PUBLIC CONSULTATION ON REGULATION (EU) NO 648/2012 ON OTC DERIVATIVES, CENTRAL COUNTERPARTIES AND TRADE REPOSITORIES

SSDAs views and priorities

Summary

Adoption of a single sided reporting obligation

Regulatory reporting requirements in general should be harmonized on a global level to ensure consistent and useful reporting requirements across jurisdictions. One step in the right direction would be to harmonize the reporting requirements for derivative transactions. The SSDA endorse fully the ISDA data reporting principles (see "Improving Regulatory Transparency of Global Derivatives Markets: Key Principles", ISDA, February 2015).

Exempt the non-financial counterparties (NFCs) below the clearing threshold from the reporting and other obligations

According to our opinion EMIR is too burdensome and complex for NFCs and the benefits of including the NFCs in the scope of EMIR do not outweigh the costs. The reporting obligation for small and medium sized firms with very few transactions is an unnecessary, excessive obligation. Instead a threshold should be introduced to ensure that only transactions of interest for the authorities should be reported. This would be consistent with other EMIR requirements - such NFCs are not subject to the clearing mandate, margining requirements or daily valuation. This would also reflect the spirit of the EMIR regulation which aims at preventing systemic risk and thus regulating only significant trading activities.

The timely confirmation, portfolio reconciliation and dispute resolution and portfolio compression are also disproportionally cumbersome for small firms in light of the nature and size of trades these firms conduct. These cumbersome obligations and the increased cost associated with their compliance discourage such firms from hedging risks inherent to the business. This gives rise to increased overall risk rather than mitigation of risk, which is an unintended consequence of a too wide application of EMIR.

Exempt all entities below the clearing threshold from the reporting and other obligations

This is relevant not only for the non-financial entities below the clearing threshold (NFC-) but also for smaller financial counterparties with small exposures for mostly hedging purposes. We therefore advocate a reduction in the scope of all EMIR

requirements by exempting all entities trading below the clearing threshold. The new category FC- is therefore proposed to be created according to the same criteria and same clearing threshold as currently applicable to the NFCs.

Alternatively, we suggest introducing a purely qualitative measure for all entities (NFC/FC) trading derivatives for hedging purposes solely and without application of any threshold. This would ease the computing burden.

For transparency and operational ease, it would be huge step forward to hold the status data publicly available and avoid the status disclosure exercise.

Legal clear definitions of key concepts

There is an urgent need to define some of the key concepts of EMIR in a clear way to improve legal certainty for all involved in the derivative markets. There should be clear definitions of undertaking and public entities (municipalities) in EMIR, such clear definitions being interpreted in the same way by all regulators. The Commission's definition of undertaking is too broad. Furthermore, there should be more clarity regarding the status of third country entities.

Better legislative and implementation process

The lack of transparency and thus lack of predictability in the legislative process is prejudicial to the industry, increases the implementation cost and uncertainty of future trading conditions. There is a need for more transparency regarding the status of rules in the drafting phase, deadlines clearly defined in advance and absolute terms (i.e. a date rather than a moving target), with more dialogue with the industry. A "phasing in" approach is welcomed but it should not be based on cumbersome criteria, requiring complex computations, multiple data exchanges between the counterparties or ambiguous legal categorization.

One of the main problems with implementing EMIR has been the lack of time for the financial sector to implement such complex requirements. The regulators seem to underestimate the scale of changes to the infrastructure and systems as required by the new rules, and the time needed to implement them. Furthermore, inflated resources have been spent by the sector on implementing the rules due to the fact that the level 2 measures have been often delayed, the dialogue between the authorities too long and deadlines pushed forward, while the industry started implementing the solutions on the basis of an ever changing, incomplete and progressively released pieces of rules. The multiple notification procedures, the exchange of data between counterparties due to multiplicity of criteria, and the times at which they are required to be exchanged for compliance purposes, have been cumbersome and unnecessary to achieve the aims of the regulations.

