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To ESMA CCP Supervisory Committee
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Subject: FIA Response to ESMA Consultation on EMIR 3 Draft RTS on CCP Participation Requirements

Executive Summary

FIA Members welcome ESMA's initiative to provide clarity and harmonisation on clearing member (CM) participation requirements through the draft RTS under EMIR 3. The framework recognises the need for sufficient financial, operational, and legal resilience, and, we advocate that the same requirements and equivalent conditions are applied proportionately to the CMs risk profile and activity, in order to be able to act as CMs.

We support the objectives of transparency, fairness, and non-discrimination in CCP access. Admission criteria should be objective, specific to product and membership type, and updated promptly upon significant changes. We endorse risk-based assessment and proportionality, particularly for NFCs, whose risk profiles differ from financial counterparties (FCs).

In the current EU landscape, characterised by a concerted drive towards simplification and enhanced global competitiveness, it is imperative to proactively identify and eliminate regulatory duplication. Requiring CCPs to duplicate standards already applied to CMs under existing regulations would constitute counterproductive redundancy, increasing compliance burdens, hindering innovation and efficiency, and ultimately undermining the overarching goals of a streamlined and competitive European market.

We strongly advocate for robust financial, operational, and liquidity requirements that are proportionate to the systemic risk an FC or NFC CM poses to a CCP. We acknowledge some requirements may be commensurate with the size of the clearing member (CM), but note that others, for example in areas such as risk management and operational effectiveness, should not be relaxed based only on size.

For non-EU CMs, the CCP may either consider compliance with a comparable local framework or must independently review operational capacity and risk management. A similar consideration could be applied to NFC CMs, but taking into account that any requirements should be proportionate to the actual activities, business models, and systemic financial impact. Any requirements should further consider that not all prospective members can be held to standards that are legally restricted to credit institutions, such as access to central bank liquidity. For example, it should be noted that CRR/CRD and IFR/IFD are primarily designed to mitigate risks associated with regulated financial intermediation activities, including client-facing services and leverage, and are not calibrated to the business models or risk profiles of companies trading on a purely proprietary basis.

To ensure appropriate differentiation and effective application of these principles, it is crucial to clarify terminology. We distinguish between:

- Bank CMs, supervised as credit institutions,
- Non-bank CMs, i.e. regulated financial entities other than credit institutions (for example MiFID investment firms or IFPR-regulated intermediaries) whose activities may generate exposures comparable to those of bank CMs, thus requiring equivalent financial and risk management standards, and
- NFCs, which include commercial or industrial firms that trade on their own account (or for the account of their own group entities) and whose cleared derivatives activity is undertaken often to hedge underlying physical exposures and who only provide clearing services to entities within their groups. These firms have distinct operational and systemic risk profiles, for whom requirements must be proportionate to their specific activities, business models, and overall clearing eco-system impact.

In addition, we reiterate the long-standing principles from FIA's 2018 work on CCP membership access¹, which emphasise that membership criteria should be risk-aligned, predictable, and transparent. CCPs should avoid blanket restrictions based solely on entity type and instead assess applicants against measurable risk criteria linked to the products cleared and the functions performed. FIA's historical position also supports that CCP membership frameworks should promote competition, avoid unnecessary barriers to entry, and ensure that requirements are calibrated to the actual risks posed, while maintaining strong safeguards for financial stability.

FIA's earlier work also highlights the importance of clear, consistent, and publicly available CCP membership standards, including detailed disclosure of financial, operational, and default management expectations for CMs. These principles remain relevant under EMIR 3, especially as the RTS seeks to clarify expectations for both FCs and NFCs. A harmonised approach grounded in these principles will support confidence, ensure predictability, and reduce the risk of uneven application across CCPs.

Margin transparency also remains a fundamental pillar of safe and fair CCP participation. Ensuring that all CMs (and their clients) have clear visibility into CCP margin methodologies, procyclicality features, liquidity implications, and stress-time margin behaviours is

¹ <https://www.fia.org/resources/fia-global-issues-position-paper-central-clearing-risks>

essential. Enhanced transparency enables CMs to anticipate liquidity needs, maintain contingency buffers, and make informed decisions about risk management and hedging strategies, especially during stressed market conditions. These disclosures support systemic resilience and enable participants to anticipate margin obligations in an orderly manner.

There are several specific inconsistencies in the current EU clearing landscape that the RTS could help address. Notably, exemptions currently granted to KfW (Kreditanstalt für Wiederaufbau, Germany) and CIC (France) at Eurex Clearing, which exclude these entities from the default fund and participation in the default waterfall, create uneven risk allocation and raise questions about fair treatment of other CMs. Similarly, issues such as the Hungarian CCP remaining a CM of another EU CCP underline the need for ESMA to ensure uniform application of criteria and consistent oversight across jurisdictions. However, for this particular issue EMIR 3.0 introduced a transitional period before CCP participation in another CCP is prohibited in the EU.

The consultation also raises the question whether an individual, rather than a legal entity, should be permitted as a direct CM, referencing historical events such as the Nasdaq default in September 2018². We support ESMA's careful consideration of this issue and recommend that admission criteria explicitly preclude individuals because prudential, operational and liquidity safeguards cannot be assured, reinforcing systemic stability and market confidence.

Finally, we want to emphasise the importance of reasonable implementation timelines, non-retroactive application of new standards and appropriate transition arrangements. CMs must be afforded sufficient time to adjust their governance, processes, models, and contractual arrangements to comply with revised requirements. Sudden or retroactive application of new criteria risks unintended market disruption, unnecessary off-boarding, or further concentration of clearing activity at a limited number of CMs. ESMA's implementation approach should therefore support predictability, avoid procyclical impacts and ensure a smooth transition for all participants.

In the sections that follow, we respond in detail to ESMA's consultation questions, setting out areas of consensus as well as points where further clarification or calibration is warranted. In the final section of the response, we also propose targeted amendments to the draft RTS aimed at strengthening proportionality, improving clarity, and ensuring consistent and risk-based application of the participation requirements, taking into account the overarching objectives of simplification and competitiveness within the EU clearing landscape.

Overall, the RTS provide an opportunity to resolve existing specific anomalies, that requirements for all participants are calibrated to achieve equivalent outcomes based on risk, and provide transparency and predictability in CCP membership criteria that remain risk-based and proportionate. Clear, enforceable and harmonised standards will strengthen the resilience of the EU clearing ecosystem while supporting fair and open access.

² Please see footnote 4 below

We thank ESMA for its work on these important standards and remain available to engage further with ESMA.

Respectfully submitted,



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Response to the consultation questions

Transparent, Fair and Open Access

Q1: Do you agree with the suggested elements with regard to transparent, fair and open access? Should the CCP consider other elements? Please justify your response and provide evidence.

We agree that CCP admission criteria should be non-discriminatory, transparent, and objective, as this underpins market confidence and promotes fair access. At the same time, we recommend a risk-based, proportionate framework that takes into account the differing regimes of banking sector FCs, non-bank FCs, and NFCs respectively, reflecting their statuses and risk profile.

Admission criteria should be product/asset class and membership-type specific

The Level 1 text currently states that admission criteria can be applied by product type and membership type only “where relevant,” which is too vague. We recommend CCPs clearly define admission requirements by product class/asset class and by type of clearing activity (proprietary vs client clearing), so that members understand obligations and responsibilities relevant to their scope of activity.

Timeliness and transparency of CCP publications

CCPs should update and publish admission criteria immediately upon any change, rather than “when it changes,” to ensure market participants can assess requirements in real time.

Leverage existing regulatory obligations

When CCPs review whether a potential CM complies with its admission criteria for a particular type of membership, CCPs should be able to take into account applicable regulation and should seek to avoid the imposition of duplicative requirements, wherever possible. CCPs should not duplicate the work already done by central banks and national competent authorities. The level of due diligence that a CCP applies as part of its assessment against admission criteria should take this into account.

