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ESMA
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AFG comments to ESMA's consultation paper on the Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories

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The Association Française de la Gestion financière (AFG)[1] welcomes ESMA's consultation paper on Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories.

General Comments

We believe regulators should strike a balance between improved transparency and the possibility for non speculative investors to carry on their business without excessive costs.

Our members would like to stress the following points:

- Use of FBF master agreements for OTC transactions : it is both (i) mandatory for two French counterparties to contract under French law if there is no extraterritorial element in the

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[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 411 management companies. They are entrepreneurial or belong to French or foreign banking or insurance groups.

AFG members are managing 2600 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 1600 billion euros managed from France, i.e. 23% 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).

transaction and (ii) not possible for practical reasons to hope negotiating ISDA contracts with tens of counterparties in a matter of months;

- Credit standing of CCPs: the mandatory usage of CCPs will reduce the diversity of counterparties and hence may increase the risk if CCPs are not totally safe for investors who will access them through clearing brokers; we would appreciate that CCPs be identified as SIFIs (systemically important financial institutions), with specific capital requirements and controls that it implies, and have access to central bank money;

- Reporting to TRs: the list of items to be reported to TRs as it stands in the annex of the discussion paper looks very long and burdensome when compared to the items necessary to confirm a trade through a confirmation platform for example. It seems not necessary to have so many criteria to properly identify trades and for the regulators to be able to conduct appropriate controls. Also, it is highly desirable to seek consistence with other reporting requirements under MIFID or Dodd Frank and operational requirements of various clearing platforms for example. We believe that asset management companies and insurance companies should be exempted from reporting obligations as their counterparts/clearing members would perform the reporting. In general, for information to be reported, it would be useful to make use of standards already present in the market (like the Legal Entity Identifier" (LEI) or "Unique Product Identifier" (UPI), etc.).

- Clearing obligation: We understand an eligible derivative product is not supposed to be treated OTC any more, however our members would like to keep the possibility to activate any specific clause that would have been included in the product's documentation and be able to deal with an eventual liquidity shortage on « listed » OTC derivatives and to permit funds to quit the transaction at any time, especially if liquidity is needed to pay redemptions.

- Clearing obligation procedure: Eligibility criteria could include prospective data on expected volumes by the CCP or the standardisation of the instrument's operational model (for instance technical norms like those of ISDA could be useful).

Many questions will not be commented as our members do not feel they have a strong view to express on the point they raise and are globally satisfied with ESMA's position.

Please see our detailed responses below:

Q1: In your views, how should ESMA specify contracts that are considered to have a direct, substantial and foreseeable effect within the EU?

First, the concept of "Eligibility to EMIR for contracts having a direct, substantial and foreseeable effect within the EU" would need be clarified by the legislator.

It is essential that the principle of reciprocity should apply with the US and Dodd Frank regulation. A common view on extraterritorial impacts of the regulations would be helpful together with a clarification on possible conflicts. Indeed, EMIR and Dodd-Franck should enact homogeneous criteria of eligibility to the clearing and in a general way agree on a process of harmonized clearing (data to be gathered for TRs, valuation models, legal documentation, taxation), allowing an equal accessibility to the US and European systems, avoiding a particular treatment with regards to a same derivative when it is concluded by a party whose jurisdiction differs from that of the CCP.

Q2: In your views, how should ESMA specify cases where it is necessary or appropriate to prevent the evasion of any provision of EMIR for contracts entered into between counterparties located in a third country?

With respect to the territorial scope of EMIR we think it is important that ESMA provides clear and simple tests allowing counterparties to determine if they are in or out of scope of the trade reporting, mandatory clearing/execution or risk mitigation measures requirements.

Q3: In your views, what should be the characteristics of these indirect contractual arrangements?

Specific consideration should be given to the possibility to clear trades conducted under local law and master agreements. More precisely investors should be authorised to refer to German Rahmen Auftrag or French FBF master agreement for trades they would submit to German or French law and that could be cleared. As mentioned in the preliminary remarks this is a key point for asset managers which may simply not be in a position to ensure best execution if prevented to use all their present counterparties.

Another point of concern relates to the case when a deal will be cleared on a CCP of which the global clearing broker of the client is not a member. The deal will be posted through a delegated or sub clearing broker and the chain of responsibilities and controls should be examined to avoid hidden risks.

