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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

|  |  |
| --- | --- |
| Name of the respondent | Investment Management Association |
| Are you representing an association? | Yes |
| Activity | Investment Services |
| Country/Region | UK |

# Introduction

**Please make your introductory comments below:**

<ESMA\_COMMENT\_1>

The IMA represents the UK-based investment management industry. Our members include independent asset managers, the investment management arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. Our members manage investments worth more than £5 trillion for their clients, who are UCITS and other authorised funds, pension funds, insurers, sovereign wealth funds and individuals. Ultimately, much of what they manage belongs to the man in the street through their savings, insurance products and pensions. Their interest in this consultation is therefore in their role as the “buy-side” of the market, accessing capital markets on behalf of their clients.

We welcome the opportunity to comment on the Consultation Paper on the Clearing Obligation under EMIR (no.1 – 2014/799).

We set out below, a summary of our members’ key concerns:

Impact of front-loading and minimum maturity thresholds

We welcome the proposal to effectively limit front-loading to contracts entered into during period B, with a minimum remaining maturity of 6 months, on the date of application of the clearing obligation and we appreciate the lengthy phase-in of 18 months for category 2 counterparties (which will be the majority of our members’ clients). However, we are concerned that the practical impact of the application of the front-loading requirements to contracts with such a low minimum remaining maturity will mean that the phase-in is of little use. A large number of our members’ clients execute long‑dated OTC contracts (with tenors of much greater than six months), often to hedge long-dated liabilities. A minimum remaining maturity of 6 months will in practice mean that the vast majority of OTC contracts subject to mandatory clearing which are executed during the phase-in period will become subject to front-loading. This in turn is likely to lead to pricing uncertainty for a significant number of contracts which could cause market disruption. In addition, the operational impact of such a large front-loading requirement on clients, clearing members and CCPs, would be substantial and would require significant time and resources to implement effectively. In order to complete the front-loading process by the end of the phase-in period, the process would need to be commenced well in advance of the deadline. In effect, this would significantly reduce the phase-in period in practical terms, for many category 2 counterparties. We suggest that ESMA consider the following two alternative approaches to the front‑loading and phase-in proposals set out in the consultation paper:

* Option 1: This is our preferred option. Remove the front-loading obligation for category 2 counterparties and reduce the phase-in period for new trades to be cleared, from 18 months to 12 months. This will result in new OTC contracts entering the cleared environment earlier than originally planned, and will reduce the front-loading burden on firms and the pricing uncertainty created in the market.
* Option 2: Implement a phase-in for front-loading for category 2 counterparties, so that the front-loading period only commences 12 months after the start of the phase-in period for category 1 counterparties, thus reducing the period of front‑loading for category 2 counterparties, from 18 months to 6 months. This should give firms sufficient time to implement the necessary processes, procedures and documentation to ensure compliance with the clearing obligation, before having to also consider front-loading. This proposal will also reduce the volume of transactions that will need to be front-loaded and therefore the impact of pricing uncertainties as well as the burden and operational risk associated with the process. At the same time, this proposal will still ensure that contracts entered into within 12 months of the start of the clearing obligation, by category 2 counterparties, become subject to central clearing.

Further detail is provided in our response to Question 9.

Uncertainty regarding the implementation of the pension exemption

Under Article 89(1) of EMIR, OTC derivative transactions that are objectively measurable as reducing investment risks directly relating to the financial solvency of pension scheme arrangements as defined in Article 2(10) of EMIR, will not be subject to the clearing obligation. ESMA has clarified in its EMIR Q&As (OTC Question 16) that pension scheme arrangements which are exempt from the clearing obligation will only have to clear contracts executed after the date when the exemption falls away, and there will therefore be no front-loading. In order to ensure certainty in respect of the application of the front-loading requirement, entities need to know whether or not they qualify as a pension scheme arrangement or entity under Article 2(10)(c) and (d) of EMIR. With the proposed front-loading requirements likely to commence in late 2014-early 2015, there is very limited time for entities to receive the certainty they need from ESMA and EIOPA that they are eligible for the pension exemption. If front-loading commences before the pension exemption is clarified and the procedure required by Article 89(2) of EMIR is implemented, then pension scheme entities and arrangements which are not clearly within Article 2(10)(a) or (b) of EMIR and their counterparties will not know whether contracts which they execute, will be required to be front-loaded in due course. This will in turn have a material impact on valuations, and the use of collateral, and is likely to result in funds incurring significant costs and end-investors and pension fund beneficiaries receiving reduced returns on their investment. Further detail is provided in our response to Question 9.