Large banking sector FCs (Tier 1 banks) are subject to daily supervisory oversight, including CRR/CRD, IFR/IFD, MiFID/EMIR, DORA, and other operational, capital, and liquidity requirements. Deep-dive CCP assessments duplicating these frameworks are unnecessary; CCPs should focus on the areas not covered by existing regulation.

Evidence from recent default events

All CMs, regardless of status, must continue to meet high CCP participation standards and be able to meet margin obligations at all times³. Proportionate CCP risk-assessments that

³ Examples of margin-related issues include MF Global (2011), where a liquidity crisis linked to leveraged positions resulted in the firm’s inability to meet margin calls, and Nasdaq Clearing (2018), where the default of Einar Aas, an individual trader admitted as a clearing member, on margin obligations related to spread trades led to losses being allocated to non-defaulting clearing members.

do not duplicate these firms' existing regulatory requirements should be carried out, as discussed throughout this response.

Nonetheless, it is important to recall that during the 2022 energy market crisis, despite extreme price volatility and liquidity pressures, there were no CCP clearing member defaults (including NFCs). Both ESMA and the Financial Stability Board (FSB) have acknowledged that the clearing framework remained resilient throughout this period. These findings also show that the current CCP risk management framework, including NFC participation, has so far proven effective under real-world stress conditions.

Risk-based approach

While we agree with non-discrimination and transparency principles, CCPs should apply risk-based assessments for all members, including non-bank CMs and NFCs, to ensure equivalent outcomes regarding resilience and reliability.

As per Article 37(1a) EMIR, NFCs should continue to be allowed to become CMs if they can demonstrate their ability to meet margin and default fund obligations, particularly in stressed conditions. This, in turn, means that NFCs must be subject to tailored requirements reflecting their capacity, business activity, including sufficient financial resources, access to adequate and credible liquidity sources or sufficient eligible collateral to service margin calls, operational robustness, and default-management ability as well as recovery and resolution obligations.

Although they may not meet the same criteria as required for a bank (or other non-bank financial CMs), it is important for a CCP to assess whether they possess proportionally equivalent resources and capabilities reflecting these requirements.

Risk-based approach to due diligence

The CCP's admission assessment should concentrate on areas not already covered by existing regulations for FCs, avoiding unnecessary duplication while ensuring that NFCs meet equivalent standards relative to their risk profile. This approach ensures fairness across members, maintains systemic integrity, and protects non-defaulting CMs.

We support the draft RTS principles of transparency, fairness, and objectivity and recommend clarifying that:

- Criteria should be specific to product type and membership type;
- CCPs should immediately publish any changes;
- Assessments should focus on residual areas, leveraging existing regulatory oversight for FCs; and
- NFCs and non-bank CMs should undergo risk-based and financially-aligned assessments, ensuring they meet CCP obligations in any market conditions.
- The CCP's level of due diligence applied as part of its risk-based assessment against admission criteria should take into account compliance with applicable regulation and, wherever possible, seek to avoid duplicative requirements. Alternatively, where (and to the extent that) such requirements are not applicable, it should independently review operational capacity, risk management and financial

information as part of its risk-based assessment to ensure that a prospective CM is able to meet CCP obligations for the relevant membership type, including in appropriately stressed market condition scenarios.

Financial Resources

Q2: Do you agree with the suggested elements with regard to the CM's financial resources? Should the CCP consider other elements? Please justify your response and provide quantitative evidence.

We broadly support the objective of ensuring that all CMs maintain sufficient and reliable financial resources. All CMs, whether FCs or NFCs, should be held to standards commensurate with their risk profile ensuring they can meet obligations under both business-as-usual and stressed market conditions.

We recommend that ESMA refine the RTS to ensure that requirements are risk-based, proportionate, and do not duplicate existing financial and risk management frameworks and do not duplicate regulatory oversight already performed by supervisors, so that CCPs focus on residual areas.

Risk-based assessment rather than absolute size

Members broadly agree that CCPs should assess financial resources based on risk drivers, not on absolute balance-sheet size. Bank CMs and non-bank FCs are already subject to comprehensive financial and risk management and other sector-specific regulation (such as CRR/CRD, IFR/IFD, MiFID, EMIR, DORA) whose requirements can include:

- Capital adequacy (CET1, LCR, NSFR, ICAAP);
- Stress liquidity planning and daily supervisory reporting;
- Governance and operational resilience; and
- Segregation, client asset protection, and recovery planning

CCPs should therefore avoid duplicating full reviews of relevant firms, instead focusing on residual areas not already mitigated under EU banking and investment-firm and any other relevant frameworks.

Product/asset class and membership-type specific criteria

As with question 1, several members emphasised that the Level 1 text gives only a conditional ("where relevant") basis for criteria to differ across product types / asset classes and types of clearing activity (proprietary vs client clearing).

We recommend that ESMA clarify that financial resource expectations may vary by product class and by membership type, as the risk profile and default-management obligations differ materially.

Need for immediate transparency on rule changes

Members support requiring CCPs to publish changes to admission criteria immediately. The current wording ("when it changes") is not sufficiently precise and could permit materially delayed updates, reducing transparency for prospective and existing CMs.

Equivalent financial-resource standards for all Clearing Members

Requirements for all CMs should be calibrated to achieve equivalent outcomes based on risk.

This includes:

- Proportional liquidity preparedness requirements for NFCs;
- Ability of CCPs to apply product-scope restrictions or calibrated capital expectations;
- Assurance that all CMs (including NFCs) can participate meaningfully in default management (or have compensatory mitigants); and
- Assurance that all CMs (including NFCs) have resilient operational processes demonstrating they can meet their obligations to the CCP at all times.

Maintaining these requirements for all clearing members is essential to the resilience of the clearing ecosystem, as default by any participant - regardless of size or type - triggers mutualisation of losses across the entire membership.

Recommended refinement of the RTS

We propose that ESMA consider the following refinements:

- Explicitly permit CCPs to apply differentiated financial-resource requirements based on product class, and membership type.
- Require CCPs to focus reviews on residual areas not already assessed by the existing regulatory framework.
- Require all CMs to demonstrate:
 1. Access to assured liquidity sources;
 2. Ability to meet margin calls and recovery-tools like cash calls in market stress conditions as well as any resolution tools;
 3. Ability to ensure their operational processes are sufficiently robust and resilient to meet the CCP requirements at all times;
 4. Capacity to absorb portfolios during default management.
- Enhance transparency on how CCPs calibrate financial-resource thresholds, including any specific uplift applied to NFCs.
- Ensure that any relaxation or proportionality for one member type does not shift risk onto other CMs and is fully disclosed with CMs.

Operational Capacity

Q3: Do you agree with the suggested elements with regard to the CM's operational capacity? Should the CCP consider other elements? Please justify your response and provide evidence.

We broadly agree with ESMA's proposed elements for assessing the operational capacity of CMs. The prescribed elements covering governance, control frameworks, technology and connectivity, staffing, and participation in default management, are consistent with current EMIR expectations and CCP risk-management norms. We would also suggest that the requirements cover not only having adequate operational capabilities but also ensuring that

participants test their capacity. We recognise ESMA's intention to ensure that all CMs, including NFCs, have the operational robustness necessary to support resilient clearing arrangements.

NFC operational requirements

We support ESMA's expectation that robust operational and Information and Communication Technology (ICT) standards should apply equally to all CMs, including NFCs. Therefore, NFCs should meet operational, technical and ICT standards proportional but equivalent in outcomes to those applied to FCs.

Interaction with DORA and avoiding duplication

We encourage ESMA to provide clearer guidance on the interaction between EMIR operational assessments and DORA. Where a CM is already DORA-regulated, CCPs should be allowed to place reliance on the ICT risk-management framework established under DORA, focusing their own assessment on any risk areas not fully covered by DORA. This approach preserves proportionality and reduces unnecessary overlap.

