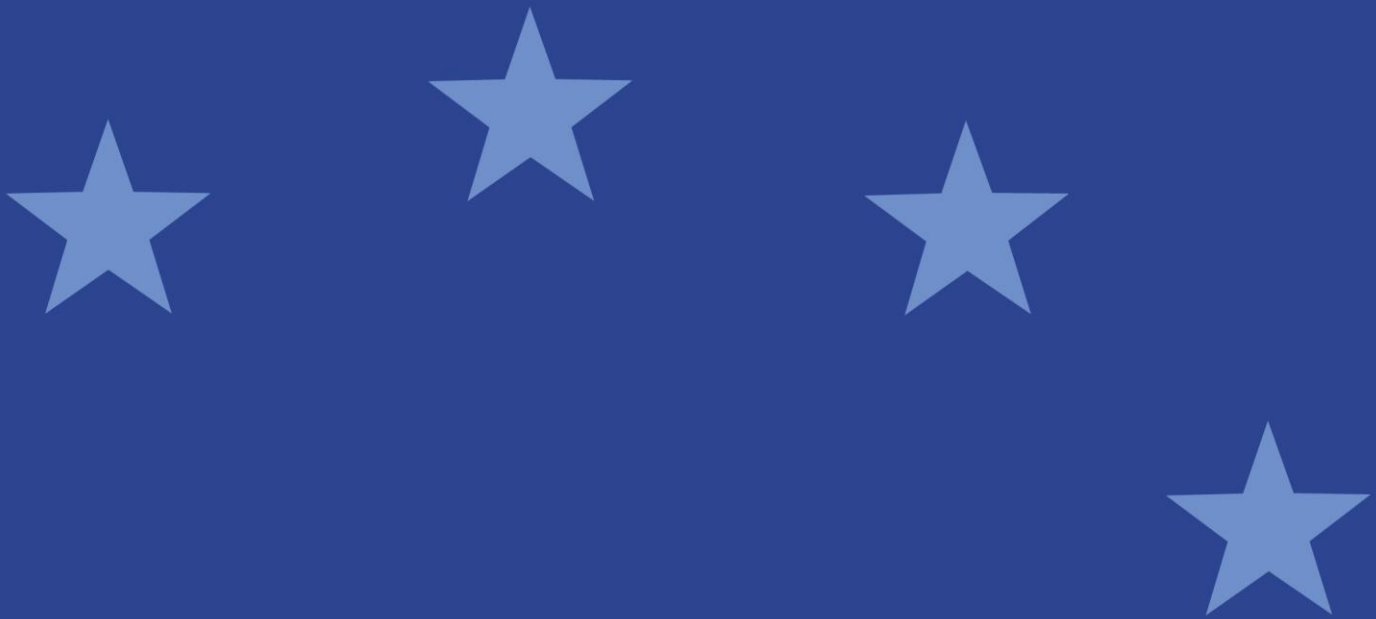




European Securities and
Markets Authority

Response Form to the Consultation Paper

Report on highly liquid financial instruments with regards to the investment policy of central counterparties (EMIR Article 85(3a(e)))



Responding to this paper

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions summarised in Annex III. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **24 January 2022**.

All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input - Consultations’.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA_QUESTION_CCP investment policy_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA_CCPinvestmentpolicy_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_CCPinvestmentpolicy_ABCD_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website (www.esma.europa.eu under the heading “Your input – Open consultations” à “Consultation on financial instruments eligible for investments by CCPs, including EU Money Market Funds”).

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading [Legal Notice](#).

Who should read this paper?

All interested stakeholders are invited to respond to this consultation. In particular, this paper may be specifically of interest for EU central counterparties, clearing members and clients of clearing members.

General information about respondent

Name of the company / organisation	Eurex Clearing
Activity	Central Counterparty
Are you representing an association?	<input type="checkbox"/>
Country/Region	Germany

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_CCP investment policy_00>

Eurex Clearing AG (Eurex Clearing) is an EMIR authorized central counterparty (CCP) and provides clearing services for cash and derivatives markets in listed and over-the-counter (OTC) financial instruments. As such, we appreciate the opportunity to provide feedback to the ESMA Consultation Paper on its report on highly liquid financial instruments with regard to the CCP investment policy.

