

**Patrick Pearson**  
Head of Unit of Financial Markets  
Infrastructure  
European Commission  
Rue de Spa 2  
1000 Brussels  
BELGIUM

12 July 2017

Dear Mr Pearson,

The Association Française de la Gestion Financière (“AFG”) welcomes the opportunity to express the French asset management industry’s opinion on the Commission’s proposal to amend the EMIR<sup>1</sup> (the “Proposal”).

AFG is very supportive of many modifications that the Commission has put forward in the Proposal (e.g.: power to suspend the clearing obligation, removal of frontloading obligation, reciprocity in relations with third countries for trade repositories) and recognize that some of them respond positively to points that AFG has previously raised.

However, AFG would like to amend the Proposal on the following points:

**1) Financial Counterparties - Articles 2(8) and 4a**

- AFG demands to maintain on a permanent basis clearing exemption for all Category 3 counterparties. To our opinion the new category of small counterparties as proposed in the Proposal unnecessarily brings more complexity. To continue to have all Category 3 counterparties to benefit from the exemption will to our understanding not increase risk. Trading on a bilateral basis with Category 3 counterparties means that those trades are subject to the margin rules for non-cleared derivatives and remain therefore sufficiently collateralised.
- AFG also requests an additional period of compliance (one year and not four months as proposed) where the concerned counterparty exceeds the clearing exemption threshold, in order to enable it to seek one or more clearing members and to negotiate contracts with them. The European Commission should take into account the legal and operational complexity of the principal to principal model and consider that buy side universe has to establish the

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<sup>1</sup> Proposal for a regulation of the European Parliament and of the Council amending regulation (EU) n° 648/2012 [EMIR] as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivatives contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories – COM (2017) 208 final

operational clearing structure for funds internally and by implicating more actors that are present in the interbank market (custodians, administrators, valuation agents...).

- AFG is not in favour of extending the financial counterparty concept because of the complexity of the process, notably the daily monitoring of the different threshold & the clients classification.

### **(2) The CCPs - Article 38(6 and 7)**

AFG wants CCPs (1) to provide (in addition to clearing members), to all direct and indirect clients, the tools to simulate their initial margin requirements and a detailed synthesis of the characteristics of the initial margin models they use and (2) to notify them, in advance, of any substantial changes by means of a validated communication with the competent supervisory authority.

### **(3) Reporting obligation - Article 9(1a)**

AFG wants to switch to a full single-sided reporting for all cleared or non-cleared derivatives and mandates, regardless of the counterparty's status. To our opinion single-sided reporting effected by the sell-side counterparty is the most efficient way to ensure transparency of trade reporting as intended by the regulator.

### **(4) The insolvency estate of the CCP and the clearing member - Article 39(11)**

AFG wishes to have comfort on the preservation of the customers' margins, in particular of the VMGH taken by the CCP in case of default, as well as Excess Margins. More generally, AFG wants more precision and substance (e.g.: indicate the level of segregation) regarding this new measure. AFG believes it would be important for the Proposal to be in line with the European Commission's proposal on CCP recovery and resolution<sup>2</sup>.

### **(5) Fair, reasonable and non-discriminatory commercial terms for clearing services - Article 4(3a)**

AFG welcomes the measure awaited by all the buy-side, but expects more details with future level 2 measures to take a definitive stance.

In addition, AFG wishes that the Proposal addresses the following points:

#### **1) Customer/clearing member relations**

AFG proposes that the Proposal addresses the following points:

- the introduction of a clear agent/counterparty status definition of clearing member in regards to the client;
- the current absence of an obligation for the clearing member to agree to clear a transaction;

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<sup>2</sup> Proposal for a regulation of the European Parliament and of the Council on a framework for the recovery and resolution of central counterparties and amending regulations (EU) n° 1095/2010, (EU) n° 648/2012, and (EU) 2015/2365 – COM (2016) 856 final

- the additional conditions imposed by the clearing members on the transaction portability;
- the limitation of the possibility for clearing members to review and increase at any moment the pricing of their services;
- the high costs associated with individual segregation.

## **2) ESMA's opinion of May 22, 2015**

The AFG strongly disagrees with ESMA's view that the counterparty risk to the CCP is applied to the fund (in addition with the ratio requested with the clearing broker), although the latter has no direct legal relationship with the CCP. ESMA also observes a conflict of standards between the UCITS Directive and EMIR on the unilateral and at any time resolution by the UCITS fund of its positions. AFG would very much like to see a solution to this situation in the EMIR review context.

## **3) HQLA funds and collateral**

AFG hopes that, in a context of collapsing collateral, we should consider the eligibility of HQLA funds shares as a collateral for the CCPs, just as the assets held in the portfolio of these funds.

## **4) Collateralisation of FX Forwards**

AFG requests that the deliverable FX Forwards and Swaps as well as the exchange of principal under cross currency swaps shall be exempted from the obligation to exchange Variation Margin so that there is no competition distortion with the US regulation.

We would be happy to discuss any of the matters addressed in this letter with you in further detail.

Yours sincerely,

Eric PAGNIEZ