

## Response to European Securities and Markets Authority's (ESMA) consultation on Clearing Thresholds under EMIR

### **Introductory comments:**

The European Associations of Corporate Treasurers (EACT) is the voice of corporate treasurers in Europe, representing over 14,000 members and 6,500 groups/companies who are the end-users of financial services.

Derivatives are a key tool for corporates to manage and reduce commercial risks. EU authorities have long recognised the importance to preserve the ability of corporates to use those instruments – and to avoid forcing non-financial companies to divest cash to post as margin if they were forced to centrally clear.

We are grateful that ESMA is reviewing the current regime and would like to share the experience of our members.

We have included a summary of our comments in this section and provided our responses to relevant questions below.

### Summary

- Maintain the current regime – corporates use derivatives to manage and hedge commercial risks. The current regime strikes an appropriate balance between flexibility and resilience. Introducing new restrictions to access those instruments (such as lower clearing thresholds or a narrower definition of hedging) would be detrimental for non-financial companies as corporates are not equipped to manage the liquidity risks arising from the clearing requirements.
- Develop a more regular dialogue between ESMA and end-users on derivatives markets – In light of the evolving nature of markets – as we have been experiencing in the recent months, markets evolutions can be sudden (see rising commodity prices & inflation) – it could be useful for ESMA to set up a regular dialogue with non-financial end-users of those products to ex-change and discuss market developments. Such a dialogue would help inform ESMA's thinking on the evolution of the clearing thresholds.
- Finding a long-term solution to uncertainties following the UK withdrawal from the EU – Since Brexit, exchange-traded derivatives entered into after Brexit on UK venues will now be considered "OTC derivatives" for EU participants and therefore impact the calculation of clearing thresholds. We support finding a long-term solution to ensure that ETDs traded in the UK do not count as OTC derivatives as this does not reflect their economic reality.

### **Question 1 - Please explain if you see a need for further clarification on how to identify OTC contracts for the purpose of the calculation of the positions to be compared to the clearing thresholds.**

The current regime is fit for purpose and does not see the need further clarifications at this stage.

**Question 2 - Please explain if you see a need for further clarification to identify OTC contracts that can be considered as reducing risks directly relating to commercial activity or treasury financing activity. And please mention any additional aspects to be further considered with regards to the hedging exemption.**

The current definition of transactions measurable as reducing risks relating to commercial activity or treasury financing activity works well to accommodate the current use of derivatives by corporates and does not require further clarification.

With regards to additional aspects: the current context of inflation will increase the need for hedging transactions (specifically on commodities market), this factor should be considered in future reviews of the clearing thresholds.

Having a regular dialogue between authorities and non-financial end-users would be an apt forum to ensure factors such as price inflation and other market developments are discussed and considered.

**Question 4 - Please provide data and arguments to illustrate the potential impact of the lack of an equivalence decision under Article 2a of EMIR and what could be done to alleviate your concerns (besides an equivalence decision)? Please specify the kind of transactions and activities that would be affected and the purpose of those, and whether there are alternatives.**

The lack of an equivalence decision has not yet posed major obstacles. However, a long-term solution to ensure that ETDs traded in the UK do not count as OTC derivatives should be found.

**Question 13 - Looking at the simulations presented in the paper and at the impact they would have, do you have any views on the sensitivities of the thresholds?**

The current clearing thresholds are fit for purpose and should be maintained.