

Final Report

**On the draft technical standards amending Regulation (EU) 149/2013
to further detail the new EMIR clearing thresholds regime**

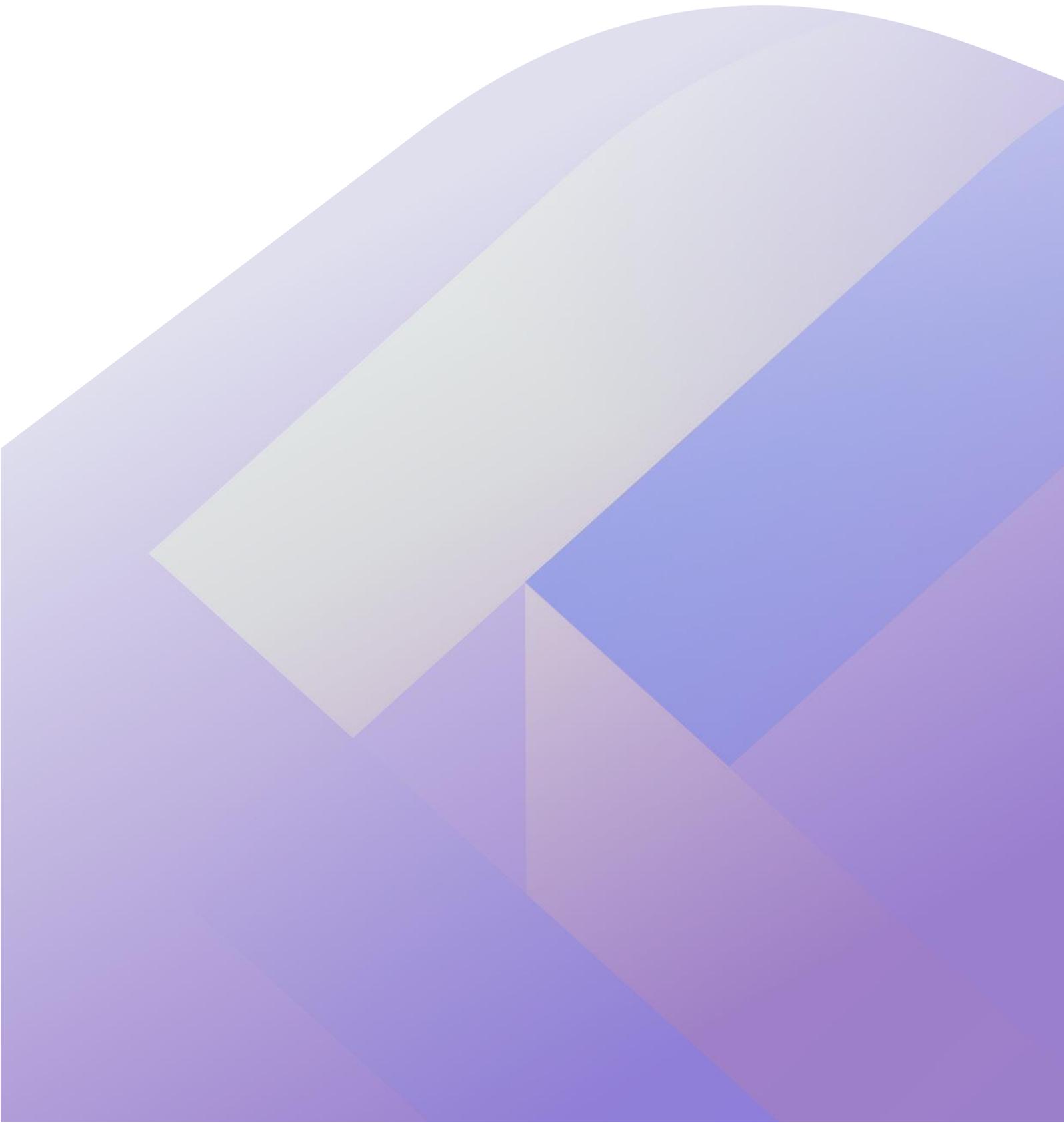


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Legislative references and abbreviations

CCP	Central Counterparty
CO	Clearing Obligation
Delegated Regulation 149/2013	Commission Delegated Regulation (EU) No 149/2013 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 indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP (OJ L 52, 23.2.2013, p. 11–24)
Delegated Regulation 2017/592 (RTS 20)	Commission Delegated Regulation (EU) No 2017/592 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business, repealed by Commission Delegated Regulation (EU) No 2021/1833 of 14 July 2021 supplementing Directive 2014/65/EU of the European Parliament and of the Council by specifying the criteria for establishing when an activity is to be considered to be ancillary to the main business at group level (OJ L 87, 31.3.2017, pp. 492–499)
Implementing Regulation 2022/1860	Commission Implementing Regulation (EU) No 2022/1860 of 10 June 2022 laying down implementing technical standards for the application of Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to the standards, formats, frequency and methods and arrangements for reporting (OJ L 262, 7.10.2022, p. 68–114)
CP	Consultation Paper
CTs	Clearing Thresholds
CWG	Consultative Working Group
EC	The European Commission
ECB	European Central Bank
EEA	European Economic Area
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 (OJ L 201, 27.7.2012, p. 1–59)
EMIR 3	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)

EMIR Refit

Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (OJ L 141, 28.5.2019, pp. 42–63)

ESG	Environmental, Social and corporate Governance
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
ETD	Exchange Traded Derivative
FC	Financial Counterparty
FR	Final Report
FX	Foreign exchange
GLEIF	Global Legal Entity Identifier Foundation
IRD	Interest Rate Derivative
NBFI	Non-Bank Financial Institution
NFC	Non-financial Counterparty
OTC	Over-the-Counter
PPA	Power Purchase Agreement
RTS	Regulatory Technical Standard
TR	Trade Repository
TSR	Trade State Report

Executive Summary

Reasons for publication

This FR follows from the CP published by ESMA in April 2025¹ and presents ESMA's proposed amendments to Delegated Regulation (EU) No 149/2013, which supplements Regulation (EU) 648/2012 (EMIR).

The recent review of EMIR led to Regulation (EU) 2024/2987² (also referred to as 'EMIR 3'), amending EMIR and in particular modifying the regime applicable to CTs. The main changes brought in by EMIR 3 to the CTs framework relate to the positions' calculation methodology which moves away from the ETD versus OTC distinction (where only OTC derivatives count towards the threshold) to a framework based primarily on the level of OTC uncleared transactions. This change in methodology aims at better recognising the benefits of clearing. More precisely, under EMIR 3 FCs are required to calculate their uncleared positions and, separately, their aggregate OTC exposure (cleared and uncleared) to assess whether they exceed the CTs, while NFCs should only count their uncleared positions towards the CTs.

In relation to this new CTs regime, EMIR 3 introduces a twofold mandate for ESMA, under Articles 4a(4) and 10(4)(b), to specify the values of the CTs for aggregate positions and uncleared positions, respectively. Additionally, Article 10(4) of EMIR requires ESMA to specify the criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks (a.k.a. hedging), i.e. a review of the existing hedging criteria from before EMIR 3, as well as the mechanisms triggering a review of the values of the CTs.

Contents

This FR is divided into 4 different sections. Section 1 sets the context and takes the reader through the different aspects covered in this FR. Section 2 provides some background information on the broader CO and CTs regimes, and focusses on the mandate related to the calibration of the aggregate and uncleared thresholds. For that purpose, ESMA carried out an update of the data analysis presented in the CP, using a more recent set of EMIR TR data to assess the population of counterparties (and the notional they trade) currently above the CTs for each asset class and, on that basis, proposes uncleared thresholds at a level that would allow capturing a similar population of counterparties. In addition, while FCs are also subject to the uncleared thresholds, ESMA considers it necessary to establish aggregate thresholds for interest rate and credit derivatives (i.e. the asset classes in scope of the clearing obligation) to ensure not leaving out of scope of the clearing obligation FCs that may have large cleared portfolios which may therefore not be captured by the uncleared CTs. In this context, to properly calibrate the thresholds and in line with the feedback received to the CP, ESMA has also taken the potential overlap between FCs that may be captured by both the uncleared and the aggregate thresholds into account in its data analysis. Lastly, this section also provides guidance on the implementation of the new regime and includes some additional considerations on commodity

derivatives in light of the EMIR 3 recital which invites ESMA to consider more granular thresholds for this asset class.

Section 3 deals with considerations with respect to the definition of hedging contracts. In particular, ESMA looked further at the feedback regarding virtual PPAs. Lastly, section 4 covers the new trigger mechanism to launch a review of the CTs. Notably, ESMA has taken into account the feedback to keep this trigger mechanism framework flexible in line with the proposal from the CP, as well as the various suggestions for indicators to consider.

Last but not least, with the simplification and burden reduction objectives in mind, ESMA paid particular attention to the responses with suggestions or comments to keep the framework simple, to the extent possible, and to limit the operational impact of the transition from the current regime to the new one. This was, for example, the case when clarifying that after the entry into force of the Delegated Commission Regulation, the new CTs calculations could be conducted by counterparties at the same period of the year they are currently doing it under the pre-EMIR 3 regime, i.e. mostly in June, or sooner for the counterparties that would want to benefit from the new regime earlier. The decision to keep five CTs and not to introduce other categories of CTs or more granular CTs, the choice to increase the uncleared commodity CT to notably take into account price changes and inflation, the increase in the uncleared interest rate CT to better take into account the overlap in terms of counterparties in scope with both the uncleared CT and the aggregate CT, the sought stability and visibility in the trigger mechanism process, etc. are other examples of how the SBR objectives have been taken into account.

Next steps

The proposed amending RTS are submitted to the EC for adoption. In accordance with Article 10 of Regulation (EU) 1095/2010, the EC shall decide whether to endorse the proposed amendments within 3 months.

¹ https://www.esma.europa.eu/sites/default/files/2025-04/ESMA74-1049116225-632_Consultation_Paper_Clearing_Thresholds_EMIR_3.pdf

² 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

1 Introduction

1. EMIR sets out the CO framework regarding OTC derivatives, setting the criteria and conditions determining which counterparties are subject to the CO, at what point in time, for which classes and for which transactions of OTC derivatives.
2. On 27 November 2024, the European Parliament and the Council adopted EMIR 3, amending EMIR. EMIR 3 was published in the Official Journal on 4 December 2024 and the provisions started applying on 24 December 2024.
3. The objectives of EMIR 3 are: improving the attractiveness of EU cleared markets, enhancing the resiliency of the EU clearing system and reducing excessive reliance on third-country CCPs of substantial systemic importance. In this context, EMIR 3 brings in a number of changes to the clearing regulatory framework, including with regards to the CTs.
4. The pre-EMIR 3 version of EMIR defined the CTs as an amount set by asset class of OTC derivative contracts used by counterparties to compare their aggregate month-end average position in OTC derivatives over a period of 12 months for the purpose of assessing whether or not they should be subject to the CO. More precisely, under the pre-EMIR 3 text and until the entry into force of the new RTS, counterparties should calculate their position by including all OTC derivative contracts entered into by the counterparty itself or by any other entities within the group to which the counterparty belongs (for NFCs, this should not include hedging positions and it should only encompass NFCs within the same group). The levels of the CTs are set in Delegated Regulation 149/2013³ for five different asset classes: credit derivatives, interest rate derivatives, equity derivatives, foreign exchange (referred to 'FX' thereafter)⁴ derivatives and commodity and other derivatives.
5. EMIR 3 amends the CTs framework by moving away from the ETDs versus OTC distinction (where ETDs are not included in the calculation while OTC derivatives are) to a framework primarily based on the level of OTC uncleared transactions. This change in methodology aims at better recognising the benefits of clearing. More precisely, the new regime introduces some differences in the calculation methodology for FCs and NFCs. While both FCs and NFCs should now calculate their uncleared OTC positions to assess whether they are above the CTs and thus be subject to mandatory clearing, FCs are also required to calculate, where necessary, their aggregate position including cleared and uncleared OTC derivatives (the 'aggregate threshold' calculation, which has also been referred to as the 'backstop threshold').
6. In view of these changes, Articles 4a(4) and 10(4)(b) of EMIR 3 introduce a twofold mandate for ESMA to specify the values of the CTs for aggregate positions and uncleared

³ Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council.

⁴ Those are referred to as 'CURR' or 'Currency' under EMIR Reporting.

positions, respectively. Additionally, Article 10(4) of EMIR requires ESMA to specify the criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks (i.e. entered into for hedging purposes), as well as the mechanisms triggering a review of the values of the clearing thresholds (and thus sooner than the regular review conducted by ESMA).

7. Against this background, ESMA published a CP in April 2025 presenting the draft technical standards amending Commission Delegated Regulation 149/2013 to further detail the new EMIR clearing thresholds regime. In particular, the CP presented the amended draft RTS with respect to the calibration of the thresholds, the hedging definition as well as the mechanism triggering the review of the CTs.
8. ESMA received 35 responses to the consultation from a broad range of stakeholders, including NFCs, FCs as well as trade associations. ESMA also consulted and received input from the ESRB on the approach for the RTS. ESMA has analysed the feedback and input received and has revised its initial proposals accordingly. This FR summarises (i) the original proposals from the consultation, (ii) the feedback and input received as well as (iii) ESMA's assessment and next steps. It should be noted that the proposal developed in the CP was presented and discussed with the members of the Securities and Markets Stakeholder Group (SMSG) but that no written advice was received. It should also be noted that while taking into account the feedback and input to finalise the RTS, ESMA paid particular attention to the objectives of simplification and burden reduction.
9. Following this introduction, Section 2 covers the re-calibration of the thresholds, Section 3 the criteria for the hedging definition and Section 4 the triggering mechanism. Finally, Annex I contains the summary of the feedback received to the CP, Annex II the proposed Amendments to Delegated Regulation (EU) 149/2013, Annex III the ESMA Cost-Benefit Analysis (CBAs) while Annex IV provides an overview of the various EMIR fields used for the purpose of the data analysis.