The process of removing derivative classes from the public register

We agree that the addition of new derivative classes to the public register and clearing obligation should be undertaken within the regulatory framework of issuing new regulatory technical standards. However, we disagree with this same process applying in instances where derivative classes should be removed from the public register and so not be subject to the clearing obligation. A class of derivatives is only likely to be removed from the clearing obligation, when it is no longer appropriate for that class to be subject to mandatory clearing. For example, this could be due to reduced usage of a particular class of derivatives across the market. In this case, CCPs and other market participants may not have access to reliable prices. If new contracts in such a class were still required to be cleared, whilst a process for removal was in progress, this could have an adverse impact on the market.Whilst we understand the legal constraints in terms of amending a set of regulatory technical standards, and the proposal to review the removal process as part of the overall EMIR review due to commence next year, we urge ESMA to consider other possible options to a full consultation process now, on the basis that this is not expressly prescribed by the Level 1 text of EMIR and the implementation of any findings from the EMIR review is likely to take some time. Further detail is provided in our response to Question 4.

Impact of clearing on risk-reducing trades

We believe that any trade that is reducing a pre-existing position under a bilateral trade, and which is intended to be compressed (and is compressed) with the original trade so that the position is partially or fully terminated should not be subject to the clearing obligation. The remaining stub of the original trade where there has been a partial termination or a novation should also not be subject to mandatory clearing. If these trades are subject to clearing, market risk will actually be increased as offsetting trades are cleared and open at a CCP, whilst the original bilateral positions remain open until maturity.Further detail is provided in our response to Question 12.

Internationally consistent clearing requirements

If the clearing requirements for specific contracts differ between the EU and other jurisdictions (e.g., the US), this will lead to a need for firms and clients to implement additional processes and procedures to ensure compliance under different sets of legislation, in respect of their global business and investment portfolios. The obligation to clear then becomes a factor in the decision as to whether or not to trade cross-border, which we do not believe was the intention of the regulators. Lack of consistency internationally, could also mean the potential for creating distortions in counterparties’ risk management and hedging processes, which could lead to arbitrage opportunities in international markets. For example, in the US, Dodd-Frank[[1]](#footnote-1) does not require Overnight Index Swaps (OIS) over 2 years to be cleared, yet in the draft regulatory technical standards, ESMA proposes that OIS up to 3 years will be subject to mandatory clearing. We suggest that ESMA reduce this to two years, in the interest of global harmonisation. We also encourage ESMA and other regulators to work closely together to ensure that the implementation of decisions on mandatory clearing is coordinated at a global level. Further detail is provided in our responses to Questions 2 and 5.

<ESMA\_COMMENT\_1>

#  The clearing obligation procedure

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

<ESMA\_QUESTION\_1>

We support ESMA’s proposal to group the analysis of the notified classes of OTC derivatives in a minimal set of consultation papers that are grouped per asset-class.

<ESMA\_QUESTION\_1>

#  Structure of the interest rate derivatives classes

## Characteristics to be used for interest rate derivative classes

Question : 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>

Whilst we support ESMA’s proposed structure for the interest rate OTC derivative classes, we are concerned that the draft regulatory technical standards do not adequately reflect the “bottom-up” approach as stated in Paragraph 22 of the consultation paper and specified under Article 4(1) of EMIR. EMIR provides that a class of derivatives can only be subject to mandatory clearing when there is a CCP which is authorised or recognised to clear that class. In addition, the extent to which a CCP is able to support the expected volume of trades of a particular class of derivatives, if those trades become subject to mandatory clearing, is a consideration ESMA must take into account when assessing the date from which the clearing obligation should take effect under Article 5(2)(b) of EMIR. Evidence on this is required to be provided to ESMA by national competent authorities when they make their notification under Article 5 of EMIR. We suggest that the draft regulatory technical standards clearly reflect the fact that the classes of derivatives they cover, will only be subject to mandatory clearing, if there is at least one CCP which is authorised or recognised to clear at the time the obligation comes into force. We also suggest that it is made clear in the draft regulatory technical standards that the phase-in periods are based on ESMA’s assessment of the extent to which CCPs will be able to support the expected volume of trades at the relevant phase-in date for each category of counterparty. If ESMA becomes aware that this is not the case during the phase-in period, these timeframes should be reassessed. To enable this to occur, ESMA should include an ability to undertake a further assessment of the actual position of CCPs at the end of each phase-in period to ensure that the timeframe for applying the clearing obligation to each category of counterparty remains appropriate.

