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# The Swedish Securities Markets Association's, Finance Sweden's and the Nordic Securities Association's response to the ESMA consultation on Conditions of the Active Account Requirement

The Swedish Securities Markets Association is a trade association representing the interests of investment firms active on the Swedish securities market.

Finance Sweden is a trade association representing banks and financial institutions established in Sweden.

The Nordic Securities Association is composed of the Danish Securities Dealers Association (Børsmæglerforeningen), Finance Finland (Finanssiala ry), the Norwegian Securities Dealers Association (Verdipapirforetakenes Forbund) and the Swedish Securities Markets Association (Föreningen Svensk Värdepappersmarknad).

In this document, the Swedish Securities Markets Association, Finance Sweden and the Nordic Securities Association are collectively referred to as the Associations.

**Question 1: Are there any aspects of the AAR scope on which ESMA has based its quantitative analysis and its policy choices that ESMA should consider detailing further?**

The Associations would like to express their gratitude towards ESMA for setting up a well-structured consultation document quickly and ahead of the entry into force of EMIR 3.0, thus giving market participants more time to analyse and respond to the proposed level 2 requirements. We also appreciate ESMA's efforts to clarify some issues in regard of the scope of the active account requirement (AAR).

**Groups**

The Associations welcome ESMA's proposal that the AAR could be fulfilled by one entity within a group subject to consolidated supervision. We understand from paragraph 40 that it is possible for one entity within a group to fulfil the operational, representativeness and reporting requirements. Such an approach would be very helpful, as we note that groups have different approaches to trading and clearing of derivatives. Some of them may be subject to the intragroup exemption and have one entity doing all the clearing with external counterparties and then entering back-to-back transactions with other entities within the

group. In this case, there would only be one counterparty in scope of the AAR. Other groups that do not use the exemption may have their subsidiaries as clients or have a clearing arrangement with an external clearing member. In that case, and absent ESMA's proposal that one entity can fulfil the AAR, one unintended consequence may be that all subsidiaries that trade the derivative contracts in scope would have to open an active account even if they do not exceed the second clearing threshold set out in Article 7.a(1). The reason for this is that they need to, in determining their obligations under article 7a(1), consider all derivative contracts in scope of the AAR that are cleared by that counterparty or by other entities within the group to which that counterparty belongs. This would not only distort competition between groups that have different approaches to their clearing activities but also lead to a stricter clearing regime for some of those entities, and we do not think that this is the intention of the legislators, given EU's intensified focus and efforts to build up the Savings and Investments Union.

**Short Term Interest Rates (STIRs)**

We are grateful for the clarifications addressed with respect to the AAR but are concerned that they are presented in a consultation paper that has no legal status. We propose that ESMA addresses these clarifications in a consistent manner and by regulatory means, for example via Q&A or other level 3 measures. This is particularly important for the STIRs in scope of the AAR.

**Question 2: Do you agree with the above approach for condition (a)? Are there other requirements that ESMA should consider for meeting condition (a)?**

The Associations note that the level one text refers to processes, while Article 1 of the draft RTS requires counterparties to set up policies and procedures, which is more burdensome and seems to go beyond the requirement in EMIR 3.0. Clearing members and clients providing clearing services already have well-established processes for setting up and accessing accounts and for onboarding clients. They should be able to use those and not have to set up new ones, just for one particular, or potentially a few, CCPs. There seems to be support for such an approach in Recital 3, but this should also be reflected in article 1. We provide some drafting suggestions to that effect below, especially emphasizing that counterparties should not have to *establish* all the requirements in Article 1 but to *have* them in place, which many counterparties already do.

We note that ESMA, in paragraph 67 in the consultation paper, in line with Article 37 of EMIR, distinguishes between the operational capacity and the financial resources of a clearing member, and therefore finds that 'operational capacity' in the context of the RTS should not include the financial resources of the clearing member. This approach is however not

reflected in the draft RTS, and we therefore propose to align the requirements in the RTS with the intention described in paragraph 67.

If the requirements in the draft RTS are kept, we would like to highlight that some counterparties will only be subject to the operational requirements. Requiring them to have sufficient financial resources on their cash and collateral accounts is too burdensome for those counterparties and might not be meaningful.

We also want to highlight that IT-connectivity with clients may look very different, depending on the clients' preferences. Some of them just want a pdf statement from their clearing member. Counterparties should be able to use existing processes and not be required to establish new connectivity just for one, or potentially a few, CCPs and a subset of clients subject to the AAR.

