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European Securities and Markets Authority

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ESMA Technical Consultation Paper SSR 2012/98 - Feedback of Siemens AG

Dear Members of the European Securities and Markets Authority,

We refer to the consultation paper on technical advice for the regulation on short selling and certain aspects of credit default swaps. We appreciate the opportunity to participate in the consultation process.

Siemens AG (Berlin and Munich) is a global industrial company engaged in electronics and electrical engineering, with its focus concentrated in the sectors industry, energy, healthcare, and infrastructure & cities. The Siemens Group has around 405,000 employees working to develop and manufacture products, design and install complex systems and projects, and tailor a wide range of solutions for individual requirements. For over 160 years, Siemens has stood for technical achievements, innovation, quality, reliability and internationality. In fiscal year 2010, Siemens had revenues of € 75.9 billion and a net income of € 4.1 billion (IFRS). Further information is available on the Internet at: www.siemens.com.

Siemens AG mainly uses derivatives (including credit derivatives) to hedge risk positions which result from the group's worldwide business transactions. Therefore the existence of an efficient and flexible derivative market is essential for Siemens AG and is a key prerequisite for promoting economic growth within the European Community and elsewhere.

We welcome your approach to give market participants room to point out their views on your proposals. Please find our feedback on some of the consultation issues relevant to us below.

Q20: Do you agree with the general conditions proposed for determining when a sovereign CDS position can be considered covered? Are there any modifications you would propose?

We agree to the general approach given.

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Siemens Aktiengesellschaft: Chairman of the Supervisory Board: Gerhard Cromme;
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Q21: Do you have any comments or alternative suggestions on the proposed test for correlation? Do you have any estimates of the costs which applying the qualitative test envisaged by ESMA would entail for market participants or the costs which would be associated with the imposition of a quantitative test?

- Siemens uses credit derivatives to hedge risk from operative business with private and public debtors in the form of trade finance assets, e.g. accounts receivables, project finance, or sovereign guarantees for public sector business. All these forms have in common that they are usually not “borrowed money” in the meaning of the ISDA CDS terminology, and are mostly not owed directly by the sovereign which the CDS would reference. Examples could be ministries, regional government authorities, or infrastructure providers with a sovereign participation (e.g. utilities, public transportation, hospitals). Rarely would such entities have traded instruments in capital markets, so there will not be many relevant debtor price references. Therefore, we suggest defining as one alternative to proof correlation a direct or indirect involvement of the reference sovereign in the entity in question. This could be stated by organizational logic (e.g. local subsidiary that effectively acts on behalf of the sovereign), or by ownership of a significant stake in the debtor (e.g. an infrastructure provider). As the effort linked to demonstrate the required coherence between asset and hedge would be very case-specific, we feel unable to give a cost estimate.

Q22: Do you consider the proposals for demonstrating correlation provide a workable framework for market participants?

Please see answers on Q21.

Q23: Are any changes required to the proposals for determining whether a sovereign CDS position is proportionate?

We think it is correct to not require an exact match of underlying and hedge, which is not only important because of exposure volatility, but also because of potential differences between the underlying asset type and the one the hedge refers to. The first issue is exposure volatility. A typical Siemens customer is not a private individual, but an institution (“B2B”). The relationship would mostly involve a longer-term framework contract, with bills issued and settled according to deliveries or services provided during the course of the contractual arrangement. The result is a certain amount of volatility in the exposure to the client during the life of the contract. As CDS will not be available for tenors below one year, our hedging would try to assess an average exposure, which however is never fully certain due to changes or delays in the underlying business. Therefore, a hedge could be “underused” in some time periods. The second issue is what we define as basis risk: as explained in our answers to Q21, the asset category of the underlying (trade finance payment obligations) is usually different to that of the CDS (“borrowed money”, i.e. bonds or loans). The risk involved here is a potential mismatch in recoveries. Our solution often is to hedge a higher amount than the underlying assets, with details laid down in our risk management strategy (and screened by risk management personnel). The definition of “proportionate” should therefore allow for a certain amount of exposure volatility in the underlying assets during the life of the hedge, and for certain planned mismatches in the nominal amounts due to asset basis risk, given formalized risk management practices exist for such a solution.

Q24: Do you think that a position that had become partially uncovered due to fluctuations in the value of the assets or liabilities being hedged and/or the CDS used as the hedge should be allowed only for a certain period of time? If so, what would be an appropriate time limit?

Please refer to answers on Q23 for our reasoning. We believe mismatches as described above should be accepted for a period of at least three month during the life of a hedge.

Q26: Do you consider there are any other illustrative cases of a risk which would be eligible to be hedged by a sovereign CDS position which should be included in the indicative list?

Yes - please refer to answers on Q21 for a detailed description of the form of a typical corporate exposure to a sovereign debtor. We suggest adding an explicit reference to “trade finance

exposures” to the wording in (iii) and (iv) on page 33 of the consultation. A term called “foreign trade contracts” is mentioned in (iv), however we believe this is not a clear enough expression.

Q27: Do you agree that the net CDS position is the correct one to use in the calculations?
Yes.

Q28: Do you consider that there should be different methods for calculating the value of the positions to be hedged by the sovereign CDS according to whether a static or dynamic hedging strategy is used?

Yes. Please refer to our answers to Q21 and Q23 where we explain why it is often not possible to apply market-based correction references (like the β -factor you propose) to trade finance exposures. It is important to acknowledge that mismatches in hedge and underlying, either for a limited time period or permanently, are not always due to differing price volatilities. We suggest adding qualitative factors for assets hedged that have no observable market price (as opposed to the hedge itself).

Q55: Do you agree with the proposal for qualitative criteria should be set out?

We understand your reasoning for not including too descriptive language in this list, but believe the wording proposed is in some instances too imprecise, as there must be identifiable limits to intervention rights of authorities. If the intention is to give market players guidelines to assess the probability of possible bans, then the criteria require a minimum of precision and predictability. Otherwise, a criteria list is not required at all as it does not provide enough clarity to understand when and why a ban would be imposed. A rather problematic example in our view is the second criterion under 1) on p.64 (“*Unsubstantiated rumours about a rating action regarding or the possibility of a default..*”) as we do not see how rumors in markets might effectively be prohibited, as it will not be possible to trace them to their originators. Furthermore, how would the regulator want to prove they are “unsubstantiated”? A simple rejection by the respective authorities would not do the job, as it also would be nothing more than a statement. A criterion that is based on market talk which can neither be traced nor easily be invalidated must not be a reason for market interventions by authorities. We even think that proposal could prove counterproductive, as such a ban could be interpreted as an affirmation of the rumor itself. Likewise, we believe the latter criterion in 2) on p.65 (“*..the existence of any type of self-fulfilling phenomena*”), is a “catch-all” phrase which is neither giving a concrete case for a market intervention. Therefore, both of these criteria should be deleted.

These were the points we wanted to address on your consultation. We would appreciate if ESMA would consider the relevant details in its evolving regulatory ideas, including potential unforeseen side effects. Thank you again for the offer to participate in this important and vital discussion. Please do not hesitate to contact us should there be any further questions or remarks.

Sincerely yours,

Siemens Aktiengesellschaft



Ralf Lierow