

Reply form

Consultation Paper on a draft RTS on Participation Requirements under Article 37(7) of EMIR

Responding to this paper

ESMA invites comments on all matters in the Consultation Paper and in particular on the specific questions in this reply form. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **5 January 2026**.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Consultation Paper in this reply form.
- Please do not remove tags of the type <ESMA_QUESTION_PART_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- When you have drafted your responses, save the reply form according to the following convention: ESMA_PART_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA_PART_ABCD.

- Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input - Consultations’.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings 'Legal notice' and heading '[Data protection](#)'..

1. General information about respondent

Name of the company / organisation	Deutsche Börse Group, including Eurex Clearing AG and European Commodity Clearing AG
Activity	Central Counterparty
Are you representing an association?	☐
Country/Region	Germany

2. Questions

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

<ESMA_QUESTION_PART_1>

As both CCPs of Deutsche Börse Group (DBG), Eurex Clearing AG and European Commodity Clearing AG, will be subject to implement the new participation requirements as specified by ESMA, we are responding with a joint group statement. As such, DBG welcomes the opportunity to respond to ESMA's consultation on the proposed draft RTS on Participation Requirements under Article 37(7) of EMIR. In this context, we would like to emphasize the criticality of developing a proportionate and well-balanced RTS.

We agree that CCPs should establish risk-appropriate participation requirements and take lessons from past market events and defaults, as highlighted in the consultation. However, we would also **caution that overly strict admission criteria or disproportionately high costs resulting from extensive compliance efforts, could create unintended barriers to market access, reduce market liquidity and impose additional compliance burdens**. This could in particular hinder energy and industrial firms' access to EU emissions certificate or power and gas spot markets. It could also undermine the EU's strategic objective to increase repo clearing especially by non-bank financial institutions. Overly strict regulatory criteria and the resulting compliance costs risk undermining the objectives of the Capital Markets and Saving and Investments Unions, which seek to foster efficiency in European financial markets. **We therefore support the general approach ESMA took in the RTS, which sets out the elements that CCPs should consider when establishing their admission criteria, rather than the criteria itself**. In addition, **we expressly support the approach proposed in article 7 of the draft RTS to give flexibility with regard to non-financial counterparties (NFCs)**. In particular, the explicitly listed possibility of considering regulatory frameworks other than financial prudential regulation is crucial to

continue established clearing and settlement services in the energy and commodity markets, which are subject to their own regulatory framework (see also our answers to Q7 and Q8).

Overall, the proposed RTS marks a commendable step towards a more outcome focused regulatory approach. Nevertheless, we **believe that targeted changes are required to the draft RTS to ensure that it will be implemented proportionally** without negatively impacting access to central clearing. As outlined by ESMA, the **decision by a CCP to accept a new clearing member should be a risk-related assessment of the relevant applicant**. The purpose of the admission criteria in this context is to set transparent non-discriminatory conditions, which mitigate risks for the CCP and as a result for the clearing ecosystem and the broader financial system. The risks associated with a clearing member, even before considering the specifics of an individual applicant, **vary significantly across different markets and activities**. For instance, the CCP will face more risk from a member active in the derivatives market than from a member active in markets without portfolio risk changes, i.e., spot markets.

Furthermore, CCPs are not limited to setting strict access criteria to mitigate risks stemming from clearing members. **CCPs can also limit risk by designing membership types or access to certain products** which align with an entity's risk profile. For instance, a CCP may require pre-funded trades, which removes settlement risk and collateral needs. In the attached annex, we outline how Eurex's ISA Direct Light and ECC's Direct Clearing Participant memberships are designed to reduce counterparty risk to a minimum, thereby enabling participants to access the CCP who would not meet the stringent criteria for more sophisticated membership types. In addition, we detail how ECC created the Market Coupling Counterparty membership model to comply with the requirement from the CACM Regulation, which mandates connections between CACM regulated CCPs.

We thereby agree with recital 2 of the draft RTS, which outlines that a CCP should tailor its admission criteria to its specific risks and the risk profile of the type of product cleared, the type of membership and the type of clearing member, as examples. However, we believe the RTS draft does not reflect this flexibility explicitly enough in the articles themselves. **It would be useful, if article 1 specifies that if a CCP designs a membership type that eliminates a certain risk, the respective conditions outlined in the RTS do not need to be part of the admission criteria for that membership type.** In order to maintain the flexibility contained in the current draft, we caution against setting prescriptive minimum access criteria.