Article 1
In order for the counterparties subject to the obligation set out in Article 7a(1) of Regulation (EU) No 648/2012 to meet the condition referred to in Article 7a(3), point (a), of Regulation (EU) No 648/2012, the counterparties shall **have** ~~establish~~:
a) a contractual arrangement with an authorised CCP, a clearing member or a client providing client clearing services in the categories of derivative contracts referred to in Article 7a(6) of Regulation (EU) No 648/2012 at an authorised CCP;
b) internal **processes** ~~policies and procedures~~ to access the clearing services of an authorised CCP, directly or indirectly via a clearing member or a client providing client clearing services;
c) cash and collateral accounts, with sufficient financial resources to meet the obligations arising from the direct or indirect participation in an authorised CCP; and
d) an IT ~~system with~~ connectivity to an authorised CCP, a clearing member or a client providing client clearing services.

**Question 3: Do you agree with the above approach for conditions (b) and (c)?**
The Associations understand that the intention of the co-legislators was for the operational conditions to be less burdensome for counterparties that do not have to fulfil the representativeness obligation. This is also reflected in Recital 13 of EMIR 3.0, which emphasizes that the novelty of the AAR and the need for market participants to gradually adapt to it should be properly taken into account. We need to be mindful of the potential consequences for counterparties and the EU financial markets of making the AAR too complicated and setting too high a benchmark.

**Volume increase**

The Associations want to highlight that the transfer of open positions between two CCPs is not possible. To migrate positions, counterparties would need to close their open positions at a Tier- 2 CCP and open equivalent new positions at an EU CCP. This adds a lot of complexity, which the threefold volume increase proposal does not take into consideration.

Depending on the structure and complexity of the portfolios, counterparties may not be able or willing to replicate them. They would need to find counterparties at a Tier-2 CCP to do offsetting transactions to close their positions and then they would need to find other counterparties at an EU CCP, to enter new transactions. Therefore, it is more likely that counterparties would reestablish their overall risk positions at an EU CCP rather than replicating all the transactions held at a Tier-2 CCP. From that perspective, the threefold increase within a limited timeframe of a month is neither realistic nor feasible. The RTS should address these issues and clarify that the volume increase refers to the overall risk position and not to transactions.

**Dedicated staff member**

The requirement to appoint a dedicated staff member to support the functioning of clearing arrangements with *one* CCP, is burdensome and unproportional and we suggest deleting the proposal. Counterparties already have staff in place to handle all stages of the clearing process and should be able to rely on existing staff, especially as they are trained and skilled to handle the clearing processes at CCPs to which those counterparties have larger exposures than to an EU CCP. In addition, level 1 does not envisage a dedicated staff member. However, if the requirement to have a dedicated staff member is ESMA's interpretation of the requirement in Article 7a.(3)(b) of EMIR to have *resources* available to be operationally able to use the account, we suggest that counterparties should be allowed to appoint a team instead of an individual. This would reduce the dependence on a single individual and provide a human resource pool with various skills, expertise and seniority.

**Written statements**

The requirements to receive the written statements from the CCP are to be met by the counterparties subject to the AAR. One issue that needs to be clarified and addressed in this regard, is how counterparties would fulfil the requirements, if the CCP would not provide them with these statements.

In addition to the lack of clarity regarding situations where the CCP would not provide a written statement, the process to transmit such statements through the whole chain of counterparties is too administrative burdensome and time consuming. A more straightforward

and pragmatic approach would be if counterparties could delegate to the CCP to transmit the written statements via the central database that ESMA is mandated to establish. Such a process would alleviate the administrative burden for national competent authorities (NCAs) to transmit the information without undue delay to ESMA. In addition to that, it would have the advantage of the statements reaching the NCAs and ESMA simultaneously, as NCAs have direct access to the database.

**Question 4: Do you agree with the proposed approach for the annual stress-testing conditions (a), (b) and (c)?**

The Associations do not agree with the proposed approach for the annual stress-testing conditions.

The requirement in condition (a) is to ensure that the active account, which is held at an EU CCP, is permanently functional. It is this technical functionality and the stress-testing thereof that are in scope of condition a) – not the IT-connectivity between the clearing member and the client, and to our understanding requiring this would go beyond level 1. We understand that ESMA interprets this requirement to target both clearing members and clients. We would however like to raise the following points. In the level 1 text, there is a requirement to stress-test, but it does not point out who should perform the stress-testing. To align with the obligations of condition a), it should, to our understanding, suffice that the stress-testing is performed by the CCP for all accounts. That way, the client would fulfil its obligation to have a permanently functional active account, but it would do so via the clearing member, just as it accesses the clearing services of a CCP via the clearing member.