ESMA should be granted the possibility to terminate or suspend the clearing obligation in exceptional circumstances.

The capital adequacy regime should be in line with the objectives of EMIR and incentivize clearing.

Currently, the capital costs related to client clearing is too heavy and causes clearing members to retreat from client clearing, to the prejudice of the objectives of EMIR. Consequently, clearing costs have increased for clients, making cleared derivatives economically unsuitable. The issue of costs and other disincentives to clearing needs to be tackled as a priority.

Part I

Questions on elements of EMIR to be reviewed according to Article 85(1)(a)-(e)

Question 1.1: CCP Liquidity

Is there a need for measures to facilitate the access of CCPs to central bank liquidity facilities? If your answer to i. is yes, what are the measures that should be considered and why?

SSDA: One reason to align the conditions for CCP access to central bank liquidity across the Member States would be to safeguard the level playing field between CCPs.

Question 1.2: Non-Financial Firms

(a) Are the clearing thresholds for non-hedging transactions (Article 11, Regulation (EU) No 149/2013) and the corresponding definition of contracts objectively measurable as reducing risks directly relating the commercial activity or treasury financing activity (Article 10, Regulation (EU) No 149/2013) adequately defined to capture those non- financial counterparties that should be deemed as systemically important?

SSDA: The clearing threshold can only be determined by the NFC itself. Its counterparty is unable to determine whether the applicable thresholds have been reached and may only rely on representations given by the NFC as to its EMIR status. Such a safe harbor confirmed in ESMA Q&A OTC Question 4, Answer 4 is an essential legal risk mitigant for the NFC-´s counterparties. In the absence of such representations or an inability to rely on representations in good faith, the risk of a regulatory breach which the FC would not be able to identify or prevent may be considered unacceptable and result in them refraining from trading with NFCs. Such representations are, however, difficult to obtain from small unsophisticated NFCs, not having the resources or competence to compute the relevant figures. Third country entities, including more sophisticated ones, may be reluctant to produce the figures, given the would require costly and *cumbersome procedures not mandated by their local regulations. Any inability to collect the relevant representations therefore hampers derivatives trading with NFCs and, to a larger extent, third country NFCs.*

It should be clarified that the EU FCs may rely on the EMIR status representations collected from third country entities to the same extent as they can with relationship to EU-based NFCs.

The exchange of EMIR status process is cumbersome. The EMIR status should be determined or collected by the authorities in the form of a public register, on which the derivative players subject to EMIR will be allowed to rely when determining the scope of their compliance.

ii. If your answer to question is no, what alternative methodology or thresholds could be considered to ensure that only systemically important non-financial counterparties are captured by higher requirements under EMIR?

The wider and threshold-free "end-user" exemption as in the Dodd-Frank rules would be more objective and easier to determine. To avoid legal uncertainty of the counterparty status, the authorities should maintain a publicly available register where the status could be easily verified.

(b) Please explain your views on any elements of EMIR that you believe have created unintended consequences for non-financial counterparties? How could these be addressed?

SSDA: For most of the NFCs the obligations in EMIR are very difficult to understand. In particular when they have only very few transactions (maybe to hedge a currency or an interest rates risk). These are transactions with no impact whatsoever on the financial markets. NFCs and their transactions do generally not pose a systemic risk to the financial market. Instead the obligation in EMIR, in particular the reporting obligation, are very burdensome and costly to small NFCs. Furthermore, even if NFCs can delegate their reporting obligation, they can't delegate their liability. There is also no reason to use the limited resources for supervision to supervise and control derivative transaction by NFCs.

A threshold should be introduced to limit the reporting and other EMIR obligations for NFCs, whereby those NFCs below the clearing threshold should not be subject to the reporting obligation. NFC-s are already excluded from the mandatory clearing and margining of uncleared OTC trades requirements. Consistent with this approach and the principle of proportionality, these NFC-s should also be exempted from the timely confirmation, portfolio reconciliation and dispute resolution and portfolio compression requirements.