To increase ESMA's confidence that CCPs nevertheless take all of ESMA's criteria into account, **ESMA could require CCPs to perform an applicability assessment for each criterion outlined in the RTS for each membership type the CCP offers.** The result of this assessment would be that an individual criterion is either not applicable because the CCP has designed the membership type to mitigate the respective risk or it is applicable and therefore needs to be reflected in the admission criteria. To implement this approach, we recommend making the following changes to article 1 of the RTS:

Add a new paragraph 2:

“2. The CCP should thus tailor its admission criteria to its specific risks and the risk profile of the type of product cleared, the type of membership, the type of clearing member, etc. with the result, that elements set out in Articles 2 to 7 of this Regulation are applicable for the respective access model only as far as they are appropriate to mitigate the specific risk.”

Change the title to “Scope and Purpose”.

Furthermore, we note that cumulatively the list of criteria that a CCP shall consider is extensive and **many of the criteria would be difficult for a CCP to verify**. We are concerned that the current draft RTS, read in context of article 37 paragraph 2 EMIR, could be interpreted in a way that CCPs should perform in depth reviews of a clearing member’s risk management frameworks, internal control systems, business continuity procedures, etc., considering the internal policies and procedures of those clearing members, or that a CCP would have to independently confirm the compliance of the clearing member with sectoral regulations such as DORA. Inadvertently, such an interpretation **would effectively make the CCP either act as a regulator for its clearing members or serve as an additional line of defence for them**. The additional cost could incentivise clearing members to move their activities to competing markets with reduced compliance obligations.

Instead, **the new rules should support the current industry practice of setting admission requirements in the CCP access conditions and requiring confirmation of compliance with these using a due diligence questionnaire**. During their annual compliance review, **CCPs conduct detailed inspections on selected samples** or when **there are signs a clearing member may not meet requirements**. This is a proven and well-balanced approach that should be maintained. Throughout our consultation response, we have therefore included specific recommendations to ensure proportionality.

We also note that **the RTS** in its current form **includes elements that are covered in the risk management framework of the CCP and should not be addressed via the admission criteria**. For instance, at onboarding the CCP cannot assess the future portfolio of a clearing member or the relative importance of client activity in comparison to proprietary clearing. Such risks are however sufficiently covered in a CCP’s risk management framework, which reacts to any changes in the risks impacting a CCP.

Finally, CCPs will require some time to amend their admission criteria after the publication of the RTS and will need to update their annual assessment processes to ensure that existing clearing members are subjected to the changed criteria. For this purpose, we believe that RTS should only go into force 12 months after publication.

Other than the suggested inclusion of a paragraph 2, outlined above, we agree with the outlined conditions of article 1 of the RTS.

<ESMA_QUESTION_PART_1>

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

<ESMA_QUESTION_PART_2>

DBG appreciates ESMA's objective to ensure robust financial soundness of clearing members. This supports the fundamental role of a CCP in overseeing and mitigating counterparty credit risk for its participants. For this purpose, CCPs already perform comprehensive credit assessments deploying internal and independent models to ensure that only such counterparties become members, whose risk profile aligns with its requested membership type. However, while we strongly support the principle that CCPs should consider financial resources as part of admission criteria, **we have concerns regarding elements of the proposed criteria.**

As drafted, **article 2 paragraph 1 seems to conflate the objective of the admission criteria with the risk management framework of the CCP.** As part of the admission, a clearing member will not be individually tested according to the outlined scenarios via forward-looking, scenario-based tests, and performing such a test is neither feasible nor sensible. For instance, a CCP has limited to no visibility into the future portfolio composition of an applicant. Furthermore, to truly assess the ability of a clearing member to handle a specific stress event, a CCP would not only need to consider the member's activity with the CCP but would require a holistic view of the member's activities across all its counterparties. Accordingly, such factors are impossible to consider during onboarding and should therefore not be considered as part of the CCP admission criteria.

Instead, **the CCP's risk management framework**—including margining, stress testing, and default management—**protects against these scenarios on an ongoing basis.** Margin add-ons, for example, can address increased wrong-way risk dynamically. We therefore strongly recommend ESMA to remove the references to any scenarios in relation to the financial resource assessment.

We agree that the member's creditworthiness assessment shall be based either on information provided by the clearing member or publicly available sources as outlined in paragraph 3. However, the current wording 'where necessary' seems to suggest that it would be preferable to receive information from the client directly. If documents are publicly available (for example financial statements) it is operationally less burdensome for the CCP and clearing member alike, if the CCP uses the public information. Accordingly, we recommend using more flexible language.

