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Response to the ESMA Consultation Paper
"Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories"

Dear Madam and Sir,

We very much appreciate to have the opportunity to submit this letter in response to the above mentioned Consultation Paper ("**CP**") issued on June 25, 2012 and respectfully request that our comments outlined below be taken into due consideration.

Reference is also made to our letter dated March 16, 2012 in response to the Discussion Paper ("**DP**") issued by ESMA on February 16, 2012, in which summary information on KfW had been included.

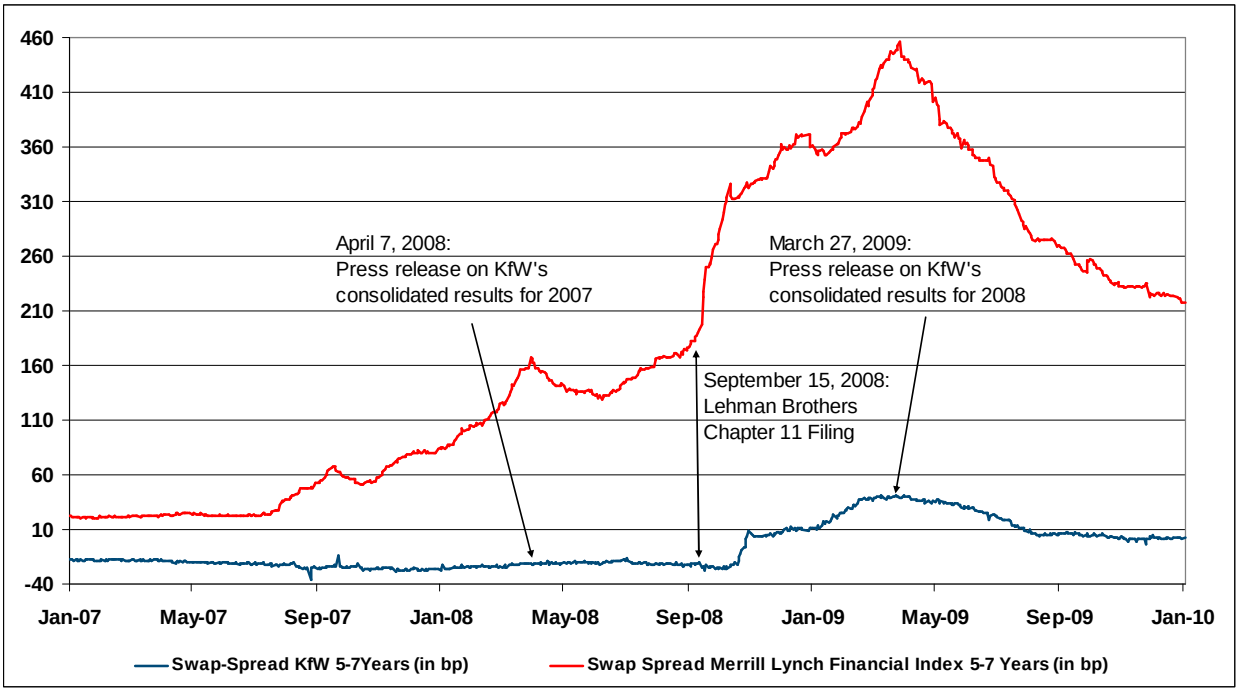
1. Comments to CP Section IV.X (CCP Requirements - Collateral requirements)

Under Article 46 of the European Market Infrastructure Regulation ("**EMIR**"), ESMA is required to define in Regulatory Technical Standards ("**RTS**") the type of collateral that can be considered highly liquid. We note that ESMA intends to retain the criteria-based approach described in the DP which include criteria such as low credit and market risk, free transferability, the existence of a liquid and diversified market and the absence of significant wrong way risk.

We generally agree with the set of criteria suggested by ESMA, but would like to reiterate that in our opinion clearing members should be allowed to post as collateral not only covered bonds issued by themselves (subject to certain additional requirements) but also other securities issued by themselves (or by their parents or subsidiaries), provided that such assets carry an explicit guarantee provided by a central government. As a central government guarantee will protect the value of the collateral against adverse credit events related to the issuer ("idiosyncratic risk"), no wrong-way risk arises from this type of collateral.

The protection against wrong–way risk provided by a central government guarantee can be illustrated by the development of swap spreads of KfW debt securities with a maturity of 5 to 7 years compared to the development of swap spreads of the Merrill Lynch Financial Index 5 to 7 years for the period from January 1, 2007 to December 31, 2009 (see graph below).

In the fiscal years 2007 and 2008, KfW suffered significant losses due to the substantial financial support provided by KfW to its - at that time - minority-owned (and not consolidated) affiliate IKB Deutsche Industriebank AG in the context of the emerging sub-prime crisis. Consolidated losses amounted to EUR 6.2 billion in 2007 and EUR 2.7 billion and 2008. However, swap spreads of KfW bonds and notes, which benefit from a statutory guarantee of the Federal Republic of Germany, did not experience any significant change at or around any of the two dates on which KfW published the respective press release on its consolidated results. Only in the context of the significant deterioration of the general market environment after Lehman Brother's Chapter 11 filing on September 15, 2008 did the swap spread of KfW debt securities widen for some time. But even this spread widening occurred with a time delay and to a much lesser degree compared to unsecured debt securities of financial issuers.



