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EBF Analysis

Derivatives Clearing – Review of the European Market Infrastructure Regulation and accompanying changes to other Regulation and Directives (EMIR/CRR/MMFR and UCITD/CRD/IFD)

Introduction

As the voice of the European banking industry, in keeping with the objective of the **Capital Markets Union** to foster well-functioning and internationally competitive EU capital markets, the European Banking Federation (EBF) welcomes the legislative package set forth in the communication by the European Commission "**A path towards a stronger EU clearing system**" (the proposal) of December 7th, 2022 to support the development of a better **integrated** and more **attractive** clearing landscape in the EU. In the proposal, the Commission has taken important positive steps to achieve such objectives, including the removal of equivalence as a pre-condition to the availability of the intragroup transaction exemption and the streamlining EU CCPs supervisory procedures for launching new products and model changes.

Having said that, as expert practitioners in the derivatives clearing space, EBF members emphasize that the proposal also features **substantial** and **highly complex elements**, which, if incorrectly and inappropriately addressed, may lead to **unforeseen** and extensively adverse **effects** on the **competitiveness**, **resilience** and **attractiveness** of European financial markets and their financial institutions.

Hence, in order to promote a **comprehensive** and **thorough** discussion that is as **evidence-based** as possible on the reform of EMIR rules and other critical pieces of regulation going forward, with a view to ensuring the highest quality in legislative outcome, EBF experts highlight a number of key observations / concern.

1) On art. 1 (4) AR / art. 7a and 7b EMIR: Active accounts requirement

To address the potential risks associated with excessive exposures of EU market participants and clients to third-country CCPs providing clearing services identified as of substantial systemic importance by ESMA (Tier 2 CCPs), the proposal intends to require financial counterparties and non-financial counterparties subject to EMIR clearing obligation to **hold active accounts**, directly or indirectly, at EU CCPs, and to **clear** on

such accounts at least a **certain proportion** of the services identified to be of substantial systemic importance (EUR-IRS, PLN-IRS, EUR-STIR, EUR-CDS), as well as to **report** on that (the Active Account requirement). ESMA, in cooperation with ESAs, is to establish the details of the calibration of the Active Account requirement. The Active Account requirement is supported by targeted **complementary measures** incentivising clearing in the EU, as well as by the introduction of new specific regulatory obligations and **supervisory powers** under the CDR and IFD compelling institutions to actively reduce their exposure towards third-country CCPs.

The Proposal also requires EU market participants and clients offering clearing services, to inform their clients about the possibility to clear a relevant contract at an EU CCP and to report to their competent authority the scope of clearing undertaken at non-EU CCPs.

Against this background, in their assessment of the proposal, **EBF members observe that the (L1) text fails to sufficiently specify certain key details about which full clarity is needed to avoiding the materialization of adverse effects on EU market participants**, such as scope specifics and implementation features of the Active Account requirement. Clarity on such details is essential to understanding the ultimate impact that, if implemented, mandated minimum level of activities in active accounts would have on EU market participants, as well as on the pursuit of regulatory objectives such as reducing over-reliance on third country CCPs and strengthening the resilience of the European financial system.

In fact, the Active Account principle, when based on target activity levels/ quantitative thresholds and in absence of the appropriate carve-outs, carries **extensive complexities** and **significant risks** and potential negative unforeseen **consequences**. As spelled out in the latest public letter by the ESRB to the Council Working Party on EMIR review[1], negative effects that should be considered include: (i) a competitive disadvantage suffered by EU market participants compared with non-EU counterparties, (ii) potential negative effects on financial stability when large volumes are moved, thereby breaking up netting sets and increasing interdependence, (iii) the relocation of clearing outside the EU and the United Kingdom.

