EAPB Response to Second Joint Consultation on draft RTS on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP

EBA/JC/CP/2015/002

10 July 2015

The European Association of Public Banks (EAPB) is pleased to provide the European Supervisory Authorities with its feedback to the proposed draft Regulatory Technical Standards (RTS) outlining the framework of the European Market Infrastructure Regulation (EMIR), responding to the related Consultation EBA/JC/CP/2015/002, published on 10/06/2015.

Our key observations and concerns are summarised in **Section B.I**. Our responses to the questions classified as mandatory in the response section for the Consultation have already been directly entered in the relevant fields – we have nevertheless included them in this document in **Section B.II** for the sake of completeness.

Section B.III contains some further comments on individual provisions of the draft RTS and the Annexes.

Terms used hereinafter which are defined in EMIR shall have the meaning ascribed to them under EMIR. One exception is the term "counterparty/ies" which – for the purposes of our comments – is intended to mean any party to a transaction, regardless of its status under EMIR (thus covering financial counterparties, non-financial counterparties (subject or not subject to the clearing obligation), third country counterparties equivalent to financial or non-financial counterparties and parties which do not qualify as non-financial counterparties, i.e. because they are not an undertaking).

I. Introduction and summary of key observations and concerns

The EAPB welcomes the opportunity to comment on the Consultation Paper of European Supervisory Authorities (Consultation Paper) on draft regulatory standards (draft RTS) on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP under Article

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11 (15) of regulation (EU) No. 648/2012 (EMIR) with draft regulatory technical standards (draft RTS).

We continue to support the central objective of the draft RTS, namely to extend the use of margining as means of risk mitigation, including mandatory margining in certain circumstances for certain types of counterparties. This ultimately reflects the developments in the derivative markets over the past few years: The reciprocal collateralisation, usually on the basis of standard collateral annexes to the various master agreements for derivative transactions,[1] has already become more and more prevalent in the market.

We also fully agree with the approach to base the future regime for margining requirements under EMIR on the international minimum standards for margining requirements in respect of non-centrally cleared derivative transactions as defined by the BCBS-IOSCO framework: In view of the international nature of the markets it will be of paramount importance to have margining regimes in the various jurisdictions which are as closely aligned as possible in order to ensure safe and functioning financial markets and to prevent diverging or even conflicting regimes. In addition, only consistent and non-conflicting margining regimes prevent competitive disadvantages and regulatory arbitrage. Of course, in this context close coordination between regulatory authorities with a view to a consistent implementation of the standards will be as important as the regulatory rules implemented.

Furthermore, for the sake of consistency with other supervisory frameworks (for example: Liquidity Coverage Ratio delegated act), the introduction of a separate category with regards to promotional bonds or debt securities issued by promotional lenders could be considered under section 5 on eligibility and treatment of collateral.

We further very much welcome that the draft RTS follow the general timeline proposed by the amended BCBS-IOSCO framework for a gradual introduction of margining requirements beginning from 1 September 2016.

Having said this, it needs to be pointed out that the introduction of mandatory margining requirements will be extremely challenging for all market participants for a number of reasons:

Please find our answers to the individual questions as follows:

[1] For instance the Collateral Support Annex to the ISDA Master Agreements or the Collateral Addendum to the German Master Agreement for Financial Derivative Transactions.

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II. Questions and Answers

Question 1. Respondents are invited to comment on the proposal in this section concerning the treatment of non-financial counterparties domiciled outside the EU.

- **Clarification of the personal scope of the obligations in relation to third-country counterparties – Art. 2 and 3 GEN**

Under Art. 2 and 3 GEN of the revised proposal for the Draft RTS the obligation to exchange variation and initial margin will exists in relation to third-country counterparties

- only where these third-country counterparties are equivalent to financial counterparties (FC) or non-financial counterparties above the clearing threshold (NFC+) and
- in the same manner as in relation to FC and NFC+; that is subject to the same exemptions, thresholds and phase-in timeline.

Consequently, an FC or NFC+ would not be obligated to collect variation and initial margin from or exchange initial and variation margin with any third-country counterparty which would neither be qualified as FC nor NFC+ if it were established in the EU; for example a counterparty equivalent to a non-financial counterparty below the clearing threshold (NFC-) or a counterparty which does not even qualify as non-financial counterparty (NFC) because it is not an undertaking (non-undertaking).

