



European Securities and
Markets Authority

Response form for the Consultation Paper on the Clearing Obligation under EMIR (no. 6)



Responding to this paper

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

Responses are most helpful if they:

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

ESMA will consider all responses received by 30 August 2018.

Instructions

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

- Insert your responses to the questions in the Consultation Paper in the present response form.
- Please do not remove tags of the type <ESMA_QUESTION_TIE_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- When you have drafted your response, name your response form according to the following convention: ESMA_TIE_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_TIE_ABCD_RESPONSEFORM.
- Upload the form containing your responses, **in Word format**, to ESMA’s website (www.esma.europa.eu under the heading “Your input – Open consultations” → “Consultation on Clearing Obligation under EMIR (no. 6)”).

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. **Please clearly indicate by ticking the appropriate checkbox on the website submission page if you do not wish your contribution to be publicly disclosed.** A confidential response may be requested from us in accordance with ESMA’s rules on access to documents.



We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.



Data protection

Information on data protection can be found at www.esma.europa.eu under the heading “Data protection”.

Who should read the Consultation Paper

All interested stakeholders are invited to respond to this consultation paper. In particular, responses are sought from financial and non-financial counterparties of OTC derivative transactions as well as central counterparties (CCPs) and clearing members.



General information about respondent

Name of the company / organisation	Association of the Luxembourg Fund Industry (ALFI)
Activity	Other Financial service providers
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Luxembourg

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_TIE_1>

The Association of the Luxembourg Fund Industry (ALFI) is the representative body of the Luxembourg investment fund community. Created in 1988, the Association today represents over 1,400 Luxembourg domiciled investment funds, asset management companies and a wide range of service providers such as depositary banks, fund administrators, transfer agents, distributors, legal firms, consultants, tax experts, auditors and accountants, specialist IT providers and communication companies. The Luxembourg Fund Industry is the largest fund domicile in Europe and a worldwide leader in cross-border distribution of funds. Luxembourg-domiciled investment structures are distributed in more than 70 countries around the world.

We thank the ESMA for the opportunity to participate in this consultation.

<ESMA_COMMENT_TIE_1>

Q1 : Do you consider that the proposed extension of the temporary intragroup exemption is justified? Please explain.

<ESMA_QUESTION_TIE_1>

ALFI welcomes the opportunity to assess to which extent the temporary intragroup exemption of clearing should be extended.

ALFI is supporting ESMA's proposal consisting in postponing to 21 December 2020 the deferred date contained in Commission Delegated Regulations (EU) 2015/2205, (EU) 2016/1178 and (EU) 2016/592 for the application of the clearing obligation for intragroup transactions satisfying certain conditions and where one of the countries is in a third country, in the absence of the relevant equivalence decisions. ALFI is bringing its support for the 2 following reasons.

Firstly, if any works were in progress to determine equivalence regimes for clearing aspects in relation to articles 3(2) and 13(2) of EMIR, it is important that the corresponding definition is developed *ceteris paribus* (i.e. other things equal). Indeed, a non-extension of the concerned clearing exemption would complexify greatly these works, in particular, with regard to the 3 different milestones to consider (respectively December 2018, May 2019, July 2019 for the above mentioned CDRs).

Secondly, for ALFI members, an alignment of these 3 milestones to one single date represents a simplification of the clearing rules, in terms of procedures and systems evolutions with regard to intragroup transactions. It should be noted that intragroup transactions are much less prone to counterparty and systemic risks than transactions between two counterparties of different groups, if they are monitored further to proper risk management procedures. In this respect, it is logical that intragroup transactions are eligible for a temporary clearing exemption as proposed by ESMA.

Moreover the ESMA proposal will reduce the number of constraints to take into account in the implementation of the new rules contained in the EMIR Refit proposal recently endorsed by the European Parliament in relation with the assessment of the clearing threshold, in particular the new clearing threshold for Small Financial Counterparties (SFCs). ALFI advocates for a SFC clearing threshold mechanism similar to the one applicable to Non-Financial Counterparties's (NFCs) (i.e. clearing obligation applicable to the asset class whose threshold has been crossed), with a threshold by asset class at a level of at least EUR 1 Bn, or similar to NFC's.

Another constraint that eligible counterparties will have to integrate in the calculation of the threshold is the withdrawal of the United Kingdom from the European Union. Indeed as of the withdrawal date, derivatives traded on a UK regulated market will no longer fulfil the definition of exchange traded derivatives (ETDs) under EU law, unless at that time they are eligible further to a future dedicated equivalence regime. Otherwise, ETDs traded on a UK regulated market will be over-the-counter (OTC) derivative contracts and will thus become subject to all EMIR requirements applicable to OTC derivatives transactions (https://ec.europa.eu/info/sites/info/files/180208-notice-withdrawal-uk-post-trade-services_en.pdf).

<ESMA_QUESTION_TIE_1>

Q2 : Do you identify other benefits and costs not mentioned above associated to the proposed approach? If you advocated for a different approach in the responses to the previous question, how would it impact this section on the impact assessment? Please provide details.



<ESMA_QUESTION_TIE_2>

ALFI welcomes the opportunity to contribute to the costs and benefits analysis of the RTS proposed by ESMA on the clearing obligation, the corner stone of EMIR.

We see another benefit not mentioned in the list on page 17 of the consultation paper; i.e. the simplification of the rules for the calculation of the clearing threshold, developed in the response to question 1. above.

<ESMA_QUESTION_TIE_2>