Daimler AG welcomes the opportunity to comment on the ESMA-consultation paper on "Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories".

Daimler AG is domiciled in Stuttgart (Mercedesstraße 137, 70327 Stuttgart, Germany). The main business of the Company is the development, production, distribution and customer financing of cars, trucks and vans. Daimler AG is the parent company for Daimler Group, which includes more than 400 subsidiaries throughout the world in which Daimler AG has a direct or indirect controlling interest.

Daimler is a globally leading vehicle manufacturer with an unparalleled range of premium automobiles, trucks, vans and buses. The product portfolio is completed with a range of tailored automotive services. With its strong brands, Daimler is active in nearly all the countries of the world. The Group has production facilities in a total of 18 countries and approximately 8,000 sales centers worldwide.

In the year 2011, Daimler generated revenue of €106.5 billion. The individual divisions contributed to this total as follows: Mercedes-Benz Cars 52%, Daimler Trucks 25%, Mercedes-Benz Vans 8%, Daimler Buses 4% and Daimler Financial Services 11%. At the end of 2011, Daimler employed a total workforce of more than 271,000 people worldwide.

We appreciate the progress made since the first consultation paper considering specific needs of non-financial companies; nevertheless we think that there is still work to be done in order to adequately reflect the existing risk management structures of non-financial companies. ESMA`s proposal of technical standards should avoid to harm the risk management of non-financial companies and to have negative side-effects on derivatives used by non-financial companies for risk-mitigating purposes. Please find below our main concerns.

1. **Annex II**
   Chapter VII, Non financial counterparties
   Article 1 NFC, Criteria for establishing which OTC derivative contracts are objectively reducing risks, page 72

The criteria defining objectively reducing risks should include hedging strategies which are usual practice for non-financial companies. We are concerned that a common used risk management practice might not be covered by the definition of "objectively measurable as reducing risk related to the commercial and treasury finance activity" as laid down in Art. 1 NFC (Annex II). Daimler e.g. uses macro hedges to eliminate risks due to variations of currency and commodity prices. The following example explains our hedging approach in the foreign exchange management.

By using the forecasted vehicle sales over the next 3 years, the controlling departments identify the amount of foreign currency cash flows. The cash flows are available for each month over that period and will be updated every month. In the next step, cash in- and outflows of the business segments are offset if they are denominated in the same currency (natural hedging). As a result, only the net exposure is subject to hedging activities. The Group's Target hedge ratio for this net exposure of foreign cash flows is indicated by a reference model. On the one hand, the hedging horizon is naturally limited by uncertainty related to cash flows that lie far in the future; on the other hand, it may also be limited by the availability of appropriate currency contracts. Based on this reference model and depending on the market outlook, the hedging horizon, which varies from 1 to 3 years, as well as the

average hedge ratio will be set. Reflecting the character of the underlying risk and uncertainty, the hedge ratio decreases with increasing maturities. This reference model aims to protect from unfavourable movements in exchange rates while preserving some flexibility to participate in favourable developments.

While ESMA so far explicitly considers proxy hedging as risk reducing only we miss an unambiguous statement that this applies also to macro hedging, as described above.

ESMA should also acknowledge the role of the company's auditor monitoring the prudent application of the hedging definition. This would also help to keep the enforcement process as lean as possible – for the benefit of supervisory authorities, corporate and their stakeholders. To examine which derivatives are applied by non-financial companies to mitigate commercial or treasury risks should be part of the annual audit (e.g. as a negative statement). Reference could also be made to the overall risk management strategy of the non-financial counterparty which would reflect the requirement laid down in recital 16a EMIR ([…] „due account should be taken of that non-financial counterparty's overall hedging and risk mitigation strategy".) For instance, German companies are already obliged by the national commercial code to disclose details of their risk management strategy including methods to mitigate risks stemming from their business activities. The compliance with these transparency rules is certificated by the auditor. This statement on our risk management strategy is an excerpt from our annual report 2011 page 113 -120.

2. Annex II,
Chapter VII, Non financial counterparties
Article 2 NFC, Clearing thresholds, page 72

We appreciate the 5 different clearing thresholds, but due to the importance of commodities for the industrial business ESMA should introduce a separate threshold for commodities and not subsume with other derivative contracts.

We don't understand why ESMA is intending that the clearing obligation should apply to all OTC derivatives after the clearing threshold was breached only in one asset category. We recommend that the breach of the threshold by one asset class should trigger the clearing obligation for that asset class only. A clearing obligation for the whole derivative portfolio – even when only one threshold has been exceeded – would be very burdensome for non-financial companies.

The position relevant for the calculation of the clearing threshold should be the net notional amount per class of OTC derivatives and not the gross notional volume proposed by ESMA. Since under certain circumstances it is necessary to economically close or adopt hedging positions it is crucial that the setting of the clearing threshold should only take the sum of net positions/exposures into account.

The application of the gross position would require the corporate to adjust hedging positions by closing out the trade with the original counterparty. While this seems to be appropriate from a counterparty risk perspective as it eliminates the risk, from a practical point of view it is a costly exercise as the respective counterparty would be able to quote uncompetitive prices knowing that it would win the close out transaction.

In addition we propose that intra-group transactions are not taken into account for calculating the clearing threshold. This is in line with the EMIR rules which provide an exemption of intra-group transactions from the clearing obligation and from bilateral collateralisation and the fact that intra-group transactions do not result in a net position towards external counterparties.

