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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 2014  2014/800 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 | Alternative Investment Management Association (AIMA) |
| Are you representing an association? | Yes |
| Activity | Investment Services |
| Country/Region | International |

# Introduction

**Please make your introductory comments below:**

<ESMA\_COMMENT\_1>

The Alternative Investment Management Association[[1]](#footnote-1) (**AIMA**) welcomes the opportunity to provide comments to the European Securities and Markets Authority (**ESMA**) in response to its Consultation Paper[[2]](#footnote-2) ‘Clearing Obligation under EMIR (no.2)’ (**the CP**).

In responding to the CP, we make the following points:

* AIMA supports ESMA’s analysis of the relevant indices to become subject to mandatory clearing and the exclusion for the moment of single name CDS. We recommend ongoing coordination between ESMA, the CFTC and SEC as far as is possible for future mandatory clearing designations.
* AIMA strongly recommends that the date of mandatory clearing be set to enable sufficient time for ICE Clear Europe to become authorised under EMIR.
* The structure of the categories used for the clearing start date risks creating uncertainty in respect of the classification of Alternative Investment Funds (AIFs) for other EMIR obligations and for frontloading. It would be helpful to confirm that the categories constructed in respect of the clearing start date do not have any implications for other obligations under EMIR, such as the NFC thresholds or frontloading requirements.
* Frontloading could lead to significant market disruption and should be avoided as far as possible.
* Lack of a comprehensive agreement between the EU and US regarding equivalence and substituted compliance for entities subject both to EMIR and CFTC rules is the greatest potential impediment to the smooth implementation of the clearing obligation under EMIR.

We would be happy to discuss any of the points raised in our submission further.

<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 note ESMA’s discussion in para.10-11 of the CP regarding the alternative possibility of submitting separate draft RTS on the clearing obligation for each CCP authorised, reflecting the different dates on which CCPs become authorised.

We strongly endorse the approach that ESMA has instead followed, whereby it has grouped the analysis of notified classes of contracts into as few consultations and legislative instruments as possible. This will better enable market participants to comment on and understand the scope of the clearing obligation.

<ESMA\_QUESTION\_1>

# Structure of the credit derivatives classes

Question : 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>

AIMA believes that the proposed structure for untranched index CDS classes is suitable for the purpose of providing certainty as to which contracts are subject to the clearing obligation, as well as providing for international convergence.

We agree that the characteristics taken into account to identify the relevant contracts – the index sub-type, its tenor and series number - are sufficient.

We also strongly support international convergence for the application of the clearing obligation to untranched index CDS. In this regard, ESMA’s proposed structure identifies two indices for clearing – the 5 year iTraxx Europe Main and 5 year iTraxx Europe Crossover, both of which are already subject to the CFTC’s clearing mandate in the US.[[3]](#footnote-3)

We would recommend that ESMA seek to coordinate as closely as possibly with the CFTC on any future mandatory clearing designations for untranched indices.

<ESMA\_QUESTION\_2>

# Determination of the classes of OTC derivatives 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 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>

**Index CDS**

AIMA agrees that the planned scope of application of the clearing obligation to the iTraxx Europe Main and iTraxx Europe Crossover indices - excluding single name CDS, the iTraxx Europe Senior Financial index and the iTraxx Europe High Volatility indices from the obligation - is appropriate to address systemic risk associated with credit OTC derivatives.

We also agree with the proposed application of the clearing obligation to series 11 onwards of the relevant iTraxx contracts, but would urge caution as to the application of the clearing obligation to off-the-run contracts. In particular, we note that the liquidity of on-the-run contracts falls incredibly fast once they become off-the-run such that they may no longer be suitable for mandatory clearing. As we describe in more detail below, we consider it vitally important that ESMA have the powers to suspend the clearing obligation either on a temporary or permanent basis.

