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**EACH response to the consultation paper  
“The Bank of England’s approach to tiering  
incoming central counterparties under  
EMIR Article 25”**

February 2022

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## Introduction

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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 consultation paper "The Bank of England's approach to tiering incoming central counterparties under EMIR Article 25" (hereinafter called "The consultation").

## EACH Comment

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EACH Members generally welcome the 2-stage approach included in the consultation paper. We believe the approach provides a clear and generally objective proposal for CCPs to access the UK market.

We also welcome the commitment to regulatory deference proposed by the Bank. As stated in the consultation paper, this allows the market to maximise the benefits from access to cross-border clearing while ensuring the risks are appropriately managed, something particularly important in the access to markets between EU and the UK.

We believe that some of the proposed points could either be reconsidered or would require further clarification:

- **Notion of UK Clearing Member** – The consultation paper provides in paragraph 4.20 that non-UK CCPs shall calculate the values of Initial Margin (IM) and Default Fund Contributions (DFC) attributable to UK firms, also **including those attributable to non-UK subsidiaries of UK headquartered firms**, in light of the fact that UK firms may be clearing business either partially or entirely through non-UK subsidiaries. However, considering that UK subsidiaries in the EU are subject to EU supervision, this inclusion seems to provide no added value to the Triage assessment. Moreover, CCPs may not always be in a position to perform this assessment due to **lack of information and complexities**, especially in case of complex corporate structures and groups. Taking also in consideration the extended lookback period proposed, this assessment would require a significant effort on all non-UK CCPs, regardless of their systemic relevance for the UK. In light of the above, we would kindly propose to delete the inclusion of IM and DFC attributable to UK subsidiaries of UK headquartered firms from the scope of the triage exercise.
- **5-year lookback period** – The consultation papers states in paragraph 4.21 that the Bank proposes a 5-year lookback period for the IM and DFC calculations, in order to allow the Bank to consider periods of stress where requirements may rise. The document also explains that *"the Bank considers this important to ensure that the*

*'triaging' metrics reflect the maximum UK clearing activity within an incoming CCP over a period of time*". However, **EACH Members are of the opinion that a 5-year lookback period would be an overly strict measure to provide a good assessment of the situation.** We would rather propose a **2-year lookback period.** This appears particularly important in the current situation, where the recent withdrawal of the UK from the EU already led to relevant structural changes in recent years and may lead to further financial market changes in the mid- to long-term that are unlikely to turn back. We therefore argue that a forward-looking approach would be more appropriate and targeted to capture expectable developments (e.g., estimations of volumes of the next year) that may be of systemic relevance. In comparison, the European Commission Delegated Regulation 2020/1303<sup>1</sup> setting out the EU's quantitative measures for tiering third country CCPs for example, only formulates a lookback period of two years and refers to average values of Margin and Default Fund Contributions.

Furthermore, the thresholds applied in the EU tiering logic are significantly higher – i.e. the aggregate level of margin requirements and Default fund contributions held by EU Clearing Members (incl. EU HQ CMs) is over 25 Bn € (=20.8 Bn £). In our opinion the following primary concerns should, at a minimum, be addressed:

- The criteria are inappropriately low;
  - The criteria use collateral held, as opposed to collateral required; and
  - The criteria use peak collateral values, as opposed to average collateral values. Given the low thresholds, they eventually do not accurately capture if an incoming CCP is in fact systemically important to the UK.
- **Informed Reliance Assessment** – EACH agrees with the additional points to be considered, to cater for the higher relative UK exposure determined in the proportionality test. However, Stage 2 "Proportionality and Informed Reliance Assessment" proposes that when a CCP is considered potentially systemically important to the UK, the Bank would conduct an informed reliance assessment to *"determine the extent to which the Bank is able to rely on the incoming CCP's home regulatory and supervisory authorities"*. **EACH Members are of the opinion that more clarity should be provided on how such informed reliance assessment would work from a practical point of view.** Furthermore, we believe it should be added that the criteria proposed for the Informed Reliance Assessment appear, in many instances **genuinely subjective**, especially those categorised under "other considerations" where e.g. the Bank is requested to assess the "cooperative nature" of relevant home authorities. However, for the sake of enhanced legal clarity and predictability for non-UK CCPs and the broader participants public, we kindly suggest the Bank to consider binding the Informed Reliance Assessment to **more objective criteria.**
  - **Qualitative measures** – EACH believes it would be helpful for the incoming CCP community to receive further clarification on these measures in order to ensure transparency and common expectations for incoming CCPs. We appreciate that the Bank has added further guidance to the information to be reviewed under the **criteria**

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<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R1303&from=EN>

**to be evaluated within the systemic risk assessment** (as specified in EMIR 2.2), however we kindly suggest that **additional weighting of the different criteria may further increase transparency** and can lead to a clarification of Bank's expectations towards incoming CCPs. This would be helpful to get a better understanding of this approach in practice as to what extent the Bank would rely on local supervision and in which cases the Bank would plan to take supervisory measures.