CONSULTATION RESPONSE

Energy Traders Europe response to the ESMA Consultation Paper on the draft Regulatory Technical Standard (RTS) in relation to public guarantees, public bank guarantees and commercial bank guarantees as collateral

Brussels, 29 April 2026 - Energy Traders Europe welcomes the possibility to provide feedback on the ESMA Consultation Paper on the draft Regulatory Technical Standard (RTS) in relation to public guarantees, public bank guarantees and commercial bank guarantees as collateral. Provided that the relevant conditions set out therein are not too restrictive to be useful in practice, the proposed RTS will broaden the range of eligible collateral available to Non-Financial Counterparties (NFC), enabling them to diversify their collateral choices manage their liquidity more effectively (including in times of market stress), and release cash reserves. This, in turn, will support investment projects to enable the energy transition and help firms better navigate stressed markets scenarios, which can be particularly cash-intensive due to volatile margin call requirements.

It is also important to note that for commercial NFCs, Initial Margin (IM) and Variation Margin (VM) requirements can increase simultaneously, and these shifts can be significant during periods of market stress. For NFCs, which do not necessarily have ready access to large pools of liquid financial assets, both IM and VM must often be posted entirely in cash. This can create a specific challenge for NFCs engaged in physical commodity markets who often hedge their exposures on exchange. In such cases, during periods of rising commodity prices, a firm may have entered into a forward physical sale for which it will only receive payment at a later stage (e.g. upon delivery). While the physical position may be economically in-the-money, the corresponding hedge position on exchange can be out-of-the-money, requiring the posting of cash variation margin in addition to initial margin. As a result, the firm is required to post cash collateral on the hedge position while not yet receiving cash from the underlying physical transaction. This creates a liquidity

timing mismatch, even though the NFC's market risk exposure is effectively hedged over time. This illustrates the broader liquidity risk that NFCs must manage alongside market risk and counterparty credit risk. If properly calibrated, this RTS can support NFCs in managing such liquidity risk more effectively, while still enabling them to maintain hedging positions at CCPs.

Key messages

Against this background, we broadly support the conditions proposed by ESMA and welcome the approach. We offer a few targeted suggestions on specific elements where greater flexibility and clarity could further en-hance market participants' ability to use this type of collateral:

1. **Definition of eligible instruments:** "Uncollateralised bank guarantees" should be under-stood as instruments that ensure a full and timely enforceability by Central Counterparties (CCPs) by fulfilling the fundamental criteria of being unconditional, irrevocable and payable on first demand. Existing international instruments such as the Standby Letters of Credit (SBLCs) already satisfy these standards and may serve as relevant examples.
2. **Beneficiary structure and enforcement mechanisms:** The proposal that a CCP may only call a guarantee upon the default of a clearing member appears difficult to implement in practice and risks disincentivising clearing members from accepting such instruments as collateral. In this regard, we suggest adopting a clear and operational dual-beneficiary structure to address various default scenarios. Such a structure should enable a mechanism whereby a CCP can exercise its right over the guarantee to cover losses arising from a clearing member's default, while also allowing the same guarantee to be used by at CM level to recover losses from a client default when not affecting the CCP. We better explain the details of the structure below.
3. **Segregation requirements:** Mandatory allocation to an Individual Segregated Account (ISA) is overly prescriptive and would significantly complicate implementation. From an operational perspective, guarantees can be posted on a

gross omnibus account, ensuring that they remain fully accessible to the CCP in the event of a CM default, while also reducing client identification requirements.

4. **Prudential regulation of bank guarantee as collateral:** While we do not consider the prudential constraints applicable to banks acting as clearing members, in particular the capital treatment of bank guarantees under the Capital Requirements Regulation (CRR) and the European Banking Authority's guidance (credit conversion factor framework), to constitute a tangible constraint to the eligibility of guarantees as collateral, we consider that these constraints may nevertheless limit their practical use in the EU clearing ecosystem. In this context, there may be merit in ESMA engaging with the relevant prudential authorities, including the EBA, to further assess whether the current prudential treatment appropriately reflects the risk-mitigating characteristics of such instruments.

Questions

Q1 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?

Energy Traders Europe agrees that the existing framework on concentration limits under Article 42 of RTS 153/2013 should also apply to guarantees and supports the proposed amendment to provide legal clarity in this respect.

