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| 11 July 2014|2014/799 Reply Form |

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| Reply form to the Consultation Paper on the Clearing Obligation under EMIR (no. 1) |
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| Date: 11 July 20142014/799 Reply Form |

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 (n0. 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](http://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](http://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

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| --- | --- |
| Name of the respondent | Chris Fielding, Executive Director, Regulated Covered Bond Council |
| Are you representing an association? | Yes |
| Activity | Banking sector |
| Country/Region | UK |

# Introduction

**Please make your introductory comments below:**

<ESMA\_COMMENT\_1>

On behalf of the Regulated Covered Bond Council (**RCBC**), we welcome the opportunity to provide comments on the Consultation Paper on the Clearing Obligation under EMIR (n0. 1) (**Consultation Paper**) issued by ESMA on 11 July 2014. In particular, we welcome the opportunity to provide comments on Question 3 of the Consultation Paper from a UK covered bond perspective. By way of background, the RCBC is made up of the UK regulated covered bond issuers. Further information with respect to the RCBC and its members is set out below.

As a starting point, we wish to express our support for the acknowledgement provided by ESMA in the Consultation Paper of the fact that a number of covered bond swaps are not sufficiently standardised with respect to their contractual terms (given certain bespoke features) and, as a result, that such swaps will not be subject to the clearing obligation. Such acknowledgement provides helpful certainty with respect to the expected position of a number of covered bond swaps, and reflects an essential outcome given the nature of such swaps and the inherent challenges they present to central clearing. As an additional threshold application matter, we ask that clarification be provided in the proposed regulatory technical standards that the clearing obligation will be deemed not to apply in circumstances where no authorised central counterparty (**CCP**) is capable of centrally clearing the relevant derivative type. While this point is referred to in paragraph 22 of the Consultation Paper, this is not currently reflected in the draft regulatory technical standards. We note that it is our understanding that, in general, CCPs are not currently capable of centrally clearing covered bond swaps.

However, as a further “backstop” against issues arising for covered bond swaps, we wish to express our support for the inclusion in the proposed regulatory technical standards of measures intended to address the issues which would arise under the obligation in respect of those (limited) covered bond swaps which may be sufficiently standardised and capable of being cleared by a CCP, such that relief would be available to exclude these swaps from the classes subject to the clearing obligation provided certain conditions were satisfied.

While it is suggested in the Consultation Paper that separate cover pool owning vehicles (such as those used in UK covered bond arrangements) (**Asset Pool Owners**) are likely to be non-financial counterparties (**NFC**) below the clearing threshold, we would note that the need to test the threshold across any relevant group means that this analysis is not entirely clear and there may indeed be scenarios where an Asset Pool Owner is regarded to be an NFC above the clearing threshold. As a result, the proposed relief for the residual category of covered bond swaps that may be sufficiently standardised and subject to the clearing obligation is essential to ensure the proper functioning of UK covered bond swaps and programmes, as it is for covered bond swaps used in other jurisdictions.

Notwithstanding our general support as outlined above, concerns have been raised by RCBC members that aspects of the proposed backstop relief and, in particular, the corresponding conditions, may not reflect UK covered bond structures and corresponding swaps in all respects and, as a result, may not operate to provide the relief – and level playing field – intended. These concerns are outlined in our response below.

The comments raised in this response with respect to the provisions included in the draft regulatory technical standards in the Consultation Paper for the exclusion of certain covered bond swaps from the classes subject to the clearing obligation apply equally with respect to the equivalent provisions included in the draft regulatory technical standards in the Consultation Paper on the Clearing Obligation under EMIR (no.2) published by ESMA.

We urge ESMA to take action in the final advice provided in connection with the regulatory technical standards to address the matters referred to in this response. We would be happy to discuss our response with you at your convenience.

*Further information on the RCBC*

The UK Regulated Covered Bond Council (RCBC) was formed in 2009. The purpose of the RCBC is to represent UK regulated covered bond issuers in discussions with regulators, legislators, rating agencies and other trade bodies.

The objectives of the RCBC are:

• to promote the UK regulated covered bond product;

• to collect, produce and disseminate information and analysis relevant to UK regulated covered bonds;

• to promote best practice and, to the extent possible, common standards in investor reporting, modelling asset capability and other similar areas; and

• to foster relationships and synergies and to campaign for RCBC interests with other industry members (legal counsels, investment banks, trustee and corporate services providers) and other national or multi-jurisdictional industry associates.

