CMCE response to ESMA consultation on draft RTS amending Commission Delegated Regulation (RTS) 153/2013 in relation to public guarantees, public bank guarantees and commercial bank guarantees as collateral and in relation to certain aspects of investment policy and highly secure arrangements for the deposit of financial instruments.

29 April 2026

Opening remarks

CMCE welcomes the opportunity to respond to ESMA's consultation on guarantees as CCP collateral.

As EMIR 3 seeks to improve access to clearing for non-financial counterparties (NFCs), including those clearing indirectly, it is essential that the accompanying RTS reinforce this objective by ensuring that guarantees remain both eligible and genuinely usable in practice.

Commodity markets can be subject to volatility triggering sudden increases in margin, so the use of bank guarantees and letters of credit (LCs), including uncollateralised guarantees, can increase the liquidity available to NFCs during such times, thereby facilitating their ability to meet these requirements and improving overall market resilience. These instruments are deeply embedded in established trade-finance structures, widely standardised under internationally recognised ICC rules, and central to the liquidity management of commodity-market participants. This is particularly important for smaller NFCs, for whom guarantees are a critical and often irreplaceable source of liquidity enabling continued access to hedging.

A regulatory framework that introduces unnecessary complexity, prescriptive conditions, or de facto constraints on the use of guarantees risks reducing their availability, increasing costs, and ultimately undermining the policy intent of EMIR 3.

CMCE therefore supports a principles-based, risk-sensitive approach that preserves CCP discretion, recognises the operational realities of commodity markets, and maintains proportionate access to clearing for a diverse range of NFCs.

Question 1: Do you agree that the existing provision on concentration limits should apply to guarantees and as such Article 42 should be amended to provide legal clarity on this?

CMCE answer

CMCE agrees that concentration limits should apply to guarantees and supports clarifying this in Article 42 to provide legal certainty. However, it is essential that the framework remains principles-based and sufficiently

flexible, allowing CCPs to calibrate concentration limits according to the specific risk characteristics of guarantees and relevant circumstances.

Prescriptive or overly restrictive concentration limits could undermine the practical usefulness of guarantees by constraining well-established arrangements. CCPs already maintain robust risk-management frameworks that include internal credit assessments, stress testing, and active concentration monitoring. A more flexible approach, supported by appropriate supervisory oversight, is therefore better positioned to deliver sound risk-management outcomes while preserving clearing access for NFCs.

Introducing guarantees and LCs would in itself facilitate the diversification of credit risk by enabling commodity firms to access additional liquidity, rather than relying on the existing range of facilities and providers.

Question 2: Do you agree with the inclusion of the level of collateralisation of the guarantee as a criterion for the CCP to consider when establishing concentration limits?

CMCE answer

CMCE recognises that the level of collateralisation might in some cases be a relevant consideration within CCP risk assessments. However, it is essential that this criterion does not introduce an implicit bias against uncollateralised guarantees. The key consideration for the CCP should be the credit-worthiness of the guarantor, which would not be dependent on whether the guarantee itself is collateralised.

In commodity markets, including OTC commodity/energy trading markets, uncollateralised guarantees are a long-standing and widely used mechanism through which firms access liquidity. Imposing collateralisation requirements at the level of the guarantor would, in practice, duplicate margin obligations already borne by NFCs. Rather than mitigating risk, this would heighten liquidity pressures at precisely the moments when firms need flexibility most.

Uncollateralised guarantees are explicitly recognised under EMIR 3 and remain critical to enabling NFCs to manage liquidity and meet margin calls, particularly during periods of market stress when cash demands can rise sharply and unpredictably.

Any reference to collateralisation should therefore remain proportionate and non-prescriptive, forming one element of a broader, risk-based assessment of the credit protection provided by the guarantee, rather than functioning as a de facto constraint on the continued use of uncollateralised guarantees.

Q3. Do you agree with the inclusion of the new criteria (e) in paragraph 3 of Article 42, so that the CCP can consider the activity of the non-financial client when setting concentration limits?

CMCE answer

CMCE supports the inclusion of the non-financial client's underlying activity as a factor that CCPs may consider when setting concentration limits, provided this is applied at a sector and asset class risk-based level and does not create additional requirements for clearing members or their clients.

In our view, the commercial sector in which NFCs operate, together with the underlying type of derivative positions is most likely to be relevant when assessing potential concentration and correlation risks at CCP level. NFCs with physical assets to manage and transport mostly dealing in commodity derivatives are likely to present different risk characteristics from NFCs active predominantly in financial derivatives such as interest rate, credit or equity products.

