



ASSOGESTIONI

associazione del risparmio gestito

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ESMA
European Securities and
Market Authority
103 Rue de Grenelle
75007 Paris

Our Ref. N. 234/12
Your Ref. N.

Joint Discussion Paper on Draft Regulatory Technical Standard on risk mitigation techniques for OTC derivatives not cleared by a CCP under the regulation on OTC derivatives, CCPs and Trade repository

Dear Sirs,

Assogestioni welcomes the opportunity to comment on the discussion paper Draft Regulatory Technical Standard on risk mitigation techniques for OTC derivatives not cleared by a CCP.

Assogestioni understands and share the ESAs overall goal to mitigate risks for OTC derivatives not cleared by a CCP but believes that “forced” standardization and CCP clearing should be avoided since it might lead to the unintended effect making risk protection tool less efficient.

We would like to express our concerns with regards to the overall administrative and cost burden that the new legislation would impose on funds and ultimately on retail investors and the possible distortion in the use of derivatives.

Assogestioni have worked with EFAMA and would like to express its support for the views presented by the European Asset Management Association in its response to this consultation. On this occasion we wish however to stress issues related to the posting of initial margins which are of particular concern to our members.

It should be born in mind that regulation should avoid imposing collateralization when there is no increase of system risk: in particular, in our view non prudentially regulated financial counterparties such as UCITS (NPRFC) should not be required to collect and post initial margins since the implementation of such requirement would impose unnecessarily high cost onto UCITS.

We do not support these proposal on three levels:

- UCITS are already highly regulated entities which are already covered by stringent risk management procedure. In particular, article 52(1) of Directive n. 2009/65 set that the risk exposure to counterparty (i.e. gross exposure less collateral received, where collateral complies with Box 26 of CESR/10-788) shall not exceed either 10% where the counterparty is a credit institution or 5% in other cases.



- Considering the investment obligation that regulates investment funds, the requirement to post and collect appropriate initial margin would result in lower investment returns on funds. Further the cost will greatly vary according to the level of collateral required, the type of collateral that will be eligible and the level of haircuts applicable. UCITS would have difficulties in posting cash collateral and could only offer as collateral those securities that are compliant with their investment strategy. Alternatively they would have to devise alternative tools to receive cash that would be costly and burdensome from an administrative point of view. As a general rule, UCITS should not enter in repo transaction in order to provide cash collateral.
- The standardized approach for the calculation of initial margin should not be mandated. The proposal models are bank models and cannot be easily and readily applied by a UCITS management company.
- The cost of posting margin would be high as it would require asset managers to set up new legal and operational procedure for managing posting of initial margin for every transaction on uncleared OTC derivatives.
- There should be a broader range of eligible collateral; in any case, all the eligible asset for a UCITS should be eligible for collateral. Appropriate haircut should apply.

In addition a clarification on the possibility to segregate collateral in segregated accounts held by third parties custodian who is part of the same group as the counterparty would be welcome.

Assogestioni would therefore ask to reconsider the obligation placed on UCITS and take into account the diverse nature and risk profile of various counterparties.

It should also be considered that an increased cost in the use of derivatives – used by UCITS used mainly for hedging purposes – could lead to a reduced “risk management” and hence higher risk carried by funds.

In general, for the reasons Assogestioni believes that the implementation of initial margin for non cleared OTC derivatives should be avoided.

Should the ESAs persist in bringing this provision forward, Assogestioni supports EFAMA’s requests. In particular: ESAs should consider applying specialist regulations to groups of markets participants resulting in a release of regulated funds from initial margin obligation; market participants should be allowed to increase haircut on all or specified class of collateral as alternative to considering initial margins.

Hoping that our comments could be a useful contribution to the debate, we remain at your disposal for answering any further question.

IL DIRETTORE GENERALE