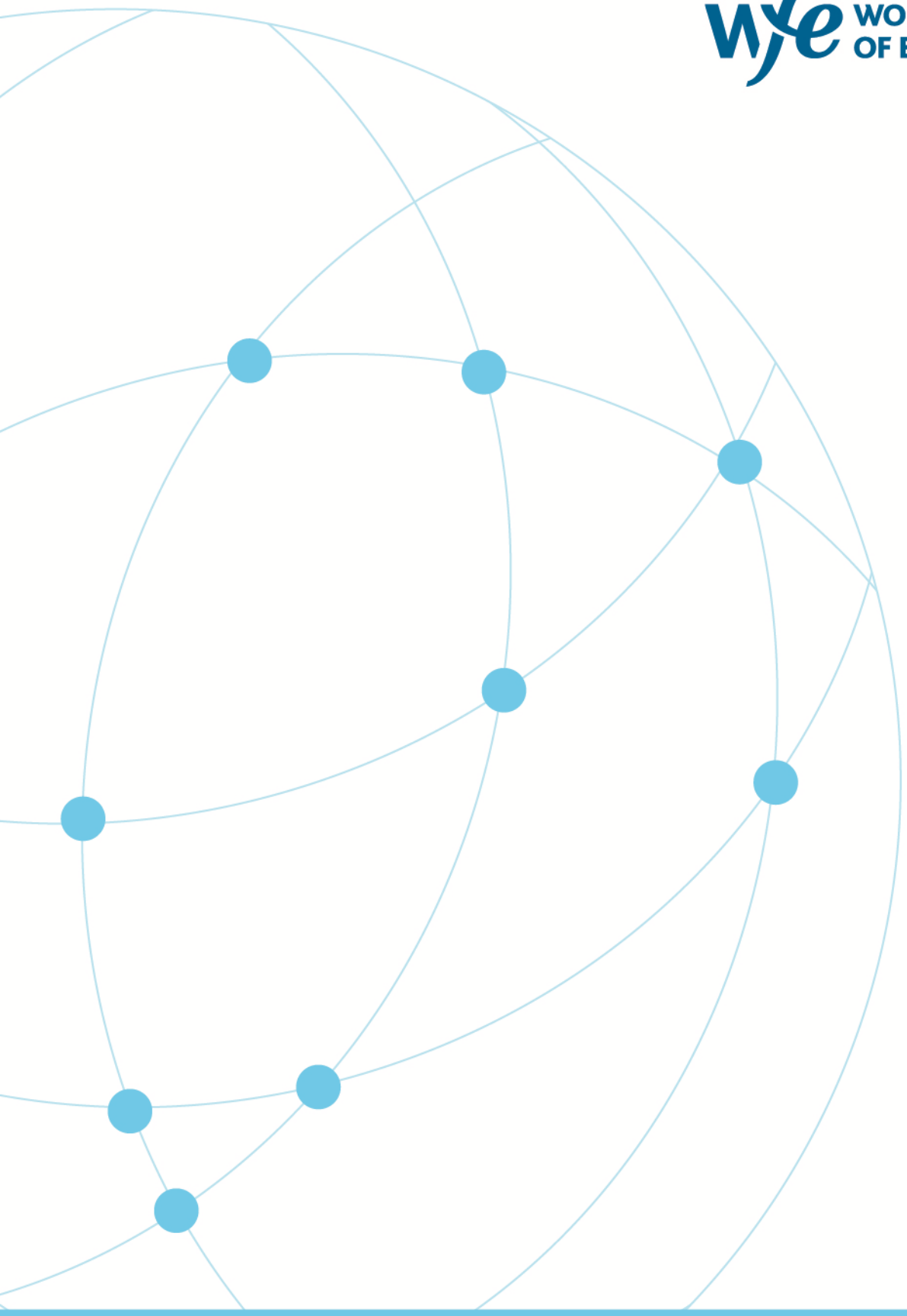
WORLD FEDERATION OF EXCHANGES



WFE Response to ESMA's Consultation on guarantees as CCP collateral and on certain aspects of CCP investment policy

30 April 2026

Response

Executive summary

The World Federation of Exchanges (WFE) welcomes the opportunity to respond to ESMA's consultation on guarantees as CCP collateral and certain aspects of CCP investment policy. WFE members include a broad cross section of CCPs with experience of accepting, limiting, or declining guarantee-based collateral in a range of markets.