Q4: What are your views on the required information? Do you have specific recommendations of specific information useful for any of the criteria? Would you recommend considering other information?

Q5: For a reasonable assessment by ESMA on the basis of the information provided in the notification, what period of time should historical data cover?

Q6: What are your views on the review process following a negative assessment?

Q7: What are your views regarding the specifications for assessing standardisation, volume and liquidity, availability of pricing information?

Q8: What are your views, regarding the details to be included in ESMA Register of classes of derivatives subject to the clearing obligation (Article 4b)?

Q9: Do you consider that the data above sufficiently identify a class of derivatives subject to the clearing obligation and the CCPs authorised or recognised to clear the classes of derivatives subject to the clearing obligation?

Q10: In your view, does the above definition appropriately capture the derivative contracts that are objectively measurable as reducing risk directly related to the commercial or treasury financing activity?

Q11: In your views, do the above considerations allow an appropriate setting of the clearing threshold or should other criteria be considered? In particular, do you agree that the broad definition of the activity directly reducing commercial risks or treasury financing activity balances a clearing threshold set at a low level?

Q12: What are your views regarding the timing for the confirmation and the differentiating criteria? Is a transaction that is electronically executed, electronically processed or electronically confirmed generally able to be confirmed more quickly than one that is not?

Suggested times for confirmation are impossible to comply with in practice. A confirmation process can't be totally automated as there must be some manual intervention to check for instance items whose description refers to text and not only figures or boxes.

Our members' experience is that a well organised middle office is in a position to confirm trades in 2 hours and that manual trades will require a full day to be confirmed. Shorter periods would result in an explosion of "fails" that would on one hand impose additional work to middle officers and on the other hand extra costs to clients when looking at fees for "repairs".

A transaction that is electronically executed, processed or confirmed is able to be confirmed more quickly than one that is not. There are however specific concerns with respect to timely confirmation as described in section 38 and 39 of the consultation.

- The currently set time frames do not reflect the existing operational infrastructure with respect to electronic execution, processing and confirmation of trades. In practice, to confirm transactions within the timeframes proposed by ESMA is not feasible. Even where trades can be electronically executed and/or processed the issue of a relevant confirmation can take more than 15 or 30 minutes, or even several business days and notably for cross-border transactions due to business day and time zone differences. This situation is even more critical where the underlying product is not covered by an electronic confirmation matching platform which is the case for the majority of products and for products where no "master confirmation agreement" or other similar template exists.

- 30 minutes paper confirmation is much too short. In general, one can pre-confirm electronically the economical terms of the derivative, but one cannot exchange signed confirmations the same day, as this is operationally impossible.

- Furthermore, Asset Managers are commonly operating their funds via different service providers (such as fund administrators, trading advisors, out-sourced back offices) which are key in the process of trade allocation and confirmation. These providers and counterparty to a transaction can all be located in different time zones which leads to a trade execution and confirmation process which can easily take several business days.

- The issue of paper confirmation which can take even for vanilla transactions a couple of days is still a common feature at the buy-side level. Only a few strategies using derivatives as mass product allow already for electronic execution and confirmation. Thus, on a larger scale, time would be needed to create an operational environment to allow for electronic execution and confirmation.

- Also there is a universe of structured funds for which the pay-off is based on a structured derivative. Due to the complexity of the structure and the bespoke character of the transaction, issue and execution of a confirmation can take several business days and could not be covered on an electronic confirmation matching venue.

ESMA should reconsider its proposed deadlines against these circumstances and adopt a flexible approach based on these market realities.

Q13: What period of time should we consider for reporting unconfirmed OTC derivatives to the competent authorities?

We believe that financial counterparties should report on a monthly basis to the competent authorities the number of unconfirmed OTC derivative transactions that have been outstanding for more than 30 calendar days. Such reporting is appropriate to support authorities in supervising market participants.

Q14: In your views, is the definition of market conditions preventing marking-to market complete? How should European accounting rules be used for this purpose?

We agree to the ESMA's approach related to Marking to Model if market conditions make not possible to use Marking to Market pricing.

Q15: Do you think additional criteria for marking-to-model should be added?

Q16: What are your views regarding the frequency of the reconciliation? What should be the size of the portfolio for each reconciliation frequency?

