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**Summary of the consultation on:
Possible initiatives to enhance the resilience of OTC Derivatives Markets**

1. INTRODUCTION

This document presents a broad non-exhaustive summary of the responses to the consultation on OTC Derivatives market. The summary follows the same sections outlined in the consultation document and for each section provides both an overview of the general comments received and of the detailed responses to the single questions.

2. PROMOTING FURTHER STANDARDISATION

General comments

The Commission Consultation paper had distinguished two types of standardisation, namely that of the contract (the legal frame) and the contractual parameters (the economic content). Several respondents refined standardisation into the following three subcategories:

1. Contract uniformity (standard legal relationships, confirmation agreements, documentation, market conventions on event handling)
2. Product uniformity (standard valuations, payment structures, dates)
3. Process uniformity and automation (Straight-through processing (STP), matching, confirmation and settlement)

Many respondents found using standardised legal terms beneficial. Market practice has generated model legal frameworks (Master Agreements), while a few may co-exist (e.g. for UK and US legal regime). This might happen naturally in a maturing, more liquid market. Commodity derivatives, however, would by nature be highly specific but there was no evidence that they posed a risk to the financial system. However, corporations often responded that they would not use some of those model contracts because they would entail market practices not suitable for them (e.g. the provision of collateral, which would expose them to liquidity risk). One respondent argued that the recent market agreement on the auction settlement for CDS would have exposed CDS sellers to higher risk. On the other hand, one respondent argued that the standard practice of "cash settlement" in CDS cause speculation and might have hinder access to credit for the companies on whose name the CDS was written. Other respondents argued that the regulation of investment/mutual funds (subject to UCITS) required some specific clauses in otherwise standard CDS contracts to avoid loan delivery.

Product uniformity, as far as standardising the economic parameters of the contract is concerned (provided they are consistently defined), was widely rejected, since it would

limit hedging possibilities and might result in a conflict with accounting rule IAS 39. Uniform event handling was seen in some cases as problematic, as there was diversity in national legislation (e.g. corporate action). However, one public authority regarded further standardisation of contract and economic terms as beneficial, which should be determined in an industry/regulator working group.

The technical standardisation, i.e. automation of processes was widely seen as beneficial; however many respondents emphasised the set-up costs. To achieve this, for example the fields to be completed in every transaction could be standardised. Process automation to reduce operational risk was often seen as the driver, rather than the consequence, of standardisation. Some argued that, especially for rather specific needs, the first steps in concluding a trade (the brokering) need not be automated. One respondent also argued that electronic confirmation on the trade date may risk resulting in cash flows from the swap not matching those of the underlying bond.

A large number of respondents (with exceptions, though) did not consider it necessary to incentivise standardisation through regulatory capital charges, as markets would have an inherent incentive to reduce operational risks anyway.

Several respondents report that the standardisation needed to allow for central clearing (and hence reduction of counterparty risk) should be strictly separated from the kind of standardisation/automation that would reduce operational risk. Moreover, considering only centrally-cleared trades as standardised would transfer a regulatory responsibility to clearing houses, which pursue the business objective of attracting order flow.

(1) What would be a valid reason not to use electronic means as a tool for contract standardisation?

It was pointed out that there was still scope to wider use electronic affirmation and confirmation to reduce settlement risk. Broker dealers should be required to receive positive affirmation from their clients on all OTC derivative trades. Market participants should be invited to explain why the use of electronic means would not be possible in some cases. However, it was warned that dominant market players might impose their electronic systems onto the rest of the market, thus cementing their market power.

Clearinghouses stated that "electronic means" would work on a general level, but the level of standardisation would not be suitable to determine if a contract was eligible for CCP clearing.

A market infrastructure provider argued that capturing the complete information of an OTC derivative trade in an electronic format early during its life cycle (Execution – confirmation – clearing – data repository – life cycle events) should be regarded as a prerequisite to increasing the resilience and the transparency of the market. The respondent added that, whilst the degree of standardisation of legal terms is relevant for the eligibility of a product for electronic processing during all stages of its life cycle, its eligibility for electronic execution and clearing would in addition depend on its actual liquidity and reliability of pricing.

One respondent offered a functional breakdown of "electronic means" during the trading cycle:

"Electronic execution: should be encouraged wherever possible, but with the realisation that only liquid segments of certain markets may meaningfully benefit from that type of

high transparency environment. Certain types of trade may only occur very infrequently, and where price uncertainty exists there is little motivation to risk creating price deviation by the mere disclosure of the price.

