believe that increased supervisory convergence should be the primary focus and would help to deepen capital markets in Europe, which is key to more diversified sources of funding for European companies. In addition to increased convergence, there is an opportunity to increase the efficiency and competitiveness of Europe's capital markets through initiatives to streamline and simplify supervisory processes.

We recommend increased engagement between EU authorities and the industry and support the creation of a more robust consultation culture with increased transparency around policy decisions. Running public consultation processes ensures that the full range of views across the entities and jurisdictions in which they operate are considered in the decision-making process,

We also believe that the relevant EU authorities should be provided with more meaningful powers to temporarily suspend the application of certain regulatory requirements in certain circumstances and within a reasonable timeframe - effectively relieving firms from enforcement action during that time period.

Regulatory and supervisory cooperation internationally is also key.

Question 2. Would it be appropriate to envisage a faster approval process for certain types of initiatives which could support the objective of promoting clearing in the EU, such as expanding the range of currencies cleared? What would be the pros and cons of a quicker approval process?

What other activities/services could be considered? Please explain:

When it comes to bringing new products to clearing the primary focus should remain on financial stability aspects. FIA members support the drive to improve quality and efficiency which could result in better services for market participants at lower costs. We support pursuing innovative and agile approaches while there must always remain a focus on ensuring the reliability and the security of the EU infrastructure to ensure that any innovation guarantees a safe and controlled environment. Pursuing innovation consistent with financial stability will contribute to a strong international position for the EU and ultimately this will have the effect of making the EU competitive in clearing and settlement.

(b) Payment/settlement arrangements for central clearing

Question 1. What problems do EU CCPs and clearing participants encounter with the current setup of payment and settlement arrangements available to them in the EU?

This topic has not been a differentiator in choice of CCP clearing location so far, but there are issues to consider. There is a diminishing number of banks that want to perform CCP settlement services given the risk / reward involved. There is a risk that, as the size of cleared activity increases, there may be a reduced appetite of settlement banks to provide CCP margin settlement services (particularly where central bank access is needed).

We believe the T2/T2S consolidation project with implementation of the first phase expected in November 2022 would enhance payment and settlement arrangements for central clearing. We find that the new Real-time gross settlement (RTGS) windows from 2:30 – 6 pm CET and 7:30 pm – 2:30 am CET would provide much needed flexibility in payments and thereby settlement arrangements available in the EU.

(c) Require segregated default funds

Question 1. If EMIR were to impose the establishment of segregated default funds to certain EU CCPs to improve their attractiveness, what should be the criteria for establishing which CCPs would need to have this segregated model?

☐ Number of asset classes cleared

☐ All CCPs clearing derivatives alongside other products

☐ Other

☒ Don’t know / no opinion / not applicable

Please specify to what number of asset classes cleared you refer in your answer to question 1:

Please specify to what other criterion/a you refer in your answer to question 1:

Question 1.1 Please explain your reply to question 1, also assessing the costs related to such a requirement:

Currently, different CCPs may operate a single default fund or segregated default funds for different asset classes, depending on the scope of their business and their own risk management policies and practices. We question whether it is appropriate for EMIR to mandate a single approach in this regard. If segregated default funds are mandated, we consider this is likely to lead to an overall increase in default fund contributions, and consequential increased costs for clients of clearing members, which is unlikely to improve the attractiveness of EU CCPs.

(d) Enhancing funding and liquidity management conditions

Question 1. Is the current range of options for funding, liquidity, collateral safekeeping/management, investment sufficient to support the growth of EU- based clearing?

☐ Yes

☒ No

☐ Don't know / no opinion / not applicable

Question 1.1 Please explain your answer to question 1 providing examples and, where possible and relevant, quantitative evidence:

CCP collateral eligibility and applicable haircuts can be a differentiator in client choice on clearing location. Within the EU there are examples of contrasting capabilities, including some CCPs with broader lists of acceptability and higher concentration limits than some other EU CCPs. In some cases, models could be improved by introducing buffer account structures to allow clearing members to better manage liquidity in volatile periods.

We refer also to our response to Section II (d) Q2 above.

(e) Interoperability

Question 1. Do you think EMIR should explicitly cover interoperability arrangements for derivatives?

☐ Yes

☒ No

☐ Don't know / no opinion / not applicable

Should explicitly cover interoperability arrangements only for Exchange Traded Derivatives or also OTCs?

☐ Only ETD

☐ Only OTC

☐ Both ETD & OTC

☐ Don't know / no opinion / not applicable

Question 1.1 Please explain your answer to question 1 providing, where possible, quantitative evidence and examples:

We do not believe that interoperability arrangements in itself would address EU policymakers' concerns and objectives, instead interoperability has the potential to increase risk in the system from a risk management perspective.