Our members do not share the view that a distinction should be made between larger and smaller market participants when determining the frequency of reconciliation.

We broadly agree that the portfolio reconciliation should cover key trade terms that identify a particular derivative transaction as set out in the Discussion Paper and can be performed each business day when the counterparties have 300 or more OTC derivatives with each other. This is subject to the condition that the threshold shall take into account the number of OTC derivatives traded by a fund (and not at the level of its Investment Manager). The 300 figure for mandatory daily reconciliation seems appropriate as it would concentrate in the fund industry mainly on hedge funds very active on derivatives.

Normal practice at some bigger players is to reconcile on a weekly basis, but we consider that introducing a third category with quarterly reconciliation makes sense to protect very small participants from excessive administrative requirements. Maybe a number of transactions limited to 20 would be appropriate in this case.

Q17: What are your views regarding the threshold to mandate portfolio compression and the frequency for performing portfolio compression?

Q18: What are your views regarding the procedure counterparties shall have in place for resolving disputes?

We believe it is important to adopt a general procedures framework in order to resolve disputes and in the meantime keep the possibility to adapt the procedure to disputes related to specific transactions.

We support rapid resolution at the portfolio level, but in practice resolution on 5 days is difficult, especially when it requires discussion between parties across vastly different time zones. Some disputes require discussion between multiple contributors to be resolved which can easily take several business days.

Q19: Do you consider that legal settlement, third party arbitration and/or a market polling mechanism are sufficient to manage disputes?

Q20: What are your views regarding the thresholds to report a dispute to the competent authority?

Q21: In your views, what are the details of the intragroup transactions that should be included in the notifications to the competent authority?

Q22: In your views what details of the intragroup transactions should be included in the information to be publicly disclosed by counterparty of exempted intragroup transactions?

With reference to intragroup transactions, the place for public communication seems to be the annual report and the notes to the accounts. The requirement under EMIR should not exceed what is best accounting practices.

Q23: What are your views on the notion of liquidity fragmentation?

Q24: What are your views on the possible requirements that CCP governance arrangements should specify? In particular, what is your view on the need to clearly name a chief risk officer, a chief technology officer and a chief compliance officer?

Our members are of the opinion that stakeholder groups should participate to the governance of CCPs, especially because the balance between Initial Margin and Default Fund is very much a question of bargaining power between clients and clearing members.

We agree to nominate representatives of asset management companies as independent members of CCPs' Boards.

Q25: Are potential conflicts of interests inherent to the organisation of CCPs appropriately addressed?

Q26: Do the reporting lines – as required – appropriately complement the organisation of the CCP so as to promote its sound and prudent management?

Q27: Do the criteria to be applied in the CCP remuneration policy promote sound and prudent risk management? Which additional criteria should be applied, in particular for risk managers, senior management and board members?

We consider that transparency of the principles of remuneration and control by a remuneration committee is adequate and sufficient. The key point is to check the appropriate balance between front/back and control activities.

Q28: What are your views on the possible organisational requirements described above? What are the potential costs involved for implementing such requirements?

Q29: Should a principle of full disclosure to the public of all information necessary to be able to understand whether and how the CCP meets its legal obligations be included in the RTS? If yes, which should be the exceptions of such disclosure requirements? Has the information CCP should disclose to clearing members been appropriately identified? Should clients, when known by the CCP, receive the same level of information?

Disclosure to clients and potential clients is of prime importance to develop trust and confidence in the CCPs. In particular all information on the risk control systems, the management of default, the continuity plan, the stress tests …should be made available to the public if not in its entirety at least in its principles and key results.

CCPs can only know the existence of a client if it requires segregation of his assets. The proper way to organise the flow of information from one CCP to the client, be it known or not, is to pass through the member and possibly sign a tripartite agreement with a view to organise direct transfer of information.

Q30: What are your views on the possible records CCPs might be required to maintain?

As regards positions, the CCP should keep record of all the transactions that led to the existing positions. Furthermore, legal documentation should be added to the list of business records to be held by the CCP.

Q31: What are your view on the modality for maintaining and making available the above records? How does the modality of maintaining and making available the records impact the costs of record keeping?

Q32: What are your views on the possible requirements for the business continuity and disaster recovery plan and in particular on the requirements for the secondary site? Would it be appropriate to mandate the establishment of a third processing site, at least when the conditions described above apply? What are the potential costs and time necessary for the establishment of a third processing site and for immediate access to a secondary business site?