In summary, idiosyncratic issuer risk is not being priced by the market for debt securities benefiting from a central government guarantee, and thus no wrong-way risk exists if a clearing member posts such securities issued by itself as collateral.

In this context, we would again like to draw your attention to Section 6.2.3 of Guideline ECB/2000/7 of the European Central Bank on the implementation of monetary policy in the euro area, which – while generally prohibiting counterparties to post assets issued by themselves as collateral for repo transactions with members of the European System of Central Banks – accepts as eligible collateral assets issued by the counterparty if the asset is guar-

anteed by a public authority of an EEA country which has the right to levy taxes. From our point of view, there is no reason why the requirements regarding the collateral acceptable for CCP's should be more demanding than the sophisticated standards of the European Central Bank for central bank lending.

On the basis of the aforesaid, we are of the opinion that assets issued by entities carrying an explicit central government guarantee should be considered highly liquid and be excluded from the general prohibition that a clearing member may not post assets issued by itself or its parent or subsidiary. Therefore, we respectfully request that ESMA consider to amend the wording in Annex III, Chapter XI, Article 1 COL 3. (b), (vii), (1) as follows:

"(1) the clearing member providing the collateral, or an entity that is part of the same group as the clearing member, except in the case of a covered bond and only were the assets backing this bond are appropriately segregated within a robust legal framework and satisfy the requirements of this subparagraph and of collateral carrying an explicit guarantee provided by a central government;"

2. Comments to CP Section V.I (Reporting obligation) and Annexes V and VI

In relation to the obligation to report data to a trade repository ("**TR**") in accordance with Article 9 of EMIR, we would like to make the following observations and suggestions with respect to the tables developed by ESMA, which shall be attached as Annex 1 to the RTS on the minimum details of the data to be reported to TRs and as Annex 1 to the implementing technical standards ("**ITS**") with regard to the format and frequency of trade reports to TRs, respectively:

a) Table 1 – Counterparty Data, line 7 (Financial or non-financial nature of C/P)

In line 7 of Table 1, the reporting entity shall indicate whether it is a financial or non-financial counterparty in accordance with Articles 2 (8) and 2 (9) of EMIR, respectively. However, in accordance with Articles 1 (4) and 1 (5) of EMIR, EMIR shall not apply to certain entities. For these entities, the definitions of "financial counterparty" and "non-financial counterparty" are irrelevant. There is thus no need to differentiate between the status of a financial or non-financial counterparty for these entities, as they constitute a class *sui generis*.

We therefore respectfully request that line 7 of Table1 – Counterparty Data in CP Annex V and CP Annex VI, respectively, be amended as follows:

CP Annex V:

7	Financial or non-financial nature of C/P	Indicate ~~if~~ whether the C/P is a financial or non-financial counterparty in accordance with Article 2(8,9) of Regulation No (EU) No xx/2012 [EMIR], if applicable

CP Annex VI:

7	Financial or non-financial nature of C/P	F = Financial Counterparty, N = Non-Financial Counterparty, N/A = Not Applicable

b) Table 1 – Counterparty Data, lines 15 and 16 (Directly linked to commercial activity or treasury financing and Clearing threshold)

Lines 15 and 16 of Table 1 – Counterparty Data require the reporting entity, in case it is a non-financial counterparty, to indicate, on the one hand, whether the derivative contract being reported is objectively measurable as directly linked to the entity's commercial or treasury financing activity and, on the other hand, whether it is above or below the clearing threshold (both as referred to in Article 10 (3) of EMIR).

This information is only relevant in order to determine whether a non-financial counterparty is subject to the clearing obligation in accordance with Article 4 of EMIR.

As outlined under a) above, EMIR shall not apply to certain entities. These entities will never be subject to the clearing obligation, even if technically a non-financial counterparty (e.g. a debt management agency of a EU Member State). Determining, for example, whether such entity would technically be above or below the threshold would impose costs on such entity for which EMIR does not provide a legal basis. Moreover, we fear that, in particular, field 16 may, if filled by an entity to which EMIR is not applicable, produce confusing information to ESMA.

We therefore respectfully request that lines 15 and 16 of Table1 – Counterparty Data in CP Annex V and CP Annex VI, respectively, be amended as follows:

CP Annex V:

15	Directly linked to commercial activity or treasury financing	For non-financial C/P; Information on whether the contract is objectively measurable as directly linked to the non-financial counterparty's commercial or treasury financing activity, as referred to in Art. 10(3) of Regulation No (EU) No xx/2012 [EMIR], if applicable
16	Clearing threshold	For non-financial C/P; information whether the counterparty is above the clearing threshold referred to in Art. 10(3) of Regulation No (EU) No xx/2012 [EMIR], if applicable

CP Annex VI:

15	Directly linked to commercial activity or treasury financing	Y = Yes, N =No, N/A = Not Applicable; changes over the lifetime of a contract need to be reported. In case the hedge is no longer justified, the report should be amended.
16	Clearing threshold	Y = Above, N = Below, N/A = Not Applicable

Alternatively, fields 15 and 16 should not be made mandatory, in which case an entity to which Art. 10 (3) of EMIR does not apply would have the possibility to leave fields 15 and 16 blank.

We thank you very much for taking our comments into due consideration.

Sincerely,

KfW

/s/ CHRISTIAN KRÄMER

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Title: First Vice President

/s/ DR. MICHAEL SCHULZE

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