Clearing members should not be required to conduct stress tests with their clients, given that the IT connectivity that may exist between clearing members and their clients may vary (as pointed out in our answer to Q2). More importantly, stress-testing the IT connectivity between the clearing member and the client will not demonstrate the functionality of an account that is maintained at the CCP, which is what level 1 requires.

The proposed approach for conditions (b) and (c) is of great concern to us.

ESMA proposes to simulate an increase of clearing activity in the relevant derivative contracts of up to 85% of the total outstanding clearing activity of the counterparties in the derivative contracts in scope, published on ESMA's website.

It is not clear to us:

1. how the clearing activity is being measured and
2. why ESMA has chosen the figure (85 %) from the exemption test, as there seems to be no correlation between these two. These points would merit some clarifications.

If the intention is to measure the clearing activity by transferring the open positions line item by line item, we want to reiterate again that moving positions from one CCP to another is not possible and the stress-test should not be built around such assumptions (please refer to our answer to Q3). We welcome that ESMA proposes to harmonize the stress-test but the 85 % figure is neither appropriate nor realistic and should be lowered substantially, as it seems to imply a scenario that goes beyond extreme. As mentioned before, in the unlikely event that a stress-event at a Tier-2 CCP would force counterparties to close their positions at that CCP and re-establish them with an EU CCP, they would most likely replicate their overall risk position and not their individual trades.

**Question 5: Do you agree with the differentiated frequency for the stress-testing depending on the counterparties' clearing activities? Would you suggest any other way to take into account the proportionality principle?**

The Associations would like to propose a slightly different option that we believe further enhances the proportionality and reduces the administrative burden and is in line with the mandate given to ESMA in Article 7a(8) of EMIR. Clearing members with larger portfolios could have their accounts stress tested by the CCP twice a year. However, the clearing members themselves should only be required to engage in those stress tests once a year, just like they do with the fire drills. Hence, the second stress test could be performed solely by the CCP. It is not unusual that CCPs do stress tests without the participation and engagement of clearing members, and we propose to follow this market practice.

**Question 6: Do you agree with the proposed classes of derivatives for EUR OTC IRD?**

As a matter of principle, the Associations do not agree with the division of EUR and PLN IRD into two separate services of substantial systemic importance. We understand the level 1 text as a mandate for ESMA to specify a maximum of 6 classes of derivatives in total, and we therefore recommend ESMA to reconsider the proposed classes, treat EUR & PLN IRD as a single clearing service of substantial systemic importance and hence identify a maximum of 6 derivative classes in total.

In its assessment report under Article 25(2c) of EMIR, ESMA initially identified three clearing services of substantial systemic importance to the EU or one or more of its Member States. Those clearing services were Swapclear for the clearing of interest rate derivatives (IRD) denominated in EUR and PLN and the Credit Default Swaps (CDS) service and the

Short-Term Interest Rate Derivatives service (STIR) of Ice Clear Europe for EUR denominated products. After ICE Clear Europe had closed its CDS service in the UK, there remain two services of substantial systemic importance to the EU, Swapclear for clearing of EUR & PLN IRD and Ice Clear Europe for clearing of STIRs. These derivative products are also defined as the categories in scope of the AAR. It is important to note that Article 7a(6)(a) of EMIR lists IRDs denominated in EUR and PLN together, which to us is a clear indication of them being treated as derivatives belonging to **one** clearing service of substantial systemic importance.

Looking at the representativeness obligation in Article 7a(3)(d) of EMIR 3.0, it states that a counterparty shall clear trades in the active account which are representative of the derivative contracts in scope and that are cleared at **a** clearing service of substantial systemic importance pursuant to Article 25(2c) during the reference period. Article 7a (8) mandates ESMA to specify the different classes of derivative contracts subject to a limit of three classes. Considering also Recital 14, which states that ESMA should identify up to three derivative classes amongst the derivative contracts belonging to the clearing services of substantial systemic importance, it is our understanding that ESMA is not mandated to identify more than three classes of derivatives per clearing service, in total 6 classes of derivatives. However, in its consultation paper, ESMA departs from its Article 25 (2c) assessment and deems EUR & PLN IRD to be **two** clearing services of substantial systemic importance and therefore proposes 7 classes of derivatives in total, which we believe is not in line with the mandate given by the co-legislators.

