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FIA response to the European Commission targeted consultation on the competitiveness of the EU banking sector

1. Introduction

FIA[1] welcomes the opportunity to respond to the European Commission's targeted consultation on the competitiveness of the EU banking sector. As part of the Savings and Investments Union (SIU) initiative, we believe it is high time for the EU authorities and policymakers to take stock of the impact of the regulatory reform over the last 15 years on EU banks and assess whether and where specific regulatory requirements impede the international competitiveness of EU banks. Our focus is predominantly on **banks that offer clearing services** to their clients and the views expressed in this paper are provided from that perspective.

Central clearing of derivatives was identified as one of the backbones to ensure financial stability post financial crisis of 2008/09. Jurisdictions around the globe have introduced rules that implement the G20 commitments from the Pittsburgh summit in 2009 to reform over-the-counter derivatives markets to improve their transparency, prevent market abuse and reduce systemic risks. In the EU, this was done mostly via adoption of the European Market Infrastructure Regulation (EMIR). **Central clearing brings a number of benefits** to its participants and the system as a whole, including enhancing financial market resilience by reducing counterparty credit risk, mitigating risks from concentrated positions, and increasing operational efficiencies. It

[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 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.

significantly lowers settlement failures and boosts dealer balance sheet capacity by netting gross settlement obligations.

It is therefore essential that there are enough firms who provide access to central clearing and that those that provide it, mostly to market participants who use derivatives for hedging and risk mitigation purposes, have **sufficient capacity** to provide this important service. Furthermore, as this is a global business, preserving the international competitiveness of EU banks that provide clearing services to EU and also other clients is essential.

Many EU firms that provide clearing services to clients are EU banks and they are subject to the bank prudential requirements (CRR/CRD). **Sufficient allocation of capital to clearing businesses** is a key component of clearing capacity that EU banks have, so it is critical that the prudential regime for EU banks is calibrated such that it supports EU banks in providing clearing services that a number of market participants are required by regulation to consume (e.g., clearing mandates for certain OTC derivatives in the EU).

In addition to the prudential rules, which have been designed for and are specific to banks[2], these same institutions are also subject to other market and financial services regulations. As a result, they face some of the same issues as those that apply to other market participants in our industry. We have highlighted some of those non-bank specific issues in this response, but the list is not exhaustive.

On the basis of more than 15 years' experience of implementing the regulatory rulebook in derivatives clearing, we note that it is essential for **prudential regulators and policy-makers to engage with their counterparts on the markets side** (and vice-versa) to discuss how the complex web of regulations and requirements apply to banks and how to ensure that the regulatory framework remains proportionate, fit-for-purpose and protects the competitiveness of EU banks, while ensuring their resilience, soundness and stability and that of the financial services ecosystem.

This response is structured as follows. In *Section 2*, we set out a few proposals for a better ruling making process in the EU, which would result in a simplified, clearer, more transparent, certain and predictable regulatory framework, which is needed to ensure the international competitiveness of EU banks. *Section 3* focuses on a few examples where we have identified unlevel playing field between EU banks and their global competitors. In *Section 4*, we suggest a different regime for QCCP status under CRR such that it is no longer dependent on EMIR Article 25 recognition status. In *Section 5*, we ask the European Commission to advocate at the Basel Committee level for equal treatment of the principal and 'agency' client clearing models under the Basel

[2] We use the term 'bank' in this paper as a synonym for a 'credit institution' as defined in CRR.

Committee G-SIB rules. In *Section 6*, we advocate for a permanent central bank reserves exemption from Leverage Ratio Exposure Measure.

For the purposes of completing the online European Commission response form for this consultation, we have mapped our responses below to the specific questions in the consultation paper. The entire response, which most accurately represents our views, has been attached to the online consultation response as a pdf document.

FIA response section	Consultation questions to which each response section relates to
Section 2	Q.37, Q.47-50
Section 3.a	Q.25, 49, 59
Section 3.b	Q.25, 49, 59
Section 3.c	Q.25, 49, Q93,
Section 3.d	Q.25, 49
Section 4	Q.49, 59
Section 5	Q.49, 59
Section 6	Q.62

2. Better rulemaking process

EU financial services legislation (both Level 1 and Level 2) would benefit from better drafting and organisation in support of the EU's simplification agenda.

Many of the issues highlighted by the industry over the past months and years illustrate the broader challenge of ensuring that EU financial services regulation remains predictable, proportionate, and applied as intended by the legislator.