Having said that, we would prefer to go even further and limit these administrative burdens also for small and medium sized FCs. The application of EMIR is not justified for small FCs having very small trading volumes and trading for hedging purposes only. The cumbersome nature and cost of regulatory compliance act as a disincentive on their hedging strategies. There is thus a risk that even these financial counterparties, for economic reasons, will avoid hedging risks ancillary to their activities, which would increase the overall risk on the market. The applicability of the EMIR requirements to FCs could be determined by reference to the same clearing threshold designed for NFCs. They face the same difficulties and their hedging activities represent a minor (if any) systemic risk.

A single sided reporting obligation could also reduce the administrative burden.

(c) Has EMIR impacted the use of, or access to, OTC derivatives by non- financial firms? Please provide evidence or specific examples of observed changes.

In general NFCs have had difficulties to understand why they are covered by the obligations in EMIR - why they should report, why they should have LEI, why they should be confronted by a liability with heavy sanctions if not fulfilled. For good reason in our opinion.

It is difficult to assess the impact of EMIRs obligations on NFCs, but there is clear risk that they are not using derivatives to hedge business risks (currency and interest rates risks) to avoid EMIR, and that EMIR has thereby created an additional administrative burden on SMEs.

Furthermore, we want to highlight the reports from ISDA on market fragmentation and other trends in the derivative markets (www2.isda.org/functional-areas/research/surveys/end-user-surveys)

Part II **General Questions**

Definitions and Scope

Question 2.1

Are there any provisions or definitions contained within Article 1 and 2 of EMIR that have created unintended consequences in terms of the scope of contracts or entities that are covered by the requirements? If your answer to is yes, please provide evidence or specific examples. How could these be addressed?

SSDA: The concept of "undertaking" is not defined in EMIR. Instead the Commission has in "EMIR: Frequently asked questions" made its interpretation of the concept.

Undertaking means, according to the Commission, an entity operating in one or more economic sectors, and the Commission stresses the nature of the activities carried out by the entity rather than the nature of the entity itself. The Commission's interpretation is based on a case from the European Court of Justice. In that case the Court has considered any activity consisting in offering goods and services on a market to be an economic activity, regardless of the entity's legal status and the way in which it is financed. According to that interpretation, both non-profit entities and individuals are considered to be undertakings if they offer goods and services in the market.

SSDA does not agree with the interpretation by the Commission. Firstly, it is doubtful if such a conclusion could be made from a case about competition law. We are not convinced that the conclusion is applicable to the criteria by which entities should be obliged to report under a financial regulation. Furthermore, to regard a derivative transaction by a NFC to have an equivalent status as offering goods and services to the market seems farfetched. From our point of view, financial firms active in the derivative markets as dealer or market maker are offering services to the market in the same way as derivative exchanges and CCPs offer their services to the derivative markets. NFCs are end-users and their transactions should not be regarded as offering services to the market (apart from adding non-substantial liquidity). For the aforementioned reasons we also question the fact that municipalities generally fall within the scope of application of EMIR.

We are also of the opinion that the concept of undertaking is of such importance that it should be clearly defined in level 1 legislation and clearly not in non-binding question and answers from the Commission or ESMA.

Despite the reference to the third party equivalence regime, there are still very few equivalence decisions and delegated acts for third country entities. The wide network of the equivalence decisions is a precondition for a well-functioning international derivatives markets. The absence of an equivalence regime creates legal uncertainty and causes concerns when trading with third country entities.

For example, the exemption granted to central banks and other public bodies has been, so far, extended only to Japan and the US, while some other countries have been announced as forthcoming (Australia, Canada, Hong Kong and Switzerland) back in 2013. The industry has been awaiting these and further exemptions in line with what is legitimately expected to be the intended scope of EMIR. Legal predictability is essential for safe derivatives markets and the delay in producing these decisions is of concern for the industry.

