



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	Eurex Clearing AG
Are you representing an association?	No
Activity	Central Counterparty
Country/Region	Germany



Introduction

Please make your introductory comments below:

<ESMA_COMMENT_1>

The proposed implementation timeline for the introduction of the clearing obligation is significantly delayed, compared to the implementation in other jurisdictions, most notably the US and Japan. This fact creates an un level playing field on a global scale for European market participants and in particular European Financial Market Infrastructures. Eurex Clearing agrees with many aspects of the conducted analysis, however the vast majority of market participants are well prepared for clearing interest rate swaps and other derivative classes. Therefore, the periods for both category 1 and category 2 could be significantly reduced in particular by small amendments to the definition of category 2 (Further details are outlined in Eurex Clearing's response to ESMA_QUESTION_7 and 8). Eurex Clearing further appreciates the front-loading requirement as it will help to smooth the readiness and on-boarding process providing an incentive for firms to start voluntary clearing well before the obligation takes effect.

<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>

Eurex Clearing has no further comments to this question.

<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>

The proposed structure seems to be appropriate and sufficient clearly defined.

<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>

Eurex Clearing has no further comments to this question.

<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>

The approach to issue new or modified Regulatory Technical Standards (RTS) for new contracts in one class is reasonable. With the issuance of RTS ESMA has the opportunity to provide information to the market early in the process to enable the industry to prepare for the additional clearing obligation.

However, Eurex Clearing would appreciate, if ESMA would establish a process allowing to remove certain contracts, if necessary, from the clearing obligation faster than through the process of modified RTS.

<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>

Based on the thorough analysis ESMA conducted (including the information already received by the CCPs), the classes appropriately address the risks associated to interest rate derivatives.

<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>

The approach seems generally reasonable; however Eurex Clearing does not agree with the statements in paragraph 134 and 135 that only the criteria (a) to (c) impact the determination of the date for the clearing obligation. In particular criteria (e) plays a material role for defining the entry into force of the clearing obligation due to the fact that (e) refers to the period of time counterparty needs to put in place arrangements to clear. The fact that a vast majority of market participants is already well advanced in their readiness process to clear interest rate swap should be considered when determining the effective date of the clearing obligation.

<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>

While Eurex Clearing understands the rationale for the proposed categorization, category 2 seems very broad and fails to consider the different size of financial counterparts and their preparedness. Therefore, Eurex Clearing suggests to allow for the possibility of rather small market participants below a certain threshold to opt-out of category 2. Eurex Clearing proposes to apply a threshold of 8bn EUR of gross notional outstanding amounts (total cleared and non-cleared) – which is in line with the lowest threshold defined for the bilateral initial margin requirement in the document ‘Margin requirements for non-centrally cleared derivatives’ published by the Basel Committee on Banking Supervision and Board of the International Organization of Securities Commissions; such participants would then be shifted into category 3. This approach builds on existing parameters required and therefore does not generate significant additional efforts and at the same time avoids that the effective date for the clearing obligation for category 2 is driven by the expected readiness of participants with low systemic relevance. For the remaining category 2 market participants the lead time should be reduced from 18 months to 9 months, given the progress of those large and medium size buy-side firms in the on-boarding and implementation process.

<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>

As ESMA outlines in paragraphs 81 to 98 the degree of standardization of contractual terms and operational processes is already high and well developed in the IRS derivatives market. Category 1 participants are already clearing members. Offering additional 6 months following the effectiveness of the RTS for category 1 participants seems excessively conservative. Given that fact that such members are already actively clearing today 3 months following the effectiveness of the RTS should be sufficient. Taking the suggested changes in ESMA_QUESTION_7 to category 2 into account and given the progress of large and medium size buy-side firms in the on-boarding, the lead time for category 2 could be reduced from 18 months to 9 months.

<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>

Frontloading as part of the proposed implementation approach provides an incentive for market participants to start clearing on a voluntary basis well before the effectiveness of the clearing obligation. This approach will help to smooth the implementation and to avoid bottlenecks in the on-boarding process with both clearing members and CCPs.

In case the relatively long frontloading period turns out to be problematic from a trading market participant's perspective, we recommend in particular considering our suggestions outlined in our response to Question 7 and ESMA Question 8 in conjunction with an extension of the minimum remaining maturity.

A pure extension of the minimum remaining maturity requirements might lead to a negative effect that the incentive for voluntary clearing is not sufficiently strong and the industry might face an on-boarding concentration right before the effective dates of the clearing obligation

<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>

Eurex Clearing agrees with the analysis on Equity OTC Derivatives.

<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>

Eurex Clearing agrees with the analysis on OTC Interest Rate futures and options.

<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>
Eurex Clearing has no further comments to this question.
<ESMA_QUESTION_12>

Annex III - Impact assessment

Question 13: Please indicate your comments on the CBA.

<ESMA_QUESTION_13>
Eurex Clearing has no further comments to this question.
<ESMA_QUESTION_13>