

VOLKSWAGEN

AKTIENGESELLSCHAFT

VOLKSWAGEN AKTIENGESELLSCHAFT 38436 WOLFSBURG DEUTSCHLAND

Brieffach: 011/18421

K-FTG tbar-hi
+49 (5361) 9 – 4 987 1
+49 (5361) 9 – 57 49871
thomas.bartelt@volkswagen.de

16. August 2010

IHRE ZEICHEN
IHRE NACHRICHT
UNSERE ZEICHEN
DURCHWAHL
TELEFAX
E-MAIL

DATUM

Volkswagen Group

Comments in response to the Consultation Paper on “Standardization and exchange trading of OTC derivatives”

*Issued by the Committee of European Securities Regulators (CESR) on
19 July 2010*

VOLKSWAGEN AKTIENGESELLSCHAFT
38436 WOLFSBURG
DEUTSCHLAND
TELEFON +49-53 61-9-0
TELEFAX +49-53 61-9-2 82 82
VW@VOLKSWAGEN.DE

EHRENVORSITZENDER DES
AUFSICHTSRATS:
KLAUS LIESEN

VORSITZENDER DES AUFSICHTSRATS:
FERDINAND PIÉCH

VORSTAND:
MARTIN WINTERKORN –
VORSITZENDER

FRANCISCO J. GARCIA SANZ
JOCHIM HEIZMANN
CHRISTIAN KLINGLER
HORST NEUMANN
HANS DIETER PÖTSCH
RUPERT STADLER

VOLKSWAGEN AKTIENGESELLSCHAFT
SITZ: WOLFSBURG
AMTSGERICHT BRAUNSCHWEIG
HRB 100484

The Volkswagen Group

The Volkswagen Group with its headquarters in Wolfsburg is one of the world's leading automobile manufacturers and the largest carmaker in Europe. In 2009, the Group increased the number of vehicles delivered to customers to 6.336 million, corresponding to a 11.3 percent share of the world passenger car market.

In Western Europe, the largest car market in the world, just over one in five new cars (20.9 percent) comes from the Volkswagen Group. Group sales came in 2009 to 105.2 billion euros. Profit after tax in the 2009 financial year amounted to 0.9 billion euros.

The Group is made up of nine automobile brands from seven European countries: Volkswagen, Audi, SEAT, Škoda, Volkswagen Commercial Vehicles, Bentley, Bugatti, Lamborghini and Scania.

Beyond that Volkswagen Financial Services coordinates the worldwide financial services activities of the Volkswagen Group. With its range of financial services products it makes a significant contribution to the promotion and securing of Volkswagen Group sales and strengthens the link between the Group brands and their customers.

Our contact details are provided on the final page of this document.

This document is on record and may be freely quoted or reproduced with acknowledgement.

General comments

Volkswagen supports the Committee of European Securities Regulators view that greater standardization of OTC derivatives contracts can deliver efficiency benefits to the market. In particular, we agree that the use of electronic confirmation systems is one of the processes that can potentially deliver benefits to some of the market participants. We also support the objective of intensifying the measures to achieve a higher degree of standardization.

Nevertheless we would like to stress that standardization has a limit with regard to the level of standardization. We as a corporate need a high degree of flexibility regarding the use of financial instruments. First of all, in order to match exactly the financial risk profile of our underlying business, and secondly, to be able to apply furthermore hedge accounting under IAS 39. Less tailored derivatives could lead to disqualification of IAS 39 hedge accounting treatment. Consequently it would cause increased P&L volatility, which would be extremely difficult to explain to the investor and capital markets community.

We are grateful for the opportunity to comment on the consultation paper and have subsequently answered the questions posted.

Q1: Do you agree with CESR's assessment of the degree of standardisation of OTC derivatives? Is there any other element that CESR should take into account?

Yes, we agree with CESR's assessment of standardisation degree, in our opinion there is no further element that should be considered.

Q2: Do you agree with the benefits and limitations of standardisation noted above? Please specify. Can you also describe and where possible quantify the potential impact of the limitations to standardisation? Are there any other elements that should be considered?

We also agree with the described benefits and limitations of standardisation. An important aspect which has to be considered in the discussion of limitation is the differentiation between dealer / broker and corporate end users. There should be no obligation for standardisation for corporate end users for the reason outlined in paragraph 40.3.

Q3: Do you agree that greater standardisation is desirable? What should the goal of standardisation be?

Yes. The goal for standardisation should be the contractual certainty. This means that clearly defined parameters for legal and contract terms have to be agreed upon. A higher degree of standardisation with this respect is also an enabler for STP as well as for the feasibility of trade repositories that would add more transparency to avoid systemic risk.

Q4: How can the industry and regulators continue to work together to build on existing initiatives and accelerate their impact?

The possibility for the industry to give response on consultation papers and the implementation of regular meetings and discussions between representatives of industry and regulators are important instruments. They ensure that the concerns of both parties are considered in the further regulation framework.

Q5: Are there any obstacles to standardisation that could be removed by regulatory action? Please elaborate.

No. The issue is that regulators must acknowledge the limitation of standardisation, as far as product uniformity is concerned, as this may be in conflict with the objectives of the derivative end user (paragraph. 40).

Q6: Should regulators prioritise focus on a) a certain element of standardisation and/or b) a certain asset class.? Please provide supporting rationale.

They should prioritise focus on option a); i.e. legal uniformity (across different legislations) and process uniformity. These aspects are the basis for STP and transparency via trade repositories.

Q7: CESR is exploring recommending to the European Commission the mandatory use of electronic confirmation systems. What are the one-off and ongoing costs of such a proposal? Please quantify your cost estimate.

An electronic confirmation system should be mandatory for dealer / financial users only. For industrial end users they should not be mandatory due to the high implementation and maintenance costs.

