November 10, 2023

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 Draft Technical advice to the European Commission on fees charged to Tier 1 Third-Country CCPs under EMIR

The Global Association of Central Counterparties ("CCP Global")[1] is the international association for central counterparties ("CCPs"), representing 42 members who operate over 60 individual CCPs across the Americas, EMEA, and the Asia-Pacific region.

CCP Global appreciates the opportunity to respond to the Consultation Paper on Draft Technical advice to the European Commission on fees charged to Tier 1 Third-Country CCPs under EMIR[2] ("the Consultation") issued by the European Securities and Markets Authority ("ESMA"). We support ESMA's efforts to ensure that "the considerable differences in size and activity across Tier 1 CCPs, including their degree of relevance for the European Union, and therefore the different level of ESMA scrutiny required from one Tier 1 CCP to the other"[3] are reflected in the structure of Tier 1 CCPs fees. Broadly, CCP Global recognizes the benefits of a proportionate approach in setting supervisory and recognition fees and therefore, we welcome ESMA's recognition that Tier 1 CCPs are not homogenous in risk profiles, size, and scope of activities, including their EU-related activities, and that these differences between CCPs may indeed be meaningful.

[1] Previously known as CCP12.
[2] ESMA, Consultation Paper, Draft Technical advice to the European Commission on fees charged to Tier 1 Third-Country CCPs under EMIR (October 2023), available at Link.
[3] *Ibid.*, p. 9.

CCP Global's responses to the individual Questions

Q1 Do you agree with the proposal to introduce different annual fees levels based on the Tier 1 CCPs global turnover?

While CCP Global recognizes the benefits of a proportionate approach to allocating ESMA's projected annual supervisory costs across Tier 1 CCPs, we do not believe the proposed use of Tier 1 CCPs' global clearing turnover to be an appropriate base for establishing the different fee levels. CCP Global believes that an ideal proportioning metric would strike a balance between being able to sufficiently approximate the relative level of scrutiny ESMA may place on a Tier 1 CCP and being transparent and reasonably straightforward to produce. Whereas global clearing turnover achieves the latter objective, it does not appear to achieve the former, given that ESMA does not seem to expect to base supervisory scrutiny on a Tier 1 CCP's global revenues. CCP Global is concerned that proportioning based on global clearing revenues would disproportionally burden those Tier 1 CCPs with relatively high revenues globally, but relatively limited nexus to the EU.

In general, CCP Global believes metrics that are more indicative of a Tier 1 CCP's activities in or risks presented to the EU, rather than a one-size-fits-all metric of global revenues, would serve as a more appropriate proxy for the different levels of ESMA scrutiny required towards different Tier 1 CCPs. Conceptually, more appropriate factors to consider could include, e.g., EU member activity, clearing fund requirements, or the number of EU members. This view seems consistent with the statements that were made in the Consultation. For example, ESMA notes that "pursuant to Article 25 of EMIR, ESMA is required to monitor Tier 1 CCPs, including scrutiny depending on the nature and size of its EU related activities"[4]. Further, ESMA also notes that "[i]n effect, ESMA monitors on a more frequent basis and in much more depth Tier 1 CCPs with multiple EU entities directly connected or which clear products denominated in European Union currencies"[5]. CCP Global notes that there are a number of Tier 1 CCPs with relatively high revenues globally but relatively limited activity – and limited numbers of clearing members and/or clients – in the EU (and thus, were not categorized as Tier 2 CCPs in the first place). Therefore, as a general matter, we do not believe global clearing turnover serves as an appropriate measure to proportion projected annual supervisory costs.[6]

As noted above, Tier 1 CCPs as a group have already been determined to have limited impact on the EU relative to Tier 2 CCPs, and they are recognized on the basis of appropriate deference to their home jurisdiction.[7] Given such deference to the home authority, CCP Global seeks clarity (and would ideally welcome supporting data) with respect to how ESMA's budgeted supervisory resources for Tier 1 CCPs have been allocated in years past. Indeed, when the current fee structure was established in 2020, the European Commission and ESMA both seemed to anticipate that the costs of supervising Tier 1 CCPs

[4] *Ibid.*

[5] *Ibid.*, p. 9-10.

[6] However, we recognize that metrics, which may be more appropriate conceptually, could in practice be less readily available or auditable. Therefore, CCP Global would request that ESMA establish a fee structure that strikes the right balance between sufficiently approximating the relative level of scrutiny ESMA may place on a Tier 1 CCP and being transparent and reasonably straightforward to produce.

[7] ESMA, Third-Country CCPs, available at Link.

would not vary much by CCP in this group.[8,9] To the extent ESMA has changed its approach to supervising Tier 1 CCPs in this context, we would kindly request that ESMA provide further evidence or rationale for such a change. If, however, ESMA's supervisory approach to Tier 1 CCPs has not changed since 2020, we believe that the current fee structure remains appropriate and has the added benefit of ensuring sufficient levels of transparency as regards to Tier 1 CCPs and avoids potentially discretionary treatment.

Q2 Do you agree that the relevant turnover should be based on audited figures of the Tier 1 CCP's worldwide revenues from clearing services for the financial year n-2?

We would like to flag that the requirement to provide the audited annual accounts no later than 30 September of year n-1 (i.e., related to a calendar year from January to December) may be problematic for some CCPs. There are CCPs for which the fiscal year ends in other months, e.g., March, and the audited annual statements would not be available for submission to ESMA within the requested timeline. Also, the budget cycles of some third country CCPs ("TC-CCPs") conclude at the end of the third quarter, which means it would be important for them to determine the fees prior to that time in order to avoid unpredictability in their budget planning.

