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**Key comments regarding EMIR consultation paper of ESMA of German Insurance Industry (ID Number 6437280268-55)**

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We would like to raise the following points with respect to selected sections of the consultation paper:

1. **ESMA to negotiate EMIR as equivalent regulatory regime pursuant to Dodd-Frank**
   The upcoming regulation of derivatives in the US will extend under certain conditions to non-US persons. Non-US persons from jurisdiction that enjoy 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. We would suggest that ESMA approaches CFTC to agree on the equivalence of the regulatory requirements for derivative business of the European Union.

2. **Indirect clearing arrangements**
   (CP: III. l., p. 8, 9 and Annex II, Chapter II, p. 66 and 67)
   The concept of indirect clearing arrangements still is not 100 % clear to us. We would therefore appreciate the implementation of further clarifying provisions granting practical guidelines for this kind of arrangements (for example for confirmation of contracts, settlement etc.).
   However, the establishment of Chinese Walls and the responsible treatment of sensitive data seem very important to us in order to avoid any negative influence on the functioning of market.

3. **Clearing obligation procedure**
   (CP: III.II., p. 9 to 12 and Annex II, Chapter III and IV, 68 and 69)
   We would like to again emphasize the general importance of clear, certain and timely information about the classes of OTC derivatives subject to the new central clearing obligation in order to enable insurance companies to get prepared operationally to the new rules. This general aspect is in particular relevant, where insurance companies intend to make use of the intra-group exemptions provided by the EMIR regulation and need sufficient time to successfully complete the exemption procedures (see below risk mitigation techniques).

4. **Public register**
(CP III.III., p.12 and 13 and Annex II, Chapter V, p. 70 and 71)
The publication of clear and explicit definitions of OTC derivative classes subject to the clearing obligation as well as the publication of dates from which the respective clearing obligations take effect are very much appreciated. With this publication transparency and a common level of information for all market participants will be guaranteed. A high level of transparency and clarity of the new rules is of great importance.

5. **Access to a trading venue**
(CP: III.IV., p. 13 and 14 Annex II, Chapter VI p. 71 and 72)
We approve the approach to grant CCP's access to all trading venues in the respective markets in order to facilitate competition. Liquidity fragmentation is not to be expected from our point of view.

6. **Risk mitigation for OTC derivative contracts not cleared by a CCP**

***a. Timely confirmation***
(CP: p. 16 and 17 an Annex II, Chapter II, Art. 1 RM, p. 73)
The obligation to confirm non-cleared contracts by the end of the same business day or at the end of the next business day respectively, seems very ambitious. We would suppose a reasonable prolongation of the terms supposed, so that also small insurance companies and small asset managers instructed can confirm in time. We would suggest extending the planned provisions (Art. 1 RM subparagraph 2 and 3) one business day each.

***b. Dispute resolution***
(CP: p. 19 and 20 and Annex II, Chapter II, Art. 4 RM, p. 74)
The new draft RTS regarding dispute resolution processes contains a significant increase of reporting obligations. According to Article 4 RM subparagraph 3 insurance companies would need to report any disputes regarding OTC derivative reaching or exceeding the amount of EUR 15 million and outstanding for at least 15 business days to the competent authority. We are of the opinion, that this reporting obligation is not required and unnecessarily bedevils the market participants with even higher reporting requirements. If however, the dispute resolution reporting obligation should be introduced, it should at least be clearly stated that the reporting obligations can be delegated to third parties, like collateral agents and a clear reporting scheme should be provided. From our point of view a monthly reporting on an aggregated basis would be sufficient for supervisory needs and reduce the burden on the market participants in terms of reporting obligations.

***c. Intra-group exemptions***
(CP: p. 21and Annex II, Chapter II, Art. 7 and 8 RM, p. 75 to 78)

(i) General increase of reporting requirements
The new requirements as regards intra-group exemptions are too extensive and might not correspond to the low-level risk structure of intra-group derivative transactions. Intra-group transactions do not contain any systematically relevant risks for non-group market participants. The risk remains in the group. Against this background we

are of the opinion that the information required according Art. 7 RM subparagraph 2 lit e (ii) – (viii) and subparagraph 3 is dispensable and the corresponding provisions could be deleted.

