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| 22 August 2018 |

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| Response form for the Consultation Paper on the Clearing Obligation under EMIR (no. 6)  |
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| Date: 22 August 2018 |

Responding to this paper

ESMA invites responses to the questions set out throughout its Consultation Paper on the regulatory technical standards (RTS) on the clearing obligation that ESMA is drafting under Article 5(2) of the Regulation (EU) No 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories (EMIR).

Responses are most helpful if they:

* respond to the question stated;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all responses received by 30 August 2018.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

* Insert your responses to the questions in the Consultation Paper in the present response form.
* Please do not remove tags of the type <ESMA\_QUESTION\_TIE\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
* If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
* When you have drafted your response, name your response form according to the following convention: ESMA\_TIE\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_TIE\_ABCD\_RESPONSEFORM.
* Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open consultations” 🡪 “Consultation on Clearing Obligation under EMIR (no. 6)”).

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly indicate by ticking the appropriate checkbox on the website submission page if you do not wish your contribution to be publicly disclosed. 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 “Data protection”.

Who should read the Consultation 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 derivative transactions as well as central counterparties (CCPs) and clearing members.

# General information about respondent

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| --- | --- |
| Name of the company / organisation | REPLY SPA |
| Activity | Other Financial service providers |
| Are you representing an association? |[ ]
| Country/Region | Italy |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_TIE\_1>

*Reply SpA*is a company that specializes in Consulting, Systems Integration and Digital Services with a focus on the conception, design and implementation of solutions based on the new communication channels and digital media. Reply partners with key industrial groups in defining and developing business models made possible by the new technological and communication paradigms such as Big Data, Cloud Computing, Digital Communication, the Internet of Things and Mobile and Social Networking. In so doing, it aims to optimize and integrate processes, applications and devices. *Avantage Reply*, is the company of the Reply group, specialized in management consultancy delivering change initiatives in Compliance, Risk, Finance and Treasury. *Avantage Reply* employs 200 consultants within our 12 offices across Europe and the UK. Its clients are large international financial institutions as well as specialized financial services Business Units within international groups. *Avantage Reply* also participates to the European Risk &Supervisor events and contributes to the normative study and the European debate on new regulations by also responding to consultation papers from the EBA and ESMA. It is in this context that our following answers are presented.

<ESMA\_COMMENT\_TIE\_1>

1. : Do you consider that the proposed extension of the temporary intragroup exemption is justified? Please explain.

<ESMA\_QUESTION\_TIE\_1>

By our point of view, the temporary intragroup exemption is justified for the following reasons:

**1. It avoids duplications and regulatory conflicts**

In the absence of equivalent decisions, the Commission delegated regulations provided a deferred date (21 December 2020) for the application of the clearing obligation for intragroup transactions that satisfies specific conditions and in which one of the counterparties is located in a country that does not belong to the European Union. This date is approaching but no equivalent decisions have yet been issued by the Commission so that, in our opinion, it is correct to extend the deferral of the entry into force of the clearing obligation for the time necessary for such equivalence decisions to be taken. It is not correct to extend the clearing obligation without first having examined the regulations of third countries and having ascertained that there are no potential duplications or regulatory conflicts. In the absence of the declaration of equivalence by European Commission, it would be penalizing to subject the group counterparts to the risk of regulatory duplication. The deferment of clearing application is necessary until the Committee has clarified whether the regulation of the third country is equivalent or not. We deem it be necessary, before the introduction of new regulatory requirement for the reduction of the systemic risk, to analyze any possible scenario that can penalize the market operations of the counterparts of the group that are in a third country. The duration of the delay proposed by ESMA should be sufficient to analyze the regulatory framework of third countries, also thanks to the ESMA support, and to check whether they are equipped with regulatory and enforcement procedures equivalent to EMIR.

**2. Intragroup transactions with contained risks**

The legislation is referring to intragroup transactions between two companies that are integrally incorporated in the same consolidation and that are already subject to adequate centralized risk assessment, measurement and control of procedures[[1]](#footnote-2).

Furthermore, intragroup transactions do not create any new risk at group level because they simply redistribute the risks within different parts of the group where the underlying risk originates. One of the main advantages of intragroup transactions is the possibility of compensation for the exposures of the counterparties.

A possible highlight to monitor is the case of the Back-To-Back trades (so-called “back-to-back” trading allows an entity in one jurisdiction to carry out a duplicate transaction in a larger location) because in that case the counterparty risk, held by the legal entity of the group in the third country, is mirrored to the EU-group without any clearing obligation thus generating a potential systemic risk, if not monitored through a solid and consist risk management policy.

Finally, if they are also intragroup transactions involving non-financial counterparties, it should be considered that they represent a relatively small part of all OTC derivative transactions and that they are mainly used for hedging within groups. Therefore, these transactions do not contribute significantly to systemic risk.[[2]](#footnote-3)

3) Possible collateral mechanisms

Possible collateral mechanism between the parties of intragroup transactions can be put in place as valid alternative to the clearing with CCP for such temporary deferring period. The netting transactions can reduce the risk exposure inside the group and is a usual practice that allow to reduce risk and correctly manage the intragroup liquidity.

<ESMA\_QUESTION\_TIE\_1>

1. : Do you identify other benefits and costs not mentioned above associated to the proposed approach? If you advocated for a different approach in the responses to the previous question, how would it impact this section on the impact assessment? Please provide details.

<ESMA\_QUESTION\_TIE\_2>

The temporary exemption of the clearing obligation guarantees a streamlining of the legislation that represents one of the objectives pursued by European Commission's program. The simplification of some sectors governed by Regulation (EU) no. 648/2012, and a more proportionate approach to apply, is in line with the Commission's Regulatory Program of control of the adequacy and effectiveness of regulation (REFIT), which emphasizes the need to simplify the requirement application, so to ensure that the policies of the Union achieve their objectives in the most efficient way.[[3]](#footnote-4)

Furthermore, it allows an optimization of the management of liquidity with beneficial impacts on short-term and long-term liquidity indicators, as Liquidity Coverage Ratio (LCR) and Net Stable Funding Ratio (NSFR), as well as on daily cash management.

<ESMA\_QUESTION\_TIE\_2>

1. https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=celex%3A32012R0648 [↑](#footnote-ref-2)
2. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2018-0244+0+DOC+PDF+V0//IT> [↑](#footnote-ref-3)
3. <https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly_it> [↑](#footnote-ref-4)