



**WFE Response to ESMA's Consultation on EMIR 3 RTS
regarding Participation Requirements
5 January 2026**

Response

The WFE welcomes the opportunity to comment on ESMA's draft RTS under EMIR 3. We strongly support a framework that reinforces robust risk management while remaining feasible, proportionate, and fully aligned with the mandate of CCPs to strike pragmatic balance between financial stability and access to central clearing. This response highlights several areas where clarification is needed to avoid unintended consequences, including excessive supervisory expectations, duplication of existing regulatory regimes, and significant operational burdens. In particular, we encourage ESMA to set a realistic implementation period, as updates to admission criteria require internal governance approvals, member consultation, and rulebook changes. Below are our responses to the eight consultation questions.

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

Several provisions risk turning CCP admission criteria into a duplication of CCPs' ongoing, resource-intensive risk management processes. In particular, the draft text suggests that CCPs should assess forward-looking drivers such as increases in portfolio risk arising from activity, concentration, wrong-way or liquidity risk as part of static admission criteria. In practice, this type of analysis relies on continuous monitoring, dynamic data and stress testing frameworks that are already embedded in CCPs' day-to-day risk management, and would therefore require CCPs to replicate those processes at the point of admission. This would create material additional operational burden while blurring the important distinction between one-off gateway assessments at onboarding and ongoing risk management and supervision. We therefore recommend that the RTS make this distinction explicit, and clarify that admission criteria should focus on baseline capability and eligibility, with evolving portfolio-level risks addressed through existing risk management tools once a member is admitted.

We welcome ESMA's recognition of different member types but emphasise that proportionality must remain at the CCP's discretion, as CCPs must retain flexibility to calibrate and adjust criteria according to evolving market structure, participant behaviour and stress experience. This includes limiting certain admission criteria to specific products, services or segments. While we support the publishing of admission criteria, this ought not to include aspects which should remain confidential. CCPs should not be expected to disclose specific internal risk limits, models or thresholds that could undermine risk management or reveal commercially sensitive information.

Q2. Do you agree with the suggested elements with regard to the clearing member's financial resources? Should the CCP consider other elements? Please justify your response and provide quantitative evidence.

CCPs should not act as first line prudential supervisors. Requirements should focus on confirming a clearing member's ability to meet its obligations to the CCP across a range of plausible stress scenarios, rather than replicating a prudential supervisory regime through prescriptive inputs or ongoing supervisory-style assessments. An outcomes-based approach is important not only for proportionality, but also to support fair and open access to clearing and a diverse clearing membership, which in turn strengthens market resilience and reduces concentration risk. Replicating prudential supervision would significantly expand CCP responsibilities and require substantial additional staffing without clear risk-management benefits.

1. Market-based indicators: References to external credit ratings, share prices and CDS spreads should be framed as optional tools rather than mandatory inputs. In practice, this information may be unavailable, incomplete, or not meaningful for certain entities, particularly non-bank or privately held members.
2. Outsourcing and third-party reliance: CCPs should be able to understand and take into account material third-party dependencies where a clearing member relies on them to meet obligations to the CCP. However, CCPs should not be expected to conduct granular assessments of outsourcing chains across a clearing member's wider group structure or to assume a supervisory role over third-party providers. It should be sufficient for CCPs to assess that the clearing member has appropriate governance, due diligence, contractual protections and contingency arrangements in place, consistent with its own regulatory obligations.
3. Central bank access: CCPs should be permitted to calibrate appropriate safeguards for members without access to central bank facilities, rather than treating central bank access as a binary eligibility criterion.

Overall, we recommend that the RTS focus on the outcome that a clearing member can reliably meet its obligations to the CCP under stress, without mandating specific ratios, metrics or rating thresholds that could unintentionally restrict access or discourage a broader and more resilient clearing ecosystem.

Q3. Do you agree with the suggested elements with regard to the clearing member's operational capacity? Should the CCP consider other elements? Please justify your response and provide evidence.