**Single-name CDS**

With respect to Single-Name CDS, AIMA agrees that the clearing obligation need not be imposed at this time and should not be a priority for the first determination. We agree with ESMA’s analysis within paragraphs 65-67 of the CP and believe that, despite the single name CDS market being larger in both gross notional value and trading activity, the notional sizes and liquidity of individual single name CDSs are not generally sufficient to warrant mandatory clearing as a priority for systemic risk purposes. We also agree with paragraph 68 of the CP which specifies that the mandatory clearing of financials and sovereigns could both introduce wrong-way-risk or correlated risk with clearing members (in the same way as the iTraxx Senior Financials index described at paragraph 60). As depicted by Table 13 of the CP, the largest 20 EU single name CDS contracts – with one exception – are referenced entirely to sovereigns and financials. Of course, we support the ongoing monitoring of relevant single name CDS for potential future mandatory clearing designations. In this regard, we consider that the individual constituents of the indices subject to mandatory clearing should be the first single name products considered for mandatory clearing.

Focusing on international convergence, we would also note that the SEC has yet to make a clearing determination in relation to single name CDS contracts. As we described within our response to Question 2 above, AIMA supports a consistent international approach to the implementation of the clearing obligation. Derivatives markets are international in nature, such that the imposition of contrasting or conflicting rules between jurisdictions can result in unnecessary negative consequences for market sentiment, market price formation and operational costs. We recommend that the EU seek to coordinate as much as is possible with the SEC on the potential application of the clearing obligation to single name CDS in the US and EU. We would recommend that such should be introduced in a phased manner and not until at least a year after the index obligation goes live.

**Changes in characteristics and suspension of the clearing obligation**

Despite supporting the planned scope of the clearing obligation from a systemic risk perspective, AIMA is concerned that there is currently no provision for situations in which the liquidity of a class of contracts deteriorates has changed so that it: (i) is materially different to the liquidity profile used by ESMA when making the clearing designation for the class; or (ii) means that mandatory clearing is no longer suitable for the class of contract. We consider that it is vital for ESMA to have the power to suspend the clearing obligation on either a temporary or permanent basis in such emergency circumstances.

AIMA notes the difficulties of CCP risk management in situations of low liquidity, potentially leading to the CCP being unable to hedge its exposures, which may then lead the CCP to seek to reduce its exposure by compelling participants to reduce their cleared positions by increasing margin requirements, such that it becomes economically unviable for participants to maintain positions with the CCP. In a mandatory clearing scenario, however, participants would not be able to take out an equivalent position in non-cleared contracts. This would place a *de facto* prohibition on their trading activities in the particular contract, impacting negatively on the ability for firms to hedge their risks efficiently and potentially forcing them to reduce their activities, which could lead to further reductions in liquidity for other products related to the underlying issuers or instruments. These issues would be avoided if the clearing obligation were suspended by ESMA, enabling firms to move their cleared positions back to the bilateral space.

We note that ESMA has recognised within CP (No.1) on IRS that the current RTS amendment procedure is not suitable to introduce such a power and strongly suggest that this for a major aspect of the EMIR review to be undertaken in 2015. In the interim, we advise that extra care should be taken when subjecting certain classes of contract to the clearing obligation.

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

<ESMA\_QUESTION\_4>

**CCPs authorized**

Within paragraphs 91-92 of the CP, ESMA notes that both LCH.Clearnet SA and ICE Clear Europe currently clear the two indices proposed for mandatory clearing; the iTraxx Main and iTraxx Crossover indices. However, as is recognised within paragraph 90 of the CP, ICE Clear Europe has yet to be authorised under EMIR.

Despite ESMA’s assertion within paragraph 90 that ICE Clear will be authorised by the time the clearing obligation takes effect, we agree with the majority opinion described within paragraph 87 of the CP that it would be particularly imprudent to introduce RTS placing a clearing obligation on the relevant indices when it is not certain that two CCPs will be authorised to clear them.