More specifically, EBF Members emphasize the following detailed concerns / and complexities related to the Active Account requirement:

- **Setting quantitative activity targets – scope of activities:**

While supportive of the principle that details of the application and implementation of the Active Account requirement are best designed and calibrated via RTS, EBF Members emphasize that any setting of quantitative targets of activities to be mandatorily cleared at CCPs authorised under Article 14 EMIR carries extensive complexities and challenges, which, especially if inappropriately designed, concretely risks putting EU market participants at a significant **competitive disadvantage** vis-à-vis non-EU peers.

1 ECB-PUBLIC. ESRB/2023/0046. EMIR 3.0 / EMIR review. 20 March 2023

One **key consequence** of inappropriate implementation (e.g., in the case of the scope of active accounts capturing **activities material to an institution's presence in international markets**) is that EU market participants would be forced to **restrict business with non-EU clients**, therefore suffering substantial impacts to their competitiveness (with no apparent gains for EU financial stability and attractiveness).

With this in mind, EBF Members emphasize that it is of the **utmost importance** going forward that **any effect akin to that of forced relocation on financial stability and the competitive disadvantage of EU market participants be avoided**. Forced relocation (or similar effect) would effectively separate EU markets from more liquid international markets and create an EU self-isolated market, structurally illiquid and unbalanced (prevalence of one-directional positions). In this respect, the global nature of financial markets cannot be dismissed.

In order to avoid the materialization of negative consequences, in case quantitative activity targets should be implemented, **EBF Members argue that the final text should benefit in full from the appropriate L1 clarification of scope of activities to be included in the computation of target clearing levels under Art. 7a (5) EMIR 3.0**, which are currently missing.

In particular, **The scope of activities to be subject to the potential quantitative framework will need to include only activities where the choice as to where to clear belongs to EU market participants which are subject to the EU clearing requirements** (proprietary trading and own-account). Conversely, **market making** and **client-clearing** activities are "client driven" activities (clients are choosing the CCP where to clear the transaction).

The scope of activities to be subject to the potential quantitative active account requirement should therefore naturally and automatically **exclude**:

- ✓ **Client clearing for EU and non-EU clients**;
- ✓ **Market making activities of EU clearing members with non-EU clients and EU clients not subject to EMIR clearing obligation.** In other words, the clearing of derivative transactions entered into with non-EU clients, not subject to EMIR and EU clients not subject to the EMIR clearing obligation, should be left out of scope of the Active account requirement.

As due to the territoriality of EMIR non-EU clients retain the possibility to choose the CCP at which to clear at all times they would simply move their entire capital markets business (beyond just the clearing business) to non-EU institutions not bound by EMIR requirements. The outcome would be that EU market makers will be excluded, at least partially, from the EUR derivative market principally traded on non-EU CCP, hereby reducing their capacity to offer competitive price, and that EU Clients will have no other choice than to trade with non-EU market makers. Restricting the access to UK CCP for EU Market Makers will ultimately lead to an over reliance for EU clients with non-EU Market Makers without increasing EUR clearing at EU CCPs.

In addition, **existing transactions (legacy trades) – as again highlighted by the ESRB in its public letter - and requirements related to membership of overseas**

CCPs such as default management procedures (related in particular to client defaults), should be excluded from the Active Account requirements. Legacy trades could be migrated to EU CCP on a voluntary basis only.

- **The qualitative option - supporting a market-led movement:**

EBF Members argue that the most effective way to avoid the materialization of negative unforeseen effects would be to prioritise the deployment of policy solutions that support market-led movements.

In this respect, a simple **qualitative** solution could be prioritized in a **first phase**. Such solution would define an "Active Account'' as an account which posts daily margin calls without any further requirement. During this first phase, relevant EU authorities (ESMA) would gather the necessary data in order to potentially, only if deemed necessary, calibrate very accurately and safely a quantitative framework for the second step. In particular, they would collect risk indicators (DV01) or initial margin per meaningful buckets of maturities from EU participants about their own account portfolio cleared at EU CCPs. This would allow ESMA to assess whether the hedging needs of EU market participants are genuinely matched by the hedging needs of other EU market participants or if they need to trade and clear with non-EU market participants. If the latter, this should be taken into account in the calibration exercise of the quantitative framework if the second step is deemed necessary, after an appropriate timeframe. Non-EU market participants will require indeed a premium (the basis) to clear at an EU CCP to reward the increased Initial margin resulting from the loss of the cross-currency netting efficiencies available at LCH Ltd. An appropriate balance would need in such case to be reached between the quantum of the reduction of the exposure against UK CCPs and the increased cost of hedging for EU market participants.

