



European Securities and
Markets Authority

Reply form to the Consultation Paper on the Clearing Obligation under EMIR (no. 1)



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. 1), 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 August 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 the respondent	EACH
Are you representing an association?	Yes
Activity	Central Counterparty
Country/Region	Europe



Introduction

Please make your introductory comments below:

<ESMA_COMMENT_1>

Introduction

The European Association of CCP Clearing Houses (EACH) is pleased to respond to the ESMA Consultation Paper on the clearing obligation under EMIR (no.1). EACH hopes that ESMA finds this response useful.

EACH agrees that the proposed interest rate OTC derivative classes should be subject to the clearing obligation. However, it would urge ESMA to consider expanding the classes beyond the G4 currencies.

Generally, EACH believes that ESMA's approach to the determination of the classes of OTC derivatives and standardised OTC equity derivatives to be subject to the clearing obligation is too simplistic as it does not take into account the systemic risk posed at the regional/country level.

<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 interest rate derivatives classes

2.1 Characteristics to be used for interest rate derivative classes

Question 2: Do you consider that the proposed structure defined here for the interest rate OTC derivative classes enables counterparties to identify which contracts fall under the clearing obligation as well as allows international convergence? Please explain.

<ESMA_QUESTION_2>

Yes, EACH believes that the proposed structure will enable counterparties to identify which contracts are subject to the clearing obligation. The structure is consistent with established practice in other jurisdictions where clearing obligations are already in place.

<ESMA_QUESTION_2>

2.2 Additional Characteristics needed to cover Covered Bonds derivatives



Question 3: Do you consider that the proposed approach on covered bonds derivatives ensures that the special characteristics of those contracts are adequately taken into account in the context of the clearing obligation? Please explain why and possible alternatives.

Stakeholders (CCPs and covered bond derivatives users, in particular) are invited to provide detailed feedback on paragraph 38 above. In particular: what is the nature of the impediments (e.g. legal, technical) that CCPs are facing in this respect, if any? Has there been further discussions between CCPs and covered bond derivatives users and any progress resulting thereof?

<ESMA_QUESTION_3>

EACH is supportive of the proposed exemption for covered bonds with interest rate derivatives that meet the specific conditions specified in the consultation.

<ESMA_QUESTION_3>

2.3 Public Register

Question 4: Do you have any comment on the public register described in Section 2.3?

<ESMA_QUESTION_4>

EACH is supportive of the recommendation to review the process for removing the clearing obligation so that such removal can be completed with the appropriate level of urgency.

<ESMA_QUESTION_4>

3 Determination of the OTC interest rate classes to be subject to the clearing obligation

Question 5: 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 interest rate OTC derivatives? Please include relevant data or information where applicable.

Please include relevant data or information where applicable.

<ESMA_QUESTION_5>

EACH agrees that the proposed classes should be subject to the clearing obligation. However, it believes that ESMA should consider expanding the classes beyond the G4 currencies i.e. EUR, USD, GBP and JPY. A mandate for Interest Rate Derivatives has been widely anticipated by clearing and trading participants in Europe since the original G20 summit requesting OTC derivatives to be cleared. It was a surprise to the market that ESMA did not implement the clearing obligation for all IRS currencies.

Whilst ESMA estimates that around 90% of the outstanding notional is covered by including the top 4 currencies, there is still systemic risk remaining at the regional level. Limiting the scope of the Class+ to G4 currencies based on globally outstanding volumes and turnover is simplistic and in our view does not fully address the G20 commitments to increase central clearing. In our opinion, ESMA should consider criteria 2(d) – volume and value of transactions - within the scale the region/country that is linked to specific class. In addition, only imposing a clearing mandate on 4 currencies could increase the risks in other currencies in the EU as the market adjusts its trading patterns to meet or avoid the clearing obligation.

In Poland for example the majority of turnover volumes and outstanding positions come from IRS that are settled in PLN. The volume of trading in PLN rate derivatives is not comparable with G4 currencies but it is very high at the scale of the Polish economy. According to data obtained from National Bank of Poland Gross positions in OTC interest rate derivatives denominated in PLN at the end of 2013 have the value of 1.385 bn PLN (FRA – 457,5 bn PLN, IRS – 843,0 bn PLN, OIS – 51,3 bn PLN). For other derivatives relevant figures were significantly lower: interest rate OTC derivatives denominated in other currencies –



146,8 bn PLN (FRA – 1,1 bn PLN, IRS – 124,1 bn PLN, OIS – 13,0 bn PLN), currency derivatives - 29,5 bn PLN, equity derivatives – 12,1 bn PLN. This shows that in Poland IRS settled in PLN presents more risk to the economy than IRS denominated in other currencies or than currency derivatives.