In addition, **the requirement that the creditworthiness assessment 'shall not fully rely on external opinions' should be reconsidered.** To be clear, most membership types of Eurex and ECC utilize advanced credit risk models to conduct independent credit risk assessments for all

members. However, as stated in our introductory statement, CCPs have designed membership models that reduce the counterparty credit risk CCPs face towards the respective member to a minimum. We therefore support a proportionate approach regarding the admission criteria for such membership types. While we understand that this proportionality is already envisaged by ESMA in the RTS and as outlined, we recommend that the proportionality should be explicitly stated in article 1 of the RTS, we believe that for the membership types that reduce counterparty risk to a minimum, external opinions should suffice. This approach could be particularly relevant for access to trading and clearing certificates under the EU Emissions Trading System.

Finally, we wish to emphasise the constraints on how thoroughly a CCP can review the specified criteria. Regarding paragraph 2, the access to reliable credit, liquidity and FX facilities is difficult for the CCP to verify on an ongoing basis. While a CCP may request confirmation from a clearing member that such facilities exist, it will be impossible to know whether such facilities remain available or have already been used in other contexts. In addition, we generally agree that a CCP should take into account the relationship of a clearing member with its group, both in terms of support received and in terms of potential liabilities. Regarding the operational dependence, however, it should be clear that a CCP should not perform in-depth review of group internal outsourcing relationships. Instead, it should be sufficient that a CCP requires that the clearing member has adequate measures in place to manage risks with internal or external outsourcings. |

<ESMA_QUESTION_PART_2>

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

<ESMA_QUESTION_PART_3>

|We agree that clearing members should maintain adequate operational capacity to ensure the safe and efficient functioning of clearing services. However, we believe the proposed requirements in article 3 should be applied in a proportionate and risk-based manner. Specifically, we recommend a staggered approach: clearing members that are already subject to regulatory requirements, such as DORA in the EU, should not be subject to additional criteria defined in the participation requirements of CCPs. These entities are already required to meet stringent operational resilience standards enforced by competent authorities. Additional verification by CCPs would be duplicative, burdensome and would not provide meaningful risk mitigation. In this context, paragraph 6 requires urgent revision, as the current wording seems to imply that CCPs need to confirm that clearing members comply with DORA, hence, that CCPs must audit the DORA compliance of their clearing members.

For the sake of legal certainty, we propose to clarify in the text that the scope of the requirements under paragraph 1(a)-(e) and paragraphs 2-5 is limited to clearing members not subject to DORA

or comparable requirements. For those counterparties, however, a proportionate approach should nevertheless be established. While clearing members should confirm operational capacity in their due diligence questionnaires, a CCP cannot verify operational capacity for clearing members on an ongoing basis. For example, verifying IT system readiness or resilience would potentially require extensive on-site inspections. As a result, CCPs would have to build up capacities comparable to cyber resilience audit firms. While CCPs already have the capability to perform inspections, they are carried out on a sample basis and do not reach the same depth as dedicated cyber resilience audits would.

In this context, we would like to reiterate the danger that the current RTS wording could be interpreted in a way that turns the CCP into a de facto regulator of its clearing members or into part of the clearing members lines of defence. The extensive set of criteria established in article 3 has the potential to cause such outcomes and, as a result, warrants revision. We therefore recommend removing or amending paragraphs 2 - 5, which specify the requirements outlined in paragraph 1, as paragraph 1 already contains sufficient detail. As drafted, we see the following challenges with these paragraphs:

- Paragraph 2: CCPs confirm a clearing member's ability to interact effectively with CCP systems during onboarding. This is achieved by granting access to a simulation environment, which allows members to test connectivity and confirm readiness before going live. In addition, clearing members are required to confirm that their systems are operational and that they will inform the CCP in case of any changes. However, the criteria in the third sentence of paragraph 2 seems to imply that a CCP should become part of the IT change process of its clearing members and potentially of independent software vendors (ISVs). Considering that CCPs may have hundreds of clearing members this would be overly burdensome and furthermore not necessary. CCPs already offer simulation environments that clearing members can use to self-assess and ensure the functioning of their systems.
- Paragraph 3: Requiring the CCP to actively verify the cited backup systems would introduce immense operational complexity and therefore also increased operational risks. If this requirement is maintained, it should be sufficient for CCPs to obtain confirmation from clearing members via due diligence questionnaires that they have such facilities in place and that they regularly conduct their own tests.
- Paragraph 4: Eurex and ECC already include in their clearing conditions the requirement that clearing members have staff with sufficient knowledge and expertise. However, as the paragraph is currently drafted, it may lead to CCPs having to not only conduct exams but also review the clearing member's staff's training plans.
- Paragraph 5: While it is agreeable that a CCP receives confirmation that its clearing members have operational risk frameworks and business continuity procedures in place, the current wording may imply that the CCP should receive and review the internal operational risk management procedures and policies of its clearing members. As outlined, especially

where clearing members are already subject to respective regulatory requirements, this does not only seem burdensome for CCPs and clearing members alike, it would also have limited added value.