We believe that the proposed structure for OTC interest rate derivative classes does not allow for international convergence. For example, in the US, Dodd-Frank[[2]](#footnote-2) does not require Overnight Index Swaps (OIS) over 2 years to be cleared, yet in the draft regulatory technical standards, ESMA proposes that OIS up to 3 years will be subject to mandatory clearing. We suggest that ESMA reduce this to 2 years, in the interest of global harmonisation.

<ESMA\_QUESTION\_2>

## Additional Characteristics needed to cover Covered Bonds derivatives

Question : 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>

No comment.

<ESMA\_QUESTION\_3>

## Public Register

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

<ESMA\_QUESTION\_4>

We note ESMA shares our concerns on the practical implications of the public register process, including the importance of public consultation and the necessary time between the modification of the public register and the date of application of a new clearing obligation or removal of an existing clearing obligation. We agree that the addition of new derivative classes to the public register and the clearing obligation should be undertaken within the regulatory framework of issuing new regulatory technical standards. This ensures that stakeholders have the opportunity to provide feedback in a timely and transparent manner.

However, we disagree with this same process applying in instances where derivative classes should be removed from the public register and so not be subject to the clearing obligation. The reasons for removing a clearing obligation on a particular derivative class are varied, and could include the fact that ESMA no longer considers that the class meets the criteria specified in Article 7 of EU No 149/2013. However, other than in circumstances where there is no longer an EU authorised or recognised CCP clearing a particular class of contract (see Article 5(6) of EMIR), there is no reference or mechanism provided for removing a class of derivatives from the clearing obligation.

A class of derivatives is only likely to be removed from the clearing obligation, when it is no longer appropriate for that class to be subject to mandatory clearing. For example, this could be due to reduced usage of a particular class of derivatives across the market. In this case, CCPs and other market participants may not have access to reliable prices. If new contracts in such a class were still required to be cleared, whilst a process for removal was in progress, this could have an adverse impact on the market.

Whilst we understand the legal constraints in terms of amending a set of regulatory technical standards, and the proposal to review the removal process as part of the overall EMIR review due to commence next year, we urge ESMA to consider other possible options now to a full consultation process, on the basis that this is not expressly prescribed by the Level 1 text of EMIR and the implementation of any findings from the EMIR review is likely to take some time. The removal of a clearing obligation need not be treated in the same way as the imposition of a clearing obligation, and the lack a full consultation process would not be detrimental to those who wish to continue to clear such contracts. For instance, ESMA could provide in each set of regulatory technical standards imposing the clearing obligation, a mechanism for removing a class of contracts, if the criteria set out in Article 7 of EU No 149/2013 are no longer met, or for the obligation to be removed in certain extreme circumstances, pending a full consultation process.

<ESMA\_QUESTION\_4>

#  Determination of the OTC interest rate classes to be subject to the clearing obligation

Question : 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>

We agree with the proposed criteria set out in Section 3 of the consultation paper for determining the interest rate classes of OTC derivatives that should be subject to mandatory clearing.

To enable greater international convergence and hence further reduce systemic risk, we suggest that ESMA harmonise the maximum maturity of Overnight Index Swaps (OIS) with its US counterparts. For example, in the US, Dodd-Frank[[3]](#footnote-3) does not require Overnight Index Swaps (OIS) over 2 years to be cleared, yet the draft regulatory technical standards propose that OIS up to 3 years will be subject to mandatory clearing. We suggest that ESMA reduce this to two years, in the interest of global harmonisation.