The WFE recognises that guarantees such as uncollateralised bank guarantees may provide targeted liquidity relief in times of stress, particularly for non-financial participants in markets when other types of collateral are scarce. This can diversify margin funding sources and support orderly risk management. When appropriately structured, such instruments can function as reliable, cash-equivalent resources within CCP liquidity frameworks.

Some CCPs accept guarantee-like instruments only in tightly constrained form - typically limited to initial margin, and subject to hard quantitative caps, strict issuer eligibility standards, and explicit affiliate restrictions to mitigate wrong-way risk. Other CCPs report limited or no demand to date and have therefore not prioritised their use.

Against this backdrop, the WFE advises that any such framework must prioritise enforceability, liquidity, concentration risk management and robust mitigation of wrong-way risk. In summary:

1. Enforceability and draw certainty must be legally robust and operationally reliable. Guarantees should be clearly irrevocable, unconditional and on-demand, and capable of being converted into cash within the CCP liquidation period under stressed conditions. These features are critical to ensuring that guarantees remain reliable in default scenarios and do not introduce avoidable liquidity or timing risks. CCPs should maintain the discretion to require more stringent operational timelines where needed for liquidity risk management.
2. CCPs may also consider features such as automatic renewal mechanisms, where appropriate, to reduce rollover and cliff-edge risk associated with near-dated expiry.
3. CCPs should retain discretion, within a clear regulatory perimeter, to determine whether and how to accept guarantees consistent with their risk models and market structure.
4. Wrong-way risk is typically not best-addressed through haircuts. Instead, quantitative limits, affiliate restrictions and issuer eligibility standards are likely to be more effective mitigants. Concentration risk must be explicitly controlled, including in relation to guarantors that are not clearing members.

The practical viability of guarantee structures will depend on their interaction with the regulatory capital requirements of clearing members. As such, ESMA should avoid prescribing structures that are legally permissible in theory but are commercially or prudentially impracticable in use.

In addition, the WFE encourages ESMA to recognise the opportunity to provide additional legal clarity in terms of the eligibility of distributed ledger technology (DLT) based collateral. The use of DLT provides CCPs the possibility to further improve collateral processes, enable near-time collateral transfers, and ensure that collateral is always available precisely where and when it is needed. In this regard, clarification that tokenised financial instruments and MiCA instruments may be accepted when applying the existing criteria for collateral would be useful. In addition, ESMA should clarify that central bank digital currency may be accepted under the existing conditions for central bank money.

We address the specific questions below.

A. Concentration limits

Q1. Do you agree that the existing provision on concentration limits should apply to guarantees and as such Article 42 should be amended to provide legal clarity on this?

The WFE agrees that guarantees should be explicitly subject to Article 42 concentration limit requirements to provide legal clarity. Guarantees create counterparty exposure to the guarantor institution and therefore should fall clearly within concentration risk monitoring and limit setting frameworks.

Q2. Do you agree with the inclusion of the level of collateralisation of the guarantee as a criterion for the CCP to consider when establishing concentration limits?

The WFE agrees that the level of collateralisation of a guarantee can be a relevant consideration when establishing concentration limits. However, it should not be treated as a substitute for a holistic risk assessment. Collateralisation does not eliminate wrong way risk, legal risk or liquidity risk. Limits should therefore reflect aggregate exposure to each guarantor irrespective of the nominal collateralisation level.

Q3. Do you agree with the inclusion of the new criteria (e) in paragraph 3 of Article 42, so that the CCP can consider the activity of the non-financial client when setting concentration limits?

The WFE agrees with ESMA's plan to allow CCPs to consider the underlying activity of non-financial clients when setting concentration limits, particularly in commodity markets where hedging activity may be directly linked to production or physical exposure. We support this as an optional risk sensitive factor rather than a mandatory requirement.

Q4. Shall there be specific concentration limits established for guarantees provided by non-clearing members, given these exposures are not considered in the Stress Test?

