



European Securities and
Markets Authority

Response form for the Consultation Paper on RTS on conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and conditions under which changes to the models and parameters are significant under EMIR





General information about respondent

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

Introduction

Nasdaq Clearing welcomes that ESMA aims to clarify in which circumstances additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and, under which conditions, changes to the risk models and parameters are significant.

However, we have objections to the proposed approach to divide into criteria and indicators conditions under which (i) additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and (ii) changes to the risk models and parameters are considered significant. This approach will add uncertainty and complexity and make the process for new products and enhancements to risk models difficult to foresee and plan for. Especially in respect of risk model changes, this can lead to a situation where CCPs are unable to adapt to evolving market conditions. Based on this, Nasdaq Clearing firmly believes that the indicators are not warranted in relation to the procedure triggering the application of Article 15 and Article 49 of EMIR.

It is also problematic that the process consulted upon does not include a clear and efficient timeline and governance mechanism. CCPs need to be able to foresee the timeline for the process determining whether or not Article 15 and Article 49 of EMIR should be applied. Also, Nasdaq Clearing would prefer that ESMA be involved in such a process rather than the college, especially for article 49.

Q1 Do you agree with ESMA’s proposed approach to divide conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation (under Article 15 of EMIR) into criteria, which would be subject to a more simplified college consultation procedure, and into indicators, which would be subject to a more extensive college consultation procedure, or would you propose a different approach? Please provide reasons for your answer.

Nasdaq Clearing welcomes that ESMA aims to clarify in which circumstances additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation. However, we have objections to the approach to divide conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation (under Article 15 of EMIR) into criteria and indicators.

To ensure that the procedure triggering the application of Article 15 of EMIR is transparent, objective and provide sufficient certainty to CCP it is important that the criteria are clear and objective. The criteria should be defined so that it is apparent and certain for NCAs and CCPs if an extension of services under Article 15 of EMIR is required or not. When a new initiative is planned, it is vital that the CCP can at an early stage determine whether or not such initiative fall under Article 15. We believe that it is possible under the proposed criteria. However, the indicators generally lack clarity, which would hamper the CCPs ability to plan and implement business-as-usual initiatives. We therefore propose to not use indicators in the determination of the application of Article 15 of EMIR.

Q2 Do you agree with ESMA’s proposed list of criteria for an extension of authorisation (under Article 15 of EMIR) or would you propose to change/add/delete any of the criteria or specify certain criteria further? Please provide reasons for your answer.

Yes, we generally agree with the list of criteria proposed for determining whether an extension of authorisation (under Article 15 of EMIR) is needed.

However, we wish to underline the following points:

- Adding a new contract to an existing market class or new market data should not constitute a service change and therefore we believe that it is important to focus on the nature of the service provided rather than the product itself.
- Article 2(c) – We do not believe that this criterion would merit an extension of authorization and therefore suggest to exclude it. The criteria will not change the service or risk model of a CCP.
- Article 2(d) - CCPs clearing FX products would have to go through an authorization process for each new pair of currencies they clear, which does not bring material new risk to the CCP and is impractical. We would therefore suggest deleting this criterion.

Q3 Do you agree with ESMA’s proposed list of indicators for an extension of authorisation (under Article 15 of EMIR) or would you propose to change/add/delete any of the indicators or specify certain indicators further? Please provide reasons for your answer.



We refer to our answer to Q1, we propose that the indicators are not used to determine a need for an extension of authorisation under Article 15 of EMIR.

Q4 Would you change certain criteria into indicators or vice-versa (under Article 15 of EMIR)? Please provide reasons for your answer

We refer to our answer to Q1, we propose that the indicators are not used to determine a need for an extension of authorisation under Article 15 of EMIR.

Q5 Do you agree with ESMA's proposed procedures for consulting the college (under Article 15 of EMIR) or would you propose different procedures? Please provide reasons for your answer.

We note that there is no proposed fixed timeline for the process of determining whether an extension of activities or services is subject to Article 15. Again a clear process with a short timeline is important to ensure that CCPs are able to efficiently develop and enhance their offering.

Q6 Do you agree with ESMA's proposed approach to divide conditions under which changes to the models and parameters are significant (under Article 49 of EMIR) into criteria, which would be subject to a more simplified college consultation procedure, and indicators, which would be subject to a more extensive college consultation procedure, or would you propose a different approach? Please provide reasons for your answer.

Please refer to our answer to Q1, we propose an approach when only criteria are used.

Q7 Do you agree with ESMA's proposed list of criteria for significant changes to the models and parameters (under Article 49 of EMIR) or would you propose to change/add/delete any of the criteria or specify certain criteria further? Please provide reasons for your answer.

Yes, we generally agree with the list of criteria for significant changes to the models and parameters (under Article 49 of EMIR). We would however propose the following changes to criteria suggested in the consultation:

A new margin module, such as a new add-on, can potentially be reasonable to interpret as a model change, however, changes within the approved framework must be allowed without formal approvals. Model inputs (used in an approved model) are an important part of the functioning and use of models: inputs are typically related to data on financial contracts (e.g. price, volatility, returns, etc.). Parameter changes need much more swift process and decisions than the ESMA process outlines. In a stress period, such as was observed during Covid19, model inputs would need to be changed very frequently to ensure that the model (if not updating volatility automatically like a VaR model) can produce margins that take the most recent volatility into account. Those changes will need to be performed swiftly, thus we consider this proposal is an impediment for risk management. We agree that change of a model itself (but not input parameters) could be subject for approval, but even this would need much faster approvals than the process envisions. Specifically, as no timelines are given.

We also believe that new, modification of stress scenarios should not be subject to Article 49 if done according to an approved methodology or stress testing framework. In line with EMIR, CCPs are required to add new scenarios promptly (see RTS Article 51), and triggering a significant change would also contravene the original objective of the regulation. However, ESMA proposes that significant changes include changes that imply the development of new stress scenarios, including either historical or hypothetical scenarios or both, or the modification of the calibration or definition of the existing scenarios, for the purpose of determining default fund exposures, collateral haircut, liquidity risk, credit and counterparty risk or operational risk. We believe these various developments should not be interpreted as a significant change.

Q8 Do you agree with ESMA's proposed list of indicators for significant changes to the models and parameters (under Article 49 of EMIR) or would you propose to change/add/delete any of the indicators or specify certain indicators further? Please provide reasons for your answer.

Please refer to our answer to Q1 and Q6.

Q9 Would you change certain criteria into indicators or vice-versa (under Article 49 of EMIR)? Please provide reasons for your answer.

Refer to our answer to Q1, we propose that the indicators are not used to determine a need for an extension of authorisation under Article 15 of EMIR.

Q10 Do you agree with ESMA's proposal to extend the consultation with the college also to Article 49? Do you agree with the proposed procedures for consulting the college or would you propose different procedures? Please provide reasons for your answer.?

Nasdaq Clearing would prefer that ESMA be involved in the process of determination rather than the college, especially for article 49. We note that such consultation is not within the scope of Article 49.5.

We also note that there is no proposed fixed timeline for the process of determining whether an extension of activities or services is subject to Article 49 or not. Again a clear process with a short timeline is important to ensure that CCPs are able to efficiently develop and enhance their offering.