Electronic reconciliation and confirmation: potentially a very valuable tool to ensure that details of trades are agreed early and accurately, and can be used in both high and low velocity markets.

Straight-Through Processing (STP): trade-capture via electronic systems (even if it occurs posttrade) allows STP to market participants' internal risk and settlement systems.

Auto routing to depositories and/or CCPs: once trade information is accurately captured it can be submitted automatically to clearing and settlement systems and/or to data depositories.

Clean data for analysis by regulators: as with trade information submitted to infrastructure, accurate, reconciled and ideally netted data can be made available to regulators for analysis."

It was pointed out that brokering the contract may not necessarily be electronic; however once a trade was agreed the remaining back office work can be done electronically.

(2) Should contracts standardisation be measured by the level of process automation? What other indicators can be used?

Many respondents argued that a certain level of process automation was possible even without standardisation, hence the level of process automation was not an exclusive measure of standardisation. So-called "copper" electronic trade records would retain only some key terms of a trade. In the same vein, it was argued that the vast amount of (operational) risk reduction would already be achieved by confirming the key financial terms of a transaction, which would correct the incorrectly booked trades.

Also, for example, equity derivatives may have bespoke contracts to deal with specific legal and business risks, but can still be eligible for electronic confirmation. However, it was also argued that such "short form" automation would be a strong impediment to central clearing.

A focus on execution and confirmation automation levels would provide the best measure for standardisation because these processes will use a fully valid legal record of the contract.

It was suggested to look at the time needed for two parties from agreeing on a trade to reaching a legally binding contract (or between transaction initiation and execution, or, if applicable, novation). Furthermore, the number of failed trades (or erroneous or incomplete confirmations) could be taken as an indicator.

Higher trading volumes and the absence of significant (economic and in legal form) differences in contract terms could be viewed as indicators. One respondent answered that the ratio of traded turnover over outstanding nominal of underlying instrument, the more standardised a contract.

One bank pointed out that the NY Federal Reserve considered 20 trades per month in a product range, such as interest rates, as the threshold for an electronic process. Similarly,

another bank suggested setting the use of electronic trade processing as an industry standard depending on the transaction volume, for example for entities with at least 10 transactions in one asset class or 20 cumulatively per month.

(3) Should non-standardised contracts face higher capital charges for operational risk?

This question proved quite controversial, since the use of the term "standardisation" was not uniform among respondents (see general remarks and preceding questions).

Some public authorities argued that priority should be given to counterparty risk mitigation tools. The Capital Requirements Directive (CRD) already takes operational risks into account in general terms; it would be difficult to technically introduce a strengthened recognition for non-standardised contracts. To include possible losses from manual processes would face conceptual problems. This was supported by some industry answers; neither the Advanced Measurement Approach nor the Standard Approach in the CRD would be able to capture each and every transaction.

However, one regulator argued that in practice, novel or increased operational risk is likely to arise more commonly for non-standard contracts. Therefore, compared to standardised contracts, higher capital charges may be appropriate more frequently.

In contrast, others pointed out that, to the extent that non-standardised contracts were not centrally cleared, they already face higher capital charges (for counterparty risk). It was even argued that an extensive standardisation would conflict with the risk mitigation function that the CRD would attribute to derivatives. One respondent would like to see proof of correlation between non-standard contracts and higher operational risk.

Others pointed out that non-standardised contracts did not only face higher operational and counterparty risk, but also higher liquidity risk. While flexible when written, they become inflexible in terms of maintenance and closure. Operational risk was not the main driver of risk for non-standard products.

In the same vein, a bank suggested to define regulatory targets directly for post-trade automation and performance, rather than addressing standardisation. Calibrating a possible level of regulatory capital charges and ensuring that the system is robust to market changes would be a lengthy exercise.

Further respondents argued that, if it was decided to impose higher charges, those should relate to the level of process automation and straight-through processing rather than standardisation on its own.

Some public authorities thought however that higher capital charges linked to operational risk could serve as an incentive to promote standardisation. Some private-sector respondents also thought that increasing capital charges would help to reduce appetite for complex and less transparent structures. In contrast, banks argued that internal operational risk models were already taking into account the increased risk associated with non-standardised contracts. It was also thought that moves in the direction of standardisation were already in the interest of market participants, if justified by volumes, and did not need further incentives. For example, standardised products would be better priced. It was pointed out that the industry has already committed to more standardisation (ISDA letter to NY Fed, 2 June 2009).

