EACH

European Association of CCP Clearing Houses

EACH response to the ESMA consultation on the Report on highly liquid financial instruments with regards to the investment policy of central counterparties (EMIR Article 85(3a(e)))

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Introduction

The European Association of CCP Clearing Houses (EACH) represents the interests of Central Counterparties (CCPs) in Europe since 1992. CCPs are financial market infrastructures that significantly contribute to safer, more efficient and transparent global financial markets. EACH currently has 19 members from 15 different European countries. EACH is registered in the European Union Transparency Register with number 36897011311-96.

EACH appreciates the opportunity to provide feedback to the ESMA consultation on the Report on highly liquid financial instruments with regards to the investment policy of central counterparties (EMIR Article 85(3a(e))) (hereinafter called "The consultation").

Section 3.3 – Requirements for CCP investments in third-countries

Question 1: Does the above section describe accurately the requirements on CCP investments outside the EU? Are there other jurisdictions that ESMA should consider to inform its analysis?

EACH is of the opinion that the description of the requirements on CCP investments in various jurisdictions outside the EU is accurate.

Section 3.4 – Investment practices of CCPs

Question 2: Does the above section provide an accurate description of CCP practices regarding their investment and collateral policies?

Yes, EACH believes that ESMA provides an accurate description of CCP practices regarding their investment and collateral policies. However, concerning the fact that more than half of CCPs deposit 90% of their financial resources in central banks, EACH would like to highlight that CCPs' access to central banks facilities constitutes a critical key component that should be supported from a policy making perspective in the interest of financial stability and integrity.

Historically there has been an increased regulatory support for the use of central bank money as a settlement asset in systemically important payment and securities systems, including CCPs. The argumentation is that the use of the central banks as settlement institutions minimises the risk of a failure of these institutions and consequently leads to less systemic risk.

A standardized regime for CCP access to central banks would be a good mechanism to promote financial stability because it would promote:

- **Limitation of exposure to insolvency risk of commercial banks** – Firstly, such regime would assist CCPs in limiting their exposure to commercial banks and their potential insolvency. When settlement in central bank money is not available, CCPs commonly rely on commercial banks to function as concentration banks and enable settlement. Even though CCPs take all steps to limit cash settlement risks, from a systemic risk point of view settling in commercial bank money involves the additional credit exposure to those entities.
- **Better management of investment risk** – Second, it would allow CCPs to manage more appropriately their exposure to investment risk by depositing cash with central bank accounts.
- **Limitation of exposure to settlement risk** – Third, it would limit settlement risk, in particular those related to the inability of CCPs becoming settlement agents in most of the relevant securities settlement systems.
- **Ensuring a level playing field** – If liquidity features are also considered, this would allow a level playing field with no differentiation for entities that have or do not have a banking-license

Section 4.2 – Policy discussion on instruments for CCP investments

Question 3: Does the above section accurately describe the trade-offs faced by CCPs when developing their investments strategies? What other factors or trade-offs can influence CCP investment strategies?

EACH is of the opinion that the section accurately describes the trade-offs faced by CCPs in this context.

Question 4: Do you agree with ESMA's premise that changes to the list of financial instruments for CCP investments should be in line with the PFMI?

Yes, EACH agrees that any change to the list of financial instruments for CCP investments should be in line with the PFMIs.

Question 5: Do you agree with ESMA's policy approach that benefits should outweigh risks to support a policy change?

Yes, EACH agrees with the ESMA's policy approach that benefits should outweigh risks to support a policy change.

Question 6: Do you agree with ESMA's approach to focus on the list of conditions to define highly liquid instruments bearing minimal credit and market risk? Do you believe it would be appropriate to align EMIR with other definitions of highly liquid instruments in the EU financial legislation, such as CRR?

Yes, EACH agrees with ESMA's approach to focus on the list of conditions to define highly liquid instruments bearing minimal credit and market risk. EACH also agrees that it would be appropriate to align EMIR with other definitions of highly liquid instruments in the EU financial legislation.

