30 April 2026

To ESMA
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Subject: FIA Response to ESMA Consultation on Guarantees as CCP Collateral and CCP Investment Policy

Executive Summary

FIA[1] and its members[2] welcomes ESMA's consultation on the permanent framework for the acceptance of guarantees as CCP collateral under EMIR, following the amendments introduced by EMIR 3.0. FIA broadly supports the objective of expanding the pool of eligible collateral for non-financial counterparties (NFCs), while ensuring that the framework remains legally certain, operationally workable and risk-sound[3]. It is crucial that the RTS does not create any expectation or obligation on CCPs or clearing members to accept guarantees from particular clients or issuers. The acceptance of guarantees, including letters of credit, must remain a discretionary, risk-based decision exercised by CCPs and clearing members on a client-by-client and issuer-by-issuer basis.

At the outset, FIA notes that the practical viability of guarantees depends not only on the detailed RTS conditions, but also on underlying legal enforceability, operational deliverability within the liquidation period, and prudential capital treatment for both issuing banks and clearing members. Where prudential frameworks create structural disincentives, for example under CRR/RWA treatment, the use of guarantees may remain limited in practice regardless of RTS design. FIA therefore encourages ESMA to ensure the RTS establishes a workable and coherent risk-management framework now, while recognising that prudential calibration may need to be addressed in parallel through the appropriate banking regulatory authorities.

FIA emphasises that the RTS should permit the use of credit support instruments by reference to their substantive legal and operational features rather than relying on a narrow interpretation of the terminology used to describe such instruments alone. In FIA's view, references to

[1] FIA is the leading trade organization for the futures, options, and cleared swaps markets worldwide. FIA's membership includes clearing firms, exchanges, clearinghouses, and trading firms from more than 25 countries as well as technology vendors, lawyers, and other professionals serving the industry. FIA's mission is to support open, transparent, and competitive markets, to protect and enhance the integrity of the financial system, and to promote high standards of professional conduct. For more information, visit www.fia.org.
[2] NFCs and clearing members' views are represented in this consultation response.
[3] FIA notes in its recent MISP response that, more broadly, ongoing technological developments, including the tokenisation of eligible collateral and advances in wholesale settlement arrangements, may further enhance the efficiency and resilience of margining processes over time. ESMA's work on CCP collateral provides a useful opportunity to reflect on how the existing framework can remain sufficiently flexible to accommodate such developments in the future, subject to appropriate safeguards.

"commercial bank guarantees" should be understood to capture autonomous, irrevocable, on-demand payment undertakings issued by credit institutions, including letters of credit, provided that such instruments meet the applicable risk-management, enforceability and operational requirements. FIA nevertheless encourages ESMA to confirm this interpretation explicitly in its final report to avoid divergent CCP-level or national interpretations.

Instruments that are default-contingent, dispute-prone or slow to enforce are not suitable for CCP collateral. By contrast, a well-structured, standardised letter of credit can materially reduce execution risk and provide a higher degree of certainty, provided strict conditions are met as regards unconditionality, irrevocability, on-demand call mechanics, payment timelines and legal enforceability. Unlike more generic bank guarantees, letters of credit are typically based on internationally recognised standards, including the International Standby Practices (ISP98), the Uniform Customs and Practice for Documentary Credits (UCP 600) and the Uniform Rules for Demand Guarantees (URDG 758), developed by the International Chamber of Commerce. It is also relevant to note that letters of credit were accepted as collateral by some European CCPs prior to EMIR and continue to be accepted by CME in the United States under strict operational and risk-management safeguards. The treatment of Letters of Credit (LCs) is therefore central to the practical effectiveness of the proposed framework.

FIA also emphasises the need for clear and unambiguous rules on beneficiary structures and callability, particularly in client default scenarios. Under the principal-to-principal clearing model, clearing members remain responsible for meeting margin requirements and managing client positions in the event of a client default. Guarantee structures that rely on optional, delayed or unclear beneficiary transfer mechanisms may leave clearing members insufficiently protected while they continue to bear full obligations to the CCP, and risk proving unworkable in practice. The RTS must therefore ensure that beneficiary structures, callability and operational mechanics do not leave clearing members exposed in client default scenarios and remain workable in practice.

