



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_ANNEX1

Deadline

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

All contributions should be submitted online at 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 under the headings 'Legal notice' and 'Data protection'.



General information about respondent

Name of the company / organisation	NASDAQ OMX Clearing AB
Activity	Central Counterparty
Are you representing an association?	<input type="checkbox"/>
Country/Region	Sweden

Introduction

Pease make your introductory comments below, if any:

<ESMA_CO4_COMMENT_1>

NASDAQ OMX Clearing AB (Nasdaq Clearing) welcomes the opportunity to respond to the consultation paper on the draft regulatory technical standard establishing a clearing obligation for certain interest rate OTC derivative classes denominated in certain EEA currencies.

Nasdaq Clearing strongly supports the goal of reducing systemic risk by introducing a clearing obligation in respect of certain classes of OTC derivatives and broadly agrees with ESMA's analysis of the OTC interest rate derivatives denominated in the EEA currencies set out in the consultation paper.

<ESMA_CO4_COMMENT_1>



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

<ESMA_CO4_1>

Nasdaq Clearing 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>

TYPE YOUR TEXT HERE

<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>

Nasdaq Clearing is of the firm opinion that systemic risk should be considered not only at the aggregated EU level, but also at a regional level. We would also argue that systemic risk cannot be measured on a currency level, but should rather be measured on a participant level and that it is important to consider how a financial crisis in one country or region could have knock-on effects in other countries or regions.

This is not least true for the Nordic region which has four different currencies, one of them being the euro. Interconnected participant exposures and systemic risk across currencies in the Nordic region and beyond mean that a severe financial crisis in the Nordics would immediately affect the Eurozone area.

Support for this view can be found in EU legislative texts. As per Recital 27 of Regulation (EU) 1092/2010: “systemic risks include risks of disruption to financial services caused by a significant impairment of all or parts of the Union’s financial system that have the potential to have serious negative consequences for the internal market and the real economy”. We also note that the ESRB, in its response to the first consultation paper regarding the clearing obligation for interest rate derivatives, clarified that “parts of the Union’s financial system” could indeed refer to “groups of or even individual Member States”.

<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>

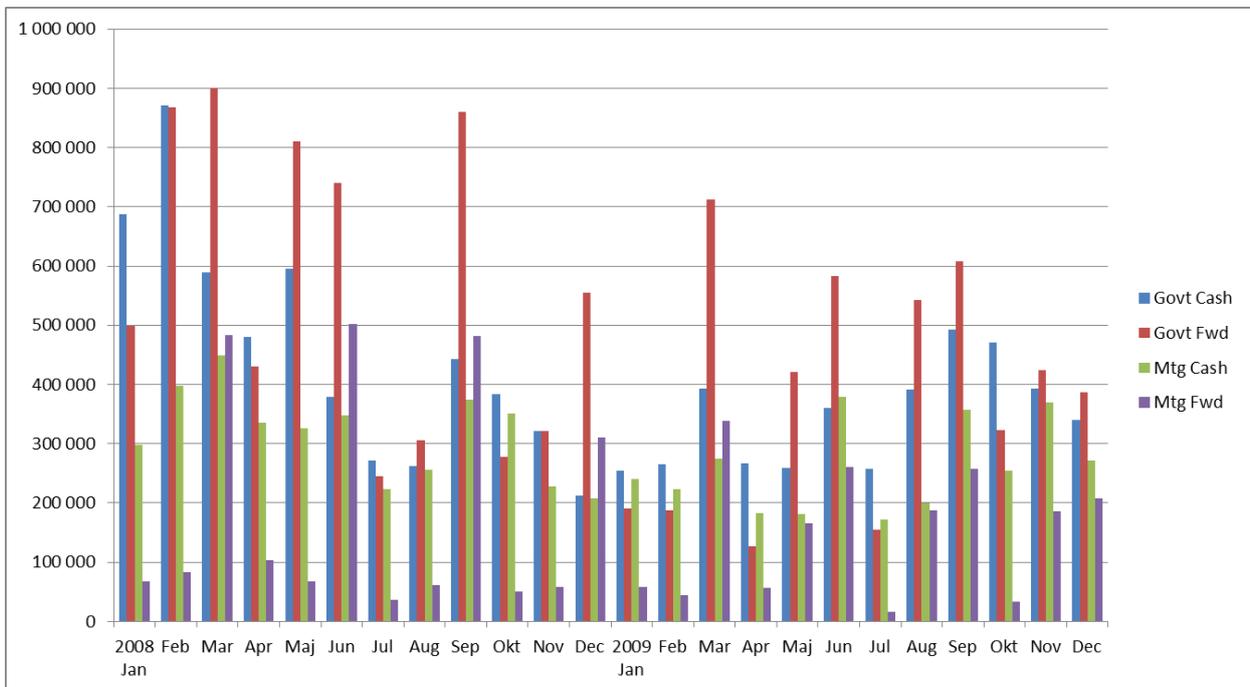
Nasdaq Clearing welcomes ESMA’s proposal in relation to DKK, NOK and SEK instruments and the fact that ESMA has considered the risk of the outstanding notional amounts of interest rate derivatives relative to the size of each relevant currency. Not doing so would underestimate the risk that smaller currencies constitute and therefore increase the aggregated risk within the EU. Excluding the Nordic currencies from mandatory clearing would lead to less clearing and transparency in the financial system in the region. In such a scenario, severe disturbances in the financial markets of the region would most likely have serious knock-on effects on the Eurozone area. In this context we note, as was also stated in Nasdaq Clearing’s response to the first Consultation Paper regarding the clearing obligation for interest rate derivatives, that Sweden has a very high ratio of notional outstanding interest rate derivatives relative to GDP at 1522%, compared to many other countries (Source: BIS, OECD, Riksbank & European Banking Federation (EBF))