With EMIR, the EU has laid the foundation for a healthy central clearing ecosystem and set a global benchmark, safeguarding the role of CCPs as independent and neutral risk managers of financial markets. Notably, Art. 47 EMIR sets the key principles a CCP must follow for its investment activities. While Eurex Clearing strongly supports EU authorities' ambitions to make this regime as safe as possible, Eurex Clearing would like to highlight that the EU's global thought-leadership on CCP investment policies needs to be advanced – especially in light of a low or negative interest rate environment that adversely injects financial stability risks and should be remedied.

Eurex Clearing welcomes that ESMA is reflecting on how to further enhance the current CCP investment policy in relation to its mandate to provide the European Commission with a review report on the potential expansion of CCP investment possibilities according to Art. 85(3a)(e) EMIR.

Looking at the considerations by ESMA in the consultation paper, Eurex Clearing would agree that broadening the basis for eligible investment possibilities for CCPs would be beneficial in the future, providing a possibility to diversify. For example, expanding the list of public entities suitable as issuers and/or guarantors of eligible financial instruments would be helpful with a view to combat the consequences of the Covid-19 pandemic, as the EU is raising the funds for its aid programs on a large scale independently on the bond market and is thus becoming one of the largest debtors in

the Eurozone. Moreover, to further explore MMFs under certain conditions could be meaningful as well; in particular, for investment of funds in currencies where a CCP has no central bank access in order to avoid unsecured exposures. However, at this point, Eurex Clearing would agree with ESMA's conclusion that it is premature to decide on the inclusion of MMFs into the list of eligible instruments for CCP investments.

While Eurex Clearing would support many of those proposals by ESMA, Eurex Clearing would highlight in particular our support to revisit the average time to maturity of 2 years. From Eurex Clearing's point of view, the average time to maturity of 2 years for the CCP's investment portfolio is too strict, considering the current limitation to highly liquid financial instruments the CCP can invest in according to Annex II of Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 with regard to regulatory technical standards on requirements for central counterparties, and that the CCP has the possibility to mobilize the securities anytime, if needed. The maturity limitation of 2 years make it practically impossible for a CCP to build up a securities portfolio as the eligible bonds are extremely scarce due to "Quantitative Easing" and in particularly short-dated bonds are hardly traded. Therefore, as outlined in more detail in our answer to question 10, we would recommend extending the average time to maturity from 2 to 5 years as well as considering non-invested funds for the calculation.

Importantly, in addition to ESMA's considerations in the consultation paper how to further enhance the current investment possibilities by CCPs, Eurex Clearing would consider in particular (physical) cash as an appropriate value store for CCPs, providing the opportunity to place a CCP's own funds as well as cash margin provided by Clearing Members in vaults. For details, please refer to our answers to questions 14 and 16.

Eurex Clearing trusts that our comments are seen as a useful contribution to increase the functioning of margining practices, and remain at the disposal of ESMA for any questions and additional feedback.

<ESMA_COMMENT_ CCP investment policy_00>

Questions

Q1: Does the above section describe accurately the requirements on CCP investments outside the EU? Are there other jurisdictions that ESMA should consider to inform its analysis?

<ESMA_QUESTION_CCP investment policy_01>

Eurex Clearing considers the provided description of CCP investment requirements in other jurisdictions to be accurate.

<ESMA_QUESTION_ CCP investment policy_01>

Q2: Does the above section provide an accurate description of CCP practices regarding their investment and collateral policies?

<ESMA_QUESTION_ CCP investment policy _02>

Eurex Clearing would agree with the description provided by ESMA.

Nevertheless, we would like to use the opportunity to bring to ESMA's attention that some elements of the current provisions of Commission Delegated Regulation (EU) No 153/2013 ("RTS 153/2013") and EMIR are unclear and create uncertainty in relation to CCPs' practices. We would welcome if ESMA would consider providing clarifications as part of the review of the current provisions in relation to the following points:

a) unsystematic numbering in RTS 153/2013

RTS 153/2013 currently contains two Article 45 (titled "Highly secured arrangements maintaining cash" and "Concentration limits", respectively) which makes unambiguous references to those articles difficult. A renumbering of the second Article 45 would be appreciated.

b) Art. 47 (4) EMIR, Art. 45 RTS 153/2013 and ESMA EMIR Q&A Q11 (b): Clarification with regards to eligible counterparties for collateralisation arrangements