2 Calibration of the thresholds

2.1 Proposals in the CP

10. As explained in the CP, the methodology to calculate counterparties' positions under EMIR 3 takes into account whether OTC derivatives are centrally cleared or not. This change in methodology aims at better recognising the benefits of clearing. More precisely, it is worth remembering that only uncleared trades would now count towards the CTs for NFCs, while FCs are required to calculate their position in uncleared OTC derivatives and, separately, their aggregate position including both cleared and uncleared OTC derivatives.
11. EMIR 3 also re-designs how FCs and NFCs should calculate their positions with respect to the distinction between groups and entities. The positions calculation remains at group

level for FCs (notwithstanding the case of funds who should calculate their positions at entity level in accordance with the third subparagraph of Article 4a(3) of EMIR 3) while it moves to entity level for NFCs. It should be considered that, under the pre-EMIR 3 regime, NFCs were calculating their positions by taking into account OTC derivatives entered into by the other NFCs belonging to the same group (so also a group approach for NFCs, although not counting trades from the FCs in their group).

12. It is also worth remembering that NFCs will continue to benefit from an exemption for those contracts reducing risks directly relating to the commercial activity or treasury financing activity of the NFCs or of its group (the so-called 'hedging exemption'). And in this case, the exemption covers transactions entered into by the NFC for its hedging needs or for the hedging needs of another group entity.
13. Lastly, under the EMIR 3 transitional measures, the current positions calculation methodology and the current levels of the CTs outlined in Commission Delegated Regulation 149/2013 continue applying until the entry into force of the amended RTS.
14. In light of the changes introduced by EMIR 3 to the calculation methodology and to fulfil the EMIR 3 mandates, ESMA conducted in the CP an assessment of the counterparties above the CTs as well as the notional traded by these counterparties above the CTs, and ran some simulations based on the new methodology to help further assess at what levels to set the CTs.
15. In this context, it should be recalled that ESMA took into account the guidance provided in Recital 9 of EMIR 3 which suggests that the review and recalibration of the CTs is not expected to lead to substantial changes in order to ensure that the current coverage of the CO is not affected by the new methodology.
16. The following paragraphs outline ESMA's proposals from the CP in more detail.

Aggregate thresholds (only for FCs)

17. In the CP, ESMA noted that the empowerment in Article 4a(4) of EMIR, as amended by EMIR 3, requires ESMA to "(..) specify the value of the clearing thresholds applicable to aggregate positions **where necessary** to ensure the prudent coverage of financial counterparties under the clearing obligation."
18. On that basis, with a view to reducing burden on FCs without leaving out of scope of the CO those counterparties that may have large cleared portfolios and that may remain under the uncleared thresholds, ESMA considered it necessary to establish an aggregate threshold only for the asset classes which are in scope of the CO, i.e. interest rate and credit derivatives.
19. ESMA also noted that any potential future amendment to the scope of the CO may need to be reflected in the scope of the aggregate CTs.

20. In addition, the data analysis conducted by ESMA in the context of the CP suggested that the CTs are well calibrated and proportionate to serve the purpose of preserving financial stability as the very large majority of notional traded in these two assets classes is traded by counterparties above the CTs, while only capturing the most active entities, thus focusing the scope on the most systemic segment of the market. Therefore, ESMA concluded that the current thresholds of 3 billion EUR for interest rate derivatives and 1 billion EUR for credit derivatives should be maintained.

Uncleared thresholds (both for FCs and NFCs)

21. With respect to the uncleared thresholds, ESMA carried out simulations to assess, for each asset class, what CT level (based on OTC uncleared positions) would allow to capture a similar population of counterparties and notional compared to the scope of the CT (based on OTC cleared and uncleared positions) at the time of the CP.
22. On that basis, ESMA considered in the CP that, for each of the five asset classes, the following thresholds would allow to capture a similar population of counterparties and notional (both for FCs and NFCs):

Asset class	Proposed thresholds for uncleared OTC derivatives
Interest rate derivatives	1.8 billion EUR
Credit derivatives	0.7 billion EUR
Equity derivatives	0.7 billion EUR
FX derivatives	3 billion EUR
Commodity derivatives and emission allowance derivatives	3 billion EUR

Additional considerations on commodity derivatives

23. Recital 16 of EMIR 3 invites ESMA to consider more granular CTs for the commodity derivatives asset class, further adding that such “(..) *granularity could be achieved by separating the clearing thresholds by sector and type, such as differentiating between agriculture, energy or metal related commodities or differentiating those commodities based on other features such as environmental, social and governance criteria, environmentally sustainable investments or crypto-related features.*”
24. Against this background, ESMA analysed whether more granular thresholds should be introduced for commodity derivatives sub-asset classes and, for that purpose, presented an overview of uncleared OTC positions at sub-asset class level (see Annex II of the

ESMA CP). ESMA looked at the categorisation included in the now-repealed Commission Delegated Regulation 2017/592 (RTS 20)⁵ which divided commodity derivatives in the following sub-asset classes: agricultural products, coal, emission allowances and derivatives on emission allowance, gas, metals, oil and oil products, power, seafood and other commodities.

25. While the analysis showed that the activity in most of the commodity derivatives sub-asset classes was well developed, ESMA did not recommend introducing in the RTS separate thresholds for the various commodity derivatives sub-asset classes.
26. ESMA noted that the calculation methodology introduced by EMIR 3 already entails a significant change for market participants and that adding more complexity regarding the determination of the various sub-asset classes did not seem necessary at that stage. ESMA also highlighted the concerns raised by some market participants trading in commodity derivatives against more granular CTs for sub-categories as this would lead to reduced flexibility in their management of exposure and risk. In a nutshell, ESMA considered that such an approach would entail additional burden for market participants who would have to conduct separate assessments for their different exposures.
27. ESMA came to a similar conclusion concerning commodity derivatives based on environmental, social and governance (ESG) factors or commodity derivatives based on crypto-related features.
28. Regarding ESG-related derivatives, ESMA analysed in the CP the different types of commodity derivative products which may be deemed as ESG-related such as emission allowance derivatives, sustainably produced commodity derivatives and ESG-resilient commodity derivatives. While ESMA provided information and figures for each of these categories, it did not consider opportune at this stage to introduce a separate threshold for these derivatives either, with a view to avoid more complexity and a burden for market participants but also in light of the limitations that there appeared to be in terms of historical data to allow for the design of new CTs.
29. In parallel, ESMA proposed that the fifth bucket currently encompassing 'commodity and other derivatives' should only capture 'commodity and emission allowance derivatives', also to align with the relevant EMIR reporting scheme. At the same time, ESMA recognised that it would be premature to define a sixth bucket for any other specific asset classes.
30. Furthermore, in relation to commodity derivatives based on crypto-related features, while ESMA acknowledged that trading in crypto derivatives has increased compared to the moment when the different categories of CTs were established, ESMA suggested not to introduce more granular thresholds for this category. ESMA also justified this decision in

⁵ Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business

light of the limitations in terms of historic data available at the time of the CP but also noted that EMIR reporting, as amended by EMIR Refit, includes a field to identify crypto-asset related trades and that crypto-assets may therefore be assessed as a separate category in the future.

2.2 Feedback from consultation

31. In the CP, ESMA asked eight questions related to the calibration of the thresholds (the detailed feedback to the CP can be found in Annex I).
32. Regarding the aggregate CTs, most respondents agreed with ESMA's proposal to only set them for the asset classes for which there is a CO. A minority of respondents however suggested to set the aggregated CTs only for interest rate derivatives in line with the scope of the EMIR 3 Active Account requirement (AAR).
33. Respondents generally welcomed ESMA's initial assessment of maintaining the aggregate thresholds at the current levels (i.e. 3 billion EUR for interest rate derivatives and 1 billion EUR for credit derivatives) although a few respondents considered that these should be increased to take into account the evolution of market conditions, and notably the fact that markets have grown both in absolute size and through inflationary effects. In parallel, some respondents also pointed out a specific element of the data analysis and suggested to assess the counterparties captured by the aggregate thresholds not in isolation from those covered under the uncleared thresholds.
34. In relation to the uncleared thresholds, respondents generally opposed to the level of the CTs proposed in the CP. It may be useful to assess the feedback received to the different asset classes separately, noting that commodity and interest rate derivatives attracted most comments from stakeholders.
35. Starting with commodity derivatives, respondents opposed to a 3 billion EUR uncleared threshold for the following reasons:
 - the proposed threshold does not align with current market conditions due to inflation, price volatility and exchange rate effects (respondents made particular reference to energy markets) and does not take into account the growing trading in new products such as VPPAs;
 - NFCs often centralise trading in one single legal entity and therefore the benefits of the new EMIR 3 calculation methodology (at entity level and no longer with a group approach) are limited for these entities;
 - considerations on the international competitiveness of EU firms as they would be at a competitive disadvantage vis-à-vis certain third-country firms where higher thresholds apply;

- a higher threshold appears justified as the commodity derivative markets poses little to no problem in terms of financial stability.
36. Respondents emphasized that a lower threshold could have negative consequences such as exacerbating liquidity strains, constrain energy market participants' ability to support green and renewable investments and limit private investments into energy generation facilities. Most respondents therefore suggested setting the uncleared threshold for commodity derivatives at 4 billion EUR while a few respondents suggested even higher levels (e.g. 7 or 12 billion EUR).
37. In the interest rate derivatives space, respondents opposed to the 1.8 billion EUR proposed in the CP for a number of reasons including that the level of interest rates has increased and this has led to a rise in nominal cash flow and a greater need for corporates to hedge interest rate risk; that inflation should be taken into account in the calibration of the thresholds; that since hedging exposure via interest rate derivatives is economically necessary, lowering the thresholds would discourage hedging and thus raise transaction costs and undermine investment certainty.
38. Regarding credit and equity derivatives, respondents also expressed a general disagreement with the proposed uncleared thresholds (0.7 billion EUR). In contrast, regarding FX derivatives, a few respondents rather considered that this category should be removed from the CTs altogether as FX derivatives do not pose a systemic risk.
39. Some respondents also raised some comments on the ESMA data analysis including a suggestion to consider the potential overlap between counterparties captured by the aggregate and uncleared thresholds and to provide more information regarding the simulations and scenario in the FR.
40. Separately, a few stakeholders considered unclear from EMIR 3 when market participants would be expected to make calculations against the new thresholds and therefore invited ESMA to provide guidance.
41. In addition, ESMA gathered feedback from market participants regarding the proposal not to introduce more granular thresholds for commodity derivatives sub-asset classes, commodity derivatives based on ESG factors, and commodity derivatives or other derivatives based on crypto-related features. In general, the very large majority of respondents agreed with ESMA's proposal not to introduce granular thresholds for these categories and welcomed the effort to simplify and reduce burden on market participants.
42. Lastly, ESMA also consulted the ESRB who, in its response⁶, expressed support for the general approach and the specific calibration of the CTs proposed by ESMA. At the same time, the ESRB encouraged ESMA to update its data analysis before finalising the RTS

⁶ https://www.esrb.europa.eu/pub/pdf/other/ESRB.response250605_EC_consultation_on_EMIR_clearing_thresholds_regime~f3a6a46b5f.en.pdf

and suggested to also look more specifically at non-bank financial intermediaries (NBFIs) given their growing systemic relevance in derivatives markets.

2.3 ESMA assessment and next steps

2.3.1 Data source and methodology

43. With a view to delivering on the policy mandates related to the calibration of the CTs for aggregated and uncleared positions, ESMA has carried out an update of the analysis performed in the CP based on a more recent set of data, using once again as a main source EMIR data reported to trade repositories (TR) (also referred to as EMIR data) registered in the EU.
44. It should be noted that this iteration of the data analysis is computed this time on the basis of EMIR Refit data. Despite the EMIR Refit structural changes, the impact on the analytical framework is limited because the methodology was intentionally kept consistent with pre-Refit analysis and ESMA did not incorporate new data fields or alter the logic of the analysis. The adjustments made were primarily operational such as aligning new field names and XML schema. The goal was to maintain comparability across periods while complying with the updated reporting standards.
45. It might be useful to recall that EMIR data is provided at different levels of granularity to the authorities, with the highest level of granularity being trade activity (also referred to as flow data) providing information about all conclusions, modifications and terminations of the derivative contracts. TRs also provide a further level of data processing, trade state data, which include information about the latest state of only outstanding derivatives at the time of aggregation by the respective TRs, at the end of the day. For the purpose of this FR and in line with regulatory requirements, ESMA used 12 trade state reports (TSR) each reflecting a different date⁷ to compute the aggregate position for each group and counterparty.
46. As part of the analysis is performed at group level, it is essential to identify the groups within the data set to meaningfully assess the counterparties and notional subject to the CO. The starting point for the identification of groups is the notification that ESMA (and NCAs) receive under Article 4a(1) and Article 10(1) of EMIR⁸. Data included in the EMIR notification is cross-checked and complemented with the information available in the Global Legal Entity Identifier Foundation (GLEIF) Level 2 data on relationship data for legal entities.
47. For this analysis, OTC derivatives (bilateral derivatives trades and derivative trades executed on markets other than EU regulated markets or third country equivalent

⁷ The exact EMIR TSR dates used are: 2024-08-30, 2024-09-30, 2024-10-31, 2024-11-29, 2024-12-31, 2025-01-31, 2025-02-28, 2025-03-31, 2025-04-30, 2025-05-30, 2025-06-30, 2025-07-31

⁸ For the purpose of the notification, counterparties should use the template provided on the ESMA website at the following webpage: <https://www.esma.europa.eu/post-trading/clearing-thresholds>

regulated markets) and uncleared derivatives (derivative trades not cleared at a recognised or authorised CCP) have been considered. It should be noted that EMIR operates in a double reporting regime for EEA entities, i.e. when both trading counterparties reside in the EEA, they are both mandated to report the information on their transactions to TRs. For this reason, and to prevent doubling counting, the notional is adjusted by halving it when both counterparties are domiciled in the EEA, if needed by the analysis. When analysing outstanding amounts at entity or group level, for the calibration of the CTs, nominal amounts have not been halved as those amounts are relevant to establish whether entities may fall under the CO or not.

