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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’.

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* 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.

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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 | Stuart J. Kaswell, Executive Vice President, Managing Director & General Counsel |
| Are you representing an association? | Yes |
| Activity | Investment Services |
| Country/Region | International |

# Introduction

**Please make your introductory comments below:**

<ESMA\_COMMENT\_1>

Managed Funds Association (“**MFA**”) represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry’s contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals, and other institutional investors to diversify their investments, manage risk, and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, the Americas, Australia and many other regions where MFA members are market participants.

MFA welcomes the opportunity to provide comments to the European Securities and Markets Authority (“**ESMA**”) on its Consultation Paper on the Clearing Obligation under EMIR (no.2), dated 11 July 2014 (the “**Consultation Paper**”). MFA strongly supports the goals and efforts of European policymakers to reduce systemic risk in the derivatives market, a core aspect of which is transitioning the over-the-counter (“**OTC**”) derivatives market to greater central clearing. MFA supports a thoughtful approach to central clearing that ensures that only appropriate products are subject to the clearing obligation. We believe that such an approach to mandatory clearing will: (i) increase transparency of the derivatives market; (ii) reduce counterparty and operational risk in trading; and (iii) enhance market integrity and oversight.

In response to the Consultation Paper, as a preliminary matter, MFA considers it important to raise the below two important points that are of general application as ESMA considers the imposition of the EMIR clearing obligation on any category of derivative contract.

**I. Recognition of Non-EU CCPs**

MFA emphasizes that it is crucial that ESMA and regulators in other jurisdictions focus on promptly resolving outstanding issues related to substituted compliance and equivalence. Significant uncertainty remains as to the extent to which regulators in different jurisdictions will recognize and give deference to other equivalent regulatory regimes. The outcome of regulators’ discussions around these issues will have practical effects on mandatory clearing and the measures market participants will need to employ to comply with the relevant mandatory clearing requirements. As a result of this uncertainty, it is difficult, for example, to provide a definitive recommendation on the timing that is appropriate for phase in of mandatory clearing of credit default swaps (“**CDS**”) in the European Union (the “**EU**”). Developing such a recommendation requires market participants to make a number of assumptions, including as to the central counterparties (“**CCPs**”) through which they will be permitted to clear CDS. Therefore, MFA urges prompt resolution of the matters that we discuss immediately below and in response to Question 6 prior to the commencement of mandatory clearing in the EU.

One critical, outstanding issue is that it is necessary for derivatives regulatory reforms in the EU and other jurisdictions to permit access to, and competition among, CCPs. In particular, it is important that EU and non-EU regulators or policy makers, as applicable, recognize CCPs organized outside their jurisdiction (*i.e.*, third country CCPs) in due course.

Many entities subject to the European Market Infrastructure Regulation (“**EMIR**”) enter into derivative contracts with entities subject to equivalent regulations in other jurisdictions, such as the rules of the U.S. Commodity Futures and Trading Commission (“**CFTC**”) or the U.S. Securities and Exchange Commission (“**SEC**”). As a result, as the various jurisdictions implement mandatory clearing, such cross-border derivative contracts may become subject to duplicative or conflicting clearing obligations. For example, where an entity classified as a financial counterparty (“**FC**”) or a non-financial counterparty (“**NFC**”) exceeding the clearing threshold (“**NFC+**”) is required to clear derivative contracts in accordance with EMIR and its counterparty is required to clear derivative contracts in accordance with the rules of another jurisdiction, then only if the requirements of the two regimes are not in conflict would clearing the trade be possible. Therefore, one necessary component of resolving any potential conflicts between different clearing obligations is for ESMA to recognize third country CCPs, and thus, permit FCs and NFC+s to clear through the same CCPs through which their non-EU counterparties are permitted to clear.

Because of the widespread, global implementation of mandatory clearing, recognition of such third country CCPs is important to ensure that market participants have sufficient access to and availability of CCPs organized in EU and non-EU jurisdictions, and that there is sufficient competition among such CCPs. Otherwise, in contravention of EMIR (Recital 14 of EMIR), there is potential that the derivatives market will become fragmented along jurisdictional lines, which could significantly harm the market by, among other things, impeding competition, impairing portability, limiting participant access to clearing, and ultimately creating artificial barriers across the global marketplace and different instrument types.

