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European Securities and Market Authority - ESMA

Comments on consultation paper ESMA/2012/95

To whom it may concern,

as a service provider for multilateral closeout-netting we would like to draw your attention to this credit risk mitigation technique and post two main comments to your consultation paper ESMA/2012/95 (see details on next page):

- Proposal for **multilateral closeout netting via offsetting OTC trades** (MCN) being recognized as a valid (credit) risk mitigation technique according to Article 6/8
- Proposal for a redefinition of the clearing threshold to hold against *individual* counterparty notional rather than entire notional on legal entity level for MCN achieves an individual credit risk mitigation without changing the overall notional on legal entity level.

We think our comments touch at least the following sections of your consultation paper:

1. Question 3: Paragraph 10
2. Question 10: Paragraph 29
3. Question 11: Paragraph 35
4. Article 6/8

In case you require more information about our service then please contact me under tenge@ovovis.com for further material.

With kind regards

Dr. Thomas Enge

Thomas Enge

Our service

Our service supports a customer in multilateral closeout-netting by proposing triangular trades to shift mark-to-market between his counterparties to balance out their limit usage. Currently the service is dedicated to the physical German power market only and customers are NFCs (utilities). The method would also work for any financial OTC derivative.

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Appendix: Detailed Response to Consultation Paper ESMA/2012/95

A1) Question 3: Paragraph 10

A legal entity should not be enforced to clear all trades, but only those trades that breach the clearing threshold with an *individual* counterparty (see also A3). This counterparty should *only then* be enforced to clear *only the mutual trades*.

A2) Question 10: Paragraph 29

The offsetting trades resulting from a multilateral closeout netting are the same type of OTC derivative that an NFC usually uses for hedging its commercial risk, but in this specific case serve to mitigate replacement risk. We therefore would like to add a category c. which excludes these offsetting trades from the threshold calculation. This comment will drop out if the definition of the clearing threshold changes according to A3.

A3) Question 11: Paragraph 35

Our service does not change the overall total notional, but nevertheless smoothens the credit exposure across all counterparties of a legal entity. Thus, *not* the *overall* notional, but the notional against the *individual* counterparties could be a simplified indicator of the credit risk of a legal entity. Consequently the threshold should enforce clearing only by individual counterparty of a legal entity (see also A1).

A4) Article 6/8

We would like to suggest to add multilateral closeout netting to the list of accepted risk mitigation techniques.