Operational capacity is important, but several provisions must be recalibrated for feasibility and proportionality. Firstly, CCPs should not be placed in a position of enforcing DORA on clearing members. We believe that CCPs should not be expected to verify a member's ongoing compliance with ICT or cyber frameworks that are already overseen by competent authorities. The RTS should allow CCPs to rely on DORA where applicable, and apply proportionate checks for non-DORA firms, allowing CCPs to assess whether non-DORA entities have equivalent or otherwise adequate ICT and cyber arrangements.

Secondly, IT change process expectations should be realistic. The current wording suggests CCPs must be involved in every IT system change that may affect operational performance for every member. With some CCPs having hundreds of members, this is unworkable. CCPs should receive appropriate notifications through due diligence or annual attestations, not participate in member level IT governance. The draft also notes that CCPs should consider reliance on third party service providers. We support this, but would encourage ESMA to make clear that CCPs should focus on the robustness of contractual rights, operational resilience, and substitution possibilities, rather than attempting to supervise the third parties directly. Furthermore, CCPs should not be required to verify the functionality of every backup arrangement as due diligence questionnaires and existing regulatory frameworks (including DORA where relevant) should be relied upon.

Q4. Do you agree with the suggested elements with regard to other considerations and risks? Should the CCP consider other elements? Please justify your response and provide evidence.

We agree that admission criteria must take account of legal, compliance and broader risk considerations that may affect a clearing member's ability to meet its obligations, and that legal enforceability and clarity of obligations are essential. In particular, CCPs should ensure that their own rules, default management processes and netting arrangements are legally enforceable in the relevant jurisdictions, including through appropriate legal opinions where a clearing member is established in a foreign jurisdiction. However, several aspects of the draft RTS should be recalibrated to avoid supervisory overreach.

CCPs' legal assessment at admission should be focused on those legal elements that are directly relevant to the CCP's risk exposure, such as enforceability of default management actions, close-out netting, collateral arrangements and choice of law. CCPs should not be required to assess or continuously monitor the entirety of a clearing member's domestic legal and regulatory framework, as this would effectively place CCPs in the role of jurisdiction-level legal supervisors. The RTS should therefore allow CCPs to apply a risk-based approach to the depth of analysis and frequency of refresh, reflecting the materiality of exposures and the complexity of the relevant jurisdictions.

CCPs should be permitted to treat licensing and prudential supervision as strong positive indicators when assessing legal and compliance risk, without making them determinative. The absence of a financial services licence or prudential regime should not automatically preclude an entity from clearing membership, particularly where alternative safeguards can be demonstrated. The RTS should also clearly distinguish between onboarding checks and periodic reviews, recognising that many legal elements change infrequently and do not warrant continuous reassessment.

Q5. Do you agree with the suggested elements with regard to the specific risks of clearing members offering clearing services to clients? Should the CCP consider other elements? Please justify your response and provide quantitative evidence.

The WFE has concerns regarding to the calculation of concentration risk and visibility of clients, as the RTS language implies that CCPs should have visibility on all clients in all models. This is not operationally feasible and contradicts existing omnibus structures.

In regards to proportionality and model neutrality, CCPs should retain flexibility to calibrate expectations across different client clearing models and segregation options. The RTS should permit CCPs to calibrate client clearing related criteria in a way that is

consistent with their existing account structures, netting arrangements and default management plans, rather than implying a single model.

Q6. Do you agree with the suggested elements with regard to sponsored models? Should the CCP consider other elements? Please justify your response and provide evidence.

We agree with ESMA's assessment that sponsored models can be a useful mechanism to broaden direct access while preserving robust risk management. However, we recommend that CCPs should not need to review all aspects of the contractual arrangements between sponsor and participant. They should focus only on those directly relevant to the CCP's risk exposure. In addition, the reference to backup sponsors should not be seen as a requirement - the RTS should make this explicit, as stating that CCPs "shall consider" such arrangements may otherwise be interpreted by NCAs as a mandatory requirement. Finally, while the term "clearing member in a sponsored model" may be deemed to be technically inaccurate, we appreciate that the Level 1 text only refers to a "clearing member" and that it is not feasible to introduce new definitions such as "participant in a sponsored access model". With this in mind, we recommend adding clarification that the term is used to reflect the Level 1 text structure, not to imply equal rights or obligations.