48. EMIR data, as amended by EMIR Refit, includes further information also on the nature of the transaction, to identify when a transaction is for hedging purposes (i.e. field 20 of table 1, “Directly linked to commercial activity or treasury financing”), and the nature of the entity (included in field 5 of table 1, “Nature of the reporting counterparty”) to distinguish FCs from NFCs among others. As a reminder, the hedging exemption is only available to NFCs and hedging transactions for these counterparties have not been counted in the calculation of the positions.
49. With respect to the treatment of hedge trades for NFCs, ESMA notes that for the purpose of the data analysis, the EMIR field “Directly linked to commercial activity or treasury financing” was used to exclude trades or positions when this field is equal to “Yes”.
50. To sum up, coherently with the CP analysis, this update uses the EMIR TSR, EMIR Notifications, and GLEIF level 1 and level 2 data. The EMIR TSR includes 12 dates⁹, and the positions of entities are calculated by aggregating the 12 TSR notional amounts outstanding (converted to EUR using ECB rates) for each entity and dividing the total by the number of dates to produce a 12-month average. The metadata of reporting entities is enhanced by incorporating ultimate owner information from GLEIF level 2 data. Notifications are also used to complement GLEIF level 2 data ownership information.
51. In the calculation performed as part of this exercise for the OTC derivative amounts, NFCs and FCs are organised into groups, while funds are treated separately. For the uncleared notional calculations, only FCs are grouped, and NFCs and funds are treated as individual entities. Funds are identified via the sector classification provided in EMIR and more precisely by using field 6 of table 1 (‘Corporate sector of counterparty’). CCP reporting has been excluded from all calculations, and for NFC calculations, hedging was excluded using the EMIR field “Directly linked to commercial activity or treasury financing”.
52. A more schematic representation of the EMIR fields used for the purpose of this analysis is presented in Annex IV below.

⁹ See footnote 8

2.3.2 Scope of the data analysis

53. For the purpose of the data analysis presented in this FR, two sections have been developed as per the following:
54. Firstly, in Section 2.3.3, ESMA assesses the population of FCs (including funds) and NFCs above the CTs as well as the notional traded by these counterparties, per each asset class, based on the pre-EMIR 3 methodology i.e. by looking at both cleared and uncleared OTC derivatives. In particular:
- For FCs, ESMA calculated whether counterparties are above the CTs by adding the OTC positions of all counterparties trading OTC derivatives within the same group, including funds and NFCs. Funds were then however treated differently as, while their positions were included in the FCs' calculation at group level, the individual position of the fund was considered to assess whether the specific counterparty is above the CTs or not.
 - In the case of NFCs, ESMA presents both the number of counterparties above the CTs with the calculation of positions at group level (only counting the positions of NFCs within the same group) and at entity level in light of the new EMIR 3 calculation methodology.
55. Secondly, in section 2.3.4, ESMA presents the proposed way forward for the aggregate thresholds as well as some simulations of how the coverage of counterparties and notional they trade would be impacted by the different levels of CTs for uncleared OTC positions. This section also provides a brief deep-dive on NBFIs.

2.3.3 Data analysis by asset classes

56. This section is meant to illustrate how the CTs based on the pre-EMIR 3 calculation methodology (i.e. including both cleared and uncleared OTC positions) apply to the different asset classes. Its main purpose is to assess the current coverage of counterparties and notional currently captured by the CO, to calibrate the thresholds based on the new methodology.
57. These statistics are based on the average notional reported by EEA counterparties to TRs over a 12-months period from August 2024 to July 2025. The different derivative asset classes assessed follow the current categorisation of the CTs (interest rate derivatives, credit derivatives, equity derivatives, FX derivatives as well as commodity derivatives).
58. ESMA has taken a macro approach to investigate how the current CTs apply at asset class level. In particular, the data looks at the number of FCs and NFCs that are above the relevant CTs as well as the percentage of notional traded by counterparties above the CTs, over the total notional traded in that asset class. As mentioned, it should be noted that funds are presented separately to reflect the specificity of the calculation at entity level as prescribed by EMIR for this type of counterparties.

59. In that respect, starting with FCs and funds, Table 1 below shows the coverage of counterparties and notional over the relevant observation period. While the number of counterparties varies significantly depending on the asset class, the figures clearly indicate that the great majority of notional is traded by counterparties above the CTs, notably for FCs.

Table 1: Number of FCs and funds above the CTs and notional traded by FCs and funds above the CTs

Asset class	Number of FCs above CTs	% notional traded by FCs above the CTs	Number of funds above CTs	% notional traded by funds above the CTs
Interest rate derivatives	813	99.3%	108	66.1%
Credit derivatives	77	98.3%	50	62.8%
Equity derivatives	249	98.4%	104	57.1%
FX derivatives	521	98.6%	115	30.9%
Commodity derivatives	47	95.4%	0	0%

60. The number of NFCs above the CTs and the notional traded by those counterparties is presented in Table 2 below.

61. As mentioned in paragraph 54, in relation to NFCs, ESMA presents both the number of counterparties above the CTs with the calculation of their positions at: i) NFC group level i.e. taking into account the cleared and uncleared OTC positions of all NFCs within the same group; and ii) entity level i.e. taking into account only the cleared and uncleared OTC positions of the specific NFC.

62. The rationale for such an additional information derives from the EMIR 3 methodology whereby NFCs should now calculate their position at entity level (based only on OTC uncleared derivatives). This information appears therefore useful to assess the number of counterparties above the CTs with the pre-EMIR 3 methodology (i.e. based on both OTC cleared and uncleared derivatives) but with the entity level calculation. For the purpose of the calibration of the thresholds, this is indeed the coverage that ESMA aimed at replicating.

63. In comparison with FCs, the notional traded by NFCs above the CTs generally represents a lower proportion of the overall notional traded, although this varies depending on the asset class. Additionally, the data indicates no major divergences in terms of notional traded when assessing NFCs positions at group and entity level. This seems to suggest that only a few NFCs within an NFC group hold positions above the CTs.

Table 2: Number of NFCs above the CTs and notional traded by NFCs above the CTs

Asset class	Number of NFCs above CTs (NFC group level calculation)	% notional traded by NFCs above the CTs (NFC group level calculation)	Number of NFCs above CTs (entity level calculation)	% notional traded by NFCs above the CTs (entity level calculation)
Interest rate derivatives	134	69.1%	37	68.5%
Credit derivatives	3	60.7%	3	60.7%
Equity derivatives	9	46.3%	9	46.3%
FX derivatives	185	52.6%	23	50.8%
Commodity derivatives	37	44.8%	8	41.9%

2.3.4 Simulations and proposals

2.3.4.1 Aggregate positions (only for FCs)

64. Starting with the aggregate thresholds which are applicable to FCs only, ESMA continues to acknowledge that the sole application of the uncleared thresholds may potentially leave out of scope of the CO several counterparties that may have large cleared portfolios, including cleared portfolios at third-country CCPs of substantial systemic importance, as long as they remain under the uncleared thresholds. Therefore, to avoid any potential loophole, ESMA remains of the view that the aggregate thresholds (cleared and uncleared OTC derivatives) should be applicable at least to those asset classes with instruments in scope of the CO, i.e. interest rate and credit derivatives.
65. At the same time, in line with the CP proposal, to reduce burden on market participants and not to impose a double set of CTs for those asset classes for which there is not a CO, ESMA maintains its original recommendation to only set an aggregate CT for interest rate and credit derivatives. This appears coherent with the wording in the EMIR 3 mandate which empowers ESMA to specify the aggregate CTs “where necessary”.
66. In line with the results of the data analysis presented in the CP and shown in the previous section, ESMA notes that the CTs for these two asset classes appear well calibrated and proportionate to preserve financial stability, as they capture the very large majority of notional traded while only capturing a smaller portion of counterparties, the ones most

active in this asset class, thus focusing the scope on the most systemic segment of this market.

67. Against this background, ESMA concludes that the aggregate threshold should only be set for interest rate and credit derivatives and that the current thresholds of 3 billion EUR and 1 billion EUR, respectively, should be maintained.

2.3.4.2 Uncleared positions (both for FCs and NFCs)

68. Before moving to the simulations for uncleared positions, it appears useful to address one comment raised by some stakeholders in their responses to the CP. In particular, while ESMA proposed for certain asset classes lower uncleared thresholds in absolute values compared to those (aggregate) currently in place, it should be noted that these figures should not be compared directly. In fact, the current set of CTs considers both counterparties cleared and uncleared OTC positions (much like the aggregate threshold), whereas the uncleared threshold has a different and more limited scope as it only takes into account counterparties' uncleared OTC positions.

69. With respect to the actual calibration exercise, in the absence of previous thresholds, ESMA carried out some simulations using as a starting point the levels of thresholds that would allow to capture a similar population of counterparties and notional, compared to the current scope of the CTs presented in section 2.3.3.

70. As also explained in the CP, ESMA acknowledges the difference between the new methodology (on which the simulations are based) which only considers uncleared OTC derivatives positions and the old methodology which looks at both cleared and uncleared OTC derivative positions. ESMA remains however of the view that the current population of counterparties and notional captured should be used as a guide for the calibration of the CTs for uncleared positions in light of Recital 9 of EMIR 3 suggesting keeping a similar coverage of counterparties.

71. On that basis, ESMA has run, for each of the five relevant asset classes, simulations showing how the coverage of the CO would change depending on the level of the threshold selected. It should be noted that for NFCs, considering the new EMIR 3 methodology, the analysis below takes into account the coverage at entity level.

72. The simulations below are based on a 12-month average of positions reported by counterparties over the period running from August 2024 to July 2025 and are only run based on uncleared OTC positions reported by counterparties to TRs.

Interest rate derivatives

73. Starting with interest rates derivatives, the ESMA analysis presented in Section 2.3.3 shows that the current coverage of the CO for this asset class is of 813 FCs (accounting for 99.3% of notional traded in this asset class and by this type of counterparty), 108 funds (66.1%) and 37 NFCs (68.5%).

74. With this in mind, Table 3 presents simulations based on uncleared OTC positions of how the coverage of FCs, funds and NFCs varies according to the threshold levels.

Table 3: Simulations of the number of counterparties above the CTs and notional traded by counterparties above the CTs based on OTC uncleared positions

Threshold	Number FCs	Number funds	Number NFCs	% notional FCs	% notional funds	% notional NFCs
1,800,000,000	825	67	42	99.42%	66.57%	57.95%
1,900,000,000	810	62	41	99.39%	65.19%	57.73%
2,000,000,000	804	60	41	99.37%	64.6%	57.73%
2,100,000,000	798	56	37	99.36%	63.37%	56.79%
2,200,000,000	753	53	37	99.34%	62.38%	56.79%
2,300,000,000	747	51	35	99.32%	61.69%	56.28%
2,400,000,000	741	48	34	99.3%	60.63%	56.01%
2,500,000,000	737	44	34	99.29%	59.15%	56.01%
2,600,000,000	731	44	33	99.28%	59.15%	55.72%
2,700,000,000	725	39	33	99.26%	57.14%	55.72%
2,800,000,000	715	36	33	99.23%	55.9%	55.72%
2,900,000,000	713	35	33	99.23%	55.47%	55.72%
3,000,000,000	710	33	33	99.21%	54.58%	55.72%

75. It should however be noted that interest rate derivatives will continue to be subject to the aggregate threshold. Therefore, it can be expected that the 921 FCs (813 FCs and 108 funds) currently above the CTs would remain captured by the CO based on the same proposed aggregate threshold (3 billion EUR).

76. Therefore, to have a comprehensive overview of the new coverage and in line with the suggestion made by some respondents to the CP, it appears necessary to also consider the potential overlap for those FCs that would be captured by both thresholds. More precisely, to be able to assess what level of the threshold would ensure a comparable coverage of counterparties, ESMA has analysed the number of additional FCs (i.e. beyond those already captured by the aggregate thresholds) that would be brought into

the scope of the CO with the introduction of the uncleared thresholds for interest rate derivatives.

77. In that respect, Figure 1 clearly shows that the effect of new FCs and funds captured by the uncleared threshold becomes marginal at 2.2 billion EUR. Specifically, any lower thresholds would bring in several additional counterparties with limited benefits in terms of extra notional captured, and thus systemic risk, while any level approaching the aggregate threshold (3 billion EUR) might undermine the purpose of an uncleared threshold.

78. Table 4 below presents this information by combining the number of FCs and funds that would be captured with both the aggregate and uncleared thresholds.

