

Consultation Paper

EMIR 3 draft RTS on Participation Requirements

Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

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

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

All contributions should be submitted online under the relevant [consultation](#).

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 heading '[Legal Notice and Data protection](#)'.

Who should read this paper?

All interested stakeholders are invited to respond to this Consultation Paper. In particular, responses are sought from central counterparties (CCPs) and direct or indirect participants of CCPs (as well as potential participants of CCPs), both financial counterparties and non-financial counterparties.

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1 Executive Summary

Reasons for publication

Regulation (EU) No 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets (EMIR 3), which has amended Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 (EMIR), has amended Article 37 of EMIR on 'Participation Requirements'. Article 37(1) of EMIR provides that a CCP is required to establish, where relevant per type of product cleared, the categories of admissible clearing members and the admission criteria, upon the advice of the risk committee pursuant to Article 28(3) of EMIR. Such criteria ought to be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Criteria that restrict access are permitted only to the extent that their objective is to control the risk for the CCP. In addition, Article 37(1a) of EMIR now provides that a CCP can accept non-financial counterparties as clearing members only if those non-financial counterparties are able to demonstrate how they intend to fulfil the margin requirements and default fund contributions, including in stressed market conditions, and restricts the provision of client clearing services by a non-financial counterparty only to non-financial counterparties belonging to the same group as that non-financial counterparty.

ESMA is mandated under the new Article 37(7) of EMIR to develop draft Regulatory Technical Standards (RTS) further specifying the elements to be considered when a CCP: (a) establishes its admission criteria referred to in Article 37(1) of EMIR, and (b) assesses the ability of non-financial counterparties acting as clearing members to meet margin requirements and default fund contributions referred to in Article 37(1a) of EMIR. When developing the draft RTS, ESMA is required to take into account: (a) the modalities and specificities through which non-financial counterparties might, or already do, access clearing services, including as direct clearing members in sponsored models; (b) the need to facilitate prudentially sound direct access of non-financial counterparties to CCP clearing services and activities; (c) the need to ensure proportionality; and (d) the need to ensure an effective management of risks. ESMA shall submit those draft RTS to the European Commission within 12 months from EMIR 3 entry into force, i.e. by 25 December 2025.

Contents

This Consultation Paper presents the draft RTS prepared by ESMA. Section 3 explains the background to our proposals, Section 4 sets out our proposals. Finally, Section 5 contains all the relevant annexes (Annex I provides the summary of all questions posed in this Consultation Paper; Annex II provides the legislative mandate for the development of this draft RTS; Annex III contains the cost-benefit analysis; Annex IV contains the draft RTS).

Next Steps

The consultation will be open until 5 January 2026. ESMA will consider the feedback received to this consultation in Q1 2026 and expects to publish a final report and submit the final draft RTS to the European Commission for endorsement by the end of Q1 2026.

2 Legislative references and abbreviations

CCP	Central counterparty
CCPRRR	Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties
CSD	Central securities depository
Delegated Regulation 153/2013	Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties
DORA	Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector
EMIR	Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories
EMIR 3	Regulation (EU) No 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets
ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
FC	Financial counterparty
NCA	National competent authority
NFC	Non-financial counterparty
RTS	Regulatory Technical Standards

3 Introduction

1. Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024¹ (EMIR 3), which has amended Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012² (EMIR), was published in the Official Journal of the EU on 4 December 2024 and entered into force on 24 December 2024. EMIR 3 has, among other things, amended Article 37 of EMIR on CCPs' participation requirements.
2. Article 37(1) of EMIR provides that a CCP is required to establish, where relevant per type of product cleared, the categories of admissible clearing members and the admission criteria, upon the advice of the risk committee pursuant to Article 28(3) of EMIR. Such criteria are required to be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Furthermore, criteria that restrict access are permitted only to the extent that their objective is to control the risk for the CCP.
3. Pursuant to Article 37(5) of EMIR, a CCP may only deny access to clearing members meeting the admission criteria where duly justified in writing and based on a comprehensive risk analysis.
4. According to Article 37(6) of EMIR, a CCP may impose specific additional obligations on clearing members, such as the participation in auctions of a defaulting clearing member's position. However, such additional obligations need to be proportional to the risk brought by the clearing member and cannot restrict participation to certain categories of clearing members.
5. As regards membership of CCPs and clearing houses in a CCP, Article 37(1) of EMIR stipulates that the admission criteria are to ensure that CCPs or clearing houses cannot be clearing members, directly or indirectly, of the CCP. This is without prejudice to interoperability arrangements under Title V of EMIR or the conduct of the CCP's investment policy in accordance with Article 47 of EMIR.
6. As regards non-financial counterparties (NFCs), in accordance with Article 37(1a) of EMIR:

¹ Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets; OJ L, 2024/2987, 4.12.2024.

² Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories; OJ L 201, 27.7.2012, p. 1–59.

- a. a CCP can accept NFCs as clearing members only if those NFCs are able to demonstrate how they intend to fulfil the margin requirements and default fund contributions, including in stressed market conditions.
 - b. an NFC acting as a clearing member of a CCP may provide client clearing services only to NFCs belonging to the same group as that NFC and may keep accounts at the CCP only for assets and positions held for its own account or the account of those NFCs.
 - c. The national competent authority (NCA) of a CCP that accepts NFCs as clearing members is required to regularly review the arrangements established by the CCP to monitor that the condition under the first subparagraph of Article 37(1a) of EMIR is met. In addition, the CCP's NCA is required to report on an annual basis to the college referred to in Article 18 of EMIR on the products cleared by those NFCs, their overall exposure and any identified risks.
 - d. Furthermore, ESMA may issue an opinion or a recommendation on the appropriateness of such arrangements following an ad hoc peer review.
7. With regard to clearing members that clear transactions on behalf of their clients, Article 37(3) of EMIR provides that:
- a. Such clearing members are required to have the necessary additional financial resources and operational capacity to perform this activity.
 - b. The CCP's rules for such clearing members must allow it to gather relevant basic information to identify, monitor and manage relevant concentrations of risk relating to the provision of services to clients.
 - c. Such clearing members are required to, upon request, inform the CCP about the criteria and arrangements they adopt to allow their clients to access the services of the CCP.
 - d. Responsibility for ensuring that clients comply with their obligations remains with such clearing members.
8. Pursuant to Article 37(2) of EMIR, a CCP is required to ensure that the application of the admission criteria is met on an ongoing basis and is obliged to have timely access to the information relevant for such assessment. In addition, the CCP is required to conduct, at least once a year, a comprehensive review of compliance with Article 37 by its clearing members. Furthermore, the CCP must inform its NCA of any significant negative development regarding the risk profile of any of its clearing members determined in the

context of the CCP's ongoing assessment or any other assessment with similar conclusion, including any increase in the risk that any of its clearing members brings to the CCP, which the CCP considers to have the potential of triggering a default procedure.

9. In accordance with Article 37(4) of EMIR, a CCP is required to have objective and transparent procedures for the suspension and orderly exit of clearing members that no longer meet the admission criteria.
10. In accordance with 17b(1) of EMIR, ESMA and the College are required to adopt respective opinions on any draft decision, report or other measure by the NCA in relation to Article 37 of EMIR.

Article 37

Participation requirements (as amended by EMIR 3)

1. A CCP shall establish, where relevant per type of product cleared, the categories of admissible clearing members and the admission criteria, upon the advice of the risk committee pursuant to Article 28(3). Such criteria shall be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and shall ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Criteria that restrict access shall be permitted only to the extent that their objective is to control the risk for the CCP. Without prejudice to interoperability arrangements under Title V or the conduct of the CCP's investment policy in accordance with Article 47, the criteria shall ensure that CCPs or clearing houses cannot be clearing members, directly or indirectly, of the CCP.

1a. A CCP shall accept non-financial counterparties as clearing members only if those non-financial counterparties are able to demonstrate how they intend to fulfil the margin requirements and default fund contributions, including in stressed market conditions.

The competent authority of a CCP that accepts non-financial counterparties as clearing members shall regularly review the arrangements established by the CCP to monitor that the condition under the first subparagraph is met. The CCP's competent authority shall report on an annual basis to the college referred to in Article 18 on the products cleared by those non-financial counterparties, their overall exposure and any identified risks.

A non-financial counterparty acting as a clearing member of a CCP may provide client clearing services only to non-financial counterparties belonging to the same group as that non-financial counterparty and may keep accounts at the CCP only for assets and positions held for its own account or the account of those non-financial counterparties.

ESMA may issue an opinion or a recommendation on the appropriateness of such arrangements following an ad hoc peer review.

2. A CCP shall ensure that the application of the criteria referred to in paragraph 1 is met on an ongoing basis and shall have timely access to the information relevant for such assessment. A CCP shall conduct, at least once a year, a comprehensive review of compliance with this Article by its clearing members.

