

CH-3003 Bern

Priority

To the Directors of the
European Supervisory Authorities

Reference: 1107
Contact: Rupert Schaefer
Bern, 30 March 2012

FINMA's response to the ESA Discussion Paper

Dear Msrs Ross, Farkas and Maijor

The Swiss Financial Market Supervisory Authority FINMA welcomes the opportunity to submit its comments on the EBA, EIOPA and ESMA joint discussion paper on draft Regulatory Technical Standards on risk mitigation techniques for OTC derivatives not cleared by a CCP under the Regulation on OTC derivatives, CCPs and Trade Repositories (the "Discussion Paper").

FINMA is an independent and integrated supervisory authority in charge of the supervision of financial institutions in Switzerland. Moreover, together with the Swiss National Bank, FINMA is responsible for the regulation and ongoing supervision and oversight of CCPs and CSDs in Switzerland.

In response to the Discussion Paper, we are pleased to provide you with some general comments.

Initial margins (IM)

We believe all market participants, namely PRFC, NPRFC and NFCs+, should in principle have to meet the same requirements on IM.

However, the ESAs need to give careful consideration to whether existing or future risk-based capital regimes for PRFCs would not already adequately protect against default without collecting initial margins.

Initial margin calculation

We are of the opinion that a reasonable standardised approach for the calculation of the initial margins should be rather simple and not be overly complex.

Internal models should only be applicable if they have been approved by supervisory authorities.

Reference: 1107

When defining the minimum level of IM requirements and the methodology for IM calculation, we consider it crucial to set the right incentives, i.e. to incentivise central clearing.

Segregation and reuse

We support the opinion of the ESAs that collateral is to be segregated and cannot be reused, or that it is centrally managed, for instance by a CCP. Collateral which does not comply with these requirements should receive less favourable treatment in the calculation of capital requirements for PRFCs.

Eligible collateral

We think a tight definition of eligible collateral should be pursued. Such an approach would be all the more appropriate if the market provides mechanisms for converting ineligible into eligible collaterals at reasonable costs.

However, in order to keep operational costs under control, a sufficiently high cap on the minimum transfer amount of collateral seems appropriate.

Transactions with counterparties outside the EU

We fully support the position of the ESAs that cross-border transactions should also be subject to margin requirements which adequately address the specific risks stemming from the cross-border business. Where a third country has implemented an equivalent regulatory and supervisory regime on the exchange of collaterals, no additional collateral requirements should be required.

We would like to emphasise that it is of crucial importance that collateral posted abroad is adequately protected.

Yours sincerely

Swiss Financial Market Supervisory Authority FINMA



Patrick Raaflaub
CEO



Yann Wermeille
Head of Markets Division