**Question 7: Do you agree with the proposed classes of derivatives for PLN OTC IRD?**
N/A

**Question 8: Do you agree with the proposed classes of derivatives for EUR STIR?**
To our knowledge, €STR options on futures are not traded in the EU. We therefore propose for options to be excluded from the scope.

**Question 9: Do you agree with the proposed maturity and trade size ranges for each class of derivatives in EUR OTC IRD?**
The Associations suggest that ESMA narrows the maturities for the EUR FRA.

**Question 10: Do you agree with the proposed maturity and trade size ranges for each class of derivatives in PLN OTC IRD?**
N/A

**Question 11: Do you agree with the proposed maturity and trade size ranges for each class of derivatives in EUR STIR?**

The Associations welcome that there is no trade size bucket proposed for the STIRs. However, we propose to reduce the maturity sizes to 2 buckets to reflect the market structure for STIRs.

**Question 12: Do you agree with the proposed number of most relevant subcategories for each clearing service of substantial systemic relevance? Do you think this should be set at a more granular level (i.e. per class of derivatives)?**

The Associations have no objections to the proposed number of most relevant subcategories. As per our response to Question 6, we do however disagree with ESMA's interpretation of the number of clearing services of substantial systemic importance and the resulting number of classes of derivatives.

We do not think there is a need for this to be set at a more granular level.

**Question 13: Do you agree with the proposed reference periods for EUR OTC IRD? Do you think the reference periods should be set at a more granular level (i.e. class of derivatives)?**

The Associations have no strong view on the proposed reference periods as such, but we do not think that it is clear how the reference periods are intended to be applied. As per our understanding, the reference periods are backwards looking, whilst meeting the representative obligation is forward-looking and is to be fulfilled on an annual average basis (cf. Articles 7a(3)(d), 7a(4) and (5) and Recital 14). It is unclear how far back market participants should look (month by month or further back) and when the reference periods start and end (e.g. each calendar month).

To ensure proportionality, the Associations would like to emphasise that forced trading with no business interest with the sole purpose to fulfil the representativeness obligation should be avoided. While we welcome the de minimis threshold provided in Article 7a(4) subparagraph 5, this does not fully address the issue.

For instance, in a scenario where an entity cleared 1 OTC FRA contract the previous 12 months, there would be one most relevant subcategory (as the others had zero trades). The entity would then need to clear one trade in that subcategory on a monthly basis resulting in an annual total of 12 trades, way above what the actual business need.

While we acknowledge that the situation described above is not intended by the legislator , we see a need of a clarification in Articles 4, 5 and 6 of the draft RTS, ensuring that the representativeness obligation should not force counterparties to clear derivative products in the EU, that they would not otherwise clear at a clearing service of substantial systemic importance, i.e. there is no business need.

In this context we would also like to raise the inappropriate situation when a counterparty during the preceding 12-month period has cleared a certain number of trades, but the business interest to clear as many, or more, trades during the following 12-month period has decreased or became null. In this situation the counterparty is forced to enter and clear trades with no business interest to fulfil the representativeness obligation.

We believe that the points described above should be taken into account, to ensure that the requirements do not distort the normal business activity or risk management and participants' behaviour on the market, in addition to creating a competitive disadvantage for counterparties in scope of the AAR.

**Question 14: Do you agree with the proposed reference period for PLN OTC IRD? Do you think that the reference periods should be set at a more granular level (i.e. class of derivatives)?**
N/A

**Question 15: Do you agree with the proposed reference periods for EUR STIR referenced in Euribor? Do you agree with the proposed reference periods for EUR STIR referenced in €STR?**
Please see our answer to question 13.

To facilitate the operational and compliance burden, the Associations would appreciate if ESMA would align the reference periods for €STR and EURIBOR STIRs to the longer ones.

**Question 16: Do you agree with the proposed approach for the reporting of the activity and risk exposures of the counterparty subject to the active account requirement?**
The Associations disagree with the proposed approach for the reporting, as we consider the proposed requirements to be disproportional. The level 1 text does not seem to envisage such detailed reporting, considering that the actual purpose of the reporting obligation is to assess counterparties' compliance with the AAR.