The CCP shall inform the competent authority of any significant negative development regarding the risk profile of any of its clearing members determined in the context of the CCP's assessment referred to in the first subparagraph or any other assessment with similar conclusion, including any increase in the risk that any of its clearing members brings to the CCP, which the CCP considers to have the potential of triggering a default procedure.

3. Clearing members that clear transactions on behalf of their clients shall have the necessary additional financial resources and operational capacity to perform this activity. The CCP's rules for clearing members shall allow it to gather relevant basic information to identify, monitor and manage relevant concentrations of risk relating to the provision of services to clients. Clearing members shall, upon request, inform the CCP about the criteria and arrangements they adopt to allow their clients to access the services of the CCP. Responsibility for ensuring that clients comply with their obligations shall remain with clearing members.

4. A CCP shall have objective and transparent procedures for the suspension and orderly exit of clearing members that no longer meet the criteria referred to in paragraph 1.

5. A CCP may only deny access to clearing members meeting the criteria referred to in paragraph 1 where duly justified in writing and based on a comprehensive risk analysis.

6. A CCP may impose specific additional obligations on clearing members, such as the participation in auctions of a defaulting clearing member's position. Such additional obligations shall be proportional to the risk brought by the clearing member and shall not restrict participation to certain categories of clearing members.

11. The new Article 37(7) of EMIR now requires ESMA, after consulting EBA and the ESCB, to develop draft RTS to further specify the elements to be considered when a CCP:

- a. establishes its admission criteria referred to in Article 37(1) of EMIR;
- b. assesses the ability of non-financial counterparties acting as clearing members to meet margin requirements and default fund contributions referred to in Article 37(1a) of EMIR.

12. Furthermore, when developing the draft RTS, ESMA is required to take into account:

- a. the modalities and specificities through which NFCs might, or already do, access clearing services, including as direct clearing members in sponsored models;
- b. the need to facilitate prudentially sound direct access of NFCs to CCP clearing services and activities;
- c. the need to ensure proportionality;
- d. the need to ensure an effective management of risks.

Article 37

Participation requirements (as amended by EMIR 3)

7. ESMA, after consulting EBA and the ESCB, shall develop draft regulatory technical standards to further specify the elements to be considered when a CCP:

(a) establishes its admission criteria referred to in paragraph 1;

(b) assesses the ability of non-financial counterparties acting as clearing members to meet margin requirements and default fund contributions referred to in paragraph 1a.

When developing those draft regulatory technical standards, ESMA shall take into account:

(a) the modalities and specificities through which non-financial counterparties might, or already do, access clearing services, including as direct clearing members in sponsored models;

(b) the need to facilitate prudentially sound direct access of non-financial counterparties to CCP clearing services and activities;

(c) the need to ensure proportionality;

(d) the need to ensure an effective management of risks.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 25 December 2025.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

4 RTS on Admission Criteria for Clearing Members

13. As per Article 37(1) of EMIR, a CCP shall establish, where relevant per type of product cleared the categories of admissible clearing members and the admission criteria, upon advice of its risk committee. Article 37(7) mandates ESMA to further specify in an RTS the elements to be considered when a CCP establishes its admission criteria. When developing those RTS, ESMA shall take into account, among other, the need to ensure proportionality and an effective management of risks.
14. In order to establish its admission criteria, the CCP should conduct a comprehensive assessment of the potential risks posed to it by its clearing members and ensure the admission criteria properly reflect the risks identified. This assessment should include, inter alia, an evaluation of whether clearing members possess sufficient financial resources and operational capacity to meet the obligations arising from participation in the CCP.
15. Article 37(7) of EMIR requires ESMA, when developing the draft RTS, to take into account, among other things, the need to ensure an effective management of risks. In addition,

Article 37(1) of EMIR also stipulates that admission criteria that restrict access are permitted only to the extent that their objective is to control the risk for the CCP. Furthermore, other risks and considerations may also affect clearing members' financial and operational capacity and ability to meet the obligations arising from their participation in the CCP. Therefore, as part of this assessment, the CCP should also consider other risks posed to it by its clearing members, e.g. risks related to anti-money laundering and counter-terrorist financing; legal risks such as any potential conflict of laws or inability of the CCP to enforce its rules, in particular where clearing members are established outside the EU; and the legal and procedural implications of national insolvency frameworks..

16. ESMA also considers that since the provision of client clearing services by clearing members carries additional financial, operational and other risks, some additional elements should be considered regarding such clearing members. The same applies where the CCP offers sponsored models. As regards sponsored models, the CCP, in addition to the risks posed by clearing members in sponsored models, should also consider the additional risks it holds in relation to the sponsors (i.e. the entity sponsoring the clearing member in a sponsored model) when setting the criteria for this type of membership.
17. Article 37(1a) of EMIR foresees that CCPs should accept NFCs as clearing members only if they are able to demonstrate how they intend to fulfil the margin requirements and default fund contributions even in stressed market conditions. The elements provided for in sections 4.1 to 4.6, are elements that CCPs should consider when establishing admission criteria that would apply equally to financial counterparties and NFC. However, given the nature of NFCs, some of the elements might not be relevant to them (e.g. having an authorisation as investment firm, credit institution or other, or being subject to DORA). For this reason, ESMA sets out some alternative elements which should be considered by CCPs in section 4.7, with which CCPs should be able to establish admission criteria which would comfort them on the fact that the NFC will be able to comply with their obligations vis-à-vis the CCP, but would avoid that NFCs are automatically rejected access to CCPs solely based on their NFC status.
18. Furthermore, in this context, it should also be recalled that, as provided in Article 37(1) of EMIR, admission criteria that restrict access are permitted only to the extent that their objective is to control the risk for the CCP. Accordingly, CCPs should not unduly restrict access unless properly justified based on risk considerations.
19. References to clearing members throughout this Consultation Paper should be understood as referring to applicant clearing members as well as existing clearing members as, in accordance with Article 37(2) of EMIR, CCPs are required to ensure that the application of the admission criteria is met on an ongoing basis.

4.1 Transparent, Fair and Open Access

20. Article 37(1) of EMIR provides that the admission criteria need to be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP, and that criteria that restrict access are permitted only to the extent that their objective is to control the risk for the CCP.
21. In order to establish non-discriminatory and objective admission criteria, the CCP should conduct a comprehensive assessment, commensurate to the scale and nature of the business of the clearing member, of the potential risks associated with its clearing members and ensure that the admission criteria properly reflect the risks identified, considering the elements outlined in Sections 4.2 – 4.7 below.
22. The CCP should thus tailor the criteria to its specific risks and the risk profile of inter alia:
- a. the type of product cleared (i.e. the CCP may set different admission criteria for each clearing service);
 - b. the type of membership (i.e. the CCP may set different admission criteria for clearing members that only clear their own transactions, compared to clearing members that also clear on behalf of their clients (including clients belonging to the same group)³, compared to clearing members in sponsored models, etc.);
 - c. the type of clearing member (i.e. the CCP may set different admission criteria for FC clearing members, compared to NFC clearing members, etc.)
23. Furthermore, with regard to the transparency requirement, CCPs should ensure that their admission criteria, as well as the CCP's rules and procedures, are publicly available (published on their website) and easily accessible, including in a language customary in the sphere of international finance, and that those publications are updated whenever the CCP makes changes to the criteria or its rules and procedures.

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

³ In the case of NFCs, the third subparagraph of Article 37 (1a) of EMIR limits their client clearing possibilities only to other NFCs belonging to the same group.

4.2 Sufficient Financial Resources

24. Article 37(1) of EMIR provides that the admission criteria that a CCP establishes shall ensure that clearing members have sufficient financial resources to meet their obligations arising from participation in a CCP.
25. A CCP should consider whether the clearing member possesses adequate financial resources to meet its obligations. In this context, ESMA understands the relevant obligation to refer to the clearing member's capacity to meet settlement obligations, margin calls and default fund contributions in a timely manner. Accordingly, the CCP should consider the clearing member's financial capacity to fulfil margin requirements and default fund contributions, as well as the adequacy of the clearing member's available capital and liquid resources, for a range of scenarios causing increased and/or intraday margin calls, where applicable:
- a. During a market stress event, notably a period of high volatility;
 - b. Increase of the risks of the portfolios of the clearing member, due to an increase of activity, concentration, wrong way or liquidity risks;
 - c. Increase of the individual risk of the clearing member, notably when this triggers additional margins;
 - d. Result of the default management procedure, in accordance with Article 48 of EMIR, including participation of the clearing member to the auction of a defaulting clearing member's positions; and
 - e. Participation of the clearing member to the recovery tools of the CCP.
26. In defining the admission criteria under the scenarios referred to above, the CCP should consider a range of relevant elements. In particular, the CCP should consider whether the clearing member has access to reliable credit, liquidity, and foreign exchange facilities that are commensurate with the scale and nature of its expected clearing activity. In this context, access to central bank financing constitutes a key consideration.
27. The CCP should consider whether the clearing member has sufficient capacity to access, in a timely manner, assets that meet the CCP's eligibility criteria for acceptable collateral.
28. The creditworthiness of the clearing member constitutes another essential element of the admission criteria. The assessment of creditworthiness should be based on information provided by the clearing member during a due diligence process, including audited financial statements, details on asset quality, loss-absorbing capacity, and the characteristics of its

liabilities. This could be complemented by publicly available information, such as external credit ratings, share prices and credit default swap (CDS) spreads. The credit risk assessment should not fully rely on external opinions.

