EACT Response to the EBA Consultation on Guidelines on limits on exposures to shadow banking

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The European Association of Corporate Treasurers (EACT)

The EACT is a grouping of national associations representing treasury and finance professionals in 18 countries of the European Union. We bring together about 12,000 members representing 6,500 groups/companies located in the EU. We comment to the European authorities, national governments, regulators and standard-setters on issues faced by treasury and finance professionals across Europe.

We seek to encourage the profession of treasury, corporate finance and risk management, promoting the value of treasury skills through best practice and education.

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Introduction

The EACT welcomes the opportunity to contribute to this consultation.

We are aware of the input submitted by Deutsches Aktieninstitut (DAI) and we are supportive of the points they make.

We support the regulatory objective of increasing the resilience and the transparency of the non-banking sector. We believe this is necessary especially given the increasing importance of the non-banking sector in financing the real economy,

and given the objectives of the Capital Markets Union. However, we also believe that regulation and supervisory measures in this area should always remain proportionate to the risks that the entities in question pose to financial stability. We therefore have strong reservations concerning the EBA's proposed approach to defining shadow banking entities, which in our view casts the net too wide and would capture industrial and commercial organisations (Non Financial Corporations NFCs) that are solely involved in financial markets to fund their business or hedge financial risks. This would have a very damaging effect of limiting banks' dealings with these companies, which would be extremely detrimental to the ability of companies in the real economy to obtain the necessary services they require from the financial sector.

Specific Questions in the EBA Questionnaire

1. Do you agree with the approach the EBA has proposed for the purposes of defining shadow banking entities? In particular: Do you consider that this approach is workable in practice? If not, please explain why and present possible alternatives. Do you agree with the proposed approach to the exclusion of certain undertakings ,including the approach to the treatment of funds? In particular, do you see any risks stemming from the exclusion of non-MMF UCITS given the size of the industry? If you do not agree with the proposed approach, please explain why not and present the rationale for the alternative approach(es) (e.g. on the basis of specific prudential requirements, redemption limits, maximum liquidity mismatch and leverage etc).

In our view the EBA's proposed definition of a shadow bank would include also traditional and non-systemically risky activities of NFCs and therefore we do not agree with the current definition.

We believe that the suggested wording would bring many NFC intra-group activities in scope of the definition. NFCs use centralised treasury management as a means to increase efficiency, to reduce costs and volume of external transactions with banks and are standard practice for most NFCs. These activities include:

- Cash pooling in order to ensure the efficient use of cash across a group
- Parent company guarantees often required in one country for a subsidiary and made by a parent company in another and for which a proportionate credit charge is made to ensure transfer charging protocols are met
- Intragroup loans made by parent companies to subsidiaries and long term in nature to provide certainty to subsidiary suppliers where the funding of the loans is part of the funding mix of the parent and may be at any instance coevered by long and short term borrowings or by use of cash surpluses. As

for guarantees, a proportionate credit charge is required to meet the requirements of domestic tax regimes.

- Intragroup hedging External derivative transactions (usually of net but sometimes of gross exposures) are often undertaken by a central unit and these are then mirrored appropriately as intra-group transactions with the part of the group where the underlying business risk has arisen.

These activities are ancillary and supporting the operative business, and part of normal functioning of company treasuries, and should not therefore be captured by the definition of shadow bank. These activities do not are not systemically risky and do not fulfil the concerns that the EBA has regarding shadow banks (section 3.1.1 of the consultation paper), i.e. run risks and liquidity problems, interconnectivity and spill overs, excessive leverage and procyclicality and opaqueness and complexity.

The legitimacy of NFC treasury centralisation has been previously recognised by the legislator in different legislative pieces, such as the European Markets Infrastructure Regulation (EMIR) where NFCs intra-group OTC derivative transactions are exempt from the central clearing obligation, MiFID II which waives from its full application investment services exclusively provided at group level; and the Payment Services Directive II which explicitly excludes from its scope corporate in-house payment factories established to process external payments in behalf of other group entities.

Classifying NFCs as shadow banking entities would have adverse effects on NFCs' ability to access the required banking services as banks would be subject to more stringent requirements when dealing with such entities. Surely this is not an outcome that it is in line with the current policy priorities. We therefore urge the EBA to explicitly exclude NFCs from the definition of a shadow bank.

The European Association of Corporate Treasurers

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