September 30, 2022

VIA ELECTRONIC SUBMISSION (Link)
European Securities and Markets Authority
201-203 Rue de Bercy
CS 80910
75589 Paris Cedex 12
France

Re: ESMA Consultation Paper on the clearing and derivative trading obligations in view of the 2022 status of the benchmark transition

The Global Association of Central Counterparties ("CCP12") is the international association for central counterparties ("CCPs"), representing 40 members who operate over 60 CCPs across the Americas, EMEA, and the Asia-Pacific region.

CCP12 appreciates the opportunity to comment on the ESMA *Consultation Paper on the clearing and derivative trading obligations in view of the 2022 status of the benchmark transition*[1] ("the Consultation Paper"). We would like to highlight that the Association also responded to the previous ESMA *Consultation Paper on the clearing and derivative trading obligations in view of the benchmark transition*[2].

Introduction

Q1: Are there any general comments you would like to raise?

CCP12 welcomes the changes proposed by ESMA in the Consultation Paper in the area of the clearing obligation ("CO"). We fully agree that the introduction of the single currency Overnight index swaps ("OIS") class referencing Tokyo Overnight Average Rate ("TONA") (JPY) with maturities up to 30Y to the scope of the CO and the expansion of the maturities for the OIS class referencing Secured Overnight Financing Rate ("SOFR") (USD) within that scope are steps in the right direction and will promote international harmonisation.

The benefits of central clearing have been proven and recognised over the years, as protecting market participants from the bilateral non-centrally cleared risks they were exposed to during the Global Financial Crisis. Hence the G20 Leaders' promotion of reforms that support central clearing.

[1] ESMA, Consultation Paper on the clearing and derivative trading obligations in view of the 2022 status of the benchmark transition (July 2022), available at Link

[2] ESMA, Consultation Paper on the clearing and derivative trading obligations in view of the benchmark transition (July 2021), available at Link; CCP12 Response to the ESMA Consultation Paper on the clearing and derivative trading obligations in view of the benchmark transition (September 2021), available at Link

The decision-making process regarding whether to include the over-the-counter ("OTC") derivatives referencing the Risk Free Rates ("RFRs") in a CO should be straight-forward, bearing in mind, as ESMA rightfully notes, that "this is about accompanying a transition where the products are broadly similar but with different benchmarks". The transition to RFRs is a realisation of global benchmark reform which further increases the markets' safety and reliability, therefore the CO determination should be consistent with this reform. We appreciate that ESMA proposes changes reflecting this approach.

It is also worth emphasising that CCPs have already proven their legal and operational capabilities in terms of helping markets transition from InterBank Offered Rates to RFRs. In general, CCPs' have successfully transitioned discounting curves and legacy contracts to RFRs. The experience market participants have gained managing these transitions over the past 2 years should ensure a smooth implementation of the proposed changes.

We also commend ESMA for holding discussions with a number of authorities from third countries that are responsible for COs in their jurisdictions, in order to facilitate international convergence. It is very important for the whole market that such changes are introduced in a harmonised and consistent way to avoid confusion and unnecessary burden for clearing members and clients of having to comply with the same, or very similar, COs but at different times in different jurisdictions.

General analysis

Q2: Are there any other aspects of the transition that need to be taken into account? Please share any data that would help qualify further the progress with the transition or any other aspects that you think should be considered.

CCP12 is of the opinion that ESMA's data analysis has been comprehensive and therefore no other aspects of the transition need to be taken into account. The most important indicators describing the development of liquidity of the different RFRs concerned have been assessed and the data, such as the notional outstanding per benchmark, clearly show that liquidity has picked up in all currencies, including those affected by the proposed changes. Especially for JPY, the progress has been most significant. According to the EMIR trade repository data, TONA has clearly become the reference rate for the JPY market. Similarly, the uptake of USD swaps referencing SOFR has been considerable and indicates that the market is adopting SOFR. This means the transition is organic and very much in progress.