Corporations were very firm in pointing out that their use of derivatives was determined by the structure (maturity etc.) of their liabilities, so that standardisation of the economic parameters of the contracts would undermine their hedging and conflict with accounting standards. While some companies acknowledged that a common understanding of legal terms was useful, they would like to retain the freedom not to use standard collateral agreements.

It was suggested that regulators carry out a quick, determined review of existing industry associations' framework agreements (both for derivatives as well as their underlying assets). Indeed, one regulator suggested establishing a working group to determine 1) a mutually acceptable definition of "standardised", and 2) a roadmap for increasing such standardisation.

(4) What other incentives toward standardisation could be used, especially for non-credit institutions?

It was pointed out that non-credit institutions would receive more favourable prices on standardised products. In addition, if capital charges were applied to credit institutions, these might be passed on to non-credit institutions as spread or price.

One credit institution suggested using the audit process to monitor the implementation of policy objectives by corporations.

One regulator suggested better education of OTC derivatives users.

3. STRENGTHENING BILATERAL COLLATERAL MANAGEMENT FOR NON-CCP ELIGIBLE OTC DERIVATIVES

General comments

Most respondents highlight concern with existing statistics (e.g. ISDA) on collateral levels. These may under represent the level of collateral, as they focus on collateral covered by Credit Support Annexes (CSAs) and hence do not focus on collateral provided outside such relations. Many respondents therefore argue that it is necessary to improve transparency of how exposures are calculated and the level of collateral.

As regards the currently less than full level of collateralisation (one third of exposures remain uncollateralized), many respondents argue that this is natural, as many end-users of OTC derivatives do not supply collateral (e.g. smaller financial firms, corporates, sovereigns and supranational lending institutions).

The views on the merits of strengthening bilateral collateral management differ considerably depending on the type of respondent. Generally, among financial firms there is a broad support for strengthening bilateral collateral management by (i) increasing collateral levels (subject to the comments above) and (ii) improving the frequency by which exposures are marked-to-market and collateral is exchanged.

Broadly, most financial firms believe that daily valuation, exchange of collateral and portfolio reconciliation should be the long-term goal. Most respondents do not see any particular market as beyond that ambition, even though specific attention has to be paid to – and exceptions made – for (i) certain counterparties (small), (ii) certain contracts (complex), and (iii) certain types of collateral (non cash), where the costs of setting up

daily valuation, exchange of collateral and reconciliation would be disproportionate to the benefits in terms of risk reduction.

Two groups of respondents have considerable concern with strengthening bilateral collateral management: corporates and supranational lending institutions. Both groups are active mainly in FX derivatives, interest rate swaps and commodity derivatives. While both groups support the objective of making OTC derivatives safer, they argue that they adequately address the risks associated with their current use of OTC derivatives and that obliging them to submit collateral would create significant risks, in terms of unpredictable margin calls, and costs, in terms of administering their collateral obligations. This would effectively reduce their ability to take recourse to OTC derivatives to hedge their business related risks.

Moreover, some corporates express particular concern related to the CDS market, which they judge opaque and volatile and where unpredictable CDS spreads may affect corporates' access to credit.

As regards the need for legislation, views differ significantly. Most financial firms argue that, as current collateral levels are adequate, existing rules and incentives are sufficient. Others – infrastructures, many Member States – on the contrary argue that legislation is necessary to complement industry action. Most of them, however, argue in favour of regulatory capital incentives rather than mandating either supply of collateral or certain collateral management techniques *per se*.

(5) How could the coverage of collateralised credit exposures be improved?

Many stakeholders stress that available ISDA statistics on the level of exposures covered by collateral are unreliable. Between financial dealers, some argue that collateral levels are sufficiently high, due to the 'natural incentives' to supply collateral (e.g. regulatory capital treatment). Moreover, the less than full coverage is explained by end-users who either cannot (e.g. corporates) or will not (e.g. supranational lending institutions) supply collateral.

