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Dear Sir, Madam

ICAP response to ESMA discussion paper on draft technical standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories

ICAP welcomes the opportunity to respond to ESMA's discussion paper on draft technical standards for the regulation on OTC Derivatives, CCPs and Trade Repositories. ICAP is the world's leading interdealer broker and provider of post-trade risk and information services. The Group is active in the wholesale markets in interest rates, credit, commodities, FX, emerging markets and equity derivatives, and provides post-trade processing, portfolio compression and reconciliation and risk management services.

Our response to the Discussion Paper focuses on the requirement for non-discriminatory access for all trading venues to CCPs which maintains the freedom for market users to have trades submitted to clearing on their behalf, irrespective of the execution venue. We believe it is important to define the enforcement mechanism that will ensure compliance with this requirement. We also provide views on additional criteria ESMA might consider when assessing which OTC derivatives should be subject to the clearing obligation.

More broadly, we would emphasise the importance of ESMA (and the EBA and EIOPA, where appropriate) ensuring coordination and consistency with work underway through international bodies such as CPSS-IOSCO and the Financial Stability Board. OTC derivatives markets are global, as are many of the largest market participants. Coordination will help to avoid the creation of an unlevel playing field and minimise the potential for regulatory arbitrage.

We have responded to those questions in the Discussion Paper where relevant. We hope you will find our submission helpful and would be happy to discuss further.

Yours faithfully

Hannah Gurga

Head of European Affairs

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Comments on ESMA's Discussion Paper on Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories

OTC Derivatives

Clearing obligation procedure

Q4: What are your views on the required information? Do you have specific recommendations of specific information useful for any of the criteria? Would you recommend considering other information?

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

In developing the draft technical standards that will determine which OTC derivatives should be subject to the clearing obligation, ESMA must have regard *inter alia* to the volume, liquidity, and degree of standardisation. We agree that these are important criteria. Furthermore, as there may be significant variation in economic terms within a particular class of derivatives, ESMA should consider additional factors such as the number of instruments per class of derivative; the trading interest per instrument; the value at risk; and the level of volatility. ESMA may also wish to take into account particular characteristics such as whether the transaction is an outright or a spread trade, as well as the potential for liquidity in certain instruments to fluctuate.

CCP Requirements

Access to venue of execution

Q23: What are your views on the notion of liquidity fragmentation?

We fully support the intention behind Article 8 of the Regulation, namely the non-discriminatory access of trading venues to CCPs and vice versa. Liquidity fragmentation should not be used to justify restriction or refusal of access of a trading venue to a CCP. Technical solutions are already available that enable trading venues to service liquidity pools in multiple clearing providers, as evidenced by ICAP's energy MTF, Trayport Energy, which today offers members a choice of clearing between ICEBlock and Clearport.

If trading venues are not permitted to access particular CCPs, the chances of meaningful competition between CCPs in non-interoperable clearing markets may be significantly reduced. ESMA should therefore consider potential enforcement mechanisms to ensure compliance with the access requirement – for example, through the creation of a market surveillance committee to whom complaints could be submitted. In any case, it is important that there is clarity as to the procedure that should be followed in the event of a perceived breach of the requirements for non-discriminatory access.