In such case, should the setting of quantitative targets be deemed necessary, EBF Members emphasize that the new art. 7(a)(5) should reflect the calibration elements set out in recital 11, whereas ESMA, when specifying the details of the level of substantially systemic clearing services to be maintained in the active accounts in Union CCPs by financial and non-financial counterparties subject to the clearing obligation, should consider the costs, risks and the burden such calibration entails for financial and non-financial counterparties, the impact on their competitiveness, and the risk that those costs are passed on to non-financial firms.

- **Additional observations:**

A) **Consistent and coordinated application**

In order to prevent a distortion of competition between in-scope EU institutions on an international level, it will be necessary that supervisory authorities apply the active account-requirement on own accounts consistently and in a coordinated manner with due consideration of the business model of the institution. This needs to include a close coordination regarding the additional obligations and supervisory powers under the CRD and IFD, should these be retained despite the considerable concerns they raise.

B) **Timelines**

The proposed text provides neither for a clear timeline nor a gradual option to reach clearing activity targets in active accounts, should these be implemented.

In such case, EBF Members emphasize that the timeline must be realistic and appropriately and clearly defined. The changes considered to the clearing framework in the EU will require considerable operational changes and preparations. All this means that market participants will need sufficient lead time. It is also already clear that the time until the scheduled ending of the current extension of the equivalency decision in June 2025 will neither be sufficient for the introduction of the operational changes and the necessary adjustments by market participants nor for seeing the impact of the active account-requirement on the markets. Moreover, market participants need certainty and clarity over the continued future access to UK CCPs sufficiently in advance of the date. This issue should be resolved in or in conjunction with the Amending Regulation.

C) **Material scope**

Under the proposal, the active account-requirement is to cover the following derivatives categories (being deemed to be of systemic relevance for the EU):

- ✓ EUR denominated interest rate swaps (EUR-IRS)
- ✓ Zloty-denominated interest rate swaps (PLN-IRS)
- ✓ EUR-denominated short term interest rate futures (EUR-STIR) and
- ✓ EUR-denominated credit default swaps (EUR-CDS)

EUR-CDS: Reconsideration of systemic importance. The classification of EU-CDS clearing via ICE Clear Europe Limited as systemically important will need to be reconsidered following the recent announcement by Ice Clear Europe Limited to phase-out the relevant clearing activities which is already in progress

EUR STIR and PLN-IRS: Unsuitability because of lacking liquidity. The markets in PLN-IRS and EUR-STIR are significantly less broad and liquid than the EUR-IRS markets. They are also of limited systemic relevance.

The active account-requirement is likely to produce split markets for the affected derivatives categories and there is a clear risk that this will result in a balanced and liquid non-EU market on the one hand and a less balanced and significantly less liquid EU-market on the other. This risk will be particularly pronounced in case of these significantly less liquid derivatives categories. The inclusion of PLN-IRS and EUR-STIR in the scope of the active account-requirement should therefore be reconsidered.

2) Art. 1 (1) AR / Art. 3 (4) and (5) EMIR: Intragroup exemption and article 13

The proposed new simplified approach for the intragroup clearing and margin exemption with respect to group entities established in third-countries, which replaces the current model requiring equivalence decisions granted by the EC, follows a simpler, more straightforward approach excluding jurisdictions which are either classified as high-risk

for money laundering and terrorist financing, or as non-cooperative for tax purposes in accordance with the relevant lists. The proposal significantly reduces complexities of the current procedures and thus increases the efficiency of the EU regulatory framework for OTC-derivatives while retaining the necessary flexibility.