AIMA appreciates ESMA’s point within paragraph 88 of the CP that whether more than one CCP is authorised to clear a contract is only relevant for the date of application of mandatory clearing, rather than whether to commence that clearing obligation procedure. However, we believe that Article 5(5) of EMIR[[4]](#footnote-4) need not limit ESMA from delaying implementation of the clearing obligation until more than one CCP is authorised.[[5]](#footnote-5) AIMA does not suggest that ESMA should not launch a clearing obligation procedure (as is envisaged by paragraph 89 of the CP); instead we suggest that if only one CCP is authorised upon the initiation of the procedure, ESMA should ensure that the date of application of the obligation is at least three months after a second CCP has been authorised to clear the particular contract.

We believe strongly that the application of the clearing obligation when only one CCP is available is undesirable as it would not only create a mandated monopoly for clearing services lacking competitive forces, but also increase systemic risk within the relevant market and its participants. For example, if the single CCP authorised to clear the mandatorily clearable contract ran into financial difficulty, participants would have no other CCP to fall back upon whilst the affected CCP dealt with its distress. No participant would voluntarily increase their exposures to an unstable CCP, thus disruption in the underlying contract market would ensue as participants ceased trading in the mandatorily clearable product.

It is also possible that a CCP may halt its clearing activities in a product for commercial reasons, despite remaining authorised to clear that product. Mandatory clearing in a single CCP scenario would, therefore, leave participants open to compliance dilemmas should the CCP choose to halt its clearing services for a particular contract as they would be unable to clear their traded contracts, but would still be mandated to do so.

The current practical scenario could also create significant disruption in the market for the iTraxx Europe Main and iTraxx Europe Crossover indices. Here, both ICE Clear Europe and LCH.Clearnet SA are able to clear the relevant contracts, but only LCH.Clearnet SA is authorised. If ICE Clear Europe is not authorised before the effective date of the clearing obligation all CDS contracts subject to the font-loading requirement that have been cleared with ICE Clear will have to be migrated to LCH.Clearnet in order to comply with obligation to clear with an authorised CCP. Under current rules, however, an effective close-out of the positions held with ICE Clear may not be possible. To close out the position, an offsetting cleared position with ICE Clear would need to be opened in order to cover the risk of the ICE Clear cleared contract effcetively, however, this would not be permitted due to ICE Clear’s lack of authorisation.

It is also the case that, despite Category 1 entities having membership with both CCPs, Category 2 participants - such as hedge funds – may well not have clearing arrangements with LCH.Clearnet SA which does not currently have client clearing relationships.[[6]](#footnote-6) If the clearing obligation is applied before Category 2 entities are able to set up clearing arrangements with LCH.Clearnet SA, such participants could face a *de facto* restriction from trading on the relevant iTraxx index markets as they are unable to clear the relevant contracts.

Operational issues are highly likely for participants should they attempt to move contracts from ICE Clear to LCH.Clearnet as both operates in a very different way. For example, LCH.Clearnet makes multiple margin calls a day. This would cause added disruption for category 2 entities.

We would, therefore, strongly suggest delaying the application of the clearing obligation for the iTraxx Europe Main and iTraxx Europe Crossover indices until three months after ICE Clear Europe is authorised by ESMA.

**Number of clearing members authorised**

AIMA believes that the number of CMs is a highly important aspect of whether to impose the clearing obligation on a particular class of contract, for the same beneficial reasons as for having at least two CCPs authorised to clear a contract.

We agree with ESMA’s analysis at paragraphs 93-99 that there are currently sufficient numbers of CMs to enable the efficient application of the clearing obligation for the relevant iTraxx Europe indices. However, we would strongly recommend that ESMA continue to monitor the relevant markets to ensure sufficient numbers of CMs are present and providing clearing services to clients, with a view to suspending the clearing obligation should this number prove insufficient for the market to function efficiently.

<ESMA\_QUESTION\_4>

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

Question : 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>

ESMA notes in para. 105 of the CP that it has found no evidence justifying different classifications of counterparties for CDS than are detailed for IRS within ESMA’s CP (No.1)[[7]](#footnote-7) and, for practical reasons, that it would be beneficial to keep an identical classification for CDS. However, AIMA has concerns as to the proposed formulation of this classification.