Further, FIA highlights the interaction between the proposed RTS and existing prudential constraints on EU clearing members. In particular, the higher capital costs associated with issuing and accepting guarantees under current CRR/EBA guidance may affect clearing members' willingness to offer such solutions, with potential competitive implications vis-à-vis non-EU clearing members not subject to similar constraints. Amongst clearing members, there may also be differences in the legal, operational and prudential requirements that apply when accepting guarantees, including the need for robust legal opinions on enforceability across relevant jurisdictions and the prudential treatment of undrawn exposures.

Given that CCPs ultimately rely on such instruments within their default management and liquidity risk frameworks, it is important that the RTS ensures that the acceptance of guarantees is supported by safeguards that preserve the overall resilience of the clearing system. While FIA recognises that these prudential requirements fall outside ESMA's direct remit, this should not prevent the RTS from establishing a framework that enables legally robust and operationally workable structures such as LCs, to operate effectively as CCP collateral. More generally, the effectiveness of any framework will depend on legal certainty across jurisdictions and on avoiding design choices that disincentivise commercial banks from issuing guarantees, including due to uncertainties around the scope of guaranteed obligations and commercial feasibility.

In this context, FIA stresses that it is critical that the RTS does not undermine one of the key objectives of EMIR 3.0: facilitating NFCs' access to central clearing, while ensuring that the use of guarantees supports, rather than weakens, the resilience of the clearing ecosystem under the principal-to-principal clearing model. NFCs, particularly in commodity markets, can be exposed to significant and sudden increases in margin requirements during periods of market volatility, as well as timing mismatches between margin calls and cash inflows from their underlying commercial activities. Many such NFCs are asset-rich and balance-sheet-strong, but may have limited access to large pools of cash or highly liquid financial assets. Guarantees, including letters of credit, can therefore be important tools to help NFCs meet margin requirements and continue hedging their commercial risks. Overly restrictive or operationally unworkable RTS conditions risk discouraging the use of cleared markets, potentially pushing NFCs towards uncleared transactions or reduced hedging activity. Conversely, for such instruments to contribute positively to financial stability, they must operate in a manner that provides timely, reliable and enforceable protection to clearing members, and that is consistent with CCP default management and liquidity frameworks. The RTS should therefore strike an appropriate balance, enabling the effective use of guarantees by NFCs while preserving robust protections for clearing members and without compromising the resilience of central clearing.

Finally, FIA underlines the importance of operational feasibility, particularly in relation to account segregation models. For guarantees to work in practice for the majority of commercial NFCs, their use should not only be limited to individually segregated accounts (ISA). Gross omnibus segregated account (GOSA) should also be supported where legally and operationally feasible, subject to robust client identification, attribution and record-keeping arrangements, and a clear allocation of due-diligence responsibilities between CCPs and clearing members. FIA encourages ESMA to draw on existing operational models and international experience where CCPs have established processes for accepting LCs as margin, while maintaining prudent safeguards to preserve the resilience of the clearing framework.

We thank ESMA for the opportunity to provide our members' view and remain available to engage further on this important topic.

Respectfully submitted,

Jackie Mesa

FIA Chief Operating Officer and Senior Vice President of Global Policy

Questions and Answers

CCP Collateral: Guarantees

For the purposes of the responses below, references to "commercial bank guarantees" are intended to refer to bank-issued guarantees by reference to their substantive legal and operational characteristics. In line with member consensus, this includes autonomous, unconditional, irrevocable, on-demand payment undertakings issued by credit institutions, such as LCs, where they meet the applicable risk-management, enforceability and operational requirements.

References to public guarantees and public bank guarantees should be read in accordance with the definitions and treatment proposed by ESMA in the consultation paper and are addressed separately where relevant.

Common Conditions

Question 1

Do you agree that the existing provision on concentration limits should apply to guarantees and as such Article 42 should be amended to provide legal clarity on this?

FIA agrees that the existing provision on concentration limits should apply to guarantees and welcomes ESMA proposal to amend Article 42 to provide legal clarity in this respect. Applying concentration limits to guarantees is consistent with EMIR's risk-based approach to collateral eligibility and helps ensure that CCPs do not become overly reliant on a single guarantor or group of guarantors.

At the same time, FIA considers that further clarification would be helpful as to how the term "total collateral" should be interpreted for the purposes of these limits (for example, whether at the level of the CCP's overall collateral pool or in another defined context), in order to avoid inconsistent or unintended application across CCPs.