When drafting rules/regulations/legislative acts, the following drafting principles should always be observed. Any requirement needs to be (i) capable of being complied with, (ii) clear, (iii) comprehensible, (iv) concise, (v) complete, (vi) consistent and (vii) certain.

EU banks and the industry at large would benefit from the following improvements in the EU's rulemaking process. In our view, these improvements do not require any structural or legislative changes to EU law before they can be implemented in practice.

a. The European Commission should provide sufficient clarity on scope (personal, product, territorial, etc.) in initial proposals for a directive/regulation. If changes to scope are made by the co-legislators, those need to be clear to avoid any ambiguity on scope of application of regulatory requirements.
   Clarity must operate within the boundaries of a clear and material EU nexus. In any event, EU regulatory requirements should apply only where there is a sufficient connection to the Union, such as where services are provided to EU-established clients. A clear and consistently applied territoriality principle is

a necessary complement to scope clarity, in order to ensure legal certainty, proportionality, and international coherence in EU rulemaking and implementation.

b. EU regulation should be principles-based in order to enable genuinely risk-based supervision. In particular, while ESMA has recently articulated principles for outcomes-focused and risk-based supervision, Levels 1 and 2 regulations should avoid excessive prescriptiveness and instead focus on clearly defined objectives and outcomes. Without a principles-based regulatory framework, supervisory expectations risk defaulting to mechanical compliance with detailed requirements, limiting the effective application of judgement, proportionality, and differentiation based on material risk.
c. The European Commission should provide for implementation period(s) of complex requirements in transitional provisions in initial proposals for a directive/regulation. A distinction should be made between the date when legislation comes into force and the date when individual requirements start to apply. If changes to transitional provisions are made by the co-legislators, those need to be clear to avoid any ambiguity about when the requirements start to apply.
d. Where a Level 1 requirement envisages further technical specification in Level 2, then Level 1 should make it clear that such Level 1 requirement only starts to apply once relevant Level 2 measures (RTS and/or ITS) have started to apply (including any implementation period in Level 2, if needed). There should be no expectation that market participants will comply with Level 1 requirements first, when Level 1 comes into force, and then again with Level 2 requirements when they start to apply. Two-step compliance expectations create unnecessary implementation burden and costs that could be avoided and introduce risks to the system as Level 2 technical details are there for a reason – to specify Level 1 requirements so that market participants can comply with them.
e. There should be no expectation that firms need to comply with draft requirements/rules that have not become law yet, although they may serve as a useful indicator of the final requirements and compliance obligations. Similarly, whilst the industry recognises the important role that EU supervisory convergence tools and Level 3 instruments (such as guidelines, Q&As, opinions, and other forms of supervisory guidance) in promoting consistency and transparency, they should not be used to introduce new requirements, accelerate compliance expectations, or effectively determine outcomes in supervisory processes where the same are not clearly anchored in Level 1 or Level 2 legislation.
f. Early detailed cost/benefit analysis and jurisdictional comparison with at least two major non-EU jurisdictions.

3. **Unlevel playing field for EU banks**
    a. *CRR Articles 305/306 – EBA Q&A 2023_6839 on CCR treatment of exposures arising from centrally cleared transactions - indirect clearing flows*

It is common market practice for clearing service providers, including those that are institutions subject to CRR, to access CCPs indirectly (i.e., via a local clearing member).

In February 2024, the EBA issued a Q&A (2023_6839) on 'CCR treatment of exposures arising from centrally cleared transactions - indirect clearing flows' that caught many market participants by surprise.

FIA clearing members believe that a more nuanced interpretation of CRR Articles 305 and 306 is needed in relation to the indirect clearing flows #1 and #3 (as outlined in the EAB Q&A), specifically in relation to how the institution treats the 'clearing member leg' (in case of #1) and the 'intermediary/higher-level client leg' (in case of #3). FIA clearing members are of the view that there are instances where CRR Article 306(1)(c) can be applied in the clearing fact patterns without needing to consider and assess whether the Article 305 requirements have been satisfied.