Figure 1 – Aggregated number of additional FCs and funds that would be above the CTs with the introduction of the following uncleared thresholds

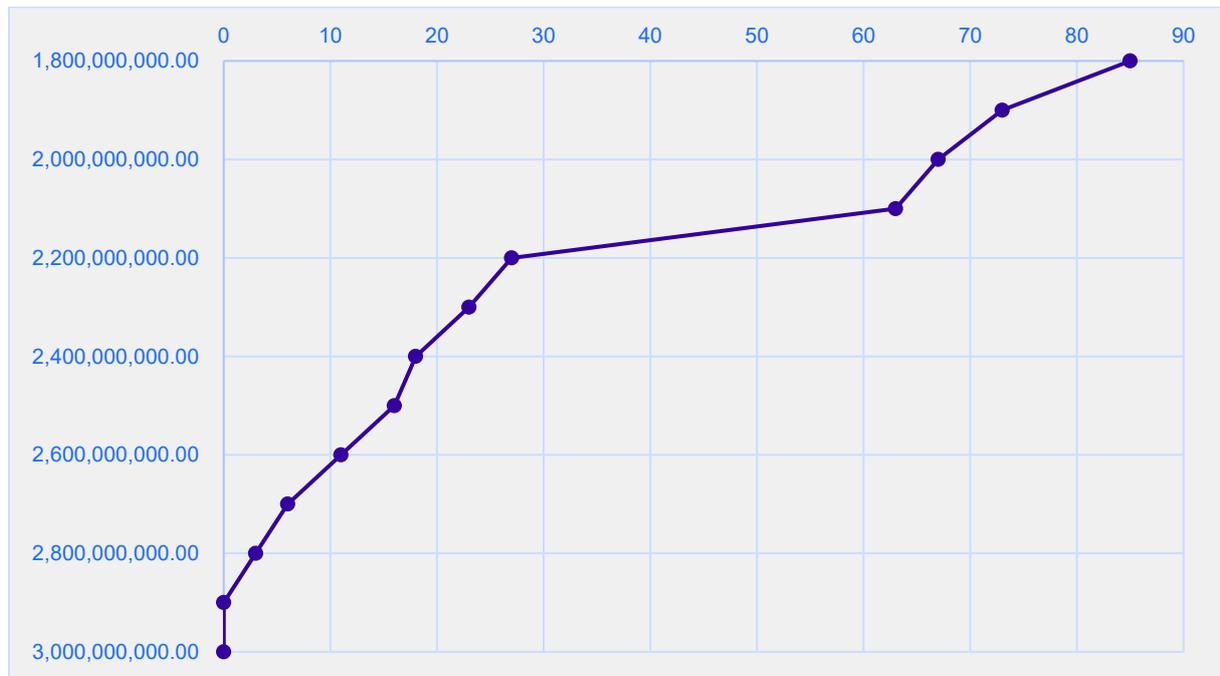


Table 4: Number of additional FCs and funds that would be above the CTs with the introduction of the following uncleared thresholds

THRESHOLD	Number of FCs with aggregate threshold (3B)	Number of Funds with aggregate threshold (3B)	Number of <u>additional</u> FCs with uncleared thresholds	Number of <u>additional</u> Funds with uncleared thresholds	Total FCs	Total Funds
1,800,000,000	813	108	70	15	883	123

1,900,000,000	813	108	61	12	874	120
2,000,000,000	813	108	56	11	869	119
2,100,000,000	813	108	55	8	868	116
2,200,000,000	813	108	21	6	834	114
2,300,000,000	813	108	17	6	830	114
2,400,000,000	813	108	14	4	827	112
2,500,000,000	813	108	13	3	826	111
2,600,000,000	813	108	8	3	821	111
2,700,000,000	813	108	5	1	818	109
2,800,000,000	813	108	2	1	815	109
2,900,000,000	813	108	0	0	813	108
3,000,000,000	813	108	0	0	813	108

79. Based on this analysis, ESMA's proposal would be to maintain the aggregate threshold at 3 billion EUR and to set the uncleared threshold at 2.2 billion EUR, resulting in an increase of the latter compared to the 1.8 billion proposed in the CP.

80. As shown in Table 5 below, notwithstanding the introduction of a double threshold, such an approach would allow to capture a very similar population of FCs and funds (as well as NFCs), while at the same time limiting the number of new counterparties brought into the scope of the CO. For FCs and funds, while it is true that the absolute number of counterparties captured would be slightly higher, this increase appears marginal compared to the actual size of counterparties in scope. In parallel, these thresholds would also have the benefit of limiting the impact in terms of systemic risk as the notional traded by counterparties above the CTs with the proposed new coverage remains aligned with the old coverage.

Table 5: Coverage of the clearing obligation based on the current aggregate threshold and the new proposed aggregate and uncleared thresholds

Current coverage						
THRESHOLD	Number FCs	Number funds	Number NFCs	% notional FCs	% notional funds	% notional NFCs
3,000,000,000 (aggregate)	813	108	37	99.34%	66.15%	68.56%
New coverage						
THRESHOLD	Number FCs	Number funds	Number NFCs	% notional FCs	% notional funds	% notional NFCs
3,000,000,000 (aggregate)	834	114	37	99.42%	66.56%	56.79%
2,200,000,000 (uncleared)						

Credit derivatives

81. ESMA has carried out a very similar analysis for credit derivatives. As a starting point, it is worth recalling that the current coverage of the CO for this asset class is of 77 FCs (accounting for 98.3% of notional traded in this asset class and by this type of counterparty), 50 funds (66.1%) and 3 NFCs (60.7%).

82. Table 6 presents simulations based on uncleared OTC positions of how the coverage of FCs, funds and NFCs varies according to the different threshold levels.

Table 6: Simulations of the number of counterparties above the CTs and notional traded by counterparties above the CTs based on OTC uncleared positions

THRESHOLD	Number FCs	Number funds	Number NFCs	% notional FCs	% notional funds	% notional NFCs
400,000,000	86	78	5	99.05%	72.60%	52.89%

500,000,000	80	57	2	98.93%	69.29%	38.93%
600,000,000	76	45	2	98.78%	66.99%	38.93%
700,000,000	70	39	2	98.60%	65.64%	38.93%
800,000,000	68	36	2	98.55%	64.83%	38.93%
900,000,000	66	30	2	98.45%	63.04%	38.93%
1,000,000,000	66	28	2	98.45%	62.35%	38.93%

83. In line with the interest rate derivatives asset class, FCs and funds will continue to be subject to the aggregate threshold for this asset class. Therefore, it is expected that the 127 counterparties (77 FCs and 50 funds) currently above the CTs would remain captured by the CO based on the same proposed aggregate threshold (1 billion EUR).
84. Also in this case, it appears relevant to assess more closely the potential overlap between the number of counterparties already covered by the aggregate thresholds and the additional entities that would be brought into the scope of the CO with the introduction of the uncleared threshold. This is presented in Figure 2 which shows a more evolutive decrease in the number of new counterparties as the level of the uncleared threshold increases.
85. The overall picture combining the number of FCs and funds that would be captured with both the aggregate and uncleared thresholds for FCs and funds is presented in Table 7 below.

Figure 2 – Aggregated number of additional FCs and funds that would be above the CTs with the introduction of the following uncleared thresholds

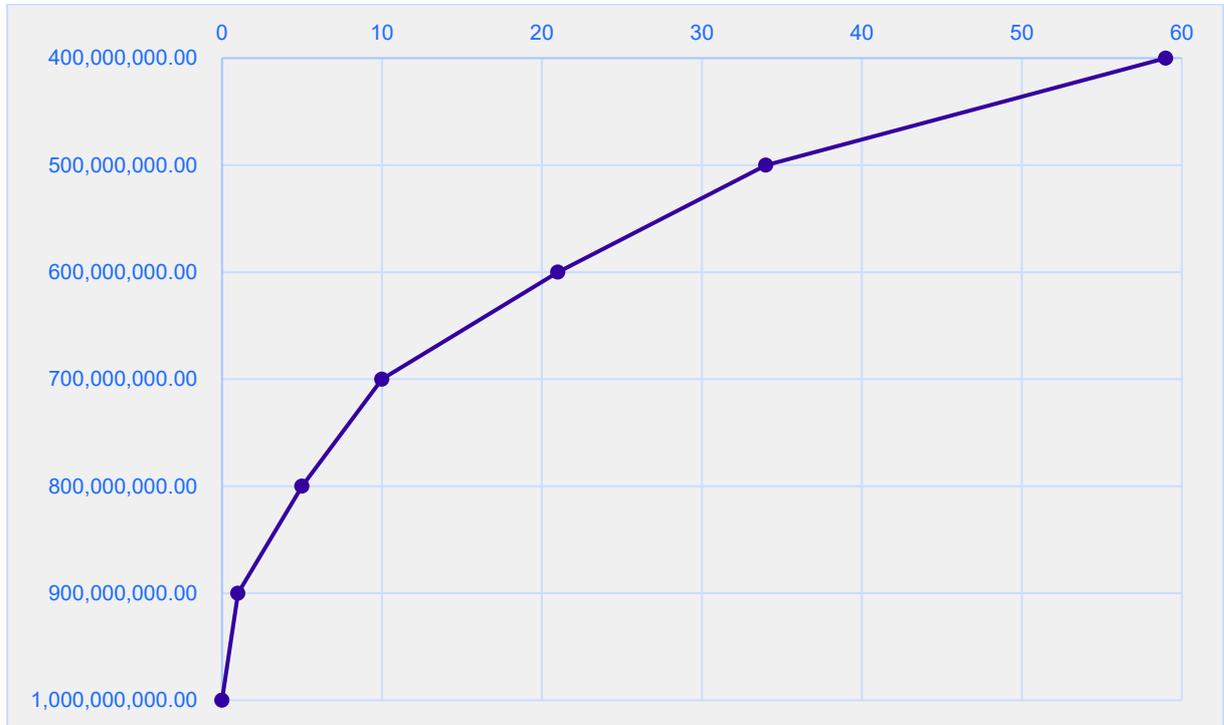


Table 7: Number of additional FCs and funds that would be above the CTs with the introduction of the following uncleared thresholds

THRESHOLD	Number of FCs with aggregate threshold (3B)	Number of Funds with aggregate threshold (3B)	Number of additional FCs with uncleared thresholds	Number of additional Funds with uncleared thresholds	Total FCs	Total Funds
400,000,000	77	50	16	43	93	93
500,000,000	77	50	12	22	89	72
600,000,000	77	50	8	13	85	63
700,000,000	77	50	2	8	79	58

800,000,000	77	50	0	5	77	55
900,000,000	77	50	0	1	77	51
1,000,000,000	77	50	0	0	77	50

86. Based on this analysis, ESMA's proposal would be to maintain the aggregate threshold at 1 billion EUR and to set the uncleared threshold at 0.8 billion EUR, resulting in an increase of the latter compared to the 0.7 billion CT proposed in the CP.

87. As shown in Table 8 below, this approach would allow to capture a very similar population of FCs, funds and NFCs, while strongly limiting the inclusion of any new counterparties following the introduction of the uncleared threshold.

88. In addition, while for FCs and funds the notional traded by counterparties above the CTs would remain highly comparable, the decrease in the case of NFCs is primarily due to the limited sample size which makes any changes in the scope of the analysis particularly sensitive.

Table 8: Coverage of the clearing obligation based on the current aggregate threshold and the new proposed aggregate and uncleared thresholds

Current coverage						
THRESHOLD	Number FCs	Number funds	Number NFCs	% notional FCs	% notional funds	% notional NFCs
1,000,000,000 (aggregate)	77	50	3	98.36%	62.83%	60.72%
New coverage						
THRESHOLD	Number FCs	Number funds	Number NFCs	% notional FCs	% notional funds	% notional NFCs
1,000,000,000 (aggregate)	77	55	2	98.60%	65.99%	38.93%

800,000,000 (uncleared)						
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Equity derivatives:

89. With respect to equity derivatives, the current coverage of the CO is of 249 FCs (accounting for 98.4% of notional traded in this asset class and by this type of counterpart), 104 funds (57.1%) and 9 NFCs (46.3%).

90. In line with the analysis presented for the other asset classes, Table 9 presents some simulations based on uncleared OTC positions of how the coverage of FCs, funds and NFCs would change according to the different levels of the thresholds.

Table 9: Simulations of the number of counterparties above the CTs and notional traded by counterparties above the CTs based on OTC uncleared positions

THRESHOLD	Number FCs	Number funds	Number NFCs	% notional FCs	% notional funds	% notional NFCs
500,000,000	265	124	10	99.05	70.52	48.21
600,000,000	255	107	8	98.91	68.07	43.38
700,000,000	246	93	7	98.87	65.74	40.58
800,000,000	237	85	6	98.69	64.13	37.26
900,000,000	231	77	6	98.61	62.35	37.26
1,000,000,000	221	70	5	98.43	60.62	33.36

91. As opposed to interest rate and credit derivatives, Table 9 above gives a final overview as there are no potential overlaps to be considered due to the absence of an aggregate threshold for this asset class.

92. Based on the simulations presented, ESMA is of the view that the level of the threshold that would allow to capture a similar population of counterparties (and related risk) is 0.7 billion EUR, in line with the CP proposal. Namely, as presented below, while there may

be some minor differences both in terms of counterparties and notional captured, this approach appears to ensure that the overall coverage remains largely comparable under the new methodology.

Table 10: Coverage of the clearing obligation based on the current aggregate threshold and the new proposed uncleared threshold

Current coverage						
THRESHOLD	Number FCs	Number funds	Number NFCs	% notional FCs	% notional funds	% notional NFCs
1,000,000,000 (aggregate)	249	104	9	98.40%	57.16%	46.34%
New coverage						
THRESHOLD	Number FCs	Number funds	Number NFCs	% notional FCs	% notional funds	% notional NFCs
700,000,000 (uncleared)	246	93	7	98.87%	65.74%	40.58%

FX derivatives:

93. Regarding the FX derivative space, the ESMA analysis showed that the current coverage of the CO is of 521 FCs (accounting for 98.6% of notional traded in this asset class and by this type of counterparty), 115 funds (30.9%) and 23 NFCs (50.8%).