According to Art. 47 (4) EMIR, a CCP shall perform cash deposits with central banks or "through highly secure arrangements with authorised financial institutions". The letter is further detailed in Art. 45 RTS 153/2013. Inter alia, as set out in Art. 45 (1) (b) RTS 153/2013, the cash "deposit shall be placed with" either a credit institution authorised in the EU (limb (i)) or a comparable third country financial institution (limb (ii)). Further, Art. 45 (2) RTS 153/2013 requires that no less than 95% of such cash

shall be deposited using a collateralised arrangement. In its EMIR Q&A, CCP Answer 11 (b), ESMA outlines that the counterparty to the collateralisation agreement does not need to meet the criteria under Art. 45 (1) RTS 153/2013 (i.e. does not need to be an EU credit institution or comparable third country institution), but it “should be [...] an authorised financial institution pursuant to Art. 47 (4) EMIR”.

However, the term “authorised financial institution” seems to be the wrong regulatory term, as EU law does not foresee a general authorization requirement for financial institutions and it therefore rather depends on the applicable national law whether for a certain financial institution an authorisation is required and thus obtained. Hence, the outcome of question whether a CCP can enter into a collateralization arrangement (such as a repo transaction) with a certain entity is rather random and dependent on the authorisation provisions of the national law where the respective financial institution is located.

From our point of view, it would be helpful if it were clarified that a CCP may enter into collateralization arrangements with in particular the following counterparties subject to the EU prudential law (or equivalent prudential third-country law, i.e. in particular with respect to credit institutions and investment firms the third-country law covered by the equivalence decisions by the European Commission based on Article 142 (2) CRR).

- A) Credit institutions, as defined in Regulation (EU) 575/2013 (CRR),
- B) Investment firms, as defined in Regulation (EU) 2019/2033,
- C) Institutions for occupational retirement provision, as defined in Directive 2016/234/EC, and
- D) Insurance undertakings and reinsurance undertakings, as defined in Directive 2009/138/EC.

c) Art. 47 (4) EMIR, Art. 45 (2) RTS 153/2013: Clarification of the obligation for a 95 % collateralisation of cash deposits

Art. 45 (2) RTS 153/2013 stipulates that where cash is maintained overnight on non-central bank accounts in accordance with Art. 45 (1) RTS 153/2013, “not less than 95 % of such cash, calculated over an average period of one calendar month, shall be deposited through arrangements that ensure the collateralization of the cash with highly liquid financial instruments”. When calculating the exposure with regard to the 95% limit, we believe that funds invested with a central bank should be included.

Storing cash at central banks is in our view the best option to minimize credit and liquidity risks and therefore preferable to a deposit on a non-central bank account or the conclusion of a reverse repo investment. This is also the rationale behind Art. 47 (4) EMIR and Art. 45 RTS 153/2013 that do not establish further requirements for deposits of cash with central banks, but rather limit other means of cash deposits.

However, in currencies where the CCP does not have central bank access, the CCP needs to rely on a cash deposit on non-central bank accounts and the entering into collateralization arrangements. If the cash deposited with the central banks is not taken into account in the calculation of the ratio of collateralized cash deposits against unsecured cash deposits for the purposes of Art. 45 (2) RTS 153/2013, this would provide a wrong incentive of a CCP to artificially inflate the notional of its collateralization arrangements by investing cash maintained on central bank accounts into reverse repo transactions. Such behaviour would be counterproductive from a liquidity risk as well as credit risk perspective, and hence also contradict the objectives of Art. 47 (4) EMIR, Art. 45 (2) RTS 153/2013.

<ESMA_QUESTION_ CCP investment policy_02>

Q3: Does the above section accurately describe the trade-offs faced by CCPs when developing their investments strategies? What other factors or trade-offs can influence CCP investment strategies?

<ESMA_QUESTION_ CCP investment policy_03>

Eurex Clearing broadly agrees with the description of trade-offs faced by CCPs in Section 4.2.1. While ESMA is indicating under point 64 in the consultation paper that CCPs may invest either in a secured or unsecured manner, we would point out with respect to ESMA's findings in point 66, in particular, that CCPs aim to deposit cash with commercial banks through arrangements ensuring the collateralisation of the cash with highly liquid financial instruments. The current description seems to focus on unsecured deposits, which can only be placed to a very limited extent in accordance with Article 45(2) of RTS 153/2013 (95% secured investment required).