Corporates argue that being forced to conclude collateral agreements (CSAs) would lead to excessive and unpredictable margin calls, which would expose them to significant liquidity risk. Currently they are exposed to counterparty risk, as no CSAs. However, this risk is manageable provided you choose your counterparty carefully and use several counterparties. Liquidity risk is not, as nobody can predict how prices will evolve. An obligation to submit collateral would put a significant strain on corporate liquidity and would be operationally costly.

Similarly, supranational lending institutions argue that obliging them to submit collateral (either by means of CCP membership or in bilateral collateral relations) would significantly increase their cost and submit them to liquidity risk.

In order to strengthen the level of collateral, some respondents argue that it is necessary to explore the possibility of non-cash collateral.

(6) Are there markets where daily valuation, exchange of collateral and portfolio reconciliation cannot be the goal? Please justify.

A majority of stakeholders argues that there are no markets that *per se* cannot support daily valuation, exchange of collateral and portfolio reconciliation and that it should

accordingly be a long-term goal. However, most respondents stress the costs of daily procedures, which for smaller financial firms and most end-users would be prohibitive. Therefore, while broad support for strengthening bilateral collateral management, it is necessary to make exceptions for (i) certain counterparties (small), (ii) certain contracts (complex), and (iii) certain types of collateral (non cash), where the costs of setting up daily valuation, exchange of collateral and reconciliation would be disproportionate to the benefits in terms of reducing risk.

(7) How frequently should multilateral netting be used?

There is a broad support for trade compression, the kind of multilateral netting referred to in this question. However, the frequency of compression depends on the liquidity of underlying instrument; if liquid, compression could occur more frequently; if not, less.

(8) Should bilateral collateral management be left to self-regulatory initiatives or does it need to be incentivised by appropriate legislative instruments?

Views on the relative merits of self-regulation vs. legislative instruments differ. Financial firms broadly express little support for legislation, arguing that natural incentives push towards high level of collateralisation and that existing legislation (CRD) already provide regulatory capital incentives. Others – corporates, infrastructures, public authorities – on the contrary argue that legislation is a useful and necessary complement to industry action. As regards the form of such legislation, with the exception of many infrastructure providers, there is limited support for mandating either collateral provisioning or certain collateral management techniques.

Instead, legislation should focus on incentives (regulatory capital requirements differentiated according to clearing method). Regulatory capital regime should favour CCP clearing. For example, it is argued that regulatory capital rules on bilateral collateral should take into account whether collateralisation includes future replacement cost (initial margin) and not only variation margin, as is currently the norm. Moreover, some argue that the charge on bilateral collateral should be reduced in steps depending on the contract being sufficiently standardised, variation margin being supplied and initial margin being supplied. The best treatment should be accorded to CCPs.

Furthermore, those supporting mandating argue that risk taking (trading) should be separated from risk management (collateral collection). Accordingly, collateral management should preferably be handled by a third party bilateral collateral manager. A commonly held position is that irrespective of what is done, it is essential that institutions remain responsible for properly managing their risk. Therefore, when adapting rules, it is necessary to keep incentives to assess and hedge risks at institutional level.

4. CENTRAL DATA REPOSITORIES

General comments

The idea of central data repositories or trade repositories (TR) is generally well accepted by all kind of respondents. Some divergences appear on the scope of products to be covered and on the need of a unique TR or several ones exclusively covering a segment of the market. Confidentiality and transparency are the two main concerns to be addressed when creating such TR according to an overwhelming majority of respondents. The disclosure of information to the public is positively considered by most of the

respondents. However unanimously, respondents propose not to disclose to the public any information which could be detrimental to the market or one of its participants. Disclosure of aggregate data according to the respondents is the way to avoid this happening. Respondents also unanimously agree that regulatory authorities should have an extended access to all data with the sufficient granularity to allow them to exercise their market supervisory duties.

(9) Are there market segments for which a central data repository is not necessary or desirable?

An overwhelming majority of the answers recognise the need to put in place central data repositories for all class of assets and markets. However among the answers received from entities falling under the business category "infrastructures", there seems to be an unanimity in favour of having markets and transactions done "through CCP" not being reported to the TR in view of avoiding duplication of work.

There are also an important number of answers requiring the settlement of a unique central data repository in order to avoid competition and unnecessary duplication.

(10) Which regulatory requirements should central data repositories be subject to?

Regarding the kind and the level of regulatory constraints to put in place, in general it is suggested to have an equal treatment between TR and other financial market players. Some referred explicitly to the MIFID provisions (article 32) whereas others referred to the legal framework surrounding Central Securities Depositories (CSD) activities.