In addition, FIA notes member concerns regarding the structure of the proposed two-tier concentration framework, under which higher per-issuer limits may apply once commercial bank guarantees exceed a significant proportion of total collateral. From a risk-management perspective, it is not immediately clear why greater reliance on guarantees as a whole should justify higher concentration thresholds. FIA therefore encourages ESMA to consider whether qualitative guardrails or an overall risk-based approach to the aggregate use of guarantees may be more appropriate than prescriptive escalation thresholds, while retaining flexibility for CCPs to calibrate limits based on their specific risk profiles.

Relatedly, FIA considers that where guarantees form part of a CCP's eligible collateral framework, CCPs should ensure that their risk-management and governance arrangements appropriately capture issuer-related risks. This may include, where relevant, consideration within existing stress-testing frameworks of the potential default of a material guarantee issuer, as well as periodic testing of the operational ability to draw on, or give effect to, guarantee arrangements, consistent with CCP default management and liquidity risk procedures.

Question 2

Do you agree with the inclusion of the level of collateralisation of the guarantee as a criterion for the CCP to consider when establishing concentration limits?

FIA agrees the level of collateralisation (if any) supporting a guarantee is a relevant factor for CCPs to consider when establishing concentration limits. Uncollateralised guarantees inherently increase reliance on the creditworthiness and operational performance of the guarantor or issuer, and CCPs should incorporate this into their risk controls and concentration assessments. This is consistent with the principle that riskier collateral should attract tighter risk controls.

However, FIA notes that the policy objective of EMIR 3.0 is to facilitate NFC access to central clearing, including in circumstances where NFCs face liquidity constraints and therefore rely on uncollateralised instruments such as LCs. In this context, the inclusion of collateralisation as a criterion should support a risk-sensitive calibration, rather than indirectly discouraging or negating the use of uncollateralised but legally robust instruments that are capable of providing timely and reliable liquidity.

Accordingly, FIA considers that CCPs should retain discretion to assess the level of collateralisation alongside other relevant factors, including the legal structure of the instrument, enforceability, issuer credit quality and concentration, rather than placing disproportionate weight on collateralisation alone when determining acceptable concentration limits.

At the same time, FIA agrees that even where LC-type instruments are accepted, CCPs should continue to ensure that cash and high-quality, liquid securities remain the core of the collateral pool, with guarantees playing a complementary role as part of a diversified collateral composition, consistent with CCP liquidity and default management frameworks.

Question 3

Do you agree with the inclusion of the new criteria (e) in paragraph 3 of Article 42, so that the CCP can consider the activity of the non-financial client when setting concentration limits?

Yes. FIA supports allowing CCPs to consider the underlying activity of non-financial clients when setting concentration limits, provided this is applied at a sectoral and risk-based level and does not create new client-level information or due-diligence requirements for clearing members.

In FIA's view, the relevant consideration is the sector in which NFCs operate and the nature of the derivatives activity being cleared, as this informs potential concentration and correlation risks at CCP level. For example, NFCs in the energy sector mostly dealing in commodity derivatives may present different risk characteristics from NFCs active predominantly in financial derivatives such as interest rate, credit or equity products.

From a financial stability perspective, this enables CCPs to assess whether clearing members and issuing banks are exposed to correlated risks within the same sector, and whether sufficient diversification exists when guarantees or guarantee-type instruments are accepted as collateral.

This assessment should not be interpreted as requiring clearing members or their clients to provide granular or ongoing client-specific information to CCPs. Rather, it may be based on information already available to CCPs, high-level classifications communicated by clearing members where appropriate, or aggregated sectoral data used for the purpose of setting proportionate and risk-sensitive concentration limits.

Question 4

Shall there be specific concentration limits established for guarantees provided by non-clearing members, given these exposures are not considered in the Stress Test?

FIA believes CCPs should have the ability to apply specific concentration limits to guarantees provided by non-clearing members, given that these exposures are not typically captured in CCP stress testing frameworks.

At the same time, FIA considers that guarantees (including LCs) must be clearly mapped to specific clients or accounts and CCPs should, to the extent feasible, include those exposures within their stress-testing and Cover-2 frameworks, including default fund sizing and contribution methodologies.

