



European Securities and
Markets Authority

Reply form to the Consultation Paper on the Clearing Obligation under EMIR (no. 2)



Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the questions listed in the Consultation Paper on the Clearing Obligation under EMIR (nO. 2), published on ESMA's website.

Comments are most helpful if they:

- respond to the question stated;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

To help you navigate this document more easily, bookmarks are available in "Navigation Pane" for Word 2010 and in "Document Map" for Word 2007.

ESMA will consider all comments received by **18 September 2014**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

How to use this form to reply

Please note that, in order to facilitate the analysis of the responses, ESMA will be using an IT tool that does not allow processing of responses which do not follow the formatting indications described below.

Therefore, in responding you are kindly invited to proceed as follows:

- use this form to reply and send your response in Word format;
- type your response in the frame "TYPE YOUR TEXT HERE" and do not remove the tags of type <ESMA_QUESTION_1> Your response should be framed by the 2 tags corresponding to the question; and
- if you have no response to a question, do not delete the tags and leave the text "TYPE YOUR TEXT HERE" between the tags.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.



Data protection

Information on data protection can be found at www.esma.europa.eu under the heading 'Legal Notice'.

Who should read this paper

All interested stakeholders are invited to respond to this consultation paper. In particular, responses are sought from financial and non-financial counterparties of OTC derivatives transactions which will be subject to the clearing obligation, as well as central counterparties (CCPs).



General information about respondent

Name of respondent	European Association of CCP Clearing Houses (EACH)
Are you representing an association?	Yes
Activity	Central Counterparty
Country/Region	Europe



Introduction

Please make your introductory comments below:

<ESMA_COMMENT_1>

The European Association of CCP Clearing Houses (EACH) was founded in 1992 and is a Belgian not-for-profit organisation (AISBL) which represents 19 central counterparty clearing houses – or CCPs- in Europe. The membership is open to CCPs based in the European Union and in other European countries. The membership of EACH comprises CCPs incorporated in 15 European countries. For more information visit www.eachccp.eu

We are very glad for the opportunity to respond to this consultation.

<ESMA_COMMENT_1>

1. The clearing obligation procedure

Question 1: Do you have any comment on the clearing obligation procedure described in Section 1?

<ESMA_QUESTION_1>

EACH supports the approach taken by ESMA of grouping the clearing obligation consultation papers per asset classes. We would also urge ESMA to review a decision not to impose a clearing obligation on a class or sub-class of derivatives on a regular basis. Paragraph 9 of the consultation paper notes that the clearing obligation will be triggered when an EU CCP is first authorised, when an extension of activity is granted or when a third country CCP is recognised by ESMA. We believe that ESMA should clarify the triggers and procedure for reviewing a decision not to impose a clearing obligation.

<ESMA_QUESTION_1>

2. Structure of the credit derivatives classes

Question 2: Do you consider that the proposed structure for the untranch index CDS classes enables counterparties to identify which contracts are subject to the clearing obligation as well as allows international convergence? Please explain.

<ESMA_QUESTION_2>

We note that the CDX index series is not included in the range of untranch index CDS contracts proposed to be subject to the clearing obligation. Whilst this is a natural consequence of the asset classes not currently being notified, it results in a marked difference in the scope of the clearing obligation between EU and the US. In line with our response to Question 1, we would encourage ESMA to review this situation as soon as a CCP is authorised or registered for such products, in order to enable international convergence.

ESMA proposes the exclusion of the iTraxx Europe High Volatility index from the scope of the clearing obligation, on the basis of lower volumes than the iTraxx Main and Crossover indices. EACH agrees with the determination of the CFTC that despite such lower volumes, the iTraxx Europe High Volatility index meets the requisite criteria for inclusion in the clearing obligation. The inclusion of this product by ESMA in the scope of the clearing obligation in Europe would avoid international divergence.

