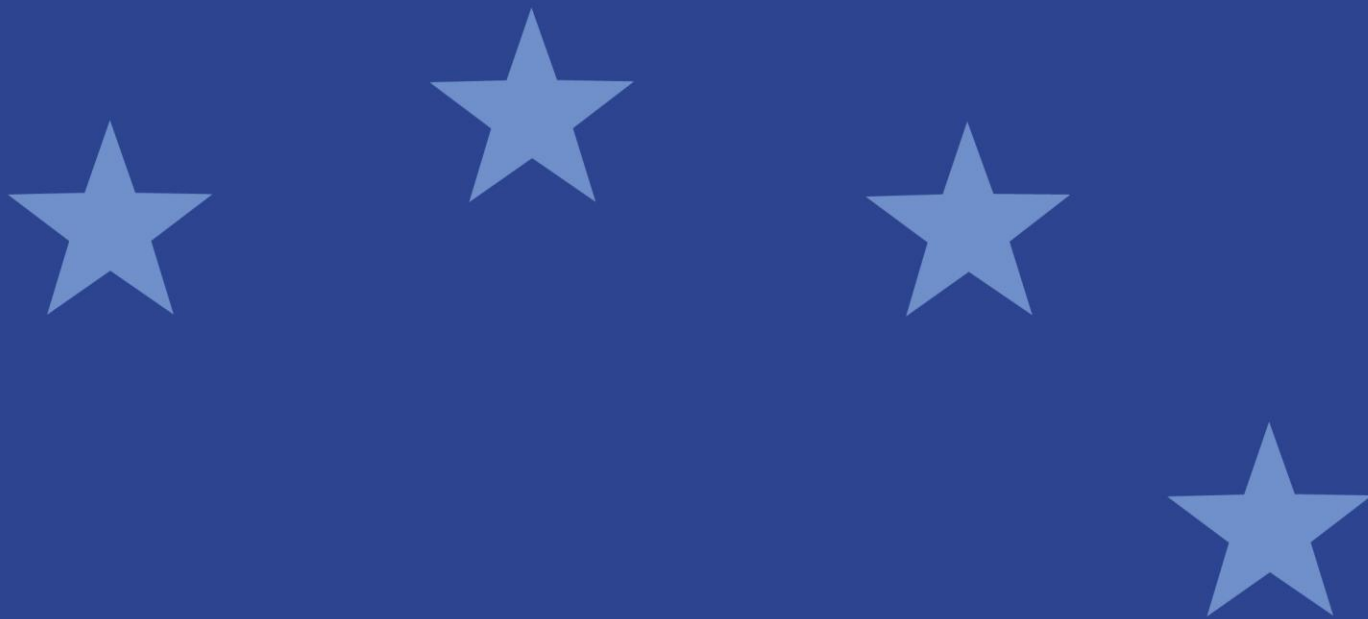




European Securities and  
Markets Authority

# Consultation Paper

Clearing Obligation under EMIR (no. 2)



## Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the questions listed in this Consultation Paper on the Clearing Obligation under EMIR (no. 2).

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

Please follow the instructions given in the document '[Reply form for the Consultation Paper on the Clearing Obligation under EMIR \(no. 2\)](#)' also published on the ESMA website.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **18 September 2014**.

## Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. 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 'Legal Notice'.

## Who should read this 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 derivatives transactions which will be subject to the clearing obligation, as well as central counterparties (CCPs).

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## Acronyms used

AIF	Alternative Investment Fund
AIFM	Alternative Investment Fund Manager
AIFMD	Alternative Investment Fund Managers Directive (Directive 2011/61/EU)
CCP	Central Counterparty
CDS	Credit Default Swap
CFD	Contract for difference
Class+	Class of OTC derivatives subject (or proposed to be subject) to the clearing obligation
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories – also referred to as “the Regulation”
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
ETD	Exchange Traded Derivatives
FC	Financial Counterparty
FX	Foreign Exchange
IRS	Interest Rate Swap
LEI	Legal Entity Identifier
MiFID	Markets in Financial Instruments Directive – Directive 2004/39/EC of the European Parliament and the Council
MTF	Multilateral Trading Facility
NCA	National Competent Authority
NFC	Non-Financial Counterparty
NFC+	Non-Financial Counterparty subject to the clearing obligation, as referred to in Article 10(1)(b) of EMIR
OTC	Over-the-counter



Q&A on EMIR	Questions and Answers on the implementation of EMIR available on ESMA's website
RTS	Regulatory Technical Standards
RTS on OTC Derivatives	Commission Delegated Regulation (EU) No 149/2013
RTS on CCP	Commission Delegated Regulation (EU) No 153/2013
SPV	Special Purpose Vehicle
TR	Trade Repository

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## Executive Summary

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### Reasons for publication

This consultation paper seeks stakeholders' views on the regulatory technical standards that ESMA is required to draft under Article 5(2) "Clearing Obligation Procedure" of the Regulation (EU) No 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories (EMIR). This paper follows the publication in July 2013 of a discussion paper on the clearing obligation under EMIR and the publication of the first consultation paper on the clearing obligation on interest rate classes<sup>1</sup>.

The input from stakeholders will help ESMA in finalising the relevant technical standards to be drafted and submitted to the European Commission for endorsement in the form of Commission Regulations, i.e. a legally binding instrument directly applicable in all Member States of the European Union. One essential element in the development of draft technical standards is the analysis of the costs and benefits that those legal provisions will imply. Input in this respect and any supportive data will be highly appreciated and kept confidential where required.

### Contents

This paper provides explanations on the draft regulatory technical standards establishing a clearing obligation on certain credit OTC derivative classes. The structure of this paper is the following: Section 1 provides an overview of the clearing obligation procedure and the classes of OTC derivatives that are relevant for this consultation paper. Section 2 provides clarifications on the structure of the classes of OTC credit derivatives that are proposed for the clearing obligation. Section 3 includes the determination of the classes of OTC derivatives that should be subject to mandatory clearing with an analysis of the relevant criteria. Section 4 presents the approach for the definition of the categories of counterparties, and the proposals related to the dates from which the clearing obligation should apply per category of counterparty. Section 5 provides explanations on the approach considered for frontloading and the definition of the minimum remaining maturities of the contracts subject to it.

### Next steps

As provided for by Regulation No 1095/2010 of the European Parliament and Council establishing ESMA, a public consultation is conducted on the draft technical standards before they are submitted to the European Commission for endorsement in the form of Commission Regulations. In addition ESMA shall consult the ESRB and, where relevant, the competent authorities of third-countries when developing the technical standards on the clearing obligation.

According to ESMA decision ESMA/2011/BS/4a on the procedure for developing and adopting draft technical standards and guidelines, the consultation paper includes the actual legal text of the provisions constituting the draft technical standards, an explanation of the measures adopted and a cost-benefit

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<sup>1</sup> 2014-ESMA-799 Consultation Paper, Clearing Obligation under EMIR no. 1 published on 10 July 2014



analysis. Other consultation papers proposing to subject other classes to the clearing obligation may be published in the future.

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## Introduction

1. With the overarching objective of reducing systemic risk, the European Market Infrastructure Regulation (“EMIR”) introduces the obligation to clear certain classes of OTC derivatives in Central Counterparties (CCPs) that have been authorised (for European CCPs) or recognised (for Third-country CCPs) under the EMIR framework. Ensuring that the clearing obligation reduces systemic risk requires a process of identification of classes of derivatives that should be subject to mandatory clearing.
2. EMIR foresees two possible processes for the identification of the relevant classes of OTC derivatives:
  - The “bottom-up” approach described in EMIR Article 5(2), according to which the determination of the classes to be subject to the CO will be done based on the classes which are already cleared by authorised or recognised CCPs.
  - The “top-down” approach described in EMIR Article 5(3), according to which ESMA will on its own initiative identify classes which should be subject to the clearing obligation but for which no CCP has yet received authorisation.
3. This consultation paper results from the bottom-up approach only and incorporates feedbacks and comments received from stakeholders responding to the discussion paper on the clearing obligation published on 12 July 2013<sup>2</sup>. It is the second consultation paper on the clearing obligation<sup>3</sup>.
4. The clearing obligation procedure shall only begin when a CCP clearing OTC derivatives is authorised under EMIR, or when ESMA has accomplished a procedure for recognition of a third-country CCP set out in EMIR Article 25. It has therefore started in Q1 2014 following the first CCPs authorisations. The list of CCPs that have been authorised to clear OTC derivatives, and the classes for which they are authorised, are available in the public register<sup>4</sup>.
5. In accordance with the clearing obligation procedure and the Commission mandate shown in Annex I, ESMA shall develop and submit to the European Commission for endorsement draft technical standards specifying:
  - (a) the class of OTC derivatives that should be subject to the clearing obligation referred to in Article 4;
  - (b) the date or dates from which the clearing obligation takes effect, including any phase in and the categories of counterparties to which the obligation applies; and
  - (c) the minimum remaining maturity of the OTC derivative contracts referred to in Article 4(1)(b)(ii).
6. This consultation paper results from the analysis of the credit OTC derivative classes cleared by ICE Clear Europe (UK) and LCH.Clearnet SA (France), and is proposing to subject some of those classes to the clearing obligation.

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<sup>2</sup> <http://www.esma.europa.eu/content/Clearing-Obligation-under-EMIR>

<sup>3</sup> 2014-ESMA-799 Consultation Paper, Clearing Obligation under EMIR no. 1 published on 10 July 2014

<sup>4</sup> The “Public Register for the Clearing Obligation under EMIR” is available under the post-trading section of : <http://www.esma.europa.eu/page/Registries-and-Databases>

7. LCH.Clearnet SA was authorised under EMIR in May 2014 and ICE Clear Europe is expected to be authorised before the entry into force of the regulatory technical standards proposed in this consultation. The classes that have been analysed and proposed to be subject to the clearing obligation take this element into consideration.
8. This paper makes frequent references to two different sets of Regulatory Technical Standards (“RTS”). For the avoidance of doubt, it should be understood that:
  - the “RTS on OTC derivatives” is the Commission Delegated Regulation (EU) No 149/2013 which entered into force on 15 March 2013 and specifies, inter alia, the criteria for the determination of the classes of OTC derivative contracts subject to the clearing obligation in Article 7;
  - the “draft RTS on the clearing obligation” is the one on which ESMA is consulting in parallel (see the first consultation paper on the clearing obligation) and is consulting again with this paper, on a modified version of the RTS which adds a class of credit OTC derivatives to the interest rate classes. Annex I provides the Commission mandate for this draft RTS, and Annex II provides the corresponding draft RTS.
9. Therefore the draft RTS included in Annex II of this consultation paper is a modification of the draft RTS included in Annex II of the first consultation paper on interest rate, with the addition of a credit class.



## 1. The clearing obligation procedure

10. The clearing obligation procedure of Article 5 is triggered every time a European CCP is authorised to clear a class of OTC derivatives under Article 14 (initial authorisation) or Article 15 (extension of activity) of EMIR. The procedure is also triggered by the recognition of a third-country CCP by ESMA in accordance with Article 25 of EMIR, however to date ESMA has not recognised any third-country CCP, therefore this process is not covered by the current consultation.
11. The procedure of Article 5(1) for European CCPs implies that potentially, depending on the date of authorisation of the CCPs, ESMA could submit separate draft RTS on the clearing obligation after each CCP authorisation. ESMA has determined that this process would be highly sub-optimal, as stakeholders would need to answer to numerous consultations potentially running in parallel.
12. Therefore ESMA has aimed at grouping, to the extent possible, the analysis of the notified classes of OTC derivatives in a minimal set of consultation papers, and at least to group them per asset-class, where an asset-class, in accordance with market practice, is understood as one of the five following categories: (1) interest rate, (2) credit, (3) foreign-exchange, (4) equity and (5) commodity.
13. This is the reason why, after the publication of the first consultation paper on interest rate OTC derivative, the paper is proposing a clearing obligation on credit OTC derivatives only.
14. Table 1 below provides an overview of the European CCPs that are authorised, or in the process of being authorised, with an indication of the asset-class that they clear<sup>5</sup>. For the authorised CCPs, the information on the cleared asset-classes is based on the formal notifications to ESMA under Article 5(1) whereas for the CCPs that are not yet authorised, the information on the cleared asset-classes is based on the notifications received by ESMA in March 2013 in accordance with Article 89(5), as well as on information gathered by ESMA. Therefore it should be understood that for those non-authorised CCPs, the scope of the cleared asset-classes may be subject to changes.

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<sup>5</sup> The detail of the classes that the CCPs are authorised to clear is available in the “Public Register for the Clearing Obligation under EMIR”, available under the post-trading section of : <http://www.esma.europa.eu/page/Registries-and-Databases>

**Table 1: Asset-Classes cleared by European CCPs**

#	CCP Name	Country	Authorised on	RTS Deadline	OTC Interest Rate	OTC Credit	OTC Commodity	OTC Equity	OTC FX
1	Nasdaq OMX	Sweden	18-Mar-14	18-Sep-14	1			1	
2	KDPW_CCP	Poland	08-Apr-14	18-Oct-14	1				
3	Eurex Clearing AG	Germany	10-Apr-14	12-Oct-14	1				
4	LCH.Clearnet SA	France	22-May-14	22-Nov-14		1			
5	European Commodity Clearing (ECC)	Germany	11-Jun-14	11-Dec-14			1		
6	LCH.Clearnet Limited	UK	12-Jun-14	12-Dec-14	1		1	1	1
7	ICE Clear Europe	UK				1			1
8	CME Clearing Europe	UK			1		1		
9	LME Clear	UK					1		
10	BME Clearing	Spain					1		
11	OMI Clear	Portugal					1		
12	Holland Clearing House	Netherlands						1	
	<b>Number of CCP per asset class</b>				<b>5</b>	<b>2</b>	<b>6</b>	<b>3</b>	<b>2</b>

Legend:

Class proposed to be subject to the clearing obligation in the first consultation paper	Class proposed not to be subject to the clearing obligation in the first consultation paper	Class proposed to be subject to the clearing obligation in this consultation	Class not covered by the present consultation	Class not yet notified (CCP not authorised)
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**Question 1: Do you have any comment on the clearing obligation procedure described in Section 1?**

## **2. Structure of the credit derivatives classes**

15. In the discussion paper on the clearing obligation, ESMA explained the approach that was considered to define the classes of OTC credit derivatives. A set of characteristics such as the product type, the product sub-type and the geographical zone would be complemented with other characteristics depending on the product type. ESMA is following this approach with the credit OTC derivative classes that are offered for clearing: untranched index CDS and single name CDS.
16. With regards to the first type, the clearing offer includes untranched indices covering European corporate credits: the iTraxx Europe Main, the iTraxx Europe Crossover, the iTraxx Europe High Volatility and the iTraxx Europe Senior Financials. No other index, such as the CDX indices series, was notified and thus will not be included in this consultation paper and the draft RTS.
17. The two other characteristics used to define the untranched index classes are the maturity/tenor and the series numbers. However, the version does not need to be included in the characteristics as there is a standardised process to handle credit events and the resulting versioning of the corresponding indices.
18. For the definition of the untranched index classes, the main additional consideration has been on how to manage and maintain the index series included in the clearing obligation, specifically on whether new series should be included systematically or their inclusion should be criteria based. The objective is to balance the need for flexibility in case a given series should not be in the clearing obligation while ensuring enough predictability for market participants.
19. Several options were presented in the discussion paper but the prevailing view is to include the new series from the outset, which is consistent with what is done in other jurisdictions. For the indices proposed in this paper, the risk of the new on-the-run series not developing a sufficient level of liquidity, leading to the need to remove them from the clearing obligation, was not identified to be important enough for ESMA to decide for a different and more complex approach.
20. As a result for untranched index classes for these European indices, the classes included in the clearing obligation are defined with the relevant tenors and the series number from when it is applicable up to the on-the-run one, included. In response to question 2 of the discussion paper, the large majority of respondents agreed that these characteristics adequately capture the structure of these classes.
21. For the second product type, single name CDS, ESMA has looked at the two categories offered for clearing, i.e. standard European corporate single name CDS and standard Western European sovereign single name CDS. The approach to define the classes would follow the same rules as with the untranched indices, with a set of characteristics such as the product type (corporate or sovereign in this case), the geographical zone (European and Western European for these), then followed by other characteristics to define which specific single names would be in the clearing obligation.
22. The analysis of the criteria set in EMIR has led ESMA to conclude that none of the single name CDS should be subject to the clearing obligation at this stage, as detailed further in this document. As a result, the definition of the classes of single name CDS will be further defined in the future if and when these become subject to the clearing obligation.

