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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.

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# General information about respondent

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| Are you representing an association? | Yes |
| Activity: | Investment Services |
| Country/Region | International |

# Introduction

**Please make your introductory comments below:**

<ESMA\_CO3\_COMMENT\_1>

Whilst AIMA is generally supportive of the objective of mandatory clearing of appropriate classes of OTC derivative that exhibit key characteristics, we have a number of concerns that the data and analysis of the particular characteristics of FX NDFs are not sufficiently developed to enable representative conclusions to be drawn as to the characteristics of the FX NDF market.

We consider that further work would be beneficial to collect and evaluate further empirical data and evidence in order to reach robust conclusions as to whether an FX NDF clearing determination would address appropriately the objective of the reduction of systemic risk associated to NDF contracts.

It is also the case that coordination with US authorities is especially important when considering the reduction of systemic risk. Should a clearing determination be made in the EU but not in the US, a bifurcation of liquidity could well occur between the respective jurisdictions across cleared and uncleared contracts, to the detriment of spreads and efficient pricing. We would also stress the importance of resolving issues of regulatory conflict and overlap between the US and EU regimes.[[1]](#footnote-2)

We suggest, therefore, that the mandatory central clearing of FX NDFs should be delayed whilst further data is collected and analysed - taking account of the activities of new CCPs as they become authorised – and a discussion is had between the EU and CFTC on the possible coordination of the respective EU and US clearing mandates for FX NDFs.

A summary of our specific positions in relation to the questions below is as follows:

* We believe that only products that are sufficiently standardised using the relevant Emerging Markets Trade Association (EMTA) currency templates and clearable in practice through an authorised CCP that offers relevant clearing services in that contract to the category of counterparty, should be subject to the clearing obligation;
* If clearing is to be mandated, we consider that it should only capture maturities of up to 6 months due to the greatly reduced liquidity of contracts with a longer maturity;
* AIMA disagrees with the additional counterparty categorisation contained within Section 4 of the CP and recommends maintaining the three counterparty categorisation contained within the previous consultation papers on IRS and credit derivatives;
* We do not support the application of frontloading to FX NDFs, but if it is to be applied, would recommend a six month minimum remaining maturity be used rather than three months; and
* We recommend that contracts entered into during Period B may be reduced or netted-off entirely using corresponding non-cleared contracts, even after the entry into effect of the clearing obligation.

<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>

No Comments

<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>

AIMA agrees in general with the structural characteristics of the classes of FX NDF included within section 2 of the CP. However, we believe that this list of characteristics needs to be expanded to take account of certain key attributes that are vital to ensure that appropriate and sufficiently standardised contracts are subject to the clearing obligation.

Namely, we believe that only contracts that are in practice clearable should be subject to the clearing obligation, otherwise a *de facto* restriction on trading of the product would result. We note that, despite authorisation being granted to a CCP to clear a particular contract, that CCP may for legitimate economic or other reasons choose to halt its offer of clearing services on either a temporary or permanent basis. In circumstances where that CCP is the only CCP available for the particular contract this could prevent the trading of that contract as compliance with the clearing obligation becomes impossible.

Similarly, given the limited number of clearing members currently offering client clearing of the FX NDF classes on LCH.Clearnet, it is conceivable that there could in future be no clearing members available for client clearing of some or all contracts. Should this happen, this could also prevent the trading of those contracts as compliance with the clearing obligation becomes impossible.

We note that the removal of the clearing obligation under Article 5(6) appears to be limited only to situations whereby the entire class of product becomes no longer clearable, not situations where, within the NDF class, contracts referenced to a particular currency or of a particular tenor become no longer clearable.

In order to prevent such scenarios arising, AIMA strongly recommends that the structure of contracts to become subject to the clearing obligation should list that not only must the CCP be authorised to clear the contract, but the contract must be of a type that the CCP accepts for clearing at the time of trading by the counterparty and for which there are actually clearing members offering client clearing.

We would also suggest that ESMA give consideration to the level of standardisation of the particular contract when determining the structural characteristics of relevant FX NDF classes, as we believe that it would be undesirable to apply the clearing mandate to contracts with materially different economic terms. In this regard, we highlight the use of the Emerging Markets Trade Association (EMTA) currency templates by market participants and would suggest that any contract that does not adopt the relevant currency template is not sufficiently standardised so as to be suitable for the clearing mandate. We propose that an additional field be added to the ESMA list that specifies whether the contract uses an EMTA published currency template without modification.