In that vein, we do not agree with the requirement to report UTIs and margins. Furthermore, parts of the information in the proposed templates referred to in Article 7 of the draft RTS are already reported by the counterparties as part of their EMIR reporting, and the authorities should therefore be able to retrieve it from the trade repositories. Overall, the proposed reporting framework adds considerable costs and complexity and will require counterparties to develop entirely new reporting systems. EMIR 3.0 states that ESMA should take "into account the existing reporting channels and the information already available to ESMA under the existing reporting framework, including the reporting obligation under Article 9". Even though this is stated in Article 7d, the same principle should be applied for the reporting under Article 7b. In this context, we would also like to point to ESMA's cost-benefit analysis in the consultation paper (Section 7.3.3 (a)), which states that the proposal goes further than what would be required to ensure the specific objective of assessing the AAR. In addition, we also recall the European Commission's communication regarding reduction of burdens and rationalisation of reporting requirements in the context of maintaining the competitiveness of European business. In the communication, the Commission sets a target of reducing burdens associated with reporting requirements by 25%, without undermining the policy objectives of the initiatives concerned. The Associations fully support this and believe that it is important that the communicated target is considered in all aspects of EU legislation which contains reporting requirements, including the EMIR 3.0 active account reporting.

Any duplication of reporting should be avoided, and to this end we recommend that further analysis regarding which information is already reported by the counterparties be done, and that any additional reporting related to the new provisions in EMIR 3.0 is limited to required information that is not already reported by the counterparties. Going through the tables in annex II, referred to in Article 7 of the draft RTS, we note that information such as notional, initial margin and variation margin information is already reported by the counterparties under EMIR Article 9 and should therefore be available to the authorities without additional reporting. Notional is reported on trade level and not aggregated, but the aggregation could be made by the authorities based on the available trade level reporting. Furthermore, counterparties might use inconsistent calculation methods when aggregating the data, making the data reported less reliable. If ESMA aggregates the information available to them under Article 9 of EMIR, ESMA can apply a consistent method across counterparties which increases the reliability of the data. We note that the information in point 4 in table 3 in the annex, Client Clearing Services, is not reported today; ESMA should consider a cost and resource effective way for the authorities to receive this additional information.

**Question 17: Do you consider that including information on margin activity in the AAR reporting requirement would provide valuable information on the activities and risk exposures of the counterparty?**

ESMA proposes that aggregate value of initial margin (IM) and variation margin (VM) should be reported, cumulated since the first reporting of posted margins for the relevant transactions, aggregated according to the dimensions of derivatives set out in Table 3 of Annex VIII in the draft RTS.

The Associations strongly oppose including margin information from the reporting obligation under the active account requirement. Considering that information on margins is already available through the data reported under Article 9 of EMIR, duplicating the requirement will not add valuable information on the activities and risk exposures of the counterparties under the active account requirement. Furthermore, counterparties might use inconsistent calculation methods when aggregating margins, making the data reported less comparable. If ESMA aggregates the margin information available to them under Article 9 of EMIR, ESMA can apply a consistent method across counterparties which increases the comparability of the data.

We would like to emphasize the difficulties of calculating margin information per derivative category as margin is normally exchanged and calculated on portfolio level for cleared trades. A portfolio can include different categories of derivatives. For example, a portfolio can consist of interest rates derivatives denominated in EUR and other currencies as well as other products.

CCPs rely on complex analytical frameworks when calculating IM requirements for the portfolio. Based on the margin requirements from the CCP, it is not possible for clearing members to derive exact portions of the IM requirements to specific derivatives. In order to do this, CCPs need to provide more granular information when requesting IM from their clearing members. Alternatively, clearing members can simulate the IM values. However, this will merely be a simulation and might not reflect the true IM values, and therefore, we do not consider simulated IM values to provide valuable information for regulators.

VM reflects the daily change in market value of the portfolio, i.e. the daily gain or loss due to market movements. If a portfolio is associated with a gain, VM is collected by the clearing member. Conversely, if a portfolio is associated with a loss, the clearing member posts VM. There might be a scenario where interest rates derivatives that are in scope of the AAR are associated with a gain, but the whole portfolio where those trades are collateralised under, is associated with a loss. In this scenario, the clearing member posts VM. But when only considering the trades that are in scope of the AAR, the clearing member would have

theoretically collected VM. But this would not reflect the real exchange of VM. Therefore, only considering a subset of VM in a portfolio would not reflect the true exposure of market movements that the VM covers. In order to assess the risk exposure, the VM of the whole portfolio needs to be considered.

In order to report margin information for specific derivatives, substantial system implementation is required, if even possible. These changes are not limited to clearing members, but CCPs will likely need to make changes as well. We consider that the costs associated with implementing this to be disproportional and will not reflect the true exposure that the margins cover.

