

ESMA CONSULTATION PAPER ON DRAFT TECHNICAL STANDARDS AMENDING REGULATION (EU) 149/2013 TO FURTHER DETAIL THE NEW EMIR CLEARING THRESHOLDS REGIME

[Consultation on the Draft technical standards to further detail the new EMIR clearing thresholds regime](#)

Target participants

The consultation paper (CP) will be of interest to financial and non-financial counterparties entering into OTC derivative transactions, as well as from central counterparties (CCPs).

Information Note

Following EMIR 3, ESMA has the mandate to specify clearing thresholds (CTs) for aggregate positions (i.e. cleared and uncleared OTC derivatives for financial counterparties -FCs-) and uncleared positions (for both FCs and NFCs -non-FCs-). ESMA proposes to maintain the current aggregate thresholds for interest rate derivatives (IRDs) and for credit derivatives, as these asset classes are subject to the clearing obligation. For uncleared positions, ESMA proposes new thresholds based on simulations aiming to maintain similar counterparties' volume under the previous methodology. ESMA also considers more granular thresholds for commodity derivatives based on sector/type, ESG factors, and crypto-features but proposes not to introduce them at this stage due to complexity and data limitations. On the criteria¹ for establishing OTC contracts reducing risks related to commercial activity, ESMA notes industry discussions, particularly regarding the hedging qualification of virtual power purchase agreements (PPAs) without prejudice to the fact that no amendments are proposed at this stage. Last, regarding the mechanisms triggering a review of the CTs, ESMA proposes a qualitative, risk-based approach rather than strict quantitative thresholds. The review would be triggered by ESMA's identification, in coordination with national competent authorities and after consulting the European Systemic Risk Board (ESRB), of a significant change in the evolution of prices of the underlying OTC derivative classes or a significant increase in financial stability risks.

The CP is organised into **five** parts:

- **Section 1** presents the legal background and the purpose of the consultation.
- **Section 2** addresses the values of the clearing thresholds, specifying CTs for aggregate positions (cleared and uncleared OTC derivatives for FCs) and uncleared positions (for both FCs and NFCs).
- **Section 3** concerns the criteria for establishing OTC contracts reducing risks related to commercial activity and whether the hedging definition should be further clarified in Article 10.
- **Section 4** includes the annexes to this CP comprising the amendments to Commission Delegated Regulation (EU) No 149/2013 (Annex I), the statistics on uncleared OTC

¹ Defined in Article 10 of Commission Delegated Regulation (EU) No 149/2013



derivatives (Annex II), the representation of the EMIR reporting fields (Annex III), and the list of the questions (Annex IV).

ESMA will consider feedback received for preparing and publishing a final report. The final drafts will be sent to the European Commission by the end of Q4 2024.

Submission of comments

The deadline for submitting comments is **16 June 2025**.

Respondents may send their comments through ESMA's website: www.esma.europa.eu. The paper of this consultation (ESMA74-1049116225-632) and the Response Form are available in the section [Consultation](#).

Likewise, please send a copy of your answers to the CNMV to the following email address: documentosinternacional@cnmv.es

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