Q33: Is the 2 hours maximum recovery time for critical functions a proportionate requirement? What are the potential costs associated with that requirement?

Q34: Are the criteria outlined above appropriate to ensure that the adequate percentage above 99 per cent is applied in CCP's margin models? Should a criteria based approach be complemented by an approach based on fixed percentages? If so, which percentages should be mandated and for which instruments?

We should keep in mind that more Initial Margin means less default fund and as a consequence buy side and clearing brokers have diverging views on this matter. We feel that (i) a criteria approach that would differentiate among asset classes is satisfactory, that (ii) minimum 99% confidence interval might be sufficient on some asset classes when liquidity and price availability is unproblematic, (iii) review of criteria should be rare and avoid pro-cyclicality., (iv) impact of significance of exposure to a clearing member should not lead to excess margin but to an increased default fund.

ESMA is considering two options for the definition of the appropriate confidence interval:

a) defining a list of financial instruments whose characteristics are such to necessitate a specific percentage above 99 percent single tail interval coverage and applying a criteria based approach for the other financial instruments not explicitly considered;

b) applying a criteria based approach for all financial instruments.

Q35: Taking into account both the avoidance of procyclicality effects and the need to ensure a balance distribution of the financial resources at the CCP disposal, what it is in your view the preferred option for the calculation of the lookback period.

Option **c** of §98 mixing two (or one) year and stress market conditions is favoured.

Q36: Is in your view the approach described above for the calculation of the liquidation period the appropriate one? Should a table with the exact number of days be included in the technical standards? Should other criteria for determining the liquidation period be considered?

Q37: Is procyclicality duly taken into account in the definition of the margin requirements?

Q39: Do you believe that the elements outlined above would rightly outline the framework for managing CCPs' liquidity risk?

Access to Central Bank funds is the only fully satisfactory way to manage liquidity risk.

Q40: Do you consider that the liquid financial resources have been rightly identified? Should ESMA consider other type of assets, such as time deposits or money market funds? If so, please provide evidences of their liquidity and minimum market and credit risk.

Along with deposits with low credit risk institutions, money market funds (both short term MMFs and MMF) should be authorised. Their regulatory framework has been conceived to ensure liquidity and avoid price uncertainty in all circumstances. Reference to French money market funds in the past 5 years evidences that funds with low weighted average life or maturity have been able to face critical times.

Q41: Should the CCP maintain a minimum amount of liquid assets in cash? If so, how this minimum should be calculated?

A minimum balance in the books of the Central Bank could be considered. Any other type of cash balance represents a risk and should not be considered as protective.

Q42: What is your preferred option for the determination of the quantum of dedicated own resources of CCPs in the default waterfall? What is the appropriate percentage for the chosen option? Should in option a, the margins or the default fund have a different weight, if so how? Should different criteria or a combination of the above criteria be considered?

Firstly, all clients and potential clients should have a clear and transparent view of the real size of CCPs own resources dedicated to one given activity. As pointed in §117 CCPs may establish different default funds dedicated to separate market segments, as some others may dedicate a portion of their capital to such activity. Thus, information on a consolidated basis might be profoundly misleading and clients should have an easy access to the funds dedicated to the market segment they plan to enter in and to the overall available capital that is not dedicated and constitute the top layer of protection.

Option a in § 114 offers the advantage of establishing a direct link between the level of dedicated funds and the real activity of the CCP. No difference should be made between margin and default fund as their respective weight may result from a simple bargaining between clients and members.

Q43: What should be the appropriate frequency of calculation and adaptation of the skin in the game?

Q44: Do you consider that financial instruments which are highly liquid have been rightly identified? Should ESMA consider other elements in defining highly liquid collateral in respect of cash of financial instruments? Do you consider that the bank guarantees or gold which is highly liquid has been rightly identified? Should ESMA consider other elements in defining highly liquid collateral in respect of bank guarantees or gold?

We are in favour of a diversification of eligible collateral (cash and securities), for initial margin as well as variation margin.

