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| 27 March 2020 |

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| Response form for the Consultation Paper on post trade risk reduction services with regards to the clearing obligation (EMIR Article 85(3a)) |
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| Date: 27 March 2020 |

Responding to this paper

ESMA invites responses to the questions set out throughout its Consultation Paper on the Report on post trade risk reduction services with regards to the clearing obligation that ESMA is drafting under Article 85(3a) of the Regulation (EU) No 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories (EMIR, as amended by Refit).

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 15 June 2020.

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\_PTRR\_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\_PTRR\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_PTRR\_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 Paper on post trade risk reduction services with regards to the clearing obligation (EMIR Article 85(3a))”.

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 | Kommunalbanken AS |
| Activity | Banking sector |
| Are you representing an association? |  |
| Country/Region | Norway |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_PTRR\_1>

TYPE YOUR TEXT HERE

<ESMA\_COMMENT\_PTRR\_1>

1. : Would you agree with the description of the benefits (i.e. reduced risks) derived from PTRR services? Are there any missing? Could PTRR services instead increase any of those risks? Are there any other risks you see involved in using PTRR services?

<ESMA\_QUESTION\_PTRR\_1>

We agree that portfolio compression is important for reduction of institution specific and systemic risk, and are generally in agreement with ESMAs description of the benefits.

<ESMA\_QUESTION\_PTRR\_1>

1. : Would you agree with this description of portfolio compression? Please explain the different compression services that are offered and how they may differ from the description above. Are there today viable alternatives to using PTRR services to achieve a similar outcome?

<ESMA\_QUESTION\_PTRR\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PTRR\_2>

1. : Without changing the market risk of the portfolios, how different can the transactions included in the portfolio compression exercise be? Would the market risk be changed at all by the applied tolerances and if yes, how can the portfolio remain market neutral? What tolerance levels are often applied and could/should restrictions be placed on tolerances?

<ESMA\_QUESTION\_PTRR\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PTRR\_3>

1. : Should there be a clearing exemption for PTRR trades that are a direct result from a portfolio compression? If not, why? Is there a difference between bilateral and multilateral portfolio compression for the sake of an exemption?

<ESMA\_QUESTION\_PTRR\_4>

We support a clearing exemption for PTRR trades that are a direct result from both bilateral and multilateral portfolio compression. To increase the efficiency of compression and reduce the risks in non-cleared portfolios (and therefore reduce systemic risk), it would be beneficial to allow the parties to book trades into their non-cleared portfolios with an exactly offsetting opposite trade in their cleared portfolio. An exemption will enable parties to better manage their credit risk profiles while enabling a greater proportion of risk to be moved to face a CCP. Introducing a clearing exemption for these transactions under EMIR would align EMIR and MIFID II/MIFIR.

<ESMA\_QUESTION\_PTRR\_4>

1. : Would you agree with this description of PTRR Services? What other forms of PTRR services exist? What do they do? How do they work? Are there any other viable alternatives to PTRR services, if yes, why are they not sufficient?

<ESMA\_QUESTION\_PTRR\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PTRR\_5>

1. : Without changing the market risk of the portfolios, how different can the transactions included in the PTRR exercise be? What tolerance levels are often applied and what restrictions could/should restrictions be placed on tolerances (if applies)?

<ESMA\_QUESTION\_PTRR\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PTRR\_6>

1. : Is the requirement under EMIR of portfolio compression sufficient to mitigate the risk of build-up of transactions and how is the market managing this risk today?

<ESMA\_QUESTION\_PTRR\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PTRR\_7>

1. : Based on all of the above, how would you define (algorithm based, second order risk, market neutral) PTRR services that cover all of the relevant aspects?

<ESMA\_QUESTION\_PTRR\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PTRR\_8>

1. : Should there be an exemption from the clearing obligation for PTRR trades (other than portfolio compression) that are a direct result from a PTRR exercise? If not, why?

<ESMA\_QUESTION\_PTRR\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PTRR\_9>

1. : Is there a PTRR service today including offsetting transactions with a CCP?

<ESMA\_QUESTION\_PTRR\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PTRR\_10>

1. : Assuming there would be an exemption to the clearing obligation:
2. Could PTRR services conduct offsetting opposite trades in the counterparty’s cleared portfolio and if yes, should it be mandatory to enter into such offsetting transactions?
3. Would the PTRR transaction in the non-cleared portfolio then remain between the counterparties or be terminated (netted)?

