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| 11 July 2014|2014/800 Reply Form |

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| Reply form to the Consultation Paper on the Clearing Obligation under EMIR (no. 2) |
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| Date: 11 July 20142014/800 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. 2), 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 September 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

|  |  |
| --- | --- |
| Name of respondent | Intesa Sanpaolo S.p.A. |
| Are you representing an association? | No |
| Activity | Banking sector |
| Country/Region | Italy |

# Introduction

**Please make your introductory comments below:**

<ESMA\_COMMENT\_1>

Intesa Sanpaolo is one of the largest European banking groups, active in Italy, Central and Eastern Europe and the Mediterranean area. As one of the main stakeholders in the EU, we welcome the opportunity to comment on the ESMA discussion paper on “The Clearing Obligation under EMIR” regarding CDS (no.2) TYPE YOUR TEXT HERE

<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>

We support ESMA approach to grouping, to the maximum extent possible, the analysis of the notified classes of OTC derivatives into 5 categories and consults upon separately. This will enable stakeholders to assess the impact of the clearing obligation for each asset class.

However, we cannot support – as already set out in our response to the consultation paper n° 1 on the clearing obligation for IRS - ESMA proposal to include in category 1 counterparties that are clearing members for any of the Class+, of any CCP authorised to clear at least one of the Class+.

Complying with the ESMA approach would require banks to either become a member of a CCP or entering into clearing arrangements with a clearing member in a very short period of time. This could prove to be difficult, because currently only large banks fulfil the criteria for becoming a direct clearing member of CCPs clearing CDS and because of the limited number of clearing members. These could apply very selective criteria when entering into contractual arrangements with CDS traders. In the absence of a clearing arrangement some traders could be forbidden from trading and thus hedging their risks.

**Therefore, we are of the view that ESMA should adopt an RTS for each class of derivatives to be subject to the clearing obligation.**

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<ESMA\_QUESTION\_1>

# Structure of the credit derivatives classes

Question 2: Do you consider that the proposed structure for the untranched index CDS classes enables counterparties to identify which contracts are subject to the clearing obligation as well as allows international convergence? Please explain.

<ESMA\_QUESTION\_2>

 We consider that the proposed structure for untranched CDS will enable counterparties to identify the contracts that are subject to the clearing obligation. We suggest adding that contracts should be subject to the clearing obligation only if there is a CCP that actually clears contracts, as mentioned in paragraph 22 of the consultation paper. This will add certainty to market participants that will be able to identify the contracts that are supported by a CCP.

<ESMA\_QUESTION\_2>

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

Question 3: 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 credit OTC derivatives?

Given the systemic risk associated to single name CDS, would you argue that they should be a priority for the first determination as well? Please include relevant data or information where applicable.

<ESMA\_QUESTION\_3>

This set of classes is appropriate. We do not believe that single name CDS are a priority. While single names CDS amount for a big notional amount overall, the individual names usually account each for a small volume as the activity is relatively spread out across all active names. This approach will align the EU with the US, where no clearing obligation is required for single names CDS.

We would like to draw ESMA attention to the fact that it is important that at least two CCPs are authorized to clear before introducing the clearing obligation for CDS. Currently the CCP that has been authorized clears only very small volumes and has a limited number of clearing members.

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<ESMA\_QUESTION\_3>

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

<ESMA\_QUESTION\_4>

We strongly agree that there would be no legal basis for ESMA not to launch a clearing obligation solely on the ground that the classes are cleared by a single CCP. However, we strongly encourage ESMA to introduce the clearing obligation when more CCPs have been authorized in order to ensure that there is choice for CDS traders and thus competition among them and that in the case a CCP loses active clearing members, it is still possible for traders to fulfil the clearing obligation.

In particular, we believe ESMA should consider the number of active clearing members not only when the authorization is introduced, but on an ongoing way, in order to guarantee a sufficient level of liquidity.

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<ESMA\_QUESTION\_4>

## Determination of the categories of counterparties (Criteria (d) to (f))

Question 5: Do you agree with the proposal to keep the same definition of the categories of counterparties for the credit and the interest rate asset classes? Please explain why and possible alternatives.

<ESMA\_QUESTION\_5>

We restate our disagreement with the proposal to consider as Category 1 counterparties that are clearing members for any of the Class+ of any CCP authorised to clear at least one Class+ as already stated in the response to question 1.

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<ESMA\_QUESTION\_5>

## Determination of the dates from which the clearing obligation takes effect

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\_QUESTION\_6>

We believe that category 2 should be subject to a shorter phased-in period in order to guarantee efficiency and liquidity to the market and avoid fragmentation of pricing.

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<ESMA\_QUESTION\_6>

# Remaining maturity and frontloading

Question 7: Do you consider that the proposed approach on frontloading ensures that the uncertainty related to this requirement is sufficiently mitigated, while allowing a meaningful set of contracts to be captured? Please explain why and possible alternatives compatible with EMIR.

<ESMA\_QUESTION\_7>

We do not have any comment on the minimum remaining maturity, while on frontloading we support the adoption of period B. We believe that implementing a frontloading in period A would increase the uncertainties on requirements provided for by the rules.

We would also like to highlight that the RTS do not provide for a mechanism to either suspend or remove the clearing obligation on specific asset classes either in a permanent or temporary way. We believe that both situations should be regulated in the RTS.

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<ESMA\_QUESTION\_7>

# Annex I - Commission mandate to develop technical standards

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

Question 8: Please indicate your comments on the draft RTS other than those already made in the previous questions.

<ESMA\_QUESTION\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_8>

# Annex III - Impact assessment

Question 9: Please indicate your comments on the Impact Assessment.

<ESMA\_QUESTION\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_9>