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Carlo Comporti
Committee of European Securities
Regulators (CESR)
11-13, Avenue de Friedland
75008 Paris

Paris, 14 April 2010

AFG RESPONSE TO CESR'S CONSULTATION ON GUIDANCE TO REPORT TRANSACTIONS ON OTC DERIVATIVE INSTRUMENTS

Ref : CESR/09-768

Dear Mr Comporti,

The Association Française de la Gestion financière (AFG)¹ welcomes CESR's consultation on guidance to report transactions on OTC derivative instruments.

1. AFG's general comments

We understand the measures proposed in the paper as part of a legitimate concern of the competent authorities to prevent as well as detect ex-post possible market abuses. More

¹ The Association Française de la Gestion financière (AFG)¹ represents the France-based investment management industry, both for collective and discretionary individual portfolio managements.

Our members include 409 management companies. They are entrepreneurial or belong to French or foreign banking or insurance groups.

AFG members are managing 2500 billion euros in the field of investment management, making in particular the French industry *the leader in Europe in terms of financial management location* for collective investments (with nearly 1500 billion euros managed from France, i.e. 22% of all EU investment funds assets under management), wherever the funds are domiciled in the EU, *and second at worldwide level after the US*. In the field of collective investment, our industry includes – beside UCITS – the employee savings schemes and products such as regulated hedge funds/funds of hedge funds as well as a significant part of private equity funds and real estate funds. AFG is of course an active member of the European Fund and Asset Management Association (EFAMA) and of the European Federation for Retirement Provision (EFRP). AFG is also an active member of the International Investment Funds Association (IIFA).

particularly, the proposed provisions relate to the set up of a transactions reporting on OTC derivatives whose underlying instrument is traded on a regulated market.

The scope of this measure includes instruments that are being progressively more and more centrally cleared (CDS for instance). This standardisation effort made by the market participants and these new reporting requirements cannot ignore one another and should be part of the same framework. Firms should be authorised to appoint DTCC as a reporting agent.

Data exchange on OTC derivative transactions is still poorly automated between market participants despite existing working groups who try to gather a consensus on a standard set of fields to be included in trade confirmations. Therefore CESR should closely consider that this new mandatory transaction reporting should ensure minimal developing costs for the asset management industry.

Indeed, the intended reporting will require a lot of analysis and IT developments for asset managers. The internal organisation and reporting chain from front to back will also need to be amended. The industry clearly needs sufficient time to properly prepare the implementation. A good idea would be to start with a limited number of OTC instruments (CDS for example) and then extend to other OTC derivatives.

AFG supports CESR's proposition to use a simple model with 8 proposed categories of instruments and globally limited number of fields. The reporting mechanism should therefore be simple to use by the reporting entities and simple to process for the supervisory authorities. A simple model is also a more robust one and this characteristic is valuable as OTC derivatives types are very diverse and permanently evolving and the industry would like to limit having to amend the IT developments.

Also, a simple and flexible reporting mechanism will help preventing unintended prohibitive costs on asset managers of all sizes and on asset managers making a limited use of these derivative instruments.

We would like to specify:

- the need to clarify that a basket starts with 2 securities and therefore an OTC derivative on a basket of 2 securities is out of scope.
- the need to keep the operational flexibility to either amend or cancel a trade to reflect events on the life of the trade.
- the need to clarify that the reporting entities are those to whom the settlement operations are delegated (carve outs, mandates, third party delegation...)

2. Specific questions:

Population of fields per type of derivatives (Q1 to Q3)

There is a need to clarify that OTC options with 2 or more strikes need to be reported in the section 'Complex Derivatives'.

OTC Options (Q3 to Q4)

Major issue: Trading time (also relevant for all other OTC derivatives)

CESR has inserted a field named 'Trading Time'. As of today, for a lot of asset managers, the only time recorded in the systems is the trade insertion time which can happen hours after the real trading time.

The trading time is only recorded in the telephone system / e-mails / BBG confirm.

Our recommendation: Trading Time shall be indicative. Only the Trade Date is important. If needed, the asset manager can provide the trading time upon reasonable request.

CFDs and Spread Bets (Q6 to Q14)

No specific comment at this stage.

Equity Swaps (Q15 to Q19)

No specific comment at this stage.

Credit Default Swaps (Q20)

Asset managers can report either the Markit red pair code (FF1AAKAC6 in the Alcatel example of the pdf doc) or the underlying Isin of the reference obligation (FR0000189201 in the example). However, in some cases, there are no ref obligations for some entities on which cds trade.

There is a clear preference for the Markit Red Pair Code as this is widely used and covers conveniently the majority of cases. In this case, the Red code on 6 characters could be mandatory and the one on 9 characters optional (if there is a reference obligation).

If the Markit red pair code is chosen, we insist on having ensured beforehand that a ***Reduced licence for transaction reporting purposes (only) is available for free!*** Small-sized players with limited use of derivatives should not see their investment options narrowed because of the transactions reporting burden and associated costs.

Credit Default Swaps (Q21)

No, we recommend using the upfront payment and the fixed spread as these are the fields matched with the counterparty.

The all-running spread is not necessarily a matching criterion with counterparties: on standard cds (with fixed spreads of 100bps or 500 bps) the matching is done on the exact fee amount rather than on a running spread.

Credit Default Swaps (Q22)

We do not agree that price notation should be the currency of the debt protected by the cds : it is not the case for sovereign cds on European states : such cds are usually traded in USD, not EUR.

It should be the currency of the CDS.

Credit Default Swaps (Q23)

There are different views on the subject as early terminations and assignments are considered by some market participants as an alternative answering to the same wish of a counterparty to close a position under the best conditions. Further study on the question is maybe needed to better capture the use made by the market participants.

We are not against the fact of not reporting compression trades. Some market participants remark that “Collapse trades” are not mentioned whereas they should be quoted and excluded from the scope of the reporting (counterparty risk reduction relating to an underlying commitment already netted).

Complex derivatives (Q24 and Q25)

The instrument description field shall be optional as it is impossible to have a common description language across all market participants.

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We remain available for any further questions. Please do not hesitate to contact myself at:

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Sincerely Yours,
Pierre Bollon