The WFE considers that concentration risk arising from guarantees provided by non-clearing members should be appropriately managed, but that specific concentration limits should not be hard-coded in regulation. Instead, CCPs should retain responsibility for calibrating concentration limits within robust, risk-based concentration frameworks that reflects the nature of the guarantor, the scale of the exposure, and the stage of market development. Such an approach would be consistent with the treatment of other collateral asset classes, where concentration limits are calibrated by CCPs in accordance with their own risk frameworks rather than fixed in regulation. Prescribing hard thresholds for guarantees would represent an unjustified departure from this established principle. This concern is especially acute during the initial phase of a guarantee programme, when the pool of accepted issuers may naturally be limited. Overly restrictive fixed limits at this stage could impede market adoption and reduce the resilience and diversification benefits that the collateral framework is intended to deliver, without a commensurate reduction in risk.

Where exposures to non-clearing guarantors are not captured within stress testing frameworks, additional safeguards are warranted to prevent the build-up of unassessed concentrations. However, the regulatory framework should ensure that concentration risks are effectively constrained and consistently addressed across CCPs while preserving sufficient flexibility for CCPs to manage risks dynamically and support market development. CCPs are well placed to manage concentration risk dynamically, taking account of issuer credit quality, collateral diversification, and evolving market conditions, and should be given the regulatory space to do so.

Although not framed as a standalone question, we note ESMA's references to haircuts as a potential tool. Member feedback indicates that haircuts should not be required for uncollateralised guarantees posted as collateral, as they are not necessarily the appropriate tool to adequately address the core risks of uncollateralised guarantees (particularly where the instrument is not supported by robust contractual, operational and concentration safeguards).

These risks can be mitigated through appropriate contractual design and operational arrangements. In particular, where guarantees are structured as irrevocable, unconditional and on-demand obligations, and where CCPs are able to call and convert them into cash rapidly, the risk of deterioration in value during stress can be significantly reduced. In practice, CCPs may seek to ensure that such instruments can be enforced and monetised within tight operational timeframes, consistent with their liquidity risk management frameworks.

The WFE would also caution against categorical restrictions preventing a bank that issues guarantees from also acting in other capacities for the CCP, that may constitute services critical to the functioning of the CCP. Such exposures are better managed through an overall concentration and counterparty risk framework than through blanket prohibitions. In particular, the WFE notes that the institutions most likely to be caught by such a prohibition - large, systemically important financial institutions that provide a broad range of services to CCPs - are typically those with the strongest credit ratings and therefore the most creditworthy guarantee issuers. Prohibiting CCPs from accepting guarantees from these institutions would not reduce risk; it would perversely direct CCPs toward accepting guarantees from institutions with weaker credit profiles, contrary to sound risk management principles. A risk-sensitive, exposure-based approach, drawing on CCPs' existing concentration risk and wrong-way risk frameworks, would achieve the regulatory objective without this unintended consequence.

B. Use of guarantees by non financial clients

Q5. Understanding of the three-party structure - is ESMA's understanding correct? Are there other essential features of the guarantees that should be highlighted?

Guarantee documentation should unambiguously specify the identity of the beneficiary, draw conditions, transferability where relevant, expiry and renewal mechanics, and the operational process for validating and calling the instrument, so that there is no uncertainty at the point of default management.

Operational arrangements may also involve additional banking roles, such as advising or confirming banks, and CCPs should be able to structure these arrangements in a manner that supports validation, operational reliability and legal certainty.

In terms of the proposed security purpose of the guarantee, the focus should not solely lie on the default of the clearing member vis-à-vis the CCP. From a clearing member perspective, there would be little use of accepting guarantees as collateral, which the clearing member cannot satisfy in case of a client default. Hence, the clearing member would have ask for separate collateral to covers its exposure to the client. Restricting the ability of clearing members to execute the guarantee with the indirect "*transfer clause*" adds an additional layer of legal complexity. Instead, clearing members should be able to execute a guarantee in case of a client default without the transfer of the beneficiary as long as the clearing member has settled the CCP's claims towards the client.