Interoperability raises, in all likelihood, additional issues related to:

- *i) different legal frameworks;*

- *ii) coordination of intraday calls;*
- *iii) sufficient margining of the transactions between the involved CCPs;*
- *iv) ringfencing of the involved collateral to protect the CCP links;*
- *v) supervisory coordination;*
- *vi) sound procedures for recovery and resolution in case of the default of one interoperable CCP; and*
- *vii) agreement between CCPs. In this latter respect, it is far from being obvious that all potentially involved CCPs may be willing and able to enter the above-mentioned interoperability arrangements. Indeed, it is fair to say that the above-mentioned issues have contributed to the modest take-up of interoperability so far in the EU.*

Question 2. In light of efforts to enhance the clearing capacity in the EU and the overall attractiveness of EU CCPs, do you think there would be benefits of developing interoperability links between EU CCPs?

☐ Yes

☒ No

☐ Don’t know / no opinion / not applicable

Question 4. How would you assess a situation in which Interest Rate Swap clearing happens at more than one EU CCP (e.g. at 2 CCPs) and there is an interoperability link between the two concerning such products?

It will lead to just a further split of liquidity and potential increase in funding costs as a result of higher initial margin.

Question 5. In the situation described under Question 4, how should the risks related to the arrangement be properly dealt with?**What kind of safeguards should be there in terms of proper risk management?**

There would need to be very robust minimum standards for any interoperability arrangements and there should be full transparency to the market about the terms of the arrangement.

Question 6. In the context of CCP links, what are in your view the costs and benefits of cross-margining arrangements?

Cross-margining can be very beneficial for clients where their portfolio lends itself to such an arrangement. Many end users of derivatives do not have offsets between their derivatives books.

IV. Monitoring progress towards reduced reliance of EU participants on Tier 2 CCPs

Question 1.Which EU market participants should be primarily targeted in a central data collection exercise to ensure a risk picture as complete as possible?

☐ It would be sufficient to focus on EU clearing members

☐ It would be necessary to cover EU clearing members and specific clients

☐ Other

☐ Don't know / no opinion / not applicable

Question 1.1 Please explain your answer to question 1 providing, where possible, quantitative evidence and examples:

Question 2. In particular, if you believe clients should be included, please specify which ones (e.g. only banks/other) and why:

Question 2.1 What would be the adequate frequency for this data collection?

☐ Quarterly

☒ Semi-annually

☐ Yearly

☐ Don't know / no opinion / not applicable

Question 3. Which measures should be used in your view to monitor such progress, beyond notional amounts, initial margins, default fund contributions and capital requirements where applicable?

Please explain your answer:

Our view on which measure(s) should be preferred is the following:

- regarding notional amounts and/or number of trades: these indicators are very dependent on the compression tools proposed by each CCP (with some of them far more efficient than the others), and of the appetite of each market participant to use them (specific balance sheet and prudential constraints, back-office capacity, risk appetite). in addition, it should also be made clear if these indicators will encompass all transactions (outstanding and flows) or will be limited to the flows. The inclusion of outstanding transactions will unduly penalize big market players, that have been active in the derivative market for a long time, and will not give a clear view of the progress in the increase EU clearing activity. Last but not least, the volume/ number does not necessarily give a clear view of the risk associated with the derivative transactions, if the maturity of each transaction is not taken into account,

- As regards initial margins, and default fund contributions, those indicators are by nature volatile and heavily dependent on the risk model of each CCP, which are not comparable. In addition, these indicators may not be comparable if the netting set model are different between the CCPs (one

default fund at EUREX and segregated default funds at LCH, netting on EUR derivatives across asset classes at EUREX, and netting in the same asset class but across other currencies at LCH) making it difficult to identify the correct measure for the 3 above identified asset classes separately, and difficult to compare between CCPs.

A risk indicator (PV 01) could be an option to explore further.

V. Supervision of CCPs

(a) Identifying costs related to current supervisory framework and benefits with a stronger role for EU-level supervision

FIA is not responding to this section.

VI. EMIR and other Regulations/Directives

Question 1. Should amendments be introduced to the following legal instruments to better harmonise the requirements applicable to entities active in OTC derivatives?

