

Paris, 9th of August 2018

FBF Answer to ESMA Consultation Paper - Clearing Obligation under EMIR (no. 6)

The French Banking Federation (FBF) stands for 347 member banks (credit institutions licensed as banks and the branch offices of credit institutions in the European Economic). The FBF promotes the banking and financial industry at the French, European and international levels. It defines the profession's positions and proposals with respect to public authorities and economic/ financial authorities. Located in Paris, the FBF also maintains offices in Brussels and Frankfurt.

First of all, the FBF would like to thank the European Securities and Markets Association for this consultation.

Question 1: Do you consider that the proposed extension of the temporary intragroup exemption is justified? Please explain.

The FBF supports the proposed extension of the temporary intragroup exemption to the 21st of December 2020. This extension would prevent any mismatch between the three calendars previously envisaged.

This extension is also relevant in the current Brexit-related political context where the process for new equivalence decisions to be taken by the European Commission in the near future may be slowed down. With this in mind, a postponement of 2 years may even seem rather short to leave the Commission with the necessary timing to make equivalence decisions for the relevant third countries.

Alternatively to a longer extension, we believe that the Commission should have the ability to roll over the extension without having to amend the RTS should there still not be sufficient equivalence determinations come December 2020.

Finally, it is critical that the extension of the exemption period is adopted early enough before 22nd December 2018. Otherwise, entities would be forced to start clearing intragroup transactions, and incur all related resulting detrimental impacts (see response on question 2) before the extension is adopted.

Question 2: Do you identify other benefits and costs not mentioned above associated to the proposed approach? If you advocated for a different approach in the responses to the previous question, how would it impact this section on the impact assessment? Please provide details.

Even if we support the extension of the temporary exemption, we are concerned that the costs of this requirement are only postponed at a later stage if there are, at the end, not enough third countries qualified as EMIR clearing equivalent.

The application of clearing obligation to intragroup transactions (with a counterparty located in a third country) will have heavy consequences as far as cost and technical complexity are concerned.

As opposed to client-facing transactions that will be either cleared or bilaterally margined, intra-group transactions are most of the time internal group back-to-back transactions used to manage risk exposure which do not increase inter-connectedness systemic risks in the financial system. Ending clearing exemptions for intra-group transactions used for risk-management purposes would create:

- Prohibitive costs (clearing membership, sourcing and posting of liquid collateral on an intra-day basis), which would simply discourage centralised risk management and/or be ultimately passed on to the end user; and
- Increase in operational risks for little benefit in terms of counterparty risk: clearing of one intra-group transaction would require 4 transactions between the CCP and counterparties involved in the transaction (1. client facing entity to Clearing Member (CM); 2. CM to CCP; 3. CCP to CM; and 4. CM to risk aggregation entity). Where the counterparties are already subject to appropriate centralised risk management and consolidated supervision, regulators already have the information necessary for oversight of all of the group entities as well as of the consolidated risk position. As such, it is not clear what benefits will be added by the requirement to clear such trades.

We would therefore recommend to exempt from clearing all intra-group transactions used for risk-management purposes notwithstanding the lack of equivalence recognition in the jurisdictions concerned.

Alternatively, we would recommend exempting at least intragroup transactions with third country-located legal entities with positions below the FC- clearing threshold under EMIR Refit computed at the legal entity level/on a standalone basis. Such exemption should apply:

- (i) independently from the equivalence status of the given third country and;
- (ii) only upon a careful assessment by competent authorities of the absence of any legal and practical impediments to the prompt transfer of own funds and repayment of liabilities:
 - 1. criteria on the legal impediment to the prompt transfer of own funds and repayment of liabilities defined in Articles 33 of Delegated Regulation (EU) 2016/2251 being met;
 - 2. criteria on the practical impediments to the prompt transfer of own funds and repayment of liabilities defined in Article 34 of Delegated Regulation (EU) 2016/2251 being met.