

Response of Oesterreichische Nationalbank to the ESMA Consultation Paper on Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories published on 25 June 2012

1. General comments

As already highlighted in the discussion paper, we again want to emphasize the need to **strengthen** the principle of **proportionality** within the technical standards of ESMA, in particular regarding organizational requirements and stress testing, in order to encourage domestic CCPs to apply for authorization. EMIR should **support** the **establishment** of **domestic CCPs** in order to avoid further risk concentrations within global CCPs and global dealers by giving small and mid-tier financial institutions the possibility of direct access, thereby preserving a level playing field.

2. Specific comments - OTC Derivatives

Non-financial counterparties (Art 10)

For non-financial counterparties a simple and easily enforceable clearing threshold based on notional values is foreseen. However, we **support the ESRB proposal** of a **two-steps approach** based on gross market value for the following reasons. Firstly, the use of notional values would imply that the evolution of risks over the term of the derivative contract is not considered. Secondly, all corporations which found exposed themselves to derivative activities for a given ratio of their overall balance sheet would be treated equally, whatever their absolute size, thereby reflecting the ability of the non-financial corporation to withstand shocks. Thirdly, the total amount of derivatives held by non-financial corporations, irrespective of their intended use, would be appropriately reflected.

3. Specific comments – CCP Requirements

Organizational requirements (Art 26ff)

The proportionality (as provided to some extent in the discussion paper, e.g. “*depending on the structure and complexity of the CCP, single individuals could perform more than one of these functions*”) should be reflected in all organizational requirements, in particular with respect to the remuneration policy and the establishment of a remuneration committee.

Liquidity risk controls (Art 44)

We strongly **support** the policy option chosen in the consultation paper to use an **criteria based approach** for the following reasons: (i) the CCP remains responsible for its investment decisions. This also applies to its sources of liquidity. The counterbalancing capacity of a liquid asset can and does vary substantially over time; it is not an objective characteristic of an assets. (ii) Regulation cannot anticipate all possible future scenarios and

the capacity of an asset to generate liquidity in these scenarios. This is the responsibility of the CCP and its liquidity risk management and treasury function. (iii) Similarly, supervisors should not simply check whether a particular asset is legally eligible, but much rather whether the liquidity risk exposure and the liquidity risk bearing capacity of the CCP are adequate based on the objectives of EMIR. The simple “box-tick” approach to financial supervision proved to be highly inappropriate. (iv) Potential differences in supervisory practice are unavoidable; full disclosure should be required to ensure that market participants are informed about these differences and can act accordingly.

The issues discussed here are similar to those discussed by the EBA SGL pursuant to Art. 481(2) CRR; collaboration with the EBA would be advisable. Full consultation, though, would stretch the resources of the EBA SGL beyond capacity.

Article 3 LIQ

As regards the **concentration of liquidity** we would *favour* that the concentration of liquidity stemming from one source is *defined* by limiting exposure to *given thresholds*. The quantitative limits are minimum standards and the CCP would remain responsible for the sufficient diversification of its sources of liquidity. Furthermore, qualitative criteria are already applied in EU regulation for, e.g., occupational pension funds – “prudent person principle”. This principle proved ineffective in ensuring the proper incentives for the financial institution. Qualitative criteria would be insufficient for establishing the accountability of CCPs in cases where concentration risk materialised. Concentration is intrinsically related to correlation of asset classes, assets within asset classes, counterparties etc. These correlations are highly cyclical; internal model based approaches to diversification are therefore unlikely to result in sufficient diversification. The responsibility for sufficient diversification and low concentration risk remains with the CCP. The **quantitative criteria** constitute solely **upper bounds** and prudent liquidity risk management is likely to require lower concentration limits under various stress scenarios.

Collateral (Art 46)

In order to avoid contagion effects we would, from a financial market stability perspective, strongly appreciate amending the standard with a **limit on** the use of financial instruments posted as **collateral** by a clearing member when they are **issued by another clearing member** or **require higher haircuts**. Art 4 COL regarding concentration limits should be complemented with *(g) the amount of collateral provided in financial instruments issued by another clearing member*.

Furthermore, the statement within Art 5 MAR that *CCPs are required to establish transparent and predictable procedures for adjusting margin requirements in respond to changing market conditions* should be **included in Art 3 COL as well** to avoid pro-cyclical effects by giving market participants the possibility to anticipate changes.

Review of models, stress testing and back testing (Art 49)

We again want to highlight that the **principle of proportionality** is **not reflected sufficiently** in this technical standards. Under point 235 the consultation paper states that EMIR does not make any distinction between larger and smaller CCPs and it is therefore not

possible to introduce such a distinction in the draft RTS. We assume that EMIR leaves sufficient room to provide national competent authorities with discretion and flexibility based on the criteria outlined in the technical standards. Therefore, we require that differences in business models and systemic importance need to be taken into consideration. Overloaded stress testing programs for smaller, regional CCPs may induce considerable competition disadvantages as large stress testing processes tie up material resources, i.e. both high installation and maintenance costs.

4. Specific comments- Trade Repositories

Remarks regarding Annex 1 - Table of fields to be reported under Art 9, Table 2, Common Data:

Section 2c – Exposures

Position 32: We suggest using ISO-currency codes to ensure greater flexibility.

Section 2f – Interest Rates

Position 37 allows for an identification of the product type for non-swap transactions, e.g. interest rate futures or swaptions. Where are the details for these transactions reported, e.g. the price of the future or the option type of the swaption?

Section 2h - Currency/Forex

What is the difference between position 47 and 48?

Section 2i - Commodities

This section seems to be directed mainly at energy derivatives. For all other commodities it would be beneficial to have more standardised information available. For example, position 53 could have a standardized identifier for commodity details: “go” for gold, “ri” for rice, “bco” for brent crude oil,...

Section 2k – Options:

Where is the underlying of the option reported?