We consider that, where the institution's client clearing agreement contains a limited recourse provision in line with Article 306(1)(c), and additionally applicable for transactions facing the clearing member / intermediary / higher-level client, as well as the CCP, the institution does not have an exposure to the clearing member (or intermediary or higher-level client, as the case may be), much like a clearing member may not have an exposure to the CCP in relation to its client clearing business. Such limited recourse provisions are often included in institutions' client clearing agreements (at the clearing member-client level and further down the clearing chain). If the institution does not have exposure to the clearing member (i.e., because terms of the contract with its client(s) do contain a limited recourse provision in line with CRR Article 306(1)(c)), then there is no risk that needs to be capitalised between that institution and the clearing member arising out of the institution's client clearing business. Therefore, in those cases, it should not be necessary for the institution to assess whether it complies with CRR Article 305(2) or (3) as that article assumes that there is an exposure that needs to be capitalised and determines how 'risky' the exposure is depending on whether the institution meets the 'look-through' conditions.

However, if the institution confirms that it has an upstream exposure to its clearing member that arises out of its client clearing activity, because it does guarantee clearing member's performance to its clients, then that institution should have the ability to

benefit from a lower risk weight (2% or 4%) if it meets the conditions in CRR Article 305(2) and (3), respectively. If it does not meet those conditions, or if it does not carry out the assessment of the conditions under Article 305, then a bilateral risk weight would apply as set out in the EBA Q&A.

The interpretation set out above is consistent with the final Basel III standards, specifically with sections 54.7 and 54.14 of the Capital requirements for bank exposures to central counterparties (CRE54). The Basel standards set out the requirements for when a clearing firm has a trade exposure to the CCP/its clearing member (i.e., '*…when the clearing member is obligated to reimburse the client for any losses suffered due to changes in the value of its transactions in the event that the CCP defaults*.' (see 54.7)), but they are silent on what the treatment should be if a clearing firm has no trade exposure to the CCP/its clearing member as no capital is attached to where there is no exposure and therefore no risk that needed to be capitalised.

While this is first and foremost a technical regulatory capital issue, it is important to bear in mind the implications that it has on the wider derivatives clearing ecosystem, including on the competitiveness of clearing service providers and on access to clearing for end users. If the EBA guidance in the Q&A were to remain unchanged, it could put a number of clearing firms that have adopted the business model of accessing certain CCPs indirectly at a competitive disadvantage, which could translate into some of these clearing firms ceasing to offer client clearing services on certain markets or potentially increased costs for end clients accessing these markets, despite no exposure existing to the clearing member, when limited recourse provisions apply. Consequently, this could also result in less competition and further concentration in the number of clearing service providers.

We ask that the European Commission propose a targeted clarificatory amendment to Articles 305/306 to allow for the interpretation that we have set out in this paper. FIA would be happy to engage with the European Commission further on this topic.

b. *Interim EU prudential regime for bank exposures to crypto assets*

The industry has been calling for recalibration of cryptoasset prudential standards. A coalition of global trade associations wrote a letter[3] to the Basel Committee last August highlighting the need for essential revisions of the Basel banking prudential treatment of cryptoassets and pausing implementation of SCO60 ahead of its January 2026 effective date to allow for a targeted consultation and redesign. In November 2025, the Basel

[3] https://www.fia.org/sites/default/files/2025-08/BCBS%20Prudential%20Letter.pdf

Committee agreed to expedite a review of targeted elements of the prudential standard for banks' cryptoasset exposures.[4]

We propose that the European Commission does not adopt the draft RTS on the interim prudential regime for bank exposures to crypto assets, as proposed by the EBA last summer. This is because other major jurisdictions (e.g., US and UK) are not intending to implement the existing BCBS crypto standards and because these standards are currently under review by the Basel Committee, as noted above. with an expectation that the BCBS rules are going to change. If the European Commission were to proceed with adoption of the draft RTS, this would put EU banks at a clear competitive disadvantage compared to their international peers. We also believe that the European Commission should not propose a final prudential framework for bank exposures to crypto assets until it is clear where and how the current review process of the BCBS crypto standards is going to land. Only then, should the European Commission propose and consult on a final regime EU prudential regime for crypto assets.

We argue that special attention needs to be given to the capital treatment of crypto derivatives that are centrally cleared by CCPs to prevent punitive capital treatment for EU banks that act as clearing members/intermediaries when providing access to these markets to their clients. Clearing members, in their role as riskless principals, do not face the same risks as end-clients as they do not take price risk in these assets, which should be reflected in the capital requirements underpinned by the principle of proportionality. The punitive risk weight of 1,250% is inconsistent with actual risks and completely inappropriate for bank clearing members to apply in the context of client clearing of crypto derivatives.

c. *EMIR Article 7d reporting*

EMIR Article 7d introduces a new reporting regime for clearing members, including bank clearing members, and their clients. While the industry has noted[5] several concerns with this requirement with the European Commission and continues to discuss it with ESMA and other stakeholders, we wanted to highlight an additional point in the context of this banking competitiveness consultation.

