The European Association of Corporate Treasurers

Interest Representative Register ID: 9160958318-89

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

14 July 2014

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.

Our contact details are provided on the final page of this document.

1 – Introductory comment

The EACT welcomes the opportunity to comment on this consultation.

A large majority of the non-financial counterparties we represent are below the EMIR clearing threshold and therefore fall into the NFC- category. We welcome the exemption from margining requirements for NFC-'s included in the draft RTSs as this is important in order to ensure consistency with the exemption from central clearing. Therefore in this response we focus mainly on certain aspects of the derogation from the margin requirements.

2 – Specific Comments

Article 2 GEN - Risk management procedures in specific cases

4. By way of derogation from Article 1 GEN, for the purposes of paragraph 3 of Article 11 of Regulation (EU) No 648/2012, financial counterparties and non-financial counterparties as referred to in Article 10 of that Regulation may instead agree in writing or equivalent permanent electronic form on any of the following:

(b) where they relate to transactions entered into with non-financial counterparties other than those referred to in Article 10 of Regulation (EU) No 648/2012, they may agree not to exchange initial and variation margin;

We very much welcome the fact that NFC-'s are exempted from the initial and variation margin requirements; this is in line with the recognition under EMIR that OTC derivative transactions made by non-financial counterparties in order to hedge their risk are not systemically risky and are an important risk management tool for the real economy. However, we would like to make two comments on the topic:

- The obligation under Article 2(4b) for NFC-'s to explicitly opt out (by written or equivalent agreement) from margining requirements increases the operational and administrative burden for NFC-'s. We would strongly prefer to reverse the logic of the obligation and instead have an "opt-in" method whereby by default no margin requirements apply to NFC-'s.

- We believe that this provision should be extended to NFC-'s located outside the EU as under the proposed rules EU banks would be obliged to collect margin from their non-financial counterparties if they are located outside the EU, even if these counterparties are below the clearing thresholds, which would lead to an inconsistent outcome at global level. For EU based non-financial companies this would mean that their non-EU group companies would no longer deal with group-approved EU banks and their business would be directed elsewhere. The exposures towards NFC-'s cannot be considered systemically significant for the financial system, therefore we would be in favour of an exemption for all NFC-'s for the margin requirements.

Article 1 REU - Treatment of collected initial margins

We believe it would be helpful if for non-financial counterparties subject to the margin requirements re-hypothecation of collateral was be permitted on a contract by contract basis; this would give some flexibility to non-financial companies in order to preserve liquidity needed in the conduct of their business activities.

Chapter 5 - Procedures concerning intragroup derivative contracts

We welcome ESMA's aim to provide for a harmonised procedure for applications for intragroup exemption in order to avoid differing approaches by competent authorities. We would however recommend that the proposed rules contain a right to appeal in case of a negative decision on a notification or application.

Physically-settled foreign exchange swaps and forwards, and currency swaps (p.57)

We support the proposed exemption from initial margin for physically-settled FX swaps and forwards and currency swaps (option 1). This seems to be a very sensible approach in terms of achieving global consistency and also avoiding unnecessary burden on different stakeholders using these instruments.

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