As the table below demonstrates, the SEK interest rate derivatives outstanding notional amounts as a proportion of GDP is comparable to currencies that are proposed to be subject to the clearing obligation . Since there is only one lender of last resort in each currency area, the systemic risk is similar to the G4 currencies.

Outstanding notional amount of Interest Rate Swaps, Forward Rate Agreements & Options relative to GDP Current PPP December 2013

USD	% of GDP
Total Interest rate derivatives inc options BIS	1034%
CHF	% of GDP
Total Interest rate derivatives inc options BIS	1313%
JPY	% of GDP
Total Interest rate derivatives inc options BIS	1134%
SEK	% of GDP
Total Interest rate derivatives inc options BIS	1522%
EUR	% of GDP
Total Interest rate derivatives inc options BIS	1945%
GBP	% of GDP
Total Interest rate derivatives inc options BIS	2245%

Source: BIS Statistical release OTC derivatives statistics at end-December 2013 Monetary and Economic Department May 2014, OECD

EACH proposes that ESMA reconsiders the exclusion of all but the G4 currencies within the European Union.

<ESMA_QUESTION_5>

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

<ESMA_QUESTION_6>

Although the number of CCPs clearing a specific class of OTC derivatives is not a criterion for determining whether a class should be subject to a clearing obligation, it is one of the criteria that ESMA shall consider when determining the date of application of a clearing obligation. We would like to stress that there are more than one authorised CCP clearing all the Interest Rate OTC Derivatives in Europe, including in those currencies that ESMA proposes not to subject to a clearing obligation in this determination.

<ESMA_QUESTION_6>

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



Question 7: Do you consider that the classification of counterparties presented in Section 4.2 ensures a smooth implementation of the clearing obligation? Please explain why and possible alternatives.

<ESMA_QUESTION_7>

EACH is supportive of the classifications of counterparties outlined in Section 4.

<ESMA_QUESTION_7>

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

Question 8: 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_8>

EACH would like to highlight that CCPs would be able to handle the extra volume associated with a clearing obligation earlier than the proposed dates for the different categories.

<ESMA_QUESTION_8>



5 Remaining maturity and frontloading

Question 9: Do you consider that the proposed approach on frontloading and the minimum remaining maturity ensures that the uncertainty related to this requirement is sufficiently mitigated, while allowing a meaningful set of contracts to be captured? If not, please explain why and provide possible alternatives compatible with EMIR.

<ESMA_QUESTION_9>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_9>

6 OTC equity derivative classes that are proposed not to be subject to the clearing obligation

Question 10: Do you have any comment on the analysis on the Equity OTC derivative classes presented in Section 6?

<ESMA_QUESTION_10>
EACH understands ESMA's approach of prioritizing OTC classes that poses the largest systemic risks on a global scale, however, it believes that ESMA should also take into account the characteristics of each financial market and the impact of a clearing obligation at the regional level. ESMA may review the merit of a clearing obligation on these products once reliable data is available, which the mandatory reporting of OTC derivatives under EMIR will facilitate. In particular, a clearing obligation for lookalike OTC equity derivatives should not be ruled out because this might have the effect of threatening the integrity of some exchange-traded equity derivatives markets especially at regional level.
<ESMA_QUESTION_10>

7 OTC Interest rate future and option classes that are proposed not to be subject to the clearing obligation

Question 11: Do you have any comment on the analysis on the OTC Interest rate future and options derivative classes presented in Section 7?

<ESMA_QUESTION_11>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_11>

Annex I - Commission mandate to develop technical standards

Annex II - Draft Regulatory Technical Standards on the Clearing Obligation

Question 12: Please indicate your comments on the draft RTS other than those already made in the previous questions.



<ESMA_QUESTION_12>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_12>

Annex III - Impact assessment

Question 13: Please indicate your comments on the CBA.

<ESMA_QUESTION_13>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_13>