

SSMA response to ESMA consultation regarding Clearing Thresholds

Swedish Securities Markets Association (SSMA) welcomes the opportunity to respond to this ESMA consultation regarding clearing thresholds.

General Comments

We note that the uncleared thresholds also will be relevant with respect to the requirement to open an active account under Art 7.a.1 of EMIR 3; essentially the proposed rules mean that the threshold for the in-scope derivative contracts referred to in paragraph 6 of Art 7a is lowered from EUR 3bn to EUR 1.8bn. This is an unfortunate consequence that may have been overlooked when introducing the new active account requirement. Considering that the in-scope transactions are cleared, it would be more logical to apply the old threshold of EUR 3bn and not the new threshold which captures uncleared transactions. The application of the EUR 3bn threshold would also minimize the gap to the 6bn threshold that apply with respect to the representativeness obligation. In summary, we prefer if the EUR 3bn threshold is retained with respect to the requirement to open an active account.

SSMA also want to mention that we believe that it is unclear from EMIR 3.0 when market participants are expected to make calculations against the new thresholds. Our understanding is that Article 5 of EMIR 3.0 states that the changes to the clearing thresholds under Article 4(a) and Article 10 will not apply until the new RTS that are the subject to this consultation paper enter into force. Today most market participants under the current rules makes their calculation every 12 months in June. Since it is unclear when the new RTS will come into force and how it will affect both timing and calculations of the new thresholds, we think this should be clarified to avoid negative market impact. SSMA also see a risk that market participants will notice the changes first when they are published in Official Journal. We therefore also want to stress the fact that it is very important that market participants get sufficient time for this implementation.

Q1: Do you agree that the aggregate thresholds should only be set for those asset classes subject to the CO i.e. IRDs and credit derivatives? If not, please elaborate.

SSMA agrees

Q2: Do you agree with ESMA's proposal to maintain the aggregate thresholds at the current level i.e. 3 billion EUR for IRDs and 1 billion EUR for credit derivatives? If not, please elaborate.

SSMA agrees but notice that this proposal aggregates cleared and uncleared, which could justify a higher threshold. There is also a link to active accounts for this proposal – see our general comments.

Q3: Do you agree with the proposed uncleared thresholds? If not, please elaborate, explain for which asset class(es) and, where possible, provide supporting data and elements.

SSMA do not agree to this proposal. The main reason is that the thresholds will have an impact on the active account requirements and the scope of who will be affected by the AAR regime – see our general comments. It could also be difficult to correctly calculate volumes for uncleared derivatives. We therefore are of the strong opinion that the EUR 3 bn threshold should be kept.

Q4: Do you agree with ESMA's proposal not to introduce in the RTS separate thresholds for the various commodity derivatives sub-asset classes at this stage? If not, please elaborate.

SSMA agrees and do not want a lower threshold.

Q5: Do you agree with ESMA's proposal to have in the fifth bucket only commodity and emission allowance derivatives? Or do you consider that commodity derivatives should be singled out as a stand-alone category and another category for emission allowance derivatives introduced? Please elaborate.

SSMA has no strong view but believes it is important not to introduce more complexity, which could lead to more burdensome implementations.

Q6: Do you agree with ESMA's proposal not to introduce a sixth bucket for other derivatives at this stage? If not, please elaborate.

SSMA agrees.

Q7: Do you agree with ESMA's proposal not to introduce more granular thresholds for commodity derivatives based on ESG factors at this stage? If not, please elaborate.

SSMA agrees.

Q8: Do you agree with ESMA's proposal not to introduce more granular thresholds for commodity derivatives based on crypto-related features at this stage? If not, please elaborate.

SSMA agrees.

Q9: Do you consider clarifications should be included in Article 10 of Commission Delegated Regulation (EU) No 149/2013? If yes, please specify and if possible, provide arguments and drafting suggestions.

SSMA do not think clarifications are needed.

Q10: Do you have any comment on proposed new Article 11b? Do you consider other indicators should be monitored and assessed? If yes, please specify and if possible provide drafting suggestion.

SSMA do not have any concrete suggestions to changed drafting. We believe it is good with a system where thresholds do not change too much and/or frequently over time. It is good if the thresholds can be kept rather stable over time.

Q10: Do you consider other indicators should be monitored and assessed? If yes, please specify and if possible provide drafting suggestion.

SSMA believes that it is important that the EU simplification agenda is considered for all new regulations to avoid more complexity and costly implementations.

Also see our general comments on link to active accounts and timing of the new rules.