Question 7: with regards to condition (a) on public entities outlined in Annex II:

- **i. Should the list of international organisations be expanded beyond the EFSF and the ESM to explicitly include the EU?**
- **ii. Should it include other international organisations (IMF? BIS? Others?)?**
- **iii. Do you agree with ESMA's legal analysis that it is not necessary to explicitly include regional governments and local authorities as these should be covered by the generic term of government under condition (a)(i)? Should ESMA consider adding conditions similar to those outlined in Article 115 of the CRR?**
- **iv. Should ESMA consider limiting the list of governments and central banks in particular to those from third-countries deemed to have equivalent regulatory and supervisory arrangements?**
- **v. Do you agree that the list of multilateral development bank listed under Article 177(2) of CRR is suitable?**

EACH would like to respond to the different points of question 7 as follows:

- i. Yes, the EU Institutions should be added to the list of international organisations in Annex II. To combat the consequences of the Covid-19 pandemic, the EU finances aid programs with a significant volume in the coming years. For the first time, the EU is raising the funds for this on a large scale independently on the bond market and is thus becoming one of the largest debtors in the Eurozone.
- ii. No comment.
- iii. We agree with ESMA's interpretation that regional governments and local authorities may currently be covered by the generic term of government under condition (a)(i). Nevertheless, we believe it would ensure clarity for the application in practice if local authorities and regional governments were explicitly included.
- iv. We do not see the need to limit the list of eligible governments and central banks in Annex II as the credit quality of the issuer of the financial instruments is already sufficiently addressed in Annex II Number 1 (a) of RTS 153/2013 that limits the eligible instruments only to those for which "*the CCP can demonstrate that they have low credit and market risk based upon an internal assessment by the CCP*", taking *"into consideration the risk arising from the establishment of the issuer in a particular country".*
- v. Yes, we agree that the list is suitable.

Question 8: Should ESMA consider expanding condition (a) to certain debt instruments issued or backed by private entities? If so, to which type of corporate debt securities (Commercial Paper, Certificates of Deposits, covered bonds, etc.)? Under what conditions? How would the benefits outweigh the added risks?

EACH is of the opinion that, although it is important to be cautious when considering expanding the list of eligible instruments to debt instruments issued or backed by private entities, ESMA could consider expanding conditions to include **covered bonds**.

According to EMIR Article 46, as well as Articles 37-42 of RTS Chapter X, CCPs can accept covered bonds as eligible collateral under several conditions, e.g. by applying haircuts and concentration limits. Covered bonds are also considered as High-Quality Liquid Assets (HQLA) in the Liquidity Coverage Ratio (LCR) calculations related to bank liquidity requirements, under the Capital requirements Regulation (CRR). It would be desirable to align the regulation for CCP investments (EMIR art 47, RTS chapter XI, Articles 43-46, including Annex II) with these regulations.

Further, certain regions may have a limited market of sovereign debt available for CCP investments. Expanding highly liquid financial instruments to include covered bonds would increase investment space for CCPs as well as facilitate diversification among investments.

Regarding the possible conditions to consider expanding the list of eligible instruments to debt instruments issued or backed by private entities, investments in covered bonds could be subject to concentration limits and also be subject to haircuts in the calculations of CCP's liquid resources (EMIR Art 44, RTS chapter VIII, articles 32-34), i.e. covered bonds considered as highly liquid financial instruments in relation to investments would be treated similar to highly liquid eligible collateral.

Question 9: with regards to condition (b) on CCP internal assessments in Annex II:

i. **What are, to your knowledge, the best practices used by CCPs to identify low credit and market risk?**
ii. **What are the safeguards put in place to avoid overreliance on external opinions, notably CRAs?**
iii. **In order to avoid supervisory divergence, do you deem necessary that ESMA issue further guidance on how NCAs should assess these provisions?**

We deem the best practices established and safeguards installed by CCPs as sufficient and effective. We therefore do not see the need for further guidance as to how NCAs should assess the existing provisions.

Question 10: with regards to condition (c) on the average time to maturity, do you believe that this time period is appropriate? Should its calculation be further specified in the RTS?

EACH is of the opinion that the **average time to maturity** of highly liquid financial instruments should be **extended to 5 years**. We consider an average time to maturity of maximum 2 years as too restrictive, and in particular it raised issues during the COVID-19 emergency when the investment activity became much more challenging: because of the limited availability of short-term securities, it was very difficult to build-up an investment portfolio with this restriction. With an average time to maturity of 5 years, the benefit in diversification would

clearly outweigh the added risk, as the securities are high quality, highly liquid instruments as per definition in the regulation, i.e. they can easily be mobilized anytime if respective liquidity is needed.