Where inclusion in stress testing is not operationally feasible, CCPs should clearly articulate how residual risks are addressed under extreme but plausible scenarios and instead apply proportionate and risk-sensitive concentration limits to address the residual exposure. FIA does not consider that prescriptive EU-level quantitative thresholds are necessary; rather, CCPs should retain flexibility to calibrate appropriate limits based on the structure, attribution, and risk characteristics of the issuers, including when the issuer is also a clearing member.

Use of Guarantees by NFCs

Question 5

Is ESMA's understanding correct? Are there other essential features of the guarantees that should be highlighted?

FIA broadly agrees with ESMA's understanding but considers that several essential features must be clarified to ensure that commercial bank guarantees can function effectively as collateral.

1. Beneficiary structure
   For guarantees provided in respect of client positions, FIA considers it essential that the clearing member is adequately protected in a client default scenario. Under the principal model and the US FCM-style agency clearing model, the CCP's primary counterparty is the clearing member, and the clearing member remains responsible for meeting margin obligations and managing client positions following a client default.

   Guarantees that name only the CCP as beneficiary may leave clearing members exposed while they continue to bear full obligations to the CCP, and may increase the risk that client-level stress escalates into clearing member and, ultimately, CCP-level risk. ESMA should therefore clarify how beneficiary arrangements are expected to operate in practice, including how clearing members' exposures are mitigated where guarantees are used in respect of client default.

   In particular, the framework should ensure that clearing members can effectively benefit and enforce the guarantee in a client default scenario, for example through a dual-beneficiary structure or an equivalent mechanism that operates without delay or discretion where the CCP does not intend to call the amounts due or where excess funds remain. Absent such clarity, clearing members may be unwilling to rely on guarantees in client default scenarios, which would materially limit their usability.

2. Callability and enforceability
   FIA notes that the risk-mitigating effectiveness of a guarantee depends critically on its enforceability and the conditions under which it may be called. Instruments that are callable only after a series of default determinations provide materially weaker protection than instruments that are payable unconditionally upon demand.

   In addition, FIA highlights that traditional, surety-type bank guarantees may give rise to material jurisdiction-specific legal and enforcement risks. The terms, enforceability and available defences associated with guarantees can vary significantly across legal systems, often requiring extensive and highly qualified legal opinions. Such instruments may also be more prone to disputes or litigation, particularly in stressed scenarios, which is not a desirable characteristic for CCP-eligible collateral, where speed and certainty of outcome are critical.

   In this context, FIA notes that, unlike many traditional guarantees, LCs, are commonly structured as primary, autonomous and irrevocable payment undertakings, and callable upon presentation of a notice. This significantly reduces enforceability risk and reliance on the assessment of underlying obligations[4]. Such instruments have historically been used by CCPs and offer greater certainty of timely payment, an attribute that is essential in a default management context.

   FIA's understanding is that references to "commercial bank guarantees" in the RTS are intended to capture such instruments based on their substantive legal and operational characteristics, including LCs and comparable on-demand payment undertakings issued by banks, provided they meet the relevant risk-management, enforceability and operational requirements. In this regard, FIA believes it is important to focus on substance rather than form, and to avoid placing undue weight on terminology that may be interpreted differently across legal systems.

   FIA nevertheless encourages ESMA to confirm this interpretation explicitly in the final RTS or accompanying report, in order to avoid uncertainty or divergent implementation across CCPs and jurisdictions. These issues are particularly relevant in a CCP default management context, where speed, legal certainty and predictability of outcome are critical.

3. Issuer feasibility, legal constraints and scope of obligations

   FIA further notes that any outcome of the RTS must be such that it does not disincentivise commercial banks from issuing guarantees in practice. In this respect, it is important to take into account the diversity of legal regimes applicable to guarantees. For example, certain legal systems may require guarantees to be limited to a maximum stated amount and/or tenor, which may constrain their design and usability.

   In addition, clarity is required on the scope of the obligations covered by a guarantee. For instance, where a guarantee relates to positions held in a gross omnibus account this may entail exposure to mutualised losses or shortfalls on that account in scenarios

[4] Under many legal systems, LCs operate as autonomous payment obligations callable upon a specified trigger, rather than as secondary obligations contingent on proof of loss or failure of a primary obligation, which may limit the availability of common defences and enhance enforceability in default scenarios.

involving simultaneous client and clearing member defaults where collateral held is insufficient. Such exposures may materially affect issuer appetite and must therefore be clearly addressed in the framework.