(ii) Interruption period
As stated already above, insurance groups need sufficient time to carry out the required notification procedures. Therefor the administrative proceedings for the intra-group exemptions as regards the obligation for central clearing as well as the obligation to perform risk mitigation techniques need to be exercisable and exercised in a time frame, which effectively enable the respective groups to avoid central clearing and the performance of risk mitigation techniques. Therefore it might be advisable to regulate, that the clearing obligation and the obligation to perform risk mitigation techniques are interrupted, as long as the applicant is still proceeding to receive an appropriate inter-group exemption.

(iii) Sensitivity of data
Information about intra-group transactions contains sensitive data. For this reason information according to Art. 8 RM should exclusively be accessible for a very limited group of people, i.e. competent authorities and ESMA. In any other case information about intra-group transactions need to be made anonymous and aggregated.

(iv) Determination of national authorities
National authorities that are competent for the purposes of the exemption procedures need to be determined as soon as possible.

(v) Counter-exception for financials under supervision
In case that both intragroup counterparties of an OTC derivative transaction are subject to an effective supervision and to a detailed regulation framework including risk management provisions (for example Solveny II) the submission of the full application material required according to Article 7 RM would represent a double reporting. In order to avoid unnecessary administrative burdens it seems reasonable if a corresponding counter-exception would be introduced.

***d. Date of effect***
We would be grateful if ESMA could clarify, that no risk mitigation techniques need to be exercised before a clearing obligation for the respective OTC derivative class takes effect.

7. **Review of model, stress testing and back testing**
(CP: IV.XII., p. 40 to 43, Annex III, Chapter XIII, SBT p. 119)
We would welcome the implementation of a precise mechanism regulating the case, that a CCP my mistake wrongly calculates positions. Operational sequences as well as binding periods should be clearly regulated as clients and indirect clients do not have the possibility to directly raise claims against the CCP.

8. **Trade repositories**
(CP: V to VIII p. 43 to 57, Annex IV and V, p. 137 – 170)

***a. Reporting time frame according to Article 9 of EMIR***
We are certain of that fact, that ESMA is not able to change the text of

the EMIR regulation. However, is shall be communicated that the German insurance companies have very serious concerns about the strict regulation to report transactions t+1. We would be grateful if ESMA would keep in mind, that most of the insurance companies have never been obliged to establish a daily reporting system like other financial counterparties. Therefore we strongly support sufficient phasing-in periods.

***b. Data on exposure***
(CP: p. 49 and Annex V, Article 6 on p. 140 and Annex 1, Table 2, common data, section 2e, p. 34)
We are of the opinion that the data on exposure might not be covered by Article 9 of EMIR regulation and ESMA might therefore exceed the limits of the EMIR regulation. However, for German insurance companies, which have often – as already stated above – not installed any daily reporting system yet, the daily reporting of exposure constitutes a heavy administrative burden.
We do have doubts, if supervisory authorities will be able to meaningfully use the subsequent rush of data.

***c. Transition period***
(CP: Annex V, Article 4, p. 139)
It should be possible to still use the services of a reporting service provider declared unfit for a transition period of one month. The transitional period is required to manage the change to another reporting service provider or to set up the required reporting processes in-house respectively.

***d. Costs of using a trade repository***
(CP: Annex V, preamble, no. 10, p. 149)
The exercise of reporting duties should be free of charge for the obliged party or the third entity instructed respectively, similar to the DTCC model for CDS/ CDX.

***e. Data availability***
(CP: Annex V, Art. 24, p. 160)
The applicant should have the possibility of permanent access to his own data delivered to the trade repository, in order to use this information for other reporting obligations as well.

9. **Effectiveness of reporting obligations**
(CP: Annex V, Art. 24, p. 160)
The insurance companies are concerned about the stageless implementation of the substantial reporting obligations according to EMIR. We would rather prefer the introduction of transitional and phasing-in periods, in order to give market participants the required time to get adapted to the new obligations step by step.