<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>

Whilst AIMA generally supports the objective of mandatory clearing of appropriate classes of OTC derivative that exhibit the relevant characteristics, we have a number of concerns that the data and analysis of the particular characteristics of FX NDFs are not sufficiently developed to enable representative conclusions to be drawn as to whether the clearing of FX NDF market. We consider that further work would be especially beneficial to collect and evaluate further empirical data and evidence in order to reach a robust conclusion as to whether an FX NDF clearing determination would address appropriately the objective of the reduction of systemic risk.

It is also the case that coordination with US authorities is especially important when considering the reduction of systemic risk. As discussed in our response to Question 7 below, making a clearing determination in the EU but not in the US could result in the bifurcation of liquidity between the respective jurisdictions across cleared and uncleared contracts. For the FX NDF market - which is both small and illiquid relative to both the IRS and CDS markets, as well as the broader OTC FX market - the reduction in liquidity could make spreads widen to the point that the market ceases to function correctly, and representative and efficient pricing becomes impossible, thus increasing risk.

We strongly suggest, therefore, that the mandatory central clearing of FX NDFs be delayed whilst further data is collected and analysed - taking account of the activities of new CCPs as they become authorised – and a discussion is had between the EU and CFTC on the possible coordination of the respective EU and US clearing mandates for FX NDFs.

Our specific thoughts and concerns as to ESMA’s data and analysis are as follows:

Market size: As described in our response to Question 2, we believe an important consideration is whether CCPs are authorised to clear a particular NDF and whether they offer clearing product that is accessible in practice. The fact that the cleared FX NDF market is still in its infancy must be highlighted when considering the market size. ESMA identifies itself that only one CCP is currently authorised, LCH.Clearnet, which has only two CMs that offer client clearing. This does not represent the same depth of market as either the interest rate or credit products already consulted upon (please see our response to Question 5 for further discussion).

Proportionate margins: Dealt with on page 17 of the CP, ESMA specifies its belief that EMIR and competitive effects among CCPs will prevent disproportionate margin and financial requirements for cleared FX NDFs. AIMA is concerned that insufficient analysis of actual data has been used to reach this conclusion. We note that LCH.Clearnet is currently the only EU CCP authorised to clear the FX NDF class of contracts, thus relative comparison becomes difficult. We, therefore, suggest that ESMA consider the margins for cleared FX NDF contracts versus the margin requirements for the corresponding interest swap in the relevant currency pair.

Number and value of transactions: AIMA has particular thoughts and concerns about the conclusions reached on the basis of ESMA’s discussion of the number and value of transactions between p22 and 35 of the CP due to the limited amount of empirical data available and the reasoning upon which such conclusions were reached.

Much of the data, as ESMA specifies, is limited in volume, completeness or representativeness. For example, paragraphs 61-63 of the CP, BIS data on respective turnover in each currency was limited to only six currencies, thus this had to be complemented by DTCC data. The DTCC, however, takes account of only a one month period and is representative of volumes within US markets, which may be significantly different to the EU. In addition, Table 9 on page 35 of the CP, as ESMA itself points out within paragraph 78, takes only 20 business days into account when looking at the percentage of trading days without trades. However, ESMA seems to reason that the limited datasets give it leeway to either ignore the results or imply ‘likely’ EU figures to conclude that mandatory clearing is viable in the EU; this is not suitable.

In addition, we have concerns that certain of ESMA’s uses of the empirical data are statistically unsound. We cite the comparison at paragraph 59 of the CP between the $127bn average daily turnover of FX NDF contracts and the $187bn daily turnover of interest rate OTC derivatives denominated in GBP. This is intended to contextualise the size of the FX NDF market when compared to the OTC rates market, however, this is not representative as it compares the entire global OTC FX NDF market with only a small section of the global OTC rates market. In order for these statistics to be useable, the comparison must either be between: (i) the entire FX NDF market and the entire rates market – so $127 billion compared with $2 trillion – or (ii) between an equivalent proportion of the FX NDF market as is represented by OTC rates contracts denominated in GBP. GBP denominated rates derivatives contracts constitute only 9% of the global OTC rates market, thus the comparison should be between $187bn of rates products and $11.4bn of FX NDFs.

Overall, we would be very concerned if such narrow and potentially unrepresentative data sets are used to subject a large number of FX NDF contracts to the mandatory clearing obligation in the EU. In our view, any clearing determination for NDFs should be based on more comprehensive data than that which has been used in the CP.

