

FESE Response to ESMA Discussion Paper on the Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories – ESMA/2012/95

1. Introduction

The Federation of European Securities Exchanges (FESE) represents 46 exchanges active in equities, bonds, derivatives and commodities through 21 full members from 30 countries, as well as 7 observer members from European emerging markets. FESE is a keen defender of cross-border competition and many of its members have become multi-jurisdictional exchanges, providing market access across multiple investor communities. FESE members operate Regulated Markets (RMs), which provide both institutional and retail investors with transparent and neutral price-formation.

FESE members are glad to have the opportunity to contribute to ESMA's consultation. FESE supports efficient, fair, orderly and transparent financial markets that meet the needs of well protected and informed investors and provide a source for companies where to raise capital.

Below you will find our response to some of the questions included in the discussion paper. Our response focuses exclusively on section I of the paper on OTC Derivatives.

2. Response to the Discussion Paper Questions

Section I of the Discussion Paper OTC Derivatives

Clearing Obligation (Article 3)

Contracts having a direct, substantial and foreseeable effect within the EU

Q1: In your views, how should ESMA specify contracts that are considered to have a direct, substantial and foreseeable effect within the EU?

FESE Members believe it might be difficult to classify a single contract as having a 'systemic' or 'direct, substantial and foreseeable effect within the EU'. Therefore we understand that ESMA refers to a 'class of derivative' as a whole. We request this is clarified in the technical standards.

Q2: In your views, how should ESMA specify cases where it is necessary or appropriate to prevent the evasion of any provision of EMIR for contracts entered into between counterparties located in a third country?

We suggest that ESMA looks at which of these contracts/classes of derivatives would cause a potential systemic impact in the EU.

Clearing obligation procedure (Article 4)

Criteria to be assessed by ESMA under the clearing obligation procedure & Public register available on ESMA website

Q7: What are your views regarding the specifications for assessing standardisation, volume and liquidity, and availability of pricing information?

FESE Members are concerned about the definition of liquidity. Measuring current liquidity of OTC derivatives instruments underestimates future potential liquidity in Regulated Markets and MTFs where much of the liquidity is generated by liquidity providers (up to 50% of the liquidity in some cases). A transparent and neutral multilateral environment would contribute to an increase trading volumes of a multiple factor. We note the example of the US bond market which is open, electronic and enjoys high liquidity levels that result in better prices for investors.

FESE Members also believe that CCPs should not be put under pressure to clear a certain product as this may increase, rather than decrease, systemic risk.

Q8: What are your views, regarding the details to be included in ESMA register of classes of derivatives subject to the clearing obligation?

Q9: Do you consider that the data above sufficiently identify a class of derivatives subject to the clearing obligation and the CCPs authorised or recognised to clear the classes of derivatives subject to the clearing obligation?

FESE Members understand that the criteria to define a class of derivative should be more detailed than in level 1. However, these criteria should not be so detailed that a minor change in a derivative contract would result in that derivative falling outside of the clearing obligation. We would suggest for example that a class of derivative includes 'all derivatives on the same underlying' (i.e. CDS on Italian Government debt).