In addition, as outlined in our response to question 1, CCPs should be able to design membership types that do not require consideration of all outlined admission criteria, if the respective risks are already mitigated by the design of that membership type. We consider such an approach as in line ESMA's objectives of promoting fair and open access and avoiding unnecessary compliance costs for CCPs under this RTS.

<ESMA_QUESTION_PART_3>

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

<ESMA_QUESTION_PART_4>

The licence of a clearing member is and should remain an essential part of the admission criteria of a CCP, as a regulated bank is subject to comprehensive requirements regarding its capital, risk management standards, operational resilience, etc. We therefore agree and support paragraph 1 of article 4. Furthermore, before any clearing member is onboarded, a comprehensive due diligence check is performed on that member. As indicated by ESMA, ongoing or past history of legal proceedings or of financial distress is relevant information for a CCP's decision to onboard a member. Accordingly, we also fully support paragraph 2.

We have concerns, however, regarding paragraph 3, which suggests that CCPs should consider the risk management framework and internal control systems of clearing members. As outlined in our responses to the previous questions, we are concerned that the current wording of the RTS could be interpreted in a way that turns CCPs in a de facto regulator of its members or into a part of its lines of defence. Regulated financial institutions, especially where the clearing member is a credit institution or investment firm, are already subject to comprehensive risk management obligations under sectoral legislation and supervisory oversight, including internal and external audits. It should be avoided that these requirements are duplicated by forcing CCPs to perform in depth reviews of their members' risk management framework and internal control systems.

Regarding paragraphs 4 and 5, we support that CCPs review the regulatory framework of jurisdictions that they onboard clearing members from and that clearing members confirm that they can and will fully comply with the rules and regulations of the CCP. Legal opinions commissioned by the CCP focus on the enforceability of the main principles of the CCP's rulebook, including its default procedure in the respective jurisdiction of the clearing member. CCPs and clearing members establish contractual relationships based on good faith, affirming that both the execution and fulfilment of such agreements are in full compliance with all applicable laws and regulations. Further requirements to consider the ability of the clearing member to fulfil and the CCP to enforce all

obligations and legal requirements seems excessively broad. Instead, we recommend that a CCP considers in its admission criteria the general enforceability of its legal framework in the jurisdiction of the clearing member, in particular regarding segregation models, obligation to deliver margins and contributions to the default fund, default management rules as well as porting mechanisms.

Finally, we support that CCPs consider due diligence and anti-money laundering considerations in their admission criteria, as outlined in paragraph 6. However, it should be clear that this only covers CCP's performing their own respective processes but does extend to CCPs reviewing the client due diligence and anti-money laundering frameworks of their clearing members or the respective regulations in other jurisdictions. |

<ESMA_QUESTION_PART_4>

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

<ESMA_QUESTION_PART_5>

|We respectfully disagree with ESMA's chosen approach and believe that a separate article for access criteria covering clearing members that offer client clearing is not required. As outlined in our response to question 1, we believe that a CCP should assess whether the access criteria outlined in the RTS apply to the respective membership type. Regarding clearing members that offer client clearing, such an assessment would likely come to the result that most if not all outlined conditions apply. This includes extensive requirements in regard to financial resources; operational capacity and the requirement to be a financial institution. The proposed criteria under article 5, however, seem to confuse the role of the risk management framework of the CCP in comparison to its access criteria.

We don't believe that a CCP should or that it even can assess the future activity of a clearing member as part of the onboarding. A CCP will not be able to assess the relative significance of client versus proprietary clearing and, even if this would be checked, the proportions would be dynamic and could change quickly. If such checks were part of the admission criteria, it is unclear how the CCP would be expected to react in regard to the clearing member's membership status in case the relative importance of client clearing changes. Therefore, it is up to the CCP's risk management framework to ensure that the risks associated with a clearing member's accounts, including client accounts, are dynamically managed. Capital requirements and margining are dynamically scaled to reflect the clearing member's overall exposure, which includes both proprietary and client positions. This approach ensures that clearing members have sufficient resources to meet margin obligations, including in the event of a client default. Accordingly, such condition should not be part of the participation requirements.

In addition, clearing members that offer client clearing services are financial institutions subject to stringent risk management requirements. It therefore seems duplicative to require the CCP to consider the risk management framework of its clearing members and as outlined in our previous responses, may give the CCP a de facto regulator status. In this context, we would like to highlight that Article 37 (3) EMIR, which covers requirements in regard to client clearing, is addressed to clearing members directly, not to CCPs, and contains no reference to a CCP's admission criteria.