One of the major concerns raised is the need for high level of transparency and adequate rules on system controls and confidentiality.

There are an equal number of answers in favour of TR being public entities or privately owned ones. Work undertaken by IOSCO and CESR on this matter can serve as a base according to one public authorities.

(11) What information should be disclosed to the public?

Regarding information disclosure a distinction is made by all respondents: the direct and full access to be given to regulatory Authorities on the one hand and on the other hand a disclosure to the public of high level statistics based on aggregated figures.

Regarding the scope of the data to be published, most of the answers propose to cover all markets segments on three elements: average prices (intraday), volumes and open interest. Many respondents asked also that the disclosure to the public take place on a delayed basis.

One respondent explicitly quoted the work of the OTC Derivatives Regulators Forum on this topic which proposes to disclose to the public 5 kind of data (all live positions as of a specified date; weekly activity for aggregate positions; weekly transaction activities; aggregate open interest by currency and aggregate settlement data by currency).

Disclosure to the public of information on individual transaction is unanimously rejected. As written by a respondent the commonly accepted goal to be achieved is that: "*The*

public should be able to analyse the evolution of the market structure over time on the basis of the information made available".

Also many respondents have concerns about the additional reporting obligation it will convey: all "corporate" respondents have indicated that these new constraints should be born exclusively by their financial counterpart and that in any case these new reporting obligations could not lead to an increase of the costs of these financial entities.

5. MOVE CLEARING OF STANDARDISED OTC DERIVATIVES TO CCPs

General comments

Respondents highlight a general aversion to mandatory clearing (even exchanges and infrastructures are not supportive) and suggest to follow the way of incentivising clearing through adequate capital incentive. Some indicate the work of the Basel Committee in this respect and the higher capital charges that should apply to bilateral transactions as an incentive to CCP clearing.

Many call for regulation to define minimum standards for CCPs, in particular on risk management to avoid competition to the detriment of risk, but also on CCPs governance and protection of client assets.

Many respondents highlight the time needed to adapt their systems.

Both banks are against multiple CCPs and some suggests a limited number or only one CCP per asset class. In their view, the competition problem would be better solved by appropriate governance arrangements or ownership.

In general the corporate sector is against the idea of CCPs that would simply increase the cost for them. They believe that it is relevant only for CDS and for the financial sector.

Many point out that the FX market is different and CCPs are not needed as the main source of risk is the settlement risk not replacement risk and the former is already adequately covered.

(12) Do you agree that the eligibility of contracts should be left to CCPs? Which governance arrangements might be necessary for this decision to be left to the CCPs' risk committees?

Almost all the respondents agree that the eligibility should be left to CCPs which are the one to bear the risk. Many however argue that the decision should not lead to an obligation to clear the product via a CCP.

Many banks suggests that users should be appropriately consulted and some suggest that the decision of the risk committee should be binding. Some suggest also a role of the regulators in this respect. Many highlight the risk of CCPs that are for profit organisation. Many also request the respect of the ESCB/CESR recommendations on governance arrangements.

For funds it is very important that CDS contracts that exclude loan delivery in case of a credit event are considered eligible.

(13) What additional benefit should the CCP provide to secure a broader use of its services?

Many agree with the suggestion of the consultation paper that one of the benefit can certainly be for the CCP to act as reporting entity on behalf of its members. However, a couple of respondents highlight that in a competitive CCP environment the information held by the different CCPs would be incomplete and not up to date considering that clearing not always occur on the same day. Therefore other market infrastructures would be better placed in this respect.

Among the other services and benefits suggested appear the following:

- Broad market participation;
- Straight Through Processing;
- Transparency on methodologies and prices;
- Cost reduction and adaptation of fee structure for less active customers;
- Cross-margins;
- Interoperability;
- Leveraging of existing infrastructure;
- Incorporate trade tear-up, termination or compression (even through account segregation);
- Equal treatment of corporate actions;
- Tri-party repo arrangements for collateral posted;
- Account segregation and portability;
- Better tax treatment of CCP cleared transactions;
- Use of central bank money;
- Participation and guarantee of States or central banks.

(14) Is the zero-risk weighting a sufficiently effective incentive for using CCPs across different market segments?

