ZENTRALER KREDITAUSSCHUSS

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Mr Carlo Comporti
Committee of European
Securities Regulators (CESR)
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CESR's Consultation Paper "Classification and identification of OTC derivative instruments for the purpose of the exchange of transaction reports amongst CESR Members"
Ref.: CESR/09-618

Dear Mr Comporti,

thank you very much for the opportunity to comment on CESR's Consultation Paper "Classification and identification of OTC derivative instruments for the purpose of the exchange of transaction reports amongst CESR Members". Please find enclosed our comments to the Consultation Paper. If you have any questions please do not hesitate to contact us.

Yours sincerely,

on behalf of the

ZENTRALER KREDITAUSSCHUSS

Bundesverband der Deutschen
Volksbanken und Raiffeisenbanken e.V.

by proxy

Gerhard Hofmann   Ruth Claßen

Enclosure

Comments of the Zentraler Kreditausschuss[1] on CESR's Consultation Paper "Classification and identification of OTC derivative instruments for the purpose of the exchange of transaction reports amongst CESR Members"

Ref.: CESR/09-618

29 September 2009

1 The Zentraler Kreditausschuss (ZKA) is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks financial group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent more than 2,300 banks.

I. General

1. Transaction reporting on OTC derivatives only in an extremly limited number of Member States mandatory

The Zentraler Kreditausschuss (ZKA) welcomes the opportunity to comment on CESR's further considerations concerning the exchange of transaction reports on OTC derivatives amongst the competent authorities. The exclusive focus of the Consultation Paper lies on the question how an exchange of transaction reports on said OTC derivatives might take place. According to the Consultation Paper, CESR has now decided to amend the existing Transaction Reporting Exchange Mechanism (TREM) to facilitate the exchange of transactions reports on OTC derivatives. However, the Directive on Markets in Financial Instruments (MiFID) only requires reports on transactions executed in derivatives admitted to trading on a regulated market. Contrary to CESR's statement in the Consultation Paper ("many CAs extended the collection of transaction reports to include OTC instruments"), there is only an extremely limited number of Member States where transactions in (certain) OTC derivatives must be reported; as far as we know this is still only the case in the UK and Ireland.

2. No general cost allocation

In line with our comments dated 27 February 2009 in response to the Call for Evidence (Ref. CESR/09-074), we should like to note again that also in the UK and Ireland – due to the novelty of the mandatory reporting – standard operating procedures for such transaction reporting purposes still do not exist. Hence, we still have considerable doubts whether a specification of details for a data exchange is already advisable. We still feel that it would appear more appropriate for the time being to wait for the implementation of these extended reporting obligations in the respective Member States. This ought to be followed by an analysis based on which it might be possible to draw further conclusions concerning a data exchange. One advantage of such an approach would be that potential complications which will only become evident during the practical implementation of the extended reporting obligations will not be repeated in the TREM. This would prevent respective downstream errors and associated costs – costs which, finally, would have to be borne by the industry.

However, if CESR remains convinced that a data exchange ought to be facilitated amongst interested supervisory authorities already now, we would like to emphasise again that the costs resulting from a modification of TREM would have to be exclusively borne by the competent authorities participating in the data exchange. We see no legal basis for a general cost allocation to the entire community of supervised entities across all EU Member States. The MiFID only requires a data exchange concerning those transactions which have to be reported in all Member States. If and when individual Member States decide to exceed this requirement, they will have to bear the costs for such an undertaking themselves.

II. Specific Comments

Notwithstanding our general concerns over a premature extension of TREM against the background of the only very few Member States, in which a reporting of transactions in OTC derivatives is mandatory, we would like to comment on the questions raised by the Consultation Paper. In general, we acknowledge that CESR has taken the industry's concerns over the specification of the reporting fields into account. We especially welcome that CESR apparently abandoned the consideration of free text fields.

1. Section 1 – Classification of OTC derivatives

Question 1: Do you agree with CESR's proposal? Any comments on CESR's view on this subject?

In general, we feel that the idea of assigning a letter to each class of OTC derivatives for identification purposes makes sense. This is in line with the CFI code's identification principle for transactions in financial instruments for which transaction reporting is mandatory under MiFID. In its Consultation Paper, CESR plausibly argues that an application of the CFI standard to the respective derivatives is not possible; we agree with this opinion. Hence, the approach of implementing a classification *sui generis* seems to be appropriate in general.

However, the present classification proposal seems to be not sufficiently unambiguous. In this regard, a common understanding among market participants is absolutely indispensable. Otherwise very negative consequences could arise: Comparable derivatives might be assigned to heterogeneous classifications by different market participants. This would clearly thwart the goals of the supervision, finally these goals would be unattain-

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able. Hence, we see a need for a more detailed specification of the individual classifications.

2. Section 2 – Identification of OTC derivative instruments

Question 2: Do you agree with CESR's proposal? Any comments on CESR's view on the above?

We share CESR's view that the identification alternatives ISIN code and Alternative Investment Identifier (AII) are in general not appropriate for an identification of OTC derivatives. At the same time, we feel that the proposal of creating an identification for OTC derivatives analogous to the AII makes sense. The elements proposed under item 1 to 7 seem to be appropriate. However, there should be a clarification that not every derivative requires information on each of these items.

A very important remark is that potential ISIN codes can, at the most, be provided on a voluntary basis. A requirement to apply for an ISIN code for an OTC derivative would be disproportionately burdensome, also in the long term. This is due to the fact that in general these contracts are not be fungible.