**Question 2: Do you consider that the proposed structure for the untranching index CDS classes enables counterparties to identify which contracts are subject to the clearing obligation as well as allows international convergence? Please explain.**

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

#### **3.1. Legal basis**

23. In accordance with Article 5(4) of EMIR, with the overarching aim of reducing systemic risk, the draft RTS for the part referred to in Article 5(2)(a) of EMIR (i.e. the specification of the classes of OTC derivatives that should be subject to the clearing obligation) shall take into consideration the following criteria:
- (a) the degree of standardisation of the contractual terms and operational processes of the relevant class of OTC derivatives;
  - (b) the volume and liquidity of the relevant class of OTC derivatives;
  - (c) the availability of fair, reliable and generally accepted pricing information in the relevant class of OTC derivatives.
24. Those criteria are further specified in Article 7 of the RTS on OTC derivatives. EMIR also provides for a primary source of information for ESMA to perform its assessment of the classes of OTC derivatives against the criteria, in the form of the “CCP notifications”, the details of which are defined in Article 6 of the RTS on OTC derivatives.
25. The paragraphs below provide for an analysis of the classes of OTC credit derivatives against those criteria. Please note that the notified classes can be found in ESMA’s public register<sup>6</sup>, whereas the classes proposed for the clearing obligation are defined on the basis of the relevant criteria and summarised in section 3.2.4.

#### **3.2. Analysis of the criteria for the OTC credit derivatives**

26. Looking at the credit derivative class as a whole, its share in the overall OTC market, both in notional terms as well as in market value as per Table 2 and Table 3, is significantly less than the predominant class, interest rate derivatives, but still represents a meaningful share of the overall market. According to the Bank of International Settlements, as of December 2013, OTC credit derivative contracts represented \$21 trillion of the outstanding notional and \$700 billion of the market value of all OTC derivative contracts<sup>7</sup>.

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<sup>6</sup> The “Public Register for the Clearing Obligation under EMIR” is available under the post-trading section of : <http://www.esma.europa.eu/page/Registries-and-Databases>

<sup>7</sup> Bank for Settlement Instructions statistics as of end of December 2013: <http://www.bis.org/statistics/derdetailed.htm>

**Table 2: Notional amounts outstanding in OTC derivatives, per asset class**

<i>as of December 2013</i>	<b>Notional Amounts Outstanding (trillion of USD)</b>	<b>% of total</b>
<b>Foreign exchange contracts</b>	<b>70.6</b>	<b>9.9%</b>
<b>Interest rate contracts</b>	584.4	<b>82.3%</b>
<b>Equity-linked contracts</b>	6.6	<b>0.9%</b>
<b>Commodity contracts</b>	2.2	<b>0.3%</b>
<b>Credit default swaps</b>	<b>21.0</b>	<b>3.0%</b>
<b>Unallocated</b>	25.5	<b>3.6%</b>
<b>TOTAL</b>	<b>710.2</b>	<b>100%</b>

Source: BIS semi-annual OTC derivatives statistics

**Table 3: Gross market values in OTC derivatives, per asset class**

<i>as of December 2013</i>	<b>Gross Market Values (trillion of USD)</b>	<b>% of total</b>
<b>Foreign exchange contracts</b>	<b>2.3</b>	<b>12.2%</b>
<b>Interest rate contracts</b>	14.0	<b>75.2%</b>
<b>Equity-linked contracts</b>	0.7	<b>3.8%</b>
<b>Commodity contracts</b>	0.3	<b>1.4%</b>
<b>Credit default swaps</b>	<b>0.7</b>	<b>3.5%</b>
<b>Unallocated</b>	0.7	<b>3.8%</b>
<b>TOTAL</b>	<b>18.7</b>	<b>100%</b>

Source: BIS semi-annual OTC derivatives statistics

27. The size of the respective markets is not the sole indicator; the analysis is done at a more granular level, at the specific class level. With the overarching principle of addressing systemic risk, each of these classes is evaluated against the three criteria defined in EMIR: the level of standardisation of these classes, their liquidity as well as the availability of reliable pricing data.
28. Additionally, this asset class is also the one, along with the interest rate derivative one, being looked at in priority in other jurisdictions, strengthening international regulatory convergence. Both the US CFTC and the Japanese FSA have now implemented their initial and respective clearing determinations on classes of these two asset classes. Other jurisdictions have further requirements in the pipeline that will need to be looked at in light of the local predominant classes, which are listed in the latest FSB report<sup>8</sup>.
29. Finally, the view that credit derivatives together with interest rate derivatives are to be considered in priority for central clearing is also shared by a large majority of the stakeholders who responded to the discussion paper on the clearing obligation. This consultation paper containing the analysis of the credit derivative classes against the three criteria defined in EMIR follows the first consultation paper that includes the analysis on the interest rate derivative classes.

<sup>8</sup> FSB report number 7 is available at the following link: [http://www.financialstabilityboard.org/publications/r\\_140408.pdf](http://www.financialstabilityboard.org/publications/r_140408.pdf)

### 3.2.1. Criteria 1: degree of standardisation of OTC credit derivatives

30. To assess the degree of standardisation of the OTC credit derivatives, ESMA used the following sets of data:
- The CCP-notifications that were made to ESMA in April 2013 under Article 89(5) (Transitional Provisions) and more specifically, the notifications related to the CCPs clearing or intending to clear credit derivatives i.e. ICE Clear Europe, Eurex clearing AG and LCH.Clearnet SA
  - The CCP-notification that was made to ESMA in May 2014 under Article 5(1) and that launched this consultation paper i.e. the notification of LCH.Clearnet SA
  - The current clearing offering of ICE Clear Europe
  - Relevant public information and reports that were published by ISDA and by the FSB using data of the ODSG
  - Public data by Trade Repositories<sup>9</sup>
31. The two types of product included in the clearing offer, untranching Index CDS and single name CDS are both relatively recent products that have seen a rapid growth in the past ten to fifteen years. One of the reasons is, in part to help this growth and their liquidity, that they have both benefited from an industry-wide effort to standardise them. In particular, the Big Bang and the Small Bang protocols have significantly standardised further these products. The contracts that are following these protocols are even referred to as “standard contracts”. The single name and untranching index classes in European corporate and Western European sovereign references that are offered for clearing are part of this category. The level of standardisation of these classes is therefore analysed altogether, while some aspects that are specific to a subset of those classes are pointed out where relevant.

#### Criteria 1(a): level of standardisation of the contractual terms – EMIR 5(4)(a) and RTS 7(1)(a)

32. About fifteen years ago, the OTC credit derivative market benefited from initiatives to standardise the documentation of its products, which led to the 1999 and the 2003 ISDA Credit Derivatives Definitions. Following the same logic also described in the interest rate classes section of the first consultation paper, with the ISDA Master Agreement approach<sup>10</sup>, counterparties execute an agreement including standard terms that would serve as the contract for all subsequent OTC credit derivative trades, meaning that all the terms negotiated and agreed once would then apply automatically to each new trade. These terms are complemented with the transaction-specific terms in the trade confirmation, such as the main economic attributes as well as the settlement method. The terms of these trade confirmations are based on the prevailing ISDA Credit Derivatives definitions. Finally, these Definitions may be further updated as this market evolves and matures, for example the 2009 Supplement or the 2014 Supplement<sup>11</sup> published by ISDA to take into account new terms.

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<sup>9</sup> The reporting start date was 12 February 2014 and the time needed to access and process the relevant data across 6 different TRs means the results are being considered but will only be included in a future document.

<sup>10</sup> ISDA standardised documentation is available at the following address: <http://www.isda.org/publications/isda-credit-derivatives-definitions-supplement-2014>

<sup>11</sup> ISDA communication on the new 2014 Supplement can be found at the following address: <http://www2.isda.org/news/isda-publishes-isda-2014-credit-derivatives-definitions>

33. The Big Bang Protocol in the US and the Small Bang Protocol in Europe in 2009 introduced an even greater level of standardisation for credit derivative OTC contracts. This led to a 2009 Supplement to the 2003 ISDA Credit Derivatives definition. The European products fall in the category of standardised products resulting from these Protocols.
34. From a contract point of view, a large portion of the market has adhered to these Small Bang and Big Bang Protocols which specify the possible types of credit events as well as define a specific auction process. This has helped developing liquidity in these standardised contracts and increasing settlement certainty when credit events occur. This includes the definition of the role of the determination committee, setting a look back period, establishing a schedule and a procedure for the conduct of the auction and the resulting settlement.
35. Finally, on top of the credit events already covered in the US with the Big Bang Protocol, the process to handle restructuring events was also further standardised with the Small Bang Protocol. The standardisation of the processing of credit events has benefitted the classes in scope as well as the CCPs clearing them as they have been able to leverage this established process. Many events<sup>12</sup> have since occurred and have been handled through this process over the past years, confirming that this standardised process is operational.
36. From a trading convention point of view, the standardisation of these contracts means they now share a set of fixed attributes and have allowed more trades to be netted together. In particular, they trade on a pre-defined set of fixed coupons, follow IMM coupon and maturity dates<sup>13</sup>, and in addition, the trading of these contracts is concentrated on a set of a few tenors. The introduction of these standardised CDS makes it easier for counterparties to ask for a trade price as well as to offset and net transactions.
37. To be noted that there is a further difference between these products. Single name CDS are by definition on a single reference name, whereas for indices the underlying is a basket of names the composition of which can change. In order to keep these baskets standard so that every market participants can refer to the right basket at any given time, their composition is managed by a third party.
38. There is a large range of indices being offered and traded, but only a few are currently cleared by European CCPs. The ones in scope in this paper are managed by Markit in collaboration with the largest dealers. Specifically, Markit is the administrator and manages the list of constituents of these indices, issuing new series based on the liquidity of its constituents and new versions following credit events. As a result the contractual terms of both the out-of-the run and on-the-run indices are openly available<sup>14</sup> to all participants, allowing trading of these indices on a continuous basis.
39. It is to be noted that there are CDS that are more tailor made and being traded with a smaller level of standardisation than the standard contracts that follow the 2009 changes, but these are not currently cleared by European CCPs.

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<sup>12</sup> Credit event auction details and results are available at the following address:  
<http://www.creditfixings.com/CreditEventAuctions/fixings.jsp>

<sup>13</sup> IMM stands for International Monetary Market, the CDS market uses a convention of quarterly termination dates called IMM dates, similar to the Futures and Options terminology, which are: 20 March, 20 June, 20 September, and 20 December.

<sup>14</sup> Markit iTraxx webpage containing the Index details and associated documentation: <https://www.markit.com/Product/iTraxx>

40. This high level of standardisation thus ensures the contractual terms of the relevant classes of single name CDS and untranched indices incorporate common legal documentation, including master netting agreements, definitions, standard terms and confirmations which set out contract specifications commonly used by counterparties. The CCPs clearing them make use of these standards by referencing the relevant agreements and definitions in their rules.

Criteria 1(b): Level of standardisation of the operational processes – EMIR 5(4)(a) and RTS 7(1)(b)

41. The standardised CDS that are in the scope of this paper, both single name and Index product types, are all eligible for electronic processing. The ability to process trades electronically is indeed an important indicator of the level of standardisation of the operational processes. Credit derivatives in general and the classes in scope in particular are leading in terms of percentage numbers of trades electronically processed and electronically confirmed, being close to 100%.
42. The fifth FSB report on OTC Derivatives Market Reform<sup>15</sup> shows the level of electronic trade processing over recent years with numbers from 2010 and 2012. For credit derivatives, the level of electronically processed transactions stood consistently at 98% in both 2010 and 2012, while the level of electronically eligible transactions remained at 99% for both years. A survey from ISDA<sup>16</sup> with 77 respondents indicated the same levels for 2012, i.e. 98% of trades were electronically processed and confirmed while only 1% was not eligible for electronic processing.
43. Going further, in addition to electronic processing and confirmation, upstream of the trade life cycle, the CDS classes have also benefited from market utilities offering affirmation services of trades ahead of confirmations, allowing counterparties to detect discrepancies early in the life of the trade.
44. Increasingly, the processing of new trades, trade novations, trade compressions and credit events has been leveraging these market utilities. The standardisation of these products and their trade life cycle, such as the Novation Protocol or the Auction process, has gone hand in hand with the development of market utilities and technological solutions.
45. The standardisation of the documentation and the trading conventions has contributed to the standardisation of the operational processes which is demonstrated in this asset class and for these classes in particular by a high degree of automation.
46. The two CCPs clearing credit derivatives are connected to these market utilities in order to receive trades from counterparties, pass on clearing confirmation messages back or handle credit events. The operational processes of the classes of credit OTC derivative contracts benefit from automated post-trade processing and lifecycle events following market conventions, and the CCPs have integrated these processes and automation.

**3.2.2. Criteria 2: liquidity of OTC credit derivatives**

Criteria 2(a): Proportionate margins – EMIR 5(4)(b) and RTS 7(2)(a)

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<sup>15</sup> “OTC derivatives Market Reforms, Fifth Progress Report on Implementation”, FSB, 15 April 2013, available at [http://www.financialstabilityboard.org/publications/r\\_130415.pdf](http://www.financialstabilityboard.org/publications/r_130415.pdf)

<sup>16</sup> “2013 Operations Benchmarking Survey”, ISDA, 25 April 2013, available at <http://www2.isda.org/functional-areas/research/surveys/operations-benchmarking-surveys/>

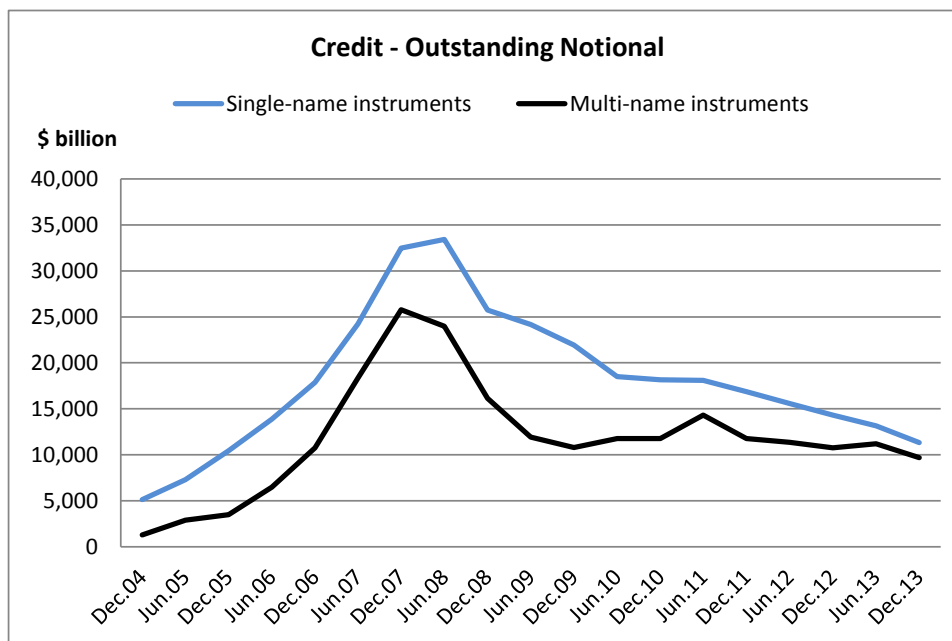


47. Provision 7(2)(a) of the RTS on OTC derivatives states that, in relation to the volume and liquidity of the relevant classes of OTC derivative contracts, ESMA shall take into consideration whether the margins or financial requirements of the CCP would be proportionate to the risk that the clearing obligation intends to mitigate. The margins and financial requirements for ICE Clear Europe and LCH.Clearnet S.A. are part of the CCP authorisation process.
48. Following this, ESMA ensured that the determination process would follow the overarching goal of reducing systemic risk, and that for instance a less liquid product currently cleared but with a disproportionate margin would not be part of a class. ESMA has determined that the inclusion of the interest rate OTC derivative classes presented in this consultation paper for the clearing obligation did not result in disproportionate margin and financial requirements.

Criteria 2(b): Stability of the market size and depth – EMIR 5(4)(b) and RTS 7(2)(b)

49. The CDS market has experienced a rapid growth up to the 2008 crisis, accompanied along the way by the introduction of new product types, which in turned fuelled further its rapid development. Following the crisis, the total outstanding notional has decreased due to multiple reasons, some being economic related like the level of the interest rates, others being structural, in particular its standardisation in 2009 and the compression runs. Figure 1 below shows this evolution and is based on data from the BIS semi-annual survey.

**Figure 1: Outstanding Notional in Single name CDS and Multi-name CDS or Index/Basket CDS over the past 10 years**



Source: BIS Semi-annual survey

50. Indeed, standard CDS contracts are standardised in a way that they are traded with a set of fixed attributes and thus makes it easier to net down together. Compression runs, clearing and its netting process as well as the novation process have allowed further counterparties to trade credit risk buying or selling protection while keeping the outstanding notional at a lower level, closer to the net

exposure. Although the outstanding notional has decreased, these markets have remained active over time.

Criteria 2(c): Market dispersion – EMIR 5(4)(b) and RTS 7(2)(c)

51. The CDS market contains multiple market makers with about fifteen of them responsible for the large majority of the trading volume. Despite this concentration in trading volume amongst these dealers, none of them appears to have a market share significantly larger than the others.
52. These large dealers are also the clearing members of the two EU CCPs clearing credit OTC derivatives. 21 clearing members are members of one or the two clearing houses offering clearing of CDS products in Europe, as detailed in section 4.1.2. At group level (i.e. when clearing members of the same group are counted only once), there are 15 members. 9 of them are members of LCH.Clearnet SA<sup>17</sup> and 15 of them are members of ICE Clear Europe<sup>18</sup>.
53. As a result, in addition to the fact that the EMIR requirements on default management are part of the authorisation process of these two CCPs, the profile and number of the clearing members involved with these two CCPs would ensure that market dispersion remains sufficient in the event of the default of one of them.

Criteria 2(d): Number and value of the transactions – EMIR 5(4)(b) and RTS 7(2)(d)

54. The untranching index class and the single name class account for the vast majority of the notional and number of trades for credit OTC derivative transactions. Yet, as can be seen in Table 4, even though these two classes have similar outstanding notionals, they have a much different number of outstanding contracts. The vast majority of the volume of the untranching indices is concentrated on a small and defined set of indices with bigger ticket sizes, whereas for single names there are thousands of references. This difference is in some part linked to the nature of the product, as indices allow to buy or to sell protection on a basket of names at once, but still it indicates differences in their respective level of liquidity. They are analysed separately in the following paragraphs.

**Table 4: Credit OTC derivatives: Outstanding notional amount and trade count per product type**

Credit OTC derivatives	Gross Notional (USD)	Contracts
Single Name CDS products	10,833,010,855,634	1,537,321
Untranching Indices products	8,734,310,068,268	151,006
Rest	1,018,077,130,872	14,426
Total	20,585,398,054,774	1,702,753

Source: DTCC, 09 May 2014

<sup>17</sup> The list of LCH.Clearnet SA CDS Clear Members is available at the following link:

[http://www.lchclearnet.com/membership/sa/current\\_membership.asp](http://www.lchclearnet.com/membership/sa/current_membership.asp)

<sup>18</sup> The list of ICE Clear Europe CDS Clearing Members is available at the following link:

<https://www.theice.com/ClearEuropeMembers.shtml#S>

## Untranchéd index classes

55. Untranchéd indices are usually active credit OTC derivative classes and amongst them some are more active than others. For the indices included in the classes offered for clearing:

- (a) Three of them belong to the most active indices: the iTraxx Europe Main series, the iTraxx Europe Crossover series and the iTraxx Europe Senior Financials series. Table 5 below illustrates this; at least one of the series of each of these three indices is in the top 20 largest outstanding notionals of all indices.
- (b) The fourth one, on the opposite, belongs to the group of much less active indices: the iTraxx Europe High Volatility series. This will be illustrated further in the following paragraphs.

**Table 5: Untranchéd indices: Top 20 largest notional amounts amongst all indices**

Index/Index Tranche	Product Type	On/Off	Dealer		Non Dealer/Customer		Totals	
			Gross Notional (USD EQ)	Contracts	Gross Notional (USD EQ)	Contracts	Gross Notional (USD EQ)	Contracts
ITRAXX EUROPE SERIES 20	Untranchéd	Off	263,402,761,801	2925	503,452,500,925	6451	766,855,262,726	9376
ITRAXX EUROPE SERIES 19	Untranchéd	Off	275,019,835,655	3146	208,256,590,893	1977	483,276,426,548	5123
ITRAXX EUROPE SERIES 21	Untranchéd	On	137,707,382,191	1679	206,598,118,126	2966	344,305,500,317	4645
ITRAXX EUROPE SERIES 9	Untranchéd	Off	241,345,195,701	1422	97,141,016,224	487	338,486,211,925	1909
ITRAXX EUROPE SERIES 18	Untranchéd	Off	210,730,125,928	2119	109,839,369,038	1045	320,569,494,966	3164
CDX.NA.IG.22	Untranchéd	On	102,078,853,810	912	216,726,889,400	2784	318,805,743,210	3696
CDX.NA.IG.21	Untranchéd	Off	67,484,955,556	715	241,297,791,295	3276	308,782,746,851	3991
CDX.NA.IG.9	Untranchéd	Off	149,540,770,544	668	133,490,731,548	479	283,031,502,092	1147
CDX.NA.IG.19	Untranchéd	Off	116,169,571,281	942	112,796,385,381	747	228,965,956,662	1689
CDX.NA.IG.20	Untranchéd	Off	88,044,552,523	690	116,278,872,623	1121	204,323,425,146	1811
ITRAXX EUROPE SERIES 17	Untranchéd	Off	126,872,993,798	1108	68,262,268,662	561	195,135,262,460	1669
ITRAXX EUROPE SENIOR FINANCIALS SERIES 20	Untranchéd	Off	132,441,059,483	3534	42,046,063,282	1177	174,487,122,765	4711
ITRAXX EUROPE CROSSOVER SERIES 20	Untranchéd	Off	49,544,765,175	1634	119,233,281,843	5343	168,778,047,018	6977
CDX.NA.IG.18	Untranchéd	Off	77,103,149,447	556	61,893,229,247	379	138,996,378,694	935
ITRAXX EUROPE SERIES 15	Untranchéd	Off	97,529,489,958	632	38,309,816,089	247	135,839,306,047	879
CDX.NA.IG.17	Untranchéd	Off	69,196,115,484	435	58,210,531,268	315	127,406,646,752	750
ITRAXX EUROPE SERIES 16	Untranchéd	Off	74,682,183,137	603	36,520,836,024	274	111,203,019,161	877
CDX.NA.IG.16	Untranchéd	Off	52,703,803,069	484	54,245,953,891	461	106,949,756,960	945
ITRAXX EUROPE CROSSOVER SERIES 21	Untranchéd	On	38,173,047,659	1049	59,267,329,050	2332	97,440,376,709	3381
ITRAXX EUROPE SENIOR FINANCIALS SERIES 19	Untranchéd	Off	75,629,761,075	1299	19,582,454,706	417	95,212,215,781	1716

Source: DTCC, 02 May 2014

56. Beyond the top 20 largest notionals, ESMA has looked at the outstanding notional and trade count for each of the 4 indices. As indicated by Table 9, for the same index some series may have an outstanding volume bigger than another so the analysis has been conducted at the series level. From a stock point of view, in terms of number and value of transactions, most of the outstanding volume is on the most recent series. Table 6 to Table 9 below list the outstanding trades per series for the four indices included in the classes in scope, in terms of gross notional and number of contracts, sorted by outstanding notional.

**Table 6: iTraxx Europe Main: Notional amounts outstanding and trade count per series, ranked from the largest to the smallest notional**

Index/Index Tranche	Product Type	On/Off	Dealer		Non Dealer/Customer		Totals	
			Gross Notional (USD EQ)	Contracts	Gross Notional (USD EQ)	Contracts	Gross Notional (USD EQ)	Contracts
ITRAXX EUROPE SERIES 20	Untranché	Off	263,402,761,801	2925	503,452,500,925	6451	766,855,262,726	9376
ITRAXX EUROPE SERIES 19	Untranché	Off	275,019,835,655	3146	208,256,590,893	1977	483,276,426,548	5123
ITRAXX EUROPE SERIES 21	Untranché	On	137,707,382,191	1679	206,598,118,126	2966	344,305,500,317	4645
ITRAXX EUROPE SERIES 9	Untranché	Off	241,345,195,701	1422	97,141,016,224	487	338,486,211,925	1909
ITRAXX EUROPE SERIES 18	Untranché	Off	210,730,125,928	2119	109,839,369,038	1045	320,569,494,966	3164
ITRAXX EUROPE SERIES 17	Untranché	Off	126,872,993,798	1108	68,262,268,662	561	195,135,262,460	1669
ITRAXX EUROPE SERIES 15	Untranché	Off	97,529,489,958	632	38,309,816,089	247	135,839,306,047	879
ITRAXX EUROPE SERIES 16	Untranché	Off	74,682,183,137	603	36,520,836,024	274	111,203,019,161	877
ITRAXX EUROPE SERIES 13	Untranché	Off	53,947,435,550	389	29,189,396,878	200	83,136,832,428	589
ITRAXX EUROPE SERIES 14	Untranché	Off	49,750,505,585	294	28,879,790,179	141	78,630,295,764	435
ITRAXX EUROPE SERIES 7	Untranché	Off	52,917,547,617	235	20,818,747,533	54	73,736,295,150	289
ITRAXX EUROPE SERIES 12	Untranché	Off	39,965,085,525	244	18,780,428,964	118	58,745,514,489	362
ITRAXX EUROPE SERIES 5	Untranché	Off	35,743,274,749	126	3,985,678,205	21	39,728,952,954	147
ITRAXX EUROPE SERIES 8	Untranché	Off	30,416,183,666	129	8,941,669,889	39	39,357,853,555	168
ITRAXX EUROPE SERIES 6	Untranché	Off	35,951,794,718	140	3,405,976,171	26	39,357,770,889	166
ITRAXX EUROPE SERIES 11	Untranché	Off	19,751,173,410	184	12,366,497,482	104	32,117,670,892	288
ITRAXX EUROPE SERIES 4	Untranché	Off	24,721,945,871	95	1,865,495,161	12	26,587,441,032	107
ITRAXX EUROPE SERIES 3	Untranché	Off	20,096,996,493	102	1,081,163,693	19	21,178,160,186	121
ITRAXX EUROPE SERIES 2	Untranché	Off	9,408,376,646	71	541,993,187	11	9,950,369,833	82
ITRAXX EUROPE SERIES 1	Untranché	Off	5,392,977,164	41	319,023,502	2	5,712,000,666	43
ITRAXX EUROPE SERIES 10	Untranché	Off	3,840,050,581	37	1,080,810,317	13	4,920,860,898	50

Source: DTCC, 02 May 2014

**Table 7: iTraxx Europe Crossover: Notional amounts outstanding and trade count per series, ranked from the largest to the smallest notional**

Index/Index Tranche	Product Type	On/Off	Dealer		Non Dealer/Customer		Totals	
			Gross Notional (USD EQ)	Contracts	Gross Notional (USD EQ)	Contracts	Gross Notional (USD EQ)	Contracts
ITRAXX EUROPE CROSSOVER SERIES 20	Untranché	Off	49,544,765,175	1,634	119,233,281,843	5,343	168,778,047,018	6,977
ITRAXX EUROPE CROSSOVER SERIES 21	Untranché	On	38,173,047,659	1,049	59,267,329,050	2,332	97,440,376,709	3,381
ITRAXX EUROPE CROSSOVER SERIES 19	Untranché	Off	40,627,347,340	1,568	45,612,648,794	1,293	86,239,996,134	2,861
ITRAXX EUROPE CROSSOVER SERIES 18	Untranché	Off	30,287,783,949	1,116	26,023,962,988	741	56,311,746,937	1,857
ITRAXX EUROPE CROSSOVER SERIES 17	Untranché	Off	21,677,547,165	581	13,806,335,351	309	35,483,882,516	890
ITRAXX EUROPE CROSSOVER SERIES 16	Untranché	Off	11,024,748,851	294	6,674,188,862	137	17,698,937,713	431
ITRAXX EUROPE CROSSOVER SERIES 15	Untranché	Off	10,038,841,960	204	6,370,660,362	96	16,409,502,322	300
ITRAXX EUROPE CROSSOVER SERIES 14	Untranché	Off	7,293,730,104	152	5,441,838,726	85	12,735,568,830	237
ITRAXX EUROPE CROSSOVER SERIES 13	Untranché	Off	5,720,797,081	124	4,119,468,877	66	9,840,265,958	190
ITRAXX EUROPE CROSSOVER SERIES 12	Untranché	Off	5,347,266,716	103	4,174,400,464	49	9,521,667,180	152
ITRAXX EUROPE CROSSOVER SERIES 11	Untranché	Off	3,027,415,659	76	2,110,717,739	42	5,138,133,398	118
ITRAXX EUROPE CROSSOVER SERIES 7	Untranché	Off	3,147,281,021	51	1,353,490,275	17	4,500,771,296	68
ITRAXX EUROPE CROSSOVER SERIES 8	Untranché	Off	3,937,294,160	53	507,920,045	11	4,445,214,205	64
ITRAXX EUROPE CROSSOVER SERIES 6	Untranché	Off	1,374,921,937	21	548,928,482	12	1,923,850,419	33
ITRAXX EUROPE CROSSOVER SERIES 9	Untranché	Off	1,077,103,650	29	282,806,981	8	1,359,910,631	37
ITRAXX EUROPE CROSSOVER SERIES 5	Untranché	Off	521,450,814	14	218,461,746	3	739,912,560	17
ITRAXX EUROPE CROSSOVER SERIES 1	Untranché	Off	630,905,865	17	42,998,820	3	673,904,685	20
ITRAXX EUROPE CROSSOVER SERIES 2	Untranché	Off	167,695,399	19	84,055,758	5	251,751,157	24
ITRAXX EUROPE CROSSOVER SERIES 4	Untranché	Off	180,927,936	13	34,676,468	3	215,604,404	16
ITRAXX EUROPE CROSSOVER SERIES 3	Untranché	Off	158,854,783	14	6,935,294	2	165,790,077	16

Source: DTCC, 02 May 2014

**Table 8: iTraxx Europe HiVol: Notional amounts outstanding and trade count per series, ranked from the largest to the smallest notional**

Index/Index Tranche	Product Type	On/Off	Dealer		Non Dealer/Customer		Totals	
			Gross Notional (USD EQ)	Contracts	Gross Notional (USD EQ)	Contracts	Gross Notional (USD EQ)	Contracts
ITRAXX EUROPE HIVOL SERIES 12	Untranch	Off	3,735,099,412	33	2,700,214,915	17	6,435,314,327	50
ITRAXX EUROPE HIVOL SERIES 13	Untranch	Off	2,879,773,226	33	1,746,252,179	22	4,626,025,405	55
ITRAXX EUROPE HIVOL SERIES 14	Untranch	Off	2,748,364,345	25	1,680,329,146	15	4,428,693,491	40
ITRAXX EUROPE HIVOL SERIES 15	Untranch	Off	1,610,048,610	19	1,148,887,378	19	2,758,935,988	38
ITRAXX EUROPE HIVOL SERIES 16	Untranch	Off	1,947,109,010	21	755,179,617	9	2,702,288,627	30
ITRAXX EUROPE HIVOL SERIES 11	Untranch	Off	1,745,821,437	31	852,880,773	13	2,598,702,210	44
ITRAXX EUROPE HIVOL SERIES 7	Untranch	Off	2,052,507,609	37	317,112,406	5	2,369,620,015	42
ITRAXX EUROPE HIVOL SERIES 18	Untranch	Off	789,183,694	22	431,183,842	11	1,220,367,536	33
ITRAXX EUROPE HIVOL SERIES 17	Untranch	Off	655,177,179	13	545,738,248	11	1,200,915,427	24
ITRAXX EUROPE HIVOL SERIES 6	Untranch	Off	724,405,277	18	414,640,392	8	1,139,045,669	26
ITRAXX EUROPE HIVOL SERIES 20	Untranch	On	652,611,121	13	204,591,159	11	857,202,280	24
ITRAXX EUROPE HIVOL SERIES 5	Untranch	Off	667,093,620	14	34,676,468	1	701,770,088	15
ITRAXX EUROPE HIVOL SERIES 19	Untranch	Off	429,849,493	15	258,409,037	12	688,258,530	27
ITRAXX EUROPE HIVOL SERIES 4	Untranch	Off	522,921,179	16	0	0	522,921,179	16
ITRAXX EUROPE HIVOL SERIES 1	Untranch	Off	213,260,278	10	27,741,174	1	241,001,452	11
ITRAXX EUROPE HIVOL SERIES 2	Untranch	Off	188,778,690	13	13,870,587	1	202,649,277	14
ITRAXX EUROPE HIVOL SERIES 3	Untranch	Off	140,647,752	13	27,741,176	4	168,388,928	17

Source: DTCC, 02 May 2014

**Table 9: iTraxx Europe Senior Financials: Notional amounts outstanding and trade count per series, ranked from the largest to the smallest notional**

Index/Index Tranche	Product Type	On/Off	Dealer		Non Dealer/Customer		Totals	
			Gross Notional (USD EQ)	Contracts	Gross Notional (USD EQ)	Contracts	Gross Notional (USD EQ)	Contracts
ITRAXX EUROPE SENIOR FINANCIALS SERIES 20	Untranch	Off	132,441,059,483	3534	42,046,063,282	1177	174,487,122,765	4711
ITRAXX EUROPE SENIOR FINANCIALS SERIES 19	Untranch	Off	75,629,761,075	1299	19,582,454,706	417	95,212,215,781	1716
ITRAXX EUROPE SENIOR FINANCIALS SERIES 17	Untranch	Off	47,472,401,268	688	10,127,322,733	259	57,599,724,001	947
ITRAXX EUROPE SENIOR FINANCIALS SERIES 18	Untranch	Off	47,702,569,933	703	9,170,042,153	211	56,872,612,086	914
ITRAXX EUROPE SENIOR FINANCIALS SERIES 21	Untranch	On	27,824,532,437	520	25,685,921,457	618	53,510,453,894	1138
ITRAXX EUROPE SENIOR FINANCIALS SERIES 15	Untranch	Off	37,556,194,208	442	9,044,506,464	149	46,600,700,672	591
ITRAXX EUROPE SENIOR FINANCIALS SERIES 16	Untranch	Off	35,421,837,378	440	6,818,828,667	157	42,240,666,045	597
ITRAXX EUROPE SENIOR FINANCIALS SERIES 14	Untranch	Off	27,367,488,280	319	5,061,422,677	109	32,428,910,957	428
ITRAXX EUROPE SENIOR FINANCIALS SERIES 13	Untranch	Off	23,893,602,878	276	5,312,629,866	84	29,206,232,744	360
ITRAXX EUROPE SENIOR FINANCIALS SERIES 12	Untranch	Off	17,538,526,922	175	3,444,826,318	74	20,983,353,240	249
ITRAXX EUROPE SENIOR FINANCIALS SERIES 11	Untranch	Off	8,365,074,587	101	1,323,536,271	18	9,688,610,858	119
ITRAXX EUROPE SENIOR FINANCIALS SERIES 7	Untranch	Off	1,422,391,246	27	81,941,880	2	1,504,333,126	29
ITRAXX EUROPE SENIOR FINANCIALS SERIES 5	Untranch	Off	970,941,094	13	104,029,403	2	1,074,970,497	15
ITRAXX EUROPE SENIOR FINANCIALS SERIES 8	Untranch	Off	812,816,402	27	69,352,935	1	882,169,337	28
ITRAXX EUROPE SENIOR FINANCIALS SERIES 9	Untranch	Off	669,255,823	12	0	0	669,255,823	12
ITRAXX EUROPE SENIOR FINANCIALS SERIES 4	Untranch	Off	450,794,083	13	13,870,587	1	464,664,670	14
ITRAXX EUROPE SENIOR FINANCIALS SERIES 3	Untranch	Off	291,559,741	12	83,223,523	4	374,783,264	16
ITRAXX EUROPE SENIOR FINANCIALS SERIES 10	Untranch	Off	363,894,850	14	0	0	363,894,850	14
ITRAXX EUROPE SENIOR FINANCIALS SERIES 2	Untranch	Off	131,215,755	10	23,579,998	1	154,795,753	11

Source: DTCC, 02 May 2014

57. Although these tables may indicate that in general the most recent series are the ones with the highest outstanding volumes, there can be some exceptions. Indeed, some series do not follow such a pattern. Series 9 and series 10 of the iTraxx Europe Main in particular are an example of that. Series 9 has had a lot of activity while Series 10 has not had as much, which is still visible in the outstanding volumes, with Series 9 being amongst the largest outstanding notionals and Series 10 one with the smallest amount. This is linked to the situation when series 9 remained the most actively traded series even though series 10 had been issued and had become the then on-the-run series. This confirms the approach developed under section 2 on how the index classes should be defined, on how to take into account that some series may not be fit for the clearing obligation, for instance when the new on-the-run series may not be as liquid.
58. Going back to the analysis on the number and value of the transactions, running the same analysis as above on the flow (weekly activity) rather than on the stock (outstanding volume and trade



count), it appears that the same indices and series dominate, but with trades on the on-the-run series being the vast majority of what is traded. Volumes vary from week to week, but using data as of the week ending on 16 May 2014 as an example, Table 10 and Table 11 below show that the on-the-run series trade in multiples compared to all the other series combined.

**Table 10: iTraxx series: Notional amount and trade count per series over a week, ranked from the largest to the smallest for each index, that correspond to a position increase**

Weekly activity / Position increase	By Transaction Type	New Trades		Full Assignments		Partial Assignments		Backloads		PTE Completed		Total Increases	
		Gross Notional (USD)	Contracts	Gross Notional	Contracts	Gross Notional	Contracts	Gross Notional	Contracts	Gross Notional (USD EQ)	Contracts	Gross Notional (USD)	Contracts
ITRAXX EUROPE SERIES 21	Untranch	211,613,550,994	2,734	1,287,947,681	36	1,564,075,875	36	-	-	197,191,859,301	109	408,805,410,295	2,879
ITRAXX EUROPE SERIES 20	Untranch	51,049,416,731	221	933,397,233	40	6,847,908	1	-	-	54,126,713,773	123	105,176,130,504	345
ITRAXX EUROPE SERIES 18	Untranch	23,477,747,424	45	-	-	-	-	-	-	22,599,066,826	-	46,076,814,250	45
ITRAXX EUROPE SERIES 19	Untranch	22,427,435,865	25	-	-	2,739,163	1	-	-	24,340,552,322	1	46,767,988,187	27
ITRAXX EUROPE SERIES 17	Untranch	10,855,872,312	16	-	-	-	-	-	-	11,540,042,762	-	22,395,915,074	16
ITRAXX EUROPE SERIES 9	Untranch	8,869,470,284	16	-	-	-	-	-	-	10,433,133,914	-	19,302,604,198	16
ITRAXX EUROPE SERIES 16	Untranch	12,714,377,441	11	-	-	-	-	-	-	13,185,493,910	-	25,899,871,351	11
ITRAXX EUROPE SERIES 14	Untranch	3,138,423,520	7	-	-	-	-	-	-	3,475,266,908	-	6,613,690,428	7
ITRAXX EUROPE SERIES 15	Untranch	3,257,762,810	6	-	-	-	-	-	-	3,855,317,316	-	7,113,080,126	6
ITRAXX EUROPE SERIES 7	Untranch	2,315,765,631	8	-	-	-	-	-	-	2,642,702,438	-	4,958,468,069	8
ITRAXX EUROPE SERIES 13	Untranch	3,873,373,220	5	-	-	-	-	-	-	4,229,819,894	-	8,103,193,114	5
ITRAXX EUROPE SERIES 8	Untranch	1,050,463,711	6	-	-	-	-	-	-	1,228,572,151	-	2,279,035,862	6
ITRAXX EUROPE SERIES 11	Untranch	7,464,219	1	-	-	-	-	-	-	154,610,704	-	162,074,923	1
ITRAXX EUROPE SERIES 4	Untranch	-	-	136,958,160	2	-	-	-	-	601,367,227	5	601,367,227	5
ITRAXX EUROPE SERIES 12	Untranch	256,926,659	3	-	-	-	-	-	-	527,113,022	-	784,039,681	3
ITRAXX EUROPE SERIES 10	Untranch	202,378,005	2	-	-	-	-	-	-	225,514,666	-	427,892,671	2
ITRAXX EUROPE SERIES 3	Untranch	-	-	342,395,400	1	-	-	-	-	1,464,343,454	3	1,464,343,454	3
ITRAXX EUROPE SERIES 2	Untranch	-	-	-	-	-	-	-	-	47,062,161	-	47,062,161	-
ITRAXX EUROPE SERIES 6	Untranch	-	-	-	-	-	-	-	-	210,621,082	-	210,621,082	-
ITRAXX EUROPE SERIES 1	Untranch	-	-	-	-	-	-	-	-	26,386,105	-	26,386,105	-
ITRAXX EUROPE SERIES 5	Untranch	-	-	-	-	-	-	-	-	198,623,551	-	198,623,551	-
ITRAXX EUROPE CROSSOVER SERIES 21	Untranch	59,743,554,169	2,268	539,847,956	67	198,603,023	11	-	-	58,676,505,631	199	118,420,059,800	2,478
ITRAXX EUROPE CROSSOVER SERIES 20	Untranch	25,196,654,727	290	123,305,200	22	32,912,687	8	-	-	25,245,292,285	67	50,441,947,012	365
ITRAXX EUROPE CROSSOVER SERIES 19	Untranch	6,273,514,844	25	4,793,535	1	-	-	-	-	6,600,199,048	3	12,873,713,892	28
ITRAXX EUROPE CROSSOVER SERIES 18	Untranch	4,172,471,272	5	-	-	-	-	-	-	4,408,537,706	-	8,581,008,978	5
ITRAXX EUROPE CROSSOVER SERIES 17	Untranch	845,968,396	5	-	-	-	-	-	-	1,006,789,153	-	1,852,757,549	5
ITRAXX EUROPE CROSSOVER SERIES 14	Untranch	384,994,341	2	1,369,581	1	-	-	-	-	450,199,448	3	835,193,789	5
ITRAXX EUROPE CROSSOVER SERIES 15	Untranch	235,352,397	3	-	-	-	-	-	-	310,047,393	-	545,399,790	3
ITRAXX EUROPE CROSSOVER SERIES 16	Untranch	292,654,077	5	-	-	-	-	-	-	371,692,723	-	664,346,800	5
ITRAXX EUROPE CROSSOVER SERIES 11	Untranch	890,928,192	7	-	-	-	-	-	-	903,807,556	-	1,794,735,748	7
ITRAXX EUROPE CROSSOVER SERIES 13	Untranch	157,552,433	3	-	-	-	-	-	-	202,271,619	-	359,824,052	3
ITRAXX EUROPE CROSSOVER SERIES 7	Untranch	-	-	-	-	-	-	-	-	20,891,524	-	20,891,524	-
ITRAXX EUROPE CROSSOVER SERIES 12	Untranch	27,391,632	2	-	-	-	-	-	-	71,312,096	-	98,703,728	2
ITRAXX EUROPE CROSSOVER SERIES 2	Untranch	-	-	-	-	-	-	-	-	1,227,018	-	1,227,018	-
ITRAXX EUROPE CROSSOVER SERIES 8	Untranch	-	-	-	-	-	-	-	-	22,289,919	-	22,289,919	-
ITRAXX EUROPE CROSSOVER SERIES 9	Untranch	-	-	-	-	-	-	-	-	20,392,563	1	20,392,563	1
ITRAXX EUROPE CROSSOVER SERIES 1	Untranch	-	-	-	-	-	-	-	-	3,113,047	-	3,113,047	-
ITRAXX EUROPE CROSSOVER SERIES 3	Untranch	-	-	-	-	-	-	-	-	996,529	-	996,529	-
ITRAXX EUROPE CROSSOVER SERIES 4	Untranch	-	-	-	-	-	-	-	-	1,028,005	-	1,028,005	-
ITRAXX EUROPE CROSSOVER SERIES 5	Untranch	-	-	-	-	-	-	-	-	3,805,068	-	3,805,068	-
ITRAXX EUROPE CROSSOVER SERIES 6	Untranch	-	-	-	-	-	-	-	-	9,729,639	-	9,729,639	-
ITRAXX EUROPE HIVOL SERIES 16	Untranch	782,953,490	-	-	-	-	-	-	-	791,805,578	-	1,574,759,068	4
ITRAXX EUROPE HIVOL SERIES 13	Untranch	6,423,337	2	-	-	-	-	-	-	27,782,042	-	34,205,379	2
ITRAXX EUROPE HIVOL SERIES 14	Untranch	18,831,747	2	-	-	-	-	-	-	39,265,694	-	58,097,441	2
ITRAXX EUROPE HIVOL SERIES 15	Untranch	26,279,461	2	-	-	-	-	-	-	38,901,187	-	65,180,648	2
ITRAXX EUROPE HIVOL SERIES 17	Untranch	7,875,093	2	-	-	-	-	-	-	13,199,964	-	21,075,057	2
ITRAXX EUROPE HIVOL SERIES 18	Untranch	12,668,629	1	-	-	-	-	-	-	18,412,055	-	31,080,684	1
ITRAXX EUROPE HIVOL SERIES 19	Untranch	46,291,858	1	-	-	-	-	-	-	49,367,411	-	95,659,269	1
ITRAXX EUROPE HIVOL SERIES 12	Untranch	52,181,058	2	-	-	-	-	-	-	81,786,383	-	133,967,441	2
ITRAXX EUROPE HIVOL SERIES 6	Untranch	-	-	-	-	-	-	-	-	5,378,788	-	5,378,788	-
ITRAXX EUROPE HIVOL SERIES 11	Untranch	21,065,657	1	-	-	-	-	-	-	32,971,589	-	54,037,246	1
ITRAXX EUROPE HIVOL SERIES 1	Untranch	-	-	-	-	-	-	-	-	1,113,286	-	1,113,286	-
ITRAXX EUROPE HIVOL SERIES 2	Untranch	-	-	-	-	-	-	-	-	936,122	-	936,122	-
ITRAXX EUROPE HIVOL SERIES 20	Untranch	-	-	-	-	-	-	-	-	3,959,772	-	3,959,772	-
ITRAXX EUROPE HIVOL SERIES 3	Untranch	-	-	-	-	-	-	-	-	781,064	-	781,064	-
ITRAXX EUROPE HIVOL SERIES 4	Untranch	-	-	-	-	-	-	-	-	3,348,449	-	3,348,449	-
ITRAXX EUROPE HIVOL SERIES 5	Untranch	-	-	-	-	-	-	-	-	4,151,117	-	4,151,117	-
ITRAXX EUROPE HIVOL SERIES 7	Untranch	-	-	-	-	-	-	-	-	10,945,132	-	10,945,132	-
ITRAXX EUROPE SENIOR FINANCIALS SERIES 21	Untranch	28,069,145,205	668	323,700,606	20	198,589,330	6	-	-	27,830,747,295	61	55,899,892,500	735
ITRAXX EUROPE SENIOR FINANCIALS SERIES 20	Untranch	11,233,403,917	31	-	-	-	-	-	-	11,734,434,130	-	22,967,838,047	31
ITRAXX EUROPE SENIOR FINANCIALS SERIES 19	Untranch	4,072,350,811	17	27,391,632	1	-	-	-	-	4,582,762,212	4	8,655,113,023	21
ITRAXX EUROPE SENIOR FINANCIALS SERIES 15	Untranch	2,610,042,521	11	-	-	-	-	-	-	2,811,536,530	-	5,421,579,051	11
ITRAXX EUROPE SENIOR FINANCIALS SERIES 16	Untranch	633,736,507	10	-	-	-	-	-	-	829,378,825	-	1,463,115,332	10
ITRAXX EUROPE SENIOR FINANCIALS SERIES 13	Untranch	2,380,264,441	6	-	-	-	-	-	-	2,505,288,818	-	4,885,553,259	6
ITRAXX EUROPE SENIOR FINANCIALS SERIES 18	Untranch	4,004,532,054	12	-	-	-	-	-	-	4,247,361,046	-	8,251,893,100	12
ITRAXX EUROPE SENIOR FINANCIALS SERIES 17	Untranch	2,921,569,548	8	-	-	-	-	-	-	3,181,184,263	1	6,102,753,811	9
ITRAXX EUROPE SENIOR FINANCIALS SERIES 14	Untranch	1,090,526,371	5	-	-	-	-	-	-	1,235,480,612	-	2,326,006,983	5
ITRAXX EUROPE SENIOR FINANCIALS SERIES 8	Untranch	-	-	2,739,163	1	-	-	-	-	12,965,376	2	12,965,376	2
ITRAXX EUROPE SENIOR FINANCIALS SERIES 10	Untranch	-	-	-	-	-	-	-	-	2,932,350	-	2,932,350	-
ITRAXX EUROPE SENIOR FINANCIALS SERIES 7	Untranch	-	-	-	-	-	-	-	-	7,263,104	-	7,263,104	-
ITRAXX EUROPE SENIOR FINANCIALS SERIES 11	Untranch	-	-	-	-	-	-	-	-	44,755,716	-	44,755,716	-
ITRAXX EUROPE SENIOR FINANCIALS SERIES 12	Untranch	-	-	-	-	-	-	-	-	97,763,788	-	97,763,788	-
ITRAXX EUROPE SENIOR FINANCIALS SERIES 2	Untranch	-	-	-	-	-	-	-	-	715,067	-	715,067	-
ITRAXX EUROPE SENIOR FINANCIALS SERIES 3	Untranch	-	-	-	-	-	-	-	-	1,731,279	-	1,731,279	-
ITRAXX EUROPE SENIOR FINANCIALS SERIES 4	Untranch	-	-	-	-	-	-	-	-	2,146,479	-	2,146,479	-
ITRAXX EUROPE SENIOR FINANCIALS SERIES 5	Untranch	-	-	-	-	-	-	-	-	5,734,623	-	5,734,623	-
ITRAXX EUROPE SENIOR FINANCIALS SERIES 9	Untranch	-	-	-	-	-	-	-	-	3,706,680	-	3,706,680	-

Source: DTCC, 16 May 2014



**Table 11: iTraxx series: Notional amount and trade count per series over a week, ranked from the largest to the smallest for each index, that correspond to a position decrease**

Weekly activity / Position decrease	Product Type	By Transaction Type		Gross Notional (US\$)	Contracts	Exits	Gross Notional (US\$)	Contracts	Matured Transactions	PTE In-Flight	Gross Notional (US\$)	Contracts	Total Reductions	Gross Notional (US\$)	Contracts
		Partial Terminations	Full Terminations												
		Gross Notional (US\$)	Contracts												
ITRAXX EUROPE SERIES 21	Untranché	240,361,568	10	138,744,515,626	1,644	-	-	-	-	-	200,031,724,393	125	339,016,601,587	1,769	
ITRAXX EUROPE SERIES 20	Untranché	-	-	55,614,927,445	245	-	-	-	-	-	57,365,057,559	120	112,979,985,004	365	
ITRAXX EUROPE SERIES 18	Untranché	-	-	26,323,004,705	81	-	-	-	-	-	24,092,567,759	-	50,415,572,464	81	
ITRAXX EUROPE SERIES 19	Untranché	41,087,448	2	31,977,182,130	71	-	-	-	-	-	26,535,548,806	-	58,553,818,384	71	
ITRAXX EUROPE SERIES 17	Untranché	43,826,610	2	25,223,281,360	26	-	-	-	-	-	12,456,781,189	-	37,723,889,159	26	
ITRAXX EUROPE SERIES 9	Untranché	-	-	11,590,431,846	23	-	-	-	-	-	12,212,705,307	3	23,803,137,153	26	
ITRAXX EUROPE SERIES 16	Untranché	-	-	16,674,502,855	24	-	-	-	-	-	13,734,619,758	-	30,409,122,613	24	
ITRAXX EUROPE SERIES 14	Untranché	-	-	4,536,640,305	15	-	-	-	-	-	3,833,334,352	-	8,369,974,657	15	
ITRAXX EUROPE SERIES 15	Untranché	-	-	4,971,522,772	14	-	-	-	-	-	4,476,130,411	-	9,447,653,183	14	
ITRAXX EUROPE SERIES 7	Untranché	135,555,160	2	2,637,497,057	11	-	-	-	-	-	2,914,459,055	-	5,687,511,272	11	
ITRAXX EUROPE SERIES 13	Untranché	-	-	4,778,410,698	12	-	-	-	-	-	4,608,910,042	-	9,387,320,740	12	
ITRAXX EUROPE SERIES 8	Untranché	-	-	960,165,826	7	-	-	-	-	-	1,410,852,226	-	2,371,018,052	7	
ITRAXX EUROPE SERIES 11	Untranché	59,439,840	2	79,504,209	6	-	-	-	-	-	300,717,111	2	439,661,160	8	
ITRAXX EUROPE SERIES 4	Untranché	-	-	-	-	-	-	-	-	-	655,286,258	4	655,286,258	4	
ITRAXX EUROPE SERIES 12	Untranché	-	-	272,162,963	4	-	-	-	-	-	798,572,662	-	1,070,735,625	4	
ITRAXX EUROPE SERIES 10	Untranché	-	-	420,323,085	4	-	-	-	-	-	250,617,752	-	670,940,837	4	
ITRAXX EUROPE SERIES 3	Untranché	-	-	-	-	-	-	-	-	-	1,562,309,008	3	1,562,309,008	3	
ITRAXX EUROPE SERIES 2	Untranché	-	-	365,981,760	2	-	-	-	-	-	95,836,520	-	461,818,280	2	
ITRAXX EUROPE SERIES 6	Untranché	-	-	1,049,952,922	2	-	-	-	-	-	426,154,226	-	1,476,107,148	2	
ITRAXX EUROPE SERIES 1	Untranché	-	-	-	-	-	-	-	-	-	52,772,210	-	52,772,210	-	
ITRAXX EUROPE SERIES 5	Untranché	-	-	-	-	-	-	-	-	-	397,247,102	-	397,247,102	-	
ITRAXX EUROPE CROSSOVER SERIES 21	Untranché	43,884,128	18	48,280,860,591	1,614	-	-	-	-	-	59,086,319,402	199	107,411,064,121	1,813	
ITRAXX EUROPE CROSSOVER SERIES 20	Untranché	329,825,372	16	24,191,001,375	400	-	-	-	-	-	25,872,289,185	70	50,393,115,932	470	
ITRAXX EUROPE CROSSOVER SERIES 19	Untranché	-	-	7,334,317,025	66	-	-	-	-	-	7,000,362,480	3	14,334,679,505	69	
ITRAXX EUROPE CROSSOVER SERIES 18	Untranché	-	-	5,271,149,061	14	-	-	-	-	-	4,669,264,492	-	9,940,413,553	14	
ITRAXX EUROPE CROSSOVER SERIES 17	Untranché	-	-	1,681,966,875	11	-	-	-	-	-	1,175,478,761	-	2,857,445,636	11	
ITRAXX EUROPE CROSSOVER SERIES 14	Untranché	2,739,162	2	651,963,103	6	-	-	-	-	-	507,517,253	3	1,162,219,518	9	
ITRAXX EUROPE CROSSOVER SERIES 15	Untranché	-	-	390,982,518	9	-	-	-	-	-	386,571,550	-	777,554,068	9	
ITRAXX EUROPE CROSSOVER SERIES 16	Untranché	-	-	513,699,176	7	-	-	-	-	-	453,134,642	-	966,833,818	7	
ITRAXX EUROPE CROSSOVER SERIES 11	Untranché	-	-	877,232,376	5	-	-	-	-	-	927,606,803	-	1,804,839,179	5	
ITRAXX EUROPE CROSSOVER SERIES 13	Untranché	-	-	280,915,875	7	-	-	-	-	-	248,305,033	-	529,220,908	7	
ITRAXX EUROPE CROSSOVER SERIES 7	Untranché	-	-	27,312,952	4	-	-	-	-	-	41,846,758	-	69,159,710	4	
ITRAXX EUROPE CROSSOVER SERIES 12	Untranché	-	-	13,695,816	1	-	-	-	-	-	115,296,634	-	128,992,450	1	
ITRAXX EUROPE CROSSOVER SERIES 2	Untranché	-	-	684,790	2	-	-	-	-	-	2,457,240	-	3,142,030	2	
ITRAXX EUROPE CROSSOVER SERIES 8	Untranché	-	-	13,695,816	2	-	-	-	-	-	44,643,912	-	58,339,728	2	
ITRAXX EUROPE CROSSOVER SERIES 9	Untranché	-	-	-	-	-	-	-	-	-	13,350,562	-	13,350,562	-	
ITRAXX EUROPE CROSSOVER SERIES 1	Untranché	-	-	-	-	-	-	-	-	-	6,226,094	-	6,226,094	-	
ITRAXX EUROPE CROSSOVER SERIES 3	Untranché	-	-	-	-	-	-	-	-	-	1,993,058	-	1,993,058	-	
ITRAXX EUROPE CROSSOVER SERIES 4	Untranché	-	-	-	-	-	-	-	-	-	2,056,010	-	2,056,010	-	
ITRAXX EUROPE CROSSOVER SERIES 5	Untranché	-	-	-	-	-	-	-	-	-	7,610,136	-	7,610,136	-	
ITRAXX EUROPE CROSSOVER SERIES 6	Untranché	-	-	-	-	-	-	-	-	-	19,459,278	-	19,459,278	-	
ITRAXX EUROPE HIVOL SERIES 16	Untranché	-	-	784,706,827	7	-	-	-	-	-	804,328,811	-	1,589,035,638	7	
ITRAXX EUROPE HIVOL SERIES 13	Untranché	-	-	107,772,374	4	-	-	-	-	-	49,644,948	-	157,417,322	4	
ITRAXX EUROPE HIVOL SERIES 14	Untranché	-	-	457,097,859	4	-	-	-	-	-	61,838,111	-	518,935,970	4	
ITRAXX EUROPE HIVOL SERIES 15	Untranché	-	-	29,676,023	3	-	-	-	-	-	51,661,748	-	81,337,771	3	
ITRAXX EUROPE HIVOL SERIES 17	Untranché	-	-	33,897,144	3	-	-	-	-	-	18,683,418	-	52,580,562	3	
ITRAXX EUROPE HIVOL SERIES 18	Untranché	-	-	38,005,887	3	-	-	-	-	-	24,333,287	-	62,339,174	3	
ITRAXX EUROPE HIVOL SERIES 19	Untranché	-	-	90,666,301	2	-	-	-	-	-	52,867,135	-	143,533,436	2	
ITRAXX EUROPE HIVOL SERIES 12	Untranché	-	-	26,090,529	1	-	-	-	-	-	111,513,769	-	137,604,298	1	
ITRAXX EUROPE HIVOL SERIES 6	Untranché	-	-	164,349,792	2	-	-	-	-	-	11,526,464	-	175,876,256	2	
ITRAXX EUROPE HIVOL SERIES 11	Untranché	-	-	21,065,657	1	-	-	-	-	-	44,976,074	-	66,041,731	1	
ITRAXX EUROPE HIVOL SERIES 1	Untranché	-	-	-	-	-	-	-	-	-	2,226,572	-	2,226,572	-	
ITRAXX EUROPE HIVOL SERIES 2	Untranché	-	-	-	-	-	-	-	-	-	1,872,244	-	1,872,244	-	
ITRAXX EUROPE HIVOL SERIES 20	Untranché	-	-	-	-	-	-	-	-	-	7,919,544	-	7,919,544	-	
ITRAXX EUROPE HIVOL SERIES 3	Untranché	-	-	-	-	-	-	-	-	-	1,562,128	-	1,562,128	-	
ITRAXX EUROPE HIVOL SERIES 4	Untranché	-	-	-	-	-	-	-	-	-	6,696,898	-	6,696,898	-	
ITRAXX EUROPE HIVOL SERIES 5	Untranché	-	-	-	-	-	-	-	-	-	8,302,234	-	8,302,234	-	
ITRAXX EUROPE HIVOL SERIES 7	Untranché	-	-	-	-	-	-	-	-	-	21,890,264	-	21,890,264	-	
ITRAXX EUROPE SENIOR FINANCIALS SERIES 21	Untranché	766,965,694	14	20,222,572,374	429	-	-	-	-	-	27,874,617,560	66	48,864,155,628	495	
ITRAXX EUROPE SENIOR FINANCIALS SERIES 20	Untranché	36,978,702	2	13,150,816,509	116	-	-	-	-	-	12,654,173,130	1	25,841,968,341	117	
ITRAXX EUROPE SENIOR FINANCIALS SERIES 19	Untranché	-	-	5,792,784,717	21	-	-	-	-	-	4,996,819,802	3	10,789,604,519	24	
ITRAXX EUROPE SENIOR FINANCIALS SERIES 15	Untranché	-	-	4,202,368,214	23	-	-	-	-	-	3,032,683,097	-	7,235,051,311	23	
ITRAXX EUROPE SENIOR FINANCIALS SERIES 16	Untranché	204,970,486	2	2,032,640,059	23	-	-	-	-	-	933,952,182	-	3,171,562,727	23	
ITRAXX EUROPE SENIOR FINANCIALS SERIES 13	Untranché	25,842,826	2	4,231,857,358	25	-	-	-	-	-	2,637,516,551	-	6,895,216,735	25	
ITRAXX EUROPE SENIOR FINANCIALS SERIES 18	Untranché	183,534,068	2	4,229,631,102	17	-	-	-	-	-	4,432,396,691	-	8,845,561,861	17	
ITRAXX EUROPE SENIOR FINANCIALS SERIES 17	Untranché	215,140,642	2	3,992,914,439	15	-	-	-	-	-	3,350,753,432	-	7,558,808,513	15	
ITRAXX EUROPE SENIOR FINANCIALS SERIES 14	Untranché	12,711,360	2	1,698,357,514	14	-	-	-	-	-	1,382,303,266	-	3,093,372,140	14	
ITRAXX EUROPE SENIOR FINANCIALS SERIES 8	Untranché	-	-	-	-	-	-	-	-	-	14,877,989	1	14,877,989	1	
ITRAXX EUROPE SENIOR FINANCIALS SERIES 10	Untranché	-	-	30,404,710	2	-	-	-	-	-	6,006,946	-	36,411,656	2	
ITRAXX EUROPE SENIOR FINANCIALS SERIES 7	Untranché	-	-	116,414,436	2	-	-	-	-	-	15,070,838	-	131,485,274	2	
ITRAXX EUROPE SENIOR FINANCIALS SERIES 11	Untranché	-	-	-	-	-	-	-	-	-	89,511,432	-	89,511,432	-	
ITRAXX EUROPE SENIOR FINANCIALS SERIES 12	Untranché	-	-	-	-	-	-	-	-	-	195,527,576	-	195,527,576	-	
ITRAXX EUROPE SENIOR FINANCIALS SERIES 2	Untranché	-	-	-	-	-	-	-	-	-	1,430,134	-	1,430,134	-	
ITRAXX EUROPE SENIOR FINANCIALS SERIES 3	Untranché	-	-	-	-	-	-	-	-	-	3,462,558	-	3,462,558	-	
ITRAXX EUROPE SENIOR FINANCIALS SERIES 4	Untranché	-	-	-	-	-	-	-	-	-	4,292,958	-	4,292,958	-	
ITRAXX EUROPE SENIOR FINANCIALS SERIES 5	Untranché	-	-	-	-	-	-	-	-	-	11,469,246	-	11,469,246	-	
ITRAXX EUROPE SENIOR FINANCIALS SERIES 9	Untranché	-	-	-	-	-	-	-	-	-	7,413,360	-	7,413,360	-	

Source: DTCC, 16 May 2014

59. Starting with the iTraxx Europe High Volatility, these tables indicate that it is significantly less liquid than the three other indices presented in the tables, with only a dozen transactions every week, even on the most liquid series. Therefore, the iTraxx Europe High Volatility index does not appear to be a priority to be included in the classes subject to the clearing obligation. ESMA will continue to monitor its volume and liquidity to see if and when it seems important to include it in the clearing obligation.
60. Then looking at the iTraxx Europe Senior Financials, even though it has a smaller number of transactions and smaller notional compared to the iTraxx Europe Main and the Crossover, both in terms of stock (outstanding notional and trade count) as well as in terms of flow (weekly activity), it still demonstrates a relatively important level of activity. Yet, the clearing of this index is only a recent development of the CCP offerings, introduced recently in March 2014 and cleared by only one of the two CCPs. In addition, ESMA is of the opinion that the clearing of financials single name CDS or indices can bear wrong-way risk or introduce a correlated risk with the clearing members of the CCP, and thus the inclusion of financials in the clearing obligation needs to be considered prudently. As a result, ESMA considers this index not to be a priority for the classes subject to the first determination for the clearing obligation.
61. Finally, for the two other indices, the iTraxx Main and the Crossover, the above analysis confirms important levels of activity, both in terms of stock (outstanding notional and trade count) as well as in terms of flow (weekly activity). And when looking at the series that are relevant for the clearing obligation for a given index, even though the older series become naturally less active, it still makes sense to include some of the off-the-run series. ESMA is looking for the right balance in terms of volume and outstanding risk for the off-the-run series, provided it is offered for clearing by the CCPs. From these considerations, it would seem appropriate to include series 11 and onwards for both the iTraxx Europe Main and the iTraxx Europe Crossover indices.
62. For these two indices, in addition to their volume broken down by series, it is also interesting to look at the split per tenor to see where the activity is concentrated. In credit OTC derivatives market, for single name CDS as well as for indices, the 5 year tenor is usually the most active tenor. As demonstrated in Table 12 below, this is also true for the iTraxx Europe Main and the iTraxx Europe Crossover.

**Table 12: iTraxx Europe Main and Crossover series: Notional amount and trade count per tenor over a year**

		All tenors	3Y	5Y	7Y	10Y
iTraxx Europe Main	Notional	1,573,312,832,755	38,538,836,878	1,419,498,972,197	40,742,247,197	72,587,081,321
	% (Notional)	100%	2%	90%	3%	5%
	Trade Count	29,363	313	27,439	451	1,135
	% (Trade Count)	100%	1%	93%	2%	4%
iTraxx Europe Crossover	Notional	476,498,973,813	30,725,701	475,469,024,041	132,403,418	373,801,516
	% (Notional)	100%	0%	100%	0%	0%
	Trade Count	22,296	2	22,265	9	12
	% (Trade Count)	100%	0%	100%	0%	0%

Source: DTCC, 30 April 2014

63. For the maturities to consider for the clearing obligation in addition to the 5 year tenor, ESMA is also looking for the right balance in terms of volume and outstanding risk for the different tenors, provided it is offered for clearing by the two CCPs. But at the moment, the activity on the tenors other than the 5 year is significantly less. In addition, not all tenors are cleared by both CCPs. As a



result, for the iTraxx Europe Main and the iTraxx Europe Crossover, ESMA has determined that only the 5 year maturity should be considered for this first determination. ESMA will continue to monitor the volume of activity on these other tenors and the related clearing offering of the two CCPs.

64. In summary, it is proposed to include only CDS on the iTraxx Europe Main and the iTraxx Europe Crossover for the current clearing obligation, and to continue to monitor the activity in the iTraxx Europe Senior Financial and the iTraxx HiVol for subsequent clearing obligation determinations.

#### Single name CDS classes

65. As discussed in paragraph 54, while Single Name CDS amount for a bigger notional and a much larger trade count than untranching indices, the individual names usually account each for a smaller volume than the active untranching indices. Comparing the most active references in each category, on 02 May 2014, there was a gross notional of 3,209 billion USD for the iTraxx Europe Main and 370 billion USD for the most active single name (a sovereign name, the Republic of Italy) and 54 billion USD for the most active corporate (a financial, the Royal Bank of Scotland).
66. Yet, it is to be noted that amongst the single name CDS, a few active names do have an important notional and trade volume as can be seen in Table 13 below. The corresponding volume is concentrated mainly on a few sovereign names and followed mainly by financials. In the top 20, except for one reference in 18<sup>th</sup> position which is a corporate name, they are all sovereign or financials references.

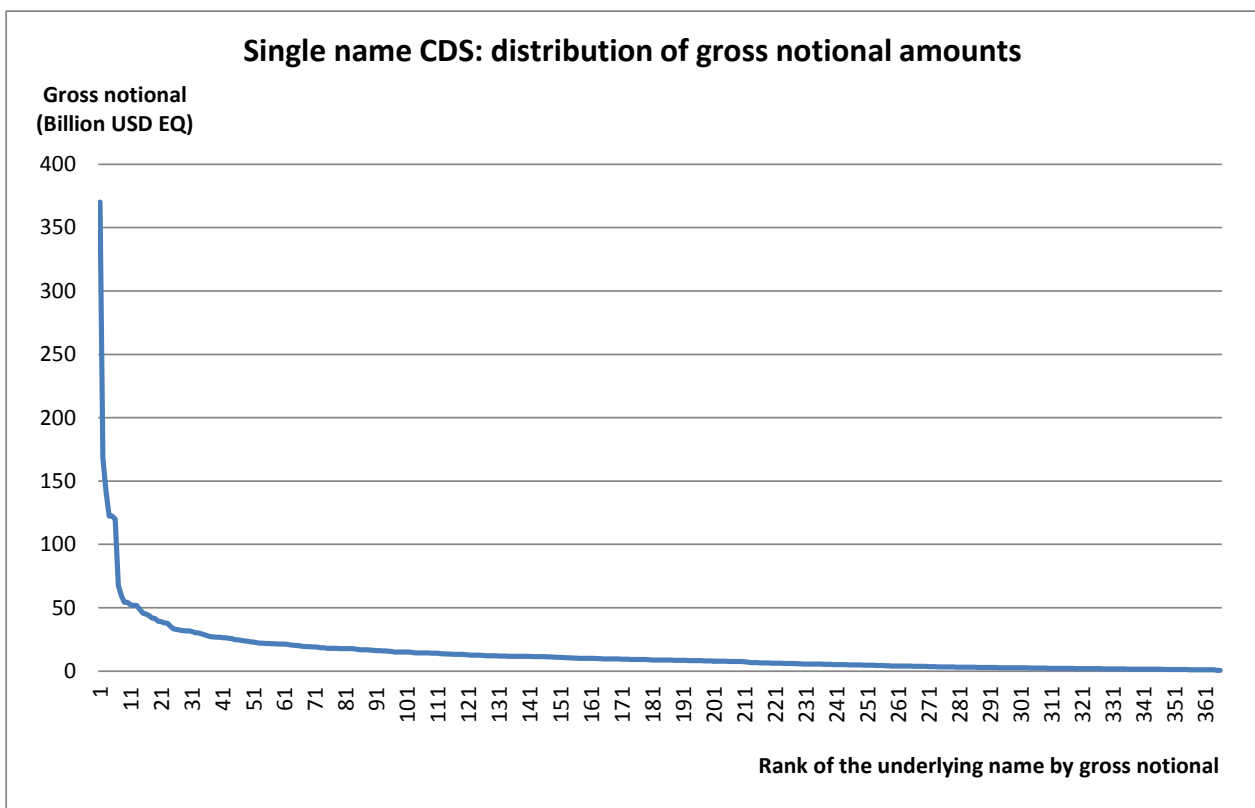
**Table 13: Single Name CDS: Top 20 European references in terms of notional amount and trade count, ranked by notional**

Reference Entity	Sector	Market Type	Gross Notional (USD EQ)	Net Notional (USD EQ)	Contracts
REPUBLIC OF ITALY	GOVERNMENT	SOV	370,126,077,662	19,466,663,067	13,305
KINGDOM OF SPAIN	GOVERNMENT	SOV	168,331,797,352	10,640,662,850	7,677
FRENCH REPUBLIC	GOVERNMENT	SOV	141,936,405,578	9,937,095,305	5,728
RUSSIAN FEDERATION	GOVERNMENT	SOV	122,383,631,032	8,909,098,844	10,996
REPUBLIC OF TURKEY	GOVERNMENT	SOV	122,375,358,548	9,332,133,484	9,004
FEDERAL REPUBLIC OF GERMANY	GOVERNMENT	SOV	120,002,656,593	11,275,334,284	3,642
PORTUGUESE REPUBLIC	GOVERNMENT	SOV	67,616,699,534	2,561,565,045	4,407
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND	GOVERNMENT	SOV	59,285,395,727	5,319,810,591	3,136
THE ROYAL BANK OF SCOTLAND PUBLIC LIMITED COMPANY	FINANCIALS	CORP	54,296,748,994	2,145,721,843	6,436
REPUBLIC OF AUSTRIA	GOVERNMENT	SOV	54,246,166,719	3,840,000,734	2,390
BANCO SANTANDER, S.A.	FINANCIALS	CORP	52,202,592,588	2,619,656,536	5,808
REPUBLIC OF SOUTH AFRICA	GOVERNMENT	SOV	51,833,660,325	4,428,945,004	5,452
KINGDOM OF BELGIUM	GOVERNMENT	SOV	51,723,102,992	2,826,193,990	2,833
INTESA SANPAOLO SPA	FINANCIALS	CORP	48,630,313,733	1,800,056,634	5,254
DEUTSCHE BANK AKTIENGESELLSCHAFT	FINANCIALS	CORP	45,808,460,249	4,566,808,445	4,898
HUNGARY	GOVERNMENT	SOV	44,951,525,811	1,138,197,772	3,963
BANCO BILBAO VIZCAYA ARGENTARIA, SOCIEDAD ANONIMA	FINANCIALS	CORP	43,825,983,959	2,062,471,037	4,906
TELECOM ITALIA SPA	TELECOM	CORP	41,815,909,687	2,367,011,175	4,612
IRELAND	GOVERNMENT	SOV	41,502,981,495	1,860,367,844	2,829
BARCLAYS BANK PLC	FINANCIALS	CORP	39,302,384,684	4,145,258,059	4,614

Source: DTCC, 02 May 2014

67. When comparing the references included in these largest notionals with the names the CCPs are clearing, only one CCP is clearing some of the sovereign names and some of the financial names. Furthermore, the offering on sovereign names is a very recent development from this CCP as it was only launched in April 2014.
68. As a result, when looking at these 20 names with the largest notionals, only some of them are offered for clearing and not necessarily by both CCPs. Secondly in line with the approach described in paragraph 60 for the iTraxx Europe Senior Financials index, due to the specific nature of their risk, ESMA considers that financials as well as sovereign names need to be considered with prudence for the clearing obligation and do not appear to be a priority for the first determination.
69. Beyond these 20 names, in terms of outstanding notional, the activity is relatively spread out across all active names. About 140 references have between 10 and 40 Billion USD in outstanding notional each. Illustrating this, Figure 2 below indicates a long distribution of gross notional for the 366 most active European references. This confirms that, collectively, single name CDS classes amount for a large part of the credit OTC derivative related risk but apart from a few names in the sovereign and financials categories, each reference has a more moderate amount of activity. As a result, ESMA will continue to monitor their activity but has considered that single name CDS are not a priority for the first determination.

**Figure 2: Single Name CDS: Distribution of the notional amounts for the 366 most active European names, ordered by notional amount**



Source: DTCC, 02 May 2014

### **3.2.3. Criteria 3: availability of the pricing information in OTC credit derivatives**

70. In relation to the availability of fair, reliable and generally accepted pricing information in the relevant class of OTC derivative contracts, Article 7(3) of the RTS on OTC derivatives requires ESMA to take into consideration whether the information needed to accurately price the contracts within the relevant class of OTC derivative contracts is easily accessible to market participants on a reasonable commercial basis and whether it would continue to be easily accessible if the relevant class of OTC derivative contracts became subject to the clearing obligation
71. The recent initiatives to standardise CDS as described in section 3.2.1 allowed to have more participants marking the same products and therefore develop further the availability of pricing information. With standard economic terms such as fixed coupons and IMM dates, the end of day marks and the quotes from firms are on a fewer set of contracts and are comparable.
72. In addition, a pricing model<sup>19</sup> has been made public and adopted as a standard. While maintaining flexibility in how some of these products are traded, whether on price, spread or upfront, this pricing model enables the conversion from one quotation methodology to another, for instance from an upfront to a spread. This has allowed a consistent trade booking of these products and made it easier to compare prices.
73. As discussed in the liquidity section 46, there is a mixed level of activity across names and indices as well as maturities, and thus various levels of pricing data for these. Broadly speaking, certain names and the indices in general are the most active ones while there are others that are less active and sometimes can be stale for a short period. Similarly, along the curve, the 5 year tenor is generally the most liquid one where other maturities can see little activity. Finally, the on-the-run index series are generally the most actively traded for a given index while previous series can see very little activity.
74. The dealers have internal methodologies to mark their credit curves when the level of activity is limited. For instance curves can be derived from a liquid point of reference like the 5 year tenor for some names. As a result, even when certain names, indices or maturities are not very liquid, meaningful pricing data can usually be produced. This marking is usually done at each region's end of day and for the active names this can be done several times a day.
75. This level of standardisation as well as this marking of curves by dealers has allowed some market data provider as well as some CCPs to receive and aggregate prices from major dealers in order to generate market data sets. In addition, some of these firms have been able to parse quotes made via electronic platforms in order to provide further data input in the generation of the pricing data sets for these products, as well as look at trade submissions for clearing. Finally, these firms usually have methodologies to clean the data input and check that each are valid contributions as opposed to doing simple averages over the entire data set. As a result, fair and reliable data is available on thousands of names at least once a day and for active names and indices this data is updated several times a day.
76. The level of liquidity has thus a correlated impact on the availability and reliability of this pricing information. For example, pricing data for the 5 year iTraxx Europe main is largely available and reliable throughout the day whereas for certain high yield single names or on certain maturities the corresponding data is rather stale or an approximate available once a day.

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<sup>19</sup> Pricing model available at <http://www.cdsmodel.com/cdsmodel/>

77. In conclusion, for the liquid names, reliable data is available and can be acquired from data providers, CCPs, dealers, trading venues. Following the entry into force of the clearing obligation, having more of these contracts going through clearing houses should not affect this aspect and there is no evidence or indication that the same level of availability and reliability would no longer exist in the existence of the clearing obligation. In fact, the opposite effect is likely to materialise: as more trades are brought to central clearing, more pricing data should be generated.

**3.2.4. Conclusion: credit OTC derivative classes to be subject to the clearing obligation**

78. Following the review of the classes offered for clearing against the criteria set in EMIR and their analysis in light of the overarching principle of systemic risk, ESMA is of the view that the following credit OTC classes should be subject to the clearing obligation:

**Table 14: European untranching index CDS class**

Type	Sub-Type	Geographical Zone	Reference Index	Settlement Currency	Series	Maturity
Index CDS	Untranching Index	Europe	iTraxx Europe Main	EUR	11 onwards	5Y
Index CDS	Untranching Index	Europe	iTraxx Europe Crossover	EUR	11 onwards	5Y

79. The determination of the phase in and the categories of counterparties to which the clearing obligation should apply are discussed in the next section of this consultation paper.

**Question 3: 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 credit OTC derivatives?**

**Given the systemic risk associated to single name CDS, would you argue that they should be a priority for the first determination as well? Please include relevant data or information where applicable.**

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

80. Article 5(2)(b) of EMIR requires ESMA to include in the draft technical standards on the clearing obligation the date or dates from which the clearing obligation takes effect, including any phase-in and the categories of counterparties to which the obligation applies. The following approach is in line with the approach detailed in the first consultation paper.
81. ESMA considers that there are strong arguments supporting the idea of adopting a phased-in implementation, as a number of market participants do not yet have in place any clearing arrangements. A phased-in implementation should encourage a timely and orderly application of the clearing obligation, avoiding “bottleneck” situations to the extent possible, i.e. situations in which an important number of counterparties look for an access to CCP at the same time, complicating the on-boarding process both for CCPs and for clearing members. It would also ensure that homogeneous groups of counterparties are subject to the same date of application, and that more time is granted to counterparties to which access to clearing is more difficult.

82. In defining the dates from which the clearing obligation applies and the categories of counterparties, ESMA shall take into consideration the criteria listed in Article 5(5) of EMIR:
- (a) the expected volume of the relevant class of OTC derivatives
  - (b) whether more than one CCP already clear the same class
  - (c) the ability of the CCP to handle the expected volume
  - (d) the type and number of counterparties active in the market
  - (e) the period of time a counterparty subject to the clearing obligation needs to put in place arrangements to clear
  - (f) the risk management and the legal and operational capacity of the counterparties
83. ESMA has determined that the first three criteria are essentially relevant for the determination of the dates while the last three criteria are more relevant for defining the different categories of counterparties to which the clearing obligation applies.
84. Those criteria are analysed in the following paragraphs, globally or per asset class where relevant.

#### **4.1. Analysis of the criteria relevant for the determination of the dates**

85. In relation to criteria (c), it should be noted that the classes proposed in this paper are already cleared in substantial volumes and, in some cases, already subject to the clearing obligation in other jurisdictions. In addition, the scalability of the CCPs is part of the authorisation process of CCPs under EMIR
86. In relation to criteria (a), all the classes that are proposed for the clearing obligation in this paper exhibit high volumes and liquidity as analysed in detail in the section above. Interest rate swaps exhibit much bigger volumes and open interest than CDS, however ESMA finds that the volume of the class in itself is only relevant for the purpose of determining the dates of application when it is compared to the number of CCPs and the number of clearing members of the specific class. This conclusion is shared by a majority of stakeholders responding to the discussion paper. Therefore the following paragraphs focus on criteria (b) and add to this criteria an analysis of the clearing members in each asset class.
87. As presented in more detail in the first consultation paper, the main feedback from the discussion paper in respect of the number of CCPs clearing the same class was that stakeholders would prefer that ESMA does not impose a clearing obligation on a class unless there are at least two CCPs clearing it.
88. It is important to keep in mind that, as defined under Article 5(5) of EMIR, the number of CCPs clearing the same class is a criteria that ESMA shall take into consideration for the purpose of defining the dates from which the clearing obligation would apply, as opposed to a criteria relevant to define the classes themselves.
89. Therefore, there would be no legal basis for ESMA not to launch a clearing obligation determination as foreseen by Article 5(2) solely on the ground that the classes are cleared by a single CCP at the

beginning of the clearing obligation procedure. This should not be understood as meaning that the number of CCPs clearing the same class is irrelevant for the purpose of determining the classes, however the existence of a single CCP to clear the class does not lead to an automatic exclusion of that class from the scope of the clearing obligation determination.

90. As regards the current clearing obligation determination, the number of CCPs clearing each Class+ and the number of clearing members for each Class+ are presented below. The analysis covers the two European CCPs clearing CDS contracts, LCH.Clearnet SA and ICE Clear Europe. Indeed, although the latter has not been authorised at the time of publication of this consultation paper, it is expected that it will be authorised by the time the RTS proposed in this consultation enters into force.

#### 4.1.1. Number of CCP per class

91. As presented in Table 15 below, the two indices which are covered by the current determination are cleared by two CCPs, LCH.Clearnet SA and ICE Clear Europe. The scope of products offered by the two CCPs in terms of series and maturities is not identical, but some overlap exists, as shown in more detail in Table 16 and Table 17.
92. In terms of intersection with the proposed set of series and maturities included in the current determination (which appear in green in the tables below), all the combinations are cleared by both LCH.Clearnet SA and ICE Clear Europe.