	1 (strongly agree)	2 (rather agree)	3 (neutral)	4 (rather disagree)	5 (strongly disagree)	Don't know – No opinion – Not applicable
Link between EMIR and MiFID with regards to the definition of OTC derivatives, central clearing requirement, DTO determination	☒	☐	☐	☐	☐	☐
CRR and CRD	☐	☐	☐	☐	☐	☐
UCITSD	☒	☐	☐	☐	☐	☐
AIFMD	☐	☐	☐	☐	☒	☐
MMFR	☐	☒	☐	☐	☐	☐
Solvency	☐	☐	☐	☐	☐	☐
Other amendments to EMIR in relation to non-centrally cleared derivatives	☐	☐	☐	☐	☐	☒

Please specify to what other amendment(s) to EMIR you refer in your answer to question 1:

Question 1.2 Please explain you answer to question 1.

If you think that amendments are required, please clearly indicate which amendments should be introduced, their rationale as well as their potential costs and benefits:

See our comments on amendment to the UCITS Directive, as set out above in our response to section I (b) (More clearing by private entities that do not access CCPs directly), Question 15.

FIA members strongly support a link between EMIR and MiFID with regards to the definition of OTC derivatives, central clearing requirement, DTO determination' to avoid any discrepancies, conflicts and gaps when EMIR or MiFIR are amended. For example, we have seen some unintended consequences in the area of DTO. EMIR Refit introduced a misalignment between the scope of counterparties subject to the EMIR clearing obligation and those subject to the derivatives trading obligation under MiFIR, which caused implementation challenges that this for counterparties exempted from the clearing obligation. To this end, we welcome the recent proposal within the EC's MiFIR legislative proposal to address the misalignment. In addition, EMIR Refit also modified the application date of the clearing obligation for some counterparties and ESMA had to clarify the application date of the trading obligation for those counterparties.

We commend the Commission for proposing to remove the authorisation requirement for DEA users dealing on own account but recommend that further changes/clarifications could be made, i.e. in the area of sub-delegation.

We believe that a change in the existing EU MMF Regulation, which restricts assets received by an MMF as part of a reverse repurchase agreement to a given issuer to 15 % of the MMF's NAV (Net Asset Value), could result in a greater uptake of central clearing by MMFs. Under the current framework CCPs are treated the same as any other counterparts (such as an investment bank) which impacts the activity and uptake of sponsored clearing models. We believe that an amendment is required to pave the way for more uptake of such clearing models.

VII. Other issues

(a) Blockchain and Distributed Ledger Technology (DLT)

Question 1. Could blockchain and DLT be used in the field of clearing to improve the attractiveness and efficiency of EU CCPs and clearing markets?

Yes

No

Don't know / no opinion / not applicable

(b) Other issues

Please provide any further suggestions to improve the attractiveness and competitiveness of EU CCPs and clearing markets, as well as the robustness of EU supervisory arrangements in order of impact and priority. Please provide supporting evidence:

The Commission's current equivalence regime creates limitations and obstacles for EU firms and has some major flaws. EU firms that are members of non-EU CCPs, including through non-EU branches, or that have non-EU subsidiaries that are members of non-EU CCPs need to rely on the *temporary transitional provisions in CRR which provide that until 28 June 2022 they may treat exposures to a non-recognised TC-CCP as if they were exposures to a QCCP.*

The increase in capital requirements would result in negative financial and commercial implications for EU firms e.g. increased margin and funding costs, increased capital costs, increased execution costs, or instead would result in completely abandoning such clearing activity.

Clients are looking for assurance that EU clearing members will still be able to service them from relevant third country jurisdictions after 28 June 2022 (which is an assurance that EU clearing members are currently unable to provide).

EU market participants would be at a competitive disadvantage compared to international peers if they cannot provide clearing and market making services to international clients clearing on non-recognised CCPs in third-country jurisdictions.

This risks further contraction of clearing service providers and harms the CMU objectives by hindering EU clearing members' ability to participate in international markets, and developing competitive EU clearing providers in the future. In the event that EU clearing members are not able to offer access to their client's preferred CCP, clients could move their business to other (mainly UK/US) clearers instead of clearing with a bank in the EU.

In order to avoid such negative impacts on EU firms, we would ask the Commission to expedite equivalence decisions for as many jurisdictions as possible by 28 June 2022. If it will not be possible to grant equivalence for many additional jurisdictions, then we would ask the Commission in conjunction with other EU authorities to consider taking urgent action to allow for an additional phase-in period once the current transitional period of non-EU CCPs as QCCPs under CRR expires and coordinate with the ECB and national competent authorities for banking supervision to ensure appropriate management of any punitive capital impacts.

From a longer-term perspective, we recommend exploring further the delinking of the equivalence and recognition status of TC-CCPs with the capital requirements under CRR . We also note that other third country jurisdictions follow a less cumbersome process while still ensuring all important financial stability aspects in their respective eco clearing systems.