94. Table 11 presents simulations based on uncleared OTC positions of how the coverage of FCs, funds and NFCs varies according to the different threshold levels.

Table 11: Simulations of the number of counterparties above the CTs and notional traded by counterparties above the CTs based on OTC uncleared positions

THRESHOLD	Number FCs	Number funds	Number NFCs	% notional FCs	% notional funds	% notional NFCs
2,500,000,000	535	147	28	98.74	34.40	51.95

2,600,000,000	532	139	25	98.74	33.63	50.36
2,700,000,000	528	136	25	98.71	33.32	50.36
2,800,000,000	526	130	25	98.68	32.70	50.36
2,900,000,000	524	121	24	98.66	31.72	49.78
3,000,000,000	521	115	23	98.63	31.05	49.18
3,100,000,000	517	112	19	98.59	30.70	46.67

95. Also for FX derivatives, the table above gives a final overview as there are no overlaps to be considered in light of the absence of an aggregate threshold. The simulations presented above confirm the findings of the CP as the level of the threshold that would allow to capture a similar population of counterparties (and related risk) remains 3 billion EUR, in line with the CP proposals. This is mainly due to the fact that, based on the data available to ESMA, the great majority of OTC notional is uncleared and therefore the sample assessed remains highly comparable.

96. The comparison between the old and the new coverage is presented in Table 12 below.

Table 12: Coverage of the clearing obligation based on the current aggregate threshold and the new proposed uncleared threshold

Current coverage						
THRESHOLD	Number FCs	Number funds	Number NFCs	% notional FCs	% notional funds	% notional NFCs
3,000,000,000 (aggregate)	521	115	23	98.64%	30.95%	50.8%
New coverage						
THRESHOLD	Number FCs	Number funds	Number NFCs	% notional FCs	% notional funds	% notional NFCs

3,000,000,000 (uncleared)	521	115	23	98.63%	31.05%	49.18%
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Commodity and emission allowance derivatives:

97. Lastly, with respect to commodity and emission allowance derivatives, the ESMA analysis suggested that the current coverage of the CO is of 47 FCs (accounting for 95.4% of notional traded in this asset class and by this type of counterparty, 0 funds (0%) and 8 NFCs (41.9%).

98. Table 13 provides an overview of the simulations based on uncleared OTC positions of how the coverage of FCs, funds and NFCs varies depending on the different levels of the uncleared thresholds.

Table 13: Simulations of the number of counterparties above the CTs and notional traded by counterparties above the CTs based on OTC uncleared positions

THRESHOLD	Number FCs	Number funds	Number NFCs	% notional FCs	% notional funds	% notional NFCs
2,900,000,000	45	0	5	94.10	0	44.02
3,000,000,000	45	0	4	94.10	0	41.77
3,100,000,000	45	0	4	94.10	0	41.77
3,200,000,000	44	0	4	93.71	0	41.77
3,300,000,000	44	0	4	93.71	0	41.77
3,400,000,000	44	0	4	93.71	0	41.77
3,500,000,000	44	0	4	93.71	0	41.77
3,600,000,000	44	0	4	93.71	0	41.77
3,700,000,000	44	0	4	93.71	0	41.77

3,800,000,000	44	0	4	93.71	0	41.77
3,900,000,000	43	0	3	93.24	0	38.84
4,000,000,000	43	0	3	93.24	0	38.84

99. The analysis for commodity derivatives appears less sensitive than for other asset classes as even a significant increase or decrease in the level of the uncleared thresholds does not seem to lead to any major changes in terms of coverage.

100. With that in mind, while the objective of the recalibration exercise is to ensure to the extent possible a comparable coverage of the CO, it might be worth considering additional elements in relation to this asset class. In particular, ESMA acknowledges the views expressed by market participants to consider granting counterparties additional flexibility, taking into account factors such as the inflationary pressure, the growing trading in new products and the international competitiveness with firms operating outside of the EU.

101. Therefore, considering these elements and given that the analysis shows a lower level of sensitivity to major variations of the CT, ESMA suggests setting the aggregate thresholds at 4 billion EUR.

102. A more detailed overview of how the coverage of the CO based on the current aggregate threshold would be amended by the new proposed uncleared threshold is presented in Table 14 below.

Table 14: Coverage of the clearing obligation based on the current aggregate threshold and the new proposed uncleared threshold

Current coverage						
THRESHOLD	Number FCs	Number funds	Number NFCs	% notional FCs	% notional funds	% notional NFCs
4,000,000,000 (aggregate)	47	0	8	95.4%	0%	41.99%
New coverage						

THRESHOLD	Number FCs	Number funds	Number NFCs	% notional FCs	% notional funds	% notional NFCs
4,000,000,000 (uncleared)	43	0	3	93.24%	0%	38.84%

2.3.4.3 Focus on NBFIs

103. In its response to the ESMA CP, the ESRB suggested to also look more specifically on the growing systemic relevance of NBFIs in derivatives markets. In particular, as market structure continues to evolve, particularly with increased derivatives activity by NBFIs, the ESRB considered that lower thresholds may need to be envisaged to ensure that NBFIs are appropriately captured by the CO and the related risk-mitigation requirements.

104. Leveraging on the suggestion from the ESRB, ESMA considered useful, as part of this data analysis, to assess the relevance of NBFIs (as opposed to credit institutions) on the basis of EMIR data. The mapping of NBFIs was performed based on the sector flag for FCs in EMIR (field 6, 'Corporate sector of counterparty').

105. ESMA focussed its analysis on those counterparties with positions above the CTs, looking at counterparties within these two categories (NBFIs and CIs) at entity level. In this context, the data suggests that the distinct number of counterparties above the CTs across all asset classes is pretty much evenly divided across NBFIs (727) and credit institutions (624). However, when looking at the OTC notional traded by FCs above the CTs, it can be observed that the share of credit institutions is largely above (86%) the one of NBFIs (14%). The portion of OTC notional traded by credit institutions above the CTs is relatively heterogenous when looking at the different asset classes as it varies from 88% for interest rate derivatives to 60% for equity derivatives.

106. The picture is rather similar when looking at the uncleared OTC notional traded by FCs above the CTs. Namely, credit institutions account for more than 90% while NBFIs only capture a residual 10%.

107. Lastly, for each of these two categories, ESMA analysed the uncleared OTC notional traded by counterparties above the CTs as opposed to the uncleared OTC notional traded by counterparties below the CTs across all asset classes. For credit institutions, 99% of notional is traded by counterparties above the CTs while the share is lower (78%) for NBFIs.

108. While ESMA remains conscious of the systemic relevance of NBFIs in OTC derivatives markets and appreciates that continued monitoring to assess the market evolution of this segment might be appropriate, at this point in time, a more granular CT approach would appear premature and more analysis would be needed first. Therefore, at this stage, a

specific and different approach for NBFIs has not been introduced in the RTS in relation to the calibration of the CTs.

2.3.4.4 Additional considerations for commodity derivatives

109. As explained in the introductory section, in light of recital 21 of EMIR 3, ESMA assessed in the CP whether more granular thresholds should be introduced for commodity derivatives based on i) sector and type; or ii) ESG factors; or for iii) crypto-related features.
110. In the CP, ESMA suggested not to introduce sub-thresholds based on these criteria and the feedback received was supportive of this approach. Therefore, considering that ESMA did not receive any evidence to revisit its initial proposal, it remains of the view that more granular thresholds should not be introduced for the commodity derivatives asset class nor crypto-related features.
111. In ESMA's view, this approach would align with the overall simplification and burden reduction objective. Considering that the new calculation methodology introduced by EMIR 3 already entails a change for market participants, adding any more complexity regarding the determination of the various sub-asset classes would not be justified at this stage.
112. At the same time, also considering the positive feedback received from respondents, ESMA confirms the approach to slightly change the taxonomy of the fifth bucket which should now encompass commodity derivatives as well as emission allowances derivatives (as opposed to commodity derivatives and 'other derivatives' as under the current Commission Delegated Regulation 149/2013).
113. In parallel, ESMA considers it premature to introduce a separate bucket for a new asset class or category. In this context, ESMA assessed the magnitude of crypto-based derivatives by looking at the notional traded under the new EMIR Refit flag (field 12, 'Derivative based on crypto-assets') and observed that while liquidity has relatively well developed, it remains low in terms of overall notional compared to the five traditional asset classes.
114. In this context, it should be mentioned that, although the reference to crypto-derivative assets was included initially in an EMIR 3 Recital dealing mostly with commodity derivatives, ESMA would continue to look at this feature more holistically rather than as a sub-category of commodity derivatives. This is the approach followed in this FR and that would thus be pursued going forward.

2.3.4.5 Implementation of the new regime

115. In light of the requests for further guidance received from market participants, ESMA deems it useful to discuss the timeline for the implementation of the new regime.

116. To recall, in accordance with OTC Q&A N.2 of the EMIR implementation Q&As¹⁰, FCs and NFCs taking positions in OTC derivative contracts and choosing to calculate their aggregate month-end average position for the previous 12 months, had to determine the results of that calculation at the moment of entry into force of EMIR Refit (June 2019). The Q&A also clarifies that, from that point on, FCs and NFCs taking positions in OTC derivative contracts and choosing to calculate their aggregate month-end average position should conduct that calculation every 12 months.
117. Following EMIR Refit, most counterparties are currently calculating their positions based on the EMIR Refit schedule, i.e. every year in June with month-end positions from June from the previous year till May of that year. Some entities that have implemented certain procedures and/or IT systems in support of this calculation, may have hardcoded some of these time references.¹¹
118. With simplification and burden reduction objectives in mind, and thus with the aim to try and minimise changes to these procedures and/or IT systems, ESMA sees merit in aligning the calculation period of the CTs under the new methodology with the current one established following EMIR Refit. This would hence help ensure continuity and align with current market practice.
119. However, it should also be noted that the new regime is expected to apply once the amended RTS enters into force. In this context, mindful of the relevant steps necessary for the adoption of the RTS which are outside of ESMA's control, such as the review and adoption by the European Commission and the scrutiny period by co-legislators, it may well be that the RTS gets published after the next calculation period.
120. In that light, for the reasons explained above, with a view to reducing burden on counterparties and ensure alignment with processes that may have been developed for the calculation of positions, ESMA is of the view that counterparties should be provided with sufficient flexibility to be able to recalculate their positions, based on the new methodology, at the usual time of the year when they do so, typically in June. This would mean not having to run the computation on the day of entry into force of the RTS but only at the time of the calculation period following the entry into force of the RTS, so in the month of June that follows, for those counterparties that have been doing this in June.
121. At the same time, ESMA also understands that some counterparties would like to transition to the new regime as soon as possible. In that case, ESMA would like to remind that under EMIR, counterparties can re-do their calculation earlier than the standard twelve months (and then every twelve months). EMIR thus provides a sufficient degree of flexibility so that counterparties that may want to recalculate their positions based on the new methodology ahead of the subsequent calculation period, would be allowed to

¹⁰ https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_qa_on_emir_implementation.pdf

¹¹ With the exception of those counterparties that were not in existence or did not have any outstanding OTC derivatives on the day of entry into force of EMIR Refit, for which their date for calculation of is each anniversary of the date that the entity first entered into an OTC derivative.

do so when the amended RTS enters into force. From that point on, counterparties taking positions in OTC derivative contracts and choosing to calculate their aggregate month-end average position should conduct that calculation every 12 months (or sooner).

122. In other words, should the RTS enter into force after the next calculation period, counterparties would have a sufficient level of flexibility to decide whether to recalculate their positions based on the new methodology right after the entry into force of the RTS, or to wait until the following calculation period before applying the new methodology.
123. Lastly, ESMA would like to recall its clarification outlined in the EMIR Q&As that FCs and NFCs taking positions in OTC derivative contracts do not need to notify again ESMA and the relevant NCAs when the results of their calculation or when their status do not change. This remains the case even with the change to the new EMIR 3 methodology. This approach should also be in accordance with the simplification and burden reduction objectives.

3 Criteria to establish OTC contracts reducing risks relating to the commercial activity

3.1 Proposals in the CP

124. Article 10(4)(a) of EMIR requires ESMA to develop draft RTS to specify “the criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity” (hedging exemption).
125. Having considered the existing framework (Article 10(3) of EMIR, Article 10 of Delegated Regulation 149/2013 and the clarifications outlined in the related Q&As published by ESMA, in particular with respect to the qualification as a hedge or not of renewable financial or virtual power purchase agreements (PPAs) recently provided by the EC), ESMA did not propose any change to the current Article 10 of Commission Delegated Regulation (EU) No 149/2013.
126. ESMA had asked market stakeholders to provide their views on this.

3.2 Feedback from consultation

127. 24 responses were received, out of which 7 supported ESMA’s approach of not making any change to Article 10 of Delegated Regulation 149/2013. 16 respondents suggested various changes or clarifications.
128. Most comments related to the treatment of structured hedging agreements such as virtual PPAs (vPPA), but some respondents also requested other clarifications in relation to other aspects such as with respect to the group exemption.