We very much welcome this clarification of the personal scope of the obligation in relation to third country counterparties. We share the assessment that this limitation of the scope of the margin requirements helps to ensure a greater international consistency and therefore prevents regulatory arbitrage as well as severe competitive disadvantages for European market participants.

However, we have the following observations and queries regarding the understanding and application of these revised provisions on third-country counterparties:

- **Alternative processes to post collateral – Recital 8**

Recital 8 of the draft RTS addresses the issue of the legal enforceability of the collateral arrangements not being sufficiently certain under the legal framework of a particular jurisdiction. According to this recital, the addressees of the obligations would be obligated to identify alternative processes to post collateral under these circumstances. The recital itself mentions the possibility to rely on third parties situated in another “safe” jurisdiction. In the public hearing, the possibility to elect the application of the laws of other jurisdictions was mentioned as a further example. In addition, it was explained that more specific

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provisions had not been included intentionally in order to give the market participants some flexibility to implement alternative processes.

We welcome this approach and indeed believe that market participants will need some discretion in order to address any unforeseeable legal challenges which they may face when trying to implement collateralisation arrangements in various jurisdictions, in particular third country jurisdictions. However, this necessary space for discretion is currently addressed only in the form of a recital and is not reflected in any way in the regulatory provisions as such. To ensure that the market participants indeed retain some flexibility in devising alternative approaches it would be helpful if the possibility were also addressed in the provisions themselves. This should include the possibility to deviate to some extent from the reciprocal (two-sided) nature of the obligation by only one party collecting collateral, and, consequently obligating the other party to post collateral unilaterally.

Further discretion to deviate from reciprocal collateralisation will specifically be required in relation to transactions with counterparties based in jurisdictions where netting agreements are not (or not sufficiently) legally protected or recognised. The involvement of a third party custodian will not be sufficient in this case, likewise, unilateral collection/posting of collateral will also not help in these circumstances. One possible approach would be the introduction of an exemption (ie. for emerging markets jurisdictions) and or a threshold amount for such jurisdictions.

In this connection we have the following additional comments and suggestions: In the penultimate sentence of Recital 8, the word "and" should be inserted between "bilateral agreements" and "of the effectiveness of". Furthermore, we feel that the expression "guaranteed" in the last line of the Recital 8 may have unintended legal connotations. We therefore suggest the following alternative wording: *"....where those requirements can be met"*.

- Treatment of cross-border transactions until recognition of equivalency - Art. 2 and 3 GEN

There is currently no provision addressing the specific challenges arising in the situation that the third country counterparty may be subject to margin requirements under its regulatory framework which are similar, but not fully compatible, with the EMIR requirements and have not yet been deemed equivalent in accordance with Art. 13(2) EMIR (and, conversely, have not yet been deemed equivalent by the regulatory authorities of the other jurisdiction). It may be impossible for the European counterparty to comply with both requirements as they are likely to be conflicting to some extent. Under these specific circumstances, it should - at least where both parties are subject to similar requirements based on the BCBS-IOSCO framework - be permissible to apply the obligations unilaterally, that is to deviate from the

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general requirement to exchange collateral so that so that only one counterparty is required to collect collateral, consequently obliging the other party to post collateral.

- **Definitions/clarifications – Art. 1 and 2 GEN**

We note that Art. 2 GEN uses the term "non-financial entity" in this context (distinguishing between third country-counterparties which are "financial entities" or "non-financial entities" equivalent to NFC+ on the one hand and "non-financial entities" which are not equivalent to NFC+). The term "financial entity" presumably is intended to capture entities which are equivalent to FCs as defined under EMIR (and "covered entities" under the BCBS-IOSCO k for margin requirements for non-centrally cleared derivatives – BCBS-IOSCO Framework). However, term is currently undefined, which may lead to uncertainties. It could therefore be considered to either include a clarification (perhaps in a recital) that this is meant to capture covered entities within the meaning of the BCBS-IOSCO Framework by incorporating a definition of "financial entity" and/or "third country financial entity" as well as "third country non-financial entity".

Although this can be construed from the context and the underlying objectives of EMIR, it should also be considered to include a clarification to the effect that the obligations also need not be applied in relation to counterparties which do not even qualify as NFC (such as non-undertakings or counterparties falling within the scope of Art. 1 (4) and (5) EMIR or equivalent thereto).