29. Where the clearing member may be required to absorb losses in its capacity as a clearing member—such as through the mutualisation of losses under the default waterfall—the clearing member’s capacity to absorb losses should be given due consideration. Depending on the potential amounts that the clearing member might be contributing to the losses of the CCP through the waterfall, the CCP may consider whether higher capital may be required .
30. Where the clearing member forms part of a wider group, the CCP should also consider the reliability and availability of financial support from the group, insofar as such support would enhance the clearing member’s capacity to meet its obligations. The CCP should also consider the financial and operational dependence by the group on the clearing member, where this could negatively impact the clearing member’s obligations towards the CCP.

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.

4.3 Operational Capacity

31. Article 37(1) of EMIR provides that the admission criteria that a CCP establishes shall ensure that clearing members have sufficient operational capacity to meet the obligations arising from their participation. ESMA conducted a Peer Review in 2022 focusing on the due diligence of clearing members⁴ and subsequently published a Supervisory Briefing on CCP’s monitoring of operational capacity of clearing members under Article 37(2) of EMIR⁵ (‘ESMA Supervisory Briefing’). In the aforementioned work, ESMA concluded that the CCP’s membership criteria often include that clearing members are required to (i) have in place adequate IT systems, (ii) have access to relevant payment services and systems, (iii) possess the necessary resources and expertise to use the clearing services and (iv) have in place adequate operational risk management and business continuity tools. The CCP should then consider these elements when establishing its admission criteria.

⁴ [ESMA91-1505572268-3108 - 2022 CCP Peer Review on Due diligence of clearing members](#)

⁵ [ESMA91-1505572268-3611 - Supervisory Briefing on CCP’s Ongoing Monitoring of Operational Capacity of Clearing Members](#)

32. When considering whether the clearing member has in place adequate IT systems, the CCP should consider the technical capabilities of the clearing member. This includes the ability to appropriately connect to the CCP's systems, as well as the clearing member's ability to interact effectively with the CCP's communication platforms. Furthermore, the CCP should consider whether the clearing member has sufficient capacity to notify the CCP in a timely manner of any changes to its IT systems that may affect its operational performance.
33. In line with the ESMA Supervisory Briefing, when considering whether the clearing member has access to the settlement and payment systems and services necessary to perform its clearing functions, the CCP should consider whether the clearing member has access to relevant central bank and commercial bank accounts, central securities depository (CSD) accounts or other settlement and payment systems. CCPs should also consider the effectiveness of the clearing member's back-up arrangements, where commercial bank accounts are used, as well as whether they are properly tested at least on an annual basis.
34. When considering whether the clearing member possesses the necessary resources and expertise to use the clearing services of the CCP, the CCP should consider the clearing member's staff's/representatives' knowledge and understanding of the CCP's rules and procedures, as well their ability to engage effectively with the CCP on an ongoing basis, any professional standards imposed on the clearing member's staff, and whether comprehensive training is provided to the clearing members' staff on the system and technical functioning of the relevant clearing activities. This includes interactions during due diligence processes and in case of incident management, or any other events that may affect the clearing member's ability to meet its obligations.
35. When considering whether the clearing member has appropriate operational risk management and business continuity arrangements in place, the CCP should consider the clearing member's relevant policies and procedures. The CCP should also consider whether the clearing member has sufficient capacity to promptly resolve incidents that could impair its ability to meet its obligations.
36. Furthermore, where applicable, the CCP should consider whether the clearing member has capacity to perform physical settlement of the cleared transactions. The clearing members should have access to the accounts and to systems needed to ensure they can perform physical settlement of cleared securities transactions. In case of commodity derivatives, clearing members must likewise have capacity to deliver the underlying goods at maturity, typically by providing proof of availability, location, and quality through recognized storage or delivery arrangements.
37. Moreover, where the clearing member relies on third-party service providers (such as settlement agents, paying agents or IT service providers) to ensure it can fulfil its

obligations towards the CCP, the CCP should consider whether these arrangements are robust under the scenarios referred to in the previous section.

38. Finally, Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector (DORA) sets out requirements in relation to digital operational resilience. Therefore, when evaluating ICT resilience and capacity of a clearing member, the CCP should consider, where applicable, whether the clearing member complies with DORA in accordance with Article 2(1) of that Regulation. For the avoidance of doubt, where the clearing member is not subject to DORA, this should not automatically mean that the CCP can, in its admission criteria, automatically disqualify the entity from becoming a clearing member to the CCP.

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.

4.4 Other Considerations and Risks

39. Other risks and considerations may also affect clearing members' financial and operational capacity and ability to meet the obligations arising from their participation in the CCP. Therefore, in order to achieve the objectives mentioned in sections 4.2 and 4.3, and to ensure that risks posed to the CCP by its clearing members are identified and appropriately managed, the CCP should also consider other elements as described in this section.
40. A CCP should consider whether a clearing members holds a relevant authorisation or licence and are, consequently, subject to capital and prudential regulation and supervision, where applicable. Where clearing members are established outside the EU, the CCP should consider whether such clearing members are subject to comparable requirements, e.g. the CCP can consider whether equivalence has been granted under the relevant EU law or can obtain a legal opinion on the requirements applicable in that jurisdiction. For the avoidance of doubt, where the clearing member does not possess a financial services licence or is not subject to capital and prudential regulation and supervision, this should not mean that the CCP can, in its admission criteria, automatically disqualify the entity from becoming a clearing member to the CCP.
41. The CCP should also consider any past or ongoing administrative, civil or criminal proceedings, sanctions or measures concerning a clearing member, other entities within the same group, or its key personnel, that may affect the clearing member's ability or capacity to fulfil its obligations towards the CCP, e.g. relating to financial services law, commercial law, anti-money laundering and counter-terrorist financing law, fraud or

professional liability. Additionally, the CCP should consider any recent history of insolvency, restructuring, or comparable financial distress concerning a clearing member or other entities within the same group, that may affect the clearing member's ability or capacity to fulfil its obligations towards the CCP.

42. The CCP should consider the clearing member's risk management framework and internal risk control systems, ensuring that all risks associated with the clearing member's clearing activities are adequately identified, monitored, and managed to prevent unmitigated risk exposure for the CCP and other clearing members of the CCP.
43. The CCP's rules should reflect all relevant legal obligations concerning clearing members stemming from their participation in the CCP (e.g. under EMIR and CCPRRR), including, where relevant, as regards the provision of client clearing services by the clearing members and as regards sponsored models.
44. The CCP should consider the legal capacity and ability of the clearing member to fulfil the obligations; verify the enforceability of such obligations and of its own rules (vis-à-vis the clearing member); and verify absence of any conflict of laws (e.g. in relation to insolvency law), in particular in respect of clearing members established outside the EU. Such assessment should include, for example, the clearing member's legal ability to participate in the default management process; to contribute to the default waterfall; to participate in recovery and resolution tools; to ensure appropriate segregation of client accounts/assets/positions and protection of such accounts/assets/positions in case of insolvency of the clearing member; to provide to the CCP the information required under Article 37(3) of EMIR (where applicable); the CCP's ability to perform e.g. audits and monitoring of the clearing member; and, in case of the clearing member's default, the CCP's ability to liquidate the proprietary positions of the clearing member, to transfer or liquidate the clients' positions of that clearing member as required under Article 48(4) of EMIR (where applicable), to ensure enforceability of collateral and netting rights; and verification that the contracts are legal, valid and binding on the clearing member. This could be done e.g. via a legal opinion by a law firm with expertise in the clearing member's jurisdiction's law. The CCP may further consider including in its clearing agreement with the clearing member provisions on subjecting the clearing member to the CCP's rules and submission by the clearing member to the jurisdiction of the CCP's choice in case of disputes.
45. The CCP should also duly consider the existence and applicability of any resolution framework governing the clearing member, in particular where such a framework includes provisions aimed at ensuring the continued fulfilment of the clearing member's obligations towards the CCP.

46. In addition, the CCP should also consider other risks posed to it by its clearing members, e.g. risks related to anti-money laundering and counter-terrorist financing and whether the clearing member has sufficient anti-money laundering procedures in place.

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.

4.5 Clearing Members offering Clearing Services to Clients

47. Article 37(3) of EMIR provides that clearing members offering client clearing services shall have the necessary additional financial resources and operational capacity to perform this activity. In this context, ESMA considers that CCPs should ensure that their admission criteria for clearing members that offer client clearing services, in addition to the considerations set out in Sections 4.1 – 4.4 above, also duly reflect the incremental risk arising from the provision of client clearing services.