As we point out within our response to Question 7 of ESMA’s CP (No.1), under this framework, Alternative Investment Funds (AIFs) that are NFC+s are grouped in the same category as FCs that are not clearing members. While we have no particular concerns regarding the proposed phase-in timescales associated with this categorization, we believe that it is undesirable to single out AIFs in this manner as it: (i) risks creating uncertainty or otherwise undermining AIFs’ status as NFCs for the purposes of the other obligations under EMIR; and (ii) creates uncertainty as to the potential application of frontloading.

Our response to Question 7 of ESMA’s CP (No.1) uses para.194 of that consultation as an illustration. There ESMA states that AIFs falling under the NFC category should qualify their OTC trading as “non-hedging”. We do not believe that this fully justified, as there may well be activity that can legitimately be classed as hedging (relating to underlying issuers of the CDS indices, for example), even though this might be difficult in practice. We consider that specific types of entity that are NFCs should be able to consider whether their trades are for hedging purposes when determining whether they are above the clearing threshold. Such a statement could create uncertainty regarding the legitimate classification of AIFs as NFC. This point is relevant both for those NFCs described in para.191 of CP No.1 (EU AIFs) and for third-country AIFs as described under para. 204 of CP (No.1).

In addition, the frontloading obligation contained within Article 4 of the draft RTS specifies at paragraph 3 that ‘[frontloading] shall not apply to contracts to which at least one counterparty is a non-financial counterparty’, excluding all NFCs both above and below the clearing threshold from the scope of frontloading. Recital 6 of the draft RTS, however, specifies that ‘for the purpose of the clearing obligation, [AIFs that are not FCs] should be included in the same categories of counterparties than AIFs that are classified as financial counterparties’. AIMA appreciates that ESMA’s categorisations of entities within paragraph 104 of the CP is relevant for the effective date of the clearing obligation only and **no**t for the frontloading obligation, which uses the standard financial counterparty/non-financial counterparty distinction. However, the wording of Recital 6 could introduce confusion.

Therefore, we encourage ESMA to: (i) confirm that the assessment of whether AIFs are above or below the clearing threshold is not in any way impacted by the structure of the classification used for the purposes of the clearing obligation start dates; and (ii) adopt a clear statement that the classification of entities does not relate to potential frontloading or any other EMIR obligations that apply to those entities. In this regard, we strongly recommend that the final sentence of recital 6 of the draft RTS be amended to read:

‘For the purpose of the clearing obligation **start dates**, those counterparties should be included in the same categories of counterparties **~~than~~ as** AIFs that are classified as financial counterparties.’

<ESMA\_QUESTION\_5>

## 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\_6>

As AIMA describes within our response to Question 8 of ESMA’s CP (No.1), we consider that those most significant impediment to the smooth implementation of the clearing obligation is the lack of a positive equivalence determination by the European Commission in respect of US clearing rules, coupled with lack of appropriate substituted compliance under CFTC rules for entities subject to EMIR.

We consider that it would be desirable to ensure that the European clearing obligation does not apply ahead of a comprehensive agreement being reached between the US and EU in order to address the potential for overlap and conflict between their respective rules. We would hope, however, that the timescales envisaged in the CP are sufficiently generous that such agreement can be reached ahead of category 2 and category 3 entities becoming subject to the obligation.

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

We believe that the most workable solution to this situation would be for the CFTC to introduce relief for EMIR-covered funds, as explained in our October 2013 relief request to the CFTC.[[8]](#footnote-8)

<ESMA\_QUESTION\_6>

# Remaining maturity and frontloading

Question : 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>

One of our main concerns in relation to ESMA’s proposals is that of frontloading. As we have previously expressed, [[9]](#footnote-9) frontloading is likely to have a disruptive impact on markets in direct conflict with its objectives.

Period A – between notification of classes to ESMA and publication of RTS in the Official Journal

AIMA supports the approach suggested in para.117-118 of the CP in respect of contracts entered into in Period A (between notification of the classes to ESMA and the publication in the Official Journal of the regulatory technical standards (RTS) on the clearing obligation), that effectively ensures that none of these contracts are subject to the trading obligation.