AIMA would also question whether the data that is currently available in fact backs-up the conclusion that NDFs (particularly those with longer maturities) are suitable for clearing at this time. We note the details contained within the CP specifying that the size of the FX NDF market is only 2.7% of turnover of all FX contracts,[[2]](#footnote-3) with clearing in the 11 proposed currencies in the low single figures.[[3]](#footnote-4) Furthermore, activities in FX NDFs greatly reduce after a 6 month tenor is reached. It could be argued that to compel the clearing of these currencies in all tenors would represent more of a top down obligation for clearing solutions to be developed rather than a bottom up mandate for contracts already cleared extensively.

Availability of pricing information: Furthermore, for the availability of pricing information AIMA is especially concerned that insufficient analysis has been undertaken and that the ‘available pricing information’ is not sufficiently robust to be used as a basis for mandatory clearing. In particular, we note that it is the accuracy and representativeness of pricing information that is important when considering the move to mandatory clearing, and not merely the fact that a ‘price’ is available.

In this regard, we stress the importance of the bid-offer spread when considering the reliability of pricing information. Should contracts not have trades on a daily basis, or infrequent transactions on an intraday basis such that trading represents only a small fraction of the gross notional value of open contracts, we note that due to the very low transaction volumes among many products, spreads will be very wide and prices subject to greater volatility.[[4]](#footnote-5) The usefulness of such prices when meeting the need to accurately price contracts within a mandatory clearing environment for NDFs is therefore debatable.

<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>

Yes, AIMA believes strongly that it would be especially undesirable to include all longer maturity FX NDFs up to 2 years. ESMA notes itself at paragraph 76 of the CP that 90% of contracts within a DTCC sample, except Chinese Renminbi, had a maturity of less than 3 months and 98% below 6 months.

When liquidity is taken into account, there is also a significant bias towards short dated maturities. Liquidity is vital to the safety of central clearing and the ability for CCPs to manage their risks effectively. We do not agree with ESMA’s arguments within paragraph 79 that liquidity can be ignored based on the fact that longer term contracts bear more risks than short dated ones. Risk is indeed greater for longer dated contracts than shorter dated ones, however, by concentrating this risk at the CCP level without the CCP being able to effectively manage this risk would itself exacerbate systemic risk.

It would appear, therefore, that the limited data would point towards the possibility of clearing only for short maturity contracts. We recommend against the mandatory clearing of any contracts above a six month maturity.

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<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 Error! Reference source not found.?

<ESMA\_CO3\_QUESTION\_5>

Overall, AIMA has concerns about the degree of assumption being made within ESMA’s analysis under Section 4.1. of the CP.

In particular, we note ESMA’s reasoning under paragraph 101 on page 40 of the DP that because CMs are large international or European banks that offer multi-asset class clearing, client clearing in a market segment will lead to all other EU CMs offering client clearing in that segment too. It is indeed the case that many hedge funds would expect their brokers to offer clearing in FX NDFs should the class be made subject to the clearing obligation, however, the existence of a vastly increased number of CMs if not a suitable number at all, should not be assumed without further analysis. We note that certain banks may seek to remodel their businesses in light of Basel III capital requirements, potentially pulling out of FX activities. It would be counterintuitive to presume that they will remain present in the much smaller FX NDF clearing market.

<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>

AIMA agrees that ESMA should keep the same definition of the categories of counterparty for each class of products, however, disagrees with the proposed categorisation contained within ESMAs draft RTS submitted to the European Commission.

We believe fundamentally that the original three counterparty categorisation as proposed within the original Consultation Paper (No1) on IRS and Consultation Paper (No2) on credit derivatives is the most appropriate. In the case of FX NDFs, we believe that the phase-in period should correspond with mandatory clearing of FX NDFs in the US.

We consider that the amended four part categorisation of counterparties is undesirable, in particular as it introduces unnecessary compliance complexity. The requirement for financial counterparties, including Alternative Investment Funds (AIFs) that are above the clearing threshold (NFC+) to undertake such calculations on a group basis in practice would be extremely difficult to comply with. We note that such entities are not currently required to make such calculations, thus do not have the relevant internal processes in place that would make this possible. Compliance would, therefore, not be readily achieved within the timeframes currently available to Category 1 and Category 2 entities.

Many questions as to potential calculations also remain unanswered, for example, whether on two legged transaction involving two currency pairs, are both legs of the transaction counted or just one? For fund managers, in particular, guidance would be necessary to identify the entities that would constitute a group - would it incorporate individual funds run by the same asset manager? Also, how would a single fund with more than one investment manager be treated?

In the context of FX NDFs, in particular, the costs of complying with this calculation would far outweigh the benefits of the additional granularity of categorisation suggested within ESMA’s Final Report, including the avoidance of bottlenecking, due to the small size of the FX NDF 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>

As described above, AIMA strongly recommends that, rather than setting specific figures at this point in time, the planned implementation of the clearing obligation for FX NDFs should be co-ordinated between ESMA and the relevant US authorities, such that mandatory clearing of NDFs is introduced in a harmonised manner across both jurisdictions.