Having said that, EBF Members note that the **criteria** specified by the proposed **new article 3(5)**, according to which the EC may, via a delegated act, identify the third countries whose entities may not benefit from any of the exemptions for intragroup transactions despite not being listed pursuant to paragraph 4, are quite broad and not sufficiently specified, and should therefore be **removed** from L1.

The EBF would also recommend a grandfathering of existing and already approved intragroup exemptions for third countries when this measure is fully enforced to avoid an unnecessary long and complex process to reapply for these exemptions with National Competent Authorities.

Additionally. while the EBF welcomes this measure, its Members reject the full removal of Article 13, which is the only tool available for EU firms to avoid to comply in some cases with dual and conflicting requirements when trading with non-EU clients. The full removal of article 13 could be detrimental for EU banks in term of competitiveness on the global stage.

Article 13 should be maintained or at least replaced by a similar tool. It is currently used by EU firms, especially for margin purposes, for example to ensure certain collateral treatment consistencies when trading with non-EU clients to remain competitive with non-EU banks.

3) New reporting obligations regarding calculation outcomes and third-country CCP clearing activity– new Art. 7a (4) and new Art. 7b (2) EMIR

A) Calculation outcomes obligation

The introduction of an additional annual reporting obligation regarding calculation and third-country CCP exposure is unnecessary in view of the **already existing** EMIR transaction reporting obligations to trade repositories (**TR-reporting obligation**). If retained, it should at least be limited to key information not already available through the existing TR-reporting obligations. In case of the CCP-exposure reporting obligation it is also unclear what the terms "other financial instruments or non-financial contracts" or "largest payment obligation" intend to capture and why such information is needed for the purposes of the active account-requirement.

B) Clearing activities reporting obligation

The need for the new reporting obligation established under Art. 7b (2) concerning clearing activities via third-country CCPs should be reconsidered or at the very least reduced to otherwise unavailable key information in view of the already existing TR-reporting obligation. This obligation covers most, if not all, relevant information, as it covers the

derivative contracts classes, valuations of the contracts and margin posted and received. Should the reporting obligation be retained despite this concern, it should be limited at the very least to the absolute minimum and clearly defined key information. In this connection EBF Members note that it is unclear what the proposal attempts to cover with information on the "largest payment obligation" and why this information is necessary. Likewise, it is unclear what the proposal intends to cover with "other financial instruments and non-financial contracts cleared", especially considering that the active account-requirement only concerns derivatives contracts so that any information requirement should accordingly be limited to these types of contracts. The – undefined – terms "financial instruments and non-financial contracts cleared" are also used in Art. 14 (provisions regarding the authorization of CCPs).

The establishment and maintenance of the operational framework and processes for such a new and broad reporting obligation will be considerably **burdensome** for all affected market participants. To the extent that necessary information is already covered by already existing reporting obligations, the introduction of such new obligation appears to be rather **disproportionate**.

4) Client information on alternative EU clearing possibilities – new Art. 7b (1) EMIR

The proposal appears to require a **trade-by-trade** information obligation. This would fundamentally **conflict** with the existing established clearing processes and workstreams which do not allow for the provision of such specific information on a trade by trade basis. Such an understanding would therefore require far reaching procedural changes which would again cause significant delays and inefficiencies. Clearing clients are professional market participants and thus very much aware of the set-up of the clearing markets and possible alternatives and therefore do not need a trade-by-trade reminder. It should therefore be clarified that the obligation for clearing members and clients offering clearings services both via EU and 3rd country CCPs to inform clients of the possibility to clear via an EU-CCP can be implemented in a more general, standardized form (i.e.: on a yearly basis or when the offer of clearing services is expanded). It should also be considered that where transactions are entered into on trading venues, the CCP is already fixed.

