

**Comments
of the German Insurance Association on**

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**ESMA Discussion paper as of 16 February 2012
regarding Draft Technical Standards for the Regulation on OTC
Derivatives, CCPs and Trade Repositories**

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Summary

The German insurance industry appreciates the opportunity of contributing its views to ESMA's discussion paper regarding Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories. Insurance groups are primarily affected by the regulation in their role as an institutional investor. Further, the proposed regulation affects the execution of risk management transactions within one insurance group.

Against this background, we would like to raise the following points with respect to selected sections of the discussion paper:

- With regard to contracts having a direct, substantial and foreseeable effect within the European Union, we take the view that the scope of EMIR should be restricted to transactions executed within the European Union as far as possible.
- The draft deadlines for a timely confirmation of non-CCP cleared contracts seem too ambitious especially for bigger insurance companies, which need to organise their reporting centrally.
- If at all, the public disclosure of details about intragroup transaction exemptions should be very limited, as there is no public interest visible in receiving information about transactions without any market impact.

1. Introduction

This comment focusses explicitly on insurance topics. Please find the views of the German insurers below and assigned to the relevant questions raised.

2.1. Contracts having a direct, substantial and foreseeable effect within the EU

Q1:

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

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?

Answer: The scope of EMIR should be restricted to the European Union. The concept to subject transactions between parties in non-European countries to European legislation contradicts the principle of territoriality. Accordingly, a narrow interpretation is recommended. In practice, problems may occur, where underlying and counterparty of OTC-derivative contracts belong to different regulatory frameworks. This should be kept in mind when specifying the contracts with a direct, substantial and foreseeable effect in the EU. Non-European units of Europe-based corporations should not be covered by the EMIR regime. Interferences of different regulatory regimes must be avoided. Any interference left should be clearly resolved or the respective regulatory frameworks should be harmonized accordingly. Systemic risks resulting from OTC derivative transactions in third countries should primarily be addressed by measures taken in the respective third country. Especially with respect to the US, it should be noted that a central clearing concept will be introduced as part of the Dodd-Frank legislation.

2.2. Timely confirmation

Q12:

What are your views regarding the timing for the confirmation and the differentiating criteria? Is a transaction that is electronically executed, elec-

tronically processed or electronically confirmed generally able to be confirmed more quickly than one that is not?

Answer: The timing appears too ambitious. Especially in respect of bigger insurance groups where the reporting will need to be organized in centralized form, the aggregation of relevant data will need to be compatible with existing processes and may take up to one month.

Q13:

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

Answer: In order to limit the data to be reported, it is proposed to apply a grace period, for example at the end of the month.

2.3. Intra –group exemptions

Q21:

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

Answer: The following details should be included in the notification to the competent authority:

- name of parties
- underlying
- type of derivative
- term
- price

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?

Answer: If at all, public disclosure of details about intragroup transactions benefitting from the exemption should be extremely limited. Indeed, intragroup transactions are concluded among companies whose financial results are consolidated into a consolidated balance sheet, so that these transactions do not have any market impact. Further, intragroup transactions may be driven by considerations of risk management and hedging strategies which form part of an insurance company's business secrets. The disclosure of transaction details would not be justified by any public

interest. We are concerned that third parties could misinterpret the information published which could lead to possible damages of the respective insurer.

2.4. Collateral requirements

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?

Answer: With respect to the proposed obligation to post collateral, it should be noted that such collateral would not qualify as restricted asset (Sicherungsvermögen und sonstiges gebundenes Vermögen) for purposes of German insurance regulatory law; German insurers would need to finance such collateral out of other funds. It might therefore become more difficult for certain German insurers to enter into derivative transactions.

Berlin, 19 February 2012