- **Procedural character of the obligations (no formal opt-out agreements) – Art. 1 GEN and Art. 2 to 4 GEN**

We further welcome the fact that the revised draft RTS now underline the procedural character of the obligations, and, as one consequence thereof, no longer require the entering into formal agreements with each counterparty, even those not qualifying as FC or NFC+ (and equivalent third country counterparties), in order to be able to rely on existing exemptions from collecting and exchanging variation and initial margin. Rather, the addressees of the obligations (FC and NFC+) will be able to discharge their regulatory obligations by introducing internal procedures under which, for example, collateral arrangements are put into place in relation to those counterparties which have been identified as being FC or NFC+ and equivalent third-country counterparties, and in relation to other types of counterparties only on a discretionary basis and only to the extent and in the form this is deemed appropriate in view of the internal risk assessment. This approach to describe the obligations primarily as procedural without detailed formal requirements ensures that it will not be necessary to approach every single market participant with the sole purpose of formally agreeing on an opt-out from collateralisation (and the connected contractual documentation). This significantly reduces the burdens for the addressees of the

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obligations as well as for the numerous market participants which are not intended to be captured by the margin requirements, and will help the market participants to concentrate their efforts on the – despite the extended implementation timeline – still extremely challenging task of developing the required new collateral documentation and the negotiation and agreement of these documents and the specific terms in relation to all counterparties falling within the personal scope within the prescribed time limits.

Question 2. Respondents are invited to comment on the proposal in this section concerning the timing of calculation, call and delivery of initial and variation margins.

- Definition of variation margin – Art. 1 (5) GEN

The definition of variation margin (VM) refers to "outstanding contracts" and does not mention the fact that the positions may be covered by a netting agreement and thus combined to a single net position. Although this follows from context and the fact that netting agreements are expressly addressed in other provisions, it may be considered to clarify this in the definition as well.

- T+1 requirement IM – Art. 1 (3) EIM

The T+1 time limit for the ssettlement of margins will be extremely challenging if not impossible to meet, in particular in view of the fact in the case of securities, the settlement periods of any central securities depositary involved have to be observed, and the necessary operational steps to be taken prior to the actual settlement (calculations to be made and reconciled will be time consuming. A more realistic time line would be a 3 day period between the calculation and the collection (exchange) of collateral, such three day period beginning on the calculation date (which would beginning at the latest close of business of the counterparties)

In addition, it has to be taken into account that the segregation requirements will make the exchange of initial margin (IM) operationally more complex than margin payments made in the form of full title transfer.

We, of course, fully recognize that a time lag in the exchange of initial margin needs to be avoided to the extent possible. However, an extension of the time-line (i.e. T+2) would greatly reduce operational burdens (and, of course associated operational risks).

At the very least it should be clarified that any breaches of the T+1 requirement, where these are not caused by the party in question (that is where the causes are outside of its sphere,

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e.g. caused by the central securities depositary), are not automatically deemed to constitute a breach of regulatory requirements.

- VM amount – Art. 1 (1) VM

The last sentence of Art.1 (1) VM can be read to imply that the VM can only be the precise amount calculated in accordance with the provision. This would preclude the collection of any additional margin exceeding that calculation. Such a restrictive reading cannot be intended. This should be clarified by inserting the word "minimum" between "the" and "amount".

- Calculation of VM and changes within the time limit– Art. 1 VM

The provision regarding the calculation of the VM does currently not specify the point in time when the calculation is to take place (calculation date).

- Application of the MTA when calculating VM and IM – Art. 4(2) and (3) GEN

Recital 10 addresses the possibility that counterparties split the minimum transfer amount (MTA) in two separate amounts for VM and IM, respectively (the total of which not exceeding the prescribed maximum of 500,000 €). The provisions setting out the manner in which the amounts due are to be calculated when applying the MTA do, however, can be read to preclude a direct application of such a split MTA on the level of the VM and IM amounts since they appear to foresee an application of the MTA only after calculation of the IM and VM amounts calculated in accordance with Art. 4(2) (a) and (b) GEN. It should therefore be clarified that that in the case of a split MTA, these can be applied already directly on IM and VM level, that is when calculating the IM and VM amounts in accordance with Art. 4(2) (a) and (b) GEN.

- Operational feasibility regarding the different application of the standardized method and the initial margin models

Doubts remain regarding the operational feasibility between the different use of the standardized method and the initial margin models. Potential risks of disputes over the difference in application between brokers (using the MRM) and members (using the SMI) may be triggered without a clear mechanism of dispute settlements.