We observe that the requirement creates an unlevel playing field for EU firms, including EU banks, that are headquartered in the EU. EU firms, including EU banks, that are affiliates of EU headquartered groups are subject to more extensive reporting requirements under EMIR Article 7d compared to EU firms that are members of non-EU groups, as they might need to report their global clearing activity on recognised third

[4] https://www.bis.org/press/p251119.htm
[5] Trade associations urge EC to delay EMIR 3.0 reporting for third-country CCPs https://www.fia.org/fia/articles/trade-associations-urge-ec-delay-emir-30-reporting-third-country-ccps

country CCPs on a consolidated basis. EU firms that belong to non-EU groups need to report 'only' their clearing activity on recognised third country CCPs. We believe that requiring EU headquartered institutions to report their global group cleared activity on a consolidated basis is not justified.

We also note that the exact scope perimeter and the technical rules that will further specify these reporting requirements have not been published yet at the time of submission of this response.

d. EMIR 3 Active Account Requirement

The Active Account Requirement (AAR) under EMIR 3 introduces additional operational, clearing of representative trades and reporting obligations for in-scope counterparties. Clearing Members (CMs) are implementing EMIR 3 AAR requirements and understand the objective of strengthening EU clearing capacity. However, potential future AAR recalibrations or potential additional requirements would further increase costs and complexity for CMs, in particular EU CMs. A recalibration of the AAR has the potential to increase capital and collateral demand, reduce the ability to net offsetting positions, resulting in higher initial and variation margin requirements. It would increase the EU banks' risk management burden even further and make them (even) less competitive than their global peers.

FIA highlights the benefits for the EU clearing ecosystem of newly established operational capacity requirements under the EMIR 3 AAR. We strongly recommend avoiding re-calibrations of the active account regime or new requirements that could further place EU clearing member banks at a competitive disadvantage in global markets, affecting client choice, pricing, and the ability of EU banks to intermediate efficiently across jurisdictions.

The implementation of the AAR is predicated on continued access for EU counterparties to global liquidity pools on Tier 2 CCPs, which necessitates an equivalence decision for UK CCPs being in permanently. The most recent renewal of the UK CCP equivalence decision has allowed for the AAR to fully enter into application and thereby address the perceived financial stability risks represented by the exposures of EU counterparties to Tier 2 CCPs.

As the time-limited equivalence decision for UK CCPs expires on 30 June 2028, we respectfully ask the Commission to extend the equivalence decision for UK CCPs in a non-time-limited manner and well in advance of 30 June 2028. This will preserve financial stability and provide EU market participants with continued access to global pools of liquidity after 30 June 2028 for a wide range of financial instruments, including for products available for clearing on UK CCPs only (e.g. some commodity derivatives or interest rate swaps) and for products with very low liquidity on EU CCPs.

The continued and repeated uncertainty around time-limited equivalence decision harms EU firms and is counter to the development of the SIU. To provide markets and EU market participants with much-needed certainty, we respectfully request that the Commission grant a non-time-limited equivalence decision in relation to UK CCPs. We note that the legal and supervisory arrangements of the UK currently meet all the required conditions for a non-time limited equivalence decision as set out in Article 25 of EMIR.

4. De-linking of QCCP status and EMIR Article 25 equivalence

First, we recommend considering 'de-linking' the EMIR Article 25 equivalence decision process and the QCCP status under CRR, specifically in the context of the capital regime that applies to third-country CCPs that have applied for, but not yet received or lost for unrelated reasons, recognition by ESMA. The current own funds regime for exposures to CCPs relies and depends entirely on EMIR Article 25 equivalence (see EU CRR Article 497 for the QCCP status) even where the risk profile of the third-country CCP remains unchanged. We believe in establishing a better, more proportionate and risk-based assessment to determine the capital treatment that applies to exposures that clearing members have related to third country CCPs not yet recognised or that have lost recognition (for example, because of their jurisdiction being 'blacklisted' for anti-money laundering reasons or due to a missing MoU between ESMA and a third-country regulatory authority).

