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August 14, 2014

**Comments on Consultation Paper “Clearing Obligation under EMIR (no. 1)”
issued by the European Securities and Markets Authority**

Japanese Bankers Association

We, the Japanese Bankers Association (JBA), would like to express our gratitude for this opportunity to comment on *consultation paper, Clearing Obligation under EMIR (no. 1)* (the “Consultation Paper”), issued by the European Securities and Markets Authority (ESMA) on July 11, 2014.

We respectfully expect that the following comments will contribute to your further discussion on this issue.

**1. Recognition of Third Country CCPs and a Categorization of Counterparties
[Paragraphs 1, 9 and Annex II Article2]**

Impacted by the enforcement of the U.S. Dodd-Frank Act and other movements, the presence of European banks is still strong in the Tokyo JPY interest rate swaps (JPY IRS) market. These banks are estimated to account for approximately half of transactions on a notional-amount basis (limited to JPY IRS). Under such a market condition, most of European banks have already developed a process for central clearing through the Japan Securities Clearing Corporation (JSCC). Accordingly, almost all of JPY IRS transactions are cleared via the JSCC.

In light of the above clearing practices, although the European Market Infrastructure Regulation (EMIR) that will require JPY IRS to be centrally cleared may have a certain level of impact on these transactions, no significant impact is expected if the existing JSCC clearing framework may be permitted. On the other hand, if the existing JSCC clearing framework is not allowed to use due to a certain reason; for example, the clearing obligation is imposed before the recognition of the JSCC as a central counterparty, there is a concern that the liquidity of overall JPY IRS market will be reduced, significantly affecting markets on a global basis.

Therefore, we respectfully request that the central clearing obligation for JPY IRS will not be enforced until the JSCC is recognized under EMIR. Additionally, when developing obligation requirements, it is requested to clarify that Japanese banks which are members of JSCC and are subject only to the clearing obligation for JPY IRS are

classified as Category 1.

If obligation requirements are finalised before the recognition of JSCC under EMIR, it is requested to specify the transitional treatment until the JSCC is recognized under EMIR. We would also like to confirm that Japanese banks subject only to the clearing obligation for JPY IRS are treated in the same manner as those banks classified as Category 2, if the JSCC is not recognized under EMIR.

2. Frontloading [Paragraph 242 and Q9]

We understand that the objective of frontloading and minimum remaining maturity approach is to reduce risks by imposing the central clearing obligation to transactions with a considerable systemic risk that are entered into after the publication in the Official Journal of the RTS and before the date of application of the clearing obligation.

This alternative measure, however, is not considered to be necessary for the following reason: most of transactions that may trigger systemic risk will be subject to margin requirements for non-centrally cleared derivatives by implementing such margin requirements before the introduction of the clearing obligation, and mandating unilateral collateral posting for transactions between major financial institutions, and hence systemic risk can be reduced in advance.

If the frontloading requirements become mandatory, transactions that are entered into before the date of application of the clearing obligation will not be subject to the clearing obligation in U.S. and Japan, and therefore a difference in the treatment arises across jurisdictions. Moreover, since not all the transactions that are entered into after the publication in the Official Journal of the RTS and before the date of application of the clearing obligation will be subject to the obligation, a complicated management is required to judge the applicability of clearing obligation.

In view of the discussions above, the frontloading requirements that require central clearing for transactions that are concluded before the date of application of the clearing obligation shall be optional, instead of “mandatory”.