Clearing Obligations

Question 2.2

With respect to access to clearing for counterparties that intend to clear directly or indirectly as clients; are there any unforeseen difficulties that have arisen with respect to establishing client clearing relationships in accordance with EMIR?   If your answer is yes, please provide evidence or specific examples. How could these be addressed?

SSDA: According to our experience, getting access to clearing services is problematic. The indirect clearing model foreseen in EMIR is not in place, and the tendency is that clearing members are disappearing from the market and indirect clearing services are not offered. In our opinion it could be very problematic in the future for small and medium-sized market participants to find clearing alternatives.

Moreover, there is a high fragmentation of products cleared on various CCPs in Europe, as well as in respect of clearing members´ offerings. Since the clearing mandate covers various asset classes and currencies, which cannot all be cleared on a single CCP via a single clearing member in practice, derivatives players have to seek access on multiple CCPs via multiple clearing members. A membership or client clearing arrangement on a single CCP is not enough to satisfy the clearing obligation. Putting in place multiple clearing arrangements is heavy and disproportionally cumbersome for clients.

There is also fragmentation in the procedures, systems, infrastructure, documentation etc. that need to be in place for each CCP and clearing member. The cost of internal implementation is multiplied by the number of CCPs and clearing members, and there is very little interoperability/economies of scale. Compliance with the clearing mandate is therefore more costly and cumbersome than originally expected.

The issue is accentuated by the lack of interoperability between the CCPs (which had been presumed at the outset).

Also, it has been anticipated that the clearing members will accept to stand by as back-up clearing members and thus create realistic conditions for portability – which is an essential tool to mitigate the systemic risk and other consequences of a CCP failure. The economic reality is different, however, as clearing members have no incentive to propose such a service, at a reasonably acceptable fee.

(b) Are there any other significant ongoing impediments or unintended consequences with respect to preparing to meet clearing obligations generally in accordance with Article 4 of EMIR? If your answer is yes, please provide evidence or specific examples. How could these be addressed?

SSDA: The access to clearing has proved very difficult if not impossible where a small portfolio of trades subject to the clearing mandate is to be cleared. It is not economically viable for clearing members to accept clients with a small portfolio.

Compliance with the clearing mandate may therefore prove impossible, with an effect of preventing trades in the relevant asset class. Indeed, while an institution may trade and directly clear big IRS volumes, it may have a very small credit derivatives portfolio, mostly for hedging purposes, without existing clearing arrangements in place. In such cases, it may be difficult and time consuming to find a clearing member willing to accept clearing responsibility for this small portfolio. It may also prove too costly and cumbersome to put in place the infrastructure required to establish the new clearing connectivity for a very small trade population.

The current phase-in timing has been a concern for some financial institutions, to the extent that they would be subject to the clearing mandate with respect to all asset classes in the first phase-in round (i.e. within 6 months after the RTS) as soon as they are direct clearing members for one of the mandated asset classes. A grouping approach adopted by ESMA in its last consultation for clearing of "EEA" currencies is welcome. But the class by class/currency by currency approach would be more appropriate, since the ability to clear one currency does not necessarily presume an existing access to clearing in another currency of the same group. It may therefore require a longer time to access clearing in a specific currency/product even for institutions used to the clearing framework.

Client clearing is taking time to gain momentum due to the delays in final RTS on clearing IRS and credit derivatives, and uncertainty as to the scope and implementation dates of the mandate. Many clearing members have been working on their client clearing offering but have difficulties to onboard clients who have mostly adopted "a wait and see approach". We expect bottleneck difficulties in the future onboarding when the clearing mandate is finalized. The fact that the clearing mandate is phased-in by 12/18 months for the FCs is not of much help due to the fact that the frontloading obligation commences as soon as 5 months after the rules are adopted. In practice, this will be the deadline for having clearing arrangements in place, as many will prefer to avoid frontloading and will therefore refuse bilateral trades subject to clearing mandate from the beginning of the frontloading period.

