NORGES BANK
INVESTMENT MANAGEMENT

Appendix: Copy of NBIM's response to ESMA's questions 1 - 13, as submitted on ESMA's web portal on 18.08.2014

1) Do you have any comment on the clearing obligation procedure described in section 1?

We agree with the procedure described in paragraphs 9 to 14. ESMA's aim of combining the analysis of the notified classes of OTC derivatives in a minimal set of consultation papers and grouping them per asset-class will be much more efficient than running numerous consultations in parallel. The clearing obligation should focus on those asset classes which are already being cleared by at least two CCPs in sufficient volume (i.e. IRS), which corresponds with ESMA's approach set out in Table I. IRS (and certain types of index CDS) appear to be better suited for the introduction of a clearing obligation than other types of OTC derivatives. We also believe that the imposition of a clearing obligation should only take place when there is certainty as to the capacity and capability of the relevant CCPs to handle expected volumes and effectively manage default and resolution scenarios.

2) Do you consider that the proposed structure for the interest rate OTC derivative classes enables counterparties to identify which contracts are subject to the clearing obligation as well as allows international convergence? Please explain.

Yes, we think that the main characteristics are adequately captured by the proposed structure. We think it is important that market participants have certainty on the exact scope of the clearing obligation, so their determination in respect of the application of the clearing obligation to an individual transaction should be facilitated by reference to a list of clearable instruments to be published and maintained by ESMA in the public register. See also our response to Q4.

We believe that ESMA's proposal for OTC derivative classes is similar to that used in other jurisdictions, allowing international convergence, which we consider a positive for the market.

3) Do you consider that the proposed approach on covered bonds derivatives ensures that the special characteristics of those contracts are adequately taken into account in the context of the clearing obligation? Please explain why and possible alternatives. Stakeholders (CCPs and CB derivatives users in particular) are invited to provide detailed feedback on paragraph 38 above. In particular: what is the nature of the impediments (e.g. legal, technical) that CCPs are facing in this respect, if any? Has there been further discussions between CCPs and covered bond derivatives users and any progress resulting thereof?

We support the initiative to centrally clear interest rate swaps, and believe most swaps should be subject to the clearing obligation. However, we agree with ESMA that derivatives related to covered bonds should be exempted from the clearing obligation. There are several reasons; e.g. many derivative contracts related to covered bonds will not be standard and hence not clearable. In addition, some covered bond programmes in certain jurisdictions structured as single-purpose vehicles would not be subject to the clearing obligation, preventing a level playing field. Overall, we think that the interest rate derivatives related to the covered bond market would be fairly small and would not

represent a systemic risk. On the other hand, the covered bond market is large, and specifically designed to protect the market in a financial crisis. Covered bond programmes already have strict requirements set by regulators and rating agencies for the use of interest rate derivatives to only be used for hedging purposes, as well as other requirements.

We also think that it is advisable to limit uncertainty and complexity relating to the conditions for clearing obligation exemption for derivatives linked to covered bonds. We recommend ESMA to consider how these conditions can be simplified, reduced or eliminated.

4) Do you have any comment on the public register described in Section 2.3?

The proposed approach, based on the categorisation of asset-classes in the RTS combined with further, more detailed specifications to be applied on the level of the public register seems to strike the right balance enabling market participants to identify what is in and out of scope of the clearing obligation. It must be ensured, however, that this set-up provides for the necessary level of legal certainty and flexibility. Market participants need a sufficient amount of time between the modification of the register (i.e. the addition or removal of a Class+ or a subset) and the date of application of a revised clearing obligation in order to be able to prepare for these changes. The phase-in should be longer for significant changes, such as arranging a clearing set-up with a new CCP. The procedure for updating the public register should be clearly defined. If ESMA makes any changes to the register then it should explain what these changes are and make a mark-up against the previous list of clearable instruments available on its website.

We support the view that any clearing obligation for which the scope is co-determined by the public register should only come into force when ESMA has robust operational processes and infrastructure in place to ensure the register is updated on a timely basis. If the removal or suspension of a clearing obligation requires ESMA to go through the issuance of modified RTS then this may cause timing constraints. We therefore support ESMA's suggestion to further discuss this during the 2015 review of EMIR whether the time involved with the amendment of the RTS is suited to the required level of urgency.