3.2.1 Clarifying the treatment of structured hedging agreements such as virtual PPAs

129. Many comments received suggested to clarify that vPPAs could be considered hedging activities under EMIR, being a part of companies' activities to reduce their business risk. Various propositions were provided, of two main types:
130. A first set of suggestions aimed at broadening the concept of "OTC derivative contracts objectively reducing risks", by exempting any OTC derivative contract entered into by two NFCs in relation to the virtual supply or purchase of renewable energy and any associated attributes where applicable.
131. Respondents have notably insisted on the "crucial role" that these contracts play within the energy transition, highlighting the long-term nature of investments in renewable plants (more than 20 years) and the uncertainty around the profitability of a project (from a price, volume and availability risk point of view). Therefore, investors are looking for hedging solutions as a pre-condition to finance such a project and develop it. Such hedging contract is usually provided by "energy market participants who could warehouse these risks without causing any systemic risk to the financial markets".
132. However, because under the current EMIR framework this activity can count towards the CTs of the hedge provider, EU market participants are at a disadvantage compared to entities from other jurisdictions. As such hedging contracts may count towards the CTs and thus may then contribute to trigger NFC+ requirements for a hedge provider (notably the exchange of margin when the conditions are met), it would increase their costs, making it more difficult to enter into such hedging contract with an EU hedge provider. In the end, this would thus limit the development of such projects.
133. vPPAs are examples of such hedging instruments and respondents advocated for them to be recognised as hedging tools for both parties to the arrangement.
134. A second set of drafting suggestions aimed at broadening the definition of commercial activity to include trading in financial instruments and risk provisioning services to support counterparties. Trading in derivatives may be considered a part of a firm's commercial activity and could thus be subject to risk reduction. This would allow qualifying structured hedging arrangements such as vPPAs as risk-reducing when they directly relate to commercial activity or energy production risks.
135. It was therefore suggested to include in Delegated Regulation 149/2013 a general recognition that any derivatives trading by energy firms as a commercial activity in nature, would be eligible for the hedging exemption if they reduce risk for the firm or for the counterparty. Further, any additional derivative contract aimed at mitigating the risk associated with such commercial activity (i.e. generated by derivatives concluded by the NFC) should be recognised as risk reducing.

136. Finally, there were suggestions to ‘upgrade’ the Q&A provided by the EC by incorporating it directly in Delegated Regulation 147/2013.

3.2.2 Other clarifications for groups

137. Finally, several respondents called for clarifying that, for NFCs:

138. The hedging exemption can continue to be applied on a group-wide basis, not just at entity-level, after the introduction of the new CT calculation method in EMIR 3 (now to be done at the level of each NFC entity).

139. Intragroup hedging transactions (transactions between entities within the same group that are exempt from clearing under Article 4(2) of EMIR) do not need to be included in the CT calculation.

3.3 ESMA’s assessment and next steps

140. ESMA has carefully assessed the feedback received to the CP on this part and considers that under the current EMIR framework, none of the suggested changes can be made at this stage in respect of the specification of hedging contracts. Indeed, the changes asked by most respondents would go beyond ESMA’s mandate.

141. Suggestions to broaden the scope of what “hedging” covers through an extension of the definition of commercial activity to include “trading and risk provisioning services to support counterparties” or through an explicit recognition of structured hedging arrangements such as vPPAs when they relate to the commercial activity or energy production risks do not seem to be compatible with Article 10 of EMIR. In fact, some of these requests are aiming for a full exemption, whereas full exemptions are more a question of scope, and scope is defined (and potentially amended) in Level 1. Beyond the technicalities of the mandate that ESMA needs to work with, some further context can be added. Notably, ESMA is mindful of the arguments raised in relation to competitiveness vis a vis other jurisdictions and of the importance of such products in support of green energy transition initiatives and projects. Some respondents indicated that the importance of structured hedging arrangements such as vPPAs has increased since the time when EMIR was being last reviewed. This timing issue could in part explain that the growing importance of such arrangements could not be fully anticipated and raised at the time of EMIR 3, while this largely remains a question for Level 1.

142. On incorporating the Q&A provided by the EC in Delegated Regulation 147/2013: ESMA does not deem this to be relevant to address the changes requested by respondents, as detailed above, i.e. recognising the hedging nature of vPPAs for both parties under a broadened understanding of the concept of “hedging”. In other words, upgrading the Q&A to Level 2 would not introduce the additional flexibility requested by these respondents, so the substance of the Q&A, whether in a Q&A or in Level 2 would

not achieve the objective requested. As per the previous paragraph, this would appear more as a consideration for the Level 1.

143. On the other clarifications requested in relation to groups, ESMA does not see a need for amending Delegated Regulation 147/2013. It appears more as a question of clarification. In particular, ESMA considers that Article 10(1) of the regulation is already clear on the scope of application of the hedging concept: “*An OTC derivative contract shall be objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group...*” and does not need to be further clarified in that respect, i.e. hedging from other group entities is part of the framework.

4 Mechanisms triggering the review of the CTs

4.1 Proposals in the CP

144. Article 10(4)(c) of EMIR requires ESMA to develop draft RTS to specify “the mechanisms triggering a review of the values of the clearing thresholds, following significant price fluctuations in the underlying class of OTC derivatives or a significant increase of financial stability risks”.

145. ESMA clarified in the CP that a review triggered by such mechanism would never be a way to manage a sudden crisis (notably taking into account the time it takes to amend an RTS), but more a mean to facilitate the timely review of the CTs with regards to one or more fundamental and more long lasting changes in the market. Following from this, ESMA proposed in the CP to define a flexible process, primarily based on the regular review of certain qualitative and quantitative indicators, and an assessment by ESMA, in consultation with national competent authorities and with the ESRB.

146. It was thus suggested to include a new article 11b reading as follows:

“The mechanisms triggering a review of the value of the clearing thresholds shall include the identification of a significant change in the following indicators:

(a) the fluctuations of prices in the underlying of OTC credit derivatives, OTC equity derivatives, OTC interest rate derivatives, OTC foreign exchange derivatives or OTC commodity derivatives and OTC emission allowance derivatives; and

(b) the evolution of the inflation rate, of the global financial conditions, or of the geopolitical and economic policy uncertainties.”

4.2 Feedback from consultation

147. 24 responses were received, out of which 10 did not formulate any suggestion to change the proposed indicators. Some of them indicated that it was not necessary to

introduce new indicators at this stage but rather focus on improving and refining the existing indicators instead of expanding the monitoring framework.

148. Other respondents proposed to take into account **additional aspects** through the following indicators:

- **Competitive impacts:** impact of the CT levels on market functioning, liquidity, private investment in energy infrastructure, and more widely, the EU's global competitiveness, as well as the impact of amending the CTs on market participants and on the market more widely;
- From two energy producers and based on recent developments in energy markets:
 - o **Market price level and volatility**, especially in commodity price indices and volatility indicators, as this would allow for a proactive adjustment of threshold values if needed to ensure they remain calibrated to capture true risk takers rather than firms being caught out by inflation.
 - o **Market liquidity and stability metrics** i.e. overall liquidity and volatility in the OTC markets. More specifically, respondents suggested ESMA to monitor bid-ask spreads, open interest, and trading volumes in relevant OTC markets for signs that liquidity is being adversely impacted by the threshold regime: while an increase in price volatility or illiquidity in certain OTC derivative markets (absent other explanations) might indicate the threshold is forcing activity out or limiting risk management transactions. Conversely, if markets remain robustly liquid, this would suggest the thresholds are not harming the market.
 - o **Clearing vs bilateral market trends** i.e. the proportion of trading that is cleared vs uncleared in key asset classes and the number of entities nearing the thresholds.
 - o **Counterparty risk exposure data** i.e. gross and net counterparty credit exposures or margin levels for the firms that are below vs. those that are above the CTs.

149. It was also suggested to frame the assessment process more explicitly by:

- Defining what 'fluctuation' could be through objective criteria or fixed triggers with specified criteria to ensure transparency and predictability (e.g. a minimum price amplitude on a given period);
- Specifying that all quantitative indicators should be systematically assessed within the qualitative framework, to ensure a well-balanced approach;

- Specifying the frequency of the assessment for the various indicators (e.g. for the prices of underlying assets, the assessment should be at least monthly; for indicators of financial stability risk, bi-annual, in line with the publication of ESMA's report on Trends, Risks and Vulnerabilities (TRV Report));

150. While three respondents asked for a clear **implementation period** of the new CTs resulting from such a review, as energy market participants often hold significant positions that cannot be reduced in a short time, or only subject to significant costs. One respondent suggested to specify that the resulting review of the CTs should be implemented by the month following the detection by ESMA of a trigger event (e.g. for a change detected in April, the review of the corresponding CT should apply at the latest in May).

151. Finally, seven respondents argued that no review should entail a reduction of the CTs: **thresholds should remain as stable as possible**. Due to the long-term nature of many commodity derivatives arrangements (eg. vPPAs), lowering thresholds could create cliff-edge effects that could force NFCs into NFC+ status mid-contract or lead to early termination and uncertainty. It should be envisaged to only review the CTs with a view to increase them, as the markets for each asset class continue to grow.

4.3 ESMA's assessment and next steps

4.3.1 Additional indicators

152. **Competitive impacts:** the proposal to incorporate an assessment of competitive impacts when reviewing thresholds is separate from using competitive impacts in assessing whether a review should be triggered (which is the scope of Article 11b). It is not clear what the rationale would be to assess impacts (including competitive impacts) at the point of triggering a review.

153. Therefore, ESMA does not consider relevant to incorporate such an aspect into Article 11b. It would be more relevant for triggering a review to monitor indicators showing adverse effects of current CTs, which is covered below.

154. **Market-level indicators.** A set of market-level (e.g. natural gas) indicators could be used to inform whether a review of a CT in one asset-class (e.g. commodities) should be triggered (e.g. where major markets in the asset class are impacted). ESMA considers it relevant to incorporate such market-level indicators in the assessment, in particular for price and volatility.

155. **Market price levels and volatility indicators** are also important to monitor to avoid unintended impacts of commodity price hikes on hedging opportunities for the real economy. ESMA notes that this is in line with the proposed Article 11b, which states that it will look at prices underlying OTC commodities. Commodity indices are publicly available and can be monitored for volatility.

156. **Market liquidity and stability metrics:** ESMA agrees that adverse market reactions, including on liquidity, could presumably drive a move to review the CTs (particularly where the CTs may be deemed too low and to unduly impact the market). However, EMIR data is limited in its usability for liquidity indicators in the context of the CTs and of the triggering mechanism framework, thus liquidity monitoring would be indirect and reliant on more general market-level indicators (e.g. volumes, price changes).
157. **Clearing vs. bilateral market trends:** ESMA could track the proportion of OTC derivative transactions that are cleared vs. uncleared, and the number of entities nearing the CTs. This would fit closely with the way that the CTs have been calibrated. Given that the calibration of the CTs uses EMIR data, this could be regularly checked to inform whether a review of the CTs is warranted. For this reason, ESMA proposes to consider this in the assessment in Article 11b.
158. **Counterparty risk exposure:** ESMA considers it could be relevant to assess whether the default risk of counterparties is being adequately captured within the CTs. Indeed, the CTs aim to define the scope of entities collectively accounting for the most systemic part of the activity and to become subject to certain requirements like the CO and this way mitigate the risks of defaults. ESMA is however concerned by a lack of sufficient information to easily and precisely assess credit exposures (outside of CDS exposures – a very specific form of exposure, there is a lack of data on broader credit exposures of counterparties) and possible limited coverage of credit ratings for relevant counterparties (those exceeding the CTs, or just outside), as well as by the level of complexity in the analysis and modelling that would be required to convert individual counterparty default risks into a wider risk assessment. Due to these difficulties, ESMA proposes not to amend Article 11b to explicitly mention counterparty risk exposures.

4.3.2 Specification of the assessment process

159. ESMA notes that a two-year review is already embedded in EMIR and that the triggering mechanism comes in addition to this. ESMA therefore considers that this assessment process should remain flexible, not creating any automaticity in the launch of a review.
160. ESMA is therefore of the opinion that neither an exhaustive list of indicators to be systematically reviewed, nor quantitative thresholds, should be included in Article 11b.
161. To make the assessment process more transparent and predictable, ESMA suggests some clarifications in Article 11b, a minimal frequency of conduct of such assessment of at least once a year should be included.

4.3.3 Other suggestions

162. Limiting any change to the CTs resulting from a review triggered by the mechanism described here to an increase of the CTs or defining an implementation period for any

change in the CTs resulting from such a review, are not in scope of ESMA's mandate under Article 10(4)(c) of EMIR.

4.3.4 New proposal

163. ESMA proposes to redraft new Article 11b as follows:

"The mechanisms triggering a review of the value of the clearing thresholds shall include, the identification of a significant changes in the following indicators:

- (a) ~~the fluctuations of prices in~~ of the underlying of OTC credit derivatives, OTC equity derivatives, OTC interest rate derivatives, OTC foreign exchange derivatives or OTC commodity derivatives and OTC emission allowance derivatives; ~~and~~*
- (b) the volatility of the prices of the underlying of each above-mentioned asset-class;*
- (c) the proportion of OTC derivative transactions, per each above-mentioned asset class, that are cleared;*
- (d) the proportion of entities clearing their OTC derivative transactions; and*
- (e) ~~the evolution of the inflation rate, of the global financial conditions, or of the geopolitical and economic policy uncertainties.~~*

An assessment of indicators to identify a significant change as mentioned above shall be conducted at least once a year."