Q7. Do you agree with the suggested safeguards in relation to the access to reliable liquidity? Should ESMA consider other safeguards? Please justify your response and provide quantitative evidence.

We support flexible safeguards that allow CCPs to safely admit NFCs without imposing barriers that amount to de facto exclusion. CCPs should remain free to combine safeguards, or to apply alternative mitigants, depending on the NFC's characteristics, the CCP's risk procedures, and supervisory expectations. EMIR allows for the flexibility to differentiate criteria across products, and it is important that this is maintained in the RTS to ensure that standards do not amount to a de facto prohibition of NFC clearing membership where the NFC can otherwise demonstrate sound risk management.

Q8. Do you agree with the suggested alternative elements that a CCP could consider when an NFC is not subject to authorisation or licensing requirements resulting in capital and prudential regulation and supervision?

We agree that the absence of a financial services licence or prudential regime should not automatically preclude NFCs from becoming clearing members, and we support the proposal to allow CCPs to consider alternative elements when assessing such entities. This flexibility is important given that many NFCs are not prudentially supervised but are nevertheless subject to regulatory oversight under sectoral regimes. Any NFC seeking clearing membership should, however, be able to demonstrate that it can meet the applicable membership requirements and its ongoing operational and financial obligations to the CCP on a day-to-day basis, in the same manner as any other clearing member.

We consider the alternative elements identified in the RTS particularly relevant in this context, including oversight under sectoral regimes (for example energy or commodities regulators, which can provide assurance on governance and conduct), as well as mature internal risk management frameworks, such as board oversight of market, liquidity and operational risk, clear risk limits and stress-testing practices. CCPs should be able to treat the presence of a licence, whether sectoral or otherwise, as a positive indicator where relevant, without this being determinative. The RTS should focus on whether the NFC can meet CCP rulebook obligations, rather than requiring CCPs to assess and map in detail each NFC's broader regulatory framework, which would be a significant and disproportionate undertaking. Where an NFC can demonstrate that it can meet the same obligations as a financial counterparty, certain admission elements may be less relevant.

Background

Established in 1961, the World Federation of Exchanges (WFE) is the global industry association for exchanges and central counterparties (CCPs). Headquartered in London, it represents over 250 market infrastructure providers, including standalone CCPs that are not part of exchange groups. Of our members, 37% are in Asia-Pacific, 43% in EMEA, and 20% in the Americas.

The WFE's 87 member CCPs and clearing services collectively ensure that risk takers post some \$1.1 trillion (equivalent) of resources to back their positions, in the form of initial margin and default fund requirements. WFE exchanges, together with other exchanges feeding into our database, are home to over 49,000 listed companies, and the market capitalisation of these entities is over \$116.58 trillion; around \$155 trillion (EOB) in trading annually passes through WFE members (at end 2024).

The WFE is the definitive source for exchange-traded statistics and publishes over 350 market data indicators. Its free statistics database stretches back 49 years and provides information and insight into developments on global exchanges. The WFE works with standard-setters, policy makers, regulators, and government organisations around the world to support and promote the development of fair, transparent, stable and efficient markets. The WFE shares regulatory authorities' goals of ensuring the safety and soundness of the global financial system.

With extensive experience of developing and enforcing high standards of conduct, the WFE and its members support an orderly, secure, fair, and transparent environment for investors; for companies that raise capital; and for all who deal with financial risk. We seek outcomes that maximise the common good, consumer confidence and economic growth. And we engage with policy makers and regulators in an open, collaborative way, reflecting the central, public role that exchanges and CCPs play in a globally integrated financial system.

If you have any further questions, or wish to follow-up on our contribution, the WFE remains at your disposal. Please contact:

Charlie Ryder, Regulatory Affairs Manager: cryder@world-exchanges.org

Richard Metcalfe, Head of Regulatory Affairs: rmetcalfe@world-exchanges.org

Nandini Sukumar, Chief Executive Officer: nsukumar@world-exchanges.org