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

<ESMA\_QUESTION\_6>

Section 4.1 includes analysis of the criteria relevant for the determination of the dates for the clearing obligation to apply. We support the criteria that ESMA proposes taking into consideration, which include: a) the expected volume of the relevant class of OTC derivatives; b) whether more than one CCP already clear the same class; and c) the ability of the CCP to handle the expected volume. We especially note the importance of criterion b). Where there is only one CCP available, ESMA should assess the potential impact that this has on access generally and the options available to market participants and increase the time frame where they consider that this will result in more CCPs offering to clear the class of derivative in question. This same argument should also apply to the number of clearing members that have access to the authorised CCP(s). Other related factors which ESMA may consider, include the jurisdictions in which the CCPs operate; the extent to which the CCP has market share across the OTC clearing market generally and the range of clearing account options (and pricing structures) made available for client clearing.

<ESMA\_QUESTION\_6>

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

Question : 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>

Section 4.2 includes an analysis of the definition of the categories of counterparties to which the clearing obligation should apply. We support ESMA’s proposed categorisation of counterparties, which reflects the Option B proposal put forth in the Discussion Paper on the Clearing Obligation (2013/925).

<ESMA\_QUESTION\_7>

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

Question : 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>

We welcome the lengthy phase-in of 18 months for category 2 counterparties, as this gives our members and their clients sufficient time to prepare for clearing.

We do have serious concerns about the impact of the proposed front-loading requirements for our members as category 2 counterparties. These concerns and possible alternatives are included in our response to Question 9.

<ESMA\_QUESTION\_8>

#  Remaining maturity and frontloading

Question : 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>

Impact of front-loading and minimum maturity thresholds

Whilst we welcome the proposal to effectively limit front-loading to contracts entered into during period B, and we appreciate the lengthy phase-in of 18 months for category 2 counterparties (which will be the majority of our members’ clients), we are concerned that the practical impact of the application of the front-loading requirements to contracts with such a low minimum remaining maturity will mean that the phase-in is of little use. A large number of our members’ clients execute long‑dated OTC contracts (with tenors of much greater than six months), often to hedge long-dated liabilities. A minimum remaining maturity of 6 months will in practice mean that the vast majority of OTC contracts subject to mandatory clearing which are executed during the phase-in period will become subject to front-loading. This is likely to cause pricing uncertainty, market disruption and could have a negative impact on financial stability in general. In addition, the operational impact of such a large front-loading requirement on clients, clearing members and CCPs, will be substantial.

In terms of pricing, even though there will be certainty about which classes of OTC derivatives are to become subject to the clearing obligation; the CCPs currently authorised or recognised to clear those derivatives; and the date on which the obligation is to apply; market participants will still be unable to accurately price trades that are to be cleared at a later date. This is due to the fact that the valuation of swaps is different in the bilateral and cleared world (due to the differences in the approach to eligible collateral and the interest rates used for discounting cash flows). As a result, contracts will be subject to a pricing adjustment at the point that they are front-loaded into a CCP. If this is not accurately reflected at the date of trade inception, one of the parties will suffer a loss when the trade is cleared. However, the pricing of a trade which will be valued on a different basis at a future point in time can be very complicated and there is no agreement on approach. Nor will there be certainty at the trade date on the front-loading date (i.e. the date on which the valuation approach will change) and so it will be difficult for counterparties to even assess when the new approach will take effect in order to accurately price this in at trade date. This means that there will need to be rebalancing payments at the point at which each trade is front-loaded. Such calculations will be complex and potentially hard to agree, especially bearing in mind the large number of trades that will be impacted by the front-loading proposals.

The operational impact of front-loading such a large volume of contracts will be substantial and will require significant time and resources to implement effectively. In order to complete the front-loading process by the end of the phase-in period, the process will need to be commenced well in advance of the deadline. The structures for client clearing including operational processes and procedures; and legal documentation will need to be in place prior to commencing the front-loading process. In effect, this will significantly reduce the phase-in period in practical terms for many category 2 counterparties. Market participants will also need to establish and agree an appropriate process for moving open contracts into clearing. We urge ESMA to also take on board the lessons learned from the experience of implementing the back-loading requirement in respect of trade reporting which created a huge operational impact for firms and trade repositories, the implications of which still remain. The front‑loading of uncleared contracts into a cleared environment is far more complex than the back-loading of trades to trade repositories.