We note that the CFTC’s clearing mandate phase-in regime currently allows for between 90 and 180 days, whereas ESMA’s current proposals are for 12 months for Category 2 counterparties and 18 months for Category 3 counterparties. These are unlikely to correspond unless the CFTC significantly delays its process. To require clearing in one major jurisdiction, but not in another may be viable for deep and liquid markets, such as for IRS. However, in small and illiquid market such as FX NDFs, the negative consequences of clearing in one jurisdiction but not the other could be severe due to the bifurcation of liquidity across the jurisdictions between cleared and uncleared products.

Furthermore, as we discussed in our response to Question 8 of ESMA’s Consultation Paper (No1) on IRS, our greatest concern regarding the smooth implementation of the clearing obligation is the current lack of a positive equivalence determination by the European Commission relating to the US clearing rules, accompanied by a lack of appropriate substituted compliance under CFTC rules for entities subject to EMIR. We would highlight that the current situation could lead to unintended negative consequences.

For example, a fund domiciled in Ireland and managed by a UK-based AIFM would be a Financial Counterparty for the purposes of EMIR. However, if that fund is majority-owned by US investors, it will also be treated as a US Person under the CFTC framework and, therefore, subject to the Dodd Frank Act’s Title VII requirements. If that fund transacts with another European entity, such as a dealer that is also a Financial Counterparty, then equivalence under EMIR (assuming that US rules ultimately are deemed equivalent) will not be available, as neither party to the transaction is ‘established’ outside of the EU. From the US side, no substituted compliance is available, as only non-US Persons are able to apply for substituted compliance under the CFTC framework. Hence that fund faces an irreconcilable overlap of European and US rules, which differ sufficiently in their detailed parameters that simultaneous compliance with both is impossible.

AIMA believes that ESMA has a great opportunity to coordinate its work on the mandatory clearing of NDFs with the US authorities to ensure a harmonised implementation period, minimising disruption in the FX NDF markets within both jurisdictions. In this regard, we strongly suggest that ESMA choose not push ahead with mandatory clearing of NDFs without seeking to coordinate with the CFTC.

<ESMA\_CO3\_QUESTION\_7>

## Remaining maturity and frontloading

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

<ESMA\_CO3\_QUESTION\_8>

As we have described in our responses to previous ESMA consultations on the clearing obligation, AIMA does not support the application of frontloading to non-cleared contracts entered prior to the effective date of the relevant clearing obligation.

In this regard, we consider that the frontloading of non-cleared FX NDFs entered into during Period B by Category 1 and 2 entities which have a minimum remaining maturity of three months,[[5]](#footnote-6) would not be necessary for systemic risk purpose and could result in market distortions in practice. If frontloading is to be applied to FX NDFs, we believe that a 6 month minimum remaining maturity would be most pragmatic to match that proposed within the IRS paper.

Overall, AIMA is concerned that frontloading could well undermine the planned phase-in period and result in market distortions. As we describe within our responses to ESMA’s consultation papers No.1 and No.2 on the EMIR clearing obligation, the requirement to frontload contracts of a certain minimum maturity could well result in a *de facto* requirement to clear contracts that are to become frontload-able from the initiation of those contracts, rather than leaving them in the bilateral space and novating them to a CCP on the date of effectiveness of the clearing obligation. This could have a significant disruptive effect on prices of non-cleared FX NDFs in the lead up to and implementation of the clearing obligation, with this disruptive effect on prices potentially being exacerbated by the small size and lack of liquidity of the FX NDF market when compared to that of the rates, credit and broader FX markets.

Frontload-able contracts would likely be cleared early as it is the case that collateral exchange conventions are very different between the cleared and uncleared spaces. Once cleared, contracts will be subject to a price adjustment which could be positive, but could also be negative. Attempting to calculate this price adjustment at the point in time that the clearing obligation enters into effect would be extremely complicated, thus participants are more likely simply to clear the contracts on a voluntary basis beforehand to avoid this complexity. For many third country participants, the complexities of frontloading could lead them to simply cease trading with EU counterparties.

The effects described could overall reduce liquidity and have a negative impact on spreads for non-cleared FX NDFs, thus distorting prices in the non-cleared space in the lead up to the effective date of the clearing obligation.

