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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

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| --- | --- |
| Name of respondent | CME Group Inc.  |
| Are you representing an association? | No |
| Activity | Central Counterparty |
| Country/Region | North-America |

# Introduction

**Please make your introductory comments below:**

<ESMA\_COMMENT\_1>

CME Group Inc. and CME Clearing Europe, together CME Group, appreciate the opportunity to comment on ESMA’s consultation paper regarding the over-the-counter (“OTC”) credit default swap (“CDS”) Clearing Obligation. CME Group is the parent company of four Designated Contract Markets (“DCMs”): the Chicago Mercantile Exchange (“CME”), the Board of Trade of the City of Chicago, Inc. (“CBOT”), the New York Mercantile Exchange, Inc. (“NYMEX”), and the Commodity Exchange, Inc. (“COMEX”). These DCMs offer the widest range of benchmark products available across all major asset classes, including futures and options based on interest rates, equity indexes, foreign exchange, energy, metals, agricultural commodities, and alternative investment products. CME’s clearing house division (“CME Clearing”) and CME Clearing Europe together offer clearing and settlement services for exchange-traded futures contracts and over-the-counter (“OTC”) derivatives. CME Clearing Europe is regulated and supervised by the Bank of England as an authorized central counterparty under the European Market Infrastructure Regulations (“EMIR”). CME Clearing is registered with the CFTC as a derivatives clearing organization (“DCO”), has been deemed a systemically important financial market utility by the Financial Stability Oversight Council and is in the process of becoming recognized under EMIR.

CME Group strongly supports ESMA’s plan to mandate the clearing of OTC CDS in the European Union. The proposed Clearing Obligation is in line with the G-20 commitment to implement mandatory clearing of liquid, standardized OTC derivatives and makes positive strides in reducing systemic risk through the clearing of derivatives contracts. CME Group would like to address some points of the Clearing Obligation consultation paper which may benefit from reconsideration.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

CME Group supports the initial product scope proposed in the Clearing Obligation which results in greater alignment with global regulatory standards. The standardized products covered by ESMA’s planned OTC CDS Clearing Obligation are largely consistent with the G-20 commitments and wisely does not include the iTraxx HiVol series, as these products are no longer supported by market liquidity. ESMA should also consider expanding the clearing mandate in a manner consistent with the risk management needs of market participants. As these markets evolve, it may become necessary to expedite the implementation of clearing obligations for new products and asset classes to afford more market participants access to central clearing and in turn limit systemic risk.

ESMA notes that while there is no legal basis for excluding a class of derivatives from the Clearing Obligation solely because only one CCP clears that class, the number of eligible CCPs is considered as a factor. We believe there are a multitude of factors that should be included in any consideration of whether and when to mandate specific classes of derivatives, as reflected by the consultation paper. However, the primary considerations should be the product characteristics (standardization, liquidity profile, etc.), rather than the number of CCPs available to clear those products. To the extent that OTC products have the appropriate levels of standardization, liquidity, and other factors that support central clearing, market participants should be afforded the transparency and risk mitigation benefits provided by a clearing mandate notwithstanding the number of CCPs available to offer central clearing. Placing too much weight on the number of CCPs available for central clearing when deciding whether to mandate a product unnecessarily limits the advancement of the financial markets and the benefits of central clearing.

<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>

TYPE YOUR TEXT HERE

<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>

CME Group supports the proposal to maintain the same definition of the categories of counterparties for credit and interest rate asset classes.

<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>

CME Group would be prepared to facilitate a clearing obligation earlier than the proposed dates for the different categories, particularly in relation to Category 2 and Category 3 timelines.

<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>

CME Group supports ESMA’s objective to reduce systemic risk through requiring the clearing of trades entered into during the frontloading period. However, an extended frontloading phase will likely amplify the operational complexities of implementing the clearing mandate. To the extent that the frontloading requirement in EMIR cannot be modified, CME Group maintains that ESMA should consider any available options to mitigate the negative impacts of frontloading on market participants. We note that these options may include increasing the maturity threshold of products covered by the requirement, changing the category definitions, and reducing the implementation timeframe for the clearing obligation.

<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>

CME Group believes that ESMA should structure the OTC CDS Clearing Obligation, and subsequent RTS, to ensure that all counterparties’ derivatives exposures that are in the covered asset classes (and maturities), and created from the date that frontloading goes into effect, are subject to mandatory clearing. This should be the case whether the exposures result from bilateral execution, execution on a multilateral trading facility, or potentially through portfolio compression, whether bilateral or multilateral. Any other approach would be inconsistent with the policy goals of the G-20 and the European Commission.

<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>