Furthermore, CCPs typically pay (or charge) interest on cash margins towards the Clearing Members on the basis of benchmark rates. In such cases, CCPs bear the risk of underperforming the benchmark, if their realized rate from investment is lower than the respective benchmark rate. Moreover, from a liquidity risk management perspective, CCPs also need to make sure that the provision of cash collateral by the Clearing Members is not disincentivised compared to securities collateral.

<ESMA_QUESTION_ CCP investment policy_03>

Q4: Do you agree with ESMA's premise that changes to the list of financial instruments for CCP investments should be in line with the PFMI?

<ESMA_QUESTION_ CCP investment policy_04>

Eurex Clearing agrees that in line with the PFMI principles, the instruments that CCPs may invest in must be highly liquid with minimal market and credit risk.

<ESMA_QUESTION_ CCP investment policy_04>

Q5: Do you agree with ESMA's policy approach that benefits should outweigh risks to support a policy change?

<ESMA_QUESTION_ CCP investment policy_05>

Eurex Clearing agrees with the policy approach to ensure that the benefits outweigh the risks when expanding the list of instruments or loosening the conditions for the inclusion of instruments in the list of eligible instruments.

<ESMA_QUESTION_ CCP investment policy_05>

Q6: Do you agree with ESMA's approach to focus on the list of conditions to define highly liquid instruments bearing minimal credit and market risk? Do you believe it would be appropriate to align EMIR with other definitions of highly liquid instruments in the EU financial legislation, such as CRR?

<ESMA_QUESTION_ CCP investment policy_06>

Eurex Clearing agrees with the proposed approach to focus on the list of conditions to define highly liquid instruments bearing minimal credit and market risk.

<ESMA_QUESTION_ CCP investment policy_06>

Q7: With regards to condition (a) on public entities outlined in Annex II:

- i. Should the list of international organisations be expanded beyond the EFSF and the ESM to explicitly include the EU?
- ii. Should it include other international organisations (IMF? BIS? Others?)?
- iii. Do you agree with ESMA's legal analysis that it is not necessary to explicitly include regional governments and local authorities as these should be covered by the generic term of government under condition (a)(i)? Should ESMA consider adding conditions similar to those outlined in Article 115 of the CRR?
- iv. Should ESMA consider limiting the list of governments and central banks in particular to those from third-countries deemed to have equivalent regulatory and supervisory arrangements?

- v. Do you agree that the list of multilateral development bank listed under Article 177(2) of CRR is suitable?

<ESMA_QUESTION_ CCP investment policy_07>

i. We agree that the list of international organisations in Annex II should be expanded beyond the EFSF and the ESM to explicitly include the EU. To combat the consequences of the Covid-19 pandemic, the EU finances aid programs with a significant volume in the coming years. For the first time, the EU is raising the funds for this on a large scale independently on the bond market and is thus becoming one of the largest debtors in the Eurozone.

ii. No comment.

iii. We agree with ESMA's interpretation that the generic term of "government" in Annex II of RTS 153/2013 may already currently cover regional governments and local authorities. However, as this interpretation is not clear and leads to difficulties with regard to its application in practice, a clarification of the term with regard to regional governments and local authorities would be appreciated. In order to minimize frictions with the CRR, and, in particular, in order to allow application of the EBA overview on EU regional governments and local authorities treated as exposures to central governments in accordance with Article 115(2) of Regulation (EU) 575/2013 (CRR) (<https://www.eba.europa.eu/documents/10180/744714/Article+115%282%29%20of+Regulation+%28EU%29%20575+2013.xlsx/c5432dd4-3c15-491e-8d8b-6e426fe43f40>), we propose to clarify that Art. 10 (1) (c) of EU Delegated Regulation 2015/61 applies accordingly.

iv. There is no need to further limit the list of eligible governments and central banks in Annex II Number 1 (a) of RTS 153/2013 as the credit quality of the issuer of the financial instruments is already sufficiently addressed in Annex II Number 1 (a) of RTS 153/2013 that limits the eligible instruments only to those for which "the CCP can demonstrate that they have low credit and market risk based upon an internal assessment by the CCP", taking "into consideration the risk arising from the establishment of the issuer in a particular country".

