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| 1 October 2014|ESMA/2014/1185 Reply Form |

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| Reply form for the Consultation Paper  On the Clearing Obligation under EMIR (no. 3) |

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| Date: 1 October 2014  ESMA/2014/1185 Reply Form |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper - Clearing Obligation under EMIR (no. 3), published on the ESMA website.

Responses are most helpful:

1. if they respond to the question stated;
2. contain a clear rationale, including on any related costs and benefits; and
3. describe any alternatives that 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.

Responses must reach us by **6 November 2014**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input/Consultations’.

Instructions

Please note that, in order to facilitate the analysis of the responses, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, please follow the instructions described below:

1. use this form and send your responses in Word format;
2. do not remove the tags of type < ESMA\_CA3\_QUESTION\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
3. if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that 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 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](http://www.esma.europa.eu) under the heading ‘Disclaimer’.

# General information about respondent

|  |  |
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| Are you representing an association? | Yes |
| Activity: | Central Counterparty |
| Country/Region | Europe |

# Introduction

**Please make your introductory comments below:**

<ESMA\_CO3\_COMMENT\_1>

The European Association of CCP Clearing Houses (EACH) is a Belgian not-for-profit organisation (AISBL) founded in 1992 which represents 20 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 16 European countries. For more information visit [www.eachccp.eu](http://www.eachccp.eu)

We appreciate the opportunity to respond to this consultation.

<ESMA\_CO3\_COMMENT\_1>

## The clearing obligation procedure

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

<ESMA\_CO3\_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\_CO3\_QUESTION\_1>

## Structure of the non-deliverable forward derivatives classes

##### Do you consider that the proposed structure for the FX NDF classes enables counterparties to identify which contracts are subject to the clearing obligation?

<ESMA\_CO3\_QUESTION\_2>

EACH believes the proposed structure for the FX NDF classes enables counterparties to easily identify which contracts are subject to the clearing obligation. We further support the compatibility of ESMA’s proposal with the taxonomy defined by the GFMA Global FX Division.

EACH would like to point out that the term “cash settled forwards” is widely used for those cash settled products in currencies that are not subject to restrictions from a local central bank and can be physically settled, but for which the user elects to have financial settlement; this is the case for example for GBP/USD, EUR/USD and USD/JPY. The term NDF, whilst having the underlying feature of cash settlement, is used to refer to the product used for currencies, as listed in table 2, on which there are restrictions imposed by a local central bank.

In addition, we suggest that in the final report the definition of non-deliverable forward in paragraph 14 refers to “the official fixing rate, as listed in the EMTA template for that currency” instead of “the spot market exchange rate”.

<ESMA\_CO3\_QUESTION\_2>

## Determination of the classes of OTC derivatives to be subject to the clearing obligation

##### In view of the criteria set in Article 5(4) of EMIR, do you consider that the determination of this class addresses appropriately the objective of reduction of the systemic risk associated to NDF derivatives?

<ESMA\_CO3\_QUESTION\_3>

EACH supports ESMA’s analysis in section 3 of the consultation and considers that the determination of this class addresses appropriately the objective of reduction of the systemic risk associated with NDFs.

EACH would like to request further clarification with regard to the definition of maturity, particularly with regard to the 2 year tenor and the corresponding final settlement date that is covered by the clearing obligation. In the case of LCH.Clearnet, its ForexClear service measures the 2 year maximum tenor as the settlement date falling two calendar years plus two business days immediately following the Submission Date.

<ESMA\_CO3\_QUESTION\_3>

##### For the currency pairs proposed for the clearing obligation on the NDF class, do you consider there are risks to include longer maturities, up to the 2 year tenor?

<ESMA\_CO3\_QUESTION\_4>

EACH supports the 11 currency pairs selected for the clearing obligation. In addition, EACH believes there are no risks to include longer maturities. Therefore, NDFs contracts with longer maturities up to the 2 year tenor should not be excluded from the clearing obligation.

<ESMA\_CO3\_QUESTION\_4>

## Determination of the dates on which the obligation applies and the categories of counterparties

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

<ESMA\_CO3\_QUESTION\_5>

TYPE YOUR TEXT HERE

<ESMA\_CO3\_QUESTION\_5>

##### Do you agree with the proposal to keep the same definition of the categories of counterparties for the NDF classes than for the credit and the interest rate classes? Please explain why and possible alternatives.

<ESMA\_CO3\_QUESTION\_6>

While for credit and interest rates classes EACH believes it is suitable to maintain the same definition of categories of counterparties, this may not be the case for the NDF class. Being a significant participant in the credit and the interest rate asset classes does not necessarily imply having the necessary infrastructure or processes in place to clear the FX class. Market participants were prepared for clearing IRS and CDS classes due to the presence of a mandate under the US Dodd-Frank Act. This is not currently the case for NDFs.

More generally, EACH invites ESMA to further consider a mechanism whereby the categorisation of counterparties can be communicated across the market. For example under the Dodd-Frank Act, the CFTC maintains a list of categories, both Swap Dealers and Major Swap Participants, on its website. We encourage ESMA to follow a similar approach to provide transparency and certainty to the market.

<ESMA\_CO3\_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\_CO3\_QUESTION\_7>

EACH supports the proposed dates of application of the clearing obligation for the NDF class.

<ESMA\_CO3\_QUESTION\_7>

## Remaining maturity and frontloading

##### Do you have comments on the minimum remaining maturities for NDF?

<ESMA\_CO3\_QUESTION\_8>

TYPE YOUR TEXT HERE

<ESMA\_CO3\_QUESTION\_8>

# Annex II - Draft Regulatory Technical Standards on the Clearing Obligation

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

<ESMA\_CO3\_QUESTION\_9>

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<ESMA\_CO3\_QUESTION\_9>

# Annex III – Impact assessment

##### Please indicate your comments on the Impact Assessment.

<ESMA\_CO3\_QUESTION\_10>

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<ESMA\_CO3\_QUESTION\_10>