



European Securities and  
Markets Authority

## Reply form for the Consultation Paper on Clearing Obligation under EMIR (no.4)





## Responding to this paper

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

### ***Instructions***

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

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA\_CO4\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

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

### **Naming protocol**

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

ESMA\_CO4\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

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

ESMA\_CO4\_XXXX\_REPLYFORM or

ESMA\_CO4\_XXXX\_ANEX1

### ***Deadline***

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

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

### ***Publication of responses***

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA's Board of Appeal and the European Ombudsman.

### ***Data protection***

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the headings 'Legal notice' and 'Data protection'.

## General information about respondent

Name of the company / organisation	Federation of European Securities Exchanges
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Europe

## Introduction

**Please make your introductory comments below, if any:**

<ESMA\_CO4\_COMMENT\_1>

### 1. General Introduction

The Federation of European Securities Exchanges (FESE) represents 41 exchanges active in equities, bonds, derivatives and commodities through 21 full members from 30 countries, as well as 2 Observer Members from European emerging markets. FESE represents public Regulated Markets (RMs), which provide both institutional and retail investors with transparent and neutral price-formation.

At the end of 2013, FESE members had up to 8,950 companies listed on their markets, of which 8% are foreign companies contributing towards the European integration and providing broad and liquid access to Europe's capital markets. Many of our members also organise specialised markets that allow small and medium sized companies across Europe to access the capital markets; 1,478 companies were listed in these specialised markets/segments in equity, increasing choice for investors and issuers. Through their RM and MTF operations, FESE members are keen to support the European Commission's objective of creating a single market in capital markets.

FESE supports efficient, fair, orderly and transparent financial markets that meet the needs of well protected and informed investors and provide a source for companies to raise capital and for investors to hedge their portfolios.

FESE would also wish to state that the questions in this CP that we do not provide a detailed answer on, we are aligned with the response as submitted by the European Association of Clearing Houses (EACH).

### 2. Link between EMIR Clearing Obligations and MiFIR Trading Obligation & Transparency Regime

As stated in our response to the ESMA Consultation paper on Clearing Obligation no1, FESE urges ESMA to consider the overall impact that its work on the EMIR Clearing Obligation will ultimately have on the final implementation of the MiFIR Trading Obligation<sup>1</sup>. Critically, because of the way the trading obligation is designed, any instrument which does not fall under the scope of the EMIR clearing obligation will not be eligible for the trading obligation.

<ESMA\_CO4\_COMMENT\_1>

---

1. Regulation (EU) No 648/2012: Article 28(1) & 32

**Question 1: Do you have any comment on the clearing obligation procedure described in this section?**

<ESMA\_CO4\_1>

FESE believes that, when making the detailed assessment of the various criteria that are relevant in the context of the clearing mandate, there is a need to take into consideration the specific circumstances of the relevant market, such as the market structure and participants in the market of a specific instrument (such as instruments denominated in a specific currency), e.g. when assessing volumes and when determining categories of counterparties.

<ESMA\_CO4\_1>

**Question 2: Do you have any comment on the structure of the interest rate derivative classes described in this section?**

<ESMA\_CO4\_2>

FESE agrees with the presented structure for interest rate derivative classes. The additional classes should be defined by the same set of characteristics as the interest rate classes on the G4 currencies.

<ESMA\_CO4\_2>

**Question 3: Do you agree with the principle that, in the context of the clearing obligation, systemic risk should be considered not only at the aggregated EU level, but also at country or even institution level?**

<ESMA\_CO4\_3>

FESE agrees with the principle that, in the context of the clearing obligation, systemic risk should be considered not only at the aggregated EU level, but also at country or even institution level. <ESMA\_CO4\_3>

**Question 4: In view of the criteria set in Article 5(4) of EMIR, do you consider that this set of classes addresses appropriately the systemic risk associated to interest rate OTC derivatives? Please include relevant data or information where applicable.**

<ESMA\_CO4\_4>

In its previous response to ESMA, FESE proposed that ESMA reconsiders the exclusion of all but the G4 currencies within the European Union.

FESE supports the implementation of the clearing mandate for IRS in line with the G20 commitments. However, given that IRS and CDS have always been the main focus of the clearing obligation, we consider that ESMA should implement the clearing obligation for all IRS currencies.

As the market had been expecting it, FESE does not consider that there would have been any additional burden for trading participants. Moreover, regulators would have been in a position to supervise 100% of the outstanding notional and to ensure greater levels of transparency to the asset class. This would have contributed to increased multilateral trading of the asset class in line with the MiFIR trading obligation and further mitigated the systemic risk resulting from trading IRS on a bilateral OTC basis.

<ESMA\_CO4\_4>

**Question 5: Do you consider that the proposals related to the definition of the categories of counterparties are appropriate in light of the criteria set out in EMIR?**

<ESMA\_CO4\_5>

FESE believes that, when making the detailed assessment of the various criteria that are relevant in the context of the clearing mandate, there is a need to take into consideration the specific circumstances of the relevant market, such as the market structure and participants in the market of a specific instrument (such as instruments denominated in a specific currency), e.g. when assessing volumes and when determining categories of counterparties.



<ESMA\_CO4\_5>

**Question 6: Do you consider that the proposed dates of application for the different categories of counterparties ensure a smooth implementation of the clearing obligation? Please explain why and possible alternatives.**

<ESMA\_CO4\_6>

TYPE YOUR TEXT HERE

<ESMA\_CO4\_6>

**Question 7: Do you have any comment on the approach envisaged for frontloading?**

<ESMA\_CO4\_7>

TYPE YOUR TEXT HERE

<ESMA\_CO4\_7>

**Question 8: Do you have any comment on the Cost-Benefit analysis?**

<ESMA\_CO4\_8>

TYPE YOUR TEXT HERE

<ESMA\_CO4\_8>

**Question 9: Do you have any comments on the draft RTS not already covered in the previous questions?**

<ESMA\_CO4\_9>

TYPE YOUR TEXT HERE

<ESMA\_CO4\_9>