5) Art. 1 (6) AR / Art. 10 (3) and (4): Hedge accounting exemption for NFC

According to recital (16) of the proposal, the current framework for the hedging exemption for non-financial counterparties (NFC) is to be reviewed in light of recent market developments and especially with regards to commodities markets.

While we understand the underlying concerns, it will be important to avoid unnecessary rigid, complex and burdensome rules.

For instance, while the proposed change that OTC derivatives cleared at authorized or recognized CCPs do not need to be included in the calculation towards the clearing threshold is welcomed, references to the group have been removed from Article 10(3), thereby requiring NFCs to include in their clearing threshold calculation, trades entered into for hedging risks of other entities within their group.

This amendment seems highly impactful as within corporate groups typically one entity faces counterparties outside the group and enters into back-to-back trades with the group entity that is exposed to the risk hedged by the OTC derivatives. As the NFC count is on a group level, one NFC exceeding the threshold, may subject all other NFCs in its group to the clearing/margin obligation.

In order to prevent corporate groups to suddenly become subject to clearing/margin requirements, banks would need to face a multitude of smaller entities within one corporate group, creating several exposures that would otherwise be one netted exposure with just 1 counterparty. This because the centralized counterparty fulfilling the trading/treasury function within a corporate group will no longer allowed to hedge on behalf of it groups entities without those trades being counted toward the clearing threshold (as those are trades do not hedge risks of that trading/treasury entity). The situation may also occur (within financial groups) where an intermediate NFC vehicle is used (or even required) e.g. for onshore/offshore trades.

Hence, also considering that the recent reports by ESMA on the clearing thresholds and proportion of counterparties/trades (not) being covered by the clearing obligation indicated that the current scope of the clearing obligation was proportionate in terms of mitigating system risks, EBF Members emphasize that **the wording proposed to be removed in article 10 (3) EMIR, in particular the phrase "or of that group", should be retained.**

6) Art. 1 (7) (a) and (b) AR / Art. 11 (3) EMIR: Clearing and margin requirements implementation period for NFC

The introduction of implementation periods of four months for non-financial counterparties (NFC) becoming subject to the margin requirements is necessary to give NFC the opportunity to set up the necessary operational and contractual framework. It should, however, be noted that four months is still a very short period considering the complexity of margin requirements especially for smaller firms. For example the UK have recently granted a 6 months implementation period for similar cases. We can also regret that the EC did not take this opportunity to also provide an appropriate implementation period for firms that come into scope of the margin requirements for the first time due to a change in the netting status of their jurisdiction.

Moreover, the implementation period should apply each time a counterparty starts to (again) exceed the clearing threshold, as parties closely monitoring the threshold may one year be above and the next year below the threshold, to later exceed the threshold again. A clarification may be needed to detail how parties should treat transactions which, having been entered into while the party is subject to the clearing/margin obligation, those transactions are still outstanding in case the party ceases to be subject to the clearing/margin obligation.

7) Art. 1 (7) (c) AR / Art. 11 (15) (aa) EMIR: deletion of need for RTS on IM model validation

The deletion of the existing Art. 11 (15) (aa) which required EBA to develop RTS for the supervisory procedures regarding the validation of IM-models is a helpful reduction of formalities and complexities for in-scope EU market participants. More importantly, it allows for a more flexible approach. The necessary consistency within the EU can be achieved via EBA guidelines recommendations if and to the extent necessary, which EBA is now entitled to issue under the newly introduced new subparagraph in Art. 11 (3) EMIR.

8) Art. 1 (12 AR) / Art. 17a EMIR: Non-objection procedure for extension of CCP activities or services

The replacement of the cumbersome and time-consuming process for a permission to expand the activities or services of a CCP is a helpful simplification which should give CCPs the possibility to implement changes in their offering in order react to market developments and client demand more quickly.