For NFCs, compliance with DORA cannot be an admission criterion as DORA applies only to FCs and is meant to address risk of ICT in financial firms providing financial services. However, as mentioned above, a CCP should ensure that NFCs meet operational, technical and ICT standards that are proportional but equivalent in outcome to those applied to FCs, based on the activity and risk profile of the NFC.

Physical settlement requirements – Need for greater flexibility

ESMA should allow CCPs to define acceptable proof of physical settlement capability in accordance with established market practice, and consider deleting or revising the reference to “recognised storage or delivery arrangements” to avoid unintended constraints. Indeed, requiring a uniform demonstration “through recognised storage or delivery arrangements” could be interpreted as requiring arrangements in the CM's own name, which may not align with operational practices across commodity markets.

Default management and CM obligations

While all CMs must have the operational capacity to participate in default management (e.g., auctions, testing, fire drills), CCPs should retain flexibility to calibrate engagement requirements based on market structure, product type, and the CM's activity profile.

Other Considerations and Risks

Q4: Do you agree with the suggested elements with regard to other considerations and risks? Should the CCP consider other elements? Please justify your response and provide evidence.

We broadly agree with the additional elements ESMA proposes under the category of “other considerations and risks”. These elements appropriately encourage CCPs to consider wider risk factors, such as regulatory status, scope of business activities, governance, and risk controls that may not be fully captured under the capital, liquidity, or operational criteria.

We view these factors as a very important complement, albeit secondary, to the assessment of financial and operational soundness, provided that CCPs apply them proportionately and avoid duplicating work already performed by prudential and supervisory authorities. In summary, we recommend that:

- Confidentiality constraints for third-country entities should be recognised explicitly.
- Prudential supervision for licensed firms should be taken into account to avoid duplication.
- Non-bank CMs⁴ providing client-clearing services, as well as NFCs, should meet equivalent risk-management standards, proportionate to their activities and resulting risk, to ensure system-wide resilience.

Confidentiality and interaction with third-country requirements

Confidentiality is a very important point to consider particularly in relation to U.S. regulatory requirements where certain U.S. prudential and supervisory disclosures cannot be shared externally unless they fall within the scope of publicly disclosable administrative actions.

We believe CCPs should not require disclosure of information that a prospective CM is legally prohibited from sharing under non-EU rules. We recommend that ESMA explicitly state that CCPs must take account of confidentiality restrictions under applicable non-EU laws and limit information requests to items that the CM is authorised to disclose. This clarification would support cross-border participation, ensure consistency with existing confidentiality frameworks, and avoid creating unintended access barriers for entities operating in multiple jurisdictions.

Recognition of existing regulatory supervision

We believe the RTS appropriately acknowledges whether a CM “holds an authorisation or licence and is consequently subject to capital and prudential regulation and supervision”. This recognition is important because authorised firms already operate under stringent prudential, governance, operational risk, and recovery planning regimes. For these entities, the CCP’s assessment should focus on areas not covered by applicable regulation, not re-assessment of areas already reviewed by Central Banks or other competent authorities.

Financial and risk management expectations for non-bank clearing members

We firmly believe that robust financial and risk-management oversight is paramount. As such, there is a need for equivalent financial robustness and risk-management standards for all CMs, including non-bank CMs. This necessity arises because their activities can generate systemic exposures comparable to those of bank CMs.

Therefore, we recommend that CCPs should ensure that all CMs maintain adequate risk-control systems, internal governance arrangements, and financial resources proportionate to both proprietary and, where applicable, client-clearing activities. This commitment to stringent yet proportionate oversight and risk management is also important when

⁴ Non-bank CMs” refers to CMs that are not authorised credit institutions under CRR/CRD but are financial entities (e.g. MiFID investment firms, etc.). This is distinct from “non-financial counterparties (NFCs)”, which are commercial enterprises operating outside the financial sector and which typically clear only their own proprietary or hedging activity.

considering NFC CMs, whose distinct profiles demand equally rigorous, tailored assessments to prevent vulnerabilities within the clearing ecosystem.

Proportionality and avoiding overlap

To maintain high standards and assessment that remain risk-focused, we believe that ESMA should encourage CCPs to:

- Rely on existing regulatory assessments where available (CRR/CRD, MiFID, IFR/IFD, DORA),
- Focus on the CM's clearing-specific risks rather than re-evaluating its entire business, and
- Apply proportionality in line with the CM's nature, activity profile, and regulatory status.

CMs clearing on behalf of clients

Q5: Do you agree with the suggested elements with regard to the specific risks of CMs offering clearing services to clients? Should the CCP consider other elements? Please justify your response and provide quantitative evidence.

We broadly support ESMA's intention to strengthen the assessment of risks related to CMs that offer client-clearing services. Client clearing is operationally complex, involves layered interdependencies, and amplifies transmission channels in a default scenario. For these reasons, enhanced scrutiny is appropriate. However, it is equally important that CCP assessments remain targeted, non-duplicative, and anchored in existing financial and risk management frameworks. We recommend that:

- CCP assessments should focus on residual CCP-specific operational risks, data quality, connectivity, portability capability, concentration risk, and default-management preparedness.
- For non-bank CMs providing client clearing services, and NFC CMs offering clearing services to their NFC group entities, CCPs should retain the ability to impose proportionate financial and risk management expectations, including financial resourcing and liquidity safeguards based on risk.

Scope of CCP assessments should focus on residual, CCP-specific risks

Most of the proposed assessment elements including governance, financial soundness, liquidity risk management, operational controls, segregation, portability frameworks, and client-facing responsibilities, are already comprehensively supervised under multiple Union frameworks (CRR/CRD, IFR/IFD, MiFID II, EMIR, and, where relevant, DORA).

CCPs should not replicate prudential or conduct assessments that NCAs and prudential supervisors already perform. We recommend ESMA should clarify that the CCP's evaluation of client-CMs should focus on areas not already covered by applicable regulation and CCP-specific, operationally relevant issues.

Consequently, for relevant CMs, we suggest narrowing the CCP's focus to a defined set of elements that are both clearing-specific and not already overseen elsewhere. These include:

- Timeliness, accuracy, and format-compatibility of client-level position and collateral data submitted to the CCP.
- Technical connectivity, including ability to support intraday calls, end-of-day processes, and communication during stress.
- Operational readiness for portability, including the ability to identify, transfer, or reconcile client positions within CCP timeframes.
- Participation in CCP default-management processes for the products that they clear, especially the ability to provide client-level data and support hedging, porting, liquidations, auctions and any default management tools.
- Assessment of concentration risks arising from large or directional client books and the potential impact of those flows on CCP risk controls.

We believe that all other prudential and governance items on ESMA's list are already robustly supervised and do not require reassessment by the CCP.

Importance of minimum standards for non-bank CMs and NFCs

It must be noted that non-bank CMs engaging in client clearing activities can pose risks comparable to (or greater than) those posed by banks, particularly given the leverage embedded in client books and the potential for rapid propagation of losses.

CCPs should be permitted, where relevant, to require minimum financial buffers, enhanced liquidity resources, and robust internal risk controls for such entities. This reduces contagion channels, and mitigates clearing system vulnerabilities.

For NFCs acting as direct clearing members on behalf of group entities, particularly where their core business is non-financial, CCP admission requirements and ongoing oversight should be robust and proportionate, addressing the risk management, operational resilience, and financial soundness considerations that are central to the broader clearing ecosystem.

Sponsored Models

Q6: Do you agree with the suggested elements with regard to sponsored models? Should the CCP consider other elements? Please justify your response and provide evidence.

