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| 1 October 2014|ESMA/2014/1185 Reply Form |

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

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| Date: 1 October 2014  ESMA/2014/1185 Reply Form |

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:

1. if they respond to the question stated;
2. contain a clear rationale, including on any related costs and benefits; and
3. 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:

1. use this form and send your responses in Word format;
2. 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
3. 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

|  |  |
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| Are you representing an association? | Yes |
| Activity: | Regulated markets/Exchanges/Trading Systems |
| Country/Region | Europe |

# Introduction

**Please make your introductory comments below:**

<ESMA\_CO3\_COMMENT\_1>

**1. General Introduction**

The Federation of European Securities Exchanges (FESE) represents 41 exchanges active in equities, bonds, derivatives and commodities through 21 full members from 30 countries, as well as 2 Observer Members from European emerging markets. FESE represents public Regulated Markets (RMs), which provide both institutional and retail investors with transparent and neutral price-formation.

At the end of 2013, FESE members had up to 8,950 companies listed on their markets, of which 8% are foreign companies contributing towards the European integration and providing broad and liquid access to Europe’s capital markets. Many of our members also organise specialised markets that allow small and medium sized companies across Europe to access the capital markets; 1,478 companies were listed in these specialised markets/segments in equity, increasing choice for investors and issuers. Through their RM and MTF operations, FESE members are keen to support the European Commission’s objective of creating a single market in capital markets.

FESE supports efficient, fair, orderly and transparent financial markets that meet the needs of well protected and informed investors and provide a source for companies to raise capital and for investors to hedge their portfolios.

FESE would also wish to state that the questions in this CP that we do not provide a detailed answer on, we are aligned with the response as submitted by the European Association of Clearing Houses (EACH).

**2. Link between EMIR Clearing Obligations and MiFIR Trading Obligation & Transparency Regime**

As stated in our response to the ESMA Consultation paper on Clearing Obligation no1, FESE urges ESMA to consider the overall impact that its work on the EMIR Clearing Obligation will ultimately have on the final implementation of the MiFIR Trading Obligation[[1]](#footnote-2). Critically, because of the way the trading obligation is designed, any instrument which does not fall under the scope of the EMIR clearing obligation will not be eligible for the trading obligation.

Therefore, FESE supports that the clearing obligation fully applies to non-deliverable forwards as outlined in this consultation paper

**3. Summary of Response**

FESE supports the inclusion of the proposed NDF derivatives in the clearing obligation on the lines set out in the consultation paper. FESE further supports the consistency of approach with the clearing obligation proposed for other asset classes, namely IRS and CDS.

<ESMA\_CO3\_COMMENT\_1>

## The clearing obligation procedure

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

<ESMA\_CO3\_QUESTION\_1>

FESE supports the approach taken by ESMA.

<ESMA\_CO3\_QUESTION\_1>

## Structure of the non-deliverable forward derivatives classes

##### 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>

Yes, FESE believes that the structure permits clear identification.

<ESMA\_CO3\_QUESTION\_2>

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

##### 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>

Yes.

<ESMA\_CO3\_QUESTION\_3>

##### 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>

FESE does not believe there are material risks to CCPs in including maturities up to the 2 year maturity in the clearing obligation.

<ESMA\_CO3\_QUESTION\_4>

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

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

<ESMA\_CO3\_QUESTION\_5>

FESE agrees with the analysis, including particularly that there are sufficient clearing members, including those offering client clearing, to sustain the clearing obligation.

FESE also agrees with the conclusion set out in paragraphs 95 and 96 that the fact that there is only one European CCP currently authorised to clear NDF derivatives should not present an obstacle to including the proposed NDFs in the clearing obligation.

<ESMA\_CO3\_QUESTION\_5>

##### 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>

Yes, FESE believes there are considerable benefits of clarity in maintaining the same categories for the credit and the interest rate asset classes.

<ESMA\_CO3\_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\_CO3\_QUESTION\_7>

Yes.

<ESMA\_CO3\_QUESTION\_7>

## Remaining maturity and frontloading

##### Do you have comments on the minimum remaining maturities for NDF?

<ESMA\_CO3\_QUESTION\_8>

TYPE YOUR TEXT HERE

<ESMA\_CO3\_QUESTION\_8>

# Annex II - Draft Regulatory Technical Standards on the Clearing Obligation

##### 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 III – Impact assessment

##### Please indicate your comments on the Impact Assessment.

<ESMA\_CO3\_QUESTION\_10>

TYPE YOUR TEXT HERE

<ESMA\_CO3\_QUESTION\_10>

1. 1. Regulation (EU) No 648/2012: Article 28(1) & 32 [↑](#footnote-ref-2)