5) 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.

Yes, we think that the criteria and categories proposed correspond with current market practice as they focus on the interest rates OTC classes which are already being cleared by CCPs in the largest volumes. We support ESMA's "bottom-up" approach as described in EMIR Article 5(2) as the preferred approach for the identification of the relevant classes of interest rates OTC derivatives. By doing so, the clearing obligation targets actual market activity and volumes and will therefore capture the more liquid and most standardised classes of interest rates OTC derivatives, which are more suitable for clearing. It is important that ESMA monitors the interest rates OTC derivatives that are not subject to clearing as well, as these may pose a systemic risk if the volume increases.

Since the initial margin is a critical component in determining the creditworthiness of a CCP, we are of the view that close supervision and monitoring of the IM held by the CCPs are important, even more so for CCPs that are clearing CDS derivatives than for interest rate derivatives. We are also generally concerned with some of the disadvantages of central clearing, such as the risk that CCPs competing

for business reduces the IM requirements and basically puts the clearing house at risk. A large number of clearing houses in the European markets also means that overall netting of counterparty risk is not substantially reduced. On the other hand, the current issue with one clearing house clearing 95 per cent of the market clearly is a situation that is not advisable or sustainable for the longer term, as risk will be overly concentrated. These examples illustrate some of the challenges with the central clearing framework that need to be resolved through sound regulation and monitoring of clearing houses.

6) Do you have any comment on the analysis presented in Section 4.1.?

We think that ESMA has chosen a reasonable approach for determining the time line for implementation of the clearing obligation. In our view it is important that there are at least two CCPs available to clear the contracts belonging to a mandatory instrument class. We are generally concerned with concentration of risk, which could be detrimental to the market if there are too few CCPs available in the market, which could result in market dominance.

Similarly, in the determination of the clearing categories and their respective timeline for implementation of the clearing obligation, we think that it is reasonable to take into account the number of clearing members and whether a party already has access to clearing.

7) Do you consider that the classification of counterparties in Section 4.2 ensures a smooth implementation of the clearing obligation? Please explain why and possible alternatives.

Yes, the designed categories of counterparties seem to be sufficiently homogeneous. We agree with ESMA's classification to have the most active market participants start clearing first, as they already have direct access to the CCPs. Those who are the most remote from clearing should be the last in line, as they will need more time to get access to clearing and implement the necessary internal organisational, legal and risk management framework. There should be suitable time for market participants to evaluate and become accustomed to the risk management practices employed by the CCP to ensure assumed risks are within market participants' acceptable level.

We believe that ESMA's categorisation and phased-in implementation are similar to those used in other jurisdictions, and we consider that the optimal approach. National legislation and regulations in the various countries, especially in the US and Europe, must be coordinated to avoid the risks of market segregation and market disruption, and to prevent the appearance of a geographical divide, with the market becoming segregated between US and non-US counterparties.

Continued co-ordination and co-operation between the regulators is crucial in order for further regulatory regimes to be declared equivalent, to provide transparency and to create a level playing field internationally, which prevents regulatory arbitrage. The harmonisation of cross-border rules is also important in this respect. Furthermore regulators should share reporting data among themselves in order to be able to fully understand systemic risk in the global swaps market.

8) Do you consider that the proposed dates of application ensure a smooth implementation of the clearing obligation? Please explain why and possible alternatives.

(No response)

9) Do you consider that the proposed approach on frontloading and the minimum remaining maturity ensures that the uncertainty related to this requirement is sufficiently mitigated, while allowing a meaningful set of contracts to be captured? If not, please explain why and provide possible alternatives compatible with EMIR.

Yes, we agree with ESMA's proposed approach.

10) Do you have any comment on the analysis on the Equity OTC derivative classes presented in Section 6?

We have no comments on the analysis on the equity OTC derivative classes presented, and agree with ESMA that equity swaps should not be subject to mandatory clearing now.

11) Do you have any comment on the analysis on the OTC interest rate future and options derivative classes presented in Section 7?

(No response)

12) Please indicate your comments on the draft RTS other than those already made in the previous questions.

(No response)

13) Please indicate your comments on the Impact Assessment

(No response)