Period B – between publication of RTS in the Official Journal and entry into effect

We appreciate that ESMA has sought to come up with a balanced approach in respect of contracts entered into in Period B (between publication in the Official Journal of the RTS and the date on which the clearing obligation takes effect), whereby contracts that are close to expiration (up to 6 months) would not be required to be cleared. However, we remain of the view that any retroactive clearing obligation will have a disruptive impact on participants’ trading activities as they are forced to re-price and novate non-cleared bilateral transactions. We, therefore, strongly recommend that either frontloading is not applied to category 2 entities, or that the minimum maturity of contracts at the effective date of the clearing mandate to become subject to frontloading is set to match the maximum maturity of contracts that are subject to the obligation.[[10]](#footnote-10)

Should frontloading be required, we note that many market participants will almost certainly elect to start clearing contracts ahead of the clearing obligation taking effect in order to avoid operational costs of having to net-off and resubmit them to clearing when the obligation takes effect. This would undermine the objective of setting a phase-in period as participants clear the contracts early. Disruption would occur as - despite not being immediately subject to the clearing obligation - those contracts entered into during Period B that will have a residual maturity of above six months at the date of application of the clearing obligation will be impossible to price accurately. In particular, collateral exchange conventions in the bilateral space are often very different to those of CCPs, thus contracts will face price adjustments once they become cleared. The logical solution to avoid either party taking a loss at the point of frontloading is to make an adjustment at the point of entry into the trade, however, this is extremely complicated such that it would most often be easier for participants to simply enter a cleared trade before the clearing obligation actually enters into effect. Such practices will likely lead to non-cleared contracts during Period B being difficult to enter into, resulting in price divergence between the uncleared and cleared spaces.

The fact that the response to frontloading could be to submit contracts to clearing could also pose operational risks for the CCPs as they attempt to onboard numerous new CMs before they have had a chance to develop their systems. Even if participants did not seek to clear early and all waited until the date of application of the clearing obligation to submit their trades for clearing, significant operational issues could still result for CCPs through ‘bottlenecking’. At the point of application, all new contracts and all pre-existing contracts of sufficient maturity entered into by all relevant entities over the prior 18 months[[11]](#footnote-11) would be submitted for clearing within a very short space of time. AIMA is concerned that the systemic risk intended to be mitigated by frontloading of contracts is far outweighed by the systemic risk that is posed by operational and systems disruptions that could occur at a CCP due to bottlenecking of contracts, with participants having to terminate a large number of trades should they be unable to clear them.

Accordingly, we believe that ESMA could either introduce wording within Article 4(3) of the RTS which disapplies frontloading to financial counterparties which are not clearing members (i.e., category 2 entities) or adjust the remaining maturity threshold to a longer period, in the same manner for Period A, such that no contract subject to the obligation can have a sufficient remaining maturity upon the effective date of clearing.

Participant status changes mid-period

If frontloading is nonetheless applied. AIMA would be extremely grateful for clarity on what happens in respect of frontloading where a participant’s status changes from NFC+ to an FC (given that NFC+s are exempted from frontloading, as confirmed in para.112). For example, we take the view that an unregistered non-EU hedge fund with a non-EU fund manager is a third-country entity that would be an NFC+/- if it were established in the EU, but if its manager becomes fully authorised as an AIFM (which it might do after October 2015 if the marketing passport under AIFMD is extended to non-EU AIFMs), the fund would become an FC. It would be helpful to confirm that contracts entered into when the entity was an NFC+ would not have to be frontloaded if the entity ultimately becomes an FC.

<ESMA\_QUESTION\_7>

# Annex I - Commission mandate to develop technical standards

# Annex II - 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\_8>

An issue that is not currently considered in the CP or RTS[[12]](#footnote-12) is how a participant might go about closing out a non-cleared position entered into prior to the application of the clearing obligation, to the extent that the contract has since become subject to the clearing obligation. Had the clearing obligation not been in place, then it would have been possible to enter into an offsetting bilateral position to eliminate the original position. This will no longer be possible under a structure where that participant is required to centrally clear the offsetting trade.[[13]](#footnote-13) One solution to this might be to novate the original trade to central clearing, and then enter to into a new, offsetting cleared transaction, although this would create the potential for disagreement between the parties to the original uncleared transaction, in as much as the pricing assumptions would have to be revisited before it could be cleared.