MFA notes the recent statement by Commissioner Michel Barnier that U.S. CCPs will not be included in the first batch of CCPs that ESMA will recognize under Article 25 of EMIR. Rather, Commissioner Barnier stated that the European Commission’s (“**EC**”) technical talks with the CFTC are progressing well and that he is confident that the two jurisdictions will be able to agree on outcomes-based assessments of rules and on aligning key aspects of margin requirements to avoid arbitrage opportunities (<http://europa.eu/rapid/press-release_STATEMENT-14-211_en.htm>).

MFA strongly supports Commissioner Barnier’s desire to resolve any outstanding differences such that U.S. CCPs will be included amongst the next batch of CCPs granted recognition by ESMA. However, in the event of any delay in recognition of U.S. CCPs, we emphasize that it is of critical importance that the EC grant such recognition prior to a clearing obligation applying under EMIR. Many market participants that will be subject to the EMIR clearing mandate are already clearing certain contracts under CFTC rules and have existing contractual arrangements and connectivity with U.S. CCPs. It would be a significant burden from a cost, timing, and clearing readiness perspective for such market participants to have to establish temporary relationships with EU CCPs to be able to comply with the EMIR clearing obligation.

The issue is a matter of urgency given that, from 15 December 2014 onwards, non-EU CCPs that have not gained recognition will not be considered to be “qualifying central counterparties” for the purposes of the European Capital Requirements Directive (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0036&from=EN>). As a result, after that time, EU clearing members or non-EU clearing members that are part of a consolidated EU banking group will attract a substantially higher capital charge with respect to their exposures to such non-EU CCPs. Such a capital charge could well be prohibitive in the case of clearing members with an exposure to such non-EU CCPs’ default funds. In the case of U.S. CCPs, the EC would need to grant an implementing act on equivalence of U.S. regulations for such CCPs prior to 15 December 2014 for EU market participants to continue clearing through U.S. CCPs without the market disruption that will be caused by applicable clearing members incurring punitive capital charges.

MFA appreciates that the EC (rather than ESMA) is responsible for making equivalence determinations, but we, nevertheless, felt that it was important to stress this point in the context of the Consultation Paper given its impact on market participants’ ability to clear CDS through U.S. CCPs.

**II. Client Access to Clearing**

As ESMA notes in the Consultation Paper, many market participants will seek to fulfill their EMIR clearing obligations by accessing CCPs through clearing members. However, ESMA also recognizes that at some CCPs there are fundamental barriers that prevent clients from clearing. For example, in the Consultation Paper, ESMA indicates that, although LCH.Clearnet SA (France) (“**LCH**”) has an operational offer of client clearing services, no clearing members of LCH currently offer client clearing.

Most clients do not have the resources available to become clearing members themselves, and thus, will necessarily rely on the availability of client clearing services offered by clearing members to comply with EMIR’s clearing mandate. As a result, it is critical that clearing members make such client clearing services available to ensure that clients have fair and equal access to CCPs. For the EMIR clearing obligation to function as ESMA intends, it is extremely important that ESMA ensure that clients that are subject to the EMIR clearing obligation have robust and viable access to CCPs. In particular, MFA urges ESMA not to subject any class of CDS to the EMIR clearing obligation until multiple clearing members are offering client clearing services with respect to that class of CDS.

<ESMA\_COMMENT\_1>

# The clearing obligation procedure

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

<ESMA\_QUESTION\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_1>

# Structure of the 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>

MFA supports the proposal in the Consultation Paper for defining untranched index CDS by reference to the following characteristics: (i) geographical zone; (ii) reference index; (iii) settlement currency; (iv) series; and (v) maturity. We believe that the proposed characteristics are sufficiently comprehensive to enable counterparties to identify in a clear and timely manner the contracts that fall within the clearing obligation.

MFA also supports ESMA’s proposed approach to identify untranched index CDS that it will subject to the clearing obligation. In particular, once a class of index CDS becomes subject to the clearing obligation, we support ESMA’s proposal to manage new series of that class of index CDS by automatically making such series subject to the clearing obligation from their inception, rather than subjecting their inclusion to a criteria-based determination. Once ESMA has determined that the initial series should be cleared, we believe that it would be unnecessary and simply repetitive to perform the same criteria-based evaluation process for subsequent series. As ESMA notes in the Consultation Paper, this approach is consistent with the approach taken in other jurisdictions, in particular with the approach used by the CFTC in the U.S. Therefore, MFA believes that ESMA’s approach will facilitate the international convergence of the EU and U.S. mandatory clearing regimes and the “smooth implementation” of the clearing obligation under EMIR, while also reducing the operational burden on firms that operate on a cross-border basis.

