

## Deutsche Börse Group

Comments on Bank of England's consultation papers on the  
Bank of England's approaches to tiering of incoming central counterparties  
under EMIR Article 25 and to comparable compliance under Article 25a

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## A. Introductory remarks

Deutsche Börse Group (DBG) provides central clearing services for cash, energy, commodity, and derivatives markets both for listed as well as certain over-the-counter (OTC) financial instruments through its EU-EMIR-authorized CCPs Eurex Clearing AG (ECAG) and European Commodity Clearing AG (ECC). Currently, both ECAG and ECC are also providing clearing services to members domiciled in the United Kingdom (UK) under the UK's Temporary Recognition Regime (TRR).

As such, we appreciate the possibility to respond to the two consultation papers published by the Bank of England (BoE) on its approaches to tiering non-UK CCPs (incoming CCPs) under UK EMIR Article 25 and to comparable compliance under Article 25a. We believe these proposals are an important step to create certainty and a basis for planning for all incoming CCPs beyond the expiration of the TRR.

## B. Comments on the BoE's approach to tiering of incoming central counterparties under EMIR Article 25

We appreciate that the proposal relies on the guiding principle of regulatory deference, similar to many other jurisdictions globally. As such we agree with the BoE's approach that a jurisdiction's exposure should be reflected in the overall supervision accordingly, while at the same time trying to mitigate inefficiencies.

The proposal foresees a sound principle of proportionality by requiring incoming CCPs with greater systemic importance for the UK's financial stability to fulfill key UK requirements and being subject to direct supervision by UK authorities. The proposed logic of assessing systemic importance of incoming CCPs also reflects and formalizes this proportionality principle. Against this background, we believe that the proposed approach to tiering combining qualitative and quantitative measures is reasonable.

With regards to the proposed quantitative measures such as the triage test, we believe that the metrics Initial Margin and Default Fund Contributions are adequate to evaluate risk exposure.

However, the consultation paper proposes a lookback period of five years for those quantitative thresholds, while from our perspective a forward-looking approach would be more appropriate and targeted to capture expectable developments (e.g., estimations of volumes of the next year) that may be of systemic relevance. This appears particularly important in the current situation, where the recent withdrawal of the UK from the EU already led to relevant structural changes and may lead to further changes in the mid- to long-term that are unlikely to turn back.

Against this background, we question why an incoming CCP that has exceeded the threshold at any point in the last five years, but may be below the threshold today, would be considered tier 2 based on the triage test. The importance of current margin and default fund levels should be higher than evaluating levels from the last five years.

Thus, from our perspective it appears more adequate to add a consideration of the trend of exposure into the tiering decision and significantly shorten the lookback period and/or look at yearly averages. In comparison, the European Commission Delegated Regulation 2020/1303 setting out the EU's quantitative measures for tiering third country CCPs for example only formulates a lookback period of two years and refers to average values of Margin and Default Fund Contributions.

Further, the thresholds applied in the EU tiering logic are significantly higher – i.e., the aggregate level of margin requirements and Default Fund Contributions held by EU Clearing Members (incl. clearing members with a headquarter located in the EU) is over EUR 25 billion (ca. GBP 20.8 billion).

So overall, the tiering logic proposed by the BoE includes a significantly shorter lookback period, the consideration of peak values (“at any point in time”) and significantly lower thresholds (BoE proposal of GBP 11 billion versus GBP 20.8 billion in the EU's Delegated Regulation). In consideration of the common aim to create a level playing field and our above outlined thoughts on the lookback period, it appears adequate to align the thresholds.

Additionally, we would propose to include further quantitative elements that allow assessing the exposures in GBP in more detail within an incoming CCP as another quantitative element to assess the systematic relevance.

For the qualitative measures, we believe it is important to formulate these as clearly as possible to create best possible transparency and common expectations among the BoE and incoming CCPs. Against that background, we appreciate that the BoE has added further guidance to the information to be reviewed under the criteria to be evaluated within the systemic risk assessment (as specified in EMIR 2.2). We believe additional weighting of the different criteria may further increase transparency and would clarify BoE's expectations towards incoming CCPs.

With a view on the proposed informed reliance assessment, we agree with the additional points to be considered, to cater for the higher relative UK exposure determined in the proportionality test. We agree with the BoE that a well-functioning cooperation between supervisors is instrumental to increase efficiency and to avoid duplicative work for regulators and incoming CCPs.

In addition, and from a more holistic viewpoint, we are convinced that a good regulatory and supervisory cooperation contributes to enhancing the global nature of markets and most importantly improving financial stability across borders. Against that background it may, again as

for the systemic risk assessment, be helpful to add and specify which points are of specific importance to the BoE, to enhance a common understanding and clarify the BoE's expectations of incoming CCPs.

As mentioned above, we agree with the BoE's approach to reflect a jurisdiction's exposure in the supervisory influence. Though it may not be the key point of this consultation paper, it would be helpful to get a better understanding of this approach in practice as to what extent BoE would rely on local supervision and in which cases BoE would plan to take supervisory measures themselves.

### C. Comments on the BoE's approach to comparable compliance under EMIR Article 25a

The consultation paper on the BoE's approach to comparable compliance connects directly to the consultation paper on tiering of incoming CCPs.

The proposed rationale to grant relief to incoming CCPs from having to fulfill requirements from both the UK and the home regimes where local requirements will lead to same or similar supervisory outcome is much appreciated. This would take off regulatory burden from supervisors and incoming CCPs, where it can be ensured that this would not impair financial stability. The proposal would further confirm the trust in regulatory deference where an incoming CCP is not deemed systemically relevant. Overall, the implementation will improve efficiency for supervisory authorities and incoming CCPs.

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DBG trusts that our comments are seen as a useful contribution to the BoE's approach to tiering and comparable compliance of incoming CCPs under EMIR Article 25 and Article 25a and remains at the disposal of the BoE for any questions and additional feedback.