In the context of derivatives clearing, we broadly support ESMA's recognition of sponsored models as a distinct category of CCP participation and agree that it is appropriate to articulate baseline elements where such models are permitted.

Sponsored access arrangements remain limited in practice for derivatives clearing, with relatively low uptake to date. Where they exist, they should be viewed as complementary to, rather than a substitute for, traditional client clearing models. Any regulatory framework should therefore remain model-neutral and proportionate, focusing on risk outcomes rather than promoting a particular access structure.

We agree with ESMA's proposed elements and recommend the following refinements:

- Explicit requirements for contingency planning and clear delineation of responsibilities in sponsor default scenarios.
- Recognition that the sponsor–sponsored participant “pair” must meet equivalent standards to a CM, without requiring identical obligations for each party individually.
- Reinforced margin transparency and margin simulation tools for sponsored participants.

Risk management characteristics of sponsored arrangements

In some sponsored derivatives clearing arrangements, certain structural features may help reduce operational frictions during stress events, provided they are robustly designed and implemented. For instance:

- Sponsored participants may post all margin directly to the CCP or via the sponsor in fully collateralised form.
- In the event of a sponsor default, sponsored positions can generally continue to be margined, and variation margin exchanged directly with the CCP.
- Sponsored portfolios may support more straightforward porting process because they are operationally segregated and subject to predefined transfer arrangements.
- Sponsors should be allowed to manage the default of the sponsored participants, such as closing out opened positions.
- Sponsors should have the same level of information on the sponsored participants as they have with the client in a standard CM relationship.

These features should not be interpreted as inherently superior to traditional client clearing models, but rather as design characteristics that may mitigate specific risks when appropriately governed.

Need for explicit contingency planning for sponsor default

We believe there is a need for clear, actionable contingency planning in the event of a sponsor default. We agree and recommend that ESMA strengthen the RTS by requiring CCPs to:

- Set out documented procedures for how sponsored positions will be margined, risk-managed, and ported if the sponsor defaults
- Define the operational and financial responsibilities of sponsors and sponsored participants in stressed scenarios
- Ensure that communications and data flows (e.g., position files, collateral reporting) can continue uninterrupted through alternative channels

A lack of clarity in these areas risks ambiguity at the point of stress, which could impair timely porting or risk mitigation.

Standards for sponsored participants and sponsors

We support ESMA’s intention that the sponsored participant and its sponsor should jointly meet standards equivalent to those applicable to other CMs.

However, proportionality must be maintained:

- Sponsors are typically financial institutions with financial and risk management, conduct, and operational obligations under CRR/CRD, IFR/IFD, MiFID II, and DORA.
- Sponsored participants often do not have access to the same regulatory frameworks.
- Therefore, CCP requirements should ensure that the combined arrangement, not necessarily each party individually, delivers equivalent capital, operational, and risk-management strength to that expected of a CM.

Importance of transparency and documentation

We support ESMA's proposal for transparency of eligibility criteria, responsibilities of the sponsor vs. sponsored participant, margining and collateral arrangements and the default management processes.

Additionally, sponsored arrangements should be accompanied by:

- Clear disclosure of any limitations to porting or continued access if either party enters distress.
- Robust margin transparency to ensure that sponsored participants can monitor, understand, and plan for stressed liquidity demands.
- Forward-looking modelling tools (e.g., margin simulation tool including add-ons, concentration charges, scenario testing) to help participants assess their liquidity resilience.

Non-Financial Counterparties

Q7: Do you agree with the suggested safeguards in relation to the access to reliable liquidity? Should ESMA consider other safeguards? Please justify your response and provide quantitative evidence.

We generally agree that safeguards ensuring reliable access to liquidity for NFCs are essential and consider them fundamental to maintaining the financial soundness and resilience of the clearing ecosystem.

We welcome ESMA's recognition that different factors are relevant for NFCs compared to banks and non-bank financial firms (who do not have access to central bank funding). NFCs play a distinct and important role in cleared markets, clearing for their own account or for their group entities rather than to provide client clearing or intermediation services.

We fully agree that NFCs must participate in a financially sound manner and maintain strong risk management and governance arrangements appropriate to their business. However, ESMA's guidelines should remain proportionate and flexible, allowing CCPs to assess and manage risk in the context of their own markets. Overly prescriptive requirements, limitations or punitive margining/collateralisation could inadvertently create barriers that function as a de facto exclusion of NFC participation, reducing diversity and concentrating risk within a narrower set of clearing members.

We encourage ESMA to ensure that any specific provisions for NFCs help maintain high financial and risk management standards while preserving open, proportionate, and non-discriminatory access for non-financial participants that rely on clearing as part of

responsible commercial risk management. Critically, these provisions should achieve proportionate and functionally equivalent outcomes to those required of FCs, as the resilience of the clearing ecosystem depends on all participants, regardless of type, demonstrating reliable capacity to meet their obligations without introducing undue risk to other CMs.

FIA banking sector Clearing Members demonstrate reliable capacity to meet intraday and potentially large variation margin calls through their compliance with, capital, liquidity, ICAAP or ILAAP frameworks and ongoing supervisory stress testing. For non-bank CMs and NFCs, alternative safeguards achieving functionally equivalent reliability are required based on their risk-profile. Any liquidity failure would ultimately be mutualised across the CCP waterfall and absorbed predominantly by financial institution CMs, based on their level of participation.

The FIA banking sector CMs therefore support the inclusion of appropriate safeguards for reliable access to liquidity, however we would recommend adopting a more stringent framework to ensure that all CMs contribute to financial stability on an equitable and sustainable basis.

Ensuring equivalent resilience outcomes for all CMs

To maintain the resilience of CCPs and the broader clearing ecosystem, all CMs must demonstrate reliable capacity to meet their obligations under stress conditions, regardless of their regulatory status. The safeguards proposed by ESMA provide a sound foundation that could be further refined to ensure functionally equivalent outcomes across all member types.

CCPs should have the flexibility to assess whether alternative arrangements achieve comparable reliability proportionate to the risk posed to the CCP. This assessment may include reviewing the member's demonstrated capacity to meet historical peak margin calls, evaluating the appropriateness of collateral types relative to the member's business profile (for example, avoiding concentrations that could create wrong-way risk), and considering whether alternative arrangements may be appropriate to ensure liquidity availability during stressed market conditions. Ongoing monitoring of clearing activity and liquidity arrangements would support early identification of any emerging risks, benefiting the stability of the entire clearing membership.

We believe these measures are not punitive but rather aim to achieve the same substantive outcome that financial and risk management frameworks deliver for supervised institutions: confidence that all participants can reliably meet their clearing obligations, thereby protecting the mutualised risk framework that underpins CCP resilience.

Equivalent liquidity and operational standards for CMs

The current drafting, which requires CCPs only to “consider” whether alternative collateralisation is necessary, is insufficient. Entities seeking access to clearing should meet liquidity and operational standards that are proportionate and result in safeguards comparable in outcomes to those required of credit institutions. This is particularly important given the potential for risk multiplication across CMs in a default scenario.

Q8: Do you agree with the suggested alternative elements that a CCP could consider when an NFC is not subject authorisation or licencing requirements resulting in capital and prudential regulation and supervision?

We agree with ESMA's view that the absence of a specific regulatory license should not automatically disqualify an NFC from CCP participation. NFCs are subject to different legal, regulatory, and operational frameworks than financial institutions, and their participation in clearing typically relates to hedging commercial exposures rather than to offering financial services to third parties. We also note that licensing status does not define a CM's risk to the CCP, nor its ability to meet margin calls or its ability to meet its obligations towards the default fund.