AIMA notes that, in this scenario, the CFTC has determined that historical non-cleared transactions can be closed out or reduced by executing an offsetting trade, which does not itself have to be cleared.[[14]](#footnote-14) While the Level 1 legislation does consider trades arising from portfolio compression, it does not address the treatment of individual risk-reducing transactions (other than in the context of the NFC+/- threshold calculation).

We would encourage ESMA to consider whether this point can be addressed through the RTS on the clearing obligation, by insertion of a new Article that would provide that individual risk-reducing transactions in a contract that is subject to the clearing obligation should not be subject to the obligation.

<ESMA\_QUESTION\_8>

# Annex III - Impact assessment

Question : Please indicate your comments on the Impact Assessment.

<ESMA\_QUESTION\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_9>

1. Founded in 1990, the Alternative Investment Management Association (AIMA) is the global representative of the hedge fund industry. We represent all practitioners in the alternative investment management industry – including hedge fund managers, fund of hedge funds managers, prime brokers, legal and accounting firms, investors, fund administrators and independent fund directors. Our membership is corporate and comprises over 1,400 firms (with over 7,000 individual contacts) in more than 50 countries. [↑](#footnote-ref-1)
2. Available online at: <http://www.esma.europa.eu/system/files/2014-800.pdf> [↑](#footnote-ref-2)
3. <http://www.ecfr.gov/cgi-bin/text-idx?SID=c0638677b8722f6265fcb6d2508dfc42&node=se17.2.50_14&rgn=div8> [↑](#footnote-ref-3)
4. Which specifies that the number of CCPs clearing the same class is a criteria to be taken into account by ESM when defining the dates from which the clearing obligation will apply. [↑](#footnote-ref-4)
5. We suggest that this is in principle similar to ESMA’s decision to disapply the clearing obligation to contracts entered into during ‘Period A’ – paragraph 113 of the CP – by setting a minimum maturity sufficiently high so that the frontloading obligation no longer applies to any contracts. [↑](#footnote-ref-5)
6. as noted by ESMA at point (\*\*) on page 32 of the CP, ‘there is currently no client clearing activity on the CDS business line.’ [↑](#footnote-ref-6)
7. Available online at: <http://www.esma.europa.eu/system/files/esma-2014-799_irs_-_consultation_paper_on_the_clearing_obligation_no__1____.pdf> [↑](#footnote-ref-7)
8. ‘AIMA Request for Time-Limited No-Action Relief with respect to Section 2(h)(1)(A) of the CEA in respect of EMIR-covered funds’, 9 October 2013. Available at: <http://www.aima.org/objects_store/aima_request_for_time-limited_no-action_relief_10092013.pdf> [↑](#footnote-ref-8)
9. AIMA-MFA Response – The Clearing Obligation Under EMIR, 12 September 2013 [↑](#footnote-ref-9)
10. In the same manner as for Period A [↑](#footnote-ref-10)
11. Period B for Category 2 entities. [↑](#footnote-ref-11)
12. That we also touch on in our response to Q4 which discusses the issue of mandatory clearing in a single authorised CCP environment and how trades could be moved from an unauthorised CCP to an authorised CCP. [↑](#footnote-ref-12)
13. This is a similar situations as is described in our response to Question 4 on a single authorised CCP, which specifies that contracts with ICE Clear will be unable to be netted effectively if it remains unauthorised at the implementation date of mandatory clearing as contracts will no longer be able to be cleared with ICE Clear. [↑](#footnote-ref-13)
14. CFTC **No-Action Relief from Required Clearing for Partial Novation and Partial Termination of Swaps** , March 2013. Available online at: <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/13-02.pdf> [↑](#footnote-ref-14)