We agree in general with the criteria based approach exposed in the section 118 of the Discussion Paper and the concept of "wrong-way risk" limitation discussed in the section 119. As far as section 120 is concerned which describes the criteria defining highly liquid cash and non-cash collateral, we believe that the "low credit risk" component should be clearly defined by ESMA. It is not easy to suggest definitions for "low credit risk" institution but such a criterion is necessary. We suggest the European authority considering for instance parameters such as credit rating and/or credit spreads to clarify which entity should be considered as "low credit risk".

The same remark applies to "low market risk" concerning the criteria highlighted for financial instruments.

Commercial guarantees seem an interesting venue for asset managers when some funds may find it difficult to maintain cash balances or eligible assets. But the approach as it appears in §120- 4 looks overly restrictive especially when mentioning the full collateralisation of the guarantee in (v). A clarification is needed on that point (v) or its suppression is suggested to make from this venue a practical way to comply with collateral requirements.

We would like to express our members concern that when a structured fund enters in a swap transaction with a bank that guarantees the full performance (as expressed in the prospectus), there is no need to collateralise the swap since the payment for the guarantee covers any discrepancy between market price and the promised amount. In most instances, we are in presence of non clearable structured swaps.

We don't recommend accepting gold as collateral given that markets experienced severe drawdown lately on a weekly basis for precious metals such as 20% moves for gold and 30% for silver. This commodity appears to be too volatile to be considered as highly liquid collateral in our view.

Q45: In respect of the proposed criteria regarding a CCP not accepting as collateral financial instruments issued by the clearing member seeking to lodge those financial instruments, is it appropriate to accept covered bonds as collateral issued by the clearing member?

A strict approach in matter of risks is essential to maintain confidence in CCPs. It would require refusing covered bonds issued by a clearing member as collateral because in case of default of the issuer the covered bonds will be fully impacted and totally illiquid.

Furthermore, attention should be paid to the risk of cross-collateralisation with member A depositing member B's bonds and reciprocally.

Q46: Do you consider that the proposed criteria regarding the currency of cash, financial instruments or bank guarantees accepted by a CCP have been rightly identified in the context of defining highly liquid collateral? Should ESMA consider other elements in defining the currency of cash, financial instruments or bank guarantees accepted by a CCP as collateral? Please justify your answer.

We assess the criteria mentioned by ESMA to define highly liquid collateral with regards to the currency of cash, financial instruments or bank guarantees as being adequate.

Q47: Do you consider that the elements outlined above would rightly outline the framework for determining haircuts? Should ESMA consider other elements?

Q48: Do you believe that the elements outlined above would rightly outline the framework for assessing the adequacy of its haircuts? Should ESMA consider other elements?

Q49: Do you consider that the elements outlined above would rightly outline the framework for determining concentration limits? Should ESMA consider other elements?

Concentration limits concerning the collateral including type of individual issuer, type of issuer (industry, regional and rating limits), and product type at the level of each clearing member and at the level of all clearing members will allow the CCP to mitigate its counterparty risk in the case where the collateral needs to be liquidated in a short period of time. We would also recommend ESMA considering liquidity limits such as ATV limits for equities and size of issue for bonds (as well as duration limits). Correlation amongst stocks at the level of each clearing member and at the level of all clearing members could be also discussed by ESMA.

Q50: Should a CCP require that a minimum percentage of collateral received from a clearing member is provided in the form of cash? If yes, what factors should ESMA take into account in defining that minimum percentage? What would be the potential costs of that requirement?

Q51: Do you consider that financial instruments and cash equivalent financial instruments which are highly liquid with minimal market and credit risk have been rightly identified? Should ESMA consider other elements in defining highly liquid financial instruments with minimal market and credit risk? What should be the timeframe for the maximum average duration of debt instrument investments?

We are very much in favour of authorizing CCPs to invest in any UCITS or regulated funds having an investment strategy compliant with the proposed rules. With reference to average duration and life of debt instruments, an easy solution is to stick to the CESR's Money Market Funds definition with an average duration of 1 year and a maximum life of 2 years. That level of risk comparable to MMFs (but not short term MMFs) seems adequate.

Q52: Do you think there should be limits on the amount of cash placed on an unsecured basis?

Yes, cash should not be considered as a risk free exposure. Central Bank deposit is the only cash that is sufficiently safe to be unlimited.

Q53: Do you consider that CCP should be allowed to invest in derivatives for hedging purposes? If so, under which conditions and limitations.