Second, and most importantly, we note that the UK is considering making changes to QCCP designation to make it more pragmatic and helpful for UK banks that do business overseas. To that end, HM Treasury intends to establish a permanent replacement for the QCCP transitional regime. They have proposed a new route for a non-UK CCP to gain QCCP status, which will be overseen by the Bank of England, with support from the PRA. Under this route, the Bank of England will be able to grant QCCP status to CCPs established in jurisdictions that have not been designated by HMT under the Overseas CCP Regime. We ask that the European Commission, together with the EBA and ESMA, also seriously consider making similar changes to the EU QCCP regime (CRR Article 497), such that QCCP designation for capital purposes (as opposed to for market access purposes) would not solely depend on EMIR Article 25 recognition.

5. Equal treatment of principal and agency clearing models for GSIB purposes

We note that the Basel Committee's G-SIB standards set out in the G-SIB assessment reporting instructions ('BCBS G-SIB reporting instructions') have not been transposed in

CRR and so we understand that EU G-SIBs look to those instructions to calculate their G-SIB scores.

The BCBS G-SIB reporting instructions provide for different treatment of OTC client clearing activity depending on whether the clearing member acts as an intermediary (principal model) or whether it acts in an 'agency' capacity ('agency' client clearing model) with the latter one being treated more favourably compared to the principal clearing model. Please see below relevant extracts from the BCBS G-SIB reporting instructions.

We would like to emphasise that client-facing derivatives transactions conducted under the principal model present the same economic risks to the clearing member as those conducted under the agency model. Like transactions conducted under the agency model, transactions in the principal model actually reduce a bank's systemic footprint compared to bilateral trading.

Interconnectedness Indicator (paragraph 93)
93. When acting as a financial intermediary (ie where the bank is a counterparty to both the client and the CCP), report exposures to the CCP. Report exposures to clients if they fit the definition of financial institution. In cases where a clearing member bank, acting as an agent, guarantees the performance of a client to a CCP, the associated exposure to the client must be reported.

Complexity indicator (paragraph 126)
126. Do not include cleared derivative transactions (ie transactions where the bank provides clearing services for clients executing trades via an exchange or with a CCP) where the bank is not a direct counterparty in the contract. When acting as a financial intermediary (ie where the bank is a counterparty to both the client and the CCP), report the notional amounts associated with each contract (ie the contract with the CCP and the contract with the client). In cases where a clearing member bank, acting as an agent, guarantees the performance of a CCP to a client, the associated notional amounts must be reported.

We ask the European Commission to argue at the Basel Committee that clearing members' exposures to clients and CCPs, when clearing under the principal model, should be excluded from the Complexity and Interconnectedness indicators so that both the principal and the 'agency' clearing models are treated equally for G-SIB purposes.

Client cleared transactions do not increase a bank's complexity or interconnectedness with the financial system, and other parts of the G-SIB surcharge and capital framework already result in an overcapitalisation of the relevant risks from these transactions.

Market-standard documentation used in the principal model relieves the clearing member of its obligation to the client if the CCP defaults on its obligation to the clearing

member. Thus, a clearing member is no more "interconnected" with other financial institutions by virtue of clearing derivatives under the principal model than it is by virtue of clearing derivatives under the agent model. In both models, the clearing member is exposed only to its client's default.

To the extent that exposures arising from derivatives clearing under the principal model have been included in the Complexity indicator because of concerns over a G-SIB's resolvability, we note that the ability to "port" clients during stress is well established both in the agent model and the principal model.

6. Leverage ratio

a. Central bank reserves exemption from Leverage Ratio Exposure Measure

The EU banks would benefit from revisiting the composition of Leverage Ratio Exposure Measure (LREM) and permanently excluding the central bank reserves from it. At the same time, the change does not undermine the soundness of the leverage ratio framework, given the nature of the exemption, and the fact that there have been temporary precedents of such exemption.

Exemption of central bank reserves from the LREM has been previously introduced as a temporary measure, which applied in extraordinary macroeconomic circumstances. Most recently, the EU implemented the exemption in the aftermath of the Covid-19 pandemic to facilitate monetary policy. The solution preserved incentives to trade and thus the stability of the financial system in the period of elevated stress.

Maintaining the exemption on a permanent basis will allow the EU banks to operate more efficiently as the change in the composition of the reserves increases the available liquidity and thus the ability to lend at competitive prices. For the EU banks whose business model relies on high collateralisation, it would provide a competitive advantage against its international rivals who have implemented the exemption only as a temporary solution, while the capital requirements remain intact.