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| 08 May 2015 |

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| Reply form for the  Consultation Paper on Clearing Obligation under EMIR (no.4) |
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| Date: 08 May 2015 |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Addendum Consultation Paper on MiFID II/MiFIR, published on the ESMA website.

*Instructions*

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

* use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
* do not remove the tags of type <ESMA\_CO4\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
* 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.

Responses are most helpful:

* if they respond to the question stated;
* contain a clear rationale, including on any related costs and benefits; and
* describe any alternatives that ESMA should consider

**Naming protocol**

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA\_CO4\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

E.g. if the respondent were XXXX, the name of the reply form would be:

ESMA\_CO4\_XXXX\_REPLYFORM or

ESMA\_CO4\_XXXX\_ANNEX1

***Deadline***

Responses must reach us by **15 July 2015.**

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

***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 headings ‘Legal notice’ and ‘Data protection’.

# General information about respondent

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| --- | --- |
| Name of the company / organisation | Czech Banking Association |
| Activity | Banking sector |
| Are you representing an association? | x |
| Country/Region | Czech Republic |

# Introduction

Pease make your introductory comments below, if any:

<ESMA\_CO4\_COMMENT\_1>

TYPE YOUR TEXT HERE

<ESMA\_CO4\_ COMMENT\_1>

##### Question : Do you have any comment on the clearing obligation procedure described in this section?

<ESMA\_CO4\_1>

We are of the opinion that the top-down approach according to Article 5(3) of EMIR is possible only in connection to derivative classes “for which no CCP has yet received authorisation”. In case of derivatives for which a CCP has received authorisation, only the procedure set out in Article 5(2) of EMIR is possible and allowed (i.e. such procedure must start within six months of receiving the notification of CCP authorisation); later commencement of clearing obligation procedure is not allowed under EMIR and such procedure would be in conflict with the law.

We support establishing a register of clearing members (which includes their LEIs) which would assist market participants when establishing whether a particular counterparty is a Category 1 counterparty for a given asset class.

<ESMA\_CO4\_1>

##### Question : Do you have any comment on the structure of the interest rate derivative classes described in this section?

<ESMA\_CO4\_2>

We have significant concerns that the proposed structure could create situations where certain derivatives are rendered untradeable on both a cleared and uncleared basis, solely on the decision of authorised CCPs to cease clearing the products.

Under the proposed structure, a situation in which a CCP may choose to stop clearing certain contracts following its authorisation – a process that does not in itself remove the clearing obligation even if no other CCP clears those contracts – is not contemplated. Firms would then be left with a situation where a contract contains the specified characteristics and was clearable at the time of authorisation but where no authorised or recognised CCP is willing to clear that contract. Article 5(6) of EMIR does not cover this situation – it only works to remove the clearing obligation where no CCPs are authorised or recognised to clear a particular class of contracts. It does not apply where a CCP continues to be authorised to clear the class of contracts but, in practice, ceases to do so.

In order to prevent decisions of CCPs to cease clearing a particular contract from dictating whether that contract is tradable, the application of the clearing obligation to a particular contract should be conditional not only on the contract being of a type that would have been accepted for clearing by a CCP at the time of its authorisation, but also on the contract being of a type which will be accepted for clearing by an authorised or recognised CCP as at the later of (i) the date of trading and (ii) the date on which the contract is required to be cleared under EMIR**.**

<ESMA\_CO4\_2>

##### Question : Do you agree with the principle that, in the context of the clearing obligation, systemic risk should be considered not only at the aggregated EU level, but also at country or even institution level?

<ESMA\_CO4\_3>

We are of the opinion that systemic risk should be considered only at aggregated EU level. In general the laws of EU should focus on stability of financial markets at EU level, rather than at member states level, or even institution level.

If this principle is not accepted, then the approach of IMF should be followed, which only four countries from those mentioned in the Consultation Paper assessed as systematically significant, i.e. Denmark, Norway, Poland and Sweden.

<ESMA\_CO4\_3>

##### 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 interest rate OTC derivatives? Please include relevant data or information where applicable.

<ESMA\_CO4\_4>

Based on the criteria set in Article 5(4) of EMIR (especially regarding volume and liquidity), we are of the opinion that fixed-to-float IRS as other interest rate derivatives denominated in CZK should be excluded from the clearing obligation. The same applies to concerns regarding volume and liquidity of instruments denominated in other currencies like HUF, DKK and perhaps also NOK.

<ESMA\_CO4\_4>

##### Question : Do you consider that the proposals related to the definition of the categories of counterparties are appropriate in light of the criteria set out in EMIR?

<ESMA\_CO4\_5>

Is in unclear which category of NFC+ is included in Category 3. It is unclear what the difference is between NFC+ in Category 3 and NFC+ in Category 4.

<ESMA\_CO4\_5>

##### Question : Do you consider that the proposed dates of application for the different categories of counterparties ensure a smooth implementation of the clearing obligation? Please explain why and possible alternatives.

<ESMA\_CO4\_6>

We are of the opinion that the period for implementation of clearing obligations under various RTS should be at least 6 months.

<ESMA\_CO4\_6>

##### Question : Do you have any comment on the approach envisaged for frontloading?

<ESMA\_CO4\_7>

We propose to prolong the 5 months period for counterparties in Category 2 and 3 to 6 months. The period for application for intragroup exemptions should be prolonged to 3 months.

<ESMA\_CO4\_7>

##### Question : Do you have any comment on the Cost-Benefit analysis?

<ESMA\_CO4\_8>

Our analysis shows that implementation of clearing obligation in connection with fixed-to-float IRS denominated in CZK would cause to banks in the Czech Republic significant additional costs (e.g. in case of 20-40 deals per year the estimated costs for central clearing would be annually about EUR 140,000). These costs would be significantly higher than the profit from these transactions. The clearing obligation would increase the price for customers and could result in material decrease of availability for customers and liquidity of such products in the Czech Republic.

<ESMA\_CO4\_8>

##### Question : Do you have any comments on the draft RTS not already covered in the previous questions?

<ESMA\_CO4\_9>

We strongly believe that fixed-to-float IRS denominated in CZK (perhaps also in HUF and DKK) should be also (as FRA, OIS and basis swaps) excluded from the clearing obligation due to the criteria of volume and liquidity, which are significantly lower not only in comparison to the G4 currencies (EUR, GBP, JPY and USD), but also in comparison to the other non-G4 European currencies (NOK, SEK and PLN).

In addition, the Czech government declared its aim to join the Eurozone within couple of years. In this context we believe that it is highly unlikely that criteria set in Article 5(4) of EMIR (especially regarding volume and liquidity) would be met in the future and thus implementation of clearing obligation regarding any interest rate derivatives denominated in CZK is neither suitable, nor reasonable.

<ESMA\_CO4\_9>