In addition, Nasdaq Clearing welcomes the proposal for additional clearing mandates on interest rate derivatives as set out in the consultation paper. By doing so, appropriate measures will be taken to mitigate systemic risk on both global and regional levels. This foundation will in a holistic way contribute to transparency of derivatives risk in global financial system. Even though on a global scale the nominal amounts might look small, those amounts alone do not represent the full perspective of the risks at stake.

Liquidity aspect

Since there are some discrepancies between the definition of a liquid market, as per Article 2(17)(a) of MiFIR for a financial instrument or class of financial instruments versus the proposal in the consultation it is important to look at the experience from the latest financial crisis. The Swedish Fixed Income market demonstrated resilience by remaining open and comparably liquid during the fall of 2008. This is shown in the Riksbank turnover statistics.

Monthly Turnover Government- Mortgage Bonds Cash and Forward 2008 - 2009



Source: Riksbank

Unfortunately, there is no monthly turnover data on the SEK OTC derivatives for this period but looking at outstanding volumes between H1 2008 – 1H 2009 we can conclude that outstanding SEK OTC derivatives volumes fell by approx. 30 % between 1H 2008 and 2H 2008. SEK OTC derivatives volumes fell less than OTC volumes in Sterling (which fell with 39 %). In the following half year the outstanding volumes in SEK OTC derivatives picked up again by 17%. Since it is the same market makers and participants that are active in the OTC derivatives market there is no reason to expect that the liquidity in these instruments would be any different than in the cash market.

Table 3
Global OTC interest rate derivatives market¹
 Amounts outstanding, in billions of US dollars

