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EACB response to the Joint Consultation on draft RTS on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP

(JC/CP/2014/03)

Introduction – General comments

The Members of the European Association of Co-operative Banks (EACB) are pleased to comment on EBA, ESMA and EIOPA joint Consultation on Draft regulatory technical standards on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP under Article 11(15) of Regulation (EU) No 648/2012.

We continue to support the central objective of the draft RTS, namely to extend the use of margining as means of risk mitigation for bilateral relationships to reduce counterparty credit risk and to mitigate the potential systemic risk that can arise in this regard.

We also agree with the approach to base the future regime for margining requirements under EMIR on the minimum international standards on margin requirements for non-centrally cleared derivative transactions defined by the BCBS-IOSCO framework. In view of the international nature of the markets this alignment is of paramount importance in order to ensure safe and functioning financial markets and to avoid competitive disadvantages and regulatory arbitrage.

Having said that, we note that the envisaged framework of mandatory margining requirements will be extremely challenging and time consuming for all market participants.

Concerning the proposed draft RTSs the EACB wishes to put forward its considerations on the basis of the consultation questions by responding to a number of questions. However, EACB's targeted responses should not be regarded as an unconditional consent on the other areas of draft RTs and reserves the right to comment on these at a later stage, if deemed necessary:

Question 1. What costs will the proposed collateral requirements create for small or medium-sized entities, particular types of counterparties and particular

jurisdictions? Is it possible to quantify these costs? How could the costs be reduced without compromising the objective of sound risk management and keeping the proposal aligned with international standards?

At this stage it is not possible to estimate the costs involved nor provide relevant figures. However, it goes without saying that the proposed collateral requirements as envisaged in the draft RTS entail considerable additional work resulting in operational expenses and considerable resources, which could especially affect small or medium-sized entities. This being the case we would have the following concerns:

A. COLLATERAL AGREEMENT

New collateral agreements with all financial counterparties and non- financial counterparties (NFC+) would have o be negotiated and drafted whilethe existing contractual terms regarding collateral eligibility, initial margin method, minimum transfer amount, product coverage (physically settled FX contracts, currency swaps) would need to be modified.; At the same time the systems and interfaces for data collection and processing of additional parameters of the collateral agreements would need to be modified.
Moreover, these new collateral agreements will only be relevant for derivative contracts executed from the validity date of the RTS. For derivative contracts that have been entered into prior to that publication, the existing collateral agreements continue to be valid; this would mean that systems would have to be adjusted to work with two different collateral agreements per counterparty in cases where no agreement on the substitution of the old collateral agreements can be found. We would like to address the following concrete examples:

- *Article 2 (4) (b) GEN- Risk management procedures in specific cases* of the draft RTS which provides that financial counterparties and non-financial counterparties (as referred to in art. 10 of EMIR) **may** agree not to exchange initial and variation margin for transactions entered into with NFC-. It is important to note that the provision proposed by the ESAs would (1) require changes in the contractual terms under which existing contracts are entered into, which were already updated upon the entry into force of EMIR, and (2) make necessary a re-negotiation of contractual terms with clients to comply with the provision proposed by the ESAS to agree not to exchange IM and VM. This represents one of the aspects of the new framework which would demand significant efforts for the legal and commercial departments, despite that fact that EMIR does not explicitly demand the parties to formally agree in writing not to exchange IM and VM. Indeed, EMIR imposes the exchange of collateral only for FC and NFC+, **therefore we deem not appropriate to impose an agreement to avoid exchanging IM and VM for transactions entered into with NFC-.**

- Both *Article 2 GEN (addressing the exceptions from mandatory margining requirements or possibility to agree on thresholds) and Art. 1 FP (3) (with the provisions on the phase-in and the threshold based exemption from the initial margin requirement)* require a formal/written opt-out by way of contractual agreement in order to allow counterparties to make use of the exceptions.
These requirements would necessitate banks to enter into formal opt-out agreements with clients and counterparties, on counterparties which are not subject to the clearing obligation, a majority of which will be small and medium sized corporates (which were always intended to be exempted from the requirements under Art. 11 (3) EMIR). However, in **our view, the non-**

application of the requirements should be the principle and the application of these requirements the exception (opt-in approach). In order to simplify the operational challenges for all market participants and especially for smaller and medium sized counterparties, the exemptions should therefore be designed as directly applicable exemptions (not requiring an opt-out agreement) with the possibility to opt-in in case counterparties wish to apply such requirements. Such an approach would be consistent with the BSBC/IOSCO framework which is also based on opt-in. The opt-out system as envisaged in the draft RTS is extremely bothersome without any added- value for the following reasons:

- Since many market participants have contractual relationships with more than one counterparty, they will have to deal with many different versions of such arrangements.
- Moreover, the process of negotiating and entering into opt-out agreements with each customer will be extremely time consuming, require considerable resource and, of course, be very costly for both sides. The possibility to rely on "equivalent permanent electronic means" in this context will only help to reduce the burdens to a limited degree and only for a limited circle of market participants: The majority of the counterparties, in particular non-financial counterparties, will not have access to technical platforms facilitating such a process. Likewise, the protocol-system used by ISDA for certain types of changes to contractual arrangements cannot be applied in all situations and in relation to all counterparties. It is also not available for other – widely used – types of master agreements, while smaller and medium sized counterparties will often not be prepared to adhere to such a system as it would subject them to the courts and laws of a different jurisdiction. Furthermore, the issues to be addressed require some degree of individualisation and thus direct negotiations.

The proposed contractual opt-out approach is not necessary to ensure that counterparties are able to determine whether their counterparty qualifies for certain exemptions in respect of the margin requirements or during the phase in period for the following reasons:

- Where these exemptions depend on the status of the counterparty as financial counterparty (FC), non-financial counterparty exceeding the clearing threshold (NFC+), non-financial counterparty not exceeding the clearing threshold (NFC-) or equivalent third-country counterparty (respectively, as counterparty subject to the clearing obligation or not), the relevant information is already available: The status of counterparties was already determined for the purpose of implementing the risk mitigation requirements under Commission Delegated Regulation 149/2013 which already required such classification. These classifications can now be directly applied in order to establish whether counterparty qualifies for the exemption addressed in Art. 2 GEN (4) (b) and (c). A further contractual agreement to this end is therefore not necessary.

- In all other cases, where the eligibility for an exception is based on factors other than the clearing status of the counterparty (e.g. transaction volume or average notional amount as in the case of the initial margin exemption under Art. 1 FP (3) (e)), eligibility can be ascertained as effectively and in a less cumbersome manner: for example by imposing a duty on counterparties to inform their respective counterparties when they breach the relevant thresholds. Counterparties could also be entitled to demand a confirmation/representation from the other counterparty that the relevant thresholds have not been breached

(and the relevant counterparties would be under a duty to provide this information if requested).

B. INITIAL MARGIN

With regard to **Initial Margin** firms have to (1) develop an internal Initial Margin Model according to the requirements and implement such model, including IT architecture (documentation of changes, yearly validation, etc.) (2) agree in writing (or other electronic means) on the method each CP uses, model characteristic and calibration (3) exchange/ collect daily the initial margin after a derivative contract has been signed or expires (4) Implement monitoring of the initial margin threshold of derivative exposures.
The EACB would like to make the following observations and suggestions with regard to the initial margin models:

- According to *Article 1(2) EIM- Initial margins* the counterparties shall agree in writing or other equivalent permanent electronic means on the method each counterparty uses and, in case of an initial margin model, on the characteristics of the model and on the data used for the calibration. The model characteristics and data used for calibration are likely to change over time, for example due to backtesting results requiring adjustments. Therefore, we believe that it is reasonable to keep the method and characteristics description in these written agreements generic, without having to include too prescriptive details. Otherwise, when making use of an internal initial margin model, each model or calibration change would trigger the requirement for a new agreement with all counterparties which would cause enormous operational costs.

- Article *1 (4) EIM - Initial margins* envisages the conditions and frequency of the recalculation and collection of initial margin. These requirements imply that a daily recalculation of initial margin for all larger counterparties would have to be performed. The criteria (a) to (f) create tremendous additional operational effort and costs necessary for the daily supervision whether a daily recalculation of initial margin is due or not. This significant additional effort is not justified from our point of view. Considering that the initial margin calculation assumes a margin period of risk of at least 10 days, we deem a bi-weekly initial margin recalculation to be more appropriate.