9) Art. 1 (21) AR / Art. 25 (4) EMIR: Simplification of recognition of third-country CCPs

The introduction of a risk-based approach for the recognition procedure regarding systemically less relevant Tier 1 third-country CCPs, in particular allowing for a recognition without ascertaining full equivalency of the regulatory framework for CCPs, simplifies the recognition process significantly without increasing systemic risks. This can greatly help to ensure and maintain access for EU institutions to key third-country markets by greatly accelerating and securing the complex and time-consuming recognition process. This risk-based simplification is fully consistent with the distinction EMIR makes regarding the recognition procedure for Tier 1 and Tier 2 third-country CCPs.

10) Art. 1 (25) and (29) AR / Art. 26 (1) and 37 (1) EMIR: membership CCP

The EC proposes that CCPs should not be allowed to be a member of another CCP. While we understand the rationale of this measure, we would like to highlight that this could lead to adverse effects upending standard CCP practices, such as the interoperability of equity CCPs and sponsored membership (relationships allowing access to repo liquidity in other markets).

Regarding CCP membership criteria, we appreciate the amendments proposed by the EC and would support a further strengthening of membership criteria of CCPs. CCPs are ultimately about risk mutualization between members. We believe this means that all members should adhere to the highest possible standards in terms of risk management, default management and capital and liquidity requirements. We would suggest to also

consider limiting the offering of client clearing services to clearing members that are a credit institution.

11) Art. 1 (30) (a) AR / Art. 38 (7) EMIR: Client information obligation regarding CCP Margin models

EBF Members emphasize that the wording proposed in Art. 38 (7) is not sufficiently clear and should be rephrased to clearly limit the scope of the requirement to OTC derivatives.

EBF Members note that the scope of the obligation currently refers to services provided, and seems to apply not just to (non-)financial counterparties, but to all counterparties and clients, including retail clients and natural persons to whom clearing services in listed derivatives are offered. The inclusion of retail clients or natural persons is conceptually difficult in practice: when servicing retail clients/investors, banks/brokers/intermediaries do not offer clearing services in isolation, but combine them with other services that cannot be unbundled. As this is a matter of cost disclosure with regard to financial services offered to retail investors, it belongs under the umbrella of MiFID II.

EBF Members emphasize that the scope of this provision should therefore be limited to that EMIR is intended to regulate: CCPs, derivative contracts and clearing members in relation to the clearing obligation and the clearing services therefore offered.

Additionally, in case transactions in listed derivatives would be executed by a bank which is not clearing member itself (which is often the case), this EMIR article would not be applicable. From an investor protection perspective there is no reason why this article would only be applicable where the bank is a clearing member and not where it is not a clearing member itself but uses another entity for this.

As indicated in the ESMA Q&A (CCP Answer 16 under (d) and recital 76 of EMIR), it is important that on the basis of this disclosure, clients can compare the services of clearing members and CCPs and make a choice. As indicated above for the transactions of retail clients in listed derivatives, clearing is part of transaction services, which are not offered separately or in isolation, with the possibility for a separate choice of clearing member or CCP.

Moreover, EBF Members emphasize that institutions offering clearing services can only provide information on a CCP's margin models and the way they are intended to work, and provide simulations, **if and only they themselves receive the relevant information and data from the relevant CCPs**. Otherwise, they will either not be in a position to comply with the new information obligations in a meaningful way or be forced to provide incomplete or even unverified and potentially misleading information. Thus, the introduction of such new information obligation for clearing service providers should be accompanied by a parallel obligation on CCPs to provide the relevant information and data to their clearing members. We also need to be mindful of the current ongoing international work on this topic (BCBS, IOSCO) and should not pre-empt their conclusions and their work leading to global policy.

Furthermore, it should be considered to introduce a **de-minims threshold** for this information requirement in view of the very considerable burdens it will pose for clearing service providers: clients with very limited clearing positions do not require such detailed and complex information for their liquidity management. Moreover, the considerable burdens associated with this obligation, especially, if applicable to all clients indiscriminately, will even further discourage institutions to offer client-clearing services.