We suggest that ESMA consider the following two alternative approaches to the front‑loading and phase-in proposals set out in the consultation paper:

* Option 1: This is our preferred option. Remove the front-loading obligation for category 2 counterparties and reduce the phase-in period for new trades to be cleared, from 18 months to 12 months. This will result in new OTC contracts entering the cleared environment earlier than originally planned, and reduces the front-loading burden on firms and the extent of the pricing uncertainty created in the market. We suggest that ESMA consider our proposal under Option 1, together with our request for a phased-in approach for variation margin requirements for uncleared trades[[4]](#footnote-4). This gives buy-side firms sufficient time to implement central clearing requirements before considering requirements for uncleared trades.
* Option 2: Implement a phase-in for front-loading for category 2 counterparties, so that the front-loading period only commences 12 months after the start of the phase‑in period for category 1 counterparties, thus reducing the period of front‑loading for category 2 counterparties, from 18 months to 6 months. This should give firms sufficient time to implement the necessary processes, procedures and documentation to ensure compliance with the clearing obligation, before having to also consider front-loading and would also reduce the volume of transactions that will need to be front-loaded and therefore the pricing uncertainty as well as the burden and operational risk associated with the process. At the same time, it will still ensure that contracts entered into within 12 months of the start of the clearing obligation, by category 2 counterparties, become subject to central clearing.

We also suggest that the effective date for front-loading, i.e. the start of Period B should be the date when the regulatory technical standards enter into force, as stated in the letter from ESMA to the European Commission of 8 May 2014[[5]](#footnote-5), rather than the date of publication in the Official Journal. As it is unlikely that the publication date will be announced to market participants ahead of time, they will not have the certainty to be able to anticipate the exact start date of front-loading precisely. However, if the effective start-date for front‑loading is when the regulatory technical standards enter into force, market participants will have had 20 days advance warning.

Further, we request that ESMA explicitly clarify that the front-loading requirements apply to third‑country entities in the same manner as the clearing obligation does, where counterparties established in third-countries determine the category of counterparty to which they would belong if they were established in the Union, and hence be subject to the relevant front-loading requirements for that particular counterparty category.

Uncertainty regarding the implementation of the pension exemption

Under Article 89(1) of EMIR, OTC derivative transactions that are objectively measurable as reducing investment risks directly relating to the financial solvency of pension scheme arrangements as defined in Article 2(10) will not be subject to the clearing obligation. ESMA has clarified in its EMIR Q&As (OTC Question 16) that pension scheme arrangements which are exempt from the clearing obligation will only have to clear contracts executed after the date when the exemption falls away, and there will therefore be no front-loading. This means that front‑loading will not apply to such entities (unless they become subject to clearing during a relevant phase-in period). In order to ensure certainty in respect of the application of the front-loading requirement, entities need to know whether or not they qualify as a pension scheme arrangement or entity under Article 2(10)(c) and (d) of EMIR. However, ESMA and EIOPA have yet to confirm the process for competent authorities to provide their list of entities or arrangements to them, or confirm their opinion in respect of the types of entities or arrangements that competent authorities have notified to them under Article 89(2), despite conducting a ‘pilot’ exercise on the pension exemption in October 2013. With the proposed front-loading requirements likely to commence in late 2014-early 2015, there is very limited time for entities to receive the certainty they need from ESMA and EIOPA that they are eligible. If front-loading commences before the pension exemption is clarified and the procedure required by Article 89(2) of EMIR is implemented, then pension scheme entities or arrangements, which are not clearly within Article 2(10)(a) and (b) of EMIR and their counterparties will not know whether contracts which they execute, will be required to be front-loaded in due course. This will in turn have a material impact on valuations and the use of collateral; and is likely to result in funds incurring significant costs; and end-investors and pension fund beneficiaries receiving reduced returns on their investment**.**

