



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL  
MARKETS UNION

The Director-General

Brussels  
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Mr José Manuel Campa  
Chair  
European Banking Authority  
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**Subject: Provisional request to the European Banking Authority (EBA) for technical advice on a possible delegated act specifying the method for the determination of the amount of the fees, and the modalities of the payment of such fees, to be paid by financial and non-financial counterparties requiring the validation of pro-forma models under the European Market Infrastructure Regulation (EMIR)**

Dear Mr Campa,

On 7 December 2022, the Commission published its proposal <sup>(1)</sup> to amend EMIR <sup>(2)</sup> as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets. On 7 February 2024, the European Parliament and the Council reached a political agreement on a compromise text, which was formally endorsed by the two institutions respectively on 4 March 2024 and 14 February 2024. Publication in the Official Journal is expected by Q4 2024. The text will enter into force on the twentieth day following its publication.

Based on the political agreement, the Regulation as amended would contribute to making EU clearing services more attractive and robust, preserving financial stability and supporting a well-functioning Capital Markets Union. It would enable central counterparties (CCPs) – which provide clearing services – to bring new products to the EU market faster. The Regulation as amended would give market participants an incentive to clear and build liquidity at EU CCPs. The Regulation as amended would also allow for a safer and more resilient clearing system, by improving the EU supervisory framework for CCPs, reinforcing the role of the European Securities and Markets Authority (ESMA), and drawing lessons from the market events of the past few years. The Regulation as amended would also contribute to reducing excessive reliance on systemic CCPs in non-EU countries, by requiring all relevant market participants to hold active accounts at EU CCPs and clear a representative portion of certain systemic derivative contracts within the single market.

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<sup>(1)</sup> [Capital markets union: clearing, insolvency and listing package - European Commission \(europa.eu\)](#)

<sup>(2)</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, OJ L 201, 27.7.2012, p.1.

Finally, the Regulation as amended would grant EBA the additional task to set up a central validation function for the elements and general aspects of pro-forma models, and changes thereto, used or to be used by a subset of financial and non-financial counterparties as part of the risk-mitigation techniques used on their portfolios of non-centrally cleared OTC derivatives. Consequently, in accordance with Article 11(12a) of the Regulation as amended, EBA would be able to charge annual fees, per pro-forma model, to those financial and non-financial counterparties using the pro-forma models validated by EBA.

In accordance with the text of the political agreement, the fees would need to be proportionate to the monthly average outstanding notional amount of non-centrally cleared OTC derivatives over the last 12 months of the counterparties concerned using the pro-forma models validated by EBA and would need to be assigned to cover all costs incurred by EBA for the performance of its tasks in relation to the validation of pro-forma models. EBA would charge fees based on a Regulation on fees to be adopted by the Commission in the form of a delegated act.

I am therefore writing to ask EBA to provide its technical advice in line with the provisional mandate enclosed to this letter. The timeframe for this important work is tight. Following the entry in force of the different provisions pertaining to uncleared derivatives portfolios subject to the obligation to exchange margins and for which an initial margin model is used, market participants need clarity on the rules that will apply to them to allow for an effective application of the set of measures.

I would be grateful if EBA submits its technical advice before 30 June 2025.

Yours sincerely,

Electronically signed

John BERRIGAN

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Enclosure: Provisional request to the European Banking Authority (EBA) for technical advice on a possible delegated act specifying the method for the determination of the amount of the fees, and the modalities of the payment of such fees, to be paid by financial and non-financial counterparties requiring the validation of pro-forma models under the European Market Infrastructure Regulation (EMIR).

c.c.: Ward MOHLMANN, Alexandra JOUR-SCHROEDER, Ugo BASSI, Jennifer ROBERTSON, Sebastijan HROVATIN.