Hedging positions is a standard practice today and there is no reason for CCPs to be banned from using liquid listed contracts to hedge their risks. No exposure through contracts should be accepted though.

Q54: Do you consider that the proposed criteria regarding the currency of financial instruments in which a CCP invests has been rightly identified in the context of defining highly liquid financial instruments with minimal market and credit risk? Should ESMA consider other elements in defining the currency of highly liquid financial instruments with minimal market and credit risk? Please justify your answer.

Q55: Do you consider that the elements outlined above would rightly outline the framework for determining the highly secured arrangements in respect of which financial instruments lodged by clearing members should be deposited? Should ESMA consider other elements? Please justify your answer.

The reference to third countries operators leads to the following remarks:

- On one hand any recognition of a third country institution should be considered with a view of reciprocity and not only equivalence.

- On the other hand, different time zones with third countries might make it much more complex to grant “prompt access when required”.

Q56: Do you consider that the elements outlined above would rightly outline the appropriate framework for determining concentration limits? Should ESMA consider other elements? Please justify your answer.

Q57: What are your views on the definitions of back and stress testing?

Q58: What are your views on the possible requirements for a CCP’s validation process?

Q59: What are your views on the possible back testing requirements?

Q60: Would it be appropriate to mandate the disclosure of back testing results and analysis to clients if they request to see such information?

Yes, to reinforce client's confidence in relation to the CCP, access to information on tests should be granted to clients and potential clients. An undifferentiated access for all is probably not advisable and a 3 way relationship between CCP, Member and client or potential client is recommended.

Q61: Should the time horizons for back tests specified under 144(e) be more granular? If so, what should the minimum time horizon be? Should this be different for different classes of financial instruments?

Q62: What are your views on the possible stress testing requirements?

Q63: Would it be appropriate to mandate the disclosure of stress testing results and analysis to clients if they request to see such information?

Yes, to reinforce client's confidence in relation to the CCP, access to information on tests should be granted to clients and potential clients. An undifferentiated access for all is probably not advisable and a 3 way relationship between CCP, Member and client or potential client is recommended.

Q64: What are your views on the possible requirements for reverse stress tests? And what impact do you think such requirements would have on industry?

As a way to better assess what would be an extreme scenario and see whether it looks plausible to use reverse stress tests sounds rather interesting. We expect that this type of tests might require some time to be properly used. A delayed application date allowing for time for CCPs to develop new tools sounds a reasonable stance.

Q65: Should there be any other parties involved in the definition and review of tests? Please justify your answer and explain the extent to which suggested parties should be involved?

European or national banking authorities should be involved in assessing the adequacy of the capital of CCPs. This is obvious if they have a banking licence but if not they have to be considered as SIFIs and should not be exempted from controls by the banking authorities.

Q66: Should the testing of default procedures involve a simulation process?

Yes, however the information should be in part kept confidential, as this type of exercise could easily be misinterpreted and may create unnecessary fears. Procedures should be explicit enough and accessible to clients in order for them to assess the risk involved. Clients will conduct due diligences before and regularly after they work with a CCP.

Q67: Are the frequencies specified above appropriate? If no, please justify your answer.

Q68: In your view what key information regarding CCP risk management models and assumptions adopted to perform stress tests should be publicly disclosed?

We believe that public information would be of the type of general principles, of mentions in the annual report of main tests conducted and of the main findings brought to the Board and corrective actions undertaken.

However, we think that clients and prospective clients should be able to receive more through their clearing members.

Q69: What is your view on the need to ensure consistency between different transaction reporting mechanisms and the best ways to address it, having in mind any specific items to be reported where particular challenges could be anticipated?

We strongly support the view that reporting requirements should be considered globally and transversally in order to ensure consistency between them. In that respect, any coordination with existing or required reporting of transactions under MIFID seems to have been overlooked in the present discussion paper.

Furthermore, any consistency with other international requirements would be welcome. More specifically, under Dodd Frank a rule has been established to decide who should report the transaction and which items should be reported. Lack of convergence on this kind of issues leads to duplication of circuits and increases dramatically the costs.

Q70: Are the possible fields included in the attached table, under Parties to the Contract, sufficient to accurately identify counterparties for the purposes listed above? What other fields or formats could be considered?

If level 2 regulations could establish the principle of delegation for reporting purposes along the lines of Dodd Frank Act, it would satisfy many end clients.