Non-financial counterparties and front-loading

Under the current proposals, front-loading is not applicable to contracts for which at least one of the counterparties is a non-financial counterparty. However it is not clear what the process is for a counterparty that shifts from non-financial counterparty to financial counterparty during a front-loading window. . For example, if an AIFM becomes authorised or registered under AIFMD, any AIFs managed by that AIFM would become financial counterparties and so be subject to front-loading. We suggest that ESMA make it clear (either through a recital in the draft regulatory technical standards or in future Q&A) that the front-loading obligation is only applicable to contracts which would, in the absence of a phase-in period, be subject to the clearing obligation at the time the contract was entered into. For example, when an AIFM becomes authorised or registered under AIFMD (and so the AIF becomes a financial counterparty), any contracts entered prior to that point would not be subject to front-loading, even if the change in counterparty status occurred in the middle of a front-loading window that would generally require financial counterparties to front-load during that entire window.

<ESMA\_QUESTION\_9>

#  OTC equity derivative classes that are proposed not to be subject to the clearing obligation

Question : Do you have any comment on the analysis on the Equity OTC derivative classes presented in Section 6?

<ESMA\_QUESTION\_10>

We support ESMA’s proposal not to submit any equity OTC derivative classes to the clearing obligation, and look forward to responding to any future consultation paper on the appropriate structure of equity classes in subsequent clearing obligation determinations.

<ESMA\_QUESTION\_10>

#  OTC Interest rate future and option classes that are proposed not to be subject to the clearing obligation

Question : 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>

We support ESMA’s proposal not to subject OTC interest rate future and option classes to the clearing obligation at this stage. Should ESMA choose to consider these classes of derivatives for clearing in the future, we look forward to responding to any future consultation paper on this decision.

<ESMA\_QUESTION\_11>

# Annex - Commission mandate to develop technical standards

# Annex - Draft Regulatory Technical Standards on the Clearing Obligation

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

<ESMA\_QUESTION\_12>

Impact of clearing on risk-reducing trades

We believe that any trade that is reducing a pre-existing position under a bilateral trade, and which is intended to be compressed (and is compressed) with the original trade so that the position is partially or fully terminated should not be subject to the clearing obligation. The remaining stub of the original trade where there has been a partial termination or a novation should also not be subject to mandatory clearing. If these trades are subject to clearing, market risk will actually be increased as offsetting trades are cleared and open at a CCP, whilst the original bilateral positions remain open until maturity. Compression is not possible between a cleared and bilateral contract and novating the bilateral trade to a CCP before compressing, is both problematic and inefficient.

<ESMA\_QUESTION\_12>

# Annex - Impact assessment

Question : Please indicate your comments on the CBA.

<ESMA\_QUESTION\_13>

No comment.

<ESMA\_QUESTION\_13>

1. <http://www.cftc.gov/PressRoom/PressReleases/pr6429-12> [↑](#footnote-ref-1)
2. <http://www.cftc.gov/PressRoom/PressReleases/pr6429-12> [↑](#footnote-ref-2)
3. <http://www.cftc.gov/PressRoom/PressReleases/pr6429-12> [↑](#footnote-ref-3)
4. <https://www.eba.europa.eu/regulation-and-policy/market-infrastructures/draft-regulatory-technical-standards-on-risk-mitigation-techniques-for-otc-derivatives-not-cleared-by-a-central-counterparty-ccp-?p_p_auth=Go4J9Xy3&p_p_id=169&p_p_lifecycle=0&p_p_state=maximized&p_p_col_id=column-2&p_p_col_pos=1&p_p_col_count=2&_169_struts_action=%2Fdynamic_data_list_display%2Fview_record&_169_recordId=755219&_169_redirect=https%3A%2F%2Fwww.eba.europa.eu%2Fregulation-and-policy%2Fmarket-infrastructures%2Fdraft-regulatory-technical-standards-on-risk-mitigation-techniques-for-otc-derivatives-not-cleared-by-a-central-counterparty-ccp-%2F-%2Fregulatory-activity%2Fconsultation-paper%2F655146> [↑](#footnote-ref-4)
5. http://www.esma.europa.eu/system/files/2014-483\_letter\_to\_european\_commission\_re\_frontloading\_requirement\_under\_emir.pdf [↑](#footnote-ref-5)