- Application of group IM threshold – Art. 6 GEN

The provisions regarding the application of the threshold on group level do not clearly set out that this threshold is to be applied in relation to the own group and not the group of the counterparty, that is, each group is responsible for monitoring its overall exposure to a

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specific counterparty and have procedures in place in order to ascertain that the own group members observe the group threshold when entering into transactions with this specific counterparty. This could be clarified in a recital to avoid confusion.

In Recital 14 of the draft RTS we note that the threshold of EUR 8 bn. for gross notional outstanding amounts does not refer to the group level. As this is inconsistent with other references in the Consultation Paper (for example in Art. 6.1 GEN), we suggest to include such a reference to the group be included in Recital 14.

- Communication of credit quality steps under IRB approach – Art. 4 (3) LEC

Under Article 4 (3) LEC the requirement to communicate to the other counterparty the credit quality step may have an unintended impact on the markets as such information can entail the release of sensitive information to the market. This is because approved internal IRBA rating models of are based on a combination of public and non-public information. The relevant requirement thus should be reconsidered or amended to the effect that it does not entail the requirement to disclose sensitive/non-public information.

- Calculation of notional amounts months to be observed – Art. 7 GEN, Art. 1 FP.

The various provisions concerning the calculation of notional amounts refer to different months to be observed: Article 7(1) GEN (p. 53 of the consultation paper) for example refers to the months June, July and August of the previous year. Art. 1 para. 4 FP refers to March, April and May. From an operational perspective it would be helpful if these time periods would be aligned (that is, the same periods would have to be observed for calculation purposes).

- Collateral Management/unused collateral – Art. 2 (1) (e) LEC/Art. 1 OPD (1) (g)

Article 1 OPD(1)(g) requires procedures for the timely re-appropriation of collateral in the event of default of the counterparty having collected it. However, we believe that this is intended to refer to re-appropriation of **unused** collateral, that is, only the excess left after close-out netting and application/realization of the collateral in this connection. It would be helpful to clarify this.

- Collateral Management/credit quality – Art. 4 (1) and (2) LEC

Art 4 (1) LEC refers to the credit quality of the collateral, Art. 4 (2) LEC, however, refers to the credit quality of the issuer. In order to avoid confusion, it appears to be more appropriate to refer to the credit quality of the collateral in both instances.

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- **References in Art. 1 (2) VM and Art. 1 (4) to sections 3 and 4**

The references to sections 3 and 4 should be replaced by references to section 6.

- **Applicable criteria concerning legal impediment to the prompt transfer of own funds and repayment of liabilities – Article 3 IGT**

Although we realise this is only indirectly connected to Question 2, we would nevertheless like to take the opportunity to address the issue of the provisions concerning the impediments to prompt transfers of funds, as this has a direct impact if and to what extent the margin requirements apply within a group: We welcome the clarifications which have been made as these greatly reduces the risk that inevitable formal and legal requirements which necessarily have to be observed in dealings between legally separate entities are qualified as an impediment. Having said this, it has to be realized that in particular the criteria set out under lit. d) are comparatively general and open to interpretation so that there still a considerable level of uncertainty as to whether existing formal requirements under applicable law or the articles of association of a company or may be deemed to constitute an impediment or not. While we understand that it may not be possible to clarify this in the provisions themselves, it could be considered to provide for be additional guidance, e.g. by means of guidelines or through Q&A process.

Question 3. Respondents are invited to provide comments on whether the draft RTS might produce unintended consequences concerning the design or the implementation of initial margin models.

No comment.

Question 4. Respondents are invited to comment on whether the requirements of this section concerning the concentration limits address the concerns expressed on the previous proposal.

No comment.

Question 5. Respondent to this consultation are invited to highlight their concerns on the requirements on trading relationship documentation.

- **Written trading documentation – Art. 2(1) OPD**

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The term "trading documentation" is open to interpretation. We assume that this is intended to cover the contractual documentation setting out the general legal basis for the transactions to be concluded, namely the general framework for the margin requirements (including supplemental agreement) as well any netting agreement, but does not include the trade confirmation with the commercial details and sometimes further specific terms governing the specific transactions. This would reflect the established market practice of relying on standardised contractual agreements which address the general framework and key provisions (such as netting provisions and collateral annexes) and the use of trade confirmations to determine further details. The general framework (master agreement and collateral annex) is generally entered into in advance or on the conclusion of a transaction whereas the trade confirmations, by their nature, are issued subsequently following the agreement on the specific terms (which agreement can occur many forms, including by telephone). Consequently, a clear distinction has to be drawn between the general contractual framework which has to be in place in advance of or at the time of the conclusion of the transaction on the one hand and the trade confirmation which may cover additional terms but may only be formally documented following the agreement on a transaction on the other.