This type of sectoral and product-based assessment of the activity of NFCs would enable CCPs to assess whether clearing members and banks issuing guarantees or LCs are exposed to correlated risks and maintain sufficient diversification exists when guarantees or guarantee-type instruments are accepted as collateral.

However, it is important that this criterion remains a matter for the CCP to take into consideration in a principles-based assessment. Assessing underlying activity can be complex and may require additional information flows between clients, clearing members, and CCPs. Any requirement should therefore avoid imposing disproportionate operational burdens or creating uncertainty that could, in practice, discourage the continued use of guarantees. Wherever possible, this should be based on information that is already available to CCPs, high-level classifications communicated by clearing members where appropriate, or aggregated sector-based data used to set proportionate and appropriately risk-sensitive concentration limits.

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Question 4: Shall there be specific concentration limits established for guarantees provided by non-clearing members, given these exposures are not considered in the Stress Test?

CMCE answer

CMCE does not support the introduction of prescriptive concentration limits specifically targeting guarantees provided by non-clearing members.

In practice, many NFCs rely on guarantees issued by non-clearing member banks, often as part of long-standing trade finance relationships. Although these institutions may not be clearing members, they play a critical role in providing liquidity to commodity firms. Imposing additional regulatory limits on such guarantors risks reducing their willingness to issue guarantees or increasing the associated costs.

This could narrow the pool of available guarantors, heighten reliance on a small number of institutions, and ultimately exacerbate concentration risks rather than mitigate them.

CCPs already capture exposures to guarantors within their existing risk-management frameworks, including through internal credit assessments and concentration monitoring. A risk-sensitive, CCP-led approach is therefore better suited to managing these exposures than rigid, prescriptive regulatory limits.

Question 5: Is ESMA's understanding correct? Are there other essential features of the guarantees that should be highlighted?

CMCE answer

CMCE broadly agrees with ESMA's description of how guarantees operate in the context of CCP collateral.

It is important to emphasise, however, that in commodity markets guarantees are deeply embedded within established financing and risk-management structures. Letters of credit and bank guarantees are widely used not only for clearing purposes but also across physical trading activities, including OTC commodity/energy trading, inventory financing, transportation, and bilateral contractual arrangements.

These instruments are typically issued within long-standing banking relationships and are often governed by internationally recognised standards, such as the International Chamber of Commerce (ICC) rules. As a result, they are generally standardised, well-understood, and operationally efficient.

Their effectiveness depends on certainty of execution, simplicity of structure, and alignment with prevailing market practices. A regulatory framework that introduces significant departures from these established

features, such as complex structuring requirements or restrictive legal conditions, risks undermining their usability and availability in practice.

Letters of credit (LCs) also play a significant role in commodity-market financing and operate in practice in a manner closely comparable to bank guarantees. LCs are typically issued under internationally recognised ICC frameworks, such as ISP98 or UCP600, which provide clear, standardised rules governing their issuance, presentation, and enforceability. Their widespread use across physical trading, inventory financing, and clearing reflects their reliability, operational efficiency, and strong legal underpinnings. As with bank guarantees, their effectiveness depends on certainty of execution and alignment with established market practice.

Question 6: Do you agree with the conditions proposed by ESMA? Please provide your views specifically for each condition (a), (b), (c) and (d).

CMCE answer

CMCE supports the objective of establishing conditions for the use of guarantees by NFCs, as this is a key element of improving access to clearing under EMIR 3. However, it is essential that these conditions remain proportionate and operationally feasible.

(a) Identification of the client - CMCE agrees that clearly identifying the NFC is appropriate and consistent with market practice.

(b) Beneficiary structure - CMCE agrees that the CCP should be the beneficiary of the guarantee and supports the inclusion of transfer clauses. In practice, this flexibility will facilitate changes in clearing arrangements, porting of client positions, or default-management processes. Allowing the CCP to remain the beneficiary throughout the lifecycle of the guarantee ensures legal certainty and operational continuity, while transfer clauses provide the necessary adaptability.

(c) Individual segregation - CMCE has concerns regarding this requirement (see response to Q7), as mandatory individual segregation may introduce substantial operational complexity and cost.

(d) Restrictions on guarantor relationships - While the principle of avoiding conflicts of interest is understood, these restrictions should be applied proportionately and should not unduly limit the availability of guarantees in practice.

Overall, CMCE emphasises that it is not sufficient for guarantees to be theoretically eligible. They must remain practically usable. Conditions that increase cost, complexity, or execution uncertainty risk discouraging their use and undermining access to clearing for NFCs.

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Question 7: In relation to condition (c), do you agree with ESMA proposal? If not, is it in your opinion legally and practically feasible that guarantees are posted to an omnibus account?