48. In establishing such admission criteria, CCPs should undertake a comprehensive assessment of the risks related to the clearing member's client clearing activity. This assessment should, inter alia, consider the relative significance of the client clearing activity in relation to the clearing member's overall clearing operations, as well as the clearing member's financial capacity to meet margin requirements in the event of client default.

49. Furthermore, CCPs should consider whether clearing members have implemented a robust risk management framework capable of effectively identifying, monitoring, and mitigating risks associated with client clearing.

50. In accordance with Article 37(3), the CCP's rules for clearing members shall allow it to gather relevant basic information to identify, monitor and manage relevant concentrations of risk relating to the provision of services to clients. Therefore, CCPs should consider whether clearing members possess the operational capability to provide timely and accurate information enabling the CCP to identify the underlying clients associated with positions recorded in client accounts. This would also facilitate the portability of client positions in case of the default of that clearing member.

51. As explained in Section 4.4 above, the CCP should also consider whether clearing members, in particular those that are established outside the EU, have legal ability to comply with the applicable legal requirements stemming from their participation in the CCP (e.g. under EMIR and CCPRRR) and with the CCP's rules, including as regards the provision of client clearing services by the clearing members, e.g. in relation to segregation

and default procedures (Articles 39 and 48 of EMIR) or in relation to the provision of information to the CCP (Article 37(3) of EMIR); and verify the enforceability of its rules and absence of any conflict of laws in this regard.

52. Finally, the CCP's rules should reflect that, as required by EMIR, a clearing member bears the full responsibility for discharging all the financial obligations vis-à-vis the CCP arising from that participation (e.g. margin requirements and default fund contributions), including in relation to its clients' positions and activity (please also see Section 4.4 above).

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.

4.6 Sponsored Models

53. In recent years, CCPs have introduced sponsored models, thereby enabling a broader range of counterparties, including buy-side institutions, to obtain direct access to clearing services. ESMA understands sponsored models as models whereby a clearing member⁶, while remaining fully responsible for discharging all the financial obligations towards the CCP arising from that participation, uses the services of another entity (sponsor⁷) to perform certain of these responsibilities. These responsibilities may include, inter alia, contributions to the default fund, participation in recovery tools, and involvement in default management procedures. At present, ESMA is aware that such models are available at two EU CCPs and nearly solely for centrally cleared repurchase agreement (repo) transactions.

54. When defining their admission criteria for clearing members (in sponsored models), CCPs should, in addition to the considerations set out in Sections 4.1 – 4.4 above, also duly consider the specific risks associated with sponsored models when establishing the admission criteria for clearing members using this model.

55. In order to meet the requirement for transparent and objective admission criteria in accordance with Article 37(1), and in line with Article 5(2) of RTS 153/2013 for clear and comprehensive rules, the CCP should consider an appropriate drafting of its rules to ensure they are clear on the delineation of responsibilities between the clearing member (in

⁶ The commercial designation of such clearing members may differ and can include terms such as 'sponsored member' or 'ISA Direct clearing member'.

⁷ The commercial term for the entities offering such services may differ and can include terms such as 'agent member' or 'clearing agent'.

sponsored models) and the sponsor, reflecting that the clearing member (in sponsored models) bears the full responsibility for discharging all the financial obligations vis-à-vis the CCP arising from that participation (e.g. margin requirements and default fund contributions), including in case of failure or default of the sponsor. The CCP should also consider appropriate drafting to ensure its rules clearly state that netting between the positions of different clearing members (in sponsored models) or between the positions of a clearing member (in sponsored models) and its sponsor should not be allowed. Please also see Section 4.4 above.

56. In particular, CCPs should consider whether clearing members (using a sponsored model) have established robust arrangements with their sponsors, with delineated responsibilities, ensuring that such arrangements remain effective at all times, including under stressed market conditions and in the event of default of another clearing member. CCPs should also consider whether such arrangements do not contradict or alter the delineation of responsibilities set out in CCP's rules and the clearing member's (in sponsored models) full responsibility for discharging all the financial obligations towards the CCP arising from that participation.
57. Moreover, CCPs should consider whether clearing members (in sponsored models) have contingency measures in place, such as back-up sponsorship arrangements or the capacity to independently fulfil all relevant obligations in the absence of or in case of default of the sponsor. Such contingency solutions and arrangements should be subject to testing by the CCP.
58. Finally, given the critical role played by sponsors in the functioning of these models, CCPs should conduct a comprehensive assessment of the associated risks and establish appropriate admission criteria specific for sponsors, ensuring that sponsors have sufficient financial resources and operational capability to meet their obligations under the sponsored model framework. The CCP should consider whether the admission criteria established for sponsors are comparable to those for clearing members that provide client clearing services. The CCP should also consider whether the sponsor is also already a clearing member of the CCP.

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.

4.7 Non-Financial Counterparties

4.7.1 Introduction

59. As part of the ESMA's mandate in Article 37(7) of EMIR, ESMA should further specify the elements to be considered by CCPs when they assess the ability of NFCs acting as clearing members to meet margin requirements and default fund contributions. In doing this, ESMA should take into consideration, among others, the modalities and specificities through which NFCs might, or already do, access clearing services, including as direct clearing members in sponsored models.
60. The energy crisis provoked by the Russian invasion of Ukraine illustrated the fact that NFCs do not have the same access to liquidity as FCs. For this reason, EMIR 3 restricts the capacity of NFCs to provide client clearing services only to other NFCs belonging to the same group. Furthermore, Article 37(1a) of EMIR 3 requires CCPs that accept or intend to accept NFCs to ensure that NFCs are able to demonstrate that they can fulfil the margin requirements and provide default funds contributions, including in stressed conditions.
61. Furthermore, given that NFCs are not subject to the same prudential requirements and liquidity safeguards as FCs, EMIR requires that NCAs of CCPs accepting NFCs as clearing members monitor this direct access. The NCAs of those CCPs should report to ESMA and the supervisory college on a regular basis on the products cleared by NFCs, the overall exposure and any identified risks. These additional requirements do not aim to restrict the ability of NFCs to become clearing members of a CCP when carried out in a prudentially sound manner.
62. Finally, it is also worth reminding that in 2018, Mr Einar Aas, a Norwegian trader⁸⁹ and member of Nasdaq Clearing AB, failed to pay a margin call to the commodities arm of Nasdaq Clearing AB in Sweden, which provoked some market turmoil and raised questions about the ability of individuals acting as clearing members to meet their obligations towards the CCPs.

4.7.2 Current practices for NFCs participation as clearing members

63. The access to EU CCPs by NFCs as clearing members is today limited. According to the information available to ESMA¹⁰, four EU CCPs accept NFCs as clearing members. Three

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<https://www.finanstilsynet.no/en/news-archive/news/2018/nasdaq-clearing-ab-default-of-clearing-member/>

⁹ According to the [Q&A 14 on EMIR](#) published by the European Commission, individuals carrying out an economic activity are also considered to be undertakings, provided they offer goods and services in the market. It seems relevant to mention this case in the section dedicated to NFCs.

¹⁰ Through the information collected in the framework of the 2022 Peer Review

of them do not apply any additional requirements on NFCs, while at the fourth CCP the only difference in the participation requirements which are specific to NFCs relate to the capital requirements. In two CCPs, NFCs cannot become clearing members at the securities markets, only for the energy segments. One of them has a credit rating methodology which is differentiated for gas market clearing members and energy market non-clearing members. One CCP was not able to select the clearing members based on appropriate risk-based categorisation as the Hungarian Gas Act requires trading members to become clearing members. In this respect, ESMA recommended to the NCA to follow-up with the relevant Ministry to remediate the impediments posed by the Hungarian Gas Act, to allow the CCP to apply strict risk-based participation requirements, which would also ensure full compliance with the requirements under Article 37(1) of EMIR. Since the publication of ESMA's peer review, although the Hungarian Gas Act has not changed, the CCP strengthen participation requirements including on operational capacity, so that the CCP is not prevented from applying its risk-based participation requirements and making rejections based on the results of the risk assessments.

4.7.3 Assessing the ability of NFCs as clearing members

64. As explained in the introduction, Sections 4.1 to 4.6 of this Consultation Paper describe the elements that CCPs should consider when establishing the admission criteria applicable to clearing members. Those elements apply to admission criteria that can be generally addressed to all entities, irrespective of whether they are FCs or NFCs. ESMA however recognises that in some instances some admission criteria, which would have been established according to the elements set out by ESMA, might not be relevant or applicable to NFCs. In those situations, CCPs might assess whether the NFC might be able to still participate as a clearing member in a prudentially sound manner through alternative safeguards that can efficiently mitigate any risks posed by the NFCs. Indeed, some NFCs might have sufficient resources (not only financial but also staff and experience in risk management) and might be sufficiently sophisticated to be able to participate as clearing members in a prudentially sound manner. This should not mean however that any NFC could participate as clearing member in a CCP, especially when the conclusion of the assessment by the CCP does not provide sufficient assurance that the NFC will be able to meet margin requirements and default fund contributions even in stressed market conditions.
65. One of the elements which might represent a difficulty in the case of NFCs is the access to reliable liquidity and in particular to central bank financing. In such situations the CCP might decide to:

- a. Require a higher level of or even full collateralisation;

- b. Put a limit on the volumes that the NFC can clear for its own account as well as for other entities of the group it belongs to (without that limit representing a *de facto* exclusion from participation);
- c. Limit the type of product or the segment in which the NFCs might act as clearing members; and
- d. Offer specific models adapted to the profile of these clearing members, such as the sponsored model.