3. **Annex II**
   Chapter VIII, Risk-Mitigation Techniques for OTC derivative contracts not cleared by a CCP
   Article 1 RM, Timely confirmation, page 73 and Article 2 RM, Portfolio reconciliation, page 73 - 74

Although we understand the importance of sound risk mitigating techniques we advocate that the proposed technical standards should be adjusted to take adequately into account the specifics of non-financial companies and therefore should be proportionate. As our derivatives are risk mitigating we do not see the benefit from applying such restrictive process requirements which solely increase the administrative burden. This applies especially for the proposed confirmation period which should be extended from two to four days. We also think that the duty to reconcile the portfolio at least once a month would be very costly without an additional benefit. Therefore, it is justified that non-financial companies not exceeding the clearing threshold should be allowed to reconcile their derivative portfolio once a year (e.g. as part of the annual audit which is today already practice with some counterparties).

4. **Annex II**
   Chapter VIII, Risk-Mitigation Techniques for OTC derivative contracts not cleared by a CCP
   Article 4 RM, Dispute resolution, page 74 - 75

We believe a reporting obligation in the event of a dispute to be critical. Dispute resolutions should not be mandatory. Also the contents of a dispute resolution should be negotiable by the parties. To allow that dispute resolutions are kept negotiable shall ensure that the business processes are not affected in an undesired way.

Proposals for a dispute resolution should not come from ESMA. Instead proposals should for example be developed by the "Bundesverband deutscher Banken", BdB, or by the ISDA.

Dispute resolutions shall not become a mandatory amendment to existing agreements, especially not in the case of non-financial institutions being involved.

5. **Annex II**
   Chapter VIII, Risk-Mitigation Techniques for OTC derivative contracts not cleared by a CCP
   Article 7 RM, Intragroup transaction notification details, page 75 - 77 and Article 8 RM, Intragroup transaction – Information to be publicly disclosed, page 78

Intragroup transactions do not constitute counterparty risk towards third parties. Therefore, we propose to keep the notification process as lean as possible. Especially the obligation to provide further supporting information as e.g. a legal opinion is extremely costly (Art. 7 RM Para. 3). To carefully analyse the legal opinions for many subsidiaries would also overstretch capacities of supervisory authorities in the notification process. Therefore, it should be left to the own assessment of the company to prove that it complies with the respective requirements which are the prerequisite to qualify for the exemption. All intra-group transactions are part of the risk assessment which is certificated by the auditor in the context of the annual audit. Therefore an additional certification by a legal opinion is not necessary.

Furthermore, for reasons of legal certainty it is very important that ESMA clarifies that intragroup transactions are not obliged to be bilaterally collateralised until the notification process is finalised. Otherwise this would lead to the paradox situation that an intragroup transaction has to be collateralised until the exemption becomes valid.

6. **Annex V**
   …...minimum details of the data to be reported to trade repositories
   Article 3, Details to be reported and Article 4, Reporting by a third entity, page 139 - 140

ESMA should take into consideration that many non-financial companies have not implemented sophisticated systems support for external reporting of their derivative transactions to regulatory agencies. Consequently it will be necessary to invest significant budgets and resources into such reporting tools to fulfil the proposed reporting obligations. The daily mark-to-market of the derivative portfolio for external reporting on a single transaction is not a requirement for non-financial derivative users. Therefore, reporting requirements for non-financial companies should be proportionate to the volumes and nature of transactions of non-financial users.

The proposed reporting obligation is not coherent with EMIR. For that reason non-financial companies not exceeding the clearing threshold should be exempted from the reporting obligation. Art. 11 Para. 2 of EMIR exempts non-financial companies from the obligation to mark-to-market the value of outstanding contracts. To force these companies to report their market value on a daily basis would obliterate this exemption and therefore contradict the intention of EMIR.

Regarding intra-group transactions, ESMA should take into account that delegation of the reporting requirement to a third party (especially the financial counterparty) is not possible. Therefore we propose a lean reporting requirement for derivatives of non-financials which are used for risk-mitigating purposes. The data which is to be delivered by the respective non-financial counterparty should be restricted to the requirements laid down in Art. 6 Para. 4 lit. b EMIR: Type, underlying (i.e. hedged item), maturity, notional value, price and settlement date. It should also be ensured that non-financial companies can access the respective trade repository easily.

7. **Annex VI**
   …...format and frequency of trade reports to trade repositories…..
   Article 2, Format of derivative contract reports, page 168 and Article 6, Reporting start date, page 169 - 170

To start with the reporting to a trade repository it is essential, that all formats for the transmission of the information are standardised and based on common definitions of formats and it is absolutely necessary to provide interfaces that allow a straight through processing of the information, as it works for example via SWIFT. To keep the investments for the companies at a reasonable level sufficient time for implementation is required. Therefore a time period of 60 days after the registration of a trade repository is not acceptable. We propose a period of time of at least 6 months after the registration of a TR, presumed the data-formats are definitely determined.

Confronted the first time with a sophisticated reporting to TR it seems more appropriate from a non-financial company point of view to define a later starting date such as the 1 January 2015.

8. Support of the DAI-response to the ESMA consultation paper

In addition to the above-mentioned concerns Daimler fully supports the position of Deutsches Aktieninstitut (DAI), Bundesverband der Deutschen Industrie (BDI) and Verband Deutscher Treasurer (VDT).