Further, we would like to note that Art. 114 (7) CRR (which seems to be the background of question 7 (iv)) is systematically not a limitation of the list of eligible governments and central banks from third countries (as indicated by question 7 (iv)), but rather allows for a privileged treatment of exposures against governments and central banks of a qualifying third country, if (i) the third party supervisory and regulatory arrangements at least equivalent to those applied in the Union, (ii) the competent authorities of the third country assign a risk weight to exposures to their government and central bank lower than those indicated in Art. 114 (1) and (2) CRR, and (iii) the exposure is funded in the domestic currency.

Hence, to apply that concept of a possibility for a privileged treatment of instruments issued by certain governments or central banks also in the context of Annex II of RTS

153/2013, it should be implemented as an optionality within Annex II Number 1 (a) of RTS 153/2013 so that a CCP may either (i) invest in financial instruments of issuers in respect the CCP may demonstrate that they have low credit and market risk (i.e. as currently foreseen in Annex II Number 1 (a) of RTS 153/2013) or (ii) invest in financial instruments of governments and central banks of (x) EU member states and the ECB or (y) of a third country which applies supervisory and regulatory arrangements at least equivalent to those applied in the Union and where the competent authorities assign a 0 % risk weight to exposures to their government and central bank denominated and funded in the domestic currency (i.e. corresponding to Art. 114 (3), (4), (7) CRR). Further, as in Art. 114 (7) CRR, a provision to delegate the power to adopt these equivalence decisions to the European Commission should be added that ideally also clarifies that equivalence decisions taken under Art. 114 (7) CRR apply accordingly.

v. We agree that the list of multilateral development banks listed under Article 177 (2) CRR is suitable.

<ESMA_QUESTION_ CCP investment policy_07>

Q8: Should ESMA consider expanding condition (a) to certain debt instruments issued or backed by private entities? If so, to which type of corporate debt securities (Commercial Paper, Certificates of Deposits, covered bonds, etc.)? Under what conditions? How would the benefits outweigh the added risks?

<ESMA_QUESTION_ CCP investment policy_08>

At the moment, we would be cautious to expand the list of eligible instruments to debt instruments issued or backed by private entities. Under strict limits and criteria (concentration limits, rating criteria, maturity limits) this might help to diversify the risks, broaden the basis for secured investment (vs. unsecured) and also improve investment performance. However, very strict criteria should then be defined in order to minimize market and credit risk.

<ESMA_QUESTION_ CCP investment policy_08>

Q9: With regards to condition (b) on CCP internal assessments in Annex II:

- i. What are, to your knowledge, the best practices used by CCPs to identify low credit and market risk?
- ii. What are the safeguards put in place to avoid overreliance on external opinions, notably CRAs?
- iii. In order to avoid supervisory divergence, do you deem necessary that ESMA issue further guidance on how NCAs should assess these provisions?

<ESMA_QUESTION_ CCP investment policy_09>

Cash investment at CCPs should only take place at counterparties of high creditworthiness. Key criteria of CCPs' investment policy are:

- Secured placement of cash (reverse repo as preferred instruments) collateralized with highly liquid financial instruments
- Counterparties required to be authorized credit institutions with low credit risk based on an internal assessment by respective CCP – the minimum counterparty rating requirement corresponds to the S&P rating category BBB+/BBB
- Eligible collateral must be issued or guaranteed by governments, central banks, multilateral development banks, the EFSF or the ESM
- Investment tenor is mainly short-term

With reference to credit risk, this means that a CCP applies placement limits as well as strict admission criteria on treasury counterparties. A credit rating is based on the internal assessment; external ratings are used to benchmark the internal methodology and to validate the individual rating as mentioned above.

Furthermore, with regard to Eurex Clearing's investment activities, an internal credit assessment of the issuers of securities is performed. Issuers are rated according to an internal methodology and are monitored accordingly. The investment policy specifies the criteria for investment combining external rating criteria for the security and internal issuer or issuer type limits which are determined based on the respective internal assessments.

With reference to market risk, this may arise from holding assets and liabilities with different maturity dates, which create an exposure to changes in the levels of interest rates, foreign exchange rates or market prices. Given this strict investment policy, a CCP is usually neither exposed to any material interest rate, nor to foreign exchange and market price risks. Interest differential between cash margins owed to Clearing Members and investments is usually limited and currency mismatches are to a large extent avoided.