Clearing Obligation

Q3: Do you agree with the assessment of the EMIR criteria and with the proposed classes? Do you also agree that the maturities for SOFR OIS could be extended, including up to 50 years? If not, please detail how the assessment could differ and please also provide data and information to justify a different assessment.

CCP12 agrees with the assessment of the EMIR criteria and the proposed classes. For TONA OIS classes, the proposed maturity of up to 30 years seems reasonable based on the liquidity criterion and is also consistent with the approach adopted by other jurisdictions, such as Australia, the United Kingdom and the United States of America ("U.S."). The situation is very similar in the case of SOFR OIS, where the level of liquidity and the market practice justify the extension of maturities of up to 50 years, in line with the approach recently adopted in the U.S[3]. In both cases, these classes are already voluntarily cleared to a large degree.

Q4: Do you agree with the proposed implementation of the changes? if not please provide details that could justify a different implementation.

CCP12 agrees with the proposed implementation of the changes. In terms of TONA OIS, the CCP legal switch already took place in December 2021. Prior to the switching, counterparties active in OTC derivatives denominated in JPY had already voluntarily cleared their TONA OIS contracts in significant amount.

The class of SOFR OIS is already in scope of the CO, therefore preparing for mandatory clearing of longer maturities should not pose any challenge to market participants. Also in this case, voluntary clearing figures indicate that "counterparties active in OTC derivatives denominated in USD are already clearing their OIS contracts."

Trading Obligation

Q5: Do you agree with this assessment and therefore, not to introduce DTO for contracts referencing TONA, SONIA and for the time being SOFR? If not, please explain.

No comments regarding the DTO.

Q6: Do you agree with this assessment? Do you consider that also contracts with constant notional and 3 months tenor and trade start date Spot (t+0) should be subject to the DTO? If so, please specify also the other relevant standardised parameters used with those contracts. Do you consider that also contracts with constant notional and 3 years tenor and trade start date second next IMM date shall be subject to the DTO? If so, please specify also the other relevant standardised parameters used with those contracts. Should other tenors be considered for the DTO?

No comments regarding the DTO.

Q7: Do you agree with this assessment? Do you consider that also the daily floating leg reset frequency is a standardised contract feature that could be considered for the DTO?

No comments regarding the DTO.

[3] Commodity Futures Trading Commission, Final rule, Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps To Account for the Transition From LIBOR and Other IBORs to Alternative Reference Rates (August 2022), available at [Link]

Q8: Do you agree with this proposal? If not, what amendments do you think are necessary?

No comments regarding the DTO.

Q9: Do you agree with proposing to not provide for an implementation period for the entry into force of the amended DTO? If not, please explain.

No comments regarding the DTO.

Cost-Benefit Analysis

Q10: Are there other elements that should be taken into account and that would impact the outcome of the cost-benefit analysis? Please provide quantitative and qualitative details.

CCP12 is of the opinion that no other elements need to be taken into account in terms of the cost-benefit analysis, bearing in mind this set of draft regulatory technical standards ("RTS") is complementary to the previous RTS regarding the CO and the analyses contained therein. Considering the fact that the market has already gravitated towards central clearing of RFR-related OIS to a significant degree and that the overall cost of transition of OTC derivatives referencing RFRs has already been borne by the market, the introduction of the proposed changes should not increase costs to CCPs or market participants in a meaningful way.

About CCP12

The Global Association of Central Counterparties ("CCP12") is the international association for central counterparties ("CCPs"), representing 40 members who operate over 60 CCPs across the Americas, EMEA, and the Asia-Pacific region.

CCP12 promotes effective, practical, and appropriate risk management and operational standards for CCPs to ensure the safety and efficiency of the financial markets it represents. CCP12 leads and assesses global regulatory and industry initiatives that concern CCPs to form consensus views, while also actively engaging with regulatory agencies and industry constituents through consultation responses, forum discussions, and position papers.

For more information, please contact the office by e-mail at office@ccp12.org or through our website by visiting www.ccp12.org.

CCP12 Members