



LEADING TREASURY  
PROFESSIONALS

## The Association of Corporate Treasurers

Comments in response to  
***Draft regulatory technical standards on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP under Article 11(15) of Regulation (EU) No 648/2012***

Issued by ESMA

14 April 2014

24 June 2014

### The Association of Corporate Treasurers (ACT)

The ACT is a professional body for those working in corporate treasury, risk and corporate finance. Further information is provided at the back of these comments and on our website [www.treasurers.org](http://www.treasurers.org).

Contact details are also at the back of these comments.

We canvas the opinion of our members through conferences, our monthly e-newsletter to members and others, *The Treasurer magazine*, topic-specific working groups and our Policy and Technical Committee.

### General

The ACT welcomes the opportunity to comment on this matter.

This document is on the record and may be freely quoted or reproduced with acknowledgement.



*The Association of Corporate Treasurers, London, June 2014*

A high proportion of ACT members work for non-financial companies and within that group the vast majority of companies are within the NFC- category, namely a non-financial counterparty but below the clearing threshold. We very much welcome the fact that the original EMIR legislation does not require an NFC- to embark on clearing nor on the mandatory provision of margin. Accordingly on this occasion we do not comment on most of the detail around margin. We restrict our comment to one major point around the margin requirements when dealing with non-EU counterparties.

## Non EU counterparties

Page 7 of the consultation states:

In order to align with international standards, the requirements in the RTS will apply only to key OTC derivative market participants. The provisions of the RTS on initial margin will therefore apply to entities that have an OTC derivative exposure above a predetermined threshold, defined in the RTS as above EUR 8 billion in gross notional outstanding. This reduces the burden on smaller market participants, while still achieving the principle objective of a sizable reduction in systemic risk. The RTS impose an obligation on EU entities to collect margin in accordance with the prescribed procedures, regardless of whether they are facing EU or non-EU entities. EU entities would have to collect margin from all third-country entities, unless explicitly exempted by the EMIR or under the EUR 8 billion threshold, **even from those that would be classified as non-financial entities below the threshold if they were established in the EU** (emphasis added).

Article 2 GEN (pages 22 and 23) provides the specific exclusions from the more general rule that financial counterparties and NFC+ must collect collateral. In Article 2.4(b) the derogation is provided to allow transactions with NFC- to be done without initial or variation margin.

We welcome this recognition that FCs /NFC+ dealing with an NFC- do not need to collect collateral. It provides the essential symmetry for the FC side to reflect that the NFC- side is not subject to clearing or margining. However it does not go far enough.

A non-financial counterparty by definition (EMIR Art 2.9) is an entity established in the Union so that the derogation in the RTS Art 2.4(b) does not apply to transactions with a non EU entity even if that entity would be an NFC- if established in the EU (We call this an NFC- equivalent hereafter).

This has serious consequences for the financial sector in Europe since any EU banks dealing with a non EU NFC- equivalent would need to take collateral. The effect will simply be that no non EU NFC- equivalent will want to do any derivative business with a European Bank. In effect the RTS seem inadvertently to ban European banks from the opportunity to do business with this potential pool of corporate customers. Given the importance in particular of London and Frankfurt as international financial centres this must surely be detrimental to the European economy.

Within large EU based international non-financial groups the banking relationships are usually controlled centrally. Often dealing is centralised too, but if it is not centralised and non EU subsidiaries can enter their own derivatives they may still be required to deal with group approved EU banks. The collateral demands from EU banks will mean that it is no longer practical for those subsidiaries to deal with an EU bank and the business will have to be directed elsewhere.



**LEADING TREASURY  
PROFESSIONALS**

## **The Association of Corporate Treasurers**

The Association of Corporate Treasurers (ACT) is the leading professional body for international treasury providing the widest scope of benchmark qualifications for those working in treasury, risk and corporate finance. Membership is by examination. We define standards, promote best practice and support continuing professional development. We are the professional voice of corporate treasury, representing our members.

Our 4,300 members work widely in companies of all sizes through industry, commerce and professional service firms.

For further information visit [www.treasurers.org](http://www.treasurers.org)

Guidelines about our approach to policy and technical matters are available at <http://www.treasurers.org/technical/manifesto>.

<p><b>Contacts:</b> John Grout, Policy &amp; Technical Director (020 7847 2575; <a href="mailto:jgrout@treasurers.org">jgrout@treasurers.org</a>) Michelle Price, Associate Policy &amp; Technical Director (020 7847 2578; <a href="mailto:mprice@treasurers.org">mprice@treasurers.org</a>) Colin Tyler, Chief Executive (020 7847 2542 <a href="mailto:ctyler@treasurers.org">ctyler@treasurers.org</a>)</p>	<p>The Association of Corporate Treasurers 51 Moorgate London EC2R 6BH, UK</p> <p>Telephone: 020 7847 2540 Fax: 020 7374 8744 Website: <a href="http://www.treasurers.org">http://www.treasurers.org</a></p>
---	--

*The Association of Corporate Treasurers, established by Royal Charter*



*The Association of Corporate Treasurers, London, June 2014*