CCP discretion and risk-based eligibility assessment

We support the principle that CCPs should retain sufficient discretion to assess the eligibility and risk profile of potential members based on the characteristics of their markets and participants. In practice, CCPs are best placed to evaluate whether an entity has the appropriate financial soundness, risk management systems, and operational capacity to meet membership obligations. Prescriptive criteria, and over-standardisation of criteria, such as whether it holds a financial services license, will act as a de facto prohibition on CCP participation for all NFCs, in contradiction to the Level 1 text, whilst not addressing CCP member risk.

Therefore, we support the principle of allowing CCPs to rely on alternative elements in cases where NFCs are not subject to financial services authorisation or licensing. However, these alternative elements must be proportionate and ensure safeguards equivalent in outcome to financial and risk management oversight applied to financial institution CMs. This is essential to ensure that the integrity of the clearing ecosystem is maintained.

Avoiding parallel or reduced standards

CCPs should ensure that requirements for all participants are calibrated to achieve equivalent outcomes based on risk. All market participants must have confidence that the CCP applies consistent scrutiny to all CMs, given the potential for risk multiplication within the clearing system. Creating parallel or reduced standards for NFCs could introduce adverse competitive distortions and undermine confidence in the robustness and integrity of the EU clearing framework.

It is important to note that allowing NFCs to self-clear reduces the overall risk to the CCP. It broadens the clearing-member base used to mutualise losses improving CCP resilience, increases the amount of actual margin held at the CCP (as opposed to the net portfolio margin posted through client-clearing business), and materially reduces the concentration risk highlighted by ESMA and others arising from clearing activity being concentrated in a small number of large clearing members.

Implementation timelines and transition arrangements

We would like to emphasise the importance of clear and phased implementation timelines. Introducing the proposed reforms through a single "big bang" transition would present significant operational and contractual challenges for CCPs and clearing members.

Insufficient lead time could leave NFC CMs in a position where they are compelled to seek alternative clearing arrangements on very short notice or unwind positions prematurely. Either outcome would create unnecessary disruption and could have broader adverse effects on market stability.

Leveraging existing applicable regulatory or supervisory frameworks

In assessing the suitability of an NFC, CCPs should leverage existing regulatory or supervisory frameworks which already apply to the NFC and focus on residual areas to ensure safeguards equivalent in outcome to those applicable to other CMs. In practice, this assessment should include whether the NFC is subject to sectoral regulation offering comparable risk mitigation, regulatory reporting and monitoring that allows timely identification of deteriorating financial conditions, and effective enforcement mechanisms ensuring adherence to risk control requirements.

Furthermore, CCPs should be empowered to impose stronger compensatory measures, where necessary to ensure all CMs are subject to comparable requirements. The calibration of these measures should reflect the NFC's size, risk profile, activity, business model, and potential systemic relevance.

DRAFT RTS – Proposed amendments (in red)

COMMISSION DELEGATED REGULATION (EU) .../...of XXX supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards further specifying the elements to be considered when a CCP establishes its admission criteria and assesses the ability of non-financial counterparties acting as clearing members to meet margin requirements and default fund contributions (Text with EEA relevance).

THE EUROPEAN COMMISSION, Having regard to the Treaty on the Functioning of the European Union, Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, and in particular Article 37(7), third subparagraph, thereof,

Whereas:

(1) As set out in Article 37(7) of Regulation (EU) No 648/2012, ESMA, after consulting EBA and the ESCB, is required to further specify the elements to be considered when a CCP establishes its admission criteria referred to in Article 37(1) of Regulation (EU) No 648/2012; and (b) assesses the ability of non-financial counterparties acting as clearing members to meet margin requirements and default fund contributions referred to in Article 37(1a) of Regulation (EU) No 648/2012. This Regulation, therefore, sets out the elements that CCPs should consider when establishing their admission criteria (including as regards non-financial counterparties), rather than the criteria themselves. Furthermore, it should be recalled that as provided in Article 37(1) of Regulation (EU) No 648/2012, admission criteria that restrict access are permitted only to the extent that their objective is to control the risk for the CCP. Accordingly, CCPs should not unduly restrict access unless properly justified based on risk considerations.

(2) In order to establish non-discriminatory and objective admission criteria, a CCP should conduct a comprehensive assessment of the potential risks posed to it by its clearing members and ensure that the admission criteria properly reflect the risks identified, considering the elements set out in this Regulation. The CCP should thus tailor its admission criteria to its specific risks and the risk profile of e.g. the type of product cleared (i.e. the CCP may set different admission criteria for each clearing service); the type of membership (i.e. the CCP may set different admission criteria for clearing members that only clear their own transactions, compared to clearing members that clear transactions on behalf of their clients, compared to clearing members in sponsored models, etc.); the type of clearing member (i.e. the CCP may set different admission criteria for financial counterparties, compared to non-financial counterparties, etc.); etc. *For the purposes of this Regulation, CCPs should clearly distinguish between different types of financial counterparties and non-financial counterparties. Specifically, this entails differentiating between (a) non-bank financial institutions that are financial counterparties which act as clearing members and may provide client-clearing or other intermediation services, and (b) commercial non-financial counterparties whose activity is limited to self-clearing and clearing for entities of the same group. These categories exhibit materially different operational, prudential, and systemic risk characteristics, and admission criteria must explicitly reflect those differences. Admission criteria should therefore be calibrated to measurable, product-specific risk*

factors and should not rely solely on the legal classification of the applicant. When establishing admission criteria, CCPs should take into account existing safeguards and requirements already provided under other applicable regulations, thereby avoiding redundant assessments.

(3) In order to ensure transparency, a CCP should make its admission criteria, as well as its rules, publicly available (i.e. published on its website) and easily accessible, including in a language customary in the sphere of international finance, and update those publications ~~whenever the CCP makes~~ *immediately upon any change* changes to its admission criteria or its rules.

(4) With regard to Article 37(1) of Regulation (EU) No 648/2012 on the requirement to ensure that clearing members have sufficient financial resources to meet their obligations arising from participation in the CCP, the CCP should consider the clearing member's financial capacity under a range of scenarios that may cause increased and/or intraday margin calls. In this context, the relevant obligations should be understood as the clearing member's capacity to meet settlement obligations, margin calls and default fund contributions in a timely manner.

(5) Such scenarios should include, in particular: periods of market stress, notably those characterised by high volatility; increases in the risks of the clearing member's portfolios, due to heightened activity, concentration, wrong-way or liquidity risks; increases in the individual risk of the clearing member, especially where such increases trigger additional margin requirements; the impact of the clearing member from the result of default management procedure in accordance with Article 48 of EMIR, including auctions of a defaulting clearing member's positions; and the clearing member's participation in the CCP's recovery tools.

(6) In defining the admission criteria under the scenarios referred to above, the CCP should consider a range of relevant elements. In particular, it should assess whether the clearing member has access to reliable credit, liquidity and foreign exchange facilities that are commensurate with the scale and nature of its expected clearing activity. In this regard, access to central bank financing should be considered a key factor. The CCP should also assess whether the clearing member has sufficient capacity to access, in a timely manner, assets that meet the CCP's eligibility criteria for acceptable collateral.

(7) The creditworthiness of the clearing member is another essential element of the admission criteria. The assessment of creditworthiness should be based on information provided by the clearing member during the due diligence process, including audited financial statements, details on asset quality, its capacity to absorb losses and the characteristics of its liabilities. This assessment may be complemented by publicly available information, such as external credit ratings, share prices and credit default swap spreads. However, the credit risk assessment should not rely solely on external opinions.

(8) Where the clearing member may be required to absorb losses in its capacity as a clearing member, such as through the mutualisation of losses under the default waterfall, the CCP should give due consideration to the clearing member's capacity to absorb losses.

Depending on the potential amounts that the clearing member might contribute to the CCP's losses through the waterfall, the CCP may consider whether higher capital requirements are necessary.