Finally, FIA notes that, in some cases, the issuance of a guarantee may only be commercially feasible where the issuing bank guarantee is itself collateralised (in whole or in part) or otherwise secured by the underlying client whose obligations it is guaranteeing. In such cases, the guarantee does not involve the issuing bank assuming fully unsecured credit risk exposure to the client, but instead reflects a backed or secured arrangement between the bank and the client.

Consequently, while guarantees may help address liquidity timing mismatches, commercial and legal realities should be taken into account when finalising the RTS. The RTS should therefore be calibrated to support guarantee structures that reflect how such instruments are actually issued and managed in practice, in order to ensure their practical usability.

These considerations underscore the importance of differentiating between guarantee structures and ensuring that the RTS accommodates legally robust, operationally reliable instruments while avoiding unintended disincentives.

Question 6

Do you agree with the conditions proposed by ESMA? Please provide your views specifically for each condition (a), (b), (c) and (d).

(a) Identification of the guaranteed client – FIA agrees.

(b) Dual beneficiary clause – FIA broadly agrees but further clarifications required.

While we agree with the objective of ensuring clarity on beneficiary rights, FIA believes that ESMA's formulation does not go far enough and risks leaving clearing members insufficiently protected. In addition, the proposed approach risks proving unworkable in practice, which could ultimately undermine the intended effectiveness of this proposal and the broader risk-containment objectives of central clearing. The proposed text states that the guarantee *"may provide"* for a transfer of beneficiary from the CCP to the clearing member. For guarantees provided in respect of client position, FIA considers a mechanism enabling the clearing member to benefit from, or enforce, the guarantee in a client default scenario is essential rather than optional. In a client default scenario, without such mechanism, the clearing member is left with an uncollateralised exposure while retaining full obligations to the CCP under the principal model.

This would not only discourage clearing members from accepting guarantees in practice, but may also increase the risk that losses crystallising at client level are transmitted upstream into clearing member stress, and ultimately into CCP-level risk, rather than being effectively contained at the level where the risk arises. Such an outcome would be inconsistent with the preventive risk-management objectives of EMIR.

In this context, it is also important that guarantees provided by clients and passed through to the CCP operate as an effective reduction of the clearing member's exposure. Where a clearing member accepts a guarantee from a client and uses it to meet the client's initial margin obligation at the CCP, the clearing member's exposure to both the client and the CCP should be

reduced accordingly. Absent this effect, guarantees would not function as collateral in any meaningful sense and would be unlikely to be accepted by clearing members in practice.

FIA therefore recommends that ESMA require, rather than merely permit, beneficiary transfer or equivalent protection mechanisms in order to avoid divergent CCP practices and unintended exposures for clearing members. Alternatively, "dual beneficiary" guarantees including both the CCP and the Clearing Member might be appropriate.

More generally, FIA notes that commercial bank guarantees are contractual undertakings of the issuer, rather than financial instruments, and therefore cannot be "posted" or transferred in the same manner as securities or cash. The RTS should reflect this legal reality and avoid terminology that assumes funded collateral mechanics.

(c) Segregation of accounts (ISA) – FIA agrees with the objective, but considers it too restrictive.

While FIA agrees with the objective of ensuring robust segregation and client protection, it considers a strict ISA-only requirement to be overly restrictive. Limiting the use of guarantees to individually segregated accounts does not appear to deliver proportionate additional risk-management benefits in all cases. In practice, it is likely to undermine the effectiveness of this proposal for the very non-financial counterparties it is intended to benefit.

FIA therefore considers that the use of guarantees should be permitted in both ISA and, where legally and operationally feasible, GOSA, subject to appropriate and robust identification, attribution and risk-management safeguards. In particular, any use of guarantees in GOSA structures should ensure clarity on the scope of the guaranteed obligations, appropriate treatment of any mutualised losses, and sufficient legal certainty for CCPs, CMs and issuing banks.

(d) Limitations on eligible guarantors – FIA agrees, but further clarifications are required.

FIA agrees with the objective of limiting eligible guarantors to appropriately regulated credit institutions. In this context, FIA notes that the amended RTS appears to contemplate guarantees issued not only by EU credit institutions, but also by equivalent third-country financial institutions.

FIA considers that, where guarantees issued by third-country institutions are permitted, this should be subject to clear and robust equivalence, supervisory, and enforceability safeguards, including legal certainty as to timely payment within the liquidation period and effective resolution and insolvency frameworks. Absent such safeguards, CCPs and clearing members may face increased legal and operational uncertainty in default scenarios.