We welcome ESMA's preferred principles-based approach, which allows CCPs to set risk-sensitive concentration limits rather than relying on prescriptive quantitative thresholds. A framework based on fixed concentration limits would lack the flexibility needed to accommodate evolving market conditions and may inadvertently restrict access to clearing for non-financial counterparties relying on guarantees, particularly in commodity markets. Where concentration is effectively managed at clearing member account level, the relevant metric should be the aggregate exposure within the account. Accordingly, CCPs should retain flexibility to allow higher use of guarantees at individual client level, provided that overall concentration at account and issuer level remains within limits.

At the same time, the effectiveness of a flexible framework depends on its consistency and predictable implementation. It is therefore important that CCP rules on concentration limits remain sufficiently transparent and are applied in a harmonised and consistent manner across CCPs, in order to avoid fragmentation or overly conservative interpretations that could undermine the in-tended benefits of the expanded collateral framework under EMIR 3.

Q2 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?

Energy Traders Europe acknowledges the need for CCPs to assess the risk profile of guarantees. However, the reference to the "level of collateralisation" may create ambiguity. In particular, it could be interpreted as favoring collateralised guarantees, thereby resulting in a systematic disincentive for the use of uncollateralised bank guarantees, which are a key instrument for non-financial counterparties. Non-financial counterparties have consistently advocated for the use of uncollateralised bank guarantees, particularly during and following the recent energy price crisis, highlighting the need to diversify collateral between cash and non-cash instruments.
Therefore, we do not agree that point (d) should be added to the third paragraph of Article 42. It would be preferable to clarify that CCPs should assess the overall credit quality and enforceability of the guarantee, rather than its collateralisation, in order to avoid unintended restrictions on otherwise robust and widely used instruments. Where NFCs have sufficient eligible collateral available, they would typically post it directly, thereby avoiding the additional costs associated with committed credit lines or guarantees (e.g., utilisation fees). Our recommendation therefore better reflects the core objective of this RTS, which is to enable the use of uncollateralised bank guarantees or letters of credit by NFCs.

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?

Energy Traders Europe fully supports the inclusion of criteria (e), allowing CCPs to take the under-lying activity of non-financial clients into account when setting concentration limits, as it introduces a necessary element of proportionality and better reflects the economic reality of hedging-driven exposures in non-financial sectors. For many non-financial energy companies, the use of bank or public guarantees is not the result of an excessive risk profile, but rather the consequence of their business model. These entities hold substantial physical assets related to generation, distribution or retail activities, and their derivative exposures, typically linked to hedging these operational needs, are supported by tangible assets. At the same time, they often do not have large pools of highly liquid financial assets, which explains their reliance on bank or public guarantees as eligible collateral.

At the same time, concentration risk should be assessed in light of sectoral exposures and the degree of diversification at the level of clearing members and issuing banks, rather than solely at the level of individual NFCs. CCPs should have sufficient visibility, including at client level, to monitor aggregate exposures and reflect such considerations when setting appropriate limits.

We note that the effectiveness of criterion (e) depends on clear communication along the clearing chain, from non-financial clients, through clearing members, to CCPs. We emphasize that cooper-ation throughout this chain is essential: timely and accurate transmission of information ensures that non-financial clients can fully benefit from the risk-sensitive application of concentration limits, while enabling CCPs to make informed and proportionate risk assessments.
Additionally, it is also important to recall the severe liquidity stress experienced during the energy price spike in 2022, when unprecedented volatility led to continuous and steep margin calls. Many non-financial energy companies faced acute liquidity pressure due to the rapid and repeated updating of collateral requirements, as they effectively had to post both IM and VM entirely in cash. Allowing CCPs to consider the nature of the underlying activity can therefore help prevent disproportionate liquidity impacts on fundamentally sound non-financial entities who are balance sheet strong but do not have ready access to

large pools of highly liquid financial assets. This improves risk sensitivity, avoids unintended liquidity stress, and supports both financial stability and the proper functioning of energy markets.

Q4 Shall there be specific concentration limits established for guarantees provided by non-clearing members, given these exposures are not considered in the Stress Test?

Energy Traders Europe considers that specific, prescriptive concentration limits for guarantees provided by non-clearing members are unnecessary. While these exposures are not currently captured in the standard stress tests, they should be assessed and managed within the CCP's risk management framework. Guarantees from non-clearing members can provide additional liquidity and flexibility for non-financial clients, and they are generally not associated with a double default risk – considering that they are not linked to any clearing member. Accordingly, risk-sensitive internal limits and assessments are sufficient to ensure that these guarantees do not pose undue risk to CCPs or the wider market.

Q5 Is ESMA's understanding correct? Are there other essential features of the guarantees that should be highlighted?