- *Article 1 (4) MRM - Initial margin models* requires that in case initial margin models cease to comply with the requirements laid down in chapter 2- Margin Methods, counterparties shall notify the relevant competent authorities and shall compute the required initial margins using the Standardised Method. Counterparties in most – if not all- cases deliberately and consciously choose the Standardised Method or an internal model. The approach followed in Article 1 (4) would impose a change from the internal model to the Standardised Method during the life of the contract. This would most likely lead to increased initial margins for the counterparty without any opportunity to negotiate this. Therefore, we consider that there should be more flexibility in managing this change-over.
  In addition, the requirement states that relevant competent authorities shall be notified. We consider that also counterparties should be notified.

- *Article 4 (1) MRM - Primary risk factor and underlying classes* provides that initial margin models should assign a derivative contract to an underlying class based on its primary risk factor, defined in terms of sensitivity of the value of the contract to the market risk drivers. From our point of view, it should be sufficient to

perform the assignment by primary risk factor based on qualitative substantiation without having to compute sensitivities for each derivative contract.

- *Article 4 (4) MRM - Primary risk factor and underlying classes* provides the conditions for the netting of the total initial margin requirements. From an economic perspective, it is not justified to only allow netting within asset classes when a master agreement exists across all these asset classes. We strongly believe that this should be amended as lacking economic rationale.

- *Article 5(1) (i) MRM - Integrity of the modelling approach* provides that the model shall be subject to a back-testing at least once every three months. We consider that back-testing frequency of at least every three months is excessive and inefficient as it is not possible to build up a sufficient data history in this timeframe. In addition, this frequency does not match the required recalibration frequency (at least every 6 months). Hence, we believe that back testing should only be required annually. More frequent back- testing could be required where there are indications that the model is not performing as intended.

- *According to Article 5 (3) MRM - Integrity of the modelling approach* the procedures shall *clearly identify what actions* a firm has to take if the back testing results exhibit deficiencies in the risk estimation of the model. From our point of view, a definition of the actions in advance is not quite possible because the suitable measures that need to be taken depend on the specific situation and are to be decided on an *ad- hoc* basis. Thus only the generic approach could be outlined in the policies and procedures. We believe that the requirement to "clearly identify actions" should be discarded or an alternative wording should be introduced to reflect this approach.

- *Article 6 MRM - Qualitative requirements provides for an* internal governance process to continuously assess the validity of the model's risk assessments and tests such assessments against realized data, including specific qualitative requirements. It is difficult to understand how this requirement could be met in case an entity agrees to use the counterparty's initial margin model or a third party developed model.

- According to *Article 1 SEG- Segregation of initial margins* the initial margin shall be segregated from proprietary assets (i) on the books and records of a third party holder or custodian, or (ii) via other legally effective arrangements made by the collecting counterparty. We consider that it should be clarified that a pledge constitutes a sufficient segregation arrangement, since any other legally effective arrangement will be difficult – if possible- to be established.

- *Article 1 SMI – Standard method* defines a new regulatory standardised method to measure exposure on derivatives. In the opinion of the members of EACB the number of regulatory models should be as small as possible in order to limit the workload to the financial sector. Therefore, we suggest aligning the standardardised model for calculating IM as much as possible with the BIS proposal for SA-CRR. We expect that the BIS proposal for SA-CCR can be copied for the standard calculation of IM with the exception of the add-on factors. Note that the BIS add-on factors are calibrated as Effective Expected Positive Exposure in stead of a 10-day 99% add-on.

- Moreover, with regard to the use of *internal margin models (IMM),* the members of EACB would support their use provided that they be derived from existing approved models for Value at Risk (VaR) for market risk or Expected Positive

Exposure (EPE) for counterparty risk. In addition, in the opinion of the members of EACB the qualitative and quantitative requirements should be aligned with the current regulatory requirements for internal models.

C. ELIGIBILITY AND TREATMENT OF COLLATERAL

All entities will have to (1) establish appropriate risