esma European Securities and Markets Authority

Discussion Paper

The Clearing Obligation under EMIR

12 July 2013 | ESMA/2013/925

Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

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

All contributions should be submitted online at www.esma.europa.eu under the heading 'Consultations', **preferably in a single word document and using the template published online together with this discussion paper (Reference ESMA/2013/926)**.

ESMA will consider all comments received by **12 September 2013**.

Publication of responses

All contributions received will be published following the close of the consultation period, 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 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 under the heading 'Disclaimer'.

Who should read this paper

All interested stakeholders are invited to respond to this discussion 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

BIS	Bank for International Settlements
CCPs	Central Counterparties
CDS	Credit Default Swaps
CFD	Contract For Difference
Class+	Class of OTC derivatives subject to the clearing obligation
CSF	Cash Settled Forward
EC	European Commission
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories
ESMA	European Securities and Markets Authority
ETD	Exchange Traded Derivatives
FRA	Forward Rate Agreement
ICA	Indirect Clearing Arrangements
IRS	Interest Rate Swaps
ITS	Implementing Technical Standards
MiFID	Markets in Financial Instruments Directive

NCA	National Competent Authority
NDF	Non Deliverable Forward
NDO	Non Deliverable Option
ODSG	OTC Derivatives Supervisors Group
OIS	Overnight Index Swap
OTC	Over-the-counter
RTS	Regulatory Technical Standards
RTS on OTC	Commission Delegated Regulation (EU) No 149/2013 supplementing EMIR
TRs	Trade Repositories

I. Executive Summary

Reasons for publication

The European Securities and Markets Authority (ESMA) is publishing this discussion paper in order to seek stakeholders' views on the preparation of the regulatory technical standards 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).

The input from stakeholders will help ESMA in the development of 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

The following discussion paper is organised as follows: the first section presents the standard procedure for the determination of the classes of OTC derivatives to be subject to the clearing obligation. The second section presents the CCP-cleared OTC derivatives and the CCPs which clear them, with the objective of identifying the key characteristics to be retained when breaking down the OTC derivative contracts within classes. The third section gives a high level analysis of the current readiness of each asset-class vis-à-vis the clearing obligation, with regards to some of the criteria to be taken into account by ESMA when defining the classes to be subject to the clearing obligation. The fourth section provides a preliminary analysis of the methodology to be used by ESMA when defining the dates from which the clearing obligation should apply, the types of counterparties to which the clearing obligation should apply and the remaining maturity of the contracts to be subject to the clearing obligation. Finally the fifth section addresses specific issues linked to the clearing obligation such as the case of contracts concluded with covered bond issuers or with cover pools for covered bonds, the case of FX OTC derivatives, as well as some issues related to the procedure for the determination of the clearing obligation.

Next steps

As provided for by Regulation No 1095/2010 of the European Parliament and Council establishing ESMA, a public consultation will be conducted on the draft technical standards before they are submitted to the European Commission for endorsement in the form of Commission Regulations.

According to ESMA decision ESMA/2011/BS/4a on the procedure for developing and adopting draft technical standards and guidelines, the consultation paper will include the actual legal text of the provisions constituting the draft technical standards, an explanation of the measures adopted and a cost-benefit analysis. Therefore, following this discussion paper and on the basis of the relevant input received, ESMA will finalise its proposed draft technical standards to be included in the consultation paper. The consultation paper will not be published before CCPs are authorised or recognised to clear certain classes of OTC derivatives as described in Article 5(1) of EMIR for the authorisation and Article 5(2) of EMIR for the recognition.

II. Introduction

1. Under the clearing obligation (CO) procedure defined in Article 5(2) of EMIR, ESMA shall develop and submit to the European Commission for endorsement draft 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).

2. 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. The Commission Delegated Regulation (EU) No 149/2013 supplementing EMIR (RTS on OTC derivatives) entered into force on 15 March 2013 and in accordance with Article 89(3) of EMIR, CCPs established in Europe have 6 months from that date to apply for authorisation under Article 14. CCPs established in third-countries that currently provide clearing services to EU clearing members also have 6 months from that date to apply for recognition under Article 25, with the view to benefit from the transitional provisions provided by EMIR and continue providing clearing services to EU clearing members until a decision is made by ESMA on their recognition. Article 17(7) of EMIR foresees that within 6 months of the submission of a complete application, the competent authority shall inform the applicant CCP whether authorisation has been granted or refused.

3. As of the date of publication of this discussion paper, no CCP has yet been authorised or recognised according to the process described above. Therefore this discussion paper should be seen as a preliminary public consultation which will be followed by one or more consultation papers to be issued by ESMA after CCPs are authorised under EMIR, with the objective of presenting the classes of OTC derivatives to be subject to the CO. Those classes will be determined based on the criteria laid down in Article 5(4) and further defined in Article 7 of the RTS on OTC derivatives. With the overarching aim of reducing systemic risk, the draft RTS to be discussed in further consultation papers and submitted to the Commission for endorsement shall take into consideration (1) the degree of standardisation of the contractual terms and operational processes of the relevant class of OTC derivatives, (2) the volume and liquidity of the relevant class of OTC derivatives and (3) the availability of fair, reliable and generally accepted pricing information in the relevant class of OTC derivatives.

4. One of the objectives of this preliminary discussion paper is to inform stakeholders on the OTC derivative contracts for which there is currently a clearing offer (CCP-cleared OTC derivatives) and to discuss the way in which those OTC derivatives can be presented in the form of classes. The discussion paper is based among other elements on the preliminary notifications received by ESMA in accordance with EMIR Article 89(5)[1]. When a CCP had previously been authorised or recognised in accordance with the national law of

[1]EMIR Article 89(5) para.1
Where a competent authority authorised a CCP to clear a given class of derivatives in accordance with the national law of its Member State before all the regulatory technical standards under Articles 16, 26, 29, 34, 41, 42, 45, 47 and 49 are adopted by the Commission, the competent authority of that Member State shall notify ESMA of that authorisation within one month of the date of entry into force of the regulatory technical standards under Article 5(1).
EMIR Article 89(5) para.2

its Member State by a Competent Authority, this Competent Authority shall notify ESMA of such authorisation or recognition within one month of the entry into force of the relevant technical standards, hence by 15 April 2013.

5. In this paper, the mention to "CCPs" should be understood as the universe of CCPs which have been notified to ESMA via the relevant National Competent Authority (NCA), in accordance with EMIR Article 89(5). It comprises both European CCPs authorised in accordance with the national law of their Member State, and CCPs established in third countries which have been recognised to provide clearing services in Europe in accordance with the national law of their Member State. The mentions to "Notifications" or "Preliminary notifications" refer to the ones of Article 89(5).

6. The Public Register referred to in Article 6 of EMIR is meant to ensure transparency for market participants regarding the clearing obligation, i.e. the classes of CCP-cleared OTC derivatives, the classes of OTC derivatives subject to the CO and the CCPs which clear them. The information of the Public Register will be divided in two sections:

(a) The list of the classes of OTC derivatives notified to ESMA

This section of the register will be published after the notifications are received by ESMA under the procedure described in Article 5(1) of EMIR, i.e. following the authorisation of CCPs under EMIR to clear classes of OTC derivatives. The classes of OTC derivatives published in this part of the register are not subject to the clearing obligation. They should be seen as the universe of CCP-cleared OTC derivatives which may become subject to the clearing obligation, if they meet the criteria to be assessed by ESMA.

The details to be included in this part of the Register are further specified in the RTS on OTC Derivatives, Article 8(5).

(b) The list of classes subject to the clearing obligation

This section of the register will be published immediately after the entry into force of the RTS specifying the classes of OTC derivatives subject to the clearing obligation. These RTS will be adopted following the procedure described in Article 5(2) of EMIR.

The details to be included in this part of the Register are further specified in the RTS on OTC Derivatives, Article 8(1) to 8(4).

Where a competent authority recognised a CCP established in a third country to provide clearing services in accordance with the national law of its Member State before all the regulatory technical standards under Articles 16, 26, 29, 34, 41, 42, 45, 47 and 49 are adopted by the Commission, the competent authority of that Member State shall notify ESMA of that recognition within one month of the date of entry into force of the regulatory technical standards under Article 5(1).

III. Discussion Paper

1. Procedure for the determination of the classes of OTC derivatives to be subject to the clearing obligation

1.1. Standard procedure to define the classes of OTC derivatives to be subject to the clearing obligation

7. The obligation to clear certain classes of OTC derivatives – the clearing obligation (CO) – in EMIR may result from one of the two following processes:

   - 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 CO but for which no CCP has yet received authorisation.

   As mentioned in EMIR Article 5(2), each class of OTC derivatives to be subject to the clearing obligation will be determined through Regulatory Technical Standard (RTS).

   The adoption of such RTS is a regulated process. The following paragraphs give an overview of the steps to be completed and the implications in terms of timing and procedure, with the objective of providing clarity to stakeholders on the constraints under which ESMA will carry out the determination of classes of OTC derivatives to be submitted to the clearing obligation.

8. Once a competent authority authorises a CCP to clear a class of OTC derivatives, it shall notify ESMA of that authorisation. Following that notification, ESMA will assess the suitability of the notified classes to the clearing obligation against the criteria defined in EMIR and the RTS. When ESMA determines that one or more classes fulfil the relevant criteria, it shall submit draft RTS to the European Commission within six months. This six month period includes a public consultation, a consultation of the ESRB and, where appropriate, a consultation of the competent authorities of third countries. ESMA will only develop RTS for those classes of OTC derivatives that should be subject to the clearing obligation.

9. The draft RTS shall include the class of OTC derivatives that should be subject to the clearing obligation, the date or dates from which the CO takes effect, including any phase in and the categories of counterparties to which the obligation applies, and the minimum remaining maturity of the OTC derivative contracts referred to in Article 4(1)(b)(ii). The RTS shall also include a comprehensive Impact Assessment (IA), the purpose of which is to present the technical options considered when drafting the rules, to identify the benefits and measure the costs of each option and to stress the advantages of the preferred option.

10. Following the submission of the RTS to the European Commission (EC), the EC has 3 months to decide whether to endorse it. The RTS endorsed by the EC are then subject to a non-objection period by the European Parliament and the Council, and this non-objection period may last up to:

    - 1 month (with a possibility of extension by 1 additional month) when the RTS have been endorsed by the EC without modifications

- 3 months (with a possibility of extension by 3 additional months) when the RTS have been endorsed by the EC with modifications

11. The RTS are then published in the Official Journal as a Commission Delegated Regulation which enters into force 20 days after this publication unless specified otherwise.

12. Therefore, under the assumptions that the EC would be able to endorse the RTS in 1 month, and that the Council and the European Parliament would not object the RTS within one month, the minimum time window between the submission by ESMA of the RTS to the EC and their entry into force would be 3 months. Using all the maximum periods as assumptions would alternatively lead to a period of 10 months between the submission of the RTS to the EC and their entry into force.

13. Adding up the maximum 6-month period for ESMA to draft the RTS, it could take from 9 to 16 months from the notification of a class of OTC derivatives to ESMA (under Article 5(1)) to the entry into force of the clearing obligation of this class, not taking into account any phase in.

Simultaneous processes

14. The 6-month period for ESMA to draft RTS on the clearing obligation is triggered by (1) the authorisation of a CCP to clear a class of OTC derivatives under Article 14 (initial authorisation of a CCP) and Article 15 (Extension of Activity) and (2) the accomplishment of a procedure for recognition of third-country CCP set out in Article 25. It may be the case that all the authorisations and/or recognitions do not occur at the same time.

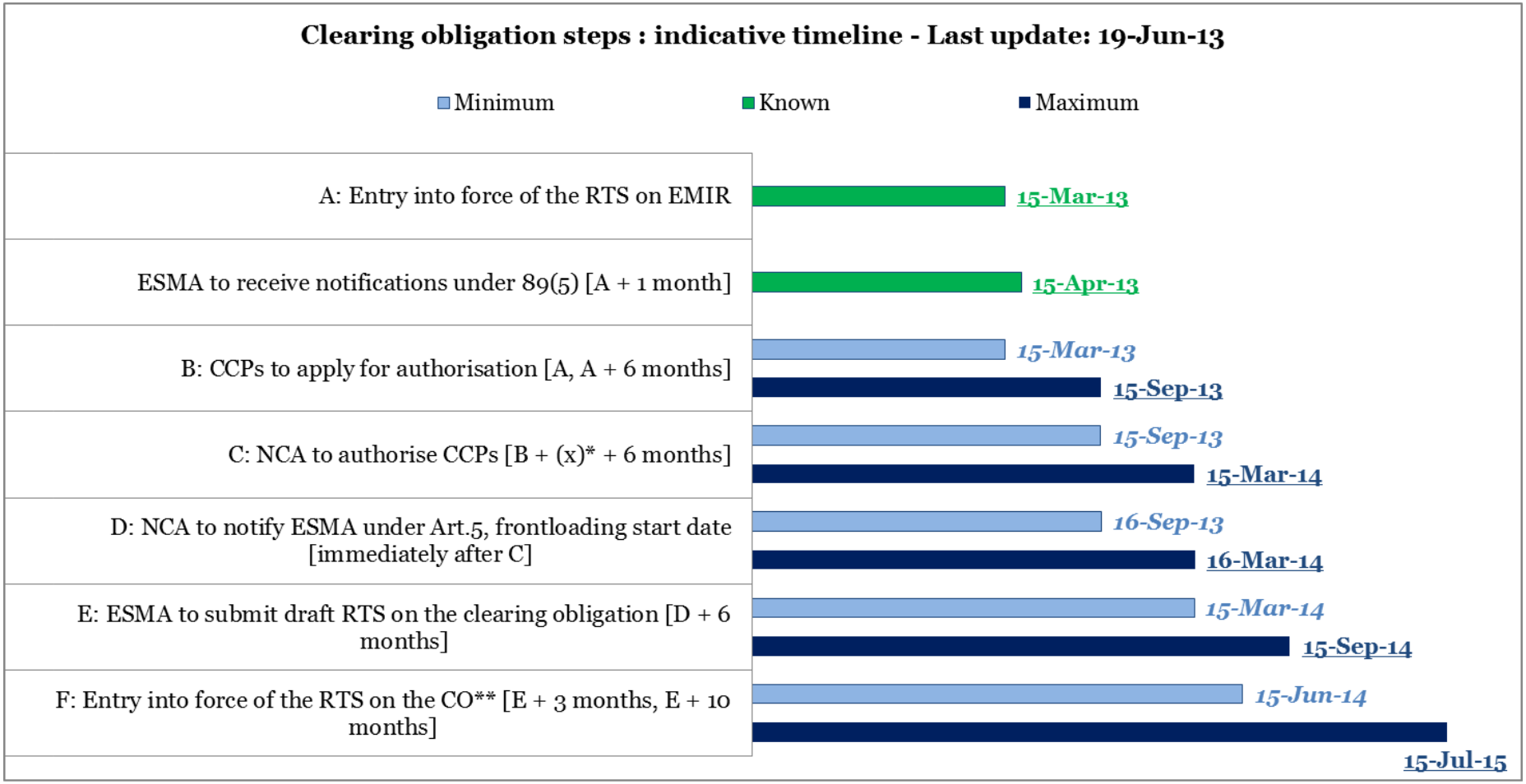
15. In relation to the authorisation of European CCPs: within the 6-month period during which CCPs shall apply for authorisation under EMIR, some CCPs will apply earlier that other. Furthermore, the date of authorisation depends on:

- the time needed for the CCP to complete its application where the NCA determines that the initial notification is incomplete and
- the time needed for the NCA to authorise the CCP following receipt of a complete application, which shall be 6 months maximum.

16. In relation to the recognition of third-country CCPs, the starting point for the 6-month period given to ESMA to draft the RTS related to the CO is subject to the length of the recognition procedure set out in Article 25. The Commission should have adopted an implementing act determining that the third country is equivalent in the context of EMIR, and ESMA shall inform the applicant third country CCP whether the recognition has been granted or refused within 180 working days.

17. Considering those different time periods as well as the number of CCPs providing clearing services in OTC derivatives, several clearing obligation processes may run in parallel, which adds complexity to the standard procedure described above. It should be noted that the CO procedure will be triggered by the first CCP authorised to clear a certain class of OTC derivatives. When another CCP is authorised to clear the same class, it will not trigger another CO procedure on the same class, and the CO procedure described in Article 5(1) of EMIR does not leave flexibility to ESMA to wait until all the CCPs clearing the same class have been authorised or recognised under EMIR. However, when determining the phase-in and the categories of counterparties to which the CO would apply, ESMA will consider whether more than one CCP already clear the same class of OTC derivatives (see under 4.1 below).

1.2. Indicative timeline



* (x) is the time needed for the determination of the completeness of the application sent by CCP to NCA

** The date on which the CO takes effect will depend on the phase in and the categories of counterparties to be defined in the RTS

2. CCP-cleared classes of OTC derivatives

18. Before the authorisation of CCPs under EMIR, a first batch of notifications regarding the clearing activity in OTC derivatives of CCPs was provided to ESMA by NCA, under the transitional provisions of Article 89(5). ESMA conducted preliminary work ahead of the notifications under Article 89(5) together with NCAs and CCPs to ensure a smooth and consistent process in Europe, as well as to standardise the notifications to the extent possible. The overall objective of the exercise was to optimise the quality of the notifications given their crucial importance in the clearing determination process to be performed by ESMA. In April 2013, one month after the entry into force of the Delegation Regulations, ESMA received notifications from 13 CCPs providing OTC clearing services in Europe located in 9 countries.

19. The highest level of classification for OTC derivative contracts is based on the asset class, i.e. interest rate derivative, credit derivative, equity derivative, foreign exchange derivative and commodity derivative. This classification can be considered as a standard market practise and is used as a reference in the Technical Standards related to EMIR. This classification is the starting point of the analysis of the classes of OTC derivatives to be subject to the clearing obligation, and each class will be further defined with higher granularity within those asset classes. The preliminary notifications indicate that CCPs in Europe provide clearing services in all of the 5 asset classes.

20. Using this high-level classification, Table 1 below gives an overview of the asset classes cleared in Europe. In addition to European CCPs, the table also includes the classes cleared by 2 recognised CCPs established outside the Union, as envisaged by paragraph 2 of Article 89(5). Those CCPs are ICE Clear Credit and CME Clearing US.

21. As evidenced by Table 1 below, all asset classes are cleared by at least 2 CCPs, although in the case of FX derivatives, only one of the two is a European CCP.

CCP	Country	# Asset Class	Commodity	Credit	Equity	Interest Rate	Foreign Exchange
CME Clearing US	USA	4	1	1		1	1
CME Clearing Europe	United Kingdom	2	1			1	
ECC	Germany	1	1				
Eurex Clearing	Germany	2		1		1	
ICE Clear Credit	USA	1		1			
ICE Clear Europe	United Kingdom	1		1			
KDPW_CCP	Poland	1				1	
LCH.Clearnet Ltd	United Kingdom	4	1		1	1	1
LCH.Clearnet SA	France	1		1			
MEFF	Spain	2	1		1		
Nasdaq OMX	Sweden	3	1		1	1	
OMI Clear	Portugal	1	1				
Holland Clearing Hous	The Netherlands	1			1		
Total			**7**	**5**	**4**	**6**	**2**

Table 1: Asset classes cleared by CCPs

General approach for the definition of the classes of OTC derivatives to be subject to the clearing obligation (Class+)

22. The definition of a class is provided in Article 2(6) of EMIR:

> "class of derivatives" means a subset of derivatives sharing common and essential characteristics including at least the relationship with the underlying asset, the type of underlying asset, and currency of notional amount. Derivatives belonging to the same class may have different maturities.

23. In addition to this definition at class level, the Public Register is another tool available to further identify the contracts within a class, as defined in Article 8 of the RTS on OTC derivatives. In particular, the Public Register may include "any other characteristic required to distinguish one contract in the relevant class of OTC derivative contracts from another", as mentioned in Article 8(1)(k) of the RTS on OTC derivatives. It may therefore be the case that:

- Two contracts belong to the same "class of OTC derivatives" as defined in the RTS
- One contract is subject to the CO, but not the other, because of another characteristic defined in the Public Register, which one has and not the other.

24. The following paragraphs present an analysis of the characteristics per asset class. For each asset class ESMA will propose a structure, i.e. a set of characteristics which has been identified as relevant to define the class of OTC derivatives either in the RTS or in the Public Register, and ask for comments.

25. When defining the essential characteristics to be specified in the RTS, due consideration should be given to the level of granularity of the classes: the more characteristics are used to define a class, the more limited the class will be. If the classes are described with excessive details, it may impede transparency for market participants, as more efforts would be required to determine whether a specific product belongs to a Class+. It might also create opportunities to evade the CO by entering into contracts which only differ from the ones subject to the CO by a minor technical feature.

26. In order to strike the appropriate balance, ESMA will aim at defining the classes in the RTS with key characteristics reflecting the economic benefit of entering into an OTC derivative contract for its user, as opposed to specifications which impact the mechanics of calculations, however do not affect the underlying economic benefit of entering into transaction. When other characteristics are needed to distinguish between CCP-cleared and non-CCP cleared classes, it would be dealt through the Public Register. Hence ESMA would rely on the CCP's offering to further define the contracts belonging to the Class+, and reflect it in the Public Register.

27. The advantage of this approach is that it will not be possible that a contract subject to the clearing obligation does not have a CCP to clear it. The approach also simplifies the process of decision for market participants who would only have to check the RTS for classes of OTC derivative contracts defined at the key characteristics level and then confirm that a CCP clears such contract. Compared to an approach where both key and additional characteristics are defined in the RTS, this approach would also prevent avoidance practices: should market participants seek to circumvent the CO by entering into contracts specifically designed with some characteristics which makes them non-eligible for clearing, CCPs may be able to identify them and to add them to their offer of services. The Public Register would then be updated, in accordance with a procedure defined at RTS level, and those contracts would fall within the scope of the CO with no delay, and without the need to amend existing RTS or draft new ones.

28. The following paragraphs provide for each asset class (1) a high level presentation of the classes which have been notified to ESMA, (2) a discussion on the characteristics of the class, together with one or more

proposed structures and (3) the classes notified to ESMA under the preliminary notification process, presented as they would be in the Public Register. To facilitate the reading of this section, please note that the discussions are focused on the following questions:

- What are the key characteristics of a class? Those characteristics also referred to as the primary key or core characteristics are shared by all the contracts belonging to the same class. The key characteristics are the ones which would be defined at RTS level. The definition of the key characteristics has an impact on the number of classes.
- What other characteristics are essential to define a class? The other characteristics would likely be defined at the Public Register level rather than RTS level. Those characteristics may be necessary to differentiate between CCP-cleared and non CCP-cleared contracts, which may be used in order to restrict the scope of the clearing obligation to contracts cleared by an EMIR authorised or registered CCP and/or to include in the Class+ only the contracts matching the criteria to be assessed by ESMA in the context of the clearing obligation. The definition of those characteristics has an impact on the scope of the class, its level of granularity.
- What are the options to tackle specific features such as the series of Index CDS or the contracts based on single name entities?

29. Please note that the tables below present the universe of Notified Classes (i.e. CCP-cleared classes) as opposed to the classes which should be subject to the clearing obligation. The Notified Classes may only become subject to the clearing obligation if they fulfil the criteria to be assessed by ESMA for this purpose. The assessment of the Notified Classes against the criteria defined in EMIR will be conducted after ESMA receives the notifications referred to in Article 5(1) of EMIR.

30. The following discussion is therefore focused on the structure of the classes, as part of the preliminary work ESMA is conducting following the preliminary notifications received under Article 89(5) – transitional provisions. The classes are presented with both the key characteristics to be included in the RTS, and the characteristics to be included in the Public Register.

2.1. Credit derivatives

31. Within the credit derivative asset class, the clearing offer identified in the preliminary notifications is limited to Credit Default Swaps (CDS). CCPs currently offer services to clear CDS on single-name corporate entities, sovereign entities and untranched indices. CDS on indices referencing European entities (iTraxx Europe, iTraxx HiVol and iTraxx Crossover Index) are available for clearing in 3 European CCPs and 1 US CCPs, while CDS on indices referencing US entities (CDX Index) are currently not available for clearing in any European CCPs.

2.1.1. Index CDS

Key characteristics

32. ESMA is proposing to use at minimum a two-level classification as primary key for the Credit derivative classes. All the contracts should share those characteristics in order to belong to the same class.

- The product type is similar to the first level of the ISDA Credit Taxonomy (base product). It allows for a high level classification of credit derivatives between e.g. tranched index, untranched index,

single name, total return swaps. The preliminary notifications indicate that only the untranched index and single name types are currently available for clearing.

- The product sub-type is similar to the second level of the ISDA taxonomy (sub-product) and goes one step further in the definition of the Credit derivative contract. The possible values depend on the value of the highest level. For example for an Index based CDS, the product sub-type would simply be the name of the underlying index while for Single Name CDS, the product sub-type is a category such as Corporate or Sovereign, both of which are present in the notifications.
- The geographical zone of the reference entities (e.g. Europe, North America, Asia): contracts based on issuers of different geographical zones will in most cases be denominated in different currencies, therefore ESMA believes that each class should encompass contracts the underlying entities of which are based in the same geographical zone, and denominated in the same currency.

Other characteristics

33. An analysis of the notifications received by ESMA shows that the underlying assets of CCP-cleared index CDS are indices administered by Markit. For each index CDS, clearing is only available in certain series and tenors, and the combination of [series ; tenor] available for clearing differs from one index to the other. Since the clearing obligation under the bottom-up approach can only apply to products in which a clearing offer already exists, the other characteristics of Index CDS classes should be at least the series and the tenor, and these two characteristics should be defined per index.

Discussion on the inclusion of new series for Index CDS

34. For Index CDS, a new series[2] is launched on a regular basis, for example every 6 months. The most recent series is frequently referred to as "on-the-run" while the others are "off-the-run". The liquidity of the "on-the-run" series is typically higher, because market participants tend to roll their positions to the new series.

35. Some of the older series are not available for clearing, therefore the series shall serve as a characteristic to define the classes of Index CDS. However, given that a new series is created every six months, which is less than the time needed for a new RTS on the CO according to the standard process described in Section 1 above, it would not be possible to develop a new RTS every time a new series is launched. ESMA proposes for discussion below a set of options to tackle this issue. The discussion only deals with the inclusion of new series as opposed to the removal of old series, as the latter is discussed under 5.4 (How to withdraw a clearing obligation on a class or subset of it?)

36. A first Option **[Option A]** would be to include in the classes the first series to be subject to the CO, and indicate that all subsequent series will also fall within the scope of the CO. Under this option, new series will automatically be included in the Class+ which is positive in terms of transparency and certainty – market participants will know at any point in time which series are subject to the CO and the risk of a specific series falling in and out of the scope of the clearing obligation will be avoided. Another advantage

[2] The constituents to be included in indices are determined on a regular basis by the administrator of the index. The constituents are reviewed on a regular basis (typically every six months). The composition of the new indices is chosen by participating dealers based on the liquidity of individual contracts, i.e. the most actively traded names are included. Every time the composition of an index is changed, a new series of the respective index is created. The consecutive series are simply numbered starting from 1.

of this option is the absence of lag: as soon as a new series is launched, it is immediately captured by the clearing obligation. The drawback of this approach is the absence of filter on the new series, and some of them may not be suitable for the clearing obligation e.g. for liquidity reasons.

37. Although the liquidity issue mentioned above is unlikely to materialise, the most recent series being in most cases also the most liquid, it may be tackled by foreseeing a procedure by which ESMA could a posteriori exclude certain series from the clearing obligation. Another option could therefore be to include any new series automatically in the CO, like in Option A, and in addition introduce a possibility for ESMA to remove certain series a posteriori **[Option B]**. If the series is not a key characteristic, as proposed above, therefore not included in the RTS, the a posteriori exclusion of a series would be dealt with through the Public Register. Such exclusion should only be possible when the series in question meets certain criteria for exclusion (specified in RTS) and ESMA publishes its rationale and assessment to remove the series from the CO. NCAs should be able to initiate such process as well by requesting ESMA to make assessment whether a series of OTC derivatives is suitable for the CO. The possibility to amend part of a Class+ is discussed in more detail in Section 5 below (How to withdraw a clearing obligation on a class or subset of it?). Option B provides less certainty to market participants, because of the possibility for a new series to be subject to the CO at a certain point in time (by default) and subsequently excluded after ESMA's review.

38. ESMA may also adopt a criteria-based approach **[Option C]** whereby the draft RTS would include a predefined set of series (e.g. from series 4 to series 19) and a list of criteria that the new series should verify in order to be subject to the CO. The criteria would aim at ensuring that the new series exhibits sufficient liquidity and could take the form of minimum amount outstanding or minimum number of transactions per period of time. The Public Register would display only the classes which fulfil the criteria and are therefore subject to the CO.

39. Although this criteria-based approach is probably the most flexible in terms of design of the classes, it also poses a number of challenges. One of them is the lag between the issuance of a new series and its potential addition to a Class+, corresponding to the time needed for the assessment of the criteria. In addition some criteria could not be observed until a considerable time has passed since launching new Index series (i.e. liquidity).The level of complexity in the implementation is also higher as the approach requires the definition of relevant criteria and their calibration. Under the assumption that those criteria should be valid at all times, they should be properly back tested to verify that the approach would not cause a series to fall in and out of the clearing obligation at an inappropriate frequency.

> **Question 1 (Series for Index CDS): Please indicate your preference between the options presented. Do you believe that the possibility for a new series to exhibit low liquidity is a risk worth being considered when defining the classes of Index CDS? Under Option C, which criteria do you believe are relevant and how should they be calibrated?**

Index CDS classes notified to ESMA

40. The following tables present the notified classes according to the structure discussed above. Therefore, the tables present the universe of OTC **Index CDS** classes on which there is today a clearing solution, and which may therefore become subject to the clearing obligation if they fulfil the criteria to be assessed by ESMA for this purpose. The assessment of the classes against the criteria defined in EMIR will be conducted after ESMA receives the notifications referred to in EMIR Article 5(1).

European Untranched Index CDS Class						
Key characteristics			Additional characteristics			
Product type	Geographical zone	Product sub-type	Settlement Currency	Series	Tenor	CCP clearing the class
Untranched CDS Index	Europe	iTraxx Main	EUR	5 to 7	7Y, 10Y	LCH.Clearnet SA Eurex Clearing ICE Clear Europe ICE Clear Credit
				8 to 11	5Y, 7Y, 10Y	
				12 onwards	3Y, 5Y, 7Y, 10Y	
		iTraxx HiVol		5 to 7	7Y, 10Y	
				8 to 11	5Y, 7Y, 10Y	
				12 onwards	3Y, 5Y, 7Y, 10Y	
		iTraxx Crossover		5 to 7	10Y	
				8 to 11	5Y, 7Y, 10Y	
				12 onwards	3Y, 5Y, 7Y, 10Y	

Table 2: European Untranched Index CDS Class

North-America Untranched Index CDS Class						
Key characteristics			Additional characteristics			
Product type	Geographical zone	Product sub-type	Settlement Currency	Series	Tenor	CCP clearing the class
Untranched CDS Index	North America	CDX North America Investment Grade (CDX.NA.IG)	USD	8	7Y, 10Y	CME Clearing US ICE Clear Credit
				9 to 12	5Y, 7Y, 10Y	
				13 onwards	3Y, 5Y, 7Y, 10Y	
		CDX North America High Yield (CDX.NA.HY)		11 onwards	5Y, 7Y, 10Y	
		CDX North America Investment Grade High Volatility		10 onwards	5Y	

Table 3: North-America Untranched Index CDS Class

Emerging Markets Untranched Index CDS Class						
Key characteristics			Additional characteristics			
Product type	Geographical zone	Product sub-type	Settlement Currency	Series	Tenor	CCP clearing the class
Untranched CDS Index	Emerging Markets	CDX Emerging Markets (CDX.EM)	USD	14 onwards	5Y	ICE Clear Credit

Table 4: Emerging Markets Untranched Index CDS Class

Question 2 (Index CDS): Do you consider that the main characteristics of Index CDS are adequately captured by the proposed structure? Are there any other variables which you consider as relevant in the context of the clearing obligation?

Question 3 (Index CDS): Do you have preliminary views on the specific items within those classes which would be the best candidates for the clearing obligation, taking into consideration the overarching aim of reducing systemic risk and the criteria defined in Article 5(4) of EMIR?

2.1.2. Single name CDS

Key characteristics

41. The key characteristics of Single name CDS could be the same as the ones of Index CDS, as described in 32 above, i.e. the product type, the product sub-type and the geographical zone. Under this classification, the classes notified to ESMA would be fully reflected by the three following classes:

- Product type = Single Name
  - Product sub-type = Corporate
    - Geographical Zone = Europe (Class 1)
    - Geographical Zone = North-America (Class 2)
  - Product sub-type = Sovereign
    - Geographical Zone = South-America (Class 3)

42. For Index CDS, the geographical zone and the settlement currency could almost be used interchangeably within the structure of the class, because the indices already apply a filter on the geographical location of the entities. This is not the case for single name entities, therefore alternative options may be considered with reference to the third key characteristic presented above (geographical zone).

Discussion on the Currency/Geographical zone for Single Name CDS

43. The settlement currency (**Option A**) could be used as the primary key instead of the geographical zone (**Option B**). In this case there would be one class per currency, including all the single names denominated in that currency. It may be easier for market participant to identify the contracts by referring to the currency of denomination rather than by geographical zones. So far the notifications only include Single Name contracts settled either in EUR or in USD, therefore there would not be any impact at this stage in the Credit asset class (as opposed to the Equity asset class as discussed in paragraph 71 below) but there may be a need to create new classes in case CCPs start clearing Single Name contracts in other currencies.

44. Another option would be to group all the single name entities in the same class (**Option C**) which would limit the number of classes to just one, but with less flexibility. It would for example not be possible to define different additional characteristics for contracts belonging to different geographical markets.

Question 4 (Single name CDS): Please indicate your preference between the options presented. In relation to Option B, which geographical zones would you define, i.e. how could the currencies be grouped in geographical zones? What is the standard market practise in this respect?

Discussion on the definition of Single Name entities

45. A less straightforward variable of single name CDS classes is the exact list of single name entities to which the clearing obligation would apply. A set of options is discussed below.

46. One option **[Option A]** would be to identify in the Class+ the set of single names subject to the clearing obligation, for example using an entity identifier. Given that single name entities are subject to events such as mergers, acquisitions or changes of name, the maintenance of an accurate list would be challenging. Moreover, the resilience in time of volume and liquidity to support the clearing obligation may be more

difficult to evidence for single name CDS than for Index CDS, given that the latter are specifically designed to encompass the most liquid names within a specific universe.

47. From a practical point of view, it would not be possible to issue a new RTS every time a company is subject to a corporate event. However the Public Register could be a more flexible tool to reflect it.

48. Another option **[Option B]** would be define the single name entities using a reference to more stable variables, such as the membership to a specific index. Such an approach allows for a higher degree of flexibility: new names are added and old names removed automatically from the Class+, based on liquidity criteria used by index providers to define the composition of their indices. The list of single name entities pertaining to a Class+ would be maintained in the Public Register.

49. However, the criteria used by index providers to modify the composition of indices do not necessarily mirror the ones used by ESMA in the context of the clearing obligation. Consequently, ESMA may need to establish a procedure to control the validity of the list of single name entities subject to the CO which would be derived from those indices.

50. Finally, another option **[Option C]** would be to use a criteria-based approach, whereby ESMA would use a list of criteria that the classes should fulfil to fall within the scope of mandatory clearing with similar pros and cons than the ones discussed in paragraphs 38 and 39.

Question 5 (Single name CDS): Please indicate your preference between the options presented. Under Option C, which criteria do you believe are relevant and how should they be calibrated?

Single Name CDS classes notified to ESMA

51. The following tables present the notified classes according to the structure discussed above. Therefore, the tables present the universe of OTC **Single Name CDS** classes on which there is today a clearing solution, and which may therefore become subject to the clearing obligation if they fulfil the criteria to be assessed by ESMA for this purpose. The assessment of the classes against the criteria defined in EMIR will be conducted after ESMA receives the notifications referred to in EMIR Article 5(1).

Single Name European Corporate CDS Class						
Key characteristics			Additional characteristics			
Product type	Geographical zone	Product sub-type	Underlying	Settlement Currency	Tenor	CCP clearing the class
Single Name CDS	Europe	Corporate	[list of entities]	EUR	up to 10Y	Eurex Clearing ICE Clear Europe

Table 5: Single Name European Corporate CDS Class

Single Name North-America Corporate CDS Class						
Key characteristics			Additional characteristics			
Product type	Geographical zone	Product sub-type	Underlying	Settlement Currency	Tenor	CCP clearing the class
Single Name CDS	North-America	Corporate	[list of entities]	USD	up to 10Y	ICE Clear Credit

Table 6: Single Name North-America Corporate CDS Class

Single Name South-America Sovereign CDS Class						
Key characteristics			Additional characteristics			
Product type	Geographical zone	Product sub-type	Underlying	Settlement Currency	Tenor	CCP clearing the class
Single Name CDS	South-America	Sovereign	Argentine Republic	USD	up to 10Y	ICE Clear Credit
			Bolivarian Republic of Venezuela	USD	up to 10Y	
			Federative Republic of Brazil	USD	up to 10Y	
			United Mexican States	USD	up to 10Y	

Table 7: Single Name South-America Sovereign CDS Class

Question 6 (Single name CDS): Do you consider that the main characteristics of Single Name CDS are adequately captured by the proposed structure? Are there any other variables which you consider as relevant in the context of the clearing obligation?

Question 7 (Single name CDS): Do you have preliminary views on the specific items within those classes which would be the best candidates for the clearing obligation, taking into consideration the overarching aim of reducing systemic risk and the criteria defined in Article 5(4) of EMIR?

2.2. Interest rate derivatives

52. Unlike CDS whose terms and characteristics are relatively standardised and homogeneous across the asset class, interest rate derivatives exhibit a wider range of characteristics, the combination of which would lead to numerous classes if they were considered independently. It is however possible to identify core characteristics by focusing on the economic result that market participants seek to achieve when entering into an interest rate derivative, and by analysing standard taxonomies developed by the industry.

Key characteristics

53. Using this approach, a first level of classification emerges which can be described as the product type, and takes in the notifications one of the following values:

- Fixed-to-float interest rate swaps (IRS), also referred to as plain vanilla IRS
- Float-to-float swaps, also referred to as basis swaps
- Forward Rate Agreements (FRA)
- Overnight Index Swaps (OIS)
- Options

54. Other product types exist such as swaptions, Caps and Floors, but they were not identified at this stage to be CCP-cleared. The differences in the economic purpose of those types of contract are sufficient to justify the existence of a distinct class for each of them. This approach is also consistent with the CFTC's final rule on the Clearing Requirement Determination[3].

55. Within each of the product types, the following additional variables further define the contracts: the floating reference rate, the settlement currency, the currency type (i.e. whether the contracts are based on a single currency or on multiple currencies), the maturity, the existence of embedded optionality and the notional amount type (constant, variable or conditional). A conditional notional amount means that the notional amount of the swap is not a known number or schedule of numbers, but may change based on the occurrence of some future event. This is different than variable amounts, where the notional amount varies according to a predetermined schedule and is therefore foreseeable. The unpredictable nature of conditional notional amounts adds complexity to the pricing and risk management associated to it and as of today, no CCP offer to clear interest rate swaps with conditional notional amounts. The same analysis is also valid for contracts on multiple currencies justifying the need to differentiate within the classes based on those characteristics.

56. Against this background, ESMA finds that interest rate derivatives can be appropriately defined by one primary key, the product type (e.g. fixed-to-float, FRA), and within each type by a combination of the other 6 variables. Those variables are necessary because CCPs only clear some of the combinations which can be derived from them: for example, according to the classes notified to ESMA, some swaps are available for clearing up the 50Y maturity, while others are only available up to the 10Y maturity. The variables are also important because not all combinations will meet the criteria relevant in the context of the clearing obligation. For example, the liquidity of IRS is a function of the underlying index/rate, and also of the maturity.

[3] http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-29211a.pdf

Other Characteristics

57. The interest rate asset class is further defined by other product characteristics, which in general refer to the mechanics of cashflow calculation, such as payment period, daycount fraction convention or rate reset period. These characteristics do not impact the underlying economic benefit to the parties to an OTC derivative interest rate contract. However since participants in the interest rate market very often seek to match the contract to their exact hedging needs, a broad range of variations of such ancillary characteristics is traded and market is able to price contracts with such variations efficiently.

Interest rate derivative classes notified to ESMA

58. The following tables present the notified classes according to the structure discussed above. Therefore, the tables present the universe of OTC **Interest Rate derivative** classes on which there is today a clearing solution, and which may therefore become subject to the clearing obligation if they fulfil the criteria to be assessed by ESMA for this purpose. The assessment of the classes against the criteria defined in EMIR will be conducted after ESMA receives the notifications referred to in EMIR Article 5(1).