12) Art. 1 (30) (b) AR / Art. 38 (8) EMIR: CCP potential loss information

As in case of the information requirement regarding margin models, clearing services offering institutions can only provide information on potential losses caused by default management procedures if and to the extent the relevant CCP provides information to the clearing members. The introduction of this information obligation for clearing service providers thus also needs to be accompanied by a parallel obligation on CCPs to provide the relevant information and data to their clearing members.

In addition, it has to be noted that it will never be possible to quantify potential losses with sufficient accuracy.

13) EMIR: permanent margin exemption for Equity Options

EBF regrets that a proposal securing a permanent variation and initial margin exemption for Equity Options (Single Stock and Index) has not been added in this EMIR 3 proposal (current temporary exemption set to expire in Jan 2024). Initially, such temporary exemption was granted, and extended twice already, to avoid market fragmentation and ensure a level playing field for all EU market participants on a global level, because in some jurisdictions (e.g. the US) they are not subject to equivalent margin requirements. Since the last extension, nothing has materially changed, the rationale to maintain and make permanent this exemption still strongly stands knowing equity options are permanently exempted in the US (and the situation could only get worse if the UK make their own exemption permanent).

If this exemption expires, EU market participants will come in-scope of margin requirements that will be problematic mostly for Initial Margin (complex to implement, non-cash margin segregated at a custodian…). This will put an additional burden on all EU market participants (end users and banks) to ensure compliance with complex requirements. It will also put all EU market participants at a clear competitive disadvantage compared to their non-EU peers in other jurisdictions (mainly US) not subject to similar rules. For example, imposing margin requirements could result in smaller EU counterparties ceasing to use equity options for hedging and risk mitigation and non-EU clients stop trading with EU banks.

The G20 initial goals were to avoid systemic risk for the financial industry by setting margin requirements for OTC uncleared derivatives and margins have been already fully

implemented for almost all OTC Derivatives in the EU. Equity Options represent only a marginal fraction of the overall OTC derivatives volume. Having also shorter maturity, they do not represent a risk for financial stability.

Therefore, a recital should be introduced in EMIR 3 to recognize that in some major jurisdictions Equity Options are not subject to equivalent margin requirements, and that to avoid market fragmentation and ensure a global level playing field, it is appropriate to permanently exempt Equity Options. This recital will give the mandate to the ESAs to amend the Uncleared Margin RTS (RTS shared between the ESAs) to exclude permanently these products from the margin requirements. It is also very important for EU market participants to receive a clear confirmation as soon as possible, well in advance of the current temporary exemption expiration in Jan 2024, to avoid market disruption and costly last minute contingency plans.

14) Art. 2 AD.1 (5) / Art. 76 (2) and Art. 100 (1) CRD and Art. 39 (2) (b) IFD: Exposure reduction planning and target setting obligation for institutions

The obligation to develop specific plans and set targets for a reduction of the concentration risk towards third-country CCPs in systemically relevant derivatives categories, together with a new supervisory power to actively enforce an exposure reduction by requiring an institution to "realign" or reduce their positions where deemed an excessive concentration risk, is a disproportionate tool which can result in significant interferences with core business activities of an institutions and the business model of an institution, its client relations and its competitiveness in international markets.

Against this background, and especially in view of the fact that the explanatory memorandum for the proposal of the Amending Directive itself states that competent supervisors already hold adequate powers to address excessive concentration risks under the existing CRD-framework (see above), the introduction of such new far-reaching and potentially very intrusive obligations and powers should be reconsidered.

Moreover, the introduction of such an additional supervisory power would overlap with the Active Account requirement, thereby creating a disproportionate burden for EU banks. At the very least, it would need to be ascertained that such new obligations and powers will be applied with utmost care, full consideration of the business model of and the potential implications for the business activities of the relevant institution and in all material aspects consistently and in a coordinated manner across the EU in order to prevent a distortion of competition and other harmful effects. It is also of the essence that the application is fully coordinated with the parallel EMIR active account requirements, in particular the exemptions.