In general most of the respondents believe that the zero-risk weighting is a sufficient incentive. However, some point out that to be effective appropriate weights should be placed elsewhere, i.e. bilateral transactions. In this respect many call for global consistency on the incentive applied and therefore suggest leaving this work to the Basel Committee.

One interested party argues that since exchange traded contracts incur a minor liquidity risk, this should be reflected in a better capital treatment than CCP cleared contracts traded OTC.

(15) Should additional requirements, such as appropriate account segregation, be introduced to apply the zero-risk weighting to indirect participants?

Almost all respondent are in favour of account segregation. Some believe that extending capital incentives to them is a positive tool, however to do that it should be ensured that the only counterparty risk that the client face is the CCP one and not that of the clearing member. Some suggests that a large portion of indirect participants are not credit institution and therefore the zero-risk weighting does not apply.

Some argue that since segregation comes at a cost it should not be imposed, in particular segregation at CCP level. It should be for the customer to decide on the basis of a transparent assessment of costs and risks faced.

Some, in particular infrastructures, buy-side and some public authority, call for appropriate regulation to establish harmonised rules on protection of client assets. It is even more important in considering that interoperability will not be immediately available and access via clearing members may represent an interim solution.

(16) Should bilateral clearing of CCP-eligible CDS be penalised and, if so, to what extent? Is there a need to extend regulatory incentives to clear through a CCP to other derivatives products?

In general it is suggested that the same approach should apply to the different asset classes, but most of the respondent are against punitive charges. Capital requirements should reflect the effective risk faced and not be improperly used. However, bilateral clearing implies higher risks and these should be duly taken into account and by doing so an incentive to CCP clearing will be provided. Some market participants may have valid reasons not to clear through CCP and only the higher risk of that choice should be captured.

Capital charges are generally preferred to mandatory use of a particular infrastructure. Some respondents from the buy-side, from infrastructures or from the public sector believe that it is not unreasonable to penalise bilateral clearing of CCP-eligible contracts. Buy-side firms are, however, against penalisation for decisions outside their control.

(17) Under which conditions should exemptions be granted and by whom?

The majority of those who replied to this question indicated that CCP use should not be mandated and hence no exemptions are needed. Corporates unanimously replied that they should be exempt from using CCPs. Some of the respondents indicated that CCP clearing should be mandated only for entities with sufficiently large exposures and for entities that are systemically important. In these cases the exemptions should be granted by the relevant authorities (in some cases after discussions with the industry).

(18) What is the minimum acceptable ratio of CCP cleared/eligible contract? What is the maximum acceptable number of non-eligible contracts?

Almost all of the respondents who replied to this question indicated that it is not advisable to set arbitrary thresholds. Those who did provide some indications of what these thresholds could be, pointed out that they would differ according to product types; in such cases best-practice benchmarks should be used. CCPs warned that setting the maximum number of non-eligible contracts could be counterproductive, as CCPs could be forced to clear unsuitable contracts to keep their members below the threshold.

(19) What statistics need to be provided to regulators to make sure they have all the information necessary to perform their duties?

In general, the respondents indicated that regulators should receive all the information necessary to perform their duties. A number of respondents have stressed the important role that trade repositories could play in the provision of information to regulators (some have even indicated that the repositories should be the default exit point for all information). Some have also pointed out to the current work being done within the OTC Derivatives Regulators Forum for determining what type of information regulators would like to have. One respondent highlighted the need for comparable statistics between data provided by CCPs and data provided by repositories. A few corporates asked to be exempt from any reporting requirements to regulators.

(20) How could European legislation help ensuring safety, soundness and a level playing field between CCPs?

The great majority of respondents indicated that some sort of legislation is necessary to regulate the activity of CCPs (a few indicated that the ESCB-CESR recommendations should be used as the basis for such legislation). The main reasons for legislation mentioned included ensuring safety and soundness of CCPs, a level playing field and preventing competition between CCPs on margin (and thus a race to the bottom). To this end, the respondents indicated that legislation should cover, inter alia, open and fair access, business continuity, effective risk management (especially concerning default management process: mandatory periodic fire drills and stress testing of the default fund), segregation of client assets, common authorisation regime (on this a few respondents indicated that this could be done by one of the new European authorities) and passporting.

Some respondents indicated either that the recently adopted ESCB-CESR recommendations for CCPs are sufficient or that one should wait and see if these recommendations will work before considering legislation. Some respondents also stressed the importance of developing international standards.