Finally, regarding point (c) ESMA indicates that the proposed requirement should further support portability of client accounts. It is already customary that CCPs require identification of segregated clients at on-boarding. This ensures that valuable time isn't lost during a clearing member default to heighten the chance of successful porting. However, it is unclear how the requirement would support porting of clients in net omnibus segregated accounts (NOSA). As NOSA porting could only function at the aggregated account level, not the individual client, the individual identification by the CCP after a default would be of little value. With regard to monitoring and managing relevant concentrations of risk related to client transactions, CCPs' risk management framework takes this into consideration depending on the segregation model and independent of whether the client is identified to the CCP or not. |

<ESMA_QUESTION_PART_5>

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

<ESMA_QUESTION_PART_6>

|DBG supports the principle of robust governance for sponsored models. At Eurex, the responsibilities between CCP, clearing member and sponsor are already defined in a tri-party agreement, which governs the relationship between the sponsored member, the clearing agent, and the CCP. This agreement ensures that roles and obligations are clearly established and remain effective under normal and stressed market conditions, including in the event of a default.

However, we have reservations regarding paragraph 1 point (c). While we understand ESMA's intention is to enable CCPs to take back-up arrangements into account, we don't see the practical applicability of this consideration. If a CCP was concerned with a particular membership application, it is unlikely that it would onboard that member solely because that member has a back-up arrangement in place. Furthermore, we are concerned that the article may imply that back-up arrangements are expected. EMIR does not mandate back-up clearing arrangements for clients, and the same principle should apply to sponsored models. Sponsored members should retain the flexibility to choose their preferred contingency approach, including the option to liquidate positions in the event of a clearing agent default. This is a valid and practical choice that aligns with current regulatory standards and market practice.

As outlined in our response to question 5, we disagree with the criteria outlined in article 5. Hence, we also do not see the need for the proposed article 6 paragraph 2 point (b). |

<ESMA_QUESTION_PART_6>

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

<ESMA_QUESTION_PART_7>

As stated in response to the previous questions, we support the flexible approach ESMA has chosen, allowing CCPs to maintain admission criteria per product cleared, membership type and clearing member type. We would however appreciate if this flexibility was stated more explicitly in the articles themselves. Hence, a CCP should be able to design access models that reduce the risk associated with an NFC to allow the CCP to not reflect all elements set out in Articles 1 to 6 of the RTS in its participation requirements. In accordance with the draft recitals and the wording from the consultation paper (Sec. 4.7.3 – 64) we therefore concretely suggest the following:

“7 - Additional requirements in relation to non-financial counterparties

When establishing admission criteria with respect to non-financial counterparties, a CCP may consider alternative elements than the elements set out in Articles 1 to 6 of this Regulation, in particular the following elements: [...]”

Regarding the specific proposal of article 7 paragraph 1, we welcome the flexibility to use alternative collateralisation arrangements for NFCs. |

<ESMA_QUESTION_PART_7>

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

<ESMA_QUESTION_PART_8>

From a practical perspective, the requirement to assess whether an NFC is subject to other regulatory frameworks—such as sector-specific regulations in energy markets—is reasonable and aligns with existing practices. DBG expressly welcomes the provided clarification in article 7 paragraph 1, lit (b). A derogation to article 4 (1) is crucial and should be maintained in the RTS. It allows EMIR-regulated CCPs to continue established clearing and settlement services in sectors with non-financial counterparties, where required by sector regulation (e.g. nominated electricity

market operator (NEMOs), central counterparties and shipping agents under CACM Regulation; Auctioneers under the Auctioning Regulation for EU Emissions Allowances or national emissions (nEHS) and guarantees of origin trading). We provide further background on the regulatory requirements under CACM Regulation and resulting membership types at ECC for this specific member group in the attachment. Recognizing these frameworks as part of the CCP's assessment avoids unnecessary duplication, regulatory incompatibility and discrimination of EMIR-regulated CCPs. Providing access for these arrangements in the form of a specific clearing member category supports market access while maintaining robust risk controls. Therefore, ECC particularly advocates for

1. a clarification in the RTS on Art. 37 EMIR 3.0 that the CCP membership ban does not apply to the regulated activities of "cross-CCP" transactions between a CCP and a CACM central counterparty, and
2. a design of membership criteria, which takes the requirement of "[...] efficient clearing and settlement arrangements avoiding unnecessary costs and reflecting the risk incurred" in power spot markets into account.