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.

66. Another element that could result in an admission criterion with which an NFC might not be able to comply is the requirement to have a relevant authorisation or licence and be subject to capital and prudential regulation and supervision. In this case, in order to avoid that such admission criterion automatically disqualifies an NFC from becoming member of a CCP, the CCP might consider other aspects of the NFCs to complement its assessment of whether the NFC participation can be assured in a prudentially sound manner. The CCP might consider whether the NFC's activity is regulated in the jurisdiction where the NFC is based, whether the NFC has any obligation to comply with any registration requirements or sectoral regulation.

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?

5 Annexes

5.1 Annex I

Summary of 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.

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.

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.

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.

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.

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.

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.

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?

5.2 Annex II

Legislative mandate to develop technical standards

Article 37

Participation requirements

1. A CCP shall establish, where relevant per type of product cleared, the categories of admissible clearing members and the admission criteria, upon the advice of the risk committee pursuant to Article 28(3). Such criteria shall be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and shall ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Criteria that restrict access shall be permitted only to the extent that their objective is to control the risk for the CCP. Without prejudice to interoperability arrangements under Title V or the conduct of the CCP's investment policy in accordance with Article 47, the criteria shall ensure that CCPs or clearing houses cannot be clearing members, directly or indirectly, of the CCP.

1a. A CCP shall accept non-financial counterparties as clearing members only if those non-financial counterparties are able to demonstrate how they intend to fulfil the margin requirements and default fund contributions, including in stressed market conditions.

The competent authority of a CCP that accepts non-financial counterparties as clearing members shall regularly review the arrangements established by the CCP to monitor that the condition under the first subparagraph is met. The CCP's competent authority shall report on an annual basis to the college referred to in Article 18 on the products cleared by those non-financial counterparties, their overall exposure and any identified risks. A non-financial counterparty acting as a clearing member of a CCP may provide client clearing services only to non-financial counterparties belonging to the same group as that non-financial counterparty and may keep accounts at the CCP only for assets and positions held for its own account or the account of those non-financial counterparties. ESMA may issue an opinion or a recommendation on the appropriateness of such arrangements following an ad hoc peer review.

2. A CCP shall ensure that the application of the criteria referred to in paragraph 1 is met on an ongoing basis and shall have timely access to the information relevant for such assessment. A CCP shall conduct, at least once a year, a comprehensive review of compliance with this Article by its clearing members.

The CCP shall inform the competent authority of any significant negative development regarding the risk profile of any of its clearing members determined in the context of the CCP's assessment referred to in the first subparagraph or any other assessment with similar conclusion, including any increase in the risk that any of its clearing members brings to the CCP, which the CCP considers to have the potential of triggering a default procedure.

3. Clearing members that clear transactions on behalf of their clients shall have the necessary additional financial resources and operational capacity to perform this activity. The CCP's rules for clearing members shall allow it to gather relevant basic information to identify, monitor and manage relevant concentrations of risk relating to the provision of services to clients. Clearing members shall,

upon request, inform the CCP about the criteria and arrangements they adopt to allow their clients to access the services of the CCP. Responsibility for ensuring that clients comply with their obligations shall remain with clearing members.

4. A CCP shall have objective and transparent procedures for the suspension and orderly exit of clearing members that no longer meet the criteria referred to in paragraph 1.

5. A CCP may only deny access to clearing members meeting the criteria referred to in paragraph 1 where duly justified in writing and based on a comprehensive risk analysis.

6. A CCP may impose specific additional obligations on clearing members, such as the participation in auctions of a defaulting clearing member's position. Such additional obligations shall be proportional to the risk brought by the clearing member and shall not restrict participation to certain categories of clearing members.

7. ESMA, after consulting EBA and the ESCB, shall develop draft regulatory technical standards to further specify the elements to be considered when a CCP:

- (a) establishes its admission criteria referred to in paragraph 1;*
- (b) assesses the ability of non-financial counterparties acting as clearing members to meet margin requirements and default fund contributions referred to in paragraph 1a.*

When developing those draft regulatory technical standards, ESMA shall take into account:

- (a) the modalities and specificities through which non-financial counterparties might, or already do, access clearing services, including as direct clearing members in sponsored models;*
- (b) the need to facilitate prudentially sound direct access of non-financial counterparties to CCP clearing services and activities;*
- (c) the need to ensure proportionality;*
- (d) the need to ensure an effective management of risks.*

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 25 December 2025.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

5.3 Annex III

Cost-benefit analysis

5.3.1 Other considerations and risks

Specific objective	The objective is to further specify the elements to be considered by CCPs when establishing their admission criteria.
Policy option 1	A first policy option would be to include a narrow list of elements strictly limited to clearing members' financial resources and operational capacity.
Policy option 2	A second policy option would be to include a slightly broader list of elements, including elements on additional risks which would supplement and complement the elements in relation to financial resources and operational capacity.
Preferred option	Policy option 2

Qualitative impact of the proposed policies	
Option 1	
Benefits / Drawbacks	This Option would involve CCPs having to consider a narrower list of elements when establishing their admission criteria. This would however also mean that certain risks, such as legal risks (e.g. conflict of laws, enforceability of the CCP's rulebook), which also affect clearing members' financial and operational capacity and ability to meet the obligations arising from their participation in the CCP, would not be included. This may result in certain risks posed by clearing members not being adequately reflected in the CCP's admission criteria.
Compliance costs	No compliance costs identified.
Supervision costs	No supervision costs identified.
Option 2	

Benefits / Drawbacks	This Option would ensure that CCPs consider a broader range of risks posed by clearing members in their admission criteria, such as legal risks, as these other risks and considerations may also affect clearing members' financial and operational capacity and ability to meet the obligations arising from their participation in the CCP and the CCP's ability to control the risk posed by clearing members. Such approach would thus ensure that the risks posed by clearing members are adequately identified and reflected in the CCP's admission criteria.
Compliance costs	While CCPs would need to consider a broader range of elements, than under Option 1, when establishing their admission criteria, based on ESMA's understanding, CCPs already reflect such elements (e.g. those related to legal risks, AML/KYC, etc.) in their admission criteria. Therefore, there should be no considerable increase in compliance costs with this Option compared to the status quo.
Supervision costs	Same as for compliance costs.

5.3.2 Collecting data on clearing member's exposure to other CCPs

Specific objective	The objective is to provide the necessary elements to be considered by the CCP for assessing the clearing member's financial resources, when it establishes its admission criteria.
Policy option 1	A first policy option would be to include in the list of elements to be considered the total pre-funded default fund contributions and unfunded additional resources committed by the clearing member to other CCPs.
Policy option 2	A second policy option would be not to include this information.
Preferred option	Policy option 2

Qualitative impact of the proposed policies	
Option 1	

Benefits	This information would allow the CCP to improve its assessment by identifying any potential aggregate funded and unfunded exposures that could lead to excessive overall risk concentration and impact the clearing member's ability to meet its obligations.
Compliance costs	However, detailed data regarding a clearing member's exposures to other CCPs is commercially sensitive and may be regarded as confidential. Furthermore, the burden placed on clearing members to provide such information, and on CCPs to collect and analyse it, could be substantial relative to the expected benefits.
Supervision costs	Additionally, supervising the transfer of information from clearing members to the CCP, as well as monitoring the CCP's handling and storage of confidential data, would present a significant burden for the responsible authorities.
Option 2	
Benefits	This option avoids extra burden for CCPs and clearing members and still enables the CCP to perform its assessment using the other elements listed in the draft regulatory technical standards.
Compliance costs	No compliance costs identified.
Supervision costs	No supervision costs identified.