Energy Traders Europe does not consider ESMA's understanding, as set out in paragraph 20, to be fully accurate and believes that important of the functioning of guarantees have not been adequately considered. In particular, limiting the use of guarantees to situations where the clearing member defaults would make such instruments ineffective in practice. Under the riskless principal model, the clearing member is responsible for the performance of its clients and manages client defaults, including through the use of posted collateral. If guarantees cannot be relied upon in the event of a client default, they do not reduce the clearing member's exposure and will therefore not be accepted as collateral.
For guarantees to be a viable collateral instrument, they must contribute to reducing default risk exposure as protection of the CCP but also of the Clearing Member (in the

case of a client's default). This requires that guarantees can be used in the context of a recovery of default of CM or Client. Below some clarifications.

- **Beneficiary structure:** It is crucial that the beneficiary structure of the guarantee provides adequate protection for both the CCP and the clearing member (CM) in the event of CM and/or Client default. Guarantees naming only the CCP as beneficiary would not match the princi-pal-to-principal structure of clearing system which require CCP to be covered against CM exposure and respectively CM to be covered against Client default. We therefore recommend a dual beneficiary structure under the following structure:
  - The CCP acts as first ranked ultimate beneficiary; and
  - The CM acts as a second ranked beneficiary able to rely on the guarantee, including in the event of a client default, once the CCP's claim has been satisfied or released.

  This model ensures that guarantees are usable in both CM and client default scenarios and reduce considerably the operational burden and related costs of transformation of collateral carried by the CM.
- **Principle-based model:** Independently from the practical instrument that would be authorised by CCP, what matters is, that the guarantee can be enforced in a timely and reliable way by its beneficiary. To achieve this they must be unconditional, irrevocable and payable on first demand – in line with Annex 1, Section 2, paragraph 1(d) of RTS 153/2013 – ensuring a high degree of legal certainty and usability in stress situations. In this context, these principles require that enforceability is not subject to additional conditions that would delay or restrict access when risks materialise. Limiting access to guarantees solely to cases of clearing member default would therefore be inconsistent with these principles.
- **Type of instrument:** "Commercial bank guarantees" should be understood as a broad category encompassing instruments such as Letters of Credit (SBLCs) and other equivalent forms of bank-issued collateral, provided they meet the relevant conditions for use by CCPs and are operationally workable in practice. In reality, for the framework to function effectively, it is essential that uncollateralised SBLCs (or demand guarantees) are explicitly included. International market standards and

related legal documentation already exist for such instruments, which are well-established and widely used in day-to-day OTC collateral management, as well as in clearing environments in other jurisdictions, such as the US, offering operational advantages and flexibility for market participants. A key risk management feature is the ability to call upon the instrument on a first-demand basis. In this respect, SBLCs and Letters of Credit (L/Cs) are unconditional, irrevocable and payable on demand, rather than only upon default, as is often the case for traditional guarantees. This ensures that payment to the CCP is irrevocably committed by the issuing bank up to the amount of the instrument. From a risk perspective, such instruments effectively reduce the credit exposure of the clearing member, as the obligation to pay the CCP is transferred to the issuing bank. Where the instrument is passed through as collateral, both the clearing member and the CCP can rely on this commitment, supporting robust risk management without increasing systemic risk. Their inclusion would therefore make the regime more workable while preserving its prudential objectives.

- **Prudential rules for Clearing Members:** As mentioned above, another consideration relates to prudential regulation under the CRR and EBA framework, in particular the capital treatment applicable to clearing members when accepting bank guarantees as collateral (credit conversion factor framework) to compensate client's exposure. Under the CRR, bank guarantees cannot be used by European banks to offset their credit exposure. EBA has confirmed in its Q&A (2015_1917 https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2015_1917) that such instruments are treated as unfunded credit protection. As a result, EU CMs incur capital costs when accepting guarantees as collateral, whereas non-EU clearing members may not be subject to the same constraints when operating under different prudential regimes. This divergence may create an uneven competitive playing field and could increase reliance on non-EU CMs.

While we understand that this falls outside ESMA's direct remit, it is important that ESMA acknowledges potential constraints arising from the prudential treatment of such instruments, which may affect their usability by clearing members and, consequently, their

effectiveness as eligible collateral at CCPs. It is important to ensure that the RTS and related rules do not inadvertently undermine one of the key objectives of EMIR 3.0, namely, to facilitate NFCs' access to clearing. Energy Traders Europe therefore highlights the importance of ensuring a level playing field in the prudential treatment of such instruments.