(9) Where the clearing member forms part of a wider group, the CCP should also consider the reliability and availability of financial support from the group, insofar as such support would enhance the clearing member's capacity to meet its obligations. The CCP should also assess the financial and operational reliance of the group on the clearing member, where this could negatively impact the clearing member's obligations towards the CCP.

(10) With regard to Article 37(1) of Regulation (EU) No 648/2012 on the requirement to ensure that clearing members have sufficient operational capacity, the technical capabilities of a clearing member should be considered by the CCP to ensure that the clearing member's IT systems meet the CCP's requirements. This includes the ability to connect appropriately to the CCP's systems, and the capacity to interact effectively with the CCP's communication platforms. The CCP should also consider whether the clearing member has sufficient capacity to notify the CCP in a timely manner of any changes to its IT systems that may affect its operational performance.

(11) The CCP should consider whether the clearing member has access to the payment systems and services necessary to perform its clearing functions. This includes access to relevant central bank and commercial bank accounts, central securities depository accounts. Where commercial bank accounts are used, the CCP should consider the effectiveness of the clearing member's back-up arrangements and whether these are properly tested at least on an annual basis.

(12) In addition, the CCP should also consider whether the clearing member possesses the necessary resources and expertise to use the CCP's clearing services. For this, the CCP should consider the knowledge and understanding of the CCP's rules and procedures by the clearing member's staff or representatives. This includes their ability to engage effectively with the CCP on an ongoing basis, any professional standards imposed on them, and the provision of comprehensive training on the system and technical functioning of the relevant clearing activities. This includes interactions during due diligence processes and in case of incident management, or any other events that may affect the clearing member's ability to meet its obligations.

(13) Moreover, the CCP should consider whether the clearing member has appropriate operational risk management and business continuity arrangements in place. For this, the CCP should consider the clearing member's relevant policies and procedures, as well as its capacity to promptly resolve incidents that could impair its ability to meet its obligations.

(14) Where applicable, the CCP should also consider whether the clearing member has capacity to perform physical settlement of the cleared transactions. The clearing members should have access to the accounts and to systems needed to ensure they can perform physical settlement of cleared securities transactions. In case of commodity derivatives, clearing members must likewise have capacity to deliver the underlying goods at maturity, typically by providing proof of availability, location, and quality through recognized storage

or delivery arrangements *or equivalent operational arrangements appropriate for the relevant commodity market, ensuring these markets are not endangered by non-delivery.*

(15) Where the clearing member relies on third-party service providers, such as settlement agents, paying agents or IT service providers, to fulfil its obligations towards the CCP, the CCP should consider whether these arrangements are robust under a range of scenarios.

(16) Regulation (EU) 2022/2554 sets out requirements in relation to digital operational resilience. Therefore, in relation to ICT matters, the CCP should consider, where applicable, whether the clearing member complies with Regulation (EU) 2022/2554 in accordance with Article 2(1) of that Regulation. For the avoidance of doubt, where the clearing member is not subject to DORA, this should not mean that the CCP can, in its admission criteria, automatically disqualify the entity from becoming a clearing member of the CCP. *Where the clearing member is not subject to DORA, the CCP should assess whether the entity meets operational and ICT risk-management standards that achieve operational resilience outcomes comparable to those mandated by DORA for in-scope financial entities in areas relevant to the activities of the CCP.*

(17) As other risks and considerations may also affect clearing members' financial and operational capacity and ability to meet the obligations arising from their participation in the CCP and the CCP's ability to control the risk posed by clearing members, CCPs should consider some additional elements covering a broader range of risks and factors when establishing their admission criteria, in order to ensure that the risks posed by clearing members are adequately identified and reflected in the CCP's admission criteria, and appropriately managed. CCPs may leverage on clearing members holding the relevant authorisation license and being subject to capital and prudential regulation and supervision. Where clearing members are established outside the Union, CCPs should consider whether such clearing members are subject to comparable requirements. In this regard, CCPs may, for example, take into account whether equivalence has been granted under the relevant Union law or can obtain a legal opinion on the requirements applicable in the jurisdiction of the non-EU clearing members. For the avoidance of doubt, however, the absence of authorisation or capital and prudential regulation and supervision should not mean that the CCP can, in its admission criteria, automatically disqualify the entity from becoming a clearing member at the CCP, but that the CCP should rather take this into account as part of its comprehensive risk assessment. *CCPs should also take into account confidentiality restrictions under applicable non-EU laws and should not request information that a clearing member is legally prohibited from disclosing. CCPs should limit information requests to items authorised for disclosure.*

(18) CCPs should also take into consideration any relevant past or ongoing administrative, civil or criminal proceedings, sanctions or measures involving a clearing member, its group entities or key personnel, where these could impair the clearing member's ability to meet its obligations, such as proceedings, sanctions or measures relating to financial services law, commercial law, anti-money laundering and counter-terrorist financing law, fraud or professional liability. Likewise, CCPs should assess any recent history of insolvency, restructuring, or comparable financial distress, concerning a clearing member or other

entities within the same group, that may affect the clearing member's ability or capacity to fulfil its obligations towards the CCP.

(19) The effectiveness of a clearing member's risk management framework and internal risk control systems should also be considered by the CCP to ensure that unacceptable risk exposure for the CCP and other clearing members at the CCP are prevented.

(20) The CCP's rules should reflect all relevant legal requirements concerning clearing members stemming from their participation in the CCP, such as those under Regulation (EU) No 648/2012 and Regulation (EU) 2021/23, including, where relevant, as regards the provision of client clearing services by clearing members and as regards sponsored models. The CCP should further consider the legal capacity and ability of the clearing member to fulfil such legal requirements and to comply with the CCP's rules. Moreover, the CCP should verify the enforceability, vis-à-vis the clearing member, of its rules and absence of any conflict of laws, e.g. in relation to insolvency law, in particular in respect of clearing members established outside the Union, where enforceability of key rights and obligations under Union law may depend on the legal framework in the clearing members' jurisdiction. Such assessment should include, for example, the clearing member's legal ability to participate in the default management process; to contribute to the default waterfall; to participate in recovery and resolution tools; to ensure appropriate segregation of client accounts, assets and positions, and protection of such accounts, assets and positions in case of insolvency of the clearing member; to provide to the CCP all relevant information, including information in relation to the clearing member's clients and client accounts; the CCP's ability to perform audits and monitoring of the clearing member; in case of the clearing member's default, the CCP's ability to liquidate the proprietary positions of the clearing member, to transfer or liquidate the clients' positions of that clearing member where applicable, and to ensure enforceability of collateral and netting rights; and verification that the contracts are legal, valid and binding on the clearing member. This could be done e.g. via a legal opinion by a law firm with expertise in the clearing member's jurisdiction's law. The CCP may further consider including in its clearing agreement with the clearing member provisions on subjecting the clearing member to the CCP's rules and submission by the clearing member to the jurisdiction of the CCP's choice in case of disputes.

(21) The CCP should also consider whether a clearing member is subject to a resolution regime, and in particular whether such regime provides for continued fulfilment of the clearing member's obligations vis-à-vis the CCP.

(22) In addition, the CCP should also consider other relevant risks posed to it by its clearing members, e.g. risks related to anti-money laundering and counter-terrorist financing and whether the clearing member has sufficient anti-money laundering procedures in place.

(23) Article 37(3) of Regulation (EU) No 648/2012 establishes that clearing members offering client clearing services must have the necessary additional financial resources and operational capacity to perform these activities. Since the provision of client clearing services by clearing members carries additional financial, operational and other risks, CCPs should consider some additional elements when establishing their admission criteria for

such clearing members, ensuring that the criteria appropriately reflect the incremental risks arising from client clearing services.

(24) A comprehensive assessment of the risks related to the clearing member's client clearing activity should be undertaken by CCPs. This assessment should take into account, inter alia, the relative importance of the client clearing activity in relation to the clearing member's overall clearing operations and the clearing member's capacity to meet margin requirements and other obligations in the event of its clients' default.