FIA therefore encourages ESMA to clarify how "equivalence" of third-country institutions is to be assessed for the purposes of the RTS, and to ensure that CCPs retain full discretion to accept or refuse guarantees based on issuer location, legal framework and risk considerations.

Question 7

In relation to condition (c), do you agree with ESMA proposal? If not, is it in your opinion legally and practically feasible that guarantees are posted to an omnibus account?

As set out in response to Question 6(c), FIA considers it legally and operationally feasible for guarantees to be used with certain omnibus account structures, provided that the CCP can

clearly identify the client to which the guarantee relates, maintain appropriate allocation records and that sufficient legal certainty is ensured.

Such identification mechanisms are already used in other collateral contexts and may equally apply to guarantee-type instruments, including where LCs or similar instruments are used in lieu of traditional guarantees.

Restricting the use of guarantees to individually segregated accounts would unnecessarily limit their practical utility and risk undermining the policy objective of facilitating NFC access to clearing. FIA therefore considers that guarantees should be permitted in both ISA and GOSA, subject to appropriate identification, legal certainty, appropriate treatment of any mutualised losses and risk management safeguards.

Question 8

Is there any other condition you consider would be necessary in relation to the extension of the use of guarantees to guarantee non-financial clients? E.g. should it be mandated that CCPs have in place a mechanism to identify the default of a non-financial client?

FIA does not consider it feasible or appropriate for CCPs to introduce mechanisms to identify the default of a non-financial client, CCPs only need to consider the default of the clearing member. Under the principal-to-principal model, client default management lies exclusively with the clearing member, and CCPs have neither the contractual relationship with clients of clearing members nor the visibility required to detect or assess client defaults.

However, for guarantees associated with specific clients, CCPs must be able to identify which client the guarantee relates to (for example by notification by the clearing member), so that the guarantee can be used (a) by the CCP on a clearing member default or (b) by the clearing member on a client default.

Accordingly, FIA recommends the following additional conditions:

- Explicit and mandatory beneficiary-transfer or dual-beneficiary arrangements, to ensure clearing members can enforce the guarantee directly in client default scenarios where there is no clearing member default;
- Robust client-to-guarantee attribution mechanisms (e.g., tagging and record keeping), ensuring that guarantees can be clearly linked to the relevant client and positions within omnibus account structures, so that they can be relied upon by the clearing member in a client default scenario and by the CCP in the event of a clearing member default;
- Guarantees should be structured as autonomous, unconditional, irrevocable and legally callable on-demand payment undertakings, so that once the relevant enforcement trigger is reached in accordance with clearing member or CCP default rules, they can be drawn without reliance on proof of default, loss or exhaustion of other collateral, and without exposure to substantive defences by the issuing bank;
- Risk-sensitive concentration limits by client, CM, guarantor or issuer and geography;
- Enhanced due diligence requirements for guarantors or issuing banks.

These measures ensure that guarantees provide equivalent risk protection without altering the EMIR default management framework or imposing new detection responsibilities on CCPs.

FIA also considers it important to recognise that guarantees, including uncollateralised bank guarantees, are not a substitute for high-quality, liquid collateral held by CCPs. Their use should therefore remain complementary and be subject to robust safeguards, including conservative concentration limits, enforceability requirements and liquidity-risk management measures, to ensure that CCPs' default management and liquidity frameworks continue to rely predominantly on readily realisable resources.

Specific conditions for the use of public guarantees

Question 9

Do you agree with ESMA's proposal to require that there are a credit rating and reliable financial data on the guarantor available for the CCP to use in its internal assessment?

Yes. We agree that CCPs, as well as clearing members, must have access to reliable credit information when assessing guarantors. This is consistent with our advocacy for robust, sound and risk-sensitive collateral frameworks.

Question 10

Do you consider that the direct access of a public guarantor to real-time gross settlement systems such as T2 should be a requirement for public guarantors? Please provide evidence or reasoning to support your response.

We consider that direct access to a real-time gross settlement (RTGS) system, such as T2, is highly desirable from a CCP risk-management and liquidity-protection perspective. Direct RTGS access minimises settlement and timing risks and supports fast, final and irrevocable payments, which are critical when a CCP needs to enforce a guarantee in a default scenario.

