



European Securities and  
Markets Authority

## **Reply form for the Consultation Paper On the Clearing Obligation under EMIR (no. 3)**



## Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper - Clearing Obligation under EMIR (no. 3), published on the ESMA website.

Responses are most helpful:

- i. if they respond to the question stated;
- ii. contain a clear rationale, including on any related costs and benefits; and
- iii. describe any alternatives that 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.

Responses must reach us by **6 November 2014**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input/Consultations’.

## Instructions

Please note that, in order to facilitate the analysis of the responses, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, please follow the instructions described below:

- i. use this form and send your responses in Word format;
- ii. do not remove the tags of type < ESMA\_CA3\_QUESTION\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- iii. if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

## Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that 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 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 ‘Disclaimer’.



### General information about respondent

Are you representing an association?	No
Activity:	Central Counterparty
Country/Region	Germany

## Introduction

### **Please make your introductory comments below:**

<ESMA\_CO3\_COMMENT\_1>

Eurex Clearing is a globally leading central counterparty (CCP). We offer fully automated and straight-through post trade services for derivatives (listed and OTC), equities, repo, securities lending, energy and fixed income transactions. As a central counterparty, our focus is to increase market integrity.

Eurex Clearing is a subsidiary of Deutsche Börse Group and acts as the central counterparty for trades executed on Eurex Exchange, Eurex Bonds, Eurex Repo, the FWB® Frankfurter Wertpapierbörse (the Frankfurt Stock Exchange) - both Xetra® and floor - and for the Irish Stock Exchange as well as OTC Interest Rate Swap and Securities Lending transactions.

Eurex Clearing is a company incorporated in Germany and licensed and regulated as a credit institution under supervision of the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht - BaFin) pursuant to the German Banking Act (Gesetz über das Kreditwesen). Eurex Clearing is also an authorized clearing house under the European Market Infrastructure Regulation (EMIR).

As an EMIR authorized CCP Eurex Clearing is compliant with the high regulatory standards offering individual and omnibus segregation models. Therefore, we welcome the opportunity to contribute to ESMA's consultation paper on "the Clearing Obligation under EMIR (no. 3)".

<ESMA\_CO3\_COMMENT\_1>

## **1. The clearing obligation procedure**

**Q1: Do you have any comment on the clearing obligation procedure described in Section 1?**

<ESMA\_CO3\_QUESTION\_1>  
TYPE YOUR TEXT HERE  
<ESMA\_CO3\_QUESTION\_1>

## **2. Structure of the non-deliverable forward derivatives classes**

**Q2: Do you consider that the proposed structure for the FX NDF classes enables counterparties to identify which contracts are subject to the clearing obligation?**

<ESMA\_CO3\_QUESTION\_2>

TYPE YOUR TEXT HERE

<ESMA\_CO3\_QUESTION\_2>

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

**Q3: In view of the criteria set in Article 5(4) of EMIR, do you consider that the determination of this class addresses appropriately the objective of reduction of the systemic risk associated to NDF derivatives?**

<ESMA\_CO3\_QUESTION\_3>

TYPE YOUR TEXT HERE

<ESMA\_CO3\_QUESTION\_3>

**Q4: For the currency pairs proposed for the clearing obligation on the NDF class, do you consider there are risks to include longer maturities, up to the 2 year tenor?**

<ESMA\_CO3\_QUESTION\_4>

TYPE YOUR TEXT HERE

<ESMA\_CO3\_QUESTION\_4>

#### **4. Determination of the dates on which the obligation applies and the categories of counterparties**

**Q5: Do you have any comment on the analysis presented in Section Error! Reference source not found.?**

<ESMA\_CO3\_QUESTION\_5>

As-outlined in paragraphs 89 and 90 it is important that ESMA takes into account whether more than one CCP already clears the asset class in question when dates and categories of counterparties for which the clearing obligation should apply are defined. Expectations that further CCPs plan the clearing service offering of a particular product-should not be a guiding principle when deciding whether a product should be subject to the clearing obligation or not. Only when at least two CCPs are authorized under EMIR to clear a certain OTC product class it should be considered whether or not a clearing obligation for such a class would be feasible. Otherwise uncertainty among market participants would be generated. Market participants which are in the admission process to clear FX NDF contracts through CCPs not yet authorized to clear these products would face the legal risk of being in breach with the clearing obligation when the respective CCP would not be authorized before the clearing obligation for such products would enter into force.

In order to not change the regulatory text outlined in Annex II we propose to clarify that the final RTS for the clearing obligation for FX NDF contracts will not be published before the second CCP is authorized to clear these products under EMIR. Thus the timeline stipulated in Article 3 'Dates from which the clearing obligation shall take effect' will not start before the second CCP is authorized.

<ESMA\_CO3\_QUESTION\_5>

**Q6: Do you agree with the proposal to keep the same definition of the categories of counterparties for the NDF classes than for the credit and the interest rate classes? Please explain why and possible alternatives.**

<ESMA\_CO3\_QUESTION\_6>

In general the categories of counterparties for one asset class should not be automatically the same for other asset classes. I.e. a category 1 participant in IRS should not be automatically a category 1 participant for CDS and NDFs as well. Only if the category 1 IRS participant is also a clearing Member for CDS and NDFs he should be a category 1 participant for these asset classes as well.

The technical and operational capability to clear for one asset class does not necessarily indicate that the technical and operational capability to also clear another asset class is given. Therefore, such a procedure could have unintended consequences. Market participants which are in the admission process to become a clearing member for e.g. IRS but are not clearing member for e.g. CDS and are not technically and operationally ready to clear CDS, could push-out their admission process for IRS to prevent being also classified as category 1 for CDS respectively NDFs. As a consequence instead of accelerating the entry into force of the clearing obligation the entry into force could be adversely affected.

In order to support a swift implementation of the clearing obligation and to set right incentives for market participants it should be clarified that market participants will only be classified as category 1 by asset class and not across asset classes. The classification into category 2 or 3, however should follow the proposed threshold.

<ESMA\_CO3\_QUESTION\_6>

**Q7: Do you consider that the proposed dates of application ensure a smooth implementation of the clearing obligation? Please explain why and possible alternatives.**

<ESMA\_CO3\_QUESTION\_7>

Relative to IRS and CDS the systemic importance of NDFs is significantly lower. Given the fact that market participants should focus their immediate efforts on those topics with highest systemic relevance, the timeline for NDFs might unnecessarily drag attention from the other more relevant asset classes. Therefore it would be advisable to go into a more sequential mode and push-out the start of the obligation by at least another 12 month following the effectiveness of the RTS.





<ESMA\_CO3\_QUESTION\_7>

## **5. Remaining maturity and frontloading**

**Q8: Do you have comments on the minimum remaining maturities for NDF?**

<ESMA\_CO3\_QUESTION\_8>  
TYPE YOUR TEXT HERE  
<ESMA\_CO3\_QUESTION\_8>

## **Annex I - Draft Regulatory Technical Standards on the Clearing Obligation**

**Q9: Please indicate your comments on the draft RTS other than those already made in the previous questions.**

<ESMA\_CO3\_QUESTION\_9>  
TYPE YOUR TEXT HERE  
<ESMA\_CO3\_QUESTION\_9>

## **Annex II – Impact assessment**

**Q10: Please indicate your comments on the Impact Assessment.**

<ESMA\_CO3\_QUESTION\_10>  
TYPE YOUR TEXT HERE  
<ESMA\_CO3\_QUESTION\_10>