Trade reporting

Question 2.3

Are there any significant ongoing impediments or unintended consequences with respect to meeting trade reporting obligations in accordance with Article 9 of EMIR? If your answer to is yes, please provide evidence or specific examples. How could these be addressed?

SSDA: The implementation of the reporting requirements in EMIR has been chaotic. It has been costly and extremely burdensome for our members. Uncertainty regarding the actual start of the different reporting requirements and the content of the reporting have characterized the implementation.

One of the most important lessons of EMIR is that the implementation of these types of reporting requirements needs much better planning, and should be based on in-depth analysis of the need for supervisors to have access to information. In short, the balance between providing good and useful data and being a reasonable burden for firms should be improved.

TRs should have the same set-up for reporting, making it possible to move from one TR to another. Fields and details to report should be identical for all TRs. In the review of EMIR the Commission and ESMA should scrutinize the reporting obligations and only reinstate the really useful information. The reporting obligations should also be harmonized with the obligations in SFT and MiFID II to avoid any duplication and finally, the reporting obligations (in all details) should be in line with the global ones.

As stated above, a threshold should be introduced to limit the reporting obligations for NFCs, and we would prefer to go even further by limiting the administrative burden for small and medium sized FCs as well.

Lastly, we are also of the opinion that the reporting of exchange traded transactions could be deleted from EMIR as unnecessary and, if not, EMIR should be clarified to state that the legislation also includes exchange trade derivatives.

Risk Mitigation Techniques

Question 2.4

Are there any significant ongoing impediments or unintended consequences with respect to meeting risk mitigation obligations in accordance with Articles 11(1) and (2) of EMIR?
If your answer to is yes, please provide evidence or specific examples. How could these be addressed?

SSDA: Discussions with NFCs and smaller FCs regarding the implementation of risk mitigation techniques have not been without problems for our members. As stated above, many NFCs have had problems in understanding why they were covered by EMIR in the first place. Furthermore, these NFCs are not experienced in financial *regulation. Only to get answers and the necessary documents from the NFCs has taken a lot of time.*

The extra-territorial application is proving very difficult, since third country entities are not aware of the EMIR regulations, and are reluctant both to provide information about their EMIR status (FC, NFC+, NFC-, exempted), or to enter into various compliance arrangements (portfolio reconciliation, dispute resolution etc.).

Exchange of Collateral

Question 2.5

Are there any significant ongoing impediments or unintended consequences anticipated with respect to meeting obligations to exchange collateral in accordance with Article 11(3) under EMIR? If your answer is yes, please provide evidence or specific examples. How could these be addressed?

SSDA: There are significant problems in cross-border transactions with different legal regimes and also different definitions and requirements (type of collateral, margins).

Derivatives players with a small hedging portfolio, including some FCs, usually do not have any collateral arrangements in place. The task of implementing the margining requirements is likely to prove complex and costly. They may prefer to refrain from trading non-cleared derivatives. As discussed above, we would suggest exempting the smaller NFC/FC end-users from the margining requirements, as well as all other EMIR requirements.

For those entities used to exchange bilateral margins as of today, the plans for margining implementation have shown that the changes required are much more complex and costly than originally anticipated. The stated intention was to reproduce standard market practices and the existing margining infrastructure in creating the mandatory margining regime. However, the current processes, systems and documentation are not in line with the proposed draft RTS in consultation. Many of the seemingly simple and small requirements have a huge impact on the current operational and documentary set-up (e.g. monitoring the collateral eligibility criteria). At first sight, others are large scale changes (e.g. initial margin modeling). A close dialogue with the industry, assisting the regulator with their understanding of the technical aspects and impact of the proposed rules, may have mitigated the cost for the financial industry.

