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via ESMA Web Site

Response to the Joint Discussion Paper of the ESAs on Draft Regulatory Technical Standards on risk mitigation techniques for OTC derivatives not cleared by a CCP under the Regulation on OTC derivatives, CCPs and Trade Repositories (JC/DP/2012/1) dated 6 March 2012

Dear Sir or Madam,

We would like to thank you very much for granting us the opportunity to submit this letter in response to the above mentioned Joint Discussion Paper issued on March 6, 2012. We would be grateful if the following comments would be taken into due consideration.

1. Background on KfW

KfW was established in 1948 by the Administration of the Combined Economic Area, the immediate predecessor of the Federal Republic of Germany (the "**Federal Republic**"). KfW is a German public law institution (*Anstalt des öffentlichen Rechts*) organized under the Law Concerning KfW (*Gesetz über die Kreditanstalt für Wiederaufbau*, or "**KfW Law**"). The Federal Republic holds 80% of KfW's equity capital and the German federal states hold the remaining 20%.

As a German state-owned promotional bank, KfW serves domestic and international public policy objectives of the German Federal government, primarily by engaging in various promotional lending activities. KfW's lending activities include domestic financing, primarily made through commercial banks, including, in particular, loans to small and medium-sized enterprises and housing-related loans, export and project finance through KfW's wholly-owned subsidiary KfW IPEX-Bank GmbH and development finance for developing and transition countries.

The KfW Law expressly provides that the Federal Republic guarantees all existing and future obligations of KfW in respect of money borrowed, bonds and notes issued and derivative transactions entered into by KfW (KfW Law, Article 1a). Under this statutory guarantee (the **"Guarantee of the Federal Republic"**), if KfW fails to make any payment of principal or interest or any other amount required to be paid with respect to any of KfW's obligations mentioned above, the Federal Republic will be liable at all times for that payment as and when it becomes due and payable. The Federal Republic's obligation under the Guarantee of the Federal Republic ranks equally, without any preference, with all of its other present and future unsecured and unsubordinated indebtedness. KfW is a public sector entity as defined in Article 4 (18) of Directive 2006/48/EC.

2. General Comment on the Joint Discussion Paper

Reference is made to paragraph 15 of the Joint Discussion Paper which, for the avoidance of doubt, clarifies that non-financial counterparties that are not above the clearing threshold are not required by the Regulation of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories ("EMIR") to hold adequate capital or collateral and therefore should not be required to exchange either variation margin or initial margin, *irrespective of their counterparties*.

We very much concur with the ESAs' view on this matter and, in connection therewith, would like to take this opportunity to respectfully ask the ESAs to also clarify, for avoidance of doubt, that the requirement to use the risk mitigation techniques prescribed by Article 8 of EMIR, including but not limited to the exchange of collateral, shall not apply to any counterparty generally subject thereto in respect of derivative transactions concluded with entities to which EMIR does not apply according to Article 1 paragraphs 4 and 4a.

It is our general understanding of the purpose of the non-applicability clauses of Article 1 paragraphs 4 and 4a of EMIR that transactions with entities to which EMIR does not apply will not be subject to any of the obligations set out by EMIR unless explicitly stated to the contrary therein (e.g. the reporting obligation in respect of some of those entities). Given the bilateral nature of derivative transactions, this necessarily implies that any financial counterparty or non-financial counterparty generally subject to EMIR which concludes derivative transactions with such entities will not be subject to the requirements of EMIR in respect of these particular transactions either. If this were not the case, the non-applicability clauses of EMIR would be without substance. This general understanding should apply to both Article 3 of EMIR "Clearing obligation" and Article 8 of EMIR "Risk mitigation techniques for OTC derivative contracts not cleared by a CCP", including but not limited to the requirement to exchange collateral.

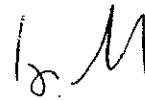
Based on this understanding and to prevent potential misinterpretations we kindly ask the ESAs to clarify in the Regulatory Technical Standards that the requirement to use the risk mitigation techniques prescribed by Article 8 of EMIR, including but not limited to the exchange of collateral, shall not apply to any counterparty generally subject thereto in respect of derivative transactions concluded with entities to which EMIR does not apply according to Article 1 paragraphs 4 and 4a.

Sincerely,

KfW



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Title: Senior Vice President



Name: Dr. Frank Czichowski
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Treasurer