At the same time, FIA considers that direct RTGS access should not necessarily be a mandatory requirement in all cases where alternative arrangements exist that provide equivalent assurance of timely and reliable payment. While routing payments through intermediaries may introduce additional operational and credit risks that CCPs would need to assess carefully, imposing an absolute RTGS access requirement may unintentionally exclude otherwise creditworthy public entities.

FIA therefore considers that CCPs should retain flexibility to assess efficient settlement and liquidity arrangements as part of their internal risk management framework. In this context, CCP could be expected to strongly incentivise RTGS access for public guarantors, for example though more haircuts or additional risk mitigation measures where guarantees are not supported by direct RTGS access.

Question 11

Do you agree that public guarantees should be accompanied by a legal opinion confirming the effective representation of the guarantor, the validity of the guarantee and its enforceability?

Yes. FIA strongly supports appropriate legal certainty measures, including the use of independent legal opinions where relevant, to ensure enforceability as a prerequisite for guarantees, not only public guarantees, to ensure that such instruments are valid, binding and enforceable in accordance with their terms and applicable legal requirements. In particular, legal opinions should provide clarity that the guarantee can be effectively called and enforced in practice, including with respect to the applicable call mechanics, timing of payment and any

relevant legal or operational conditions. This is consistent with our longstanding view to promote legal certainty in cross-border collateral arrangements.

FIA also notes that legal opinions on guarantees often involve extensive assumptions and qualifications, reflecting the diversity of national legal regimes and enforcement risks. At the same time, FIA recognises that for certain internationally standardised and well-established instruments, such as letters of credit, it is not always market practice for each instrument to be supported by a standalone external legal opinion. Clearer specification of acceptable structures, including where internationally standardised instruments such as LCs are used, and allowing for risk-based and proportionate approaches to demonstrating legal certainty, would enhance legal certainty for CCPs and clearing members alike.

Conditions for the use of bank guarantees

Question 12

Do you agree that the conditions for commercial bank guarantees should explicitly foresee that the guarantor is a credit institution as defined in CRR?

Yes. FIA agrees that eligible guarantors should be limited to appropriately regulated credit institutions.

In this context, FIA notes that the RTS refers to guarantees issued by a "credit institution as defined in Article 4(1)(1) of Regulation (EU) No 575/2013", a definition which is location-neutral and distinct from the application of the CRR/CRD prudential framework. FIA therefore considers it important that the RTS clearly specifies the prudential and supervisory expectations applicable to any institution acting as a guarantor.

In particular, FIA considers that guarantees issued by EU-authorised credit institutions including EU-authorised branches of third-country banks subject to CRR/CRD requirements and effective EU supervision, should fall within scope. Where guarantees issued by third-country institutions are contemplated more broadly, this should be subject to clear equivalence criteria, including robust supervisory oversight, effective resolution and insolvency frameworks, and legal certainty as to enforceability and timely payment within the liquidation period.

Clarifying this point would reflect existing market practice, avoid unintended restrictions or ambiguity on eligibility, and ensure that CCPs and clearing members can assess guarantors on the basis of equivalent prudential standards and legal certainty, rather than formal legal form alone.

FIA emphasises that the acceptance of guarantees should be accompanied by appropriately calibrated risk-management measures reflecting their non-transferable and non-marketable nature. This includes conservative eligibility criteria, concentration limits and integration into CCP default management and liquidity risk frameworks, to avoid unintended risk mutualisation among clearing members.

In this context, proportionate transparency within CCP risk-management and governance arrangements may also play a supporting role, including to enable effective monitoring of concentrations and reliance on such instruments. Any such transparency should be designed to support CCP oversight and supervisory review, without creating disproportionate operational burdens or public disclosure obligations that could discourage the use of legally robust guarantee structures.

Question 13

Do you agree that the possibility for CCP to accept uncollateralised bank guarantees should be specified in Section two of Annex I of RTS 153/2013?

Yes. FIA agrees that the RTS should explicitly recognise that CCPs may accept uncollateralised bank guarantees, subject to appropriate safeguards, in order to provide legal certainty and support the objectives of EMIR 3.0. FIA notes that, as currently drafted, certain provisions of Annex I may be read as limiting the use of uncollateralised bank guarantees, and clarification is therefore warranted.