Fixed-to-Float Class							
Key Characteristic							
Product Type	Floating Rate Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional type	CCP clearing the class
Fixed-to-float	BA-CDOR	CAD	1D-31Y	Single Currency	No	Constant or Variable	**CME Clearing Europe** **CME Clearing US** **Eurex Clearing** **KDPW_CCP** **LCH.Clearnet Ltd** **Nasdaq OMX**
	BBR-BBSW	AUD	1D-31Y				
	BBR-FRA	NZD	28D-15Y				
	BUBOR	HUF	28D-10Y				
	CIBOR	DKK	28D-31Y				
	EURIBOR	EUR	1D-51Y				
	HIBOR	HKD	28D-10Y				
	JIBAR	ZAR	28D-10Y				
	LIBOR	CHF	1D-31Y				
		EUR	28D-50Y				
		GBP	1D-51Y				
		JPY	1D-50Y				
		USD	1D-51Y				
	NIBOR	NOK	28D-31Y				
	PRIBOR	CZK	28D-10Y				
	SOR	SGD	28D-10Y				
	STIBOR	SEK	28D-31Y				
	WIBOR	PLN	28D-20Y				

Table 8: Fixed-to-float Class

Basis Swap Class							
Key Characteristic							
Product Type	Floating Rate Index	Settlement Currency	Maturity	Currency Type	Optionality	Notional type	CCP clearing the class
Basis swap	BA-CDOR	CAD	28D-30Y	Single Currency	No	Constant or Variable	**CME Clearing US** **Eurex Clearing** **KDPW_CCP** **LCH.Clearnet Ltd**
	BBR-BBSW	AUD	28D-31Y				
	BBR-FRA	NZD	28D-15Y				
	BUBOR	HUF	28D-10Y				
	CIBOR	DKK	28D-10Y				
	EURIBOR	EUR	2D-51Y				
	HIBOR	HKD	28D-10Y				
	JIBAR	ZAR	28D-10Y				
	LIBOR	CHF	2D-30Y				
		EUR	28D-50Y				
		GBP	2D-51Y				
		JPY	28D-40Y				
		USD	2D-51Y				
	NIBOR	NOK	28D-10Y				
	PRIBOR	CZK	28D-10Y				
	SOR	SGD	28D-10Y				
	STIBOR	SEK	28D-30Y				
	WIBOR	PLN	28D-20Y				

Table 9: Basis swap Class

FRA Class							
Key Characteristic							
Product Type	Floating Rate Index	Settlement Currency	Maturity	Currency Type	Optionality	Notional type	CCP clearing the class
FRA	BUBOR	HUF	3D-2Y	Single Currency	No	Constant or Variable	**CME Clearing US** **Eurex Clearing** **KDPW_CCP** **LCH.Clearnet Ltd** **Nasdaq OMX**
	CIBOR	DKK	3D-2Y				
	EURIBOR	EUR	28D-3Y				
	LIBOR	CHF	28D-2Y				
		EUR	3D-3Y				
		GBP	3D-3Y				
		JPY	3D-3Y				
		USD	3D-3Y				
	Mortgage bonds	DKK	30Y				
	Mortgage bonds	SEK	2Y, 5Y				
	NIBOR	NOK	3D-2Y				
	Policy rate	SEK	3M-2Y				
	PRIBOR	CZK	3D-2Y				
	STIBOR	SEK	3D-3Y				
	Treasury bonds	SEK	2Y, 5Y, 10Y				
	WIBOR	PLN	3D-2Y				

Table 10: FRA Class

OIS Class							
Key Characteristic							
Product Type	Floating Rate Index	Settlement Currency	Maturity	Currency Type	Optionality	Notional type	CCP clearing the class
OIS	CORA-OIS	CAD	7D-2Y	Single Currency	No	Constant or Variable	**CME Clearing US** **Eurex Clearing** **KDPW_CCP** **LCH.Clearnet Ltd** **Nasdaq OMX**
	EONIA	EUR	1D-10Y				
	FedFunds	USD	2D-3Y				
	POLONIA	PLN	1D-1Y				
	SONIA	GBP	2D-5Y				
	STIBOR	SEK	1D-10Y				
	TOIS	CHF	2D-3Y				
	TONAR	JPY	5Y				

Table 11: OIS Class

Interest Rate Option Class							
Key Characteristic							
Product Type	Underlying	Settlement Currency	Maturity	Currency Type	Optionality	Notional type	CCP clearing the class
Interest Rate Options	STIBOR	SEK	3M-3Y	Single currency	Yes	Constant	**Nasdaq OMX**
	NIBOR	NOK	3M-2Y				
	Treasury bonds	SEK	2Y, 5Y, 10Y				

Table 12: Interest Rate Option Class

Question 8 (Interest rate derivatives): Do you consider that the main characteristics of the interest rate derivatives are adequately captured by the proposed structure? Are there any other variables which you consider as relevant in the context of the clearing obligation?

Question 9 (Interest rate derivatives): Do you have preliminary views on the specific items within those classes which would be the best candidates for the clearing obligation, taking into consideration the overarching aim of reducing systemic risk and the criteria defined in Article 5(4) of EMIR?

2.3. Equity derivatives

59. The preliminary notifications indicate that OTC Equity derivatives are currently cleared by 4 CCPs in Europe. The bulk of those contracts are plain-vanilla derivatives on baskets, indices or single names. In terms of structure, the Equity asset class exhibits some commonalities with the Credit asset class: for both, the underlying asset of the contracts can either be an index, a single name or an ad-hoc basket. Therefore, the discussion relative to the way to identify single names in a Class+ (see 2.1.2 above) is relevant for this section as well.

60. Based on the preliminary notifications and on industry taxonomies, the following characteristics have been identified as relevant for the purpose of defining an Equity derivative class:

- The product type e.g. Vanilla, Dividend, Volatility
- The product sub-type i.e. basket, index or single name
- The transaction type e.g. option, Contract For Difference (CFD), forward/swap
- The settlement currency, which could be grouped by geographical zones
- The maturity

61. Regarding transaction types, by convention ESMA avoids the reference to "Futures" in the field of OTC derivatives. In accordance with the Q&A on the implementation of EMIR[1], OTC Question 1(b):

(a) derivative contracts traded on MTFs are OTC derivatives in the context of EMIR ;
(b) derivative contracts which are not executed on a regulated market, but which share the same characteristics as exchange traded derivatives, so that once cleared they become fungible with exchange traded derivatives, are to be considered OTC derivatives in the context of EMIR ;

These derivative contracts may be named "futures" by market participants. Other OTC derivative contracts may also be named "futures" even though they are not traded on MTFs or not fungible with exchange traded derivatives.

OTC derivatives contracts named "futures" by market participants but for which execution does not take place on a regulated market will be identified in the register with a transaction type equal to "forward/swap" to avoid any confusing with exchange traded derivatives.

Key characteristics

62. Defining the primary key within this asset class is more challenging. Using for example the first 4 variables as primary keys, and under the assumption that there are 3 product types, 3 product sub-types, 3 transaction types and 3 geographical zones would lead to the creation of 81 classes which is unlikely to be efficient in view of the process under which the Classes+ are to be defined.

63. Therefore, when transforming the characteristics into classes, ESMA believes that one of the key variables should be the product type, because this feature best reflects the economic purpose of the parties entering into an equity OTC derivative transaction. For example, a counterparty wishing to gain exposure on the underlying itself would use a price-driven type of contracts, while a counterparty wishing to gain exposure on some its characteristics such as dividend or volatility would use a parameter-driven type of contracts. Therefore, ESMA believes that a contract on e.g. Dividend and another one on e.g. Volatility should belong to separate classes.

[1] available at http://www.esma.europa.eu/page/European-Market-Infrastructure-Regulation-EMIR

64. The product sub-type (i.e. index, equity or basket) should also be a key characteristic for the Equity classes, to reflect the mention to the "type of underlying asset" prescribed in the definition of the Class of derivative of EMIR Article 2(6). Indeed, Equity derivative contracts based on Indices may be described in a Class+ by simply providing the list of indices, while for single name instruments a different approach would be needed as discussed below.

Discussion on the definition of Equity Single Name Classes

65. Like for Single Name CDS, the issue here is to define the best methodology to describe Equity derivatives classes on Single Names.

66. One option **[Option A]** would be to identify in the Class+ the set of single names subject to the clearing obligation, for example using an entity identifier. Given that single name entities are subject to events such as mergers, acquisitions or changes of name, the maintenance of an accurate list would be challenging. Moreover, the resilience in time of volume and liquidity to support the clearing obligation may be difficult to evidence.

67. The feasibility of this approach is linked to the process described in 5 below. From a practical point of view, it would not be possible to issue a new RTS every time a company is subject to a corporate event. However the Public Register could be a more flexible tool to reflect it.

68. Another option **[Option B]** would define the single name entities using a reference to more stable variables, such as the membership to a specific index. But unlike CDS on which the universe of index is relatively narrow, there exists numerous Equity indices, and one entity can potentially belong to many different indices, therefore the choice of the relevant reference index would be more complex. In addition, the criteria used by index providers to modify the composition of indices are unlikely to mirror the ones used by ESMA in the context of the clearing obligation, the market capitalisation being in most cases the first criteria used to include stocks in indices.

69. Another option **[Option C]** would be to introduce a cross-reference to the list of "liquid shares" as defined in MiFID, for the underlying of the OTC Equity derivatives. This list has the advantage of being stable as it is updated on a yearly basis, and to be derived from pre-existing criteria such as the average daily number of transactions, the average daily turnover, minimum free float and a minimum trading frequency (daily)[4].

70. Finally, another option **[Option D]** would be a criteria-based approach, whereby ESMA would use a list of criteria that the classes should fulfil to fall within the scope of mandatory clearing with similar pros and cons as the ones discussed in paragraphs 38 and 39.

Question 10 (Equity derivatives): Please indicate your preference between the options presented. Under Option D, which criteria do you believe are relevant and how should they be calibrated?

4 The criteria for the determination of the list of liquid shares can be found in Article 22 of COMMISSION REGULATION (EC) No 1287/2006 available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:241:0001:0025:EN:PDF

Discussion on the Currency/Geographical zone for Single Name Equity derivative contracts

71. The problematic is the same as for the Single Name Credit derivative contracts, and the same Options as in 43 above are presented below.

72. The settlement currency (**Option A**) could be used as the primary key instead of the geographical zone (**Option B**). In this case there would be one class per currency, including all the single name contracts denominated in that currency. It may be easier for market participant to identify the contracts by referring to the currency of denomination rather than by geographical zones. So far the notifications include Single Name contracts settled in 7 different currencies attached to 2 geographical zones (Europe and North America), therefore the differences between Option A and Option B at this stage would be limited, but there may be a need to create new classes in case CCPs start clearing Single Name contracts in other currencies.

73. Another option would be to group all the single name entities in the same class (**Option C**) which would limit the number of classes to just one, but with less flexibility. It would for example not be possible to define different additional characteristics for contracts belonging to different geographical markets.

Question 11 (Equity derivatives): Please indicate your preference between the options presented.

In relation to Option B, which geographical zones would you define, i.e. how could the currencies be grouped in geographical zones? What is the standard market practise in this respect?

Equity derivative classes notified to ESMA

74. Using Option B for the geographical zones and the key characteristics presented above, the Equity classes notified to ESMA would be fully reflected by the eight following classes:

- Product type = Vanilla
  - Product sub-type = Single Name
    - Geographical Zone = Europe (Class 1)
    - Geographical Zone = North-America (Class 2)
  - Product sub-type = Index
    - Geographical Zone = Europe (Class 3)
    - Geographical Zone =[Other](Class 4)
    - Geographical Zone = North-America (Class 5)
  - Product sub-type = Basket
    - Geographical Zone = Europe (Class 6)
- Product type = Dividend
  - Product sub-type = Single Name
    - Geographical Zone = North-America (Class 7)
  - Product sub-type = Index
    - Geographical Zone = Europe (Class 8)

The following tables present the notified classes according to the structure discussed above. Therefore, the tables present the universe of OTC **Equity derivatives** classes on which there is today a clearing solution, and which may therefore become subject to the clearing obligation if they fulfil the criteria to be

assessed by ESMA for this purpose. The assessment of the classes against the criteria defined in EMIR will be conducted after ESMA receives the notifications referred to in EMIR Article 5(1).

		Key Characteristics				Additional Characteristics					
Equity Class number	Equity Class Name	Product Type	Product Sub-Type	Geographical Zone	Settlement Currency	Underlying	Maturity	CFD	Forward/ Swap	Option	CCP clearing the class
1	Vanilla Single name Europe Class	Vanilla	Single name	Europe	CHF	[list of entities]	[not specified]	yes			Holland Clearing House LCH.Clearnet Ltd MEFF Nasdaq OMX
					DKK	[list of entities]	1D-2Y		yes	yes	
					EUR	[list of entities]	1D-5Y	yes	yes	yes	
					GBP	[list of entities]	[not specified]	yes			
					NOK	[list of entities]	1D-2Y		yes	yes	
					SEK	[list of entities]	1D-2Y		yes	yes	
2	Vanilla Single name North-America Class	Vanilla	Single name	North-America	USD	[list of entities]	[not specified]	yes	yes	yes	LCH.Clearnet Ltd
3	Vanilla Index Europe Class	Vanilla	Index	Europe	CHF	[]	[not specified]	yes			Holland Clearing House LCH.Clearnet Ltd MEFF Nasdaq OMX
					DKK	OMXC20CAP	1D-2Y		yes	yes	
					EUR	AEX	[not specified]	yes		yes	
						CAC 40	[not specified]	yes			
						DAX 30	[not specified]	yes			
						DJ Eurostoxx	[not specified]	yes			
						IBEX	1D-5Y		yes	yes	
						Nordic VINX30	1D-2Y		yes	yes	
					GBP	FTSE 100	1D-2Y	yes	yes	yes	
					NOK	OMXO20	1D-2Y		yes	yes	
						OBX	1D-2Y		yes	yes	
					SEK	OMXS30	1D-2Y		yes	yes	
4	Vanilla Index Other Class	Vanilla	Index	Other	USD	FTSE Russia	1M-1Y		yes	yes	LCH.Clearnet Ltd
5	Vanilla Index North-America Class	Vanilla	Index	North-America	USD	S&P 500	[not specified]	yes			LCH.Clearnet Ltd
					USD	Nasdaq 100	[not specified]	yes			
					USD	Dow Jones Industrial	[not specified]	yes			
6	Vanilla Index North-America Class	Vanilla	Basket	Europe	DKK	not relevant	1D-2Y		yes	yes	Nasdaq OMX
					EUR		1D-2Y				
					NOK		1D-2Y				
					SEK		1D-2Y				
7	Dividend Single name North-America Class	Dividend	Single name	North-America	USD	[list of entities]	Out to 2Y		yes		LCH.Clearnet Ltd
8	Dividend Index Europe Class	Dividend	Index	Europe	EUR	IBEX Dividend	1D-5Y		yes	yes	MEFF

Table 13: Equity OTC derivative Classes

Question 12 (Equity derivatives): Do you consider that the main characteristics of Equity OTC derivatives are adequately captured by the proposed structure? Are there any other variables which you consider as relevant in the context of the clearing obligation?