(25) CCPs should also consider whether clearing members offering client clearing services have established a robust risk management framework capable of effectively identifying, monitoring, and mitigating the specific risks arising from client clearing activities. This is necessary to ensure that the risks do not undermine the CCP's ability to manage its overall exposures.

(26) In accordance with Article 37(3) of Regulation (EU) No 648/2012, the CCP's rules for clearing members must allow it to gather relevant basic information to identify, monitor and manage relevant concentrations of risk relating to the provision of services to clients. Therefore, CCPs should consider whether clearing members possess the operational capability to provide timely and accurate information enabling the CCPs to identify the underlying clients associated with positions recorded in client accounts. This would also facilitate the portability of client positions in case of the default of that clearing member.

(27) Finally, it should be recalled that under Regulation (EU) No 648/2012, clearing members remain fully responsible for meeting all financial obligations vis-à-vis the CCP, including in relation to client clearing activities. CCPs' rules should thus reflect this requirement clearly, ensuring that the responsibilities of clearing members are not diluted or transferred to clients or third parties.

(28) In recent years, CCPs have introduced sponsored models, thereby enabling a broader range of counterparties, including buy-side institutions, to obtain direct access to clearing services. Sponsored models should be understood as arrangements whereby a clearing member (in a sponsored model), while remaining fully responsible for discharging all financial obligations towards the CCP arising from its participation, uses the services of another entity (the sponsor) to perform certain responsibilities. These responsibilities may include, inter alia, contributions to the default fund, participation in recovery tools, and involvement in default management procedures. The commercial terminology may differ across CCPs for both the clearing members in sponsored models, as well as for the sponsors.

(29) When defining their admission criteria for clearing members in sponsored models, CCPs should, in addition to the general considerations applicable to all clearing members, duly consider the specific risks associated with such models.

(30) In order to ensure transparency, the CCP's rules should clearly delineate the responsibilities of the clearing member and the sponsor, reflecting that the clearing member bears full responsibility for discharging all financial obligations vis-à-vis the CCP, including

in the event of failure or default of the sponsor. The CCP's rules should also explicitly state that netting between the positions of different clearing members in sponsored models, or between the positions of a clearing member and its sponsor, should not be permitted.

(31) CCPs should also consider whether clearing members using the sponsored model have established robust arrangements with their sponsors, with clearly defined responsibilities, and whether such arrangements remain effective at all times, including under stressed market conditions and in the event of a default by another clearing member. Such arrangements should not contradict or alter the delineation of responsibilities set out in the CCP's rules, nor should they undermine the clearing member's full responsibility for meeting its obligations towards the CCP. *CCPs should maintain documented contingency arrangements to ensure operational continuity of sponsored positions in the event of a sponsor default, including margining, position management, and communication flows.*

(32) CCPs should also consider whether clearing members in sponsored models have contingency measures in place, such as back-up sponsorship arrangements or the capacity to independently fulfil all relevant obligations in the absence or default of the sponsor. These contingency arrangements should be subject to testing by the CCP.

(33) Given the critical role played by sponsors in the functioning of sponsored models, CCPs should conduct a comprehensive assessment of the associated risks and establish appropriate admission criteria specific to sponsors. In particular, CCPs should consider whether sponsors have sufficient financial resources and operational capability to meet their obligations under the sponsored model framework. The CCPs should consider whether admission criteria established for sponsors are comparable to those applicable to clearing members that provide client clearing services. The CCP should also consider whether the sponsor is also already a clearing member of the CCP.

(34) It is necessary to further specify the elements that CCPs should consider when assessing the ability of NFCs acting as clearing members to meet margin requirements and default fund contributions, including under stressed market conditions. *CCPs should require all clearing members to demonstrate reliable access to liquidity sufficient to meet historical peak margin calls, including under periods of stress. Where such assurance cannot be demonstrated, CCPs should require enhanced financial standards achieving the same substantive outcome.* While Articles 1 to 6 of this Regulation set out core participation requirements, CCPs should consider alternative elements that may demonstrate the prudential soundness of NFCs that do not meet certain criteria in a standardised manner. This is particularly relevant where NFCs lack access to central bank financing, or are not covered by capital and prudential supervision regimes. In such cases, CCPs should assess whether alternative arrangements, including collateralisation mechanisms, operational capabilities, and sector-specific regulatory oversight, provide sufficient assurance of the NFC's ability to participate safely and reliably in the clearing system. This approach ensures that participation requirements remain proportionate and risk-sensitive, while maintaining the integrity and resilience of the clearing system.

(35) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(36) ESMA has developed the draft regulatory technical standards after consulting the European Banking Authority (EBA) and the European System of Central Banks (ESCB). In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) 11, ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010.

Article 1

Transparent, fair and open access

1. When establishing its admission criteria, a CCP shall conduct a comprehensive assessment, commensurate to the scale and nature of the business of the clearing member, of the potential risks posed to it by its clearing members and ensure the admission criteria properly reflect the risks identified, considering the elements set out in Articles 2 to 7 of this Regulation.
2. A CCP shall make its admission criteria, as well as its rules, publicly available and easily accessible, including in a language customary in the sphere of international finance. The CCP shall update those publications when it changes its admission criteria or rules.
3. *Admission criteria shall be articulated at the level of product class and clearing activity (proprietary versus client-clearing), where differences in risk profiles warrant differentiated standards.*

Article 2

Financial resources

1. When establishing its admission criteria, a CCP shall consider, whether a clearing member possesses adequate financial resources to meet its obligations in a timely manner, for a range of scenarios which result in increased margin calls, including at least the following ones:
 - (a) During a market stress event, notably a period of high volatility;
 - (b) Increase of the risks of the portfolios of the clearing member, due to an increase of activity, concentration, wrong way or liquidity risks;
 - (c) Increase of the individual risk of the clearing member, notably when this triggers additional margins;
 - (d) Result of the default management procedure, including the obligations following to the clearing member's participation to the auction of a defaulting clearing member's positions;and
 - (e) Participation of the clearing member to the recovery tools of the CCP.
2. For the purposes of paragraph 1, a CCP shall consider a range of relevant elements:

- (a) whether the clearing member has access to reliable credit, liquidity, and foreign exchange facilities that are commensurate with the scale and nature of its expected clearing activity. In this context, access to central bank financing constitutes a key consideration *for financial institutions, but in the absence of such access CCPs may consider enhanced collateral or alternative safeguards.*
 - (b) the clearing member's creditworthiness; and
 - (c) the clearing member's capacity to absorb losses.
3. For the purposes of paragraph 1, the clearing member's creditworthiness assessment shall be based on information provided by the clearing member. It shall be complemented, where necessary, by publicly available information, and it shall not fully rely on external opinions.
 4. For the purposes of paragraph 1, where the clearing member forms part of a group, the CCP shall also consider the reliability and availability of financial support from the group. The CCP shall also consider the financial and operational dependence of the group to the clearing member, where this could negatively impact the clearing member's obligations towards the CCP.
 5. *For clearing members subject to Directive 2013/36/EU, Regulation (EU) No 575/2013, Directive (EU) 2019/2034, Regulation (EU) 2019/2033, Directive 2014/65/EU, Regulation (EU) No 600/2014, Regulation (EU) No 648/2012, Regulation (EU) 2022/2554 (or other relevant regulations), the CCP's assessment shall focus on residual areas not already mitigated under existing financial, risk management, regulatory or supervisory frameworks.*

Article 3

Operational capacity

1. When establishing its admission criteria, as regards operational capacity, a CCP shall consider, the following elements:
 - (a) whether the clearing member has in place adequate IT systems;
 - (b) whether the clearing member has access to relevant settlement and payment services and systems;
 - (c) whether the clearing member possesses the necessary resources and expertise to use the clearing services;
 - (d) whether the clearing member has in place adequate operational risk management and business continuity tools; and
 - (e) whether the arrangements with third-party service providers that the clearing member relies on for fulfilling its obligations towards the CCP are robust under the scenarios listed in Article 2(1) of this Regulation, where applicable.
2. For the purposes of paragraph 1, point (a), the CCP shall consider the technical capabilities of the clearing member, to ensure the clearing member's IT systems meet the CCP's requirements. This shall include the suitability of the clearing member's hardware and software infrastructure and its ability to interact effectively with the CCP's communication platforms. Furthermore, the CCP shall consider

whether the clearing member has sufficient capacity to notify the CCP in a timely manner of any changes to its IT systems that may affect its operational performance.