We welcome the postponement of the implementation date in line with the BCBS IOSCO recommendations. However, there should also be a reasonable timeframe between the announced implementation dates and the publication of the implementing rules (RTS). The margining RTS are still not in place. The industry has been suffering *from the resulting uncertainty, spending a lot of time and resources working on the basis of the assumptions and expectations of what the final rules will be. Such unnecessary pressure and lack of legal predictability has prejudiced (and will keep prejudicing as long as the rules are not final) the sound functioning of the derivatives markets.*

The cross-border inconsistencies are of a major concern for the industry. The US and EU margining rules are not in line (8 pct. FX haircut, wrong way risk, concentration limits, in-scope transaction types, in-scope entities, eligible collateral types, positon as to the use of cash IM in absence of re-investment etc.), thus deepening market fragmentation. The cross border regulatory dialogue is essential to preserve the global derivatives market.

Some requirements are not realistic in light of the existing framework and infrastructure. For example, there are major incompatibilities between the current custody arrangements and segregation requirements for initial margin. The regulatory requirements need to be in line with the operational feasibility.

The re-documentation process causes major concerns and burden. The exchange of data required for compliance with the phase-in arrangements (e.g. notional amounts etc.) will come at a high cost in terms of operations and resources.

Cross-Border Activity in the OTC derivatives markets

Question 2.6

(a) With respect to activities involving counterparties established in third country jurisdictions; are there any provisions or definitions within EMIR that pose challenges for EU entities when transacting on a cross-border basis? If your answer to is yes, please provide evidence or specific examples. How could these be addressed?

As mentioned above, the collection of data for EMIR compliance purposes is challenging. Third country entities may not have the relevant information at hand or may not be willing to spend resources on calculating various thresholds and assessing what their EMIR status would be if located within the EU.

The EMIR "financial counterparties" definitions were drafted with the most common EU legal structures in mind. Therefore, fitting these EMIR definitions to third country entities may be very challenging or merely an approximate exercise. Even within Europe, local legal advice is required in most cases, which is cumbersome and costly.

Putting in place the legal documentation or processes mandated by EMIR is not easy with third country entities. Indeed, they may be reluctant to spent time and resources on a compliance mandated by a foreign jurisdiction.

As mentioned above, the absence of third country equivalence and delays in producing the equivalence decisions are a challenge to cross-border business as it hampers the business expectations of a legal treatment to come.

(b) Are there any provisions within EMIR that create a disadvantage for EU counterparties over non-EU entities? If your answer is yes, please provide evidence or specific examples. How could these be addressed?

SSDA: In general a reference can be made to ISDA document summarizing the difference between the EU and US regimes (www2.isda.org/emir/). And we want to stress the following.

Margining rules

In general, the requirement to collect collateral from a third party FC/NFC+ will disadvantage the EU-based entities to the advantage of third country entities not required to collect margin. Trading derivatives with EU-based entities will therefore become more expensive and more cumbersome unless and until all other countries implement similar regulations. Even then, the discrepancies between the regimes will create scope for regulatory arbitrage in favor of those entities subject to a less stringent regulatory regime.

As of today, despite the announced harmonization work at an international level (BCBS, IOSCO), major discrepancies persist between the EU and US margining regimes. Complying with multiple regimes at the same time is a challenge from a documentation and operational perspective. Dual-regulated firms may be caught by both set of rules and would face major difficulties in complying with both of them until and unless substituted compliance is in place. Single regime firms will also face difficulties in their cross-border trading where, for example, one side is collecting under the EU rules while the other side is collecting under the (non-harmonised) US rules.

The complex interaction of inconsistent regimes is likely to cause market fragmentation. This trend has already been observed as the counterparties are preparing for the implementation on both sides and anticipate difficulties (see ISDA Insight of 23 April 2015 at report http://www2.isda.org/functional-areas/research/surveys/end-user-surveys/).

For example, the EU and US regimes are inconsistent in their (i) scope of covered transactions, (ii) scope of eligible collateral types, (iii) scope of covered counterparties, (iv) applicable thresholds etc.