Question 13 (Equity derivatives): Do you have preliminary views on the specific items within those classes which would be the best candidates for the clearing obligation, taking into consideration the overarching aim of reducing systemic risk and the criteria defined in Article 5(4) of EMIR?

2.4. Foreign exchange derivatives

75. Only one European CCP currently clears OTC FX derivatives, although other European CCPs notified their intention to start offering clearing services in this asset class. In addition, a US-based CCP also offers clearing services of OTC FX products in Europe.

Key characteristics

76. To define the structure of FX derivatives, ESMA considers separating the contracts that have different economic purposes and are clearly identified by market participants through industry taxonomies. For example, non-deliverable forwards (NDF), FX forwards, non-deliverable options (NDO), vanilla options and exotic options would belong to different classes based on structural differences between those types of products. The geographical zone of the settlement currency could also be used as a primary key.

77. To date, the OTC FX derivative products notified to ESMA are non-deliverable forwards (NDF) on emerging market currencies, and Cash-Settled Forward (CSF).

78. The following characteristics would serve to further specify the classes of OTC FX derivatives in the context of the clearing obligation:

- The maturity
- The notional currency
- The settlement currency
- The settlement type (cash or physical)

FX derivative classes notified to ESMA

The following tables present the notified classes according to the structure discussed above. Therefore, the tables present the universe of OTC **FX derivatives** classes on which there is today a clearing solution, and which may therefore become subject to the clearing obligation if they fulfil the criteria to be assessed by ESMA for this purpose. The assessment of the classes against the criteria defined in EMIR will be conducted after ESMA receives the notifications referred to in EMIR Article 5(1).

Non Deliverable Forward Class						
Key characteristics						
Product Type	**Currency pair**	**Notional Currency**	**Settlement Currency**	**Maturity**	**Settlement Type**	**CCP clearing the class**
NDF	USDBRL	Brazilian Real	US Dollar	3D-2Y	Cash	**LCH.Clearnet Ltd** **CME Clearing US**
	USDRUB	Russian Ruble	US Dollar	3D-2Y		
	USDINR	Indian Rupee	US Dollar	3D-2Y		
	USDCLP	Chilean Peso	US Dollar	3D-2Y		
	USDCNY	Chinese Yuan	US Dollar	3D-2Y		
	USDKRW	Korean Won	US Dollar	3D-2Y		
	USDCOP	Colombian Peso	US Dollar	3D-2Y		
	USDIDR	Indonesian Rupee	US Dollar	3D-2Y		
	USDMYR	Malaysian Ringgit	US Dollar	3D-2Y		
	USDPHP	Philippin Peso	US Dollar	3D-2Y		
	USDTWD	Taiwan Dollar	US Dollar	3D-2Y		
	USDPEN	Peruvian New Sol	US Dollar	3D-2Y		

Table 14: Non Deliverable Forward Class

Cash Settled Forward Class						
Key characteristics						
Product Type	**Currency pair**	**Notional Currency**	**Settlement Currency**	**Maturity**	**Settlement Type**	**CCP clearing the class**
CSF	EURAUD	Euro	Euro	3D-2Y	Cash	**CME Clearing US**
	EURCHF	Euro	Euro	3D-2Y		
	EURGBP	Euro	Pound Sterling	3D-2Y		
	USDCAD	US Dollar	Canadian Dollar	3D-2Y		
	AUDUSD	Australian Dollar	US Dollar	3D-2Y		
	EURUSD	Euro	US Dollar	3D-2Y		
	GBPUSD	Pound Sterling	US Dollar	3D-2Y		
	NZDUSD	New Zealand Dollar	US Dollar	3D-2Y		
	USDCHF	Swiss Franc	US Dollar	3D-2Y		
	USDDKK	Danish Krone	US Dollar	3D-2Y		
	USDNOK	Norwegian Krone	US Dollar	3D-2Y		
	USDSEK	Swedish Krone	US Dollar	3D-2Y		
	USDZAR	South African Rand	US Dollar	3D-2Y		
	USDCZK	Czech Koruna	US Dollar	3D-2Y		
	USDHKD	Hong-Kong Dollar	US Dollar	3D-2Y		
	USDHUF	Hungarian Florint	US Dollar	3D-2Y		
	USDILS	Israeli Shekel	US Dollar	3D-2Y		
	USDMXN	Mexican Peso	US Dollar	3D-2Y		
	USDPLN	Polish Zloty	US Dollar	3D-2Y		
	USDSGD	Singapore Dollar	US Dollar	3D-2Y		
	USDTHB	Thai Baht	US Dollar	3D-2Y		
	USDTRY	Turkish Lira	US Dollar	3D-2Y		
	AUDJPY	Australian Dollar	Japanese Yen	3D-2Y		
	CADJPY	Canadian Dollar	Japanese Yen	3D-2Y		
	EURJPY	Euro	Japanese Yen	3D-2Y		
	USDJPY	US Dollar	Japanese Yen	3D-2Y		

Table 15: Cash Settled Forward Class

Question 14 (FX derivatives): Do you consider that the main characteristics of the FX derivatives are adequately captured by the proposed structure? Are there any other variables which you consider as relevant in the context of the clearing obligation?

Question 15 (FX derivatives): Do you have preliminary views on the specific items of the presented class which would be the best candidates for the clearing obligation, in view of the criteria to be assessed by ESMA, taking into consideration the overarching aim of reducing systemic risk and the criteria defined in Article 5(4) of EMIR?

2.5. Commodity derivatives

79. According to the preliminary notifications, Commodity OTC derivatives are cleared by 6 European CCPs and 1 US CCP. The type of products is rather broad, with products available for clearing in each of the 6 first classification level, or "Base Product" as defined by ISDA, i.e. Metals, Energy, Index, Agriculture, Environmental and Freight.

80. Based on a high level analysis, it appears that the Commodity classes in the context of the CO could mainly be characterised by the underlying asset, and the level of detail by which this underlying asset is described. The main challenge when defining the structure of the Commodity classes for the CO will therefore come down to identifying the appropriate level of granularity to describe the underlying asset, and to establish whether it would be possible to depart from a product by product definition.

81. It should be noted that a product-based approach would not necessarily mean that a single class corresponds to a single underlying asset. Indeed several underlying assets could be grouped in the same class, provided that they share common and essential characteristics as prescribed by the definition of a "class of OTC derivatives" in the Regulation.

Key characteristics

82. ESMA's initial view is that a two-level classification of Commodity derivatives would serve as the primary key to define a class (e.g. Level 1: Energy, Level 2: Electricity). This corresponds to the first two levels of the ISDA taxonomy i.e. Base product and Sub-product. According to this two-level classification, there are 17 combinations and therefore 17 potential classes based on the preliminary notifications received by ESMA. Within each of these classes, the underlying asset could be further specified either by adding a third level to the classification, or by adopting a product-based approach.

Other Characteristics

83. The other characteristics identified in this asset class are the settlement currency, the transaction type (e.g. forward/swap, option), the settlement type (i.e. cash or physical) and the maturity of the contracts, either because some combinations are not available for clearing, or because of significance differences in liquidity or level of standardisation justifying to include e.g. specific maturities in the Class+ while excluding others.

84. Similarly to paragraph 61 above in the section on Equity derivatives, regarding transaction types, by convention ESMA avoids the reference to "Futures" in the field of OTC derivatives. In accordance with the Q&A on the implementation of EMIR[1], OTC Question 1(b):

(a) derivative contracts traded on MTFs are OTC derivatives in the context of EMIR
(b) derivative contracts which are not executed on a regulated market, but which share the same characteristics as exchange traded derivatives, so that once cleared they become fungible with exchange traded derivatives, are to be considered OTC derivatives in the context of EMIR

These derivative contracts may be named "futures" by market participants. Other OTC derivative contracts may also be named "futures" even though they are not traded on MTFs or not fungible with exchange traded derivatives.

[1] available at http://www.esma.europa.eu/page/European-Market-Infrastructure-Regulation-EMIR

OTC derivatives contracts named “futures” by market participants but for which execution does not take place on a regulated market will be identified in the register with a transaction type equal to “forward/swap” to avoid any confusing with exchange traded derivatives.

Commodity classes notified to ESMA

The following tables present the notified classes according to the structure discussed above. Therefore, the tables present the universe of OTC **Commodity derivatives** classes on which there is today a clearing solution, and which may therefore become subject to the clearing obligation if they fulfil the criteria to be assessed by ESMA for this purpose. The assessment of the classes against the criteria defined in EMIR will be conducted after ESMA receives the notifications referred to in EMIR Article 5(1).

		Key characteristics		Additional characteristics				
Commodity Class number	**Commodity Class Name**	**Product Type**	**Product Sub Type**	**Underlying Asset**	**Settlement Currency**	**Settlement Type**	**Transaction Type**	**CCP clearing the class**
1	Agriculture - Biofuel*	Agriculture	Biofuel*	[to be further specified]	USD	Cash	Forward/Swap	CME Clearing Europe
2	Agriculture - Fertilizer	Agriculture	Fertilizer	[to be further specified]	USD	Cash	Forward/Swap	CME Clearing Europe CME Clearing US LCH.Clearnet Ltd
3	Agriculture - Grains Oil Seeds	Agriculture	Grains Oil Seeds	[to be further specified]	USD	Cash	Forward/Swap	CME Clearing Europe CME Clearing US
4	Energy - Biofuel*	Energy	Biofuel*	[to be further specified]	USD	Cash	Forward/Swap	CME Clearing Europe
5	Energy - Coal	Energy	Coal	[to be further specified]	USD	Cash	Forward/Swap, Option	LCH.Clearnet Ltd
6	Energy - Electricity	Energy	Electricity	[to be further specified]	EUR, GBP	Cash, Physical	Forward/Swap, Option, CFD	MEFF Nasdaq OMX OMI Clear
7	Energy - Ferrous Metal	Energy	Ferrous Metal	[to be further specified]	USD	Cash	Forward/Swap, Option	CME Clearing Europe
8	Energy - Inter Energy	Energy	Inter Energy	[to be further specified]	USD	Cash	Forward/Swap	CME Clearing Europe
9	Energy - Nat Gas	Energy	Nat Gas	[to be further specified]	EUR, GBP, USD	Cash, Physical	Forward/Swap, Option	CME Clearing Europe Nasdaq OMX ECC
10	Energy - Oil	Energy	Oil	[to be further specified]	EUR, USD	Cash	Forward/Swap, Option, CFD	CME Clearing Europe LCH.Clearnet Ltd
11	Energy - Petrochemicals	Energy	Petrochemicals	[to be further specified]	USD	Cash	Forward/Swap	CME Clearing Europe
12	Energy - Refined Products	Energy	Refined Products	[to be further specified]	EUR, USD	Cash	Forward/Swap, Option	CME Clearing Europe
13	Environmental - Emissions	Environmental	Emissions	[to be further specified]	EUR	Cash, Physical	Forward/Swap, Option	Nasdaq OMX
14	Freight	Freight	Freight	[to be further specified]	USD	Cash	Forward/Swap, Option	CME Clearing Europe LCH.Clearnet Ltd
15	Index	Index	Index	[to be further specified]	USD	Cash	Forward/Swap	CME Clearing US
16	Metals - Non Precious	Metals	Non Precious	[to be further specified]	USD	Cash	Forward/Swap	CME Clearing Europe LCH.Clearnet Ltd
17	Metals - Precious	Metals	Precious	[to be further specified]	USD	Cash, Physical	Forward/Swap, Option	CME Clearing Europe CME Clearing US LCH.Clearnet Ltd

(*) those two classes encompass different products: the underlying notified within the Energy type are European RME Biodiesel fob Rotterdam and European FAME 0 Biodiesel fob Rotterdam. The underlying notified within the Agriculture Type is Rapeseed Oil.

Table 16: Commodity derivative Classes

Question 16 (Commodity derivatives): What is in your view the best approach to specify the underlying assets within each OTC Commodity class?

Question 17 (Commodity derivatives): Do you consider that the main characteristics of the Commodity derivatives are adequately captured by the proposed structure? Are there any other variables which you consider as relevant in the context of the clearing obligation?

Question 18 (Commodity derivatives): Do you have preliminary views on the specific items within those classes which would be the best candidates for the clearing obligation, taking into consideration the overarching aim of reducing systemic risk and the criteria defined in Article 5(4) of EMIR?

3. Preliminary analysis of the readiness of asset classes vis-à-vis the clearing obligation

85. EMIR foresees a number of criteria of different nature, which ESMA may take into account when drafting the RTS related to the clearing obligation. Specifically, in accordance with Article 5(4), in preparing the draft RTS, ESMA may take into consideration the interconnectedness between counterparties using the relevant classes of OTC derivatives, the anticipated impact on the levels of counterparty credit risk between counterparties as well as the impact on competition across the Union.

86. In addition to this, and with the overarching aim of reducing systemic risk, the draft RTS for the part referred to in Article 5(2)**(a)**[5] i.e. the specification of the **classes** of OTC derivatives that should be subject to the CO 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.

87. Those criteria are further specified in Article 7 of the RTS on the CO.

88. The full assessment of the criteria will only be performed by ESMA after reception of the notifications[6] referred to in EMIR Article 5, and the asset classes captured by the first CO will only be known in the course of this procedure. However, ESMA believes that the present Discussion Paper is a good opportunity to analyse at an early stage and at a relatively high level the various asset classes of OTC derivatives, and their hypothetical suitability for the clearing obligation based on a subset of those criteria and more specifically:

- the volume and liquidity
- the level of standardisation
- the availability of data
- the experience in clearing
- the existence of a clearing obligation in other jurisdictions

Regarding the last point, ESMA will duly consider the international agreement reached by the members of the OTC Derivatives Regulators Group (ODRG) and published on 4 December 2012[7], stating among other things that the signatories agree to consult with each other prior to making any final determinations regarding which derivatives products will be subject to a mandatory clearing requirement. The signatories also commit that once one of the authorities decides that a certain product or class of products should be subject to a clearing requirement, then each of them will consider whether the same product should be subject to the same requirement in their jurisdictions, having regard to the characteristics of our domestic markets and in accordance with the applicable determination processes in our respective legal regimes.

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[5] The draft RTS for the part referred to in EMIR Article 5(2)**(b)** i.e. the definition of the **dates** from which the CO takes effect, including any phase in and the categories of counterparties to which the obligation applies shall take into consideration additional criteria defined in EMIR Article 5(5) and further discussed in the next Section.

[6] The details to be included in those notifications are further specified in Article 6 of the RTS on the CO.

[7] Available at http://www.esma.europa.eu/system/files/2012-802.pdf

3.1. Overview of the OTC derivative markets

89. According to the most recent BIS statistics of OTC derivatives market activity[8], the total notional amounts outstanding in OTC derivatives were $633 trillion at end-December 2012. This activity is not uniform between asset classes as can be seen in Table 17 below. The OTC derivative market as measured by notional amounts outstanding is significantly driven by the interest rate market, which accounts for more than 80% of the total. In comparison the Commodity and Equity derivatives market share is close to or below 1%, and notional amounts below $10 trillion, as presented in Table 17.

90. These numbers, although given at a high-level, suggest some primacies per asset class in view of the overall objective of the clearing obligation which is the reduction of systemic risk and counterparty credit risk. Given the substantial portion of the OTC derivatives market represented by Interest rate derivatives, this asset class should be given a high priority in the context of the clearing obligation. A similar conclusion would be more difficult to draw for the other asset classes, although based on a pure quantitative assessment of the market size, FX derivatives and CDS would appear to be the next best candidates. It should however be stressed that the size of the market is only one of the criteria to be considered by ESMA in the context of the clearing obligation, and that the availability of sufficiently granular data within the asset class would be crucial to perform the assessment against the clearing obligation, as discussed in more detail below.

Asset class	Notional amounts outstanding ($m)	% of Total
Interest rate derivatives	489 702 595	82,9%
Credit default swaps	25 068 701	4,2%
FX derivatives	67 358 399	11,4%
Commodity derivatives	2 587 117	0,4%
Equity derivatives	6 251 303	1,1%
TOTAL	**590 968 115**	**100,0%**

Table 17: Notional amounts outstanding in OTC derivatives (source: BIS, December 2012)

3.2. Availability of OTC derivative markets data

91. When defining the classes to be subject to the clearing obligation ESMA shall take into consideration the volume and liquidity of the classes. The main challenge identified in relation to this criteria comes down to the existence of sufficiently granular data to make the assessment, and in particular the availability of data allowing for a comparison between cleared and non-cleared volumes. This is essential to measure the impact of a potential clearing obligation on a given class.

92. In terms of data sources for cleared volumes, ESMA will be able to analyse the information provided by CCPs through their NCA, in the notifications referred to in EMIR Article 5(1). However, collecting data for the market as a whole poses a bigger challenge. One of the main objectives of the reporting obligation to Trade Repositories under EMIR is precisely to increase transparency in this relatively opaque market.

[8] Available at http://www.bis.org/publ/otc_hy1305.htm

Once established, TRs will certainly constitute the primary source of information for ESMA in the context of the clearing obligation.

93. However, considering the timing described in section 1.2 (Indicative timeline), it is likely that the first assessment ESMA will conduct in the context of the CO will be made before or shortly after the reporting obligation is in place, justifying the need for ESMA to rely on other sources of information, such as already operating TRs. A preliminary analysis of the data currently available shows again important differences between asset classes, with the existence of granular data in the Credit and Interest rate derivative asset classes, versus very few data in the three other asset classes.

94. For example, the DTCC database provides Interest rate derivative figures in the form of historical time series of Notional amounts and trade counts with a breakdown per type of instrument, currency, term year and customer type. The existence of such breakdown is essential to conduct an assessment on a class by class basis. Similarly, the DTCC database provides a breakdown of CDS data per type of instrument, per index, series and maturity (for Index CDS) and per single name entity for the top 1,000 reference entities. In addition to this, a comparison between the amounts reported to DTCC and the amounts covered by the BIS semi-annual survey indicates that 97% of the Interest rate derivatives and 99% of the Credit derivative would be reported to DTCC, suggesting that this dataset exhibits sufficient statistical significance to serve as a source of information in the context of the clearing obligation.

95. Pending the entry into force of the reporting obligation to TRs under EMIR, it is unclear at this stage whether equivalent dataset would be available in the three other asset classes, i.e. Equity, Commodities and Foreign exchange OTC derivatives, at the moment ESMA needs to make the assessment of the clearing obligation.

3.3. Cleared volumes of OTC derivatives

96. The most recent FSB report[9] indicates that around 40-50% of notional outstanding amounts in interest rate derivatives were centrally cleared at the end of 2012, while the range was 35-40% in 2011.This report also indicates that for Credit derivatives, the proportion of cleared volumes is more stable through time, at a level of 10-12%.

97. Deriving similar numbers for the other asset classes is not a simple task, because data on the market as a whole is difficult to obtain and because the aggregation of data on cleared volumes is not straightforward. For example, in the notifications received by ESMA for Commodity derivatives, data is given at contract level and the way in which CCPs measure the clearing activity is not standardised.

98. As a conclusion it appears that the interest rate and credit derivative markets exhibit significant volumes of activity cleared on a voluntary basis, underlining the experience of CCPs and market participants in the process of clearing products belonging to those asset classes. Although the clearing activity in the three other asset classes is also expanding, as suggested by the extension of the clearing services offered by CCPs, the above paragraphs suggest that the progress towards central clearing has been most substantial for the interest rate and credit derivatives.

[9] "OTC derivatives Market Reforms, Fifth Progress Report on Implementation", FSB, 15 April 2013, available at http://www.financialstabilityboard.org/publications/r_130415.pdf

3.4. Standardisation of the OTC derivative markets

99. During the recent years, the OTC derivatives market participants have accomplished significant progress in relation to the standardisation of OTC derivatives. Led by authorities participating in the OTC Derivative Supervisors Group (ODSG), these large market participants have set and met a number of objectives with regards to electronic trade processing, such as trade matching and confirmation.

100. The most recent FSB report on OTC Derivatives Market Reform[10] shows a number of statistics useful to measure the level of standardisation of each asset class, and also to measure to progress of the level of standardisation with a comparison between 2010 and 2012.

101. The report indicates that the differences in the level of standardisation between asset classes are relatively wide, with a gap between some highly standardised asset classes and the others (see Figure 1). Using as a criteria the proportion of electronically processed transactions, the asset classes identified as highly standardised are the interest rate derivatives, with 90% of transactions electronically processed in 2012, and almost 100% of them eligible to electronic processing; the credit derivatives with close to 100% of the transactions electronically processed, which was already the case in 2010; the energy derivatives and metal derivatives on which close to 95% of the transactions are eligible to electronic processing, although the actual number of transactions electronically processed is lower than in the interest rate asset class; the FX NDF, with 98% of transactions eligible to electronic processing and a progress from 75% in 2010 to 92% in 2012 of transactions electronically processed; the FX Vanilla NDO on which the level of electronically processed transactions has sharply risen from 47% in 2010 to 72% in 2012, and with close to 90% of transactions eligible to electronic processing.

102. On the less standardised side stand the Equity derivatives, for which both the number of electronic eligibility and electronic processing are below 40% and there has been no progress in those rates between 2010 and 2012. Regarding the two other categories of the FSB report (other commodities and FX – Simple Exotic) there is an important difference between the level of electronic eligibility and the level of electronic processing, suggesting a meaningful room for improvements.

103. Even though the above results are presented with a level of granularity which is not consistent with the classes of OTC derivatives in the context of the clearing obligation under EMIR, they allow for a useful high-level evaluation of the level of standardisation of the OTC derivative markets. They suggest that at least 6 segments of the OTC market, in 4 different asset classes, i.e. the Interest rate and Credit asset class, the Energy and Metal segments of the Commodity asset class, and the NDF and NDO segments of the FX asset class, exhibit high level of electronic processing pointing to high level of standardisation. The numbers indicate that the Equity derivative market is significantly lagging in terms of electronic processing, which could be explained by the highly bespoke nature of many of these transactions.

[10] "OTC derivatives Market Reforms, Fifth Progress Report on Implementation", FSB, 15 April 2013, available at http://www.financialstabilityboard.org/publications/r_130415.pdf

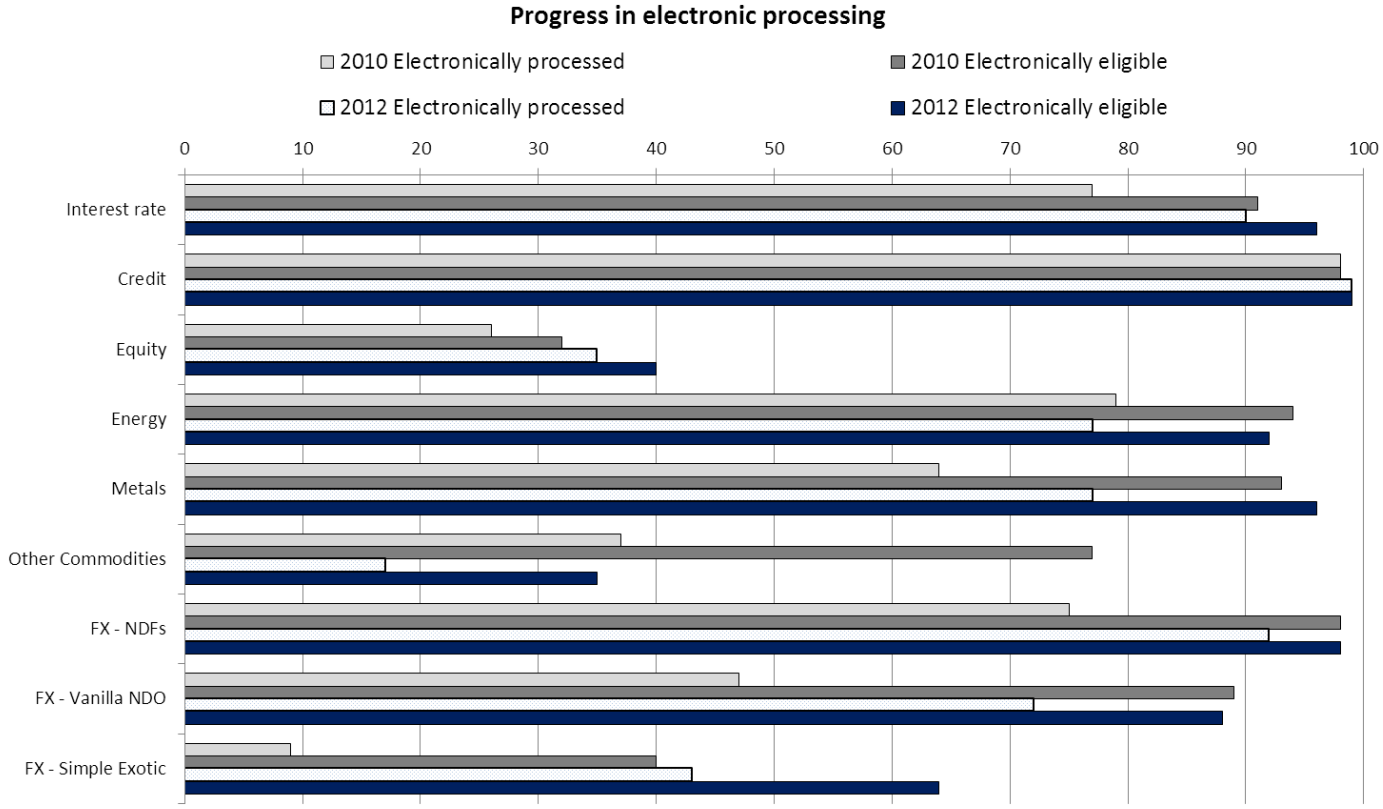

Figure 1: Progress in electronic processing per OTC derivative types (source: FSB)

104. It should be noted that the availability of electronic processing is not the only variable to assess the level of standardisation of a class of derivatives, but it has the advantage of being measurable and therefore comparable from one asset class to the other. In the notifications received by ESMA, other elements were provided to demonstrate the level of standardisation of the contractual terms and operational processes of the classes of OTC derivatives, such as the existence of master agreements, product definitions and short form confirmations. The complete set of elements relevant to assess the level of standardisation of the classes will be considered by ESMA when analysing the notifications to be sent under Article 5 of the Regulation, after the procedure of authorisation or recognition of CCPs.

105. As a conclusion to Section 3, if the classes were to be sorted out based on the criteria described above, the interest rate and CDS asset classes would appear at this stage to be the best candidates in many aspects: they are highly standardised and already cleared in significant volumes. They are more transparent in terms of publicly available data, facilitating the analysis of the volume, the liquidity and the impact of a potential clearing obligation. In addition the interest rate asset class by itself represents a significant portion of the global OTC derivative market, therefore making it subject to clearing obligation would be a crucial step in mitigation of global systemic risk. Finally, some classes of IRS and Index CDS are already subject to mandatory clearing in the US and Japan. Given the global nature of the OTC derivative markets, the international dimension of the clearing obligation is important for market participants.

Question 19 (readiness of the classes): Do you agree with this analysis?

4. Determination of the phase in, and the categories of counterparties to which the CO would apply

106. Article 5(2) of EMIR foresees that "*within six months of receiving notification in accordance with paragraph 1 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).*"

The following section focuses on point (b) and (c).

4.1. Dates, phase in, categories of counterparties

107. The timing of the CO and the possibility to phase in will be of essence for all stakeholders and more importantly for CCPs and market participants which are not yet involved directly or indirectly in the clearing of the relevant Class+.

108. The date from which the CO takes effect will depend on the state of development of the market of the relevant OTC derivatives. EMIR Article 5(5) comprehend this notion by stating elements that should be taken into consideration by ESMA to define the date for the CO:

(a) the expected volume of the relevant class of OTC derivatives;

(b) whether more than one CCP already clear the same class of OTC derivatives;

(c) the ability of the relevant CCPs to handle the expected volume and to manage the risk arising from the clearing of the relevant class of OTC derivatives;

(d) the type and number of counterparties active, and expected to be active within the market for the relevant class of OTC derivatives;

(e) the period of time a counterparty subject to the clearing obligation needs in order to put in place arrangements to clear its OTC derivative contracts through a CCP;

(f) the risk management and the legal and operational capacity of the range of counterparties that are active in the market for the relevant class of OTC derivatives and that would be captured by the clearing obligation pursuant to Article 4(1)."

Number of CCPs clearing the same Class+ (EMIR Article 5(5)(b))

109. Article 5(2) contemplates the "bottom-up" approach so by definition if a CO exists for a Class+ that means that there is at least one CCP authorised or recognised to clear the corresponding OTC derivatives.

110. If there is more than one CCP clearing the class of OTC derivatives, one could consider that competition is established and counterparties having choice over their CCP, it will be easier, hence quicker, to be allowed access to clearing, directly or indirectly. A longer phase in would therefore seem appropriate in cases where only one CCP is clearing the Class+.

111. If there is only one CCP clearing the Class+, there is no competition and it can be anticipated that this monopoly could impede/slow down access to clearing not only due to potential commercial reluctance to accept all clients (at reasonable commercial conditions) but also for obvious scalability (IT, risk, operational etc…) and workload reasons.

112. On the one hand, giving more time for other CCPs to enter the market (or for the current CCP to integrate all requests and corresponding transaction volumes) would seem reasonable but, on the other hand, it is likely that the incumbent CCP has a competitive advantage which would make it difficult for the outsider CCPs to overcome whatever the granted delay.

113. Furthermore, setting up new clearing services, even if the outsider CCP does not clear the asset class which the Class+ is encompassed in, would probably require many months if not years. The legal, regulatory, financial, technical, risk, operational and business requirements need to be defined, validated, implemented, and tested as the case may be, with all stakeholders. There could even be specific circumstances/events that would completely prevent a CCP from upgrading its services within a reasonable timeframe thus leading to the conclusion that providing delay may not be a suitable option.

114. The need for time to bring competition should be balanced with the fact that ESMA cannot delay too much the CO which is one of EMIR's pillars to reduce systemic risk. Thus giving extra time would only seem relevant in case there are other CCPs which clears the same asset class or similar Classes+ and which are likely to upgrade their services quickly to the new Class+.

115. Furthermore, given that the assumption is that CCPs are authorised based, amongst others, on scalability and highly stressed and concentrated environment tests, the risk of concentration of the volumes within one CCP should not thus be an argument to postpone too much the CO. The CO will allow the counterparty risk to be managed by a fully authorised and supervised CCP, rather than by the dealers.

Question 20 (dates, phase in): What would you consider to be the shortest delay to impose a clearing obligation to a class of OTC derivatives when there are several CCPs available? And when there is only one CCP available?

Please specify in your answer whether the cause of delay is due to operational issues (e.g. time for CCP/counterparties to be ready for the CO) and/or to market issues (e.g. time for a CCP to add a new product to its offering).

Question 21 (dates, phase in): What would you consider to be a reasonable delay to allow CCPs which clear the same asset class or a similar Class+ to clear a new Class+?

Criteria related to the impact of the CO on CCPs (EMIR Article 5(5)(a) and (c))

116. Assuming that there are one or more CCPs which have been authorised to clear a Class+, the next question relates to their capacity to absorb the new trade flow. In case of multiple CCPs, a first hurdle will be to define how the market shares will spread between CCPs (if there are several), to then try and assess their respective ability to handle it.

117. In evaluating the timing of the CO in view of the capacity of a CCP to absorb the expected increase of cleared volumes due to the CO, it should be noted that the authorisation granted by the National Competent Authority under EMIR Article 14 or 15, would already assess the capability of the CCP to clear the specific derivatives for which a CO is considered appropriate. Where this question has already been considered by national competent authorities as part of the authorisation process, ESMA may make use of any information provided by the relevant national authorities as part of their assessment.

118. Furthermore qualitative and quantitative elements will be included in the notification foreseen under EMIR Article 5(1) in relation to the ability of the CCP to handle new volumes resulting from a potential CO. These elements are further specified in the RTS on the OTC, Article 6(2)(a) and (b): For the purpose of assessing the date or dates from which the clearing obligation takes effect, including any phasing-in and the categories of counterparties to which the clearing obligation applies, the notification for the purpose of the clearing obligation shall include:

(a) data relevant for assessing the expected volume of the class of OTC derivative contracts if it becomes subject to the clearing obligation

(b) evidence of the ability of the CCP to handle the expected volume of the class of OTC derivative contracts if it becomes subject to the clearing obligation and to manage the risk arising from the clearing of the relevant class of OTC derivative contracts, including through client or indirect client clearing arrangements

119. Scalability, hence the possibility to take-up new volumes could entail some obvious technical constraints but also other ones (e.g. financial ones if the volume to integrate entails a raise in capital requirements for the CCP, legal ones if new counterparties to integrate come from a new jurisdiction, human resources ones if the corresponding workload is significant).

Question 22 (dates, phase in): What should be the assumption regarding market share which the CCP would have to be able to assume? Should it be requested that each CCP be able to handle the whole volume to tackle the worst case scenario?

Question 23 (dates, phase in): What should be the elements (e.g. number of transactions, increase in risks, number of active counterparties, new jurisdiction involved) for ESMA to investigate, after consulting the NCAs responsible for CCPs authorisation, on the ability of the relevant CCPs to handle the expected volume and to manage the risk arising from the clearing of the relevant class of OTC derivatives?

Question 24 (dates, phase in): Should there be a default period of [x] months whenever there is a need for a CCP to upgrade its service considering incompressible internal/external validation processes? If not, how to evaluate the time to upgrade services based on the result of the criteria assessment?

Criteria related to the counterparties active in the market (EMIR Article 5(5)(d) and (f))

120. EMIR Article 5(5)(d) and (f) defines the criteria which ESMA shall take into account in relation to the *counterparties active and expected to be active within the market for the relevant class of OTC derivatives*. "Counterparties" should be understood from the legal perspective as being the original parties to the OTC derivatives contracts (e.g. banks, investment companies, assets managers) since they are the ones to whom the CO requirement applies.

121. Based on information on counterparties and corresponding market share, the next step is to define how the number of counterparties should influence the dates on which the CO becomes binding. For this purpose one can wonder if counterparties should be divided into categories and treated differently, by applying different phase in to each. EMIR Article 5(5) not only refers to the "*number of counterparties active, and expected to be active within the market for the relevant class of OTC derivatives* "but also to "*the period of time a counterparty subject to the CO needs in order to put in place arrangements to clear its OTC derivative contracts through a CCP*".

122. One should remember that Commissioner Connie Hedegaard mentioned in the EU Parliament that the "*Commission is prepared to make sure that, when it adopts its decisions on mandatory clearing for specific classes of OTC derivatives, the obligation for non-financial firms to clear will be phased-in over an appropriate period of time. Such a phased-in period could be similar to the one proposed in the technical standard for bank guarantees*"[11]. When developing the technical standard for the clearing obligation, ESMA will ensure that the obligation for non-financials counterparties above the clearing threshold is phased-in over an appropriate period of time.

123. Some characteristics of counterparties may prove to be an advantage or a drawback to access clearing of the Class+ hence influencing the time required to abide by the CO. This supports the view that categories of counterparties sharing similar characteristics should be created each being under a different time constraint. The corresponding criteria must be clear to avoid disputes over counterparties belonging to one category or another. Defining new categories of counterparties as opposed to using categories which are already defined in existing regulations poses a number of challenges: finding criteria to unambiguously identify categories is a difficult task from a theoretical and practical perspective (e.g. how to define a small or a big player).

124. One **option (Option A)** would be to rely on the **categories of counterparties defined in EMIR** i.e. financial counterparties and non-financial counterparties. This has the main advantage of using existing and precise definitions. However even if NFC are likely to need more time to set-up clearing solutions than FC, the scope of FC is very wide and the access to clearing may be heterogeneous within this category.

125. Another **option (Option B)** would then be to keep the **NFC category and further divide the FC category**. An obvious indicator on the ability to set-up a clearing solution of a Class+ is the fact that the counterparty has already a direct access to clearing. This could lead to the creation of a 3 level classification (1) NFC, (2) clearing members, and (3) the rest of FCs.

126. Under Option B one of the distinguishing element is the access to clearing. Most CCP memberships are based on asset class and even if they are more granular, the access to CCP would not be granted on a class level, whilst "classes" are considered in the context of EMIR. Asset classes might be the easiest criteria to

[11] European parliament debates on February 7th, 2013: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20130207+ITEM-005-05+DOC+XML+V0//EN

use when determining whether or not counterparties have access to clearing in the options developed above.

127. Another **option (Option C)** would be to focus on the importance of the counterparty's activity. The counterparties would be divided by **categories depending on the volume of OTC derivatives contract** which they are a party to and each category would be allowed a corresponding period of time to comply with the CO.

128. For all options (option A to a lesser extent) the reference date to be taken into account also needs to be defined, i.e. at which point in time should the counterparty demonstrates whether or not it has access to clearing, to determine the category to which it belongs or calculates the threshold: it could be the date on which the RTS comes into force or another one (e.g. x months prior to the CO).

> **Question 25 (categories of counterparties): Please indicate your preference between the options presented. Would you rather use an option that is not detailed here? Under Options B and C, do you agree to base the clearing access approach on the asset class to which the counterparties have access? What should be the date on which clearing access/threshold calculation should be assessed?**
>
> **Question 26 (categories of counterparties): What would in your view be the appropriate timeframe for counterparties with / without access to clearing in the relevant asset class?**

Taking into account indirect access to clearing

129. EMIR Article 4(3) paragraph 2 states that a counterparty can fulfil its obligation either by accessing the CCP directly and becoming a clearing member or indirectly. This implies that there can be a chain of intermediaries between the counterparty and the clearing member. In case the counterparty does not manage to have access to clearing, it should stop executing trades in the relevant Class +. This leads to the importance of clearing members and their offering clearing service to clients or indirect clients.

130. The access to clearing might however not be directly correlated to the number of clearing members. In practice there are always several clearing members for a product type within one CCP (e.g. each of LCH.Clearnet SA, Eurex Clearing and ICE Clear Europe, which are the 3 European CCPs clearing CDS, have at least 8 clearing member on those products). However, not all clearing members necessarily offer client clearing services. As such, the number of clearing members offering client clearing services could be one measure of likely access to clearing for non-clearing members. An additional factor could be the ability of the CCP to facilitate client clearing at the necessary scale, for example having the capacity to operate large numbers of segregated client accounts.

> **Question 27 (categories of counterparties): Do you agree that a key factor to take into account when defining the phase in for the counterparties to comply with the clearing obligation will be the number of clearing members offering client clearing services? Is the client clearing capacity of the CCP also a relevant factor? What could be the other criteria?**

4.2. Minimum remaining maturity of the OTC derivative contracts referred to in EMIR Article 4(1)(b)(ii)

131. The third element which ESMA should specify in the RTS related to the CO is a parameter to size the impact of the so called "frontloading" requirement, i.e. the fact that the CO may apply to contracts entered into or novated before the CO takes effect. Indeed, as per EMIR Article 4(1)(b), the clearing obligation will apply 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 CO takes effect if the contracts have a remaining maturity determined by the Commission in accordance with Article 5(2)(c)

132. The articulation of the different parameters is as follows: let's suppose that the notification referred to in EMIR Article 5(1) is received by ESMA on date A, that the CO takes effect on date B, and that the remaining maturity defined in the RTS is X months. Then, only the contracts entered into or novated after date A, and which on date B have a remaining maturity of more than X months will be subject to the CO.

133. The impact of defining a short or long remaining maturity can be viewed as follows:

- If the remaining maturity is very short, contracts may become subject to the clearing obligation only a few days or weeks before the termination dates. This may be overly burdensome in view of the overarching aim of the CO, which is the reduction of systemic risk, given that such risk could in this case only materialise during a very limited period of time.
- On the contrary, if the remaining maturity is set at a high level, the frontloading requirement may be limited, because only a few transactions would likely have a maturity long enough to be captured by Article 4(1)(b)(ii). To the limit, it would even be possible to set a remaining maturity sufficiently long to exclude all transactions from the frontloading requirement.