Q71: How should beneficiaries be identified for the purpose of reporting to a TR, notably in the case of long chains of beneficiaries?

Reporting back to back transactions should be organised in a manner to avoid double counting of balanced market risk. Flagging the transactions or having a specific code could be helpful.

The same remark applies on collateral requirements which are not necessary for the middle counterparty that carries a totally backed transaction.

Q72: What are the main challenges and possible solutions associated to counterparty codes? Do you consider that a better identifier than a client code could be used for the purpose of identifying individuals?

Q73: What taxonomy and codes should be used for identifying derivatives products when reporting to TRs, particularly as regards commodities or other assets for which ISIN cannot be used? In which circumstances should baskets be flagged as such, or should their composition be identified as well and how? Is there any particular aspect to be considered as regards a possible UPI?

Q74: How complex would be for counterparties to agree on a trade ID to be communicated to the TR for bilaterally executed transactions? If such a procedure is unfeasible, what would the best solution be to generate the trade ID?

Q75: Would information about fees incorporated into pricing of trades be feasible to extract, in your view?

By nature OTC transactions are concluded between two counterparties which have commercial relationships. The pricing will certainly include many elements ranging from the quality of the counterparty to the position currently in hand, the expected trend in the market, the appetite for risk or the closeness of trading limits, the refinancing cost…all reflected in a global price "all included". In many cases the counterparty uses a model to price the transaction and that pricer includes many variables and assumptions which are used at the moment and on the spot. There is no possibility to express a nacked price and a fee.

Q76: What is your view of the granularity level of the information to be requested under these fields and in particular the format as suggested in the attached table?

We believe that these items are not necessary to identify counterparties or transactions.

Q77: Are the elements in the attached table appropriate in number and scope for each of these classes? Would there be any additional class-specific elements that should be considered, particularly as regards credit, equity and commodity derivatives? As regards format, comments are welcome on the possible codes listed in the table.

Q78: Given that daily mark-to-market valuations are required to be calculated by counterparties under [Article 6/8] of EMIR, how complex would it be to report data on exposures and how could this be made possible, particularly in the case of bilateral trades, and in which implementation timeline? Would the same arguments also apply to the reporting of collateral?

It is clearly not possible to mix reporting requirements and middle office risk management on a daily basis.

We believe there is confusion on the aim and objective of trade repositories (TR): declaration and identification of trades and counterparties is one thing, risk management tool is another and TR do not look as the appropriate institutions to organise it. The increase in cost could be phenomenal if such a new requirement were introduced. It belongs to regulators to have appropriate means to conduct their controls and ensure that the regulation they have introduced is properly implemented.

Q79: Do you agree with this proposed approach? What are in your view the main challenges in third party reporting and the best ways to address them?

Q80: Do you envisage any issues in providing the information/documentation as outlined above? In particular:

a) what would the appropriate timeline over which ESMA should be requesting business plans (e.g. 1, 3, 5 years?)

3 years looks reasonable.

b) what would the appropriate and prudent length of time for which a TR must have sufficient financial resources enabling it to cover its operating costs (e.g. 6 months / 1 year)?

Permanence of the TR and availability of the records it holds is very important and it should be considered requiring sufficient capital and requiring to establish a legacy procedure by which an eventual successor could easily take over the activity.

Q81: What is your view on these concerns and the ways proposed to address them? Would there be any other concerns to be addressed under the application for registration and tools that could be used?

Q82: What level of aggregation should be considered for data being disclosed to the public?

Confidentiality should not be offset by public disclosure. A high level of aggregation is needed as a consequence and indications on counterparties at the individual level should be totally banned.

Q83: What should the frequency of public disclosure be (weekly? monthly?); and should it vary depending on the class of derivatives or liquidity impact concerns; if yes, how?

If you need any further information, please don't hesitate to contact Eric Pagniez, at +33.1.44.94.94.06 (e.pagniez@afg.asso.fr) or Adina Gurau Audibert, at +33.1.44.94.94.31 (a.gurau.audibert@afg.asso.fr) or myself at +33.1.44.94.94.29 (p.bollon@afg.asso.fr) or Stéphanie Saint Pé, at +33.1.44.94.96.69 (s.saint-pe@afg.asso.fr).

Sincerely Yours,

Pierre Bollon