**Table 15: Number of CCP for OTC Index CDS**

Class	LCH.Clearnet SA	ICE Clear Europe	Total
<b>European untranchéd index</b>	<b>2</b>	<b>2</b>	
iTraxx Europe Main	1	1	<b>2</b>
iTraxx Europe Crossover	1	1	<b>2</b>

**Table 16: Number of CCP for iTraxx Main index CDS, per series and maturity**

iTraxx Main	3Y	5Y	7Y	10Y
Series 5 & 6	1	1	1	1
Series 7 to 10	1	1	1	2
Series 11 onward	<b>1</b>	<b>2</b>	<b>1</b>	<b>2</b>

**Table 17: Number of CCP for iTraxx Crossover index CDS, per series and maturity**

iTraxx Crossover	3Y	5Y	7Y	10Y
Series 5 to 10	1	1	1	1
Series 11 onward	<b>1</b>	<b>2</b>	<b>1</b>	<b>1</b>

#### 4.1.2. Number of clearing members per class

93. In the responses to the discussion paper, it was noted that the number of clearing members may be of greater importance than the number of CCP clearing the same class. Indeed a number of counterparties will access CCP through them to fulfil their obligations under EMIR. One should not focus on the absolute number of clearing members, but rather compare the number of clearing member to the size of the respective markets, and the types of market participants in this market.
94. In this respect, the OTC interest rate and credit asset classes are different: for interest rate classes covered in the first consultation paper on interest rate OTC derivative classes, 110 clearing members (78 at group level) were referenced, whereas for the credit classes covered in this consultation paper there are 21 clearing members and 15 at group level. Several reasons explain this difference, including the difference in size, in number of participants and maturity of the respective markets. For instance, clearing of IRS exists since 1999 whereas for CDS it only started about 5 years ago.
95. The differences in the number of clearing members in the various asset classes can also be explained by the scope of the clearing offer: for IRS, a large share of the swaps market is eligible to be cleared whereas for CDS some active indices or single names have only been introduced recently, and the possibility offered by CCP to realise offsets between indices and single names is even more recent. Therefore the efforts and investments by banks to become clearing members may be more or less cost-effective depending on the maturity of CCP clearing for those products.
96. The OTC interest rate swap market is also the biggest in terms of notional amounts outstanding: according to the BIS data of December 2013<sup>20</sup>, it represents 82% of the total notional amounts outstanding whereas credit default swaps represent 3%, and the order of magnitude is similar when looking at gross market values. In addition, the number of active counterparties in the CDS is more concentrated, as roughly three quarters of the volume is executed between dealers according to DTCC data<sup>21</sup>.
97. This supports the view that what was deemed to be an appropriate number of clearing members for IRS (as presented in the first consultation paper on the clearing obligation) should not necessarily be the same for CDS.
98. In order to evaluate the deployment of CCP clearing members in Europe, ESMA has collected in May 2014 information on the clearing members of CCPs in coordination with the national competent authorities responsible for their supervision. The purpose of this data collection was to gather information on the number of clearing members for each asset class and, among those clearing members, those offering client clearing and/or indirect client clearing.
99. The clearing members being identified with their Legal Entity Identifier (LEI) it was possible to spot the clearing members of numerous CCP and avoid double counting. In the following tables, the numbers marked as “without duplicate” should be understood as meaning that clearing members (with the same LEI) of multiple CCPs are counted only once in the total.

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<sup>20</sup> The BIS report published in May with data as of December 2013 is available at the following link:

[http://www.bis.org/publ/otc\\_hy1405.pdf](http://www.bis.org/publ/otc_hy1405.pdf)

<sup>21</sup> As measured by gross notional amounts, as of 23 May 2014

<http://www.dtcc.com/market-data/section-1/table-1.aspx>



100. It was also possible to aggregate the clearing members per group and have a view not only at entity but also at group level. Indeed this is important because the choice of a clearing member by a counterparty would likely be done at group rather than entity level. Once a counterparty has selected a clearing member, the choice between one entity of the group or the other would mainly be driven by legal or practical reasons (e.g. the geographical location), but it is likely that the offer of the clearing member would be identical for various entities of the same group. From the point of view of a counterparty seeking to become the client of a clearing member, the number of “groups” clearing member is therefore more relevant than the number of entities.
101. There are two European CCPs that clear Index CDS in Europe: LCH.Clearnet SA and ICE Clear Europe. Table 18 shows that the number of clearing members at entity level in this asset class ranges from 9 to 20 per CCP, of which 13 offer client clearing. When several clearing members of the same group are counted only once, as indicated in the columns “group level”, those numbers go down, ranging this time from 9 to 15 clearing members per CCP, of which 12 offer client clearing.
102. In total, the number of clearing members for OTC credit derivatives is 20 at entity level without duplicates, and 15 at group level without duplicates. This represents roughly 25% of the total number of clearing members for the interest rate OTC derivatives, for a market which is 30 times smaller as measured by notional amounts outstanding, and 20 times smaller as measured by gross market values. Therefore, although the absolute number of clearing members is smaller in the credit compared to the interest rate asset class, it does not seem to be disproportionate when compared to the size of the respective markets.
103. Based on the above, ESMA concludes that the number of clearing members including those offering client clearing is sufficient to support the clearing obligation of the Index CDS classes proposed in the current determination, and that it is not necessary to delay the application of the clearing obligation for the sole purpose of giving time to other clearing members to enter the market.

**Table 18: Number of clearing members in OTC credit derivatives**

CREDIT	Number of Clearing Member		Number of clearing members with client/indirect client clearing	
	At group level	At entity level	At group level	At entity level
<i>as of 15/05/2014</i>				
ICE CE	15	20	12	13
LCH.Clearnet SA**	9	9		
Total (with duplicates)	<b>24</b>	<b>29</b>	<b>12</b>	<b>13</b>
Total (without duplicates*)	<b>15</b>	<b>20</b>	<b>12</b>	<b>13</b>

(\*) Clearing members of multiple CCPs are counted only once in the total

(\*\*) Although LCH.Clearnet SA has an operational offer of client clearing services, there is currently no client clearing activity on the CDS business line.

Source: ESMA calculations



**Question 4: Do you have any comment on the analysis presented in Section 4.1?**

#### **4.2. Determination of the categories of counterparties (Criteria (d) to (f))**

104. The approach regarding the categories of counterparties has been detailed in the first consultation paper on the clearing obligation, which covers interest rate derivatives. In this paper the three categories of counterparties are as follows:
- Category 1 (Clearing member): counterparties that, on the date of entry into force of the RTS on the clearing obligation, are clearing members for any of the Class+ of the RTS, of any CCP authorised to clear at least one of the Class+. This covers any class subject to the clearing obligation, including the interest rate classes proposed for mandatory clearing in the first consultation paper.
  - Category 2 (Non-Clearing member):
    - Financial counterparties not included in Category 1; and
    - AIFs qualifying as NFC+ not included in Category 1.
  - Category 3 (Non-Financial counterparties): Non-financial counterparties not included in Category 1 or 2
105. ESMA has not found evidence that the definition of the categories of counterparties would need to be modified for the credit asset class. Besides, for practical reasons it would be beneficial to keep the definition of the categories of counterparties identical for all the classes. The compliance costs would be lower for counterparties as they would need to make the classification only once.

**Question 5: Do you agree with the proposal to keep the same definition of the categories of counterparties for the credit and the interest rate asset classes? Please explain why and possible alternatives.**

#### **4.3. Determination of the dates from which the clearing obligation takes effect**

106. The approach regarding the dates from which the clearing obligation applies has been detailed in the first consultation paper on the clearing obligation, which covers interest rate derivatives. The dates of application are specified as follows:
- Category 1 (Clearing members): 6 months after the entry into force of the RTS
  - Category 2 (Non-Clearing members): 18 months after the entry into force of the RTS
  - Category 3 (Non-Financial counterparties): 3 years after the entry into force of the RTS
107. ESMA has not found evidence that the dates from which the clearing obligation takes effect would need to be modified compared to the dates of the interest asset class and is therefore proposing the same implementation timeframe for the credit classes.

**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.**

## 5. Remaining maturity and frontloading

### 5.1. Frontloading

108. The frontloading requirement as foreseen by Article 4(1)(b)(ii) of EMIR is the obligation to clear the OTC derivative contracts (pertaining to a class of OTC derivatives that has been declared subject to the clearing obligation) that are entered into after the notification as referred to in Article 5(1) and before the date of application of the clearing obligation<sup>22</sup>.
109. The approach regarding frontloading has been detailed in the first consultation paper on the clearing obligation, which covers interest rate derivatives and applies in exactly the same manner for the credit classes. The main points of the approach are presented below for ease of reference:

#### Non-financial counterparties are not subject to frontloading

110. NFC cannot “become subject to the clearing obligation” as indicated in Article 10(1)(b) of EMIR in the absence of a clearing obligation. This means that for the purpose of this article, NFC can only become subject to the clearing obligation on or after the date on which the obligation is created, which is the date on which the clearing obligation takes effect for the category of counterparty to which that counterparty belongs (the date of application).
111. In addition, the reference to “future contracts” in Article 10(1)(b) and (c) of EMIR should be understood as meaning: entered into or novated on or after the date on which the counterparty becomes subject to the clearing obligation.
112. Therefore for NFC, no contract concluded before the date of application can be subject to the clearing obligation. Given that the frontloading requirement of Article 4(1)(b)(ii) applies to contracts entered into before the date on which the clearing obligation takes effect (i.e. the date of application for the relevant category of counterparty), it follows that frontloading is not applicable to contracts for which at least one of the counterparty is a non-financial counterparty.

#### The two periods of frontloading

113. The frontloading period can be divided into two different timeframes:
- (a) Period A: between the notification of the classes to ESMA and the publication in the Official Journal of the regulatory technical standards (RTS) on the clearing obligation;
  - (b) Period B: between the publication in the Official Journal of the RTS and the date on which the clearing obligation takes effect (the date of application).

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<sup>22</sup> In accordance with EMIR Article 4(1)(b), the clearing obligation applies to contracts entered into or novated either:

- (i) on or after the date from which the clearing obligation takes effect; or
- (ii) on or after notification as referred to in Article 5(1) but before the date from which the clearing obligation takes effect if the contracts have a remaining maturity determined by the Commission in accordance with Article 5(2)(c).

## 5.2. Minimum remaining maturity of the contracts

114. Article 5(2)(c) of EMIR requires ESMA to specify in the draft RTS the “minimum remaining maturity of the OTC derivative contracts referred to in Article 4(1)(b)(ii)”. As a naming convention those OTC derivative contracts will be referred to as “the frontloaded contracts”.
115. For the sake of clarity, it is reminded that the “remaining maturity” of the contracts referred to in Article 4(1)(b)(ii) of EMIR, to be compared to the “minimum remaining maturity”, is the maturity of that contract as of the date of application of the clearing obligation for this contract and for this counterparty.
116. In order to achieve the legal certainty during Period A as mentioned above, ESMA is proposing to divide the frontloaded contracts into two sets -- depending on the date on which they were concluded -- to which different minimum remaining maturities would apply. In view of the date of application for Category 3 (NFC), ESMA is also proposing to adapt the minimum remaining maturity for this category. This proposal is further explained below.
117. For contracts concluded in Period A, the minimum remaining maturity is set at a level which ensures that no contract is subject to frontloading. In practise, this is achieved by setting a minimum remaining maturity per class of OTC derivatives, at a level equal to the maximum maturity of the contracts of this class minus the length of the implementation period of Category 1 (i.e. 6 months).
118. For example, the maximum maturity of the contracts falling under the European untranchéd index CDS class being 5 years, and the implementation period for Category 1 being 6 months, the resulting minimum remaining maturity for this class is set at 4 years and 6 months.
119. For contracts concluded in Period B, the remaining maturity is set at a meaningful level that ensures that contracts which are close to expiration on the date of application of the clearing obligation, are not required to be cleared. It is reminded that this was the original purpose of defining a minimum remaining maturity for the contracts subject to frontloading.
120. For the sake of simplicity ESMA is proposing to adopt a unique minimum remaining maturity for contracts concluded during Period B, and therefore to set the parameter at the same level as the one adopted in the first consultation paper on the clearing obligation.
121. Based on the above, ESMA considers that contracts concluded during Period B with more than 6 months before expiration on the date of application of the clearing obligation should be subject to frontloading.

**Question 7: Do you consider that the proposed approach on frontloading ensures that the uncertainty related to this requirement is sufficiently mitigated, while allowing a meaningful set of contracts to be captured? Please explain why and possible alternatives compatible with EMIR.**



## **Annex I - Commission mandate to develop technical standards**

Article 5 of Regulation (EU) No 648/2012

### **Clearing obligation procedure**

2. Within six months of receiving notification in accordance with paragraph 1 [of Article 5] or accomplishing a procedure for recognition set out in Article 25, ESMA shall, after conducting a public consultation and after consulting the ESRB and, where appropriate, the competent authorities of third countries, develop and submit to the Commission for endorsement draft regulatory technical standards specifying the following:
  - (a) the class of OTC derivatives that should be subject to the clearing obligation referred to in Article 4;
  - (b) the date or dates from which the clearing obligation takes effect, including any phase in and the categories of counterparties to which the obligation applies; and
  - (c) the minimum remaining maturity of the OTC derivative contracts referred to in Article 4(1)(b)(ii).

Power is delegated to the Commission to adopt regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.



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

**COMMISSION DELEGATED REGULATION (EU) No .../..**  
**supplementing Regulation (EU) No 648/2012 of the European Parliament and**  
**of the Council with regard to regulatory technical standards on the clearing**  
**obligation**

of [ ]

(text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories<sup>23</sup>, and in particular Article 5(2) thereof,

Whereas:

- (1) Regulation (EU) No 648/2012 considers in Recital (16) that, in determining which classes of OTC derivative contracts should be subject to the clearing obligation, the specific nature of OTC derivative contracts which are concluded with covered bond issuers or with cover pools for covered bonds should be taken into account. In this respect, the classes of OTC derivative subject to the clearing obligation should not encompass contracts concluded by covered bond issuers or covered pools, meeting the conditions established in this Regulation. In particular, the legal documentation of some derivative contracts prevents the termination of the contract in case of default of the covered bond issuer. Central clearing would not preserve this feature and therefore those contracts should not be subject to the clearing obligation.
- (2) Defining different categories of counterparties enables to schedule a series of successive dates when the clearing obligation should take effect for each respective category, and therefore to ensure an orderly and timely implementation.

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<sup>23</sup> OJ L 201, 27.7.2012, p. 1.

- (3) The categories of counterparties to which the clearing obligation applies should be defined in such a way that counterparties included in the same category are sufficiently similar with regards to the criteria set out in Regulation (EU) No 648/2012.
- (4) In particular, clearing members of the classes subject to the clearing obligation constitute a group of entities which already have an experience with voluntary clearing and have already established the connections with at least some of the relevant CCPs. These entities are relatively limited in number but account for a significant portion of the traded volume and usually are the most relevant liquidity providers. In addition, they constitute the access point to clearing for the counterparties that will not become direct clearing members. Therefore they should be included in the first category to which the clearing obligation is applicable (Category 1). This category should be defined in such a way that counterparties which are clearing members only for classes not covered by the clearing obligation are not captured. To ensure legal certainty, this category should only encompass clearing members of CCPs authorised at the time this Regulation enters into force.
- (5) Conversely, the period of time a counterparty subject to the clearing obligation needs to put in place arrangements to clear its OTC derivative contracts through a CCP is expected to be the longest for non-financial counterparties because those counterparties generally do not have an experience with central clearing. Therefore they should be included in a category of counterparty to which the longest implementation period is granted (Category 3).
- (6) However, non-financial counterparties do not form a homogeneous group with regards to the criteria that are relevant to define the categories of counterparties. In particular, certain non-financial counterparties are direct clearing members of CCPs. Those counterparties should be included in the clearing member category (Category 1) if they are clearing members meeting the conditions of this category. In addition, certain non-financial counterparties are alternative investment funds (“AIFs”) not captured by the definition of financial counterparties under Regulation (EU) No 648/2012. For the purpose of the clearing obligation, those counterparties should be included in the same categories of counterparties than AIFs that are classified as financial counterparties.
- (7) Counterparties that are clearing members do not necessarily have a pre-existing CCP access for all the classes subject to the clearing obligation. The date on which the clearing obligation takes effect for this category of counterparty (i.e. the date of application) should therefore take into account the fact that they will need to decide on their type of access for the classes for which they do not have pre-existing access, and in the case they consider becoming a clearing member for the other classes subject to the clearing

obligation, a reasonable timeframe for a counterparty to become a clearing member varies from 3 to 6 months.

- (8) The date on which the clearing obligation takes effect for counterparties that are not clearing members should take into account the fact that most of those counterparties will get access to CCP by becoming client or indirect client of a clearing member.
- (9) The date on which the clearing obligation takes effect for non-financial counterparties not falling under Category 1 or Category 2 should take into account their legal and operational capacity, and the fact that most of them have limited experience with central clearing.
- (10) Regulation (EU) No 648/2012 imposes an obligation to clear a posteriori some contracts concluded after the notification to ESMA that follows the authorisation of a CCP to clear a certain class of OTC derivatives, but before the date of application of the clearing obligation. This so-called “frontloading” requirement is not applicable to non-financial counterparties because as per Regulation (EU) No 648/2012, they shall only clear contracts concluded after the date on which they become subject to the clearing obligation, and this date is necessarily on or after the date on which the clearing obligation takes effect.
- (11) The provision on frontloading is linked to the definition of the minimum remaining maturity, and applies to contracts concluded during two periods: the first period is from the notification to ESMA that follows the authorisation of a CCP to clear a certain class of OTC derivatives to the publication of this Regulation in the Official Journal; the second period is from the publication of this Regulation in the Official Journal to the date of application of the clearing obligation. The consequence of frontloading is different depending on whether the contracts were concluded during the first or the second period. During the first period, there is no legal certainty on which of the notified classes will be subject to the clearing obligation, on when the clearing obligation takes effect, and on which CCPs will be authorised to clear the notified classes. This uncertainty may have a significant impact on the capacity of market participants to accurately price the OTC derivative contracts in the notified classes, because a transaction that is centrally cleared is subject to a different collateral regime than a transaction that is not. Therefore, minimising the number of contracts subject to frontloading during the first period would reduce the level of pricing uncertainty.
- (12) To take this into account, the minimum remaining maturity applicable to contracts entered into during the first and the second period should be different. The minimum remaining maturity of the contracts concluded before the publication of this Regulation in the Official Journal should be set at a level ensuring that the number of contracts subject to

frontloading is minimal. However, the minimum remaining maturity of the contracts concluded after the publication of this Regulation in the Official Journal should be set at a level ensuring that only contracts with a meaningful remaining maturity are required to be centrally cleared. The remaining maturity of the contracts to be compared to the minimum remaining maturity should be the one as of the date of application of the clearing obligation for this contract.