<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>

At the present time, MFA supports ESMA’s decision not to subject the iTraxx Europe Senior Financials untranched CDS index or any single name CDS to the clearing obligation. We believe that, for the sake of international convergence, it is important that the categories of derivatives subject to mandatory clearing in the EU and other jurisdictions be as similar as possible. In the U.S., clearing of single name CDS will be subject to the mandatory clearing rules of the SEC (rather than the CFTC). Given that these derivative classes are not currently subject to clearing under SEC rules, we support ESMA not requiring clearing of them as well. We would suggest that ESMA and the SEC work together to coordinate a requirement to clear single name CDS in the future.

In addition, MFA supports the approach taken by ESMA in proposing that the following untranched CDS indices be subject to the clearing obligation:

1. iTraxx Europe Main, 5Y, Series 11 onwards; and
2. iTraxx Europe Crossover, 5Y, Series 11 onwards.

We agree with ESMA’s assessment that these indices exhibit important levels of activity and that, although the older series of each index are less active, it still makes sense to include some of the off-the-run series within the clearing mandate. The fact that these indices are also subject to clearing in the U.S. demonstrates that they are suitable classes for the imposition of a clearing mandate in Europe.

Within the different categories of CDS, MFA wishes to highlight the following areas where the approach taken by ESMA and the approach taken by the CFTC appear to diverge:

(1) *iTraxx Europe Main*: In the Consultation Paper, ESMA proposes that only the five-year tenor should be subject to the clearing obligation because the volume of trading on the other tenors is significantly lower. In contrast, the CFTC requires clearing of both the five-year and the ten-year tenors.

Similarly, on p. 24 of the Consultation Paper, ESMA proposes that only series 11 onwards should be subject to a clearing obligation because it establishes “the right balance in terms of volume and outstanding risk for the off-the-run series”. In contrast, the CFTC requires series 10 onwards (in respect of the five-year tenor) and series 7 onwards (in respect of the ten-year tenor) to be cleared.

(2) *iTraxx Europe Crossover*: In the Consultation Paper, ESMA proposes that only series 11 onwards should be subject to the clearing obligation (for the reasons given at (1) above), whereas the CFTC subjects series 10 onwards to mandatory clearing in the U.S.

(3) *iTraxx Europe High Volatility*: ESMA does not propose to require clearing of this CDS index because it is significantly less liquid than the other indices that ESMA is proposing to subject to the clearing obligation. Specifically, market participants enter into only a dozen of these transactions every week, even for the most liquid series. In contrast, the CFTC subjects the five-year tenor of this index from series 10 onwards to U.S. clearing.

MFA appreciates that the discrepancies noted above relate to a comparatively small proportion of the volume of the untranched CDS index market. However, we believe that there would be incremental value in ESMA aligning its approach to these derivative classes with the approach taken by the CFTC. MFA is concerned that divergences in approach between the two jurisdictions will harm the liquidity of certain classes of derivative, where there is a bifurcation between jurisdictions as to which products are required to be cleared and which are not subject to a clearing mandate. In addition, we believe that such divergences may complicate any determination of equivalence by the EC in respect of the clearing rules of the U.S. pursuant to Article 13 of EMIR, on the basis that the product range subject to mandatory clearing differs between the two jurisdictions.

Although we support minimizing the divergences between the EU and U.S. clearing obligations, MFA believes the more significant issue is ensuring that, where these minor differences exist, they do not result in regulatory conflicts that prevent EU and U.S. market participants from trading with each other or require them to establish new contractual arrangements to continue trading. Therefore, as we note elsewhere in our response, MFA does not support the imposition of a clearing obligation under EMIR on any category of market participant prior to resolution of the issues discussed in our introductory comments and in our response to Question 6 below.

<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>

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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>

Subject to our response in Question 6 below in relation to the proposed dates of application of the clearing obligation, MFA broadly supports the categories of counterparties proposed by ESMA for the interest rate asset classes. Therefore, we also support ESMA’s proposal to use the same categories of counterparties in relation to the CDS clearing obligation.

MFA supports ESMA’s proposal to include in Category 2: (i) FCs, (ii) entities that would be classified as FCs if they were established in the EU (“**Assumed FCs**”), (iii) alternative investment funds (“**AIFs**”) qualifying as NFC+s, and (iv) AIFs that would qualify as NFC+s if they were established in the EU (“**Assumed NFC+s**”), in each case provided such entities are not clearing members that fall within Category 1. Certain AIFs established in the EU may be classified under EMIR as FCs, whereas others may be categorized as NFCs. Similarly, certain AIFs established outside the EU may be classified as Assumed FCs, whereas others may be classified as Assumed NFC+s. Therefore, MFA appreciates that ESMA’s proposed structure will properly result in all AIFs within the scope of EMIR’s clearing obligation falling within Category 2, such that all in-scope AIFs are treated in the same manner for purposes of the clearing obligation. MFA considers it appropriate that the treatment of AIFs be consistent, and welcomes ESMA’s approach accordingly.

