Allianz SE

Allianz

www.allianz.com

Allianz, 80790 Munich, Germany
European Securities and
Markets Authority
"Consultations"
www.esma.europa.eu

Koeniginstrasse 28
80802 Munich, Germany
Phone +49 89.38 00-0
Fax +49 89.38 00-34 25

Commerzbank AG
Bank code 700 800 00
Account No. 310 922 700
IBAN DE48 7008 0000 0310 9227 00
SWIFT-BIC DRESDEFF700

Your ref.:

Direct dial
Tel. +49 89 38 00-18132
Fax +49 89 38 00-2152
Mail Adrian.glaesner@allianz.com

Our ref., Date
Dr. Adrian Glaesner
02.08.2012

Re: Discussion Paper Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories, dd. June 2012 ("Discussion Paper")

Dear Sirs,

We appreciate the opportunity to express our views on the Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories. We note that these proposals will be supplemented by joint regulatory standards of the European Supervisory Authorities covering OTC derivatives that are not centrally cleared and details on intra-group exemptions. Although these proposals for these regulatory standards have not yet been published, some of our comments may also be of relevance to matters covered therein.

Regulation of derivatives affects insurance groups in connection with their investment activity as well as in the context of risk management measures.

From this perspective, it is desirable that the new regulatory regime provides the industry with a sufficient level of (i) transparency and clarity of the new rules, (ii) practicability and (iii) compatibility in an international context.

With respect to the proposals contained in the Discussion Paper, we would like to raise the following points:

1. In order to enable the industry to get prepared operationally, it is important to determine as early as possible the classes of OTC derivatives subject to the central clearing obligation (Discussion Paper p. 9-12, p.68 - Annex II)

2. Insurance groups that want to make use of the exemption for intra-group transactions, need sufficient time to carry out the required notification procedures including the application to obtain not only relief from the central clearing requirement, but also from certain risk mitigation requirements that are generally applicable to not-centrally cleared transactions in particular the need to post collateral. Where the intra-group transaction is concluded between

group companies domiciled in different member states, the exemption process requires the involvement of several local authorities. Given that intra-group transactions constitute only measures to allocate risk within the group, they do not change the Group's overall risk position; consequently, they do not have a market impact and bear no systemic risk. In order to minimize the administrative burden resulting from the aforementioned procedures, the national authorities that are competent for the purposes of these procedures need to be identified together with the transactions subject to the central-clearing obligation. In addition, we propose to provide that the central-clearing obligation as well as the obligation to apply risk-mitigation techniques do not apply to intra-group transactions, in respect of which the application procedure for relief has been initiated.(Discussion Paper p.21, 75 -78 – Annex II).

3. The requirement to confirm not-centrally cleared intra-group contracts within one day seems very ambitious. We are not certain whether the ability to do so is yet available to market participants and propose to extend the period by one business day (Discussion Paper p. 16-17, 73 – Annex II).

4. The obligation to report transactions within one or two business days after their conclusion, modification or termination in the format proposed in "Annex 1 to implementing technical standard on format of details to be reported to trade repositories" (i.e. Annex VI to Discussion Paper) requires extensive adjustments of the internal reporting systems, especially in insurance groups where data collection for reporting purposes is organized centrally. In any event, appropriate transitional periods should be granted.

5. The proposed reporting of exposure data (Discussion Paper p 49) gives rise to concern from a practical as well as from a legal perspective. As a practical matter, it would be unusual for insurance companies to produce mark-to-market valuations of their positions on a daily basis. As a legal matter, we would have some doubts whether an obligation to report exposure data can be based on Art. 9 EMIR which deals with transaction-related reporting.

6. Reported details about intra-group transactions may contain sensitive information about a group's risk management strategy. As described above, intra-group transactions do not contain relevant risk to market participants. Therefore, we propose to reduce the volume of reportable information by deleting Art. 7 RM subpara. 2 lit.e (ii-viii) and subpara.3. Further, reported information should be confidential and only be made available to the competent authorities or ESMA; and any further dissemination of information should only be made on an aggregated basis. .(Discussion Paper p.78 – Annex II)

7. Transactions which have been entered into before the date of entry into force of EMIR should not be subject to any additional risk mitigation measures other than the reporting of those transactions to trade repositories.

8. It is important to deal with overlapping regulation especially as this may lead to conflicting requirements under the EU and the US regulatory regime. To avoid conflicting regulation, the regulatory authorities should reach an agreement regarding the applicable regime and the equivalence of the regulatory regimes. We welcome the discussions that ESMA is having with third country supervisors on the compatibility of the different regulatory regimes (Discussion Paper p.22). In particular, we note that the upcoming regulation of derivatives in the US will extend under certain conditions to non-US persons. Non-US persons from jurisdiction that are subject to an equivalent regulatory regime may get relief from certain US-requirements. The procedure for obtaining recognition of equivalence by the competent US authority – the Commodity Futures Trading Commission CFTC - can either be initiated by foreign persons individually, groups of foreign persons from one jurisdiction or the competent regulatory authority from that jurisdiction. In order to relief market participants from the bureaucratic burden to deal with this, we expect ESMA to approach the CFTC to agree on

the equivalence of the regulatory requirements for derivative business. This approach would mirror the Commission's right pursuant to Art. 9a(2) EMIR to declare equivalence of third countries' legal, supervisory and enforcement arrangements to the requirements resulting from EMIR.(Art. 13 EMIR)

Finally, as the submission of the joint draft regulatory technical for OTC derivatives contracts not cleared by a CCP will be postponed beyond September 30, 2012, we want to highlight that the new regulatory framework on OTC derivatives should only become applicable, once all elements thereof are in place.

We hope that the above is useful for the further development of this important topic and are at your disposal for any additional information you may need.

Best regards,

Allianz SE

ppa. [illegible] [illegible]