At the same time, the RTS should clarify that the absence of such a regulatory framework should not automatically preclude NFC participation or that this consideration may not be relevant for all markets or membership types. CCPs should retain discretion to admit NFCs based on their risk profile and the enforceability of CCP rules. |

<ESMA_QUESTION_PART_8>

Annex to DBG's response to the ESMA consultation on CCP Participation Requirements – Membership Type Examples

As outlined in the Deutsche Börse Group response to ESMA's consultation on the CCP Participation Requirement RTS, CCPs are not limited to setting strict access criteria to mitigate risks stemming from clearing members. CCPs can also limit risk by designing membership types or access to certain products which align with an entity's risk profile. As a result, CCPs enable non-financial counterparties (NFCs) to access central clearing, thereby strengthening the overall EU clearing system without introducing new risks.

In order to ensure that the new participation requirement RTS does not introduce barriers to such membership types, we believe that a CCP should tailor its admission criteria to its specific risks and the risk profile of the type of product cleared, the type of membership and the type of clearing member, for example. To support such a proportionate approach, ESMA could require CCPs to perform an applicability assessment for each criterion outlined in the RTS for each membership type the CCP offers.

Below, we would like to outline based on two examples how Eurex and ECC have created membership types that allow non-financial counterparties (NFCs) access to central clearing while effectively managing the associated risks. NFC market access may be crucial for such counterparties while also strengthening the liquidity of the market overall. As outlined in the below, the respective membership types allow for tailored admission criteria

A) Eurex ISA Direct Light

Eurex Clearing created the ISA Direct Light license for corporates with strong cash reserves, allowing them to earn additional income by participating in reverse repo transactions. Due to the specific needs that corporates have to access the repo market, Eurex Clearing implemented measures that effectively minimize counterparty risk and thereby allow for simplified admission criteria.

In particular, the following measures were implemented:

- 1) **Product limitation:** Under ISA Direct Light, the ISA Direct Light clearing member can only clear Eurex Repo transactions. In addition, the ISA Direct Light clearing member can only act as net-cash provider, ensuring that the protection measures under ISA Direct Light, particularly the pledge back requirement with respect to the deal securities (see below), remain applicable.
- 2) **Pledge back of Deal Securities:** The ISA Direct Light clearing member is required to pledge back all deal securities it receives under its cash provider transactions to Eurex Clearing. Such pledges secure all claims Eurex Clearing may have against the ISA Direct Light clearing member with respect to all cleared Eurex Repo transactions relating to such clearing member. As a result, the ISA Direct Light clearing member is not subject to a margin requirement or a default fund contribution requirement, as Eurex Clearing is sufficiently protected by the pledge back requirement.
- 3) **Special Default Management Process:** The extended scope of eligible entities and the relief of the margin and default fund contribution requirement is justified by the special default management process. In case of the default of an ISA Direct Light clearing member, the following special features apply:
 - Open Eurex Repo transactions do not form part of any contractual netting set.
 - Further, such Eurex Repo transactions are not subject to any close-out netting mechanism.
 - Instead of a termination of the Eurex Repo transactions in a default, the term leg of each Eurex Repo transaction is accelerated and all obligations of the ISA Direct Light clearing member and Eurex Clearing under such transactions shall become immediately due.
 - If the ISA Direct Light clearing member does not retransfer the deal securities, Eurex Clearing is entitled to enforce the pledge.

The main advantage of this structure is that Eurex Clearing receives the deal securities back. This allows Eurex Clearing to make replacement transactions and restore a matched book after an ISA Direct Light clearing member defaults. Due to the retransfer obligation of the defaulted ISA Direct Light clearing member, which is protected by the pledge, Eurex Clearing is not required to purchase the deal securities on the market or via auctions.

Based on the above, we firmly believe that ESMA should maintain the flexibility for CCPs to design admission criteria tailored to the specific membership type. For ISA Direct Light, for example, it would be of little value to consider whether a clearing member possesses adequate financial resources to meet increased margin calls (Article 2 (1) of the draft RTS) as ISA Direct Light clearing members are not required to post any margins.¹ A full overview of the different Eurex clearing member types can be found the Eurex website: [Becoming a Clearing Member](#).

B) ECC DCP Clearing Member Model

Introduced in 2016, the DCP Clearing Member model (DCP model) specifically targets energy and energy-related spot markets. The primary motivation behind the introduction of this model is to address a common challenge faced by companies interested in participating in commodity spot markets: finding a suitable clearing member. Due to the comparatively small size of the business volumes among small and medium-sized companies, it is difficult for market participants to find a respective clearing bank at reasonable costs. For many companies, the DCP model is the only feasible option to access spot markets cleared by ECC.