5 Annex

5.1 Annex I – Summary of the responses to the consultation

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

- The great majority of respondents fully agreed with ESMA's proposal.
- One respondent participant partially agreed but considered that an aggregate threshold only appears necessary for IRDs. The rationale is that one of the main reasons for the aggregate clearing threshold to exist is to ensure that counterparties do not fall out of the scope of the AAR and given that credit derivatives are not part of the clearing services relevant to the AAR, the aggregate threshold only appears strictly necessary for IRDs. It also noted that, if the prudent coverage of FCs in scope of the CO can be ensured via the uncleared thresholds, setting the aggregate threshold would indeed only be relevant for the purpose of the AAR and hence only needed for IRDs.
- Respondents also raised the following points:
 - A number of stakeholders considered unclear from EMIR 3 when market participants are expected to make calculations against the new thresholds and therefore invited ESMA to provide guidance as to what market participants should expect. It is suggested that ESMA clarifies that the changes introduced by EMIR 3 can be applied upon publication of the RTS;
 - One respondent even invited ESMA to introduce a different implementation timeframe for FCs and NFCs. FCs should be provided with a set implementation date providing for a sufficient transitional period from entry into force of the RTS to allow FCs to make the necessary operational changes, and NFCs should be given the choice immediately to apply the new methodology upon the RTS entering into force with a back-stop date by which all NFCs must comply which aligns with the implementation date for FCs.
- Lastly, three participants did not provide comment on the question.

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

- The majority of respondents fully supported ESMA's proposals.
- At the same time, three respondents suggested increasing the aggregate thresholds to take into account the evolution of market conditions, and notably the fact that markets have grown both in absolute size and through inflationary effects. One respondent also

mentioned that increasing the threshold would reduce the burden on smaller entities which spend resources monitoring the compliance with the CTs.

- One respondent pointed out a specific element of the data analysis. It was suggested that the current approach might not reflect the objective of Recital 9 as the ESMA's proposed approach consists in calibrating a new set of uncleared thresholds, to capture the same population as under the current CTs, in isolation from the aggregate thresholds. On top of this, the proposed aggregate threshold, which would remain at the current level, would also by default capture the same population in isolation from the uncleared threshold. This means that the new set of thresholds can logically only capture more entities and therefore the aggregate thresholds should be set at higher level.
- Another respondent shared some concerns with the use of turnover volumes as metrics for the calibration of the CTs.
- Lastly, one respondent commented that given the burden of calculating two sets of thresholds, ESMA should give due consideration in setting aggregated CTs only where strictly needed. Similarly, another respondent suggested that to reduce complexity, the aggregate thresholds should only be set for the asset classes in scope of the AAR i.e. IRDs.
- Three respondents did not provide comments.

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

The very large majority of respondents disagreed or shared significant concerns in respect of ESMA's proposal.

Firstly, a large number of respondents, mainly NFCs, focussed on the uncleared CT for commodity derivatives and opposed to the 3 billion uncleared thresholds for the following reasons:

- The 3 billion CT does not align with current market conditions due to inflation⁸, price volatility and exchange rate effects (respondents made particular reference to energy markets).
- The 3 billion CT does not take into account the growing trading in new products such as VPPAs which are critical to financing renewable energy projects.
- NFCs usually centralises trading in one single legal entity and therefore the benefits of the new EMIR 3 calculation methodology (at entity level) are very limited and this should be taken into account

- The 3 billion CT would put EU NFCs at competitive disadvantage vis-à-vis third country firms, and namely US firms where a 8 billion threshold on a 12-months rolling window applies. One respondent also noted that Singapore and Australia offer respectively a 20 and a 100 billion threshold.
- A higher thresholds appears justified as the commodity derivative markets poses little to no problem in terms of financial stability, also considering that NFCs are not considered systemically important.

These NFCs considered that the lower thresholds would lead to the following consequences:

- Exacerbate liquidity strains as many energy firms shifted positions from exchanges to OTC to reduce cash margin pressures, but this strategy was constrained by the clearing threshold limit. If the threshold is set too low, firms would quickly exceed it in high-price environments and be forced into clearing at the worst possible time, exacerbating liquidity strains
- Constraint energy market participants' ability to support green and renewable investments, limiting the effectiveness of the EU's broader climate agenda.
- Limit private investments into energy generation facilities with negative effects on affordable energy pricing.
- Withdraw liquidity from the market with implications for the EU's strategic autonomy and market resilience
- This would bring into scope more NFCs with a cliff edge effect on all OTC derivatives they trade which would be brought into scope of margin requirements.

In terms of proposals, the majority of respondents considered that the threshold for commodity derivatives should be at minimum kept at the same level as the current one i.e. 4 billion, while some others suggested raising to 7 (2 respondents) or 12 billion.

One respondent considered it difficult to understand why the thresholds for commodity (and equity) derivatives have been lowered although currently there are no not subject to the CO and considered it even more unclear why the thresholds are lowered if there is no intention to change the current scope of in-scope FCs and NFCs.

On the interest rate side, also a very large number of respondents opposed the 1.8 billion thresholds for the following reasons:

- The level of interest rates has increased significant since 2011 and this has led to a rise in nominal cash flow and a greater need for corporates to hedge interest rate risk. Similarly, one respondent mentioned that high and volatile environment, also with differences across jurisdictions, justify a more active risk management.
- Inflation should be taken into account in the calibration of the thresholds;

- Since hedging exposure via IRDs is economically necessary, lowering the thresholds would discourage hedging and thus raise transactions costs and undermine investment certainty;
- Hedge trades often lose their economic anchor due to natural evolution of business risk and therefore start count towards the thresholds, requiring thus higher CTs¹⁰.
- Lowering the IRD CT would impact companies with long terms investment horizons e.g. renewable energy sectors, with major impact on market and economic growth.
- Considering that the aggregate threshold applies as a safety net for FCs, applying a lower uncleared CT would likely only result in bringing more FCs in scope of the CO, contrary the EMIR recital 9 objective.

These respondents proposed to keep the uncleared threshold at the current level (3 billion).

On the equity and credit space, there was also a strong push against the new uncleared thresholds and respondents generally considered that the current levels should be kept. Interesting to note that one respondents supported the proposed uncleared thresholds for equity and credit while opposing to those for IRDs and commodity.

Regarding FX, a few respondents suggested that this category should be removed from the clearing thresholds as FX does not pose a systemic risk but, on the contrary, exceeding the CT for this category has important implications for FCs which trade very little in other OTC derivatives.

One respondent suggested that the uncleared CTs should be set at a different level for FCs and NFCs (FCs as proposed by ESMA in the CP and for NFCs as they currently are).

Another complaint on the FCs side is that the new uncleared thresholds will have a negative impact on (smaller) FCs which are more likely to be brought in the scope of the CO despite posing little risk to the system. Some respondents also shared complaints in terms of operational burden about the calculation of two different sets of thresholds for FCs.

A few respondents also expressed concerns in relation to the ESMA methodology used for the purpose of the data analysis. In particular, the following points were made:

- As already mentioned, with respect to FCs specifically, as the aggregate threshold applies as a safety net, it was suggested that applying a lower uncleared CT would likely only result in bringing more FCs in scope of the CO, contrary the EMIR recital 9 objective.
- ESMA's simulation is based on the last 12-month clearing period between 1 May 2023 and 30 April 2024 which cannot serve as a reliable basis to lower existing thresholds.

- Three respondents invited ESMA to provide further evidence including scenarios and simulations to understand the impact of the new CTs thresholds in terms of number of FCs/NFCs and the notional which would be captured, as done in previous reports.
- One respondent invited ESMA to provide additional evidence as regards the share of uncleared (and cleared) volumes justifying lower uncleared thresholds;

Two respondents also considered that ESMA should not rely solely on the idea that the new thresholds should result in a comparable population but other elements such as credit risk mitigation, market liquidity, etc should be taken into account.

Moreover, a few respondents invited ESMA to consider the implications on the AAR.

Lastly, on a different perspective, one respondent considered that market participants with significant risk exposures but relatively low turnover should be captured by the CO. In their view, this can be achieved by replacing turnover volumes with risk-related or by reducing the value of both the new uncleared and aggregated thresholds to ensure an appropriate coverage.

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

All respondents agreed with ESMA's proposed approach and considered that this fully aligns with market practices and prevents from adding additional complexity.

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

All respondents (but two) agreed with ESMA's proposals to have commodity and emission allowances derivatives under the same CT category. The two respondents who disagreed considered that two separate categories should be introduced for the two asset classes.

Separately, one respondent invited ESMA to clarify where 'other derivatives' would fall under the new categorisation.

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

All respondents (but one) agreed with ESMA's proposals not to introduce a sixth bucket for other derivatives.

One respondent reiterated the need to consider how to treat 'other derivatives'. While agreeing, another respondent suggested that a separate category for VPPAs could be explored in the future as a way to address the call from the industry to have more flexibility on these products.

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

All respondents agreed with ESMA's proposal.

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

All respondents agreed with ESMA's proposal.

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

24 responses were received, out of which 7 supported ESMA's approach of not making any change to Article 10 of Delegated Regulation 149/2013. 16 respondents suggested various changes or clarifications.

Most comments related to the treatment of structured hedging agreements such as virtual PPAs, but some respondents also requested other clarifications in relation to other aspects such as the group exemption.

Clarifying the treatment of structured hedging agreements such as virtual PPAs

Many comments received suggested to clarify that Virtual Power Purchase Agreements (vPPAs) could be hedging activities under EMIR, part of companies' activities to reduce their business risk. Various propositions were provided, of two main types:

A first set of suggestions aimed at broadening the concept of "OTC derivative contracts objectively reducing risks", by exempting any OTC derivative contract entered into by two NFCs in relation to the virtual supply or purchase of renewable energy and any associated attributes where applicable

Respondents have notably insisted on the "crucial role" that these contracts play within the energy transition, highlighting the long-term nature of investments in renewable plants (more than 20 years) and the uncertainty about the profitability of a project (from price, volume and availability risk). Therefore, investors are looking for hedging solutions as pre-condition to project development and such hedging is usually provided by "energy market participants who could warehouse these risks without causing any systemic risk to the financial markets".

However, because under the current EMIR framework this activity can count towards the clearing thresholds of the hedge provider, EU market participants are at disadvantage, as it increases their costs and thus limits the development of such projects.

vPPAs are examples of such hedging instruments and respondents advocated for them to be recognised as hedging tools for both parties to the arrangement.

A second set of drafting suggestions aimed at broadening definition of commercial activity to include trading in financial instruments and risk provisioning services to support counterparties. Trading in derivatives may be considered a part of a firm's commercial activity and could thus be subject to risk reduction. This would allow qualifying structured hedging arrangements such as virtual PPAs as risk-reducing when they directly relate to commercial activity or energy production risks.

It was therefore suggested to include in Delegated Regulation 149/2013 a general recognition that any derivatives trading by energy firms as a commercial activity in nature, eligible for hedging exemption if they reduce risk for the firm or for the counterparty. Further, any additional derivative contract aimed at mitigating the risk associated with such commercial activity (i.e. generated by derivatives concluded by the NFC-) should be recognized as risk reducing.

Finally, there were suggestions to 'upgrade' the Q&A provided by the EC by incorporating them directly in Delegated Regulation 147/2013.

Clarifying the application of the new CT regime for groups

Finally, several respondents called for clarifying that, for NFCs:

- o The hedging exemption can continue to be applied on a group-wide basis, not just at entity-level, after the introduction of a new CT calculation method in EMIR 3 now to be done at the level of each entity.
- o Intragroup hedging transactions (transactions between entities within the same group that are exempt from clearing under Article 4(2) of EMIR) do not need to be included in CT calculation.

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

24 responses were received, out of which 10 did not formulate any suggestion to change the proposed indicators. Some of them indicated that it was not necessary to introduce new indicators at this stage but rather focus on improving and refining the existing indicators instead of expanding the monitoring framework.

Other respondents proposed to take into account additional aspects through the following indicators:

164. Competitive impacts: impact of the CT levels on market functioning, liquidity, private investment in energy infrastructure, and more widely, the EU's global competitiveness, and impact of amending the CTs on market participants and on the market more widely;

From two energy producers and based on recent developments in energy markets:

- Market price level and volatility, especially in commodities prices indices and volatility indicators, as this would allow for a proactive adjustment of threshold values if needed to ensure they remain calibrated to capture true risk takers rather than firms being caught out by inflation.
- Market liquidity and stability metrics i.e. overall liquidity and volatility in the OTC markets. More specifically, respondents suggested ESMA to monitor bid-ask spreads, open interest, and trading volumes in relevant OTC markets for signs that liquidity is being adversely impacted by the threshold regime: while an increase in price volatility or illiquidity in certain OTC derivative markets (absent other explanations) might indicate the threshold is forcing activity out or limiting risk management transactions, conversely, if markets remain robustly liquid, this would suggest the thresholds are not harming the market.
- Clearing vs bilateral market trends i.e. the proportion of trading that is cleared vs uncleared in key asset classes and number of entities nearing the thresholds.
- Counterparty risk exposure data i.e. gross and net counterparty credit exposures or margin levels for the firms that are below vs those that are above the clearing thresholds.

It was also suggested to frame the assessment process more explicitly, by:

- Defining what a 'fluctuation' could be through objective criteria or fixed triggers with specified criteria to ensure transparency and predictability (e.g. a minimum price amplitude on a given period);
- Specifying that all quantitative indicators should be systematically assessed within the qualitative framework, to ensure a well-balanced approach;
- Specifying the frequency of the assessment for the various indicators (e.g. for the prices of underlying assets, assessment should be at least monthly; for indicators of financial stability risk, bi-annual, in line with the publication of ESMA report on Trends, risks and vulnerabilities (TRV Report));

While three respondents asked for a clear implementation period of the new clearing thresholds resulting from such a review, as energy market participants often hold significant positions that cannot be reduced in a short time, or only subject to significant costs. One respondent suggested to specify that the resulting review of the clearing thresholds should be

implemented by the month following the detection by ESMA of a trigger event (e.g. for a change detected in April, the review of corresponding CT should apply at the latest in May).