The RCBC members include:

• Abbey National Treasury Services plc

• Bank of Scotland plc

• Barclays Bank plc

• Clydesdale Bank plc

• Co-operative Bank plc

• Coventry Building Society

• HSBC Bank plc

• Leeds Building Society

• Lloyds Bank plc

• Nationwide Building Society

• Royal Bank of Scotland plc

• Yorkshire Building Society

*Further information on UK covered bond programmes and swaps*

For further information on UK covered bond programmes and swaps, we refer you to the response recently provided by the RCBC to the consultation paper of the European Supervisory Authorities on the risk mitigation techniques for uncleared swaps.

<ESMA\_COMMENT\_1>

#  The clearing obligation procedure

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

<ESMA\_QUESTION\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_1>

#  Structure of the interest rate derivatives classes

## 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_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>

*General support for adjusted treatment for covered bond swaps*

As noted above, RCBC members support the inclusion in the proposed regulatory technical standards of “backstop” measures intended to address the issues which would arise under the obligation in respect of those (limited) covered bond swaps which may be sufficiently standardised and capable of being centrally cleared by a CCP, such that relief would be available to exclude these swaps from the classes subject to the clearing obligation provided certain conditions were satisfied. Indeed we consider the inclusion of this relief to be essential to the proper functioning of UK covered swaps and programmes more generally.

RCBC members also seek clarification in the proposed regulatory technical standards that the clearing obligation will be deemed not to apply in circumstances where no authorised CCP is capable of centrally clearing the relevant derivative type. We note that it is our understanding that, in general, CCPs are not currently capable of centrally clearing covered bond swaps.

*Certain proposed conditions do not clearly reflect UK covered bond swaps; required clarifications*

Article 1(2) of the proposed regulatory technical standards requires the satisfaction of certain conditions in order for covered bond swaps to be excluded from the specified classes of OTC derivatives in Annex I. These conditions largely mirror the conditions proposed in the context of the consultation paper on risk management techniques for non-centrally cleared OTC derivatives (**Margin Consultation Paper**). While we are in favour of consistency between the two sets of regulatory technical standards, we would note that not all of the conditions proposed to be included in the Margin Consultation Paper clearly support the stated policy intention in that paper of ensuring sufficient protection to swap counterparties. Moreover, as was noted in the RCBC response to the Margin Consultation Paper, for largely technical reasons, not all of the conditions are clearly satisfied in the context of UK covered bond swaps, notwithstanding the robust protections which form part of these arrangements. Accordingly, we do not consider that the proposed conditions as currently drafted ensure that the special characteristics of the full range of covered bond swaps are adequately taken into account.

In keeping with our comments in the context of the Margin Consultation Paper, we urge the Authorities to ensure that sufficient flexibility is provided under the conditions to accommodate not only more traditional “integrated model” covered bond structures, but also “segregated” arrangements (such as the UK model) which involve materially equivalent protective features. As noted above, given that whether or not an entity is an NFC above or below the clearing threshold is required to be tested across any relevant group, it should not be assumed that an Asset Pool Owner could not be an NFC above the clearing threshold and potentially required to comply with the clearing obligation (for any sufficiently standardised swaps) as a result. Accordingly, the availability of a backstop exclusion for covered bond swaps in the regulatory technical standards is equally important from the perspective of UK covered bond market participants.

We consider each of the proposed conditions below in turn.