134. Therefore, to measure precisely the impact of the remaining maturity parameter, ESMA would need information on the distribution of the maturity of the contracts belonging to a certain asset class.

135. As already expressed by stakeholders, ESMA understands the concerns linked to the length of the frontloading period, i.e. the period of time which may elapse between the notification of a class of OTC derivatives to ESMA (A) and the date on which the CO takes effect (B). As described in 1.1 above, it could take from 9 to 16 months from A to the entry into force of the RTS on the clearing obligation for a specific class. With a hypothetical 6 month phase in, the lag between A and B would come down to 15-22 months. ESMA is of the view that the determination of the remaining maturity of the contract may be used as an efficient tool to ensure that the frontloading requirement is proportionate.

Question 28 (remaining maturity): What are your views regarding the calibration of the remaining maturity of the contracts to be subject to the CO? What criteria should ESMA take into account when defining it?

5. The clearing obligation in specific cases

5.1. Contracts concluded with covered bond issuers or with cover pools for covered bonds.

136. According to Recital 16 of EMIR, in determining which classes of OTC derivative contracts are to be subject to the clearing obligation, "*ESMA should take into account the specific nature of OTC derivative contracts which are concluded with covered bond issuers or with cover pools for covered bonds"*. Recital 16 should be understood as encouraging ESMA to take into consideration the nature of the aforementioned contracts, as opposed to calling for an exemption which is not foreseen by the Regulation.

137. A covered bond is a debt instrument in which the bond is secured by a pool of financial instruments (the cover pool). The cover pool may include, among other types of financial instruments, derivative contracts to hedge specific risks such as interest rate risks or currency risks. Under the legal framework of covered bonds, the cover pool is bankruptcy-remote, ensuring that if the issuer defaults, the bond holders are covered by the cover pool, and that the derivative contracts included in the cover pool are not terminated.

138. It is therefore important that CCPs are able to differentiate the derivatives of the insolvent issuer from those of the cover pool, to avoid that the derivative contracts within the cover pool are terminated together with the derivative contracts of the issuer, in the event of a default of this issuer.

Question 29 (covered bonds): Are there other specific features of the contracts concluded with covered bond issuers or with cover pools for covered bonds, to be considered by ESMA in the context of the clearing obligation?

Question 30 (covered bonds): What would be the legal or technical challenge faced by covered bonds issuers and CCPs, if a clearing obligation was imposed on some of the OTC derivative contracts included in the cover pools of covered bonds?

Question 31 (covered bonds): Have CCPs developed solutions to be able to differentiate the derivative contracts of the issuer from those of the cover pool?

Question 32 (covered bonds): Would an appropriate phase-in for these counterparties alleviate these challenges? If so, how?

5.2. Foreign exchange OTC derivatives

139. The Recital 19 of EMIR recognises that the predominant risk for transactions in some classes of OTC derivative contracts may relate to settlement risk, which is addressed through separate infrastructure arrangements, and may distinguish certain classes of OTC derivative contracts (such as foreign exchange) from other classes. CCP clearing specifically addresses counterparty credit risk, and may not be the optimal solution for dealing with settlement risk. The regime for such contracts should rely, in particular, on preliminary international convergence and mutual recognition of the relevant infrastructure.

140. However some CCPs already clear OTC FX derivatives and other CCPs are planning to add this asset class to their current offer of services, which tends to support the idea that the mitigation of counterparty credit risk through CCP clearing is appropriate for some OTC FX derivatives.

Question 33 (FX derivatives): Within the foreign exchange asset class, for which type of contracts do you consider that settlement risk is the predominant risk, and what criteria or characteristics should be used by ESMA to identify those contracts?

5.3. Interaction of portfolio compression and the clearing obligation

141. ESMA is aware that the operation of compression services can create new replacement contracts, for example where a contract is replaced by a new, smaller contract to allow the removal of an offsetting exposure. In the US, the CFTC[12] has provided limited relief to allow some new contracts created through compression to remain outside the clearing obligation. ESMA would welcome views on the relevance of this issue in the EU context.

Question 34 (Portfolio compression): Are there ways in which the imposition of the clearing obligation in the EU could hamper the effectiveness of compression services? If so, please provide evidence of the potential impact. Are there ways in which the clearing obligation could be defined to alleviate the problem without creating opportunities for avoidance?

5.4. How to withdraw a clearing obligation on a class or subset of it?

142. The purpose of the clearing obligation under EMIR is to reduce systemic risk by subjecting to mandatory clearing classes of standardised OTC derivatives, which match certain criteria related to the availability of the pricing information and the volume and liquidity. This assessment will be made by ESMA at a certain point in time, however nothing guarantees that the conditions leading to this assessment remain unchanged in the future. For example, although Article 7(2)(b) of the RTS on OTC requires ESMA to take into account "the stability of the market size and depth in respect of the product over time", past liquidity may not be a perfect indicator of future liquidity.

143. The risk is therefore that a clearing obligation continues to apply while the criteria to be taken into account in the context of the CO are no longer respected.

144. When it comes to changes to Class+ EMIR Article 5(6) foresees that when a class of OTC derivative contracts no longer has a CCP which is authorised or recognised to clear those contracts, it shall cease to be subject to the clearing obligation referred to in EMIR Article 4. But the two following elements should also be considered: (1) given that the classes will not be defined on a contract by contract basis, it is possible that within the same Class+, some contracts do no longer have a CCP which is authorised or recognised to clear them and (2) it may be the case that after a Class+ (or subset of it) has been declared subject to the CO, the criteria assessed by ESMA are no longer met by the Class+ e.g. insufficient liquidity.

[12] http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/13-01.pdf

145. The different situations are summarised in the table below:

	Class+ can no longer be subject to the CO	**Subset of Class+ can no longer be subject to the CO**
Because it no longer has a CCP which is authorised or recognised to clear it	Case 1 Foreseen by EMIR Article 5(6)	Case 2
Because the criteria to be assessed by ESMA are no longer respected by the Class+	Case 3	Case 4

Table 18: Cases in which the RTS on the clearing obligation would need to be reviewed

146. It can therefore be seen that the procedures are only specified in EMIR for Case 1. Case 2 could easily be dealt with via the Public Register: the subset of a Class+ which no longer has a CCP to clear it would be removed from the Public Register, without the need to amend the RTS. In Case 1 and Case 2, the classes would fall back under the scope of the top-down approach.

147. The other cases may be tackled using different means depending on whether the relevant characteristic is a key characteristic defined in the RTS, or an additional characteristic defined in the Public Register:

- If the relevant characteristic is a key characteristic defined in the RTS (e.g. there isn't any more sufficient liquidity on contracts on a specific Index CDS) ESMA would need to submit a draft RTS amending the class of OTC derivatives subject to the clearing obligation. In this case there will inevitably be a minimum delay of several months between the moment when the class (or subset of it) is identified as being no longer appropriate for the clearing obligation, and the moment when the clearing obligation would cease to apply.
- If the relevant characteristic is an additional characteristic defined in the Public Register (e.g. there isn't any more sufficient liquidity on contracts on a specific series of an Index CDS), the modification of the RTS could be avoided and the Public Register could be used to inform the public on the contracts within a Class+ which are not subject to the CO any longer.

148. In the first case and to the extent possible, the procedure of amending the RTS could be accelerated, with the objective of compressing all the steps of the standard procedure described in 1.1 above. This could include for example: a limited consultation period (or the absence of it, at least for Case 2), the absence of CBA, and a minimised delay between the moment when the draft RTS are submitted by ESMA to the European Commission, and the moment when the amended RTS enter into force.

Question 35 (Modification of a Class+): For which reason (other than the fact that a CCP does not clear it any longer) do you believe that the clearing obligation of a class - or subset of it - would need to be removed? Please focus on the risks which could stem from a clearing obligation on contracts which would no longer be appropriate for mandatory clearing and provide concrete examples.

Question 36 (Modification of a Class+): In case a clearing obligation would need to be reviewed, how crucial would be the time needed to dis-apply the clearing obligation?

Annex I: Basic map of the classes identified in the notifications received under Article 89(5) EMIR

Asset-class	Type	Underlying 1	TOTAL	CME Clearing Europe	CME Clearing US	ECC	Eurex Clearing	Holland Clearing House NV	ICE Clear Credit	ICE Clear Europe	KDPW_CCP	LCH.Clearnet Ltd	LCH.Clearnet SA	MEFF	Nasdaq OMX	OMIClear
Interest Rate	Basis	BA-CDOR	1									1				
Interest Rate	Basis	BBR-BBSW	2		1							1				
Interest Rate	Basis	BBR-FRA	1									1				
Interest Rate	Basis	BUBOR	1									1				
Interest Rate	Basis	CIBOR	1									1				
Interest Rate	Basis	EURIBOR	3		1		1					1				
Interest Rate	Basis	HIBOR	1									1				
Interest Rate	Basis	JIBAR	1									1				
Interest Rate	Basis	LIBOR	3		1		1					1				
Interest Rate	Basis	NIBOR	1									1				
Interest Rate	Basis	PRIBOR	1									1				
Interest Rate	Basis	SOR	1									1				
Interest Rate	Basis	STIBOR	1									1				
Interest Rate	Basis	WIBOR	2								1	1				
Interest Rate	Fixed to Float	BA-CDOR	3	1	1							1				
Interest Rate	Fixed to Float	BBR-BBSW	3	1	1							1				
Interest Rate	Fixed to Float	BBR-FRA	1									1				
Interest Rate	Fixed to Float	BUBOR	1									1				
Interest Rate	Fixed to Float	CIBOR	3		1							1			1	
Interest Rate	Fixed to Float	EURIBOR	5	1	1		1					1			1	
Interest Rate	Fixed to Float	HIBOR	1									1				
Interest Rate	Fixed to Float	JIBAR	1									1				
Interest Rate	Fixed to Float	LIBOR	4	1	1		1					1				
Interest Rate	Fixed to Float	NIBOR	3		1							1			1	
Interest Rate	Fixed to Float	PRIBOR	1									1				
Interest Rate	Fixed to Float	SOR	1									1				
Interest Rate	Fixed to Float	STIBOR	3		1							1			1	
Interest Rate	Fixed to Float	WIBOR	2								1	1				
Interest Rate	FRA	BUBOR	1									1				
Interest Rate	FRA	CIBOR	2									1			1	
Interest Rate	FRA	EURIBOR	4		1		1					1			1	
Interest Rate	FRA	LIBOR	3		1		1					1				
Interest Rate	FRA	Mortgage bonds	1												1	
Interest Rate	FRA	NIBOR	2									1			1	
Interest Rate	FRA	Policy rate	1												1	
Interest Rate	FRA	PRIBOR	1									1				
Interest Rate	FRA	STIBOR	2									1			1	
Interest Rate	FRA	Treasury bonds	1												1	
Interest Rate	FRA	WIBOR	2								1	1				
Interest Rate	OIS	CORA-OIS	1									1				
Interest Rate	OIS	EONIA	4		1		1					1			1	
Interest Rate	OIS	FedFunds	3		1		1					1				
Interest Rate	OIS	POLONIA	1								1					
Interest Rate	OIS	SONIA	3		1		1					1				
Interest Rate	OIS	STIBOR	1												1	
Interest Rate	OIS	TOIS	2				1					1				
Interest Rate	OIS	TONAR	1		1											
Interest Rate	Option	NIBOR	1												1	
Interest Rate	Option	STIBOR	1												1	
Interest Rate	Option	Treasury bonds	1												1	

Asset-class	Type	Underlying 1	TOTAL	CME Clearing Europe	CME Clearing US	ECC	Eurex Clearing	Holland Clearing House NV	ICE Clear Credit	ICE Clear Europe	KDPW_CCP	LCH.Clearnet Ltd	LCH.Clearnet SA	MEFF	Nasdaq OMX	OMIClear
Commodity	Agriculture	Biofuel	1	1												
Commodity	Agriculture	Fertilizer	3	1	1							1				
Commodity	Agriculture	Grains Oil Seeds	2	1	1											
Commodity	Energy	Biofuel	1	1												
Commodity	Energy	Coal	1									1				
Commodity	Energy	Electricity	3											1	1	1
Commodity	Energy	Ferrous Metal	1	1												
Commodity	Energy	Inter Energy	1	1												
Commodity	Energy	Nat Gas	3	1		1									1	
Commodity	Energy	Oil	2	1								1				
Commodity	Energy	Petrochemicals	1	1												
Commodity	Energy	Refined Products	1	1												
Commodity	Environmental	Emissions	1												1	
Commodity	Freight	Freight	2	1								1				
Commodity	Index	Index	1		1											
Commodity	Metals	Non Precious	2	1								1				
Commodity	Metals	Precious	3	1	1							1				
Credit	Single Name	Corporate Senior	3				1		1	1						
Credit	Single Name	Sovereign	1						1							
Credit	Untranched Index	CDX.EM	1						1							
Credit	Untranched Index	CDX.NA.HY	2		1				1							
Credit	Untranched Index	CDX.NA.IG	2		1				1							
Credit	Untranched Index	CDX.NA.IG.HVOL	1						1							
Credit	Untranched Index	iTraxx Crossover	4				1		1	1			1			
Credit	Untranched Index	iTraxx HiVol	4				1		1	1			1			
Credit	Untranched Index	iTraxx Main	4				1		1	1			1			
Equity	Dividend	Equity Single Name	1									1				
Equity	Vanilla	Basket	1												1	
Equity	Vanilla	Equity Index	4					1				1		1	1	
Equity	Vanilla	Equity Single Name	4					1				1		1	1	
Foreign Exchange	Forward		1		1											
Foreign Exchange	NDF		2		1							1				