Finally, seven respondents argued for that no review should entail a reduction of the clearing thresholds: thresholds should remain as stable as possible. Due to the long-term nature of many commodity derivatives arrangements (eg. vPPAs), lowering thresholds could create cliff-edge effects that could force NFC into NFC+ status mid-contract or lead to early termination and cp uncertainty. It should be envisaged to only review the clearing thresholds with a view to increase them, as the markets for each asset class continue to grow.

5.2 Annex II – Amendments to Commission Delegated Regulation (EU) No 149/2013

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

of **XXX**

amending Commission Delegated Regulation (EU) No 149/2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation, and non-financial counterparties

(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 repositories¹², and in particular Article 4a(4) and Article 10(4), thereof

Whereas:

- (1) Commission Delegated Regulation (EU) No 149/2013 specifies, among others, the values of the clearing thresholds for the purpose of the clearing obligation as well as some criteria for establishing which OTC derivative contracts are objectively reducing risks.
- (2) Regulation (EU) No 2024/2987 amended Regulation (EU) No 648/2012, in particular modifying the regime applicable to the clearing thresholds. Under the framework introduced by Regulation (EU) No 2024/2987, to assess whether they exceed the clearing thresholds, , financial counterparties and non-financial counterparties should calculate their positions in uncleared OTC derivatives contracts and compare it with the uncleared clearing thresholds. In addition, financial counterparties should also calculate their aggregate positions in cleared and uncleared OTC derivatives position and compare it against the aggregate thresholds.
- (3) In light of these changes to Regulation (EU) No 648/2012 introduced by Regulation (EU) No 2024/2987, Commission Delegated Regulation (EU) No 149/2013 should set out separate clearing thresholds applicable to aggregate and uncleared positions.

¹² 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 Text with EEA relevance (OJ L 201, 27.7.2012, pp. 1–59).

- (4) The aggregate thresholds are only relevant for financial counterparties. While these counterparties are still subject to the thresholds applicable to OTC uncleared positions, it would be necessary to set aggregate thresholds in order to ensure a prudent coverage of counterparties subject to the clearing obligation. More precisely, in order not to leave out of scope of the clearing obligation counterparties having large cleared portfolios as long as they would remain under the uncleared thresholds, the aggregate thresholds should only apply to the asset classes which are subject to the clearing obligation in accordance with Article 4 of Regulation (EU) No 648/2012 and outlined in Commission Delegated Regulation (EU) 2015/2205¹³, Commission Delegated Regulation (EU) 2016/1178¹⁴ and Commission Delegated Regulation (EU) 2016/592¹⁵. As a consequence, the aggregate clearing thresholds should therefore only apply to positions held in OTC interest rate derivatives and to positions held in OTC credit derivatives. The aggregate clearing thresholds for OTC equity derivatives, OTC foreign exchange derivatives and OTC commodity derivatives should therefore no longer apply.
- (5) The amendment in the calculation methodology calls for a calibration of thresholds for uncleared OTC derivatives applying to both financial and non-financial counterparties. Notably, based on elements such as the systemic relevance of the sum of net positions and exposures per counterparty and per class of OTC derivatives, the uncleared thresholds are set separately for interest rates, credit, equity, foreign exchange as well as commodity and emission allowance derivatives with the intention to ensure a prudent coverage of financial and non-financial counterparties subject to the clearing obligation. The bucket including commodity derivatives should no longer encompass other derivatives but should only refer to commodity derivative and emission allowance derivatives contracts to align with the relevant reporting requirements.
- (6) The trigger to launch a review of the clearing thresholds should result from the identification by the European Securities and Markets Authority (ESMA) of a significant change in the evolution of the prices of the underlying class of OTC derivatives or of financial stability risks. These significant changes would be identified by ESMA when periodically assessing the market prices of the relevant underlyings and indicators such as those used to monitor market developments under Article 32 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council¹⁶.

¹³ Commission Delegated Regulation (EU) 2015/2205 of 6 August 2015 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation (OJ L 314, 1.12.2015, pp. 13–21).

¹⁴ Commission Delegated Regulation (EU) 2016/1178 of 10 June 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation (OJ L 195, 20.7.2016, pp. 3–10)

¹⁵ Commission Delegated Regulation (EU) 2016/592 of 1 March 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation (OJ L 103, 19.4.2016, pp. 5–11)

¹⁶ 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 (OJ L 331, 15.12.2010, p. 84–119).

- (7) Commission Delegated Regulation (EU) No 149/2013 should therefore be amended accordingly.
- (8) This Regulation is based on the draft regulatory technical standards submitted to the European Commission by ESMA.
- (9) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, 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,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) No 149/2013 is amended as follows:

- (1) Article 11 is replaced by the following:

'Article 11

(Article 4a(4) of Regulation (EU) No 648/2012)

Clearing thresholds for aggregate positions

The clearing thresholds values applicable to aggregate positions for the purpose of the clearing obligation shall be:

- (a) EUR 1 billion in gross notional value for OTC credit derivative contracts;
- (b) EUR 3 billion in gross notional value for OTC interest rate derivative contracts';

- (2) the following articles are inserted:

'Article 11a

(Article 10(4)(b) of Regulation (EU) No 648/2012)

Clearing thresholds for uncleared positions

The clearing thresholds values applicable to uncleared positions for the purpose of the clearing obligation shall be:

- (a) EUR 0.8 billion in gross notional value for uncleared OTC credit derivative contracts;
- (b) EUR 0.7 billion in gross notional value for uncleared OTC equity derivative contracts;
- (c) EUR 2.2 billion in gross notional value for uncleared OTC interest rate derivative contracts;

(d) EUR 3 billion in gross notional value for uncleared OTC foreign exchange derivative contracts;

(e) EUR 4 billion in gross notional value for uncleared OTC commodity derivative and emission allowance derivative contracts;

Article 11b

(Article 10(4)(c) of Regulation (EU) No 648/2012)

Mechanisms triggering a review of the values of the clearing thresholds

The mechanisms triggering a review of the value of the clearing thresholds shall include, the identification of significant changes in the following indicators:

- (a) the prices of the underlying of OTC credit derivatives, OTC equity derivatives, OTC interest rate derivatives, OTC foreign exchange derivatives or OTC commodity derivatives and OTC emission allowance derivatives;
- (b) the volatility of the prices of the underlying of each above-mentioned asset-class;
- (c) the proportion of OTC derivative transactions, per each above-mentioned asset class, that are cleared;
- (d) the proportion of entities clearing their OTC derivatives transactions; and
- (e) the inflation rate, of the global financial conditions, the geopolitical and economic policy uncertainties.

An assessment of indicators to identify a significant change as mentioned above shall be conducted at least once a year.'

Article 2

This Regulation shall enter into force on the twentieth 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,

For the Commission
The President

5.3 Annex III - Cost-benefit analysis

This section provides a cost-benefit analysis (CBA) of the main proposed amendments to Commission Delegated Regulation 149/2013. The CBA will analyse the main proposed new provisions of Commission Delegated Regulation 149/2013 for the purpose of fulfilling the mandates for ESMA in Articles 4a(4) and 10(4)(b) of EMIR to specify the values of the CTs for aggregate positions and uncleared positions, respectively, and in Article 10(4)(a) and (c) of EMIR to specify the criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks as well as the mechanisms triggering a review of the values of the clearing thresholds.

The baseline for this CBA is the existing regulatory framework set out in Commission Delegated Regulation 149/2013.

A broad range of stakeholders provided input on the proposed measures through a public consultation, and their responses are considered in this CBA.

Establishment of an aggregate threshold

Policy objective	The policy objective is to ensure an appropriate coverage of the clearing obligation with a view to preserve financial stability. In light of the EMIR mandate requiring ESMA to specify the value of the clearing thresholds applicable to aggregate positions “where necessary”, ESMA has considered different options.
Option 1	Setting an aggregate threshold for all asset classes.
Option 2	Setting an aggregate threshold only for asset classes with instruments in scope of the clearing obligation.
Option 3	Not setting an aggregate threshold at all.
Preferred Option	ESMA has opted for option 2.

Option 2	Qualitative description
Benefits	While all counterparties will be subject to the uncleared threshold, its sole application may potentially leave out of scope of the clearing obligation several counterparties that may have large cleared portfolios when their uncleared position remains below the uncleared thresholds. This approach has the benefit of avoiding any loophole which may potentially impact the

	<p>effectiveness of the clearing obligation and its objective to ensure financial stability.</p> <p>At the same time, the application of the aggregate threshold only to the asset classes for which there is a clearing obligation has the clear benefit of simplify calculation processes and reducing burden on market participants, as they would not have to compare their positions against two different thresholds for those asset classes for which there is not a clearing obligation.</p>
Costs to regulators	While regulators will need to adjust their supervisory practices in light of the double set of thresholds (uncleared and aggregate – for certain asset classes), limited costs are anticipated for supervising compliance with the aggregate threshold.
Compliance costs	Compliance costs are expected to be limited considering the narrow scope of the aggregate threshold both in terms of asset classes covered and counterparties subject to it i.e. only FCs. In addition, the calculation of counterparties' positions against the aggregate threshold does not change compared to the pre-EMIR 3 methodology, thus limiting the need to adapt existing systems.
Costs to other stakeholders	None identified.

Calibration of the CTs

Policy objective	The policy objective is to set the clearing thresholds at a level that allows to capture an appropriate number of counterparties with the purpose of ensuring a meaningful application of the clearing obligation and other EMIR requirements.
Option 1	Maintain the current levels of the thresholds.
Option 2	Re-calibrate the thresholds based on relevant data.
Preferred Option	Option 2

Option 2	Qualitative description
Benefits	The approach to the calibration of the clearing thresholds leading to the regulatory amendment ensures a prudent coverage of the clearing obligation for all asset classes.
Costs to regulators	Limited costs mainly connected with the need to adjust supervisory practices in light of the double set of thresholds (uncleared and aggregate – for certain asset classes). This however does not derive from the level of the thresholds proposed in the Commission Delegated Regulation but rather from the amendments to the Level 1.
Compliance costs	No direct compliance costs related to the amendments proposed in the Commission Delegated Regulation. In light of the new regime introduced by EMIR 3, one-off compliance costs could however be expected for certain counterparties trading OTC derivatives as they would need to adapt internal procedures and systems to align with the new requirements e.g. by setting up calculations of uncleared positions and in certain cases comparing their positions against both the uncleared and the aggregate threshold.
Costs to other stakeholders	None identified.

CT hedging exemption

The policy objective is to review the current criteria set in the Delegated Regulation to determine which trades qualify for the hedging exemption. However, as explained in the related section of the CP and as confirmed in the section on this topic in this FR, no potential change that would have been possible within the EMIR mandate for this Level 2 could be identified, therefore no further details and analysis of the cost and benefits was developed on this aspect in this annex.

CT review trigger mechanism

Policy objective	The policy objective is to define mechanisms triggering a review of the values of the clearing thresholds following significant price fluctuations in the underlying class of OTC derivatives or a significant increase of financial stability risks.
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Option 1	Establishing a mechanism based on the crossing of certain quantitative thresholds
Option 2	Establishing a mechanism based on the assessment of certain quantitative indicators
Preferred Option	Option 2

Option 2	Qualitative description
Benefits	This option should allow for flexibility in triggering a review of the CTs, which should warrant proportionality in the approach, based on the context – while with a purely quantitative approach, burdensome reviews of CTs could be triggered automatically and possibly too easily.
Costs to regulators	Limited costs: ESMA will identify the data necessary to establish the defined indicators and assess them with other relevant authorities (NCAs, ESCB) to determine if it would be necessary to start a review before the two-year period between two mandatory reviews has elapsed.
Compliance costs	None identified (this mechanism is limited to triggering a review by the regulators, not necessarily resulting in an actual review of the CTs).
Costs to other stakeholders	None identified.

5.4 Annex IV – Representation of the EMIR reporting fields under REFIT

Use of EMIR reporting fields for the ESMA data analysis in Section 2.3

For the purpose of the data analysis presented in the FR, and for the calculation of the positions assessed against the CTs, ESMA based its observations on the use of the following fields:

- **Counterparty 1 (Reporting counterparty) (Table 1 Field 4):** This field is used to identify and exclude LEIs that should be exempted from the analysis, such as central banks and ministries of finance/treasury.
- **Nature of the reporting counterparty (Table 1 Field 5):** This field is used to determine whether the counterparty is Financial or Non-Financial.
- **Corporate sector of the reporting counterparty (Table 1 Field 6):** This field is used to determine the sector and type of the Financial Counterparty.
- **Directly linked to commercial activity or treasury financing (Table 1 Field 20):** This field is used to identify hedging by NFCs.
- **Asset class (Table 2 Field 11):** This field is used to identify the asset class of the underlying security.
- **Derivative based on crypto-assets (Table 2 Field 12):** This field is used to identify whether the derivative is based on crypto-assets.
- **Cleared (Table 2 Field 31):** This field is used to identify cleared and uncleared transactions.
- **Intragroup (Table 2 Field 37):** This field is used to enhance group information in conjunction with GLEIF Level 2 information.
- **Venue of execution (Table 2 Field 41):** This field is used to identify if the transaction is OTC or ETD.
- **Notional amount of leg 1 (Table 2 Field 55):** The notional amount of the transaction.
- **Notional currency 1 (Table 2 Field 56):** This is used to identify the currency of the notional amount.