Q6 Do you agree with the conditions proposed by ESMA? Please provide your views specifically for each condition (a), (b), (c) and (d).

Energy Traders Europe broadly supports ESMA's proposed conditions, with additional practical considerations:

(a) *The guarantee must be issued to guarantee a non-financial client, clearly identifying this client:* we support this condition. Clear identification of the client ensures that the guarantee covers the correct positions and enables proper application of risk-sensitive concentration limits (criterion e under Article 42).

(b) *The beneficiary of the guarantee should be the CCP:* As indicated above, we recommend structuring bank guarantees issued by non-financial client that are not direct clearing members with two beneficiaries, the CCP as the primary and ultimate beneficiary and the Clearing Member as the secondary beneficiary. This arrangement would reduce the operation efforts and costs associated with collateral transformation for CM, while simultaneously allowing CM to be also protected in the case of a client's default. The CM's right would become effective once the CCP releases its exercise right on the guarantee as the ultimate beneficiary, providing both practical enforceability and flexibility. In this regard, ESMA already proposed in the draft RTS the option for guarantees to include a transfer clause to the benefit of the clearing member. We suggest that such a clause becomes a requirement for guarantees, in the form of the above-mentioned dual-beneficiary structure.

(c) *The guarantee must be posted to an individually segregated account at the name of the non-financial client who is the principal in the guarantee:* As non-financial counterparties (NFCs) and clients of clearing members, we welcome ESMA's objective of enhancing the segregation of client collateral. However, we do not

consider the allocation of collateral to individual segregated accounts (ISAs) to be necessary, and we consider the proposal overly restrictive and, in practice, is likely to undermine the practical effect of this proposal by making it unusable by the very NFC entities that it is intended to benefit. From an operational and risk perspective, guarantees can be posted to a clearing member's omnibus account while still ensuring full accessibility for the CCP in the event of a clearing member default. This approach preserves flexibility without undermining the CCP's ability to manage risk effectively. Where NFC clients wish to achieve a higher degree of collateral segregation, they should retain the option to do so through the use of ISAs, as already foreseen under the existing regulatory framework.

(d) *The guarantee should not be issued by an entity that is part of the same group as the non-financial clearing member or the non-financial client covered by the guarantee; nor, the clearing member of the non-financial client covered by the guarantee:* We agree that Guarantee should not be issued by an entity related to the non-financial client or clearing member.

Q7 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?

As mentioned in our response to Q6, we support the use of omnibus accounts for guarantees. While we understand ESMA's rationale that individually segregated accounts (Policy Option 1) could potentially ensure legal clarity, we would like to note that this option imposes significant IT, operational, and reconciliation costs. Clearing through a gross omnibus account is a more economical option for clients and allowing it would increase the attractiveness of voluntary clearing.

We consider the posting of guarantees to omnibus accounts practically feasible, as demonstrated both in the context of exchange-traded derivatives as well as in other jurisdiction, where Gross Omnibus Segregation Account (GOSA) is the standard segregation model. Successful implementation requires clear pre-requisites and alignment between CCP and CM, including:

- **Clear identification and operational tagging:** CCPs should be able to identify the specific client associated with each guarantee based on the information contained in the guarantee and through communication with the respective CM. Nevertheless, it's worth mentioning that when guarantees are posted to omnibus accounts, such client-level identification is of limited relevance, as CCPs' use of collateral is independent from its eligible form and relates only to the clearing member's default. The fact that a client is identifiable in the guarantee's documentation does not affect the treatment of the guarantee once it is posted within an omnibus account structure.
- Collateral access and liquidation: CCPs should ensure that different forms of collateral are appropriately reflected in their risk management and concentration frameworks, including as regards access and liquidation arrangements. This ensures that risk is adequately captured at account level despite the pooling of client positions. Where a non-financial counterparty seeks a higher level of segregation, it may opt for an individual segregated account (ISA), which provides explicit client-level identification and segregation. In such cases, the relevant client information is reflected in the guarantee's documentation and account structure.

Q8 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?

Energy Traders Europe believes that further arrangements should especially be targeted at the process of execution of a bank guarantee. This would e.g. mean that when a client of a CM fails and it is closing the positions, the CCP is informed. This might furthermore be helpful to align on the execution of the guarantee by the CCP, if necessary, or in case of full coverage of the CCP, that the CCP can waive the execution of the guarantee and leave it up to the clearing member to execute the guarantee.

Q9 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?