We also note the exclusion of financials indices from the scope of products proposed to be subject to the clearing obligation. The rationale expressed in paragraph 60 of the Consultation Paper for the exclusion of these products is that *'the clearing of financials single name CDS or indices can bear wrong-way risk or introduce a correlated risk with the clearing members of the CCP'*. EACH believes that such issues do indeed need to be carefully taken into account in the clearing methodology, practices and procedures for



CCPs in clearing such products, in line with EMIR. However, once an authorised or registered CCP has put in place such controls, and been accordingly approved to clear such products, there seems to be no reason to exclude financials indices from the clearing obligation on this basis.

<ESMA_QUESTION_2>

3. Determination of the classes of OTC derivatives to be subject to the clearing obligation

Question 3: In view of the criteria set in Article 5(4) of EMIR, do you consider that this set of classes addresses appropriately the systemic risk associated to credit OTC derivatives?

Given the systemic risk associated to single name CDS, would you argue that they should be a priority for the first determination as well? Please include relevant data or information where applicable.

<ESMA_QUESTION_3>

See our response to Question 2.

<ESMA_QUESTION_3>

4. Determination of the dates on which the obligation applies and the categories of counterparties

4.1. Analysis of the criteria relevant for the determination of the dates

Question 4: Do you have any comment on the analysis presented in Section 4.1?

<ESMA_QUESTION_4>

EACH agrees with the analysis, including particularly that there are sufficient clearing members, including those offering client clearing, to sustain the clearing obligation. As noted in paragraph 102 of the Consultation Paper, the market in credit derivatives is substantially smaller than the market in interest rate derivatives, with a significantly lower number of market participants.

More generally, EACH agrees with the conclusion set out in paragraph 93 of the Consultation Paper that the number of clearing members is of greater importance than the number of CCPs clearing the class. EACH further agrees that it is appropriate to focus not on the absolute number of clearing members but the number relative to the number and type of participants in the market. In this context, the number of CCPs clearing the class is only a material relevant factor in situations where a small number of CCPs would result in a bottleneck for growth of business, or restrict growth in the number of participants in the market. EACH does not believe that such conditions exist for any of the products under consideration for application of a clearing obligation.

<ESMA_QUESTION_4>

4.2. Determination of the categories of counterparties (Criteria (d) to (f))

Question 5: Do you agree with the proposal to keep the same definition of the categories of counterparties for the credit and the interest rate asset classes? Please explain why and possible alternatives.

<ESMA_QUESTION_5>

Yes, EACH believes there are considerable benefits of clarity in maintaining the same categories for the credit and the interest rate asset classes.

<ESMA_QUESTION_5>

4.3. Determination of the dates from which the clearing obligation takes effect

Question 6: Do you consider that the proposed dates of application ensure a smooth implementation of the clearing obligation? Please explain why and possible alternatives.

<ESMA_QUESTION_6>

As set out in our response to Question 5, the credit derivatives market has a significantly smaller number of market participants than the interest rate derivatives market. EACH would like to highlight that CCPs would be prepared to facilitate a clearing obligation earlier than the proposed dates for the different categories, particularly in relation to the proposed timelines for categories 2 and 3.

<ESMA_QUESTION_6>



5. Remaining maturity and frontloading

Question 7: Do you consider that the proposed approach on frontloading ensures that the uncertainty related to this requirement is sufficiently mitigated, while allowing a meaningful set of contracts to be captured? Please explain why and possible alternatives compatible with EMIR.

<ESMA_QUESTION_7>
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<ESMA_QUESTION_7>

Annex I - Commission mandate to develop technical standards

Annex II - Draft Regulatory Technical Standards on the Clearing Obligation

Question 8: Please indicate your comments on the draft RTS other than those already made in the previous questions.

<ESMA_QUESTION_8>
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<ESMA_QUESTION_8>

Annex III - Impact assessment

Question 9: Please indicate your comments on the Impact Assessment.

<ESMA_QUESTION_9>
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<ESMA_QUESTION_9>