Q8: Do you agree with the assessment done by CESR on the benefits and limitations of exchange trading of OTC derivatives? Should any other parameters be taken into account?

Yes, we agree.

Q9: Which sectors of the market would benefit from/ be suitable for (more) exchange trading?

No additional sectors compared to the outline in the paper.

Q10: In your view, for which sectors of the market will increased transparency associated with exchange trading increase liquidity and for which sectors will it decrease liquidity? Please specify.

We do not see any significant impact on liquidity from increased transparency.

Q11: Do you identify any other elements that would prevent additional OTC derivatives to be traded on organised platforms?

The main issue is product uniformity and flexibility for derivative end users, that inhibit exchange trading, as well as if coupled to CCP the need to post initial and variation margin.

Q13: Do you agree with CESR's assessment of the characteristics and level of standardisation which are needed for a contract to be traded on an organised trading platform?

Yes

Q14: Is the availability of CCP clearing an essential pre-determining factor for a derivative contract to be traded on an organised trading platform? Please provide supporting rationale.

No, there should be independence between exchange trading (which would also include electronic platforms) and the availability / mandatory use of CCP-clearing. CCP-clearing only addresses the issues related to counterparty risk. All other benefits (higher transparency, standardisation etc.) can be accomplished by exchange trading without CCP.

Q15: Is contract fungibility necessary in order for a derivative contract to be traded on an organised trading platform? Please provide supporting rationale.

There is a need for contract standardisation. However, if there is no CCP, i.e. contracts are held bilaterally between counterparties there is no need for full fungibility.

Q16: Which derivative contracts which are currently traded OTC could be traded on an organised trading platform? Please provide supporting rationale.

Almost any derivative could be dealt on electronic platforms. Its feasibility depends on the degree of product standardisation. Complex derivative transactions (structured equity, various FX and interest rate products) cannot be traded on platforms / exchanges.

Q18: In the OTC derivatives context, should any regulatory action expand the concept of "exchange trading" to encompass the requirements set out in paragraph 86 and 87 or only the requirements set out in paragraph 86? Please elaborate.

No regulatory action should be taken; however trading platforms may be useful with regard to STP and transparency.

Q19: Do current trading models and/or electronic trading platforms for OTC derivatives have the ability to make pricing information (both pre- and post-trade) available on a multi-lateral basis? Please provide examples, including specific features of these models/platforms.

Yes, most electronic trading platforms provide market price information. They also provide STP and therefore require certain standardisation.

- Q23:** In your view does the envisaged legislative approach in the US leave scope for regulatory arbitrage with the current EU legislative framework as provided under MiFID? Would regulatory measures taken in the EU to increase 'exchange trading' of OTC derivatives help to avoid regulatory arbitrage?

Any approach taken for the EU legislative framework that is more restrictive than the US framework – now signed into law - would be the cause for regulatory arbitrage. In that respect it is important to align it with other legislations (e.g. in Asia). Otherwise the differences in exchange trading restrictions will cause a shift of market liquidity and trading activity (in particular in OTC-markets) towards other financial centres (e.g. Singapore), ultimately weakening the European financial industry and the European economy as a whole.

- Q24:** The Commission has indicated that multi-laterality, pre- and post-trade transparency and easy access are key aspects of the concept of "on exchange" trading. Do you agree with CESR applying these criteria in its further analysis of what this means in the EU context, in particular in applying MiFID to derivatives trading?

Yes, but it is important not to equate exchange trading with Central Counterparty Clearing. In essence, exchanges provide important functions for infrastructure, such as price transparency, confirmation and settlement.

The multilateralism with the aspect of clearing through a central counterparty is not necessarily a prerequisite for "exchange trading" and its benefits.

Therefore many electronic platforms are equivalent to exchange trading, however still leaving the bilateral nature of a transaction.

Consequently electronic platforms that provide the following functions should be considered equivalent to exchange trading:

- Price transparency
- Pre and post trade transparency and
- Easy and unrestricted market access to all market participants

- Q25:** If not, do you consider that MiFID requirements and obligations should be refined to cover deviating characteristics of other electronic trading facilities? Please elaborate.

Yes, (see above) there should be a reference to electronic platforms without the prerequisite of a mandatory Central Clearing Counterparty to qualify as an exchange for derivative trading.

- Q26:** Are there any market-led initiatives promoting 'exchange trading' that the regulators should be aware of?

The regulators should be aware that market participants themselves have reasons to minimize their operational risks from dealing with derivative instruments and need to use the most economical processes. As a consequence larger corporates have implemented STP in their derivatives trading and also use electronic trading platforms. Therefore those efforts should be assessed and taken into consideration when regulations are drafted.

Q27: Which kind of incentives could, in your view, efficiently promote greater trading of standardised OTC derivatives on organised trading venues? Please elaborate.

The existing incentive is to reduce operational risks and to establish more efficient processes are sufficient to promote exchange trading. However, they do not result in a higher degree of exchange trading activity because it does not offer the flexibility required by many markets participants such as Volkswagen, nor does it contribute meaningfully to additional risk reduction and process efficiency. There should be no "forced incentives" based on legal requirements.

Q28: Do you believe there would be benefits in a mandatory regulatory action towards greater trading of standardised OTC derivatives on organised venues? Please elaborate.

No, due to the reasons explained above. Any regulation that „enforces“ exchange trading that is not supported by respective benefits for users would result in regulatory arbitrage as long as the enforced rules do not apply globally.

Conclusion

We hope that the Commission will consider our arguments in the recommendation to the European Commission.

ppa.



Albrecht Möhle
Group Treasury
Head of
Global Markets & Group Funding

i.v.



Thomas Bartelt
Group Treasury
Head of
Financial Risk-Controlling