<ESMA\_QUESTION\_PTRR\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PTRR\_11>

1. : Please provide data (number of trades and notional compressed, amount of initial margin reduction, number of counterparties regularly using PTRR services, other metrics) per type of PTRR service, with as much granularity as possible (per entity, per asset class/currency, per run, over the years and over the past year, etc.) and the related explanations on how PTRR services are used.

<ESMA\_QUESTION\_PTRR\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PTRR\_12>

1. : Please also, where possible, provide data whether those numbers would be expected to change if there was an exemption to the clearing obligation.

<ESMA\_QUESTION\_PTRR\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PTRR\_13>

1. : Do you think an exemption from the clearing obligation for transactions resulting from PTRR services would increase the use of PTRR services? Please explain.

<ESMA\_QUESTION\_PTRR\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PTRR\_14>

1. : Do you think an exemption from the clearing obligation is not needed for legacy portfolios and PTRR services generally? To what extent can the use of plain vanilla transactions in PTRR services be replaced with the use of non-plain vanilla transactions, or should this be avoided? Please explain.

<ESMA\_QUESTION\_PTRR\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PTRR\_15>

1. : Would an exemption to the clearing obligation contradict the G20 commitments? Please explain.

<ESMA\_QUESTION\_PTRR\_16>

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<ESMA\_QUESTION\_PTRR\_16>

1. : How could an exemption to the clearing obligation for PTRR trades lead to a circumvention of the clearing obligation? Please explain.

<ESMA\_QUESTION\_PTRR\_17>

We generally agree with ESMAs description of portfolio compression services. As implied also by ESMAs discussion of other post trade risk reduction services, there has after the adoption of EMIR been a swift market development with a growing number of service providers providing various kinds of services. Whilst many of these services provide similar economic effects, legal and regulatory set up may however vary considerably, and causes significant legal and regulatory uncertainty for users/participants.

Some services provide the service on platforms or through systems that technically and legally raise questions on whether they might be considered MTFs regulated markets or direct electronic access to a trading venue. For financial institutions that are not investment firms, and that benefit from the MiFID-exemption by not providing any other investment services than dealing on own account in financial instruments, it raises the question of whether use of certain (or any) portfolio compression system would be considered membership or participation that would disqualify from this MiFID-exemption under Art. 4(1)(d)(ii), and hence would have to apply for authorization under MiFID.

It is also unclear whether a market participant offering offsetting trades into a portfolio compression service or submitting transactions for other post trade risk reduction services would be considered to deal on own account when executing client orders which would be subject to MiFID Art. 4(1)(d)(iv).

One of the main challenges for users is the lack of legal certainty about the scope of the provisions of MiFID and MiFIR with respect to the diverse set up of various PTRR services. In our experience, the service providers are as uncertain about this as the participants and generally are not even able to provide the documentation necessary for the participants to perform the necessary regulatory diligence. Preforming such diligence therefore consumes an unreasonable amount of time, effort and money and still potentially leaves significant legal uncertainty. Needlessly to say, in instances where it is concluded that it should be applied for authorization “just to be sure”, further time, effort and money is consumed, and it then also increases the administrative burdens for the competent authorities. It is our view that at the very least ESMA should clarify the scope of MiFID and MiFID with respect to PTRR services. Given the benefit of PTRR to reduce institution specific and systemic risk we would argue, however, that an exemption from MiFID would be justified to facilitate increased participation from the “buy side” and other non investment firms in multilateral PTRR systems, the buy side often having opposite positions to the “sell side” which with their participation would increase the potential for compression etc. Hence, we would encourage ESMA to clarify that market participants do not have to apply for authorization as an investment firmer under MiFID solely by participating or being members of venues or platforms for the purpose of using portfolio compression services and that submitting transactions to such services falls outside the scope of the definition of execution of client orders and market making etc.

<ESMA\_QUESTION\_PTRR\_17>

1. : Would you consider introducing an exemption to the clearing obligation as an incentive not to clear transactions that technically are covered by the clearing obligation. If yes, why?