* *Derivatives are not terminated in case of default of the covered bond issuer* – the rationale for the inclusion of this condition in the Margin Consultation Paper (and, in turn, the Consultation Paper) is unclear given that provision for the continuation of the swap in the case of the insolvency of the covered bond issuer primarily serves to protect the covered bondholders in a scenario where the cover pool is held by the issuer, rather than serving to meaningfully protect the swap counterparty. In keeping with this, we consider that the condition is not necessary to ensure sufficient protection for swap counterparties and, as such, should be removed. If (notwithstanding our comments) the condition is retained, RCBC members consider that it is essential that certain clarifications are made. In particular, clarification is required that the reference to “default” in the condition is intended to capture insolvency events only, as the current wording is too general and could (inadvertently, we assume) pick up other types of defaults (such as non-performance related events) which would essentially rule out most covered bond swaps. In addition, we note that the condition assumes that the cover pool holding entity entering into the swap is the covered bond issuer and that, as a result, there is a risk that an insolvency event in respect of the issuer may result in the termination of the swap on the cover pool side. This does not reflect UK covered bond structures where the cover pool is held by the (separate) Asset Pool Owner and it is this entity (rather than the issuer) which enters into the swaps on the cover pool side, meaning that the same concerns with respect to the continuation of the swap in the event of the insolvency of the (separate) covered bond issuer do not arise. We are also concerned that the condition could be read to restrict swaps which terminate upon the insolvency of the swap counterparty to the cover pool where that swap counterparty is the covered bond issuer, as may be relevant once again in a UK covered bond swap context given the separation of the issuer from the Asset Pool Owner. Unless addressed, these assumptions within the current drafting may operate to effectively restrict the availability of the relief in respect of UK covered bond swaps.

*Proposal*: We consider that this condition should be removed as it does not clearly reflect the stated policy intention. If the condition is retained, then our more technical comments noted above could be addressed by amending the wording as follows – “if the covered bond issuer is the holder of the cover pool, then the derivative is not terminated in the case of an insolvency or analogous event of default in respect of the covered bond issuer”.

* *Counterparty to the contracts, which counterparty is not the cover pool or the covered bond issuer, ranks at least pari passu with the covered bondholders* – as noted in our response to the Margin Consultation Paper, we assume that this condition is intended to ensure in general that the swap counterparty benefits from a sufficiently senior claim with respect to the cover pool assets in an acceleration scenario when the likelihood of recovery in respect of the general claim against the covered bond issuer may be reduced. In this regard, we note that certain covered bond regimes (including the UK framework) are principles-based and do not specify the ranking of creditors, including swap counterparties, in all circumstances.[[1]](#footnote-1) As a result, the contractual arrangements must also be taken into account. In this regard, we note that the swap counterparty will be a secured creditor with respect to the Asset Pool Owner and will be required to accede to the terms of the security documents, thereby ensuring its general senior ranking under the contractual payment waterfall provisions which apply with respect to distributions made by the Asset Pool Owner from amounts received in respect of the cover pool assets. However, there are two technical points to note with respect to this ranking. First, given that UK covered bond structures involve in general payments to bondholders being made by the covered bond issuer and payments to swap counterparties being made by the Asset Pool Owner in a pre-acceleration scenario, it is difficult to point to the relative ranking of payments as between covered bondholders and swap counterparties in these circumstances and it would be extremely challenging to revisit this aspect of UK programmes if changes were required. However, as noted above, we assume that the key concern behind the proposed condition relates to the relative ranking in a *post-acceleration scenario* (given the importance of the ranking of distribution of recoveries in respect of the cover pool in this scenario), and we urge the Authorities to make this clear to ensure that compliance confirmation may also be provided in the context of segregated covered bond structures (including the UK framework). Second, it should be noted that it is common in UK covered bond swaps for certain termination payments arising as a result of an event of default in respect of the swap counterparty to be subordinated to certain other payments (including payments to covered bondholders) in both a pre- and post-acceleration scenario. Given the limited nature of such termination payments and their connection to the fault or failure of the swap counterparty, we consider that these payments should be carved-out of the condition. Such a carve-out is not inconsistent with the policy intention identified in the Margin Consultation Paper of ensuring that the swap counterparty benefits from sufficient protection, as other payments owed to the swap counterparty will in general rank at least *pari passu* with payments to covered bondholders and this will be the case without exception in a post-acceleration scenario. Lastly, we note that the wording of this proposed condition is different from that included in the Margin Consultation Paper in that it describes the derivative counterparty as an entity “which is not the cover pool or the covered bond issuer”. While it is not clear, we are concerned that this wording could result in unequal treatment of UK covered bond swaps if interpreted to restrict arrangements where the covered bond issuer acts as the swap counterparty, which is a common arrangement where the issuer is a separate entity from the cover pool. We can see no reason in principle why these arrangements should not equally benefit from the proposed relief.