Notwithstanding the above, we elaborate on the implications of the current negative interest rate environment on the EUR cash holdings by CCPs in our answer to question 14, as with respect to cash received from Clearing Members as margin, CCPs are usually required to pay interest. Such interest payments are calculated on the basis of benchmark rates. As a consequence of the current negative interest environment, CCPs bear the risk of underperforming the benchmark, if the realized rate from the investment or deposit of the cash is below the respective benchmark. We outline a potential solution through holding cash in vaults in our answers to questions 14 and 16.

To conclude, we deem the best practice established and safeguards installed by CCPs as sufficient and effective. We therefore do not see the need for further guidance as to how NCAs should assess the existing provisions.

<ESMA_QUESTION_ CCP investment policy_09>

Q10 : With regards to condition (c) on the average time to maturity, do you believe that this time period is appropriate? Should its calculation be further specified in the RTS?

<ESMA_QUESTION_ CCP investment policy_10>

From Eurex Clearing's point of view, the average time-to-maturity of two years for the CCP's investment portfolio is too strict, considering the current limitation to highly liquid financial instruments the CCP can invest in according to Annex II of RTS 153/2013, and that the CCP has the possibility to mobilize the securities anytime, if needed. The limitation of the time-to-maturity to two years makes it practically impossible for a CCP to build up a securities portfolio as the eligible bonds are extremely scarce due to "Quantitative Easing" and in particular short-dated bonds are hardly traded. Therefore, Eurex Clearing would welcome if ESMA would extend the allowed time to maturity.

Further, with regard to the calculation of the average time-to-maturity on the CCP portfolio level, it should be possible to consider non-invested funds that could be invested under the existing limits for the investment portfolio but are deposited instead on cash accounts, since they also contribute to the aim to limit the interest sensitivity of the CCP portfolio and in this regard are essentially similar to debt instruments with a remaining maturity of one day. Hence, not considering uninvested cash (and especially cash on central bank accounts) would set the wrong incentive to convert cash into debt instruments solely for the purpose to bring down the average time-to-maturity of the CCP's debt instruments portfolio. An alternative to the consideration of uninvested funds could be the extension of the average time to maturity limit from 2 to 5 years.

<ESMA_QUESTION_ CCP investment policy_10>

Q11 : With regards to conditions (d), (e), (f) and (g) under Annex II, should these be amended?

<ESMA_QUESTION_ CCP investment policy_11>

While we have no comments with regard to the conditions (d), (f) and (g) under Annex II, regarding condition (e) ("freely transferable and without any regulatory constraint or third party claims that impair liquidation") we would like to point out the following:

It could be clarified in Annex II (1) condition (e) (as well as Annex I Section 1 condition (d)) that the “liquidation” addressed in here relates to the liquidation of the collateral. Further, we note that in the German language version of Annex II (1) condition (e) (and of Annex I Section 1 condition (d)), the term “*Liquidation*” is used as well which should rather be replaced by “*Verwertung*” in this context, as the German term “*Liquidation*” primarily relates to the winding-up of a company and therefore is not an adequate translation of the English term ‘liquidation’ in this context.

<ESMA_QUESTION_ CCP investment policy_11>

Q12 : Do you agree with this conclusion? To what extent are MMFs currently used as collateral or CCP investments beyond the EU?

<ESMA_QUESTION_ CCP investment policy_12>

In the US, MMFs are a well-established and liquid instrument; for CCPs managing USD without central bank access, the possibility to place in MMFs would significantly reduce the risk of unsecured exposures.

<ESMA_QUESTION_ CCP investment policy _12>

Q13 : Do you agree with the premise that the assets held by eligible MMFs for CCP investment should at least meet the same criteria as for other financial instruments?

<ESMA_QUESTION_ CCP investment policy_13>

In general, Eurex Clearing would agree. Exploring the inclusion of MMFs under certain conditions could be meaningful, in particular, for investment of funds in currencies where a CCP has no central bank access in order to avoid unsecured exposures. However, for MMF’s, clarification would be required, for example:

- with regard to EMIR RTS 153 Annex II 1. (a) only CNAV funds would come into question, however CNAV funds are required to invest 99.5% of their assets in “public debt”. Here the question would be, whether the definitions can be aligned;
- with regard to EMIR RTS 153 Annex II 1. (b) how can the requirement to have an internal credit assessment be fulfilled; and with regard to EMIR RTS 153 Annex II 1. (e) requirement towards a free transferability

<ESMA_QUESTION_ CCP investment policy _13>

Q14 : In your view, how could ESMA bridge the need for macroprudential tools for MMFs and the need for high quality and highly liquid collateral for CCPs?