In this context, FIA's understanding is that references to commercial bank guarantees in the EMIR Level 1 framework and the draft RTS are intended to encompass autonomous, unconditional, irrevocable, on-demand payment undertakings issued by banks, including LCs, provided that such instruments meet the applicable risk-management, enforceability and operational requirements. FIA considers it important that the RTS focuses on the substantive legal and operational characteristics of the instrument rather than its formal classification or label, and that generic or default-contingent guarantees that cannot be reliably enforced within default timelines are effectively excluded in practice.

Given that CCPs ultimately rely on such instruments as part of their default management and liquidity risk frameworks, it is essential that guarantees accepted as collateral provide a level of legal and operational robustness commensurate with their role as a last-resort resource. Instruments that are not transferable, tradable or readily priceable should therefore only be recognised where they offer a high degree of certainty of timely and enforceable performance.

FIA therefore encourages ESMA to in Annex I and/or accompanying final report that such instruments fall within scope, where they meet the prescribed conditions, without introducing a separate collateral category. In doing so, ESMA should ensure that the framework provides sufficient legal and operational certainty, including with respect to enforceability, payment finality and timeliness (including a concrete timeframe within which on-demand guarantees must be honoured, in CCPs' rules or contractual arrangements), to allow CCPs and clearing members to rely on such instruments within their default management and liquidity risk frameworks. This clarification would support consistent implementation across CCPs and jurisdictions while preserving full discretion for CCPs or clearing members as to whether to accept such instruments in specific cases.

Question 14

Do you agree with ESMA that the conditions applicable to commercial bank guarantees should also be applicable to public bank guarantees? Please specify in your answer whether any addition condition should be considered.

Yes. FIA agrees that aligning the conditions for commercial bank guarantees and public bank guarantees is appropriate and helps avoid regulatory arbitrage between public and privately owned credit institutions. Public banks, like commercial banks, are credit institutions and pose similar credit, liquidity, operational and wrong-way risk considerations when issuing guarantees to CCPs.

In assessing such guarantees, FIA considers it important that CCPs take into account not only issuer-specific credit and enforceability characteristics, but also the broader prudential context in which guarantees are accepted. In particular, differences in prudential treatment across

market participants may create incentives for guarantees to be channelled through CCPs where there are fewer direct balance-sheet constraints, notwithstanding the fact that the CCP ultimately relies on such instruments as part of its default management framework.

Against this backdrop, appropriate CCP risk-management safeguards, including conservative concentration limits, eligibility criteria and adequate first-loss protections such as Skin-in-the-Game, are important to preserve confidence in the clearing system and avoid unintended risk mutualisation.

However, FIA recommends that ESMA require CCPs to consider specific risk characteristics unique to public banks, such as:

- the nature and strength of any explicit or implicit sovereign support,
- the applicable public-sector resolution or recovery regime, and
- any governance, statutory, or mandate limitations that may affect enforceability or timeliness of payment.

These elements are distinct to public banks and may not arise for commercial banks, and therefore merit explicit assessment within CCPs' internal credit and due-diligence frameworks.

Question 15

Do you agree with the proposed way to address the lack of definition of "public bank"?

Yes. We welcome efforts to clarify this term. A clear definition reduces interpretive uncertainty and improves consistency across CCPs

CCP Investment Policy

Highly liquid financial instruments with minimal market and credit risk (Article 47(1) of EMIR)

Question 16

Do you agree with the proposed change concerning the conditions under which debt instruments can be considered highly liquid, bearing minimal credit and market risk (and hence considered as eligible financial instruments for the purpose of CCP investment policy)?

Yes. FIA supports including EU, BIS, and IMF-issued debt instruments, which generally exhibit strong liquidity and credit quality. This update modernises the investment eligibility framework.

Highly secure arrangements for the deposit of financial instruments posted as margins or as default fund contributions (Article 47(3) of EMIR)

Question 17

Do you agree with the proposed change concerning the highly secure arrangements for the deposit of financial instruments posted as margins or as default fund contributions?

Yes. FIA agrees with ESMA's proposals, not to allow emission allowances as eligible instrument in scope for CCP investment. And we support the proposed clarification that CCPs are allowed to accept emission allowances as collateral to deposit the emission allowances posted as

margins at the Union Registry, only where emission allowances are the underlying of the derivative contract to cover against initial margin only for such contract but not for the purpose of meeting mutualised margin requirements such as default fund contributions.