In this context we would like to make the observations and suggestions:

- The use of the word "any" in Art. 2 (1) (a) OPD can be understood to mean that the relevant contractual documentation need to include provisions which cover every possible payment obligation which may arise under or in relation to a transaction and/or contractual relationship. Such an understanding would be incorrect since contractual documentation intents or is able to specify or cover all possible payments obligations which emanate or may emanate from a contractual relationship. In addition, this understanding would conflict with the above described situation that certain transaction specific terms, including payments, may be agreed and documented in the trade confirmation, and thus not already in advance of a transaction. The contractual documentation will only be able to cover the general or material terms and the general basis for the rights and obligations but not any and all rights and obligations. The term "any" should therefore be deleted. The above applies correspondingly to the use of the term "any" in Art. 2(1)(e) OPD.

- The use of the term "written" in this context can be understood to preclude electronic messages and means of recording/documenting, which should therefore either be deleted or replaced by a term with a broader meaning covering any form which ensures an adequate recording/documentation, including electronic records.

- **Independent legal review requirement – Art. 2(2) OPD**

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We note that Art. 2(2) OPD sets out a requirement to annually perform an “independent legal review” regarding the (continued) legal enforceability of the netting agreements used.

While we welcome the fact that the revised draft no longer requires obtaining a formal legal opinion, there are still some uncertainties and concerns over the exact nature of the obligation:

For one, there may be uncertainties of what can be considered to qualify as independent legal review in this context: In view of the existing EBA interpretation regarding the legal opinion obligations under the CRR and in the interest of consistency between CRR and EMIR requirements, the term “independent” cannot imply the need for external legal advice, and would, for example not preclude reliance on internal legal advice, at least where this come from a separate unit which is independent from the relevant business unit (such as the legal department). We would therefore assume that the requirements are met, where, for example, an addressees of the obligation has procedures in place whereunder qualified legal experts (which may be internal or external) regularly assess whether there have been any material changes in the relevant laws which may have adversely affected the enforceability and validity of the contractual agreements used, and where such changes trigger further steps which may include, for example, updating any legal opinions.

In this context we reiterate our concerns already voiced in our comments on the first consultation paper over any requirement which can be understood as to result in the need for a rigid annual review requirement, and, in particular, an annual update of legal opinions. Such a rigid timeframe is not necessary and may actually be counterproductive. The focus should rather lie on effective procedures which ensure that potential material adverse changes in the legal situation are being noticed and adequate addressed by further measures. A formal legal assessment (and/or legal opinion update) should and can always only be one element of such procedures and should, in any event, not be subject to a rigid timeframe.

Question 6. Respondents are invited to comment on the requirements of this section concerning the legal basis for the compliance.

Especially for small banks the requirements may be a large operational burden. Therefore, industry standards need to be developed in this regard.

- Concept of segregation and timely availability – Art. 1(4) SEG

The term “segregated” is open to interpretation: Despite the further clarifications there may still be some question whether the requirements set out under Art 1 SEG will permit reliance

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on pledge arrangements to provide for the segregation of assets (in particular securities) posted as initial margin.

In many jurisdiction pledge arrangements (legal arrangements whereunder the securing party grants a security interest/rights in the assets without relinquishing title over the pledged assets) are a very common and widely recognized method of providing collateral without exposing the collateral to insolvency risk of the secured party. Relying on pledge arrangements in order to achieve segregation has the advantage that the legal framework is usually well established, ensuring a very high degree of legal certainty for both parties. Indeed, in many jurisdictions it will be almost impossible to find a workable alternative to pledges and even where alternatives may exist, these may actually introduce further or new legal risks. Pledge arrangements do, however, necessarily entail observance of certain legally prescribed formalities which affect the speed by which pledged assets can be realised in the event of a default. Such formalities, by themselves, should not be considered to constitute obstacles preventing a "timely" availability for the purposes of Art. 1 SEG.

- **Relation between segregation requirements and collateral management requirements – Art. 1 SEG and Art. 2 LEC**

Art. 2 LEC appears to address some aspects which are also covered by the segregation requirements. One example is the requirement under Art. 2 (1) (c) LEC regarding insolvency or bankruptcy remoteness of initial margin maintained with the collateral provider. It is not entirely clear how these obligations covering similar or connected questions are to interact or which requirements prevail in the case of conflict. In particular all requirements addressing insolvency/bankruptcy remoteness need to be coordinated to avoid discrepancies or uncertainties. To this end, these should only be covered by one single provision.