<ESMA_QUESTION_ CCP investment policy_14>

Importantly, in addition to ESMA's considerations in the consultation paper how to further enhance the current investment possibilities by CCPs, Eurex Clearing would consider in particular (physical) cash as an appropriate value store for CCPs, providing the opportunity to place a CCP's own funds as well as cash margin provided by Clearing Members in vaults.

Depositing cash in vaults, besides the current investment with commercial credit institutions, direct investments and deposits with central banks, should qualify as another reasonable route to diversify and "invest" cash in a secure manner – especially in the increasingly challenging negative interest rate environment.

This is relevant against the background of two dimensions: Firstly, CCPs need to ensure a safe investment, especially in light of the persistent negative interest rate environment and should not be disincentivized to take cash as collateral rather than highly liquid securities. Secondly, it is important to ensure a level playing field, as CCPs in other jurisdictions are not affected by the current negative interest rate environment.

In case CCPs hold significant funds in EUR, these are subject to negative interest rates. Those funds consist of both customer funds as well as the CCP's own funds. Such cash holdings may significantly exceed a CCP's potential liquidity needs under EMIR.

With respect to cash received from Clearing Members as margin, CCPs are usually required to pay interest. Such interest payments are calculated on the basis of benchmark rates. As a consequence, CCPs bear the risk of underperforming the benchmark, if the realized rate from the investment or deposit of the cash is below the respective benchmark.

In comparison to global competitors, due to the negative interest rate environment and respective unattractive repo market, such CCPs lack opportunities to invest the funds secured in the market on reasonable terms. While CCPs might reflect this via adjusting their cash handling fees or interest rates charged to the Clearing Members, at the same time, they should ensure that cash collateral (being most liquid) is not disincentivized vs. securities collateral (being only highly liquid in comparison to cash). It is important to note that CCPs cannot use the securities collateral directly in order to manage liquidity risks due to the pledge structure. CCPs can only access securities collateral in case of a Clearing Member's default, while they can access cash at any point in time.

Maintaining cash in vaults qualifies from our point of view as an equivalent to a "highly liquid financial instrument, bearing minimal credit and market risk", specifically if the following conditions are fulfilled:

Title in cash remains with the CCP, i.e. there is no counterparty credit risk:

- the operator of the vault is not entitled to make use of the cash
- the cash is physically segregated from potential other cash holdings
- from a German law perspective, “cash in vault” is generally not subject to any risk arising from a potential insolvency of the respective vault operator because section 47 German Insolvency Code provides for a right to separation in case of the insolvency of the vault operator; generally, national insolvency regimes foresee such specific separation rights in case of the insolvency of the vault operator.

There is no market risk:

- the physical cash can be transferred back to the Central Bank anytime receiving the same amount of cash

Well-established operational procedures are used:

- Transfer of funds is done by professional cash logistics service providers
- Insurance fully covers risk of damage and theft during storage and transportation - and defines requirements for the full process
- Professional vault provider (inter alia commercial banks) operate high-security, fully-insured vaults and offer such solutions to the market for some time now
- Regular audits ensure that all defined requirements are met
- Return shipment can be realized rapidly, liquidity risks considered:
- The days needed to bring the cash back to the central bank would have to be included in the **CCP’s liquidity risk model**, conservative **mismatch limits** might apply.
- **Only the excess cover-2 liquidity** could qualify for storage in the vault.
- Same day physical cash sale to third parties possible, accelerating mobilization

Under consideration of the ongoing negative interest rate environment, the placement of cash in vaults should be considered as an eligible instrument under Art. 47 EMIR, which offers the CCP the opportunity “to invest its financial resources only in cash or highly liquid financial instruments”.

Please also refer to Eurex Clearing’s response to question 16 regarding the benefits of the cash in vault concept.

<ESMA_QUESTION_ CCP investment policy_14>

Q15 : Do you agree with ESMA that it is not appropriate at this stage to decide on the potential eligibility of MMFs for CCP investments

before policy discussions on MMFs at the international and EU levels are finalized?