Moreover, some CCPs encompass a variety of businesses (e.g. trading execution, TR, etc.) due to their nature and publish audited figures which include trading fees, not just clearing and settlement fees separately. In this regard, it could be difficult for them to provide audited figures related to clearing fees only. Please note that the figures for clearing and settlement fees are usually managed separately as internal data and publicly disclosed as quantitative information disclosure items. To require a separate audited figure solely for the purpose of identifying the right Tier 1 fee level could be unreasonably costly and burdensome.

Q3 Do you agree with the proposed thresholds and weighting factors to calculate Tier 1 CCPs annual fees?

In terms of the proposed fee levels, we would like to make a suggestion that ESMA create another group – before Group 1, given that the estimated cost for Group 1 may be cost-prohibitive for small or newly established CCPs that would not have the budget to pay supervisory fees at the level proposed by ESMA. The Group 1 level of fees could create an unnecessary barrier to entry for these TC-CCPs. We believe there is benefit to encouraging smaller CCPs to align with international standards and EMIR regulation and to pursue equivalence by making the market more standardized. To this end, we would propose a baseline category that would establish a flat fee for such small or new CCPs with

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[8] ESMA, Final Report, Technical advice on ESMA fees for Third-Country CCPs under EMIR 2.2 (November 2019), available at Link; see page 26: "Under Article 25d(2) the fees charged to TC-CCPs shall be proportionate to their turnover. In the case of TC-CCPs, the proportionality of fees with the turnover cannot be assessed in isolation. It has necessarily to be considered in conjunction with the relevance of a given TC-CCP in the EU. The relevance of a TC-CCP for the EU is linked, among others, to the revenues that are obtained providing services in the EU or to EU clearing members. Moreover, ESMA proposes to establish separate annual supervisory fee for Tier 1 TC-CCPs and Tier 2 TC-CCPs. By establishing separate fees for Tier 1 TC-CCPs and Tier 2 TC-CCPs, which leverage on the relevance that a TC-CCP has in the Union, ESMA also understands that its advice complies with the requirement in Article 25 to apply fees that are proportionate to the turnover of the TC-CCPs."

[9] European Commission, Commission Delegated Regulation of 14 July 2020 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to central counterparties established in third countries, available at Link; when the European Commission adopted the final fee structure that would require an even split of projected Tier 1 CCP annual supervisory costs, it stated that: "ESMA's tasks in relation to Tier 1 CCPs will be relatively standardised across Tier 1 CCPs, regardless of their size. Turnover should not therefore be reflected in the annual fees for Tier 1 CCPs in the same way than for Tier 2 CCPs." (see at p. 6)

limited nexus to the EU.

Q4 Do you agree that the Tier 1 CCPs annual fee framework should include a maximum and a minimum amount?

Please see our comments to Q5.

Q5 Do you agree with the proposed amounts for the maximum and minimum annual fees for Tier 1 CCPs?

Firstly, CCP Global believes that the annual supervisory fees should be proportional to what some other jurisdictions charge and would like to point out that the overall proposed revised fee structure is significantly higher as compared to some other jurisdictions for TC-CCPs. At a minimum, we would kindly request ESMA to conduct a comparative study of the fees charged in other comparable jurisdictions, including how such fees are structured, and publish and discuss the results, ideally in an open forum.

Secondly, CCP Global has some concerns that ESMA's annual fees, which are covered by Tier 1 CCPs, have the potential for an unlimited increase. The Consultation envisages setting minimum and maximum amounts of annual fees that would also be "indexed each year."[10] While we understand ESMA's desire to collect fees to cover its supervisory costs, we are concerned that the proposal does not provide sufficient and transparent information and analysis as to how the proposed fee levels were determined, or how fees will be determined in subsequent years, including what indicators or criteria will be used for fees indexation. Transparency with respect to the determination of the projected annual fees as well as the fee structure is important to market participants, so we would kindly invite ESMA to provide an adequate disclosure of and future predictions for such costs and thus ensure a higher degree of transparency and predictability of its regulatory costs.

Q6 Do you agree that an incentive mechanism should be implemented to ensure that ESMA is able to compute the fees for a given year?

CCP Global does not agree with the proposed incentive mechanism as it has the potential to unduly penalize some TC-CCPs. As mentioned in our response to Q2, for some TC-CCPs, the fiscal year is not identical with the calendar year and thus does not end in December. Also, some TC-CCPs' ownership and business structures may not enable them to publish audited figures which would separately indicate the turnover part clearly related to clearing fees only. In such cases, those CCPs may not be able to submit audited figures as requested by ESMA and, as a result, be potentially charged the highest fee. Whereas CCP Global recognizes that ESMA is required to assess fees under EMIR and respects the EU's rationale behind having supervisors of the financial markets to be financed directly by supervised entities (in an effort to avoid taxpayer burden), CCP Global does not believe these fees should be considered or structured to be punitive in nature. CCP Global respectfully requests that ESMA provide more flexibility and optionality for the assessment and collection of supervisory fees from Tier 1 CCPs.

[10] ESMA, Consultation Paper, *op. cit.*, p. 15.

CCP Global
The Global Association of Central Counterparties

About CCP Global

CCP Global is the international association for CCPs, representing 42 members who operate over 60 individual central counterparties (CCPs) across the Americas, EMEA, and the Asia-Pacific region.

CCP Global promotes effective, practical, and appropriate risk management and operational standards for CCPs to ensure the safety and efficiency of the financial markets it represents. CCP Global 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@ccp-global.org or through our website by visiting www.ccp-global.org.

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