<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>

As noted in our introductory comments, MFA considers it of key importance that ESMA and regulators in other jurisdictions promptly resolve any outstanding issues regarding recognition of other countries’ equivalent regulatory regimes. In particular, MFA believes it is critical that the EC recognize U.S. CCPs as equivalent pursuant to Article 25 of EMIR prior to the imposition of a clearing obligation on any category of market participant under EMIR.

Our responses below assume that the EC will grant such recognition prior to the entry into force of the relevant RTS, and in the absence of such recognition, we would have a different view on the implementation process and timeframe. MFA does not support any phase-in period, which will result in market participants being subject to duplicative clearing obligations in different jurisdictions.

MFA appreciates that it is not solely the responsibility of ESMA to resolve these issues. We understand that developing a thoughtful and expedient global solution to this matter necessitates international coordination and harmonization of derivatives regulations by not only ESMA but also the CFTC and other non-EU regulators and policy makers. Therefore, we have made similar comments to the CFTC as well as regulators and policymakers in other jurisdictions. However, we emphasize this issue in response to the Consultation Paper because without prompt resolution, we are concerned that some market participants will encounter practical obstacles that will make clearing derivatives contracts in the EU impossible and/or undesirable.

Assuming that the EC will recognize U.S. CCPs prior to entry into force of the RTS, MFA believes that the proposed dates of application of the clearing obligation in the Consultation Paper are not appropriate. As noted in our joint response (together with The Alternative Investment Management Association) to ESMA’s discussion paper on the clearing obligation on September 12, 2013 (<https://www.managedfunds.org/wp-content/uploads/2013/09/EU-EMIR-ESMA-DP-Clearing-Obligation-2013-MFA-AIMA-Final-Response.pdf>, “**Joint Response**”), MFA favors an approach pursuant to which the clearing obligation is phased in with respect to all categories of counterparties at the same time. We supported such an approach because we believe that an approach that provides different timescales for different counterparties could give rise to competitive distortions, particularly where (as currently proposed) clearing members are required to clear ahead of clients. Such a phase-in could cause CCPs to finalize their clearing offerings based on the initial preferences of clearing members, rather than the full universe of entities that will ultimately be required to clear under EMIR.

We note ESMA’s view that other respondents to the discussion paper did not support this view and that ESMA considers that introducing a single phase-in period for all categories of counterparties would not result in a “smooth implementation” of the clearing obligation. Given ESMA’s position, as an alternative, MFA urges ESMA to consider a shorter timetable with respect to Category 1 and Category 2 entities than is currently envisaged in the Consultation Paper. Such an approach, coupled with the approach to the frontloading obligation that we discuss at Question 7 below, would be consistent with the stated aims of the RTS “to ensure an orderly and timely implementation” (see Recital (2) of the draft RTS).

In particular, MFA proposes that Category 1 entities should become subject to the clearing obligation 3 months after the entry into force of the RTS, rather than 6 months after the entry into force of the RTS, as currently proposed. Given that the relevant clearing members already have access to central clearing, currently clear the products in question, and have connectivity to the relevant CCPs, MFA does not believe that such clearing members need any additional time to be clearing ready. Therefore, we think that a 6-month phase-in period after the entry into force of the RTS would introduce an unnecessary delay in the establishment of mandatory central clearing in the EU, and that reducing the phase-in period for Category 1 entities to 3 months is more appropriate.

In respect of Category 2 entities, MFA supports ESMA’s determination to include all AIFs in this category. As mentioned in our response to Question 5, we recognize that some AIFs will be FCs/Assumed FCs for purposes of the clearing obligation, while other AIFs will be NFCs/Assumed NFCs. We think that ensuring that all AIFs begin mandatory clearing under EMIR at the same time is appropriate.

However, MFA considers the proposed 18-month phase-in period following entry into force of the RTS for Category 2 entities excessively long, and urges ESMA to introduce a shorter, 6-month phase-in period following entry into force of the RTS for such entities. In our view, such a 6-month period, together with the additional time that will pass prior to the entry into force of the RTS, will give Category 2 entities sufficient time to put in place arrangements to clear under EMIR. As mentioned in our introductory comments, many Category 2 entities are already subject to a clearing obligation in other jurisdictions, and thus, already have connectivity with CCPs and appropriate clearing documentation in place. Therefore, a 6-month implementation period is appropriate in our view because only a short time will elapse between the application of the clearing obligation with respect to Category 1 entities and the application of the clearing obligation with respect to Category 2 entities.