Q6. Do you agree with the conditions proposed by ESMA? Please provide your views specifically for each condition (a), (b), (c) and (d).

The WFE broadly supports the conditions proposed by ESMA, including:

- Identification of the client principal.
- Restrictions on issuance by affiliates or the clearing member.
- Clear linkage between the guarantee and the relevant position exposure.

The WFE also supports the identification of the beneficiary structure, but advocates for preserving the flexibility of CCPs and market participants to use arrangements that are legally robust and operationally effective. The WFE would caution against overly prescriptive requirements as to beneficiary structure, as the appropriate design may vary across markets and may affect the capital and balance-sheet treatment for clearing members and clients. It is also necessary to keep this in mind when addressing the obligation to post the guarantee to an individually segregated account in the name of the non-financial client. CCPs should be able to consider whether the aims and benefits of segregated accounts could be ensured in alternative operational ways (for further explanation see answer to Q7)

In particular, the WFE considers that regulation should permit both structures in which the CCP is the sole beneficiary and structures in which the CCP and the clearing member are named as joint beneficiaries, provided the CCP's interests are protected in each case. Restricting beneficiary structures to a single model would have material capital consequences: structures in which the CCP is the sole beneficiary can be significantly more capital-intensive for clearing members, as members may be required to hold additional capital against guarantees posted by underlying clients where the CCP is the only named beneficiary. This could cause clearing members to limit or withdraw the offering of guarantees to clients, or to pass on the associated costs, reducing the practical usability of guarantees for the non-financial counterparty (NFC) clients that EMIR 3 is designed to support.

The risk of competitive disadvantage relative to participants clearing at non-EU CCPs, where greater structural flexibility is available (or may be necessary), further underscores the case for a principles-based approach that accommodates both beneficiary structures. In particular, there is also a specific legal constraint affecting US market participants that ESMA should consider. CFTC Regulation 1.43, which governs letters of credit as collateral for futures commission merchants (FCMs), imposes conditions that effectively require FCMs, their bankruptcy trustee, or the FDIC, to be able to draw on the letter of credit (LC). A structure in which the CCP is the sole beneficiary would prevent this, making it legally impossible for clients clearing through FCMs to use guarantees as collateral under the proposed framework. This is not a matter of commercial preference but of regulatory incompatibility, and further underscores why joint beneficiary structures must remain a permissible option.

The WFE notes that established CCPs in other jurisdictions already successfully operate with a range of beneficiary structures, including supporting both a pass-through with transfer facility structure (in which the CCP and clearing member are named beneficiaries) and a non-pass-through structure (in which the LC is posted by the clearing member directly). The availability of both structures reflects the diversity of legal frameworks and clearing member requirements across markets. ESMA should similarly preserve sufficient flexibility to accommodate differing legal structures, including the ability for CCPs to accept guarantees posted directly by clearing members as well as by underlying clients.

Q7. In relation to condition (c), do you agree with ESMA proposal? If not, is it in your opinion legally and practically feasible that guarantees are posted to an omnibus account?

We do not support a requirement that guarantees be limited to individually segregated accounts (ISAs). Such an approach would treat this form of collateral differently from other collateral types, increase operational complexity and clearing costs for end-users, and may be inconsistent with legal and account structures used in other jurisdictions, including for certain US market participants. CCPs and clients should retain flexibility to determine the appropriate account structure, subject to the relevant legal and risk-management framework.

The WFE considers that this requirement also lacks a clear legal basis and is in direct tension with the stated objectives of EMIR 3. Recital 55 of EMIR 3 explicitly acknowledges that the purpose of expanding eligible collateral to include guarantees is to facilitate clearing access for non-financial counterparties that do not hold sufficient amounts of highly liquid assets. A mandatory ISA requirement would directly frustrate this objective in two material respects.

First, ISAs are legally unavailable to a significant class of NFC clients. The segregation regime under US law and CFTC rules to which FCMs are subject is incompatible with individual client-level segregation. Accordingly, ISAs cannot be offered to NFC clients clearing through FCMs, whether by the FCM or the relevant CCP. The practical effect of the proposed requirement would be to systematically exclude this class of NFC client from using guarantees as collateral altogether - the very outcome EMIR 3 sought to prevent.