<ESMA\_QUESTION\_PTRR\_18>

We do not consider an exemption to the clearing obligation for PTRR trades that are a direct result from a portfolio compression as an incentive to not clear transactions that technically are covered by the clearing obligation. We view an exemption as a tool to reduce risk when appropriate, however due to the risk mitigation requirements for uncleared transaction under Article 11 of EMIR, we do not consider it as an incentive to avoid clearing.

<ESMA\_QUESTION\_PTRR\_18>

1. : Are there risks with reducing collateral? Even if complying with regulatory requirements, could this lead to such capital being used to increase risks, possibly systemic risks?

<ESMA\_QUESTION\_PTRR\_19>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PTRR\_19>

1. : Are there other jurisdictions where PTRR trades have been exempted from the clearing obligation? Please explain the features of any such exemption. Do you use any of those exemptions, and for what type of trades?

<ESMA\_QUESTION\_PTRR\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PTRR\_20>

1. : Should conditions, similar to the ones as outlined above, apply to a possible exemption under EMIR for PTRR transactions? Should other conditions apply? Would the answer depend on the type of PTRR service? Please explain.

<ESMA\_QUESTION\_PTRR\_21>

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<ESMA\_QUESTION\_PTRR\_21>

1. : Is there a difference between bilateral and multilateral portfolio compression justifying an exemption to the clearing obligation only to apply for multilateral portfolio compression?

<ESMA\_QUESTION\_PTRR\_22>

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<ESMA\_QUESTION\_PTRR\_22>

1. : Should only uncleared transactions be included in portfolio compression in order to qualify for the clearing exemption? How would a possible limitation to uncleared transactions limit the effectiveness?

<ESMA\_QUESTION\_PTRR\_23>

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<ESMA\_QUESTION\_PTRR\_23>

1. : To benefit from an exemption to the clearing obligation, should PTRR trades be strict risk neutral or should there be tolerances for small changes in the risk of portfolios? How would you define what is an acceptably small change in risk?

<ESMA\_QUESTION\_PTRR\_24>

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<ESMA\_QUESTION\_PTRR\_24>

1. : To benefit from an exemption to the clearing obligation, to what extent should parties to a PTRR exercise be able to be changed, i.e. not limited to the original counterparties? Would the answer depend on the type of PTRR service? Please explain.

<ESMA\_QUESTION\_PTRR\_25>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PTRR\_25>

1. : Should there be a requirement for PTRR services to reduce risk for a clearing exemption to apply? Should it apply to all PTRR services? If not, please explain why. How would a successful PTRR exercise be measured?

<ESMA\_QUESTION\_PTRR\_26>

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<ESMA\_QUESTION\_PTRR\_26>

1. : Could PTRR services increase exposure or risk on a participant basis? Would the answer depend on the type of PTRR service provided? How should the PTRR service provider limit any possible increase in notional amount or risk? Please explain.

<ESMA\_QUESTION\_PTRR\_27>

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<ESMA\_QUESTION\_PTRR\_27>

1. : How could a limitation like “no participant worse off” be defined?

<ESMA\_QUESTION\_PTRR\_28>

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<ESMA\_QUESTION\_PTRR\_28>

1. : How should it be ensured that PTRR service providers are independent in their assessment? Should the conditions imposed on the providers of PTRR services include requirements on governance of the algorithms to ensure the definition and the setting of parameters takes place with minimum influence from market participants? Should algorithms run with minimum manual intervention? Any other conditions or structural requirements that should apply?

<ESMA\_QUESTION\_PTRR\_29>

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<ESMA\_QUESTION\_PTRR\_29>

1. : Do you consider that a PTRR service provider should be specifically licenced or authorised? Would this depend on the remits of the services provided? Would it be sufficient to provide requirements on the service provided, i.e. on transaction level rather than entity level? What do you see as the benefits of regulating PTRR services? Would this create any impediment or barriers?

<ESMA\_QUESTION\_PTRR\_30>

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<ESMA\_QUESTION\_PTRR\_30>

1. : What would be the cost-benefit of exempting PTRR transactions (replacement and risk mitigation services through offsetting trades such as rebalancing) from the clearing obligation?

<ESMA\_QUESTION\_PTRR\_31>

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<ESMA\_QUESTION\_PTRR\_31>