CMCE answer

CMCE does not support mandating individual segregation for guarantees. From both a legal and operational perspective, it is feasible for guarantees to be posted to an omnibus account, provided that the CCP maintains appropriate records to identify the underlying client exposure.

In commodity markets, operational processes are typically built around scalable account structures that allow firms to manage multiple positions efficiently. Requiring individual segregation for guarantees would introduce significant complexity, increase costs, and reduce operational flexibility without delivering commensurate risk-management benefits.

An omnibus structure, combined with robust internal record-keeping and transparency requirements, can achieve the necessary level of risk control while preserving the usability of guarantees for NFCs.

Question 8: Is there any other condition you consider would be necessary in relation to the extension of the use of guarantees to guarantee non-financial clients? E.g. should it be mandated that CCPs have in place a mechanism to identify the default of a non-financial client?

CMCE answer

CMCE does not consider that additional prescriptive conditions are necessary beyond those already proposed, provided the overall framework remains principles-based and risk-sensitive.

In commodity markets, risk-management processes are already well developed, with clearing members and CCPs monitoring exposures at both the portfolio and client level. Introducing further mandatory requirements, such as specific mechanisms for identifying client defaults, may duplicate existing controls and increase operational complexity without delivering clear risk-management benefits.

Any additional conditions should therefore be carefully assessed to ensure they do not create unnecessary barriers to the use of guarantees, particularly for smaller NFCs with more limited operational resources.

Question 9: Do you agree with ESMA's proposal to require that there are a credit rating and reliable financial data on the guarantor available for the CCP to use in its internal assessment?

CMCE answer

CMCE agrees that CCPs should have access to reliable financial information to support their assessment of guarantors, as part of effective risk management and the resilience of clearing. However, it is important that this requirement does not unduly restrict the pool of eligible guarantors. In practice, many institutions providing guarantees may not have a formal external credit rating, but are nonetheless subject to robust internal credit assessments by CCPs and clearing members.

A framework that relies too heavily on external credit ratings risks excluding otherwise suitable guarantors, reducing availability and increasing costs for NFCs. The RTS should therefore allow for flexible, risk-based assessment methodologies, ensuring that CCPs can rely on a range of relevant information rather than introducing de facto eligibility constraints.

Question 10: Do you consider that the direct access of a public guarantor to real-time gross settlement systems such as T2 should be a requirement for public guarantors? Please provide evidence or reasoning to support your response.

CMCE answer

CMCE does not consider direct access to real-time gross settlement (RTGS) systems, such as T2, to be a necessary requirement for public guarantors. The key risk considerations for CCPs relate to the creditworthiness, enforceability, and operational reliability of the guarantee, rather than the guarantor's access to a specific payment infrastructure.

Many public institutions that may act as guarantors do not have direct RTGS access but nonetheless meet high standards of financial soundness and legal certainty. Imposing this requirement could unnecessarily restrict the pool of eligible public guarantors without materially improving risk outcomes.

A principles-based assessment of the guarantor's financial strength and operational capacity is therefore more appropriate than a prescriptive RTGS-access requirement.

Question 11: Do you agree that public guarantees should be accompanied by a legal opinion confirming the effective representation of the guarantor, the validity of the guarantee and its enforceability?

CMCE answer

CMCE agrees that public guarantees should be supported by appropriate legal certainty regarding their validity and enforceability, including through the use of legal opinions where necessary. This helps ensure that guarantees can be relied upon and executed promptly in a default scenario, supporting effective risk management and the orderly functioning of clearing markets.

Question 12: Do you agree that the conditions for commercial bank guarantees should explicitly foresee that the guarantor is a credit institution as defined in CRR?

CMCE answer

CMCE agrees that it is important for guarantors to meet high prudential and supervisory standards. However, requiring that all guarantors be credit institutions as defined under the CRR may be overly restrictive.

In practice, a range of regulated financial institutions, including certain investment firms, public financial bodies, and specialised trade-finance institutions, may be well-placed to issue guarantees and are already subject to robust oversight. Limiting eligibility strictly to CRR credit institutions risks reducing the availability of guarantees, particularly for NFCs in commodity markets that rely on a diverse set of relationship banks and specialised lenders.

CMCE therefore supports a more flexible, risk-based approach that allows CCPs to assess guarantors against clear prudential and creditworthiness criteria, without imposing a rigid institutional definition that could narrow the guarantor pool unnecessarily.

Question 13: Do you agree that the possibility for CCP to accept uncollateralised bank guarantees should be specified in Section two of Annex I of RTS 153/2013?

CMCE answer

CMCE agrees that the possibility for CCPs to accept uncollateralised bank guarantees should be clearly specified in Section Two of Annex I of RTS 153/2013.