*Proposal*: Our comments with respect to this condition could be addressed by amending it as follows – “following acceleration of the covered bonds, the derivative counterparty ranks at least *pari passu* with the covered bondholders other than in respect of payments due to the derivative counterparty where an event of default has occurred in respect of that derivative counterparty or an additional termination event has occurred following a failure by the swap counterparty to comply with the requirements of the ratings downgrade provisions set out in the relevant swap agreement”.

* *Derivative is registered in the cover pool of the covered bond programme in accordance with national covered bond legislation* – we note that the draft impact assessment section of the Margin Consultation Paper suggested that this condition was included to ensure that the counterparty benefits from the appropriate segregation of the assets in the cover pool. As noted above, under UK covered bond structures, segregation of the cover pool is achieved through the cover pool being held by the (separate) Asset Pool Owner and this is the entity which enters into the swaps. As a result, unlike covered bond arrangements based on an integrated structure (where the cover pool continues to be owned by the bank and is segregated by operation of statutory provisions), there is no need in the context of UK arrangements for the swap to be identified as forming part of the cover pool via a formal registration process. In this regard, we note that the recent report published by the European Banking Authority (**EBA**) entitled “EU Covered Bond Frameworks and Capital Treatment” (**EBA Covered Bonds Report**) expressly acknowledges in the context of considering segregation of cover pool assets that this may be achieved “either by registration of the cover pool assets into a cover register or by transfer of the cover assets to a special purpose vehicle”. Accordingly, the UK covered bond statutory framework does not require a formal cover pool register to be maintained and instead requires the covered bond issuer to make arrangements with the Asset Pool Owner so that a record is kept of each asset in the asset pool (including the corresponding swap agreements). The asset pool notification forms required to be submitted to the competent authority in respect of UK regulated programmes also provide for the filing of certain swap information. Moreover, as noted above, swap counterparties will be required to accede to the terms of the security documents and, as a result, they will have the benefit of the security provided by the Asset Pool Owner in respect of the cover pool. On this basis, we consider that this condition should be adjusted in circumstances where the cover pool is held by a separate entity such that formal registration of the derivative in the cover pool is not required.

*Proposal*: Our comments with respect to this condition could be addressed by amending it as follows – “the derivative is registered in the cover pool of the covered bond programme in accordance with national covered bond legislation or is entered into by a cover pool entity which is separate from the covered bond issuer”.

* *Derivatives are used to hedge the interest rate or currency mismatches of the cover pool* – we note that the conditions included in the Margin Consultation Paper referred to the swaps being “used only for hedging purposes”. We assumed that this condition was used to seek to ensure that the swaps benefiting from the exclusion posed little systemic risk and RCBC members did not have concerns with this concept provided that it was clarified that hedging for these purposes should be interpreted consistently with other provisions in EMIR intended to capture similar arrangements, namely article 10(3) of EMIR and the criteria set out in article 10 of Regulation (EU) No. 149/2013. It is not clear why the wording of this condition has been revised in the Consultation Paper but, given the general intention of the provision (i.e. to ensure relevant swaps pose little systemic risk) and in the interests of using consistent concepts under the EMIR regime to identify low risk arrangements, RCBC members consider that a clarified version of the wording used in the Margin Consultation Paper is preferable.

*Proposal*: Our comments with respect to this condition could be addressed by amending it as follows – “the derivative is used only for hedging purposes, which shall be interpreted in a manner consistent with the principles to be applied under article 10(3) of Regulation (EU) No. 648/2012”.