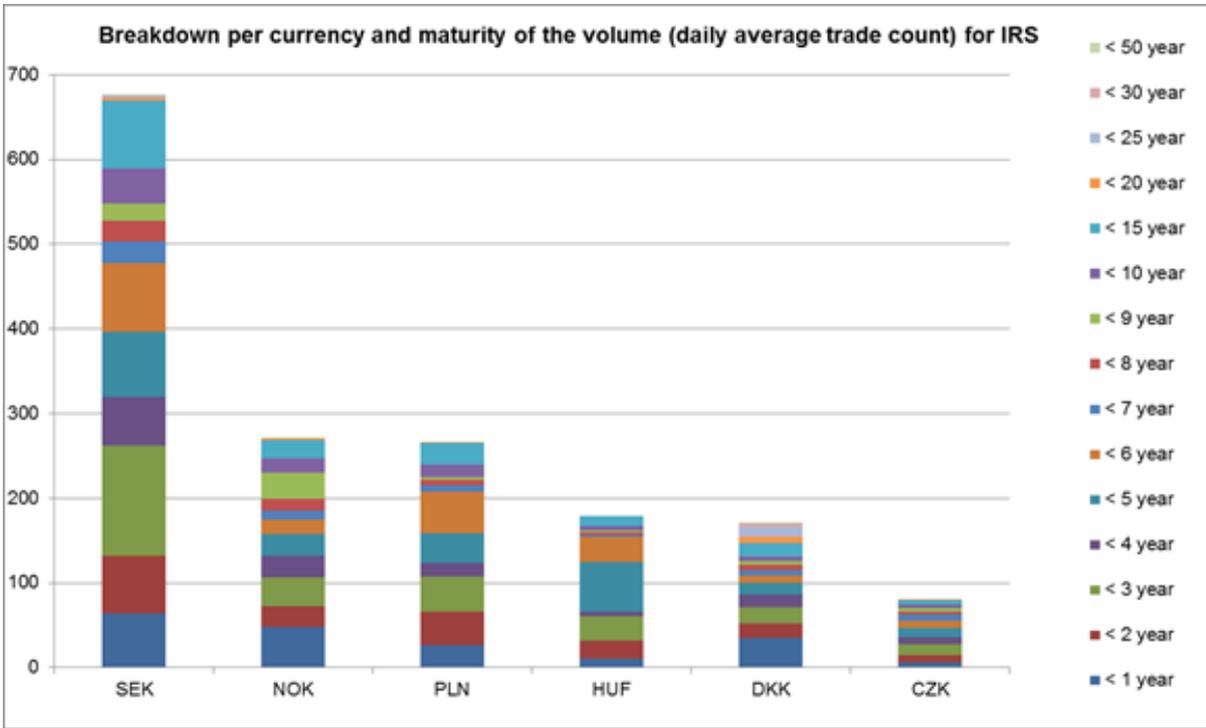
	Notional amounts outstanding				Gross market values			
	H2 2007	H1 2008	H2 2008	H1 2009	H2 2007	H1 2008	H2 2008	H1 2009
Total contracts	393,138	458,304	385,896	437,198	7,177	9,263	18,011	15,478
With reporting dealers	157,245	188,982	160,261	148,150	2,774	3,554	6,889	4,759
With other financial institutions	193,107	223,023	187,885	250,069	3,786	4,965	10,051	9,928
With non-financial customers	42,786	46,299	37,749	38,979	617	745	1,071	790
Up to 1 year ²	127,601	153,181	152,060	159,143	...	...	...	...
Between 1 and 5 years ²	134,713	150,096	124,731	128,301	...	...	...	...
Over 5 years ²	130,824	155,028	109,104	149,754	...	...	...	...
US dollar	129,756	149,813	129,898	154,167	3,219	3,601	9,911	6,473
Euro	146,082	171,877	146,085	160,646	2,688	3,910	5,128	6,255
Yen	53,099	58,056	57,425	57,451	401	380	847	800
Sterling	28,390	38,619	23,532	32,591	430	684	1,161	1,117
Swiss franc	4,101	5,253	4,940	4,713	42	71	115	121
Canadian dollar	3,014	3,286	2,631	3,227	37	60	181	141
Swedish krona	5,176	6,454	4,503	5,294	43	73	114	118
Other	23,520	24,946	16,883	19,108	317	484	555	453
<i>Memo: Exchange-traded contracts³</i>	71,051	73,779	52,711	57,732	...	...	...	...

¹ See footnote 1 to Table 1. ² Residual maturity. ³ See footnote 2 to Table 1.

Source: OTC derivatives market activity in the first half of 2009 BIS

In the consultation ESMA Clearing Obligation no.4 Figure 4, IRS Volume (daily average trade count in EEA currencies, Breakdown per maturity), it would be expected to find higher daily turnover and volume numbers for the shorter IRS maturities. However, the relatively limited volumes for such shorter IRS maturities can be explained by the fact that they are often substituted with FRAs which give market participants a more granular risk management tool for these maturities. It is important not to create regulatory arbitrage and therefore include both instruments in the scope of the clearing obligation.

Figure 4. ESMA Clearing Obligation no.4



<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>

As stated at Question 1 above, Nasdaq Clearing 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>

Nasdaq Clearing supports ESMA's proposal for a phased-in implementation of the clearing obligation for the EEA currencies and believes that it would be unfortunate with a longer phase-in period than that proposed. Should the consultation responses from other stakeholders convince ESMA to align the time-plan for the implementation of the clearing obligation for the EEA currencies with that of the G4 currencies, Nasdaq Clearing will be prepared for such simultaneous implementation.

<ESMA_CO4_6>

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

<ESMA_CO4_7>

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

<ESMA_CO4_8>
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Question 9: Do you have any comments on the draft RTS not already covered in the previous questions?

<ESMA_CO4_9>
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