



Maria Teresa Fabregas Fernandez  
Head of Unit  
Financial Markets Infrastructure (C2)  
DG FISMA  
European Commission

23 September 2016

Dear Ms Fabregas,

### **Issues relating to EMIR RTS on risk mitigation techniques for non-cleared OTC derivatives**

We are writing to you to express our support for the European Commission's (EC's) efforts to make the EMIR Regulatory Technical Standards (RTS) on risk mitigation techniques for non-cleared trades workable for the industry as published by the EC on 28 July 2016. We do not support the opinion of the European Supervisory Authorities (ESAs) published on 9 September 2016.

*We support the EC on all of the points below:*

- **Sovereign concentration rule**

We do not believe the issuer sovereign concentration rule should be applied to entities benefiting from the transitional provision provided to pension scheme arrangements (PSAs) in EMIR Article 89(1). As the EC correctly points out in its letter of 28 July 2016, we believe this could force these entities to either collateralise initial margin (IM) in sovereign bonds not matching their liabilities and therefore introduce unnecessary currency risk to PSAs, or to collateralise IM in cash, which would be inconsistent with the exemption provided to PSAs which recognises that they should not post collateral in cash given they are normally fully invested.

*We support the intention behind the EC's sovereign concentration rules but believe that some minor drafting changes are required to deliver the intended effect, as set out in Annex I attached [here](#). We attach [here](#) slides explaining the rationale for the drafting suggestions.*

If for any reason the ESAs' text from 9 September 2016 is adopted, please note that we believe there is a drafting error in the text which will result in a worse outcome than intended by the ESAs. See Annex II attached [here](#) for more information and a suggested drafting fix to address this.

- **T+1 variation margin (VM) transfer**

We support the EC's drafting of the wording around timings for VM transfer which relates to "providing" collateral within a certain time frame rather than "collecting" collateral as per the ESAs' text. We believe the EC text can be read to mean instructing the settlement of the margin, but not necessarily the actual settlement of the margin. We believe this is practically workable and does not disadvantage securities collateral which requires a longer settlement window than cash collateral.

- **Undocumented trades**

We believe it is reasonable for all trades to meet a minimum documentation requirement by the date when VM rules apply to entities, but not before. We therefore support the deletion of Article 2(7) of the ESAs' [opinion](#) as per the EC's proposed RTS from 28 July 2016.

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We would also like to draw the EC's attention to the following:

- **Timing**

We request sufficient time for the industry to implement the rules, once the final rules are made publically available. In particular, we believe it is important to maintain a staggered start date as initially proposed, so that small entities (with less than or equal to EUR 3 trillion of non-cleared derivatives positions) are phased in after the larger entities (with more than EUR 3 trillion of non-cleared derivatives positions).

- **Minimum transfer amount (MTA)**

We request that the MTA works per single legal netting set, rather than per pair of counterparties. This is because clients often have more than one asset manager managing different portfolios. A client could have positions with the same bank counterparty but from portfolios managed with different asset managers, which are likely to be on different legal agreements. Asset managers will not have visibility of positions of other asset managers even for the same client and therefore there is no practical way to implement the MTA on an aggregated basis. If the wording remained as it is, the buy-side will be forced to implement a minimum MTA (e.g. EUR 10,000) creating unnecessary operational burden and significantly increasing the number of margin calls.

- **FX forward delay should apply to FX swaps as well**

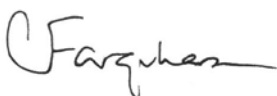
Given that FX swaps can be created with a combination of an FX spot and FX forward, we request that the delay applied to FX forwards be also applied to FX swaps.

- **Collateral haircut**

The collateral haircut table in the annex of the RTS (called table on "haircuts for long-term credit quality assessments") depends on the credit quality step, but there seems to be a lack of clarity on how to determine this. The ESAs published a report in May 2016 (link [here](#)) on a proposal to map between credit rating agencies' ratings and credit quality steps but this has not been finalised. We request that work is progressed on this quickly to ensure there is clarity over the interpretation of the credit quality step.

We are grateful to you for taking the time to read this letter, and are at your disposal should you have questions on any of these issues.

Yours sincerely,



Charles Farquharson  
(Chief Risk Officer)



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