A few respondents also stressed the importance of granting CCPs access to central bank liquidity in times of markets stress. In this context some have argued that CCPs should be located in the area of the currency in which derivatives are denominated and should have the status of credit institutions. One respondent called for explicit public guarantees for CCPs.

6. TRANSPARENCY OF TRADING

General comments

Extending MiFID style transparency on OTC derivatives market is facing opposition from a large majority of the stakeholders that have responded to the consultation. The professional nature of the market participants, the size of the trades, the existing arrangements and presence of data providers, and the diversity of derivatives markets lead the majority of stakeholders to reject uniform extension of MiFID style transparency rules, especially for pre-trade information and for specific markets like interest rate, foreign exchange and commodities markets, saying that it would damage liquidity.

Transaction and position reporting finds much more support from stakeholders, especially position reporting towards regulators. They consider that TRs and CCPs are the best positioned to fulfil such requirements. They also underline the need to minimize as much as possible the cost and burden of the new reporting and to preserve confidentiality on individual transaction from public scrutiny, as well as the fragmentation of data that may result from it.

(21) Should MiFID-type pre and post trade transparency rules be extended to non-equities products? Are there other means to ensure transparency?

Even if a few of respondents agree in principle on increased transparency, a large majority of them consider that MiFID type transparency rules, especially pre-trade, are less relevant for derivatives because of the specificities of these markets. Market participants are professional investors, transactions large in size and data providers are

actively operating. Most market participants which have answered, being financials or corporates consider that the level of transparency on these markets is overall satisfactory. Most corporates estimate that transparency on foreign exchange, interest rates and commodities markets is adequate. On the contrary, a couple of respondents mention the lack of transparency of the CDS market. Lastly, there are some comments on the fact that increased transparency without further standardisation would create confusion.

Several respondents across different categories underline that increased transparency could be detrimental to liquidity, that any new transparency measure should go through a thorough costs/benefits analysis and adapted to each segment of the OTC derivatives markets which encompass very different products and trading features.

(22) How should transactions reporting of OTC derivatives to competent authorities be envisaged? Should it be extended to all contracts or to certain categories? If so, which ones? Are there other means to ensure that the competent authorities receive the relevant information on OTC derivatives transactions?

A majority of respondents are supportive of transaction reporting towards competent authorities. They also consider that the reporting to competent authorities should come from CCPs or TRs and to a less extent, sell side institutions.

Several respondents, especially from the corporate side and more particularly in the energy markets, stress the necessity of preserving confidentiality of individual transactions towards the public in order to preserve sensitive commercial information and avoid damaging market liquidity. A few point out the fact that transaction reporting may not be the most suitable tool for regulators, especially for energy markets.

There were also several comments on the needs to avoid duplication of existing data and too heavy administrative burden.

(23) How should position reporting of derivatives to competent authorities be envisaged? Should it be extended to all contracts or to certain categories? If so, which ones? Are there other means to ensure that the competent authorities receive the relevant information on the exposures to particular contracts?

There is a large support for position reporting, on a post trade basis, with the same restriction than for transaction reporting regarding public release of individual positions. TR and CCPs are mentioned as the most suitable sources of data.

There were also individual comments on the needs for comparable data across Europe, for clear and unique identification of each transaction, and on the necessity to avoid complexity and minimize costs. A couple of respondents mentioned TREM as a blue print for this position reporting.

7. MOVE TRADING TO MORE PUBLIC TRADING VENUES

General comments

Trading on public trading venues, it is seen as complementary to OTC trading because of the necessity to be able to trade customised products, to use voice market when needed

and choose between competing trading venues. A majority of stakeholders consider that forcing all derivatives trading to public venues would have limited added value if central depository and CCP clearing are implemented but could damage liquidity for some markets. A natural evolution should be favoured over a mandatory approach.

(24) How can further trade flow be channelled through transparent and efficient trading venues? What would be the appropriate level of transparency (price, transaction, position) for the different derivatives markets?

The majority of respondents do not support the transfer, especially mandatory of derivatives trading to public trading venues. For several respondents, trading on public venues would not add value if sufficient standardisation, TR and CCP clearing is achieved, but would create a number of issues regarding the ability to trade for large size, confidentiality, and the possibility of using voice trading rather than electronic trading when needed.

For several respondents, OTC and public trading venues are said to be complementary and competition between trading venues is welcome and should be maintained.