* *Covered bond programme to which they are associated meets the requirements of Article 129 of Regulation (EU) No 575/2013* – while it is not clear, as noted in our response to the Margin Consultation Paper, we assume that this condition is intended to ensure that the relevant programme demonstrates certain key features consistent with the nature of covered bonds. However, as drafted, by referring only to programmes which satisfy the requirements of Article 129 of the Capital Requirements Regulation (**CRR**), this condition is too restrictive and will mean that the exemption is only available in respect of covered bonds backed by the specific asset types referred to in that article. While such asset type limitations are appropriate for the purposes of preferential risk weight treatment (which is what Article 129 is intended to determine), these limitations are not necessary or appropriate for the purposes of the proposed relief for covered bond swaps. In particular, we consider that this condition should *also* recognise bonds which comply with the key features referred to in Article 52(4) of the UCITS Directive. This approach is consistent with the objective of ensuring sufficient counterparty protection is provided as the features referred to in Article 52(4) require the cover pool assets to be capable of covering covered bondholder claims. Moreover, this approach of referring to both Article 129 of the CRR and Article 52(4) of the UCITS Directive has been used in other EU legislative contexts where there is an intention to identify high-quality covered bond arrangements, e.g. in the provisions relating to liquid assets for the purposes of the Liquidity Coverage Ratio in Article 416(2)(a) of the CRR, and the importance of the principles referred to in Article 52(4) is clearly acknowledged in the recent EBA Covered Bonds Report. We also consider that it would be appropriate to disapply the requirement under Article 52(4) which refers to special public supervision as there are covered bond programmes in existence which, although not regulated, are consistent with the other key covered bond features identified in Article 52(4) and, as such, provide similar protection to swap counterparties as is provided under regulated programmes.

*Proposal*: Our comments with respect to this condition could be addressed by amending and clarifying it as follows – “the covered bonds issued under the programme are bonds as referred to in Article 52(4) of Directive 2009/65/EC (disregarding the requirement that such bonds are subject to special public supervision) or which meet the requirements for the treatment set out in Article 129(4) or (5) of Regulation (EU) No. 575/2013”.

* *Covered bond programme to which they are associated is subject to a legal collateralisation requirement of at least 102%* - it is not clear whether the reference to “legal” here is intended to capture both statutory requirements applicable under national covered bond laws and contractual provisions that operate to establish an over-collateralisation requirement. In our view, both types of requirements are legal in nature and should be acceptable for the purposes of the exemption, as neither would equate to “voluntary over-collateralisation” which could be unilaterally reduced as described in footnote 9 on page 60 of the Margin Consultation Paper as being potentially problematic. We further note that we have assumed that this condition is focused on the total principal amounts outstanding in respect of the cover pool assets as compared to the total principal amounts outstanding in relation to the issued covered bonds (rather than an interest coverage requirement).

*Proposal*: Our comments with respect to this condition could be addressed by amending and clarifying it as follows – “the covered bond programme to which they are associated is subject to a legal collateralisation requirement (arising through operation of statutory and/or contractual provisions) of at least 102%”.

To be clear, RCBC members are of the view that the proposed conditions should be amended as described above in order to ensure the full range of relevant covered bond swap arrangements may be eligible for the relief as a threshold matter. It would be problematic if the exemption was only available in practice in respect of swaps used in more traditional “integrated” covered bond structures notwithstanding that substantially equivalent features and protections exist in the context of other covered bond swaps, such as those used in connection with UK structures. Lastly, if any of our comments above are not accepted and if as a result the satisfaction of certain matters in respect of UK covered bond swaps may require changes to the UK statutory framework, we respectfully request that ESMA provide for the phasing-in of the relevant provisions, so as to provide sufficient time for relevant national authorities to make any changes to the local regime considered appropriate.

<ESMA\_QUESTION\_3>

## Public Register

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

<ESMA\_QUESTION\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_4>

#  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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_5>

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

## 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_6>

## 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_7>

## 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_8>

#  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>

#  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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_10>

#  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>

As noted above, the comments raised in this response with respect to the provisions included in the draft regulatory technical standards in the Consultation Paper for the exclusion of certain covered bond swaps from the classes subject to the clearing obligation apply equally with respect to the equivalent provisions included in the draft regulatory technical standards in the Consultation Paper on the Clearing Obligation under EMIR (no.2) published by ESMA.

Thank you for the opportunity to comment on the issues that were raised in the Consultation Paper. Should you have any questions, or require any additional information regarding any of the comments set out above, please do not hesitate to get in touch with the respondent.

<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>

1. In a security enforcement scenario and/or in the context of the owner being wound up, the UK covered bond regulations provide that the claims of the bondholders and certain service providers and counterparties rank in priority to all other creditors and as between themselves, such claims may rank equally, but the claims of the service providers and swap counterparties may not rank in priority to bondholder claims. The UK regulations also provide that the claims of certain service providers and swap counterparties may be paid as an expense by the receiver or insolvency officeholder and such expenses rank above all other claims, including bondholder claims with respect to certain amounts. [↑](#footnote-ref-1)