<ESMA_QUESTION_ CCP investment policy_15>

In general, in Eurex Clearings view, exploring the inclusion of MMFs under certain conditions could be meaningful in particular, for investment of funds in currencies where a CCP has no central bank access in order to avoid unsecured exposures and diversify investment.

However, at this point, Eurex Clearing would agree with ESMA's conclusion that it is premature to decide on the inclusion of MMFs into the list of eligible instruments for CCP investments, considering as well the latest FSB report on MMFs from October 2021 (<https://www.fsb.org/wp-content/uploads/P111021-2.pdf>). The FSB is revisiting the 2012 Policy Recommendations for MMFs due to shown weaknesses at the peak of the Covid-19 induced volatility in March 2020: (a) susceptible to sudden and disruptive redemptions and (b) challenges in selling assets (c) likely contagion among MMFs.

However, the proposals aimed to enhance MMF resilience are relatively vague (reduction of liquidity transformation (e.g. limits on eligible assets), improved loss absorption (e.g. through a minimum balance at risk) and removal of threshold effects (e.g. removal of ties between regulatory thresholds and imposition of fees/gates)).

Overall, it seems that it will be the next step to execute these options on jurisdiction level as seen fit. Once MMFs will be considered more resilient, it may be considered to accept them as highly liquid and safe investment for CCPs.

<ESMA_QUESTION_ CCP investment policy_15>

Q16 : What would be the costs and benefits of extending the list of financial instruments considered highly liquid with minimal market and credit risk, in the context of EU CCPs' investment policies?

<ESMA_QUESTION_ CCP investment policy_16>

With regard to the introduction of cash in vault as alternative investment, as suggested in our answer to question Q14, we would like to highlight the following benefits:

- Further diversification possibility for placement of cash in a secured manner, i.e. without incurring counterparty credit or market risk (see answer to Q14 for details)
- Keeping the delivery of cash margin for a Clearing Member attractive vs. the delivery of securities collateral in a persistent negative interest rate environment

- Achieving a level playing field with CCPs which are more active in other currency areas not affected by the current negative interest environment

With the right regulatory framework, this instrument could even increase the resilience of the CCP and enhance the efficiency of CCP's liquidity management. This framework might include the following key aspects:

- The service must be sponsored by authorized credit institutions
- Full insurance of the physical cash must be given
- Sufficiently conservative mobilization assumptions must be factored in CCP's liquidity risk models

In Eurex Clearing's view, cash in vaults qualifies as another reasonable route to "invest" cash in a secure manner – and would possibly even provide a lower risk profile compared to other existing options.

The offering is well established in the market, which should address as well potential concerns in relation to physical safe-keeping as outlined above. A number of highly professional service providers are operating vaults, performing transfers on a day-to-day basis in an extremely safe environment; various large insurance companies provide insurance for such services.

Eurex Clearing would therefore encourage ESMA to recommend adding the "holding cash in vaults" as an investment alternative to Annex II of Regulation (EU) No 153/2013 when reviewing the investment options a CCP has under Art. 47 EMIR. Based on the considerations outlined above, Eurex Clearing holds the view that "holding cash in vaults" seems to be equivalently secure than the investment into "highly liquid financial instrument".

Further, it can be argued that the recognition of a physical storage of security assets other than cash and financial instruments is not entirely new to EMIR. Art. 46 EMIR expressly foresees the option that a CCP can accept gold as "highly liquid collateral" and Annex I Section 3 of Regulation (EU) No 153/2013 stipulates detailed requirements for the deposit of the gold with central banks or even credit institutions.

With respect to collateral, EMIR accepts an additional form of collateral asset (gold) next to cash and financial instruments and also considers, under certain requirements, the safe keeping of the gold with a vault operator as equivalently secure and liquid. Consequently, similar provisions could be drafted and implemented into Annex II, setting the legal frame for "holding cash in vaults".

<ESMA_QUESTION_CCP investment policy_16>

Q17 : What would be the costs and benefits of extending the list of financial instruments to money market funds authorised in accordance with MMFR?

<ESMA_QUESTION_ CCP investment policy_17>

Please refer to our previous comments in relation to the expansion of the list of financial instruments to MMFs.

<ESMA_QUESTION_ CCP investment policy_17>