5.3.3 Ensuring that the elements provided allow for the assessment of the ability of non-financial counterparties acting as clearing members to meet margin requirements and default fund contributions

Specific objective	Providing elements that allow CCPs to assess the ability of non-financial counterparties acting as clearing members to meet margin requirements and default fund contributions.
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Policy option 1	Set one list of elements to be considered by CCPs when establishing participation requirements which apply equally to financial and non-financial counterparties.
Policy option 2	Set two separate lists of elements to be considered by CCPs when establishing participation requirements, one for financial counterparties and the other one for non-financial counterparties.
Policy option 3	Set one list of elements to be considered by CCPs when establishing participation requirements which apply equally to financial and non-financial counterparties, and foresee a limited number of derogations to those elements applicable to non-financial counterparties in situations where they cannot comply with the proposed elements, but the CCP can put in place safeguards to still ensure that the non-financial counterparty can participate in a prudential sound manner.
Preferred option	Policy option 3

Qualitative impact of the proposed policies	
Option 1	
Benefits	Promotes consistency and simplicity in participation requirements. Easier comparability across counterparties. Reduces regulatory arbitrage.
Compliance costs	Potentially high for NFCs, as they may struggle to meet requirements designed for financial institutions. Could discourage NFC participation due to disproportionate burdens.
Supervision costs	Lower for supervisors due to uniform criteria. However, may require additional monitoring of NFCs that are struggling to comply.
Option 2	
Benefits	Tailored requirements improve relevance and feasibility for NFCs. Encourages broader participation by reducing entry barriers for NFCs. Enhances risk sensitivity of the framework.
Compliance costs	Lower for NFCs due to tailored requirements. Higher for CCPs due to the need to manage two sets of criteria.

Supervision costs	Higher due to complexity in monitoring compliance with two distinct frameworks. Potential challenges in ensuring consistency and fairness.
Option 3	
Benefits	This option balances consistency with flexibility. It maintains a unified framework while allowing CCPs to apply safeguards for NFCs. Encourages NFC participation without compromising prudential standards. Supports innovation and diversity in clearing membership.
Compliance costs	Moderate for NFCs: derogations reduce burden while maintaining core standards. CCPs may incur costs to implement and monitor safeguards.
Supervision costs	Moderate: requires oversight of derogations and safeguards. More efficient than Option 2 due to the unified base framework.

5.4 Annex IV

COMMISSION DELEGATED REGULATION (EU) .../...

of XXX

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards further specifying the elements to be considered when a CCP establishes its admission criteria and assesses the ability of non-financial counterparties acting as clearing members to meet margin requirements and default fund contributions (Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, and in particular Article 37(7), third subparagraph, thereof,

Whereas:

- (1) As set out in Article 37(7) of Regulation (EU) No 648/2012, ESMA, after consulting EBA and the ESCB, is required to further specify the elements to be considered when a CCP (a) establishes its admission criteria referred to in Article 37(1) of Regulation (EU) No 648/2012; and (b) assesses the ability of non-financial counterparties acting as clearing members to meet margin requirements and default fund contributions referred to in Article 37(1a) of Regulation (EU) No 648/2012. This Regulation, therefore, sets out the elements that CCPs should consider when establishing their admission criteria (including as regards non-financial counterparties), rather than the criteria themselves. Furthermore, it should be recalled that as provided in Article 37(1) of Regulation (EU) No 648/2012, admission criteria that restrict access are permitted only to the extent that their objective is to control the risk for the CCP. Accordingly, CCPs should not unduly restrict access unless properly justified based on risk considerations.
- (2) In order to establish non-discriminatory and objective admission criteria, a CCP should conduct a comprehensive assessment of the potential risks posed to it by its clearing members and ensure that the admission criteria properly reflect the risks identified, considering the elements set out in this Regulation. The CCP should thus tailor its admission criteria to its specific risks and the risk profile of e.g. the type of product cleared (i.e. the CCP may set different admission criteria for each clearing service); the type of membership (i.e. the CCP may set different admission criteria for clearing members that only clear their own transactions, compared to clearing members that clear transactions on behalf of their

clients, compared to clearing members in sponsored models, etc.); the type of clearing member (i.e. the CCP may set different admission criteria for financial counterparties, compared to non-financial counterparties, etc.); etc.

- (3) In order to ensure transparency, a CCP should make its admission criteria, as well as its rules, publicly available (i.e. published on its website) and easily accessible, including in a language customary in the sphere of international finance, and update those publications whenever the CCP makes changes to its admission criteria or its rules.
- (4) With regard to Article 37(1) of Regulation (EU) No 648/2012 on the requirement to ensure that clearing members have sufficient financial resources to meet their obligations arising from participation in the CCP, the CCP should consider the clearing member's financial capacity under a range of scenarios that may cause increased and/or intraday margin calls. In this context, the relevant obligations should be understood as the clearing member's capacity to meet settlement obligations, margin calls and default fund contributions in a timely manner.
- (5) Such scenarios should include, in particular: periods of market stress, notably those characterised by high volatility; increases in the risks of the clearing member's portfolios, due to heightened activity, concentration, wrong-way or liquidity risks; increases in the individual risk of the clearing member, especially where such increases trigger additional margin requirements; the impact of the clearing member from the result of default management procedure in accordance with Article 48 of EMIR, including auctions of a defaulting clearing member's positions; and the clearing member's participation in the CCP's recovery tools.
- (6) In defining the admission criteria under the scenarios referred to above, the CCP should consider a range of relevant elements. In particular, it should assess whether the clearing member has access to reliable credit, liquidity and foreign exchange facilities that are commensurate with the scale and nature of its expected clearing activity. In this regard, access to central bank financing should be considered a key factor. The CCP should also assess whether the clearing member has sufficient capacity to access, in a timely manner, assets that meet the CCP's eligibility criteria for acceptable collateral.
- (7) The creditworthiness of the clearing member is another essential element of the admission criteria. The assessment of creditworthiness should be based on information provided by the clearing member during the due diligence process, including audited financial statements, details on asset quality, its capacity to absorb losses and the characteristics of its liabilities. This assessment may be complemented by publicly available information, such as external credit ratings, share prices and credit default swap spreads. However, the credit risk assessment should not rely solely on external opinions.
- (8) Where the clearing member may be required to absorb losses in its capacity as a clearing member, such as through the mutualisation of losses under the default waterfall, the CCP should give due consideration to the clearing member's capacity to absorb losses. Depending on the potential amounts that the clearing member might contribute to the CCP's losses through the waterfall, the CCP may consider whether higher capital requirements are necessary.

- (9) Where the clearing member forms part of a wider group, the CCP should also consider the reliability and availability of financial support from the group, insofar as such support would enhance the clearing member's capacity to meet its obligations. The CCP should also assess the financial and operational reliance of the group on the clearing member, where this could negatively impact the clearing member's obligations towards the CCP.
- (10) With regard to Article 37(1) of Regulation (EU) No 648/2012 on the requirement to ensure that clearing members have sufficient operational capacity, the technical capabilities of a clearing member should be considered by the CCP to ensure that the clearing member's IT systems meet the CCP's requirements. This includes the ability to connect appropriately to the CCP's systems, and the capacity to interact effectively with the CCP's communication platforms. The CCP should also consider whether the clearing member has sufficient capacity to notify the CCP in a timely manner of any changes to its IT systems that may affect its operational performance.
- (11) The CCP should consider whether the clearing member has access to the payment systems and services necessary to perform its clearing functions. This includes access to relevant central bank and commercial bank accounts, central securities depository accounts. Where commercial bank accounts are used, the CCP should consider the effectiveness of the clearing member's back-up arrangements and whether these are properly tested at least on an annual basis.
- (12) In addition, the CCP should also consider whether the clearing member possesses the necessary resources and expertise to use the CCP's clearing services. For this, the CCP should consider the knowledge and understanding of the CCP's rules and procedures by the clearing member's staff or representatives. This includes their ability to engage effectively with the CCP on an ongoing basis, any professional standards imposed on them, and the provision of comprehensive training on the system and technical functioning of the relevant clearing activities. This includes interactions during due diligence processes and in case of incident management, or any other events that may affect the clearing member's ability to meet its obligations.
- (13) Moreover, the CCP should consider whether the clearing member has appropriate operational risk management and business continuity arrangements in place. For this, the CCP should consider the clearing member's relevant policies and procedures, as well as its capacity to promptly resolve incidents that could impair its ability to meet its obligations.
- (14) Where applicable, the CCP should also consider whether the clearing member has capacity to perform physical settlement of the cleared transactions. The clearing members should have access to the accounts and to systems needed to ensure they can perform physical settlement of cleared securities transactions. In case of commodity derivatives, clearing members must likewise have capacity to deliver the underlying goods at maturity, typically by providing proof of availability, location, and quality through recognized storage or delivery arrangements.
- (15) Where the clearing member relies on third-party service providers, such as settlement agents, paying agents or IT service providers, to fulfil its obligations towards the CCP, the CCP should consider whether these arrangements are robust under a range of scenarios.