Providing explicit regulatory clarity is important to ensure consistent implementation across CCPs and to avoid any ambiguity that could limit the practical availability of guarantees. This should encompass both traditional bank guarantees and LCs, which operate in a functionally equivalent manner and are widely used across commodity-market financing.

Uncollateralised guarantees are an important tool for NFCs, particularly in commodity markets where margin requirements can be significant and volatile and where access to highly liquid assets may be constrained. Their availability supports firms' ability to meet margin calls and continue hedging their commercial risks, including during periods of market stress when liquidity pressures can intensify rapidly.

Explicit recognition within the RTS would therefore reinforce the policy intent of EMIR 3 to improve access to clearing for NFCs and ensure that CCPs can continue to accept these instruments within a clear and risk-sensitive framework.

Question 14: Do you agree with ESMA that the conditions applicable to commercial bank guarantees should also be applicable to public bank guarantees? Please specify in your answer whether any addition condition should be considered.

CMCE answer

CMCE supports a consistent approach whereby the core conditions applicable to commercial bank guarantees also apply to public bank guarantees. The key risk considerations, such as creditworthiness of the guarantor, enforceability of the guarantee, operational reliability, and clarity of contractual term, are broadly similar irrespective of whether the guarantor is a commercial or public institution.

Applying a common baseline of conditions promotes regulatory coherence and avoids introducing unnecessary complexity or fragmentation into the framework.

At the same time, it is important that this alignment remains proportionate and sufficiently flexible to reflect the specific characteristics of public institutions. CCPs should retain the ability to take these differences into

account within their existing risk management frameworks rather than being subject to overly rigid or prescriptive requirements.

CMCE does not consider that additional conditions are required beyond those already proposed, provided that the overall framework remains principles-based and proportionate. Any further requirements should be carefully assessed to ensure they do not inadvertently restrict the availability of guarantees or impose operational burdens that would disproportionately affect NFCs.

Question 15: Do you agree with the proposed way to address the lack of definition of "public bank"?

CMCE answer

CMCE supports clarifying the definition of "public bank" to ensure consistent application across CCPs. Legal certainty is important both for CCPs and for NFCs relying on public guarantees as part of their liquidity management.

However, any definition should remain sufficiently broad to capture the diverse range of public financial institutions operating across Member States, including export-credit agencies, development banks, and state-backed financial institutions that play a significant role in commodity-market financing.

A definition that is too narrow could inadvertently exclude credible public guarantors and reduce the availability of guarantees. CMCE therefore supports a principles-based definition focused on public ownership, public mandate, and prudential oversight, rather than a prescriptive institutional classification.

Question 16: Do you agree with the proposed change concerning the conditions under which debt instruments can be considered highly liquid, bearing minimal credit and market risk (and hence considered as eligible financial instruments for the purpose of CCP investment policy)?

CMCE answer

CMCE supports the proposed expansion of eligible instruments for CCP investment policy.

From a commodity market perspective, diversification and liquidity are critical components of effective CCP treasury management. Broadening the range of highly liquid, high-quality instruments available for investment can enhance CCPs' ability to manage liquidity efficiently, particularly during periods of market stress when market conditions may shift rapidly and access to certain asset classes may tighten.

Expanding eligibility to include instruments issued by highly rated supranational entities is consistent with this objective. Such instruments are generally characterised by strong credit quality, deep and stable secondary markets, and predictable performance across the cycle. Their inclusion can therefore strengthen the resilience of CCP investment portfolios, reduce concentration in a narrow set of sovereign issuers, and support the broader stability of the clearing ecosystem.

Overall, a more diversified and robust set of eligible instruments contributes to sound liquidity-risk management and reinforces the capacity of CCPs to meet their obligations under stressed conditions.

Question 17: Do you agree with the proposed change concerning the highly secure arrangements for the deposit of financial instruments posted as margins or as default fund contributions?

CMCE answer

CMCE supports the objective of ensuring that financial instruments posted as margin or default-fund contributions are held under highly secure arrangements. Safeguarding collateral is essential to maintaining confidence in the clearing system. However, it is important that the framework remains proportionate and does not impose operational constraints that limit CCPs' ability to manage collateral efficiently. In commodity markets, where margin flows can be large and volatile, CCPs require flexibility to use a range of secure custodial and settlement arrangements that meet high standards of protection while supporting timely settlement and liquidity management.

CMCE also recognises the need for the framework to accommodate the specific characteristics of assets such as emission allowances, including through appropriate secure deposit arrangements. CMCE therefore encourages ESMA to adopt a framework that preserves CCP discretion, avoids prescriptive constraints, and ensures guarantees remain a viable and scalable source of liquidity for NFCs across the commodity markets.