Second, even for NFC clients that can in principle access ISAs, such accounts are rarely used in practice due to materially higher operational, legal and administrative costs compared with omnibus accounts. Critically, ISAs cannot be established at short notice, which limits their utility precisely in stressed market conditions - the circumstances in which liquidity relief from guarantee collateral would be most needed. Mandating their use would therefore reduce the economic attractiveness of guarantees as a collateral option and undermine the broadening of the eligible collateral base that EMIR 3 sought to achieve.

The WFE also notes that the rationale offered in Recital 4 of the draft RTS - that the non-fungible nature of guarantees requires them to be posted to ISAs - conflates two distinct questions. The fungibility of an instrument at the point of posting is legally separate from the question of what account structure should govern its use. EMIR already permits a range of non-fungible instruments (such as bonds from different issuers) to be held in omnibus accounts, and does not require non-fungibility to be the determining criterion for account structure. Bank guarantees held in an omnibus account would be available to CCPs on the same basis in a default as any other collateral in that account, without being confined to the circumstances of the named client's default, as is the case for existing types of collateral. It should be noted in this regard that an LC posted by a client as collateral is drawn by the CCP only in the event of a clearing member default, and not upon the default of the individual client posting the LC. Where an underlying client defaults but the clearing member remains solvent and continues to meet its obligations, the CCP would not draw on the LC. In the event of a clearing member default, the LC would be accessed as part of the overall default management close-out process, alongside all other collateral attributable to clients whose positions are not successfully ported. In this context use of LCs by the CCP to manage a default should not be restricted.

The identifiability requirements already embedded in the draft RTS (requiring guarantees to be issued to cover a specific NFC client) would be sufficient to ensure appropriate attribution without mandating ISAs. The decision on account structure should rest with NFC clients posting such collateral, consistent with the treatment of all other highly liquid collateral accepted by CCPs.

Q8. Is there any other condition you consider would be necessary in relation to the extension of the use of guarantees to guarantee non-financial clients? E.g. should it be mandated that CCPs have in place a mechanism to identify the default of a non-financial client?

The WFE recommends additional safeguards be left to the discretion of the CCP given their knowledge of the specific markets they clear, and the clients involved. We would also urge ESMA to refrain from transferring the responsibility to monitor client defaults to CPPs, since this would result in an unnecessary duplication of the control process, which already ensures the monitoring and identification of potential client defaults via the clearing members.

C. Public guarantees

Q9. Do you agree with ESMA's proposal to require that there are a credit rating and reliable financial data on the guarantor available for the CCP to use in its internal assessment?

Due to the operating reality and distinguishable variety of guarantor types, access to credit ratings and reliable financial information remains crucial in order to allow CPPs to evaluate the creditworthiness of guarantors. It is particularly true that, in the case of public guarantors (which often lack independent credit ratings), the RTS must ensure that such guarantors provide sufficient financial evidence (e.g. disclosures or external credit ratings) that they meet the CPP's risk management criteria.

Q10. Do you consider that the direct access of a public guarantor to real-time gross settlement systems such as T2 should be a requirement for public guarantors? Please provide evidence or reasoning to support your response.

We agree that the question of whether the guarantor can demonstrably honour the guarantee within the CCP's liquidation period under stressed conditions, including through robust payment agent arrangements without legal or operational impediments, should remain central. However, we also support ESMA's proposal to require public guarantors to have direct access to real-time gros settlement systems such as T2. This directly tackles the settlement and liquidity timing risks posed by a potential default scenario, and ensures that a swift, irrevocable payment mechanism is already in place.

Q11. Do you agree that public guarantees should be accompanied by a legal opinion confirming the effective representation of the guarantor, the validity of the guarantee and its enforceability?

We agree that public guarantees should be accompanied by an independent legal opinion, since public guarantors are subject to heterogenous legal frameworks, and often operate under administrative constraints that inhibit the assessment of their legal capacity. This in turn creates a significant level of uncertainty for CCPs when determining whether all necessary approvals have been obtained. Such a requirement thus proves both necessary and proportionate.