- (16) Regulation (EU) 2022/2554 sets out requirements in relation to digital operational resilience. Therefore, in relation to ICT matters, the CCP should consider, where applicable, whether the clearing member complies with Regulation (EU) 2022/2554 in accordance with Article 2(1) of that Regulation. For the avoidance of doubt, where the clearing member is not subject to DORA, this should not mean that the CCP can, in its admission criteria, automatically disqualify the entity from becoming a clearing member of the CCP.
- (17) As other risks and considerations may also affect clearing members' financial and operational capacity and ability to meet the obligations arising from their participation in the CCP and the CCP's ability to control the risk posed by clearing members, CCPs should consider some additional elements covering a broader range of risks and factors when establishing their admission criteria, in order to ensure that the risks posed by clearing members are adequately identified and reflected in the CCP's admission criteria, and appropriately managed. CCPs may leverage on clearing members holding the relevant authorisation license and being subject to capital and prudential regulation and supervision. Where clearing members are established outside the Union, CCPs should consider whether such clearing members are subject to comparable requirements. In this regard, CCPs may, for example, take into account whether equivalence has been granted under the relevant Union law or can obtain a legal opinion on the requirements applicable in the jurisdiction of the non-EU clearing members. For the avoidance of doubt, however, the absence of authorisation or capital and prudential regulation and supervision should not mean that the CCP can, in its admission criteria, automatically disqualify the entity from becoming a clearing member at the CCP, but that the CCP should rather take this into account as part of its comprehensive risk assessment.
- (18) CCPs should also take into consideration any relevant past or ongoing administrative, civil or criminal proceedings, sanctions or measures involving a clearing member, its group entities or key personnel, where these could impair the clearing member's ability to meet its obligations, such as proceedings, sanctions or measures relating to financial services law, commercial law, anti-money laundering and counter-terrorist financing law, fraud or professional liability. Likewise, CCPs should assess any recent history of insolvency, restructuring, or comparable financial distress, concerning a clearing member or other entities within the same group, that may affect the clearing member's ability or capacity to fulfil its obligations towards the CCP.
- (19) The effectiveness of a clearing member's risk management framework and internal risk control systems should also be considered by the CCP to ensure that unacceptable risk exposure for the CCP and other clearing members at the CCP are prevented.
- (20) The CCP's rules should reflect all relevant legal requirements concerning clearing members stemming from their participation in the CCP, such as those under Regulation (EU) No 648/2012 and Regulation (EU) 2021/23, including, where relevant, as regards the provision of client clearing services by clearing members and as regards sponsored models. The CCP should further consider the legal capacity and ability of the clearing member to fulfil such legal requirements and to comply with the CCP's rules. Moreover, the CCP should verify the enforceability, vis-à-vis the clearing member, of its rules and absence of any conflict of laws, e.g. in relation to insolvency law, in particular in respect of clearing members established outside the Union, where enforceability of key rights and obligations

under Union law may depend on the legal framework in the clearing members' jurisdiction. Such assessment should include, for example, the clearing member's legal ability to participate in the default management process; to contribute to the default waterfall; to participate in recovery and resolution tools; to ensure appropriate segregation of client accounts, assets and positions, and protection of such accounts, assets and positions in case of insolvency of the clearing member; to provide to the CCP all relevant information, including information in relation to the clearing member's clients and client accounts; the CCP's ability to perform audits and monitoring of the clearing member; in case of the clearing member's default, the CCP's ability to liquidate the proprietary positions of the clearing member, to transfer or liquidate the clients' positions of that clearing member where applicable, and to ensure enforceability of collateral and netting rights; and verification that the contracts are legal, valid and binding on the clearing member. This could be done e.g. via a legal opinion by a law firm with expertise in the clearing member's jurisdiction's law. The CCP may further consider including in its clearing agreement with the clearing member provisions on subjecting the clearing member to the CCP's rules and submission by the clearing member to the jurisdiction of the CCP's choice in case of disputes.

- (21) The CCP should also consider whether a clearing member is subject to a resolution regime, and in particular whether such regime provides for continued fulfilment of the clearing member's obligations vis-à-vis the CCP.
- (22) In addition, the CCP should also consider other relevant risks posed to it by its clearing members, e.g. risks related to anti-money laundering and counter-terrorist financing and whether the clearing member has sufficient anti-money laundering procedures in place.
- (23) Article 37(3) of Regulation (EU) No 648/2012 establishes that clearing members offering client clearing services must have the necessary additional financial resources and operational capacity to perform these activities. Since the provision of client clearing services by clearing members carries additional financial, operational and other risks, CCPs should consider some additional elements when establishing their admission criteria for such clearing members, ensuring that the criteria appropriately reflect the incremental risks arising from client clearing services.
- (24) A comprehensive assessment of the risks related to the clearing member's client clearing activity should be undertaken by CCPs. This assessment should take into account, inter alia, the relative importance of the client clearing activity in relation to the clearing member's overall clearing operations and the clearing member's capacity to meet margin requirements and other obligations in the event of its clients' default.
- (25) CCPs should also consider whether clearing members offering client clearing services have established a robust risk management framework capable of effectively identifying, monitoring, and mitigating the specific risks arising from client clearing activities. This is necessary to ensure that the risks do not undermine the CCP's ability to manage its overall exposures.
- (26) In accordance with Article 37(3) of Regulation (EU) No 648/2012, the CCP's rules for clearing members must allow it to gather relevant basic information to identify, monitor and

manage relevant concentrations of risk relating to the provision of services to clients. Therefore, CCPs should consider whether clearing members possess the operational capability to provide timely and accurate information enabling the CCPs to identify the underlying clients associated with positions recorded in client accounts. This would also facilitate the portability of client positions in case of the default of that clearing member.

- (27) Finally, it should be recalled that under Regulation (EU) No 648/2012, clearing members remain fully responsible for meeting all financial obligations vis-à-vis the CCP, including in relation to client clearing activities. CCPs' rules should thus reflect this requirement clearly, ensuring that the responsibilities of clearing members are not diluted or transferred to clients or third parties.
- (28) In recent years, CCPs have introduced sponsored models, thereby enabling a broader range of counterparties, including buy-side institutions, to obtain direct access to clearing services. Sponsored models should be understood as arrangements whereby a clearing member (in a sponsored model), while remaining fully responsible for discharging all financial obligations towards the CCP arising from its participation, uses the services of another entity (the sponsor) to perform certain responsibilities. These responsibilities may include, inter alia, contributions to the default fund, participation in recovery tools, and involvement in default management procedures. The commercial terminology may differ across CCPs for both the clearing members in sponsored models, as well as for the sponsors.
- (29) When defining their admission criteria for clearing members in sponsored models, CCPs should, in addition to the general considerations applicable to all clearing members, duly consider the specific risks associated with such models.
- (30) In order to ensure transparency, the CCP's rules should clearly delineate the responsibilities of the clearing member and the sponsor, reflecting that the clearing member bears full responsibility for discharging all financial obligations vis-à-vis the CCP, including in the event of failure or default of the sponsor. The CCP's rules should also explicitly state that netting between the positions of different clearing members in sponsored models, or between the positions of a clearing member and its sponsor, should not be permitted.
- (31) CCPs should also consider whether clearing members using the sponsored model have established robust arrangements with their sponsors, with clearly defined responsibilities, and whether such arrangements remain effective at all times, including under stressed market conditions and in the event of a default by another clearing member. Such arrangements should not contradict or alter the delineation of responsibilities set out in the CCP's rules, nor should they undermine the clearing member's full responsibility for meeting its obligations towards the CCP.
- (32) CCPs should also consider whether clearing members in sponsored models have contingency measures in place, such as back-up sponsorship arrangements or the capacity to independently fulfil all relevant obligations in the absence or default of the sponsor. These contingency arrangements should be subject to testing by the CCP.
- (33) Given the critical role played by sponsors in the functioning of sponsored models, CCPs should conduct a comprehensive assessment of the associated risks and establish

appropriate admission criteria specific to sponsors. In particular, CCPs should consider whether sponsors have sufficient financial resources and operational capability to meet their obligations under the sponsored model framework. The CCPs should consider whether admission criteria established for sponsors are comparable to those applicable to clearing members that provide client clearing services. The CCP should also consider whether the sponsor is also already a clearing member of the CCP.

- (34) It is necessary to further specify the elements that CCPs should consider when assessing the ability of NFCs acting as clearing members to meet margin requirements and default fund contributions, including under stressed market conditions. While Articles 1 to 6 of this Regulation set out core participation requirements, CCPs should consider alternative elements that may demonstrate the prudential soundness of NFCs that do not meet certain criteria in a standardised manner. This is particularly relevant where NFCs lack access to central bank financing, or are not covered by capital and prudential supervision regimes. In such cases, CCPs should assess whether alternative arrangements, including collateralisation mechanisms, operational capabilities, and sector-specific regulatory oversight, provide sufficient assurance of the NFC's ability to participate safely and reliably in the clearing system. This approach ensures that participation requirements remain proportionate and risk-sensitive, while maintaining the integrity and resilience of the clearing system.
- (35) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (36) ESMA has developed the draft regulatory technical standards after consulting the European Banking Authority (EBA) and the European System of Central Banks (ESCB). In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)¹¹, ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010.

Article 1

Transparent, fair and open access

¹¹ OJ L 331, 15.12.2010, p. 84.

1. When establishing its admission criteria, a CCP shall conduct a comprehensive assessment, commensurate to the scale and nature of the business of the clearing member, of the potential risks posed to it by its clearing members and ensure the admission criteria properly reflect the risks identified, considering the elements set out in Articles 2 to 7 of this Regulation.