Concerning the calculation, we believe it should be clarified whether the calculation of the average time to maturity may include non-invested funds that could be invested according to the term transformation limits defined by the CCP.

Question 11: with regards to conditions (d), (e), (f) and (g) under Annex II, should these be amended?

EACH Members would appreciate a clarification on Annex II condition (e) (as well as Annex I Section 1 condition (d)) that the *"liquidation"* mentioned under this condition relates to the liquidation of the collateral.

Section 5.2 – Impact on CCP Investments

Question 12: Do you agree with this conclusion? To what extent are MMFs currently used as collateral or CCP investments beyond the EU?

Although understanding that under the current version of Annex II of the EMIR Delegated Regulation MMFs cannot qualify as possible investments, EACH would like to invite ESMA to consider the possibility for CCPs to invest in MMFs. The US Money Market reform in 2016[1] gave US Government Funds the ability to opt to not have the ability to impose "gates", at least not without a significant lead time and appropriate communication channels.

Since the above possibility in the US legislation is currently not available for EU MMFs, EACH proposes to **reconsider the list of financial instruments in order to include all MMFs (EU *and* third-country) that meet certain requirements and improve CCPs' liquidity and risk management**, as long as the issue of "gates" – amongst others – is addressed and CCPs take an adequate risk-based approach towards the products they invest in. Exploring MMFs under certain conditions could also be meaningful for investment of funds in currencies where a CCP has no central bank access in order to avoid unsecured exposures.

It is also our understanding that other European jurisdictions outside the EU also allow CCPs to invest in MMFs.

Question 13: Do you agree with the premise that the assets held by eligible MMFs for CCP investment should at least meet the same criteria as for other financial instruments?

Yes, EACH agrees, with the premise that the assets held by eligible MMFs for CCP investment should at least meet the same criteria as for other financial instruments.

[1] https://www.sec.gov/spotlight/money-market.shtml

Question 14: In your view, how could ESMA bridge the need for macroprudential tools for MMFs and the need for high quality and highly liquid collateral for CCPs?

Please see answer to Question 12.

Question 15: Do you agree with ESMA that it is not appropriate at this stage to decide on the potential eligibility of MMFs for CCP investments before policy discussions on MMFs at the international and EU levels are finalized?

As stated under our response to Question 12, exploring the inclusion of MMFs under certain conditions could be meaningful, in particular for the investment of funds in currencies where a CCP has no central bank access in order to avoid unsecured exposures and allow for a diversification of investments.

Question 17: What would be the costs and benefits of extending the list of financial instruments to money market funds authorised in accordance with MMFR?

Further diversifying the range of secured investments by using secured arrangements like government MMFs in circumstances where constraints to robust risk management have been removed since the implementation of EMIR would further increase the **resilience** of CCPs and the **efficiency** of CCPs' liquidity management.

To make MMFs an adequate investment option, EACH suggests that the **requirements** that MMFs should comply with may include the following:

- The ability to **redeem an interest** and **make payment in satisfaction** thereof with same day value following a redemption request that meets appropriate cut off times (i.e. no application of redemption gates);
- The fund must be **appropriately registered** by its competent authority;
- The fund must be **sponsored by authorised credit institutions** as defined and regulated under CRDIV and CRR, an investment firm authorised under MiFID II and MIFIR, an alternative investment fund managed by AIFMDs authorised or registered in accordance with the AIFM Directive, or third-country equivalent firms and institutions.

Adding government MMFs that meet the above requirements would be particularly beneficial to EU cross-border CCPs that perform late-in-the-day margin calls that tend to be met largely in US dollar cash by clearing members. CCPs therefore need safe, liquid and reliable outlets to securely invest these late cash-inflows as required under EMIR. The exclusion of MMFs from EMIR imposes material constraints on cross-border CCPs wishing to manage their intra-day risk to clearing members.

MMFs that meet the above requirements would provide an additional possibility for an instruments that offers same-day liquidity.