Also, with specific reference to the discussion contained within the CP, we do not agree with ESMA’s reasoning within paragraph 127 of the CP for the shortening of the minimum remaining maturity for contracts from 6 to 3 months (on the basis that the maximum maturities of FX NDFs are shorter than IRS contracts). To AIMA, the justification for central clearing, as provided within Recital 21 and Article 5(4) of EMIR, thus the justification for frontloading, is the mitigation of systemic risk. In this regard, we believe that the shortening of the minimum maturity, when compared with the six month minimum maturity for IRS, is not necessary and does not serve to reduce systemic risk. For example, an FX NDF with a remaining maturity of 3 months does not pose the same degree of systemic risk as an IRS with a remaining maturity of six months, such that the shorter maturity NDF should be frontloaded.[[6]](#footnote-7) In AIMA’s opinion, to shorten the minimum maturity of contracts subject to frontloading just for FX NDFs would appear to be arbitrary, focusing not on mitigating systemic risk but ensuring a certain proportion of FX NDF contracts are front-loadable.

A three month deadline could also inadvertently capture certain activities undertaken by Category 2 entities by procedural idiosyncrasy alone. It is common for our manager members to enter into FX NDF positions with an initial maturity of three months (as reflected by the fact that the majority of liquidity is concentrated in the short-term maturities); however, when ‘rolling-forward’ the initial position it is necessary, prior to maturity of the initial contract, to (i) enter a contract to net-off the initial contract, with both relevant contracts held to expiry; and (ii) enter into a new contract in the same currency pair with a maturity date which is 3 months after that of the initial contract. In this situation, it is the case that the new contract would typically have a residual maturity slightly in excess of 3 months. Thus, such contract could become subject to mandatory frontloading, even though in practice the purpose of the new contract is simply to extend the maturity of the initial position by an additional three months. We do not believe that this is an intended or desirable consequence of frontloading.

<ESMA\_CO3\_QUESTION\_8>

# Annex I - 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>

As we described in our response to Question 8 of ESMA’s consultation No.2 on credit derivatives, AIMA believes that it is extremely important to enable the efficient close-out of existing non-cleared FX NDFs after the date of effect of the clearing obligation.

AIMA would be concerned if market participants are not able to enter into a relevant offsetting FX NDF in order to close-out their non-cleared positions. We note that the only other option would be to novate the existing trade to a CCP and enter an offsetting cleared FX NDF to close out the position, however, due to the difficulties of pricing adjustments necessary to convert a non-cleared contract into a cleared contract (discussed in our response to Question 8 of this CP) we believe that this would be highly undesirable.

We would strongly suggest that the costs of preventing the efficient close-out of non-cleared FX NDFs with corresponding non-cleared NDFs far outweigh any counterparty risk benefits of requiring all new contracts to be CCP cleared after the effective date.

AIMA notes that the CFTC has permitted historical non-cleared transactions to be closed out or reduced by executing an offsetting non-cleared trade.[[7]](#footnote-8) We would, therefore, encourage ESMA to consider whether this point can be addressed through the RTS on the clearing obligation, by insertion of a new Article that would provide that individual risk-reducing transactions in a contract that is subject to the clearing obligation should not be subject to the obligation.

<ESMA\_CO3\_QUESTION\_9>

# Annex II – Impact assessment

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

<ESMA\_CO3\_QUESTION\_10>

TYPE YOUR TEXT HERE

<ESMA\_CO3\_QUESTION\_10>

1. we also believe that it would be beneficial for the ambiguities concerning the definition of FX at European level to be addressed prior to mandating any clearing for shorter-dated instruments such as NDFs.  Despite the recent European Commission consultations and statements on this matter, legal uncertainty remains as to whether FX trades of less than 7 days' duration are derivatives and therefore within the scope of EMIR [↑](#footnote-ref-2)
2. Paragraph 58 [↑](#footnote-ref-3)
3. Paragraph 72 [↑](#footnote-ref-4)
4. As a whole class, ESMA notes that FX NDFs represent only 2.7% of FX contracts in terms of turnover [↑](#footnote-ref-5)
5. as proposed within paragraph 127 of the CP [↑](#footnote-ref-6)
6. When looking at maturity alone, arguably due to the potential for IRS to have longer maturities, on average, an FX NDF with a minimum remaining maturity of 6 months may not pose the same degree of systemic risk as an IRS also with a minimum remaining maturity of 6 months. This is because, as ESMA points out, very few FX NDFs have a maturity over six months. [↑](#footnote-ref-7)
7. CFTC **No-Action Relief from Required Clearing for Partial Novation and Partial Termination of Swaps** , March 2013. Available online at: <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/13-02.pdf> [↑](#footnote-ref-8)