3. For the purposes of paragraph 1, point (b), the CCP shall also consider the effectiveness of the clearing members' back-up arrangements, where commercial bank accounts are used, as well as whether they are properly tested at least on an annual basis.
4. For the purposes of paragraph 1, point (c), the CCP shall consider the clearing member's staff's and representatives' knowledge and understanding of the CCP's rules and procedures, as well their ability to engage effectively with the CCP on an ongoing basis, any professional standards imposed on the clearing member's staff, and whether comprehensive training is provided to the clearing member's staff on the system and technical functioning of the relevant clearing activities.
5. For the purposes of paragraph 1, point (d), the CCP shall consider the clearing member's relevant policies and procedures. The CCP shall also consider whether the clearing member has sufficient capacity to promptly resolve incidents that are likely to impair its ability to meet its obligations.
6. For the purposes of paragraph 1, in relation to ICT, the CCP shall consider, where applicable, whether the clearing member complies with Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector (DORA) in accordance with Article 2(1) of that Regulation. *For clearing members already subject to DORA, the CCP shall rely on the existing ICT risk-management framework, limiting additional requirements to gaps relevant to CCP-specific risks.*

Article 4

Other considerations and risks

1. When establishing its admission criteria, a CCP shall consider whether a clearing member holds, an authorisation or licence and is, consequently, subject to capital and prudential regulation and supervision, where applicable. Where a clearing member is established outside the EU, the CCP shall consider whether the clearing member is subject to comparable requirements. *Where information relevant to financial or regulatory assessment is protected under confidentiality laws, the CCP shall limit requests to information lawfully disclosable by the clearing member.*
2. When establishing its admission criteria, a CCP shall consider:
 - (a) any past or ongoing administrative, civil or criminal proceedings, sanctions or measures concerning a clearing member, other entities within the same group or its key personnel, that may affect the clearing member's ability or capacity to fulfil its obligations towards the CCP; and
 - (b) any recent history of insolvency, restructuring, or comparable financial distress concerning a clearing member or other entities within the same group, that may

affect the clearing member's ability or capacity to fulfil its obligations towards the CCP.

3. When establishing its admission criteria, a CCP shall consider the risk management framework and internal risk control systems of a clearing member, ensuring that the clearing member is able to adequately identify, monitor and manage all risks associated with its clearing activities in order to prevent unacceptable risk exposure for the CCP and other clearing members at the CCP.
4. When establishing its admission criteria, a CCP shall consider:
 - (a) the legal capacity and ability of a clearing member to comply with and fulfil all obligations and legal requirements arising from its participation in the CCP and to comply with the CCP's rules;
 - (b) the enforceability, vis-à-vis a clearing member, of the CCP's rules, which shall reflect all relevant obligations and legal requirements concerning clearing members arising from their participation in the CCP, including, where relevant, as regards the provision of client clearing services by the clearing members and as regards sponsored models; and
 - (c) any conflict of laws, in particular in respect of a clearing member established outside the Union.
5. When establishing its admission criteria, a CCP shall consider the existence and applicability of any resolution framework governing a clearing member, in particular where such a framework includes provisions aimed at ensuring the continued fulfilment of the clearing member's obligations towards the CCP.
6. When establishing its admission criteria, a CCP shall consider any other relevant risks posed to it by its clearing members, including risks related to anti-money laundering and counter-terrorist financing.

Article 5

Clearing members that clear transactions on behalf of their clients

When establishing its admission criteria with respect to clearing members that clear transactions on behalf of their clients, in addition to the elements set out in Articles 1 to 4 of this Regulation, a CCP shall also consider the following elements, unless otherwise covered under existing prudential, regulatory or supervisory frameworks:

- (a) outcome of the comprehensive assessment, referred to in Article 1(1) of this Regulation, which shall also comprise risks related to the clearing member's client clearing activity, including the relative significance of the client clearing activity in relation to the clearing member's overall clearing operations, as well as the clearing member's financial capacity to meet margin requirements in the event of the default of its clients;
- (b) whether clearing members have implemented a robust risk management framework capable of effectively identifying, monitoring, and mitigating risks associated with client clearing;

(c) whether clearing members possess the operational capability to provide timely and accurate information enabling the CCP to identify the underlying clients associated with positions recorded in client accounts for the purpose of Article 37(3) of Regulation (EU) No 648/2012.

Article 6

Sponsored models

1. When establishing its admission criteria with respect to clearing members using a sponsored model, in addition to the elements set out in Articles 1 to 4 of this Regulation, a CCP shall also consider the following elements:
 - (a) whether clearing members in sponsored models have established robust arrangements with their sponsors, with delineated responsibilities, ensuring that such arrangements remain effective at all times, including under stressed market conditions and in the event of a default of another clearing member;
 - (b) whether the arrangements referred to in point (a) do not contradict or alter the delineation of responsibilities as set out in Regulation (EU) No 648/2012 and in CCP's rules; and
 - (c) whether clearing members in sponsored models have contingency measures in place, such as back-up sponsorship arrangements or the capacity to independently fulfil all relevant obligations in the absence of or in case of default of the sponsor.
Contingency measures shall include documented procedures for how sponsored positions will be margined, risk-managed, and ported if the sponsor defaults.
2. When establishing its admission criteria with respect to sponsors, a CCP shall perform a comprehensive analysis of the associated risks and shall consider:
 - (a) whether sponsors have sufficient financial resources and operational capability to meet their obligations under the sponsored model framework;
 - (b) whether the CCP's admission criteria for sponsors are comparable to those for clearing members that clear transactions on behalf of their clients as set out in Article 5 of this Regulation; and
 - (c) whether the sponsor is a clearing member of the CCP.
3. *CCPs shall ensure sponsors and sponsored participants have access to clear margin-transparency tools, including margin simulation capabilities and appropriate documentations.*

Article 7

Additional requirements in relation to non-financial counterparties

When establishing admission criteria with respect to non-financial counterparties, a CCP shall, in addition to the elements set out in Articles 1 to 6 of this Regulation, consider the following elements:

- (a) Where a non-financial counterparty does not have access to reliable sources of credit, liquidity, and foreign exchange arrangements that are proportionate to the scale and nature of its expected clearing activity, by way of derogation to Article 2, paragraph 2(a) of this Regulation, the CCP shall *ensure that the non-financial*

counterparty can reliably meet its obligations under stressed market conditions by considering alternative collateralisation arrangements. ~~consider whether alternative collateralisation arrangements are necessary for the participation of the non-financial counterparty in the CCP;~~

(b) Where a non-financial counterparty is not subject to any prudential regulation and supervision, by way of derogation to Article 4 paragraph 1 of this Regulation, the CCP shall consider the nature of the activities carried out by the non-financial counterparty and whether those activities are subject to other *equivalent* regulatory frameworks in the jurisdiction where the non-financial counterparty is established.

Article 8

Entry into force

This Regulation shall enter into force on the [XXth] day following that of its publication in the Official Journal of the European Union.

It shall apply from [].

This Regulation shall be binding in its entirety and directly applicable in all Member States.