2. A CCP shall make its admission criteria, as well as its rules, publicly available and easily accessible, including in a language customary in the sphere of international finance. The CCP shall update those publications when it changes its admission criteria or rules.

Article 2

Financial resources

1. When establishing its admission criteria, a CCP shall consider, whether a clearing member possesses adequate financial resources to meet its obligations in a timely manner, for a range of scenarios which result in increased margin calls, including at least the following ones:
 - (a) During a market stress event, notably a period of high volatility;
 - (b) Increase of the risks of the portfolios of the clearing member, due to an increase of activity, concentration, wrong way or liquidity risks;
 - (c) Increase of the individual risk of the clearing member, notably when this triggers additional margins;
 - (d) Result of the default management procedure, including the obligations following to the clearing member's participation to the auction of a defaulting clearing member's positions; and
 - (e) Participation of the clearing member to the recovery tools of the CCP.
2. For the purposes of paragraph 1, a CCP shall consider a range of relevant elements:
 - (a) whether the clearing member has access to reliable credit, liquidity, and foreign exchange facilities that are commensurate with the scale and nature of its expected clearing activity. In this context, access to central bank financing constitutes a key consideration.
 - (b) the clearing member's creditworthiness; and
 - (c) the clearing member's capacity to absorb losses.

3. For the purposes of paragraph 1, the clearing member's creditworthiness assessment shall be based on information provided by the clearing member. It shall be complemented, where necessary, by publicly available information, and it shall not fully rely on external opinions.
4. For the purposes of paragraph 1, where the clearing member forms part of a group, the CCP shall also consider the reliability and availability of financial support from the group. The CCP shall also consider the financial and operational dependence of the group to the clearing member, where this could negatively impact the clearing member's obligations towards the CCP.

Article 3

Operational capacity

1. When establishing its admission criteria, as regards operational capacity, a CCP shall consider, the following elements:

- (a) whether the clearing member has in place adequate IT systems;
- (b) whether the clearing member has access to relevant settlement and payment services and systems;
- (c) whether the clearing member possesses the necessary resources and expertise to use the clearing services;
- (d) whether the clearing member has in place adequate operational risk management and business continuity tools; and
- (e) whether the arrangements with third-party service providers that the clearing member relies on for fulfilling its obligations towards the CCP are robust under the scenarios listed in Article 2(1) of this Regulation, where applicable.

2. For the purposes of paragraph 1, point (a), the CCP shall consider the technical capabilities of the clearing member, to ensure the clearing member's IT systems meet the CCP's requirements. This shall include the suitability of the clearing member's hardware and software infrastructure and its ability to interact effectively with the CCP's communication platforms. Furthermore, the CCP shall consider whether the clearing member has sufficient capacity to notify the CCP in a timely manner of any changes to its IT systems that may affect its operational performance.

3. For the purposes of paragraph 1, point (b), the CCP shall also consider the effectiveness of the clearing members' back-up arrangements, where commercial bank accounts are used, as well as whether they are properly tested at least on an annual basis.

4. For the purposes of paragraph 1, point (c), the CCP shall consider the clearing member's staff's and representatives' knowledge and understanding of the CCP's rules and procedures, as well their ability to engage effectively with the CCP on an ongoing basis, any professional standards imposed on the clearing member's staff, and whether comprehensive training is provided to the clearing member's staff on the system and technical functioning of the relevant clearing activities.

5. For the purposes of paragraph 1, point (d), the CCP shall consider the clearing member's relevant policies and procedures. The CCP shall also consider whether the clearing member has sufficient capacity to promptly resolve incidents that are likely to impair its ability to meet its obligations.

6. For the purposes of paragraph 1, in relation to ICT, the CCP shall consider, where applicable, whether the clearing member complies with Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector (DORA) in accordance with Article 2(1) of that Regulation.

Article 4

Other considerations and risks

1. When establishing its admission criteria, a CCP shall consider whether a clearing member holds, an authorisation or licence and is, consequently, subject to capital and prudential regulation and supervision, where applicable. Where a clearing member is established outside the EU, the CCP shall consider whether the clearing member is subject to comparable requirements.

2. When establishing its admission criteria, a CCP shall consider:

- (a) any past or ongoing administrative, civil or criminal proceedings, sanctions or measures concerning a clearing member, other entities within the same group or its key personnel, that may affect the clearing member's ability or capacity to fulfil its obligations towards the CCP; and
- (b) any recent history of insolvency, restructuring, or comparable financial distress concerning a clearing member or other entities within the same group, that may affect the clearing member's ability or capacity to fulfil its obligations towards the CCP.

3. When establishing its admission criteria, a CCP shall consider the risk management framework and internal risk control systems of a clearing member, ensuring that the clearing member is able to adequately identify, monitor and manage all risks associated with its clearing activities in order to prevent unacceptable risk exposure for the CCP and other clearing members at the CCP.

4. When establishing its admission criteria, a CCP shall consider:

- (a) the legal capacity and ability of a clearing member to comply with and fulfil all obligations and legal requirements arising from its participation in the CCP and to comply with the CCP's rules;
- (b) the enforceability, vis-à-vis a clearing member, of the CCP's rules, which shall reflect all relevant obligations and legal requirements concerning clearing members arising from their participation in the CCP, including, where relevant, as regards the provision of client clearing services by the clearing members and as regards sponsored models; and
- (c) any conflict of laws, in particular in respect of a clearing member established outside the Union.

5. When establishing its admission criteria, a CCP shall consider the existence and applicability of any resolution framework governing a clearing member, in particular where such a framework includes provisions aimed at ensuring the continued fulfilment of the clearing member's obligations towards the CCP.

6. When establishing its admission criteria, a CCP shall consider any other relevant risks posed to it by its clearing members, including risks related to anti-money laundering and counter-terrorist financing.

Article 5

Clearing members that clear transactions on behalf of their clients

When establishing its admission criteria with respect to clearing members that clear transactions on behalf of their clients, in addition to the elements set out in Articles 1 to 4 of this Regulation, a CCP shall also consider the following elements:

- (a) outcome of the comprehensive assessment, referred to in Article 1(1) of this Regulation, which shall also comprise risks related to the clearing member's client clearing activity, including the relative significance of the client clearing activity in relation to the clearing member's overall clearing operations, as well as the clearing member's financial capacity to meet margin requirements in the event of the default of its clients;
- (b) whether clearing members have implemented a robust risk management framework capable of effectively identifying, monitoring, and mitigating risks associated with client clearing;
- (c) whether clearing members possess the operational capability to provide timely and accurate information enabling the CCP to identify the underlying clients associated with positions recorded in client accounts for the purpose of Article 37(3) of Regulation (EU) No 648/2012.

Article 6

Sponsored models

1. When establishing its admission criteria with respect to clearing members using a sponsored model, in addition to the elements set out in Articles 1 to 4 of this Regulation, a CCP shall also consider the following elements:

- (a) whether clearing members in sponsored models have established robust arrangements with their sponsors, with delineated responsibilities, ensuring that such arrangements remain effective at all times, including under stressed market conditions and in the event of a default of another clearing member;
- (b) whether the arrangements referred to in point (a) do not contradict or alter the delineation of responsibilities as set out in Regulation (EU) No 648/2012 and in CCP's rules; and
- (c) whether clearing members in sponsored models have contingency measures in place, such as back-up sponsorship arrangements or the capacity to independently fulfil all relevant obligations in the absence of or in case of default of the sponsor.

2. When establishing its admission criteria with respect to sponsors, a CCP shall perform a comprehensive analysis of the associated risks and shall consider:

- (a) whether sponsors have sufficient financial resources and operational capability to meet their obligations under the sponsored model framework;
- (b) whether the CCP's admission criteria for sponsors are comparable to those for clearing members that clear transactions on behalf of their clients as set out in Article 5 of this Regulation; and
- (c) whether the sponsor is a clearing member of the CCP.

Article 7

Additional requirements in relation to non-financial counterparties

When establishing admission criteria with respect to non-financial counterparties, a CCP shall, in addition to the elements set out in Articles 1 to 6 of this Regulation, consider the following elements:

- (a) Where a non-financial counterparty does not have access to reliable sources of credit, liquidity, and foreign exchange arrangements that are proportionate to the scale and nature of its expected

clearing activity, by way of derogation to Article 2, paragraph 2(a) of this Regulation, the CCP shall consider whether alternative collateralisation arrangements are necessary for the participation of the non-financial counterparty in the CCP;

- (b) Where a non-financial counterparty is not subject to any prudential regulation and supervision, by way of derogation to Article 4 paragraph 1 of this Regulation, the CCP shall consider the nature of the activities carried out by the non-financial counterparty and whether those activities are subject to other regulatory frameworks in the jurisdiction where the non-financial counterparty is established.

Article 8

Entry into force

This Regulation shall enter into force on the [XXth] day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, DD MM YYYY.

For the Commission

The President

Signature