Furthermore, it is not clear to us why margin data of uncleared positions are relevant in the context of the AAR.

**Question 18: Do you consider that including reporting on Unique Trade Identifiers (UTIs) would provide valuable information from a supervisory perspective?**

The Associations see little value of adding the UTIs in the reporting requirements under the active account requirement and strongly oppose including this. The information is already available through the EMIR transaction reporting. In its cost benefit analysis, ESMA acknowledges that reporting additional fields would increase the reporting cost and burden for counterparties. Adding the UTIs will neither help regulators to assess the compliance with the AAR nor help to monitor activities, risk exposures and representativeness. It will rather result in additional costs for counterparties. In paragraph 166 of the consultation paper, ESMA states that one reason to include the UTIs is that this may help detect data quality issues. The purpose of the reporting under Article 7b of EMIR 3.0 is, however, to make sure that the competent authorities have the information they need to monitor compliance with the AAR and not to monitor the data quality. We consider that the cost of including reporting on UTIs outweighs the benefits and suggest that ESMA removes this requirement.

**Question 19: Do you agree with the proposed approach for the reporting of the operational conditions?**

The Associations do not agree with the proposed approach for the reporting, as we consider the proposed requirements to be disproportional. The level 1 provision in Article 7b (1) of EMIR requires FCs and NFCs subject to the AAR obligation in Article 7a to report every six months to their competent authority, so that the authority has the information necessary to assess compliance with the obligation. In its cost benefit analysis, ESMA deems it most prudent to only require counterparties to report, where relevant, the material changes to the documentation since the last report submitted to the competent authorities confirming that

they meet the operational conditions and their stress-testing. We do, however, note that paragraph 1 in Article 8 of the draft RTS is not clear on this.

Contractual arrangements and IT-connectivity are quite static in nature and should therefore not have to be reported via written statements every six months. Instead, counterparties should only have to report any material changes to the contractual arrangements and to the IT-connectivity, similarly to the proposed requirement regarding internal policies and systems in Article 8(1) (b). To fulfil the reporting requirement in level 1, in case there has been no material change since the last report, it should be sufficient to confirm this to the authorities. We also note that counterparties below the 100 billion threshold, are only required to stress-test annually, but still have a requirement to report every six months, which might be difficult to fulfil.

In regard of policies and procedures, dedicated staff member, large flows of transactions and the process with written statements, we refer to our answers to Q2, 3, 4 and 5. The corresponding amendments should be made in the reporting requirements in Article 8.

**Question 20: Do you agree with the proposed approach for the reporting of the representativeness obligation?**

The Associations do not agree with the proposed approach for the reporting of the representativeness obligation.

Article 9(1) b of the draft RTS requires the counterparties to report information on the gross and net notional amounts cleared, and the number of trades cleared, in each of the subcategories in accordance with Articles 4 to 6, per class of derivative contracts and per reference period at a recognised third-country CCP. In the level 1 text the reference is however to Tier 2 CCPs, not third-country CCPs. Hence, the provision in the draft RTS should be amended.

There should be no need to report the list of UTIs (Article 9(1) b of the draft RTS), as information about UTIs is already available through the existing EMIR reporting.

**Question 21: Do you agree with the proposed approach to standardise the reporting arrangements under the active account requirement?**

The Associations are in favour of harmonisation and standardisation of the reporting arrangements under the AAR. If, for example, NCAs have different arrangements and methods, this would increase the reporting costs and burden for counterparties that report to multiple NCAs.

We would like to emphasize that counterparties cannot start to report in accordance with Article 7b of EMIR until the RTS is in force. ESMA also highlights that additional guidance may be published to address the data standards, formats, and the methods and arrangements for reporting to NCAs and subsequently to ESMA. Ideally, such guidance should also be in place before the counterparties begin their reporting. It is therefore important that all of the above is published in a timely manner before the first submission of data to competent authorities occurs so that counterparties have sufficient time to implement the reporting arrangements. The guidance also needs to specify a cut-off date for which the 12 months period applies for each reporting date. The Associations consider 3 months to be a suitable timeframe between the cut-off date and the reporting deadline. In this way, counterparties should have sufficient time to collect the data under the AAR. This would also give the counterparties some flexibility as to the date of reporting, as the period between the cut-off date and the reporting deadline could serve as a reporting window. Hence, when the reporting deadline is the last day of January (or July), we suggest that the cut-off date is the last day of October (or April).