

HANIEL

Comments from Franz Haniel & Cie. GmbH on European Markets Infrastructure Regulation (EMIR)

27.) What is the definition of a financial counterparty versus a non-financial counterparty?

Since corporates often have financing subsidiaries the question arises whether those financing subsidiaries are considered as financial or non-financial counterparties.

We are skeptical regarding the proposal to apply the central clearing obligation to all OTC derivatives once the threshold is exceeded. We think it would be adequate to limit the central clearing obligation only to OTC derivatives not used for hedging purposes as defined in 29.a and b..

28.) Who determines/monitors that the clearing threshold has not been exceeded? What are the (reporting) requirements as long as the threshold is not exceeded?

29.) These regulations seem to refer only to Fair Value Hedges (as described in IAS 39). Many hedges are concluded with the intention to reduce volatility in expected cash flows. (e.g. interest payer swaps) These should also be recognized as risk reducing derivatives.

30.) IFRS Hedge Accounting treatment of derivatives

Is it sufficient that the derivative is eligible for hedge accounting treatment or is it required that hedge accounting is actually applied? In our view, the eligibility criteria should be chosen to maintain flexibility over the decision to use hedge accounting.

What if the derivative is not eligible for IFRS hedge accounting treatment but is used for hedging purposes as defined in 29.a and b. (e.g. commodity derivatives)? We would expect that those derivatives are also exempted for the clearing threshold calculation.

In addition: Hedge Accounting under IAS 39 may only be applied, if the underlying is a financial instrument. Thus it is impossible to apply hedge accounting to hedging transactions that for instance hedge commodity risk from purchasing metals or from having them on stock as trading goods. Although defined in 29.a and b. as being legitimate hedges for the purpose of the regulation, it would be impossible to obtain the necessary documentation.

32.) Notional values may be misleading. Example: a series of FX forwards can be constructed to have exactly the same economic effect (risk and return) than one single cross-currency swap. The series of FX forwards would result in a multiple notional value though.

33.) What do you mean with "low level"? Is it an absolute or relative amount? Is the level set for an individual company or for a business segment?

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The concept of the clearing threshold sounds quite complicated and it is hard to determine an appropriate level taking into account the wide range of different business models in the non-financial counterparty's universe.

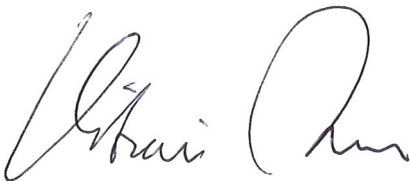
Having seen that non-financials have not abused derivatives in the past and that it will be difficult to document the hedging use of derivatives, it seems not to be prudent to set a clearing threshold at "low levels". A rather "high level" of notional value in combination with a more conservative market value threshold seems more appropriate.

35.) These considerations are crucial for conglomerates and investment holding companies. Given a holding company with majority investments in several independently operating business units, a group threshold is not reasonable. In addition, German stock corporation law may prevent the collection of necessary data to comply with the regulation.

38.) We understand that for the purpose of the timely confirmation requirement the time span is calculated from the dealing confirmation onwards, not from the time of trading.

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