Currently, ECC has granted approval to more than 300 companies as DCP Clearing Members (DCP).

1. Risk Management

Access Restrictions

Certain minimum requirements must be fulfilled by a company to be admitted as a DCP:

- Only non-natural persons can be admitted;
- Equity of at least EUR 50,000;
- The company must be based in a country approved by ECC for the DCP model. To determine DCP eligibility, ECC, with the assistance of external law firms, verifies whether the country's specific insolvency proceedings allow for the enforceability of

¹ Eurex instead has implemented more simplified financial resource conditions, asking members to confirm that they exceed at least two of the following thresholds:

- | | |
|----|---|
| A) | Balance sheet total: EUR 25 000 000 |
| B) | Net turnover: EUR: 50 000 000 |
| C) | Average number of employees during the financial year: 250. |

the ECC Clearing Conditions in the event of a member's default, particularly concerning payment finality.

- Strict Know Your Customer (KYC) requirements apply to all participants.

Trading Limit

Unlike other ECC access models, the DCP model does not rely on margin calculations. The default risk for ECC is excluded by only permitting the DCP to conclude transactions within the boundaries of a specified financial pre-trade limit in the respective trading system. This pre-trading limit must be collateralised by the DCP in advance with collateral accepted by ECC.

The DCP's total limit – i.e. the sum of all individual financial trading limits across trading systems – is restricted by the lower of the following:

- Collateral Limit, calculated based on the collateral provided by the DCP
- Credit Limit, based on the financial strength of the DCP

This methodology ensures that the granted limit is always fully secured by accepted collateral. Additionally, the total limit – even if fully covered by collateral – is restricted by the risk profile of the member which is reflected in the Credit Limit.

Default Management

The regulations on default according to the ECC Clearing Conditions (section 3.8) implement the requirements of Art. 48 EMIR and apply to DCPs in the same way as to Institutional clearing members.

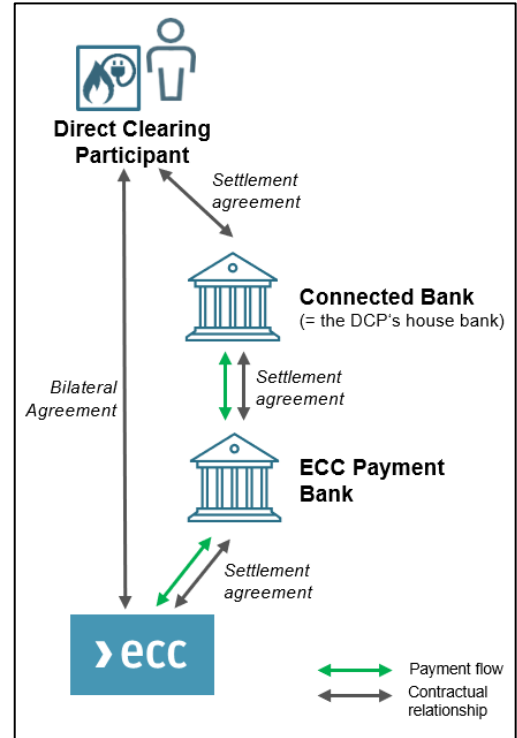
In the event of a default (i.c.w. section 3.8.1 ECC Clearing Conditions) or a technical default (i.c.w. section 3.8.2. ECC Clearing Conditions), the DCP is immediately suspended from all exchange trading activities via the Emergency Member Stop Process.

2. Financial Settlement

Financial settlement with DCPs is conducted via a commercial bank serving as the settlement bank of ECC (“ECC Payment Bank”) and a settlement bank of the member, that needs to be connected to the ECC Payment Bank (“Connected Bank”).

This infrastructure is used for daily settlement of concluded spot market transactions, adjustments to cash collateral, and fee settlement. Daily transaction settlement is conducted in the currency of the underlying traded product, i.e. EUR or GBP. ECC initiates debit and credit payments between the ECC Payment Bank account and the members’ Connected Bank account on every T2 Business Day for EUR, and on every ECC Business Day that is not a UK bank holiday for GBP.

For overnight cash storage, EUR cash collateral provided by the member to ECC is transferred to ECC’s T2 account. GBP cash is transferred to ECC’s account with Deutsche Bank London.



3. Available Markets

The DCP model is available for spot products in power and natural gas, as well as guarantees of origin certificates for power and biogas products. Additionally, the DCP model provides access to the German national emissions trading system (nEHS). The DCP model is available for trading on several exchanges: EPEX SPOT, BSP Energy Exchange, European Energy Exchange, SemoPX and HUPX.