Such shorter implementation period will incentivize CCPs to give sufficient consideration of the requirements and timing applicable to Category 2 entities when finalizing their clearing offerings. We are concerned that if 12 months were to elapse after the application of the clearing obligation to Category 1 entities before Category 2 entities are subject to a clearing obligation, competitive distortions would result from such a split phase-in period.

MFA also notes that adoption of the proposed 3- and 6-month phase-in periods discussed above would align ESMA’s phase-in timing with that used by the CFTC in implementing mandatory clearing of swaps in the U.S. Like ESMA, the CFTC divided market participants into three different categories for purposes of phasing in clearing of swaps. The CFTC included the most active swap market participants, including clearing members and some AIFs, in the first category and provided a 90-day phase-in period. In addition, the CFTC incorporated all remaining AIFs into the second category and provided a 180-day phase-in period. Despite initial concerns from certain market participants about the CFTC’s proposed implementation timeframe, all relevant market participants were able to meet the applicable phase-in periods.

MFA suggests that ESMA consider its proposals with respect to the phase-in periods in conjunction with its proposals in relation to the frontloading period, as discussed in our response to Question 7 below. As noted below, we believe that shorter phase-in periods are preferable to the application of a frontloading period.

<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>

MFA strongly supports ESMA’s proposed approach to the frontloading obligation with respect to Period A.

As MFA expressed in the Joint Response, we had strong concerns about the potential inclusion of a frontloading obligation and the possible broad application of frontloading to the EU derivatives market. As a result, we strongly support the thoughtful approach taken by ESMA with respect to this issue in the Consultation Paper. In particular, MFA supports ESMA’s approach to contracts concluded during Period A (*i.e.*, the period between the relevant notification of the classes of derivatives to ESMA and the publication of the RTS), such that the minimum remaining maturity of such contracts is set at a level that ensures that no contract is subject to frontloading. We believe that this approach will achieve legal certainty during Period A and eliminate the difficulties associated with frontloading during Period A (*i.e.*, pricing uncertainty and consequent market uncertainty).

MFA continues to have concerns in relation to the application of the frontloading obligation to contracts concluded during Period B (*i.e.*, the period between the publication of the RTS and the date on which the clearing obligation begins to apply). Although parties will have legal certainty as to which contracts will ultimately be subject to the frontloading obligation, such contracts will be priced for a certain period of time as uncleared trades, and then, upon commencement of the clearing obligation for such trades, would have to be priced as cleared trades. MFA is concerned that, accordingly, the frontloading obligation in Period B will result in fractured markets and a troubling lack of transparent pricing being available during such interim period.

MFA supports the approach taken by ESMA to excluding contracts from the frontloading obligation that are concluded between in-scope entities where at least one of the parties is an NFC+/Assumed NFC+. However, we are concerned that a necessary consequence of this approach is that AIFs that are NFC+s/Assumed NFC+s will be treated differently than AIFs that are FCs/Assumed FCs because AIFs that are FCs/Assumed FCs remain subject to the frontloading obligation during Period B. As with the phase-in of the clearing obligation, MFA does not see any justification for applying the clearing obligation to such entities differently.

As a result, MFA urges ESMA to consider modifying its approach to Period B, such that ESMA treats the minimum remaining maturity of contracts concluded during this period in the same way as in Period A. Taking such a position would effectively result in no contracts being subject to frontloading. However, at the same time, we would support ESMA reducing the phase-in periods in accordance with our suggestions at Question 6 above. Due to our concerns about the impact of frontloading on pricing of derivatives contracts, MFA believes that accelerating the timeframe for phase in of the clearing obligation, rather than requiring frontloading during Period B, is a more appropriate way to ensure clearing of the proposed CDS. Such an approach would have the benefit of: (i) eliminating the difficulties associated with frontloading, as described above; (ii) ensuring that all in-scope AIFs are subject to the same treatment with respect to all aspects of the clearing obligation; and (iii) result in the clearing obligation applying to Category 1 and Category 2 entities at an earlier date.

<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>

MFA respectfully notes a minor typographical error at Article 4(2)(d) of the draft RTS: “2 year” should read “2 years”.

<ESMA\_QUESTION\_8>

# Annex III - Impact assessment

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

<ESMA\_QUESTION\_9>

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<ESMA\_QUESTION\_9>