D. Bank guarantees

Q12. Do you agree that the conditions for commercial bank guarantees should explicitly foresee that the guarantor is a credit institution as defined in CRR?

Yes, limiting the pool of eligible guarantors to credit institutions regulated by the CRR actively ensures legal certainty, since CCPs will only be able to rely on institutions which are already operating under an established supervisory framework and subject to clear and harmonised prudential requirements.

Q13. Do you agree that the possibility for CCP to accept uncollateralised bank guarantees should be specified in Section two of Annex I of RTS 153/2013?

We support clarifying in the RTS that uncollateralised bank guarantees may be accepted, consistent with the Level 1 text.

Q14. Do you agree with ESMA that the conditions applicable to commercial bank guarantees should also be applicable to public bank guarantees? Please specify in your answer whether any addition condition should be considered.

However, we would like to stress that the common baseline of requirements should also take specific public bank risks into account, as they differ from commercial banks in terms of their governance structures, legal basis and scope of permitted activities. Accordingly, we recommend further conditions for public bank guarantees regarding the legal enforceability of the guarantee under public law frameworks, the reliability and timeliness of payments and the availability of sufficient financial information to allow the CCP to perform a risk assessment.

Q15. Do you agree with the proposed way to address the lack of definition of "public bank"?

The WFE broadly supports ESMA's approach to defining public banks based on public ownership or control, excluding MDBs and central banks. While the definition should primarily be clear and legally unambiguous, it is also important to include a reference to the heterogeneity of public banks, as their specific legal basis and ownership structures may significantly impact their risk profile and ultimately, the feasibility of their guarantees. Based on this, we also believe it is important for CCPs to preserve the ability to internally assess whether a specific public bank meets the requirements for accepting its guarantee as collateral.

E. Investment policy amendments

Q16. Do you agree with the proposed change concerning the conditions under which debt instruments can be considered highly liquid, bearing minimal credit and market risk (and hence considered as eligible financial instruments for the purpose of CCP investment policy)?

We support the inclusion of EU, BIS and IMF issuance or guarantees among instruments that may be considered highly liquid and minimal risk, subject to existing Annex II safeguards. This promotes prudent diversification consistent with Article 47 EMIR. In addition, ESMA could use this opportunity to bring outdated CCP investment policy rules up to date. This could be done by implementing the following proposals, which reflect the currently evolving market conditions:

- Increasing CCP flexibility by extending the required average time-to-maturity of their portfolios
- Amending Art. 45(2), since requiring CCPs to collateralize 95% of overnight cash held with institutions other than central banks may force CCPs into withdrawing their central bank deposits to counterbalance unsecured investments in other currencies. This effectively undermines security by shifting funds away from the most secure form of deposits (central bank deposits).
- Including derivative contracts to the list of permissible financial instruments which CCPs can use to hedge interest rate risks,
- Adding state bodies other than central banks as entities falling under highly secured arrangements for the deposit of financial instruments and cash, and
- Adding a clarification regarding a CCP's ability to invest in short-dated financial instruments such as covered bonds and commercial papers as long as they fulfil the existing conditions.

Q17. Do you agree with the proposed change concerning the highly secure arrangements for the deposit of financial instruments posted as margins or as default fund contributions?

We support the proposal permitting deposit of emission allowances in the Union Registry where such allowances are accepted as collateral and cannot be held in a securities settlement system.

Conclusion

The WFE supports ESMA's objective of establishing a coherent and permanent prudential framework for guarantees as eligible collateral.

We reiterate that:

- Guarantees may provide targeted liquidity benefits, especially for non-financial participants in commodity markets.
- Wrong way risk, enforceability and liquidity risk require stringent mitigation.
- Limits and eligibility criteria are likely to be more effective than haircuts.
- CCP discretion within a clear regulatory perimeter remains important, given differences in market structure and risk profile.
- In addition, regulatory requirements should support legal certainty and rapid liquidity realisation without imposing unnecessary rigidity. This is particularly important in regards to beneficiary structure, account design, and concentration management. Requirements should still allow CCPs to calibrate operational requirements to their liquidity risk frameworks.

We would welcome continued engagement with ESMA as this framework develops.

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:

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