- **Independent legal review requirement – Art. 1(5) SEG**

The concerns already raised above in our response to Question 5 regarding the legal review requirement apply correspondingly.

In addition, we further refer to our concerns raised under Question 1 regarding the impact of legal uncertainty over the protection of netting agreements in a certain jurisdiction and the need to a greater degree of flexibility to permit alternative approaches such as exemptions from the reciprocity requirements and/or exemptions for certain jurisdictions. In any event it needs to be avoided that an addressee of the obligations is required to post collateral to counterparties in jurisdictions, where the enforceability of netting and segregation is in doubt.

Question 7. Does this approach address the concerns on the use of cash for initial margin?

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In particular taking into account the explanations made at the public hearing, we understand that cash collateral paid into an account will generally not qualify as being sufficiently segregated because the secured party generally only obtains a security interest in relation the claim for repayment against the holder of the account where the cash collateral has been paid into. This is also considered to be the case where the account is held with a third party, since the repayment claim is then still subject to a certain insolvency risk.

In order to nevertheless give counterparties the opportunity to rely on cash to post IM, Art. 1 SEG does not prohibit the use of cash, but would, in conjunction with Art. 1 (2) REU, require that the cash is invested in securities which than could then be segregated.

Although this of course indeed allows reliance on cash as collateral for IM purposes (albeit in a roundabout way) it has to be noted that this indirect manner of using cash to invest in "segregatable" securities will be operationally complex and time consuming so that the T+1 requirement which is already challenging under normal circumstances will be even more difficult to meet (see our comments on Question 2 above).

In addition it should also be noted that reliance on cash for IM purposes is expected to be the exception because of the many disincentives and disadvantages. It is unlikely to be considered other than in very exceptional circumstances, i.e. where a counterparty is not able to procure securities which it could use as IM. However, in such exceptional circumstances, such as a market disruption, it will – in all likelihood – be equally difficult for the recipient of the cash to invest the cash in securities.

Against this background it should perhaps be considered to provide for an exemption from the segregation requirements in respect of cash placed with a third party for a limited period of time in certain exceptional circumstances such as a market disruption.

Question 8. Respondents are invited to comment on the requirements of this section concerning treatment of FX mismatch between collateral and OTC derivatives.

- 8% Haircut – Art. 1 VM, Art. 1 EIM /Annex II

It is not entirely clear whether the 8% haircut addressed in Annex II (item 6) is only to be applied in relation to IM or also VM. This needs to be clarified both in the Annex as well as the substantive provisions.

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In addition it needs to be explicitly confirmed that the haircut is only to be applied to non-cash (as it was clarified in the public hearing and which also follows from Recital). Such limitation of the haircut to non-cash collateral would correctly reflect the fact that cash is the most fungible of all collateral and thus should be exempt in its entirety from any FX haircut (currency mismatches should and will be accounted for when IM is calculated). Again, this should be clarified in the substantive provisions.

In this connection, since neither "termination currency" nor "transfer currency" are defined we would assume that counterparties will be able to determine the transfer and termination currency by agreement.

III. Comments on individual provisions of the draft RTS

- Art. 1(5) VM incorrectly refers to Section 1, Chapter 1 of the Regulation in lieu of Section 2, Chapter 1 and is devoid of a reference to Art. 1(3) FP.

- Art. 1(3)(a)-(e) FP should read either 'that is above' or merely 'above'.

- Art. 1(4) and (5) FP need to make reference to 'paragraph 3' as opposed to 'paragraph 1'.

- Art. 1(6)(a) FP incorrectly refers to 'Paragraph 3(a)' instead of 'Article 3(a)'.

- Annex IV Article 1(3)(c) SMI should be read as a separate paragraphfor the same applies to Article 1(3)(d)-(f) SMI.

- The definition of NGR provided for in Annex IV Article 1(3)(c) SMI would not be operational in the event of negative market values in a netting set resulting in gross replacement cost of zero and a NGR's denominator of the same value. Consequently, the NGR should be set to 100% if the gross replacement cost equals zero.

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The European Association of Public Banks (EAPB) represents the interests of 30 public banks, funding agencies and associations of public banks throughout Europe, which together

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represent some 100 public financial institutions. The latter have a combined balance sheet total of about EUR 3,500 billion and represent about 190,000 employees, i.e. covering a European market share of approximately 15%.

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