- *(i) Scope of covered transactions: options on securities and indices are excluded in US but not in EU. Physically settled FX forwards and swaps are excluded in US while they remain subject to variation margin in EU.*
- *(ii) Scope of eligible collateral types: US rules only allow variation margin in USD cash. EU rules allow a range of collateral types which are however subject to the eligibility criteria not required in the US (wrong way risk, concentration limits). EU rules in practice disqualify cash for initial margin purposes in contradiction with US rules and with the BSCS IOSCO recommendations in general.*
- *(iii) Scope of covered counterparties: the exemption of non-financial counterparties is not consistent on both side of the Atlantic. In the EU, the non-financial counterparties over the clearing threshold are in scope while they may not be caught in US if they are "end-users" with "material swap exposure" of less than USD 3 trillion.*
- *(iv) Thresholds: The phase-in thresholds for IM are set at different levels in the EU and US. Moreover, the exchange rates are floating while the regulatory thresholds and caps under EMIR and Dodd-Frank are set in EUR and USD respectively. As an example, when the cap on the IM threshold was coordinated at the international level, the EUR 50 million allowed in the EU was equivalent to USD 65 million in the US (they are not equivalent amounts as of today). Counterparties agreeing on the applicable threshold in a single currency will have to deal with the exchange rate risk, which may cause them to breach one of the regulations passively.*

Clearing: In the US, the end-users are exempted from clearing while only NFC- are exempted under EMIR.

Transparency

Question 2.7

Have any significant ongoing impediments arisen to ensuring that national competent authorities, international regulators and the public have the envisaged access to data reported to trade repositories? If your answer to is yes, please provide evidence or specific examples. How could these be addressed?

SSDA: So far the available data for the public is not particularly useful.

Requirements for CCPs

Question 2.8

Are there any significant ongoing impediments or unintended consequences with respect to CCPs' ability to meet requirements in accordance with Titles IV and V of EMIR? If your answer is yes, please provide evidence or specific examples. How could these be addressed?

(b) Are the requirements of Titles IV and V sufficiently robust to ensure appropriate levels of risk management and client asset protection with respect to EU CCPs and their participants? If your answer to is no, for what reasons? How could they be improved?

SSDA: No comments.

Requirements for Trade Repositories

Question 2.9

Are there any significant ongoing impediments or unintended consequences with respect to requirements for trade repositories that have arisen during implementation of Titles VI and VII of EMIR, including Annex II? If your answer is yes, please provide evidence or specific examples. How could these be addressed?

SSDA: No comments.

Additional Stakeholder Feedback

Question 2.10

Are there any significant ongoing impediments or unintended consequences with respect to any requirements or provisions under EMIR and not referenced in the preceding questions that have arisen during implementation? If your answer is yes, please provide evidence or specific examples. How could these be addressed?

SSDA: ESMA should be granted the possibility to terminate or suspend the clearing obligation in exceptional circumstances.

The multiplication of the data and information to be exchanged between market participants in order to comply with EMIR: various parts of EMIR have been implemented at various points in time and caused multiple exchanges of data or status information between counterparties. At each stage, different criteria are being used to determine compliance dates or the scope of various requirements. This results in a huge *administrative burden and systems updates, as the collected data needs to be integrated within internal systems. To reduce this burden, the compliance thresholds on margining and clearing should be harmonized and fixed at a single point in time. For example, market participants should be able to reuse the figures calculated for the purposes of the phase-in compliance of the margining requirements for determining the clearing mandate compliance date. Currently, the criteria are the same (based on notional amounts) but the calculation period may not necessarily coincide.*

Also, the phase-in criteria used in the EU should be coordinated with the criteria used in the US and other major jurisdictions. Currently, there are slight differences in the methodology for calculating the phase-in trigger levels in the EU and EUR. Moreover, currency movements may cause EUR-based figures to fluctuate between the calculation date, disclosure date and compliance date.