Outlook:

ECC envisaged to extend the DCP model to emission certificates as part of the EU Emission Trading Scheme 2 (EU ETS2). EU ETS2 is set to take effect at the beginning of 2028. EU ETS2 is estimated to cover approximately 11,000 companies, requiring them to hold emission certificates for their CO₂ emissions resulting from fuel combustion in buildings, road transport, and other smaller sectors not yet covered by EU ETS1. According to the principles for the auctioning of allowances defined by the European Commission, auctions shall be designed to ensure that small and medium-sized enterprises covered by EU ETS2 have full, fair and equitable access and that small emitters are granted access.

Due to the changes in system design and applicability of EU ETS2 compared to EU ETS1, several thousand SMEs are anticipated to be newly covered by EU ETS2. Relying solely on major banks licensed as institutional clearing members may not offer sufficient market access opportunities to them. Therefore, a direct access model, such as the DCP model, is expected to play a crucial role in granting compliance-obliged companies EU-wide direct or indirect access to auction platforms and CCPs.

ECC has previously encountered similar situations during the introduction of the German national emission trading scheme, where the DCP model played a pivotal role. For the period of a fixed price allocation more than 200 compliance-obliged participants successfully onboarded at ECC as DCPs for this market segment directly. Additionally, many companies subject to compliance requirements gained access to the nEHS (national German Emission Trading Scheme) market through the 15 intermediaries approved as DCPs.

C) ECC Market Coupling Counterparty membership model

Providing clearing and settlement services for various partner exchanges in European power spot markets ECC also facilitates clearing and settlement with other coupled power spot exchanges or their central counter parties under CACM Regulation (Commission Regulation (EU) 2015/1222). These arrangements are needed to operate European Market Coupling. As an EMIR-regulated CCP, which operates its power spot business under the same regulated entity, ECC has to meet energy market and financial market regulations at the same time.

Clearing and settlement of power spot transactions between different power spot exchanges (certified as “Nominated Electricity Market Operators”, NEMO) is governed by the provisions in Art. 68 and 77 CACM Regulation. In its role as a CCP and shipper acting for several partner exchanges under CACM Regulation, ECC has to meet the following requirements:

- *Art. 68.3. “Central counter parties shall act as counter party to each other for the exchange of energy between bidding zones with regard to the financial rights and obligations arising from these energy exchanges.”*
- *Art. 77.2. “The central counter parties and shipping agents shall seek efficient clearing and settlement arrangements avoiding unnecessary costs and reflecting the risk incurred. The cross-border clearing and settlement arrangements shall be subject to approval by the relevant national regulatory authorities.”*

ECC has implemented so-called “Settlement Links” for the exchange of energy with other market coupling counterparties (MCC). ECC requires MCCs’ contributions to ECC’s Default Fund in accordance with Art. 42 EMIR in conjunction with Art. 29-31 Commission Delegated Regulation (EU) No 153/2013.

ECC has implemented this requirement by the mentioned MCC membership model with the MCC becoming either a Non-Clearing Member of ECC (with a Clearing Member of ECC) or by a joint MCC Settlement Bank being a Clearing Member of ECC, which pledges to guarantee for the MCC’s payments as if it was a Clearing Member of ECC.

A third option allows for direct settlement between the MCC and ECC. Whilst ECC’s concept for the direct Settlement Link was motivated by onboarding CCP.A, an EMIR-licensed CCP for the purpose of exchanging power spot transactions only, the concept laid down a general approach for direct financial settlement and collateral management between ECC and its MCCs.

Given the above-mentioned requirements on “[...] *efficient clearing and settlement arrangements avoiding unnecessary costs and reflecting the risk incurred.*” several CACM central counter parties to which ECC has to maintain a relationship for the settlement of cross-CCP transactions refuse to bear the costs and limitations of a Non-Clearing Membership or a Settlement Bank, which is a clearing member of ECC. Moreover, MCCs as price takers in power spot auctions are unable to adhere to pre-trade limits and refuse to directly contribute to ECC’s Default Fund. Hence, ECC has been obliged to establish alternative payment solutions and risk mitigating measures.

ECC further develops its MCC model with a direct clearing membership (MCC Clearing Member), direct payment (ECC Payment Bank / Connected Bank) using the DCP payment infrastructure and direct collateral provision. This is strictly limited to the exchange of cross-CCP transactions in European Market Coupling according to CACM Regulation.

The continuation and evolution of the Market Coupling Counterparty membership model as a specific category for the clearing and settlement of power spot transactions with other *NEMOs*, their *central counter parties* or *shipping agents* is of utmost importance for ECC and other CCPs operating European Market Coupling.