- (13) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.
- (14) The European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Security and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010.

HAS ADOPTED THIS REGULATION:

*Article 1 – Classes of OTC derivatives subject to the clearing obligation*

1. The classes of OTC derivatives listed in Annex I shall be subject to the clearing obligation.
2. The classes of OTC derivatives listed in Table 1 to Table 4 of Annex I shall not include contracts associated to covered bonds programmes when such contracts satisfy all of the following conditions:
  - (a) they are not terminated in case of default of the covered bond issuer;
  - (b) the counterparty to the contracts, which counterparty is not the cover pool or the covered bond issuer, ranks at least pari-passu with the covered bond holders;
  - (c) they are registered in the cover pool of the covered bond programme in accordance with national covered bond legislation;
  - (d) they are used only to hedge the interest rate or currency mismatches of the cover pool;
  - (e) the covered bond programme to which they are associated meets the requirements of Article 129 of Regulation (EU) No 575/2013; and
  - (f) the covered bond programme to which they are associated is subject to a legal collateralisation requirement of at least 102%.



*Article 2 – Categories of counterparties to which the clearing obligation applies*

1. For the purpose of Article 3, the counterparties subject to the clearing obligation shall be divided in the following categories:
  - (a) Category 1 which includes counterparties which, on the date of entry into force of this Regulation, are clearing members, within the meaning of Article 2(14) of Regulation (EU) No 648/2012, for at least one of the classes of OTC derivatives listed in Annex I, of at least one of the CCPs authorised before that date to clear at least one of the classes of OTC derivatives listed in Annex I;
  - (b) Category 2 which includes:
    - (i) Financial counterparties not included in Category 1; and
    - (ii) Alternative investment funds as defined in Article 4(1)(a) of Directive 2011/61/EU that are non-financial counterparties meeting the conditions referred to in Article 10(1)(b) of Regulation (EU) No 648/2012 and that are not included in Category 1.
  - (c) Category 3 which includes non-financial counterparties meeting the conditions referred to in Article 10(1)(b) of Regulation (EU) No 648/2012 and that are not included in Category 1 or Category 2.

*Article 3 – Dates from which the clearing obligation takes effect*

1. For the classes of OTC derivatives listed in Annex I, the clearing obligation shall take effect on:
  - (a) [the date 6 months after the date of entry into force of this Regulation] for counterparties of Category 1;
  - (b) [the date 18 months after the date of entry into force of this Regulation] for counterparties of Category 2;
  - (c) [the date 3 years after the date of entry into force of this Regulation] for counterparties of Category 3.
2. Where a contract is entered into between two counterparties included in different categories of counterparties as defined in Article 2, the date from which the clearing obligation takes effect for that contract shall be the latest of the two.

*Article 4 – Minimum remaining maturity*

1. The minimum remaining maturity referred to in Article 4(1)(b)(ii) of Regulation (EU) No 648/2012 shall be 6 months for OTC derivative contracts entered into or novated on or after the date of publication of this Regulation in the Official Journal of the European Union.
2. The minimum remaining maturity referred to in Article 4(1)(b)(ii) of Regulation (EU) No 648/2012 for OTC derivative contracts entered into or novated before the date of publication of this Regulation in the Official Journal of the European Union shall be:
  - (a) 49 years and 6 months for Table 1: Basis swaps
  - (b) 49 years and 6 months for Table 2: Fixed-to-float interest rate swaps
  - (c) 2 years and 6 months for Table 3: Forwards rate agreement
  - (d) 2 year and 6 months for Table 4: Overnight index swaps
  - (e) 4 years and 6 months for Table 5: European untranchcd index CDS class
3. This Article shall not apply to contracts to which at least one counterparty is a non-financial counterparty.

*Article 5 – Entry into force*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*[For the Commission  
The President]*

*[For the Commission  
On behalf of the President]*

*[Position]*

*Annex I*

**Classes of OTC derivatives subject to the clearing obligation**

*Section 1*

***Interest Rate OTC derivatives***

*Table 1: Basis swaps class*

<b>Type</b>	<b>Reference Index</b>	<b>Settlement Currency</b>	<b>Maturity</b>	<b>Settlement Currency Type</b>	<b>Optionality</b>	<b>Notional Type</b>
Basis	EURIBOR	EUR	28D-50Y	Single currency	No	Constant or Variable
Basis	LIBOR	GBP	28D-50Y	Single currency	No	Constant or Variable
Basis	LIBOR	JPY	28D-30Y	Single currency	No	Constant or Variable
Basis	LIBOR	USD	28D-50Y	Single currency	No	Constant or Variable

*Table 2: Fixed-to-float interest rate swaps class*

<b>Type</b>	<b>Reference Index</b>	<b>Settlement Currency</b>	<b>Maturity</b>	<b>Settlement Currency Type</b>	<b>Optionality</b>	<b>Notional Type</b>
Fixed-to-Float	EURIBOR	EUR	28D-50Y	Single currency	No	Constant or Variable
Fixed-to-Float	LIBOR	GBP	28D-50Y	Single currency	No	Constant or Variable
Fixed-to-Float	LIBOR	JPY	28D-30Y	Single currency	No	Constant or Variable
Fixed-to-Float	LIBOR	USD	28D-50Y	Single currency	No	Constant or Variable

*Table 3: Forward rate agreement class*

<b>Type</b>	<b>Reference Index</b>	<b>Settlement Currency</b>	<b>Maturity</b>	<b>Settlement Currency Type</b>	<b>Optionality</b>	<b>Notional Type</b>
FRA	EURIBOR	EUR	3D-3Y	Single currency	No	Constant or Variable
FRA	LIBOR	GBP	3D-3Y	Single currency	No	Constant or Variable
FRA	LIBOR	USD	3D-3Y	Single currency	No	Constant or Variable

*Table 4: Overnight index swaps class*

Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type
OIS	EONIA	EUR	7D-3Y	Single currency	No	Constant or Variable
OIS	Fed Funds	USD	7D-3Y	Single currency	No	Constant or Variable
OIS	SONIA	GBP	7D-3Y	Single currency	No	Constant or Variable

## Section 2

### *Credit OTC derivatives*

*Table 5: European untranching index CDS class*

Type	Sub-Type	Geographical Zone	Reference Index	Settlement Currency	Series	Maturity
Index CDS	Untranching Index	Europe	iTraxx Europe Main	EUR	11 onwards	5Y
Index CDS	Untranching Index	Europe	iTraxx Europe Crossover	EUR	11 onwards	5Y

**Question 8: Please indicate your comments on the draft RTS other than those already made in the previous questions.**

## Annex III – Impact assessment

### 1. Introduction

122. This impact assessment was conducted by ESMA while developing the regulatory technical standards (“RTS”) on the clearing obligation, as foreseen by the clearing obligation procedure of Regulation (EU) 648/2012 (EMIR).
123. In accordance with the clearing obligation procedure, within 6 months of being notified that a CCP has been authorised to clear a class of OTC derivatives, ESMA shall develop and submit to the European Commission for endorsement draft RTS specifying:
- (a) the class of OTC derivatives that should be subject to the clearing obligation
  - (b) the date or dates from which the clearing obligation takes effect, including any phase in and the categories of counterparties to which the obligation applies; and
  - (c) the minimum remaining maturity of the OTC derivative contracts referred to in Article 4(1)(b)(ii) of EMIR (i.e. the contracts subject to frontloading).
124. It should be noted that this impact assessment only covers the technical options under the specific mandate of ESMA in respect of the clearing obligation, given that an impact assessment covering the general aspects of the clearing obligation has already been performed by the European Commission as part of the impact assessment of EMIR.
125. This impact assessment follows the publication of a discussion paper on the clearing obligation published on 12 July 2013<sup>24</sup> and incorporates feedbacks and comments received from stakeholders.
126. This impact assessment also follows the publication on 10 July 2014 of the first consultation paper on the clearing obligation on interest rate classes<sup>25</sup>, which included an impact assessment that is not duplicated here. Only the policy choices that were considered by ESMA, when developing the technical standard on the clearing obligation, that are above and beyond the ones addressed in the first consultation paper are addressed here:
- which characteristics or variables of OTC derivative contracts should be used to describe the classes of OTC derivatives to be subject to the clearing obligation;
  - which is the best way to ensure a smooth and appropriately phased-in implementation of the clearing obligation.
127. The determination of the classes of OTC derivatives that should be subject to the clearing obligation has been presented both in quantitative and qualitative terms in the explanatory part of the consultation paper and is therefore not repeated in the impact assessment.
128. The impact assessment presented in the tables below is of qualitative nature only, and the Final Report to be submitted to the European Commission after the consultation period should include

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<sup>24</sup> <http://www.esma.europa.eu/content/Clearing-Obligation-under-EMIR>

<sup>25</sup> 2014-ESMA-799 Consultation Paper, Clearing Obligation under EMIR no. 1 published on 10 July 2014

elements of a more quantitative nature including, when possible, references to the monetary value attached to the identified costs and benefits. Where relevant, respondents to this consultation paper are invited to justify their answers by providing supporting evidences of a quantitative nature that may feed into the cost-benefit analysis.

## 2. Structure of classes – Credit OTC derivatives

<b>Policy Objective</b>	<b>Determine the structure for the classes of credit OTC derivatives to be considered for the clearing obligation</b>
Option 1	Define classes with the main characteristics (product type, sub type, geographical zone, reference index, settlement currency, series and maturity) that make up these derivatives, including the reference of the first series after which all series are subject to the clearing obligation
Option 2	Define each class with the same characteristics but adopt a criteria based approach for determining the series included in the mandatory classes
Option 3	Define each class with the same characteristics but submit a new RTS each time a new series is rolled out and is to be added to the class+
Preferred Option	<b>Option 1</b>

<b>Option 1</b>	<b>Define classes with the main characteristics (product type, sub type, geographical zone, reference index, settlement currency, series and maturity) that make up these derivatives, including the reference of the first series after which all series are subject to the clearing obligation</b>
	Qualitative description
<i>Benefits</i>	The approach is the simplest one. Those characteristics define precisely which index CDS is in scope. The three options presented here rely on the same set of characteristics and this set was supported by stakeholders in response to the discussion paper. But the difference between the three options is on how the series included are specified. With this first option, the first series is stated in the RTS and any subsequent series is included from the outset. This has the benefit of a) providing certainty on the scope of the clearing obligation with regards to the index series, and b) it is in line with the approach taken in other jurisdictions in a global credit OTC derivative market.
<i>Costs to regulator</i>	The simpler the classes are defined while still being meaningful, the simpler it will be to identify them and the least costly it will be for regulators to monitor and enforce compliance of counterparties with the clearing obligation. In this respect the options are sorted out from the least costly (Option 1) to the costliest (Options 2 and 3).
<i>Compliance costs</i>	The simpler the classes are defined while still being meaningful and the more aligned internationally, the simpler they will be identified internally by both counterparties to the trade and maintained in the control functions of their systems and processes for their on-going compliance checks. In this respect the options are sorted out from the least costly (Option 1) to the costliest (Options 2 and 3).

<b>Option 2</b>	<b>Define each class with the same characteristics but adopt a criteria based approach for determining the series included in the mandatory classes</b>
	Qualitative description

<i>Benefits</i>	With this second option, the series included would be indexed on various possible measures of liquidity. This has the benefit of ensuring that only liquid series remain included in the clearing obligation without having to modify the RTS or requiring any non-standard measures. The second benefit with this option is that it would also provide the possibility to remove by design a series or a class when required.
<i>Costs to regulator</i>	With a dynamic scope, it would introduce some uncertainty for counterparties that regulators would need to mitigate to ensure compliance at all times. Although this option 2 has been suggested as a possibility, there is little legal basis for the RTS on the clearing obligation to include conditions.
<i>Compliance costs</i>	Counterparties would be faced with uncertainty with regards to the scope and would need to adapt quickly, potentially impacting their control functions, when such a change takes place.
<i>Indirect costs</i>	A quantitative criteria based approach would bring some difficulties: a) the choice and the definition of the quantitative criteria could be subject to interpretation, b) a new process and responsibility would need to be established for monitoring and communicating when the conditions are met or are not met when deciding whether series need to be included. These correspond to additional costs.

<b>Option 3</b>	<b>Define each class with the same characteristics but submit a new RTS each time a new series is issued and is to be added to the class+</b>
	Qualitative description
<i>Benefits</i>	With this third option, each new series would be added through the process of modifying an existing RTS. This would have the benefit of leaving time for counterparties to prepare for the new series being added to the clearing obligation scope. This would also enable not to add a series that does not exhibit enough liquidity.
<i>Costs to regulator</i>	This approach would have a slightly higher cost than option 1. Where in option 1, the new series are included from the outset, with option 3, companies would need to monitor when the RTS enter into force to activate and start using the new set of class+ to determine compliance. Regulators would need to take this additional factor in monitoring compliance.
<i>Compliance costs</i>	This approach would have a slightly higher cost than option 1. Where in option 1, the new series are included from the outset, with option 3, companies would need to monitor when the RTS enter into force to activate and start using the new set of class+ to determine compliance.
<i>Indirect costs</i>	This approach would bring a new series quite late in the clearing obligation. Given that many of these indices have a new series rolled out every 6 month it could be possible for a new series to become part of the class+ while no longer being the on-the-run and usually most active one, due to the length of the process for a new RTS to enter into force. As a result, this would not address systemic risk properly.

### 3. Definition of the categories of counterparties

<b>Policy Objective</b>	<b>Determine the categories of counterparties to which different phase-in would apply</b>
Option 1	The categories of counterparties for the OTC credit derivative classes are defined in the same way as the categories of counterparties for the OTC interest rate derivative classes (as presented in Consultation Paper n°1 on the clearing obligation)
Option 2	The categories of counterparties for the OTC credit derivative classes are defined in a different way than the categories of counterparties for the OTC interest rate derivative classes (as presented in Consultation Paper n°1 on the clearing obligation)
<b>Preferred Option</b>	<b>Option 1</b>

<b>Option 1</b>	<b>The categories of counterparties for the OTC credit derivative classes are defined in the same way as the categories of counterparties for the OTC interest rate derivative classes (as presented in Consultation Paper n°1 on the clearing obligation)</b>
	Qualitative description
<i>Benefits</i>	The way in which the categories of counterparties are defined for the OTC interest rate derivatives introduces some compliance costs related to the classification of counterparties, in particular in respect of Category 1 (Clearing members). The approach of keeping the definition of the categories of counterparties in the RTS unchanged is the simplest one, as most counterparties will not need to re-assess the date from which the clearing obligation applies to them and to their counterparties. Counterparties will be able to leverage on the classification work already accomplished in relation with the first clearing obligation determination, for the interest rate classes.
<i>Costs to regulator</i> - <i>One-off</i> <sup>26</sup>	This is the baseline scenario and it is not expected to add specific costs to regulators or counterparties.
<i>Compliance costs</i> - <i>One-off</i>	This is the baseline scenario and it is not expected to add specific costs to regulators or counterparties.

<b>Option 2</b>	<b>The categories of counterparties for the OTC credit derivative classes are defined in a different way than the categories of counterparties for the OTC interest rate derivative classes (as presented in Consultation Paper n°1 on the clearing obligation)</b>
	Qualitative description
<i>Benefits</i>	This option, which is more complex, adds the flexibility to better take into account the nature of the counterparties that are specifically active in the OTC credit derivative market.
<i>Costs to regulator</i> - <i>One-off</i> <sup>27</sup>	The costs would depend on the way such a new classification would be framed. In any case, this option would necessitate another round of counterparty classification on top of the one already performed in connection with the clearing obligation on OTC interest rate derivative market. This would necessarily add costs to regulators and counterparties.

<sup>26</sup> On-going costs are irrelevant with respect to phase-in.

<sup>27</sup> On-going costs are irrelevant with respect to phase-in.



<i>Compliance costs</i> - <i>One-off</i>	The costs would depend on the way such a new classification would be framed. In any case, this option would necessitate another round of counterparty classification on top of the one already performed in connection with the clearing obligation on OTC interest rate derivative market. This would necessarily add costs to regulators and counterparties.
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**Question 9: Please indicate your comments on the Impact Assessment.**