Energy Traders Europe acknowledges the importance of assessing the creditworthiness of public guarantors. However, we do not believe that a strict requirement for a formal credit rating and full financial data should be mandatory for all public guarantors.
Public guarantees are typically issued by entities whose creditworthiness is generally recognised derived from the public body owning it, even in cases where a formal rating is not available. Requiring formal credit ratings and comprehensive financial data could exclude smaller or lower-rated public entities that nonetheless provide highly reliable guarantees. A rigid requirement could increase compliance and operational costs for CCPs and participants without materially improving risk mitigation. Allowing practical flexibility ensures that public guarantees remain a usable and efficient collateral option, especially for non-financial clients.

Q10 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.

We do not have feedback on this question.

Q11 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?

Energy Traders Europe recognises the need to ensure enough protection for CCPs when accepting public guarantees. However, we do not consider it practical or proportionate to require independent legal opinions for every public guarantee.
Obtaining a full legal opinion for each public guarantee would be extremely costly and time-consuming. The burden on CCPs would inevitably fall on clearing members their

clients potentially discouraging the use of public guarantees and undermining the objective of increasing collateral flexibility and market liquidity. As mentioned, public guarantees are generally issued by sovereigns, public banks, or multilateral development banks, whose legal capacity and authority are typically well-established and publicly documented. CCPs already have internal legal and risk assessment frameworks to review enforceability and compliance before accepting guarantees.

Q12 Do you agree that the conditions for commercial bank guarantees should explicitly foresee that the guarantor is a credit institution as defined in CRR?

Energy Traders Europe agrees with Section 2 of Annex I to RTS 153/2013. While EMIR Article 46 (as amended by EMIR 3) already permits CCPs to accept fully uncollateralised public or commercial bank guarantees, specifying this in Annex I, provides legal clarity and harmonisation across CCPs, avoids divergent interpretations of eligibility rules and ensures the collateral framework fully reflects EMIR 3, supporting both CCP risk management and non-financial clients who may rely on bank guarantees rather than cash or other highly liquid instruments.

Additionally, we agree with the requirement that the guarantor of commercial bank guarantees should be a credit institution as defined under the CRR. At the same time, we believe that equivalent third-country regimes should also be recognised in order to provide flexibility and promote the international competitiveness of European markets. In this sense, third-country banks (including UK and US banks) that meet other creditworthiness conditions should not be excluded. This approach will strengthen legal certainty and harmonisation across CCPs, facilitate internal credit assessments and support calibration of risk-based concentration limits under Article 42.

These clarifications together provide a robust, harmonised, and operationally clear framework for CCPs to accept commercial bank guarantees while aligning with EMIR 3 objectives.

Q13 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?

Energy Traders Europe agrees that Section 2 of Annex I to RTS 153/2013 should explicitly state that a CCP may accept uncollateralised bank guarantees, including – as mentioned above – LCs. This provides legal certainty and harmonisation across CCPs and aligns Level2 text with the amended Article 46 EMIR. Specifying this option in Annex I avoids divergent interpretations and ensures that the collateral framework fully reflects EMIR 3's permanent broadening of eligible guarantees as a key learning from the crisis, beyond the temporary crisis measures. It supports both CCP risk management and non-financial clients who rely on bank guarantees to the same degree on cash or other highly liquid instruments.

Q14 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.

Energy Traders Europe agrees with ESMA's approach to align the conditions applicable to public bank guarantees with those for commercial bank guarantees.
Alignment ensures consistency in risk management standards and maintains robust collateral requirements, including irrevocability, unconditionality, enforceability, and timely availability of funds. Public bank guarantees, while issued by publicly owned banks, should adhere to the same risk principles to ensure CCPs can realise collateral without legal or operational impediments. Minor operational adjustments may be made to reflect public ownership (e.g., sovereign backstops), but no fundamental changes to risk standards are necessary. Previous points regarding non-financial client exposures and proportionality also apply to public bank guarantees.

Q15 Do you agree with the proposed way to address the lack of definition of "public bank"?

Energy Traders Europe agrees with ESMA's proposed approach to clarify the meaning of "public bank" in the absence of an EMIR 3 definition. However, Energy Traders Europe believes that the restriction of public guarantees to EEA related bodies is too restrictive. Either further European jurisdictions like the UK or Switzerland should be considered or the rating of the issuing country should be the driver rather than the sole EEA criterion. Other than with EEA, the issuing could be limited to country government related entities rather than also regional governments like in the EEA.

Q16 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)?

We do not have feedback on this question.

Q17 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?

We do not have feedback on this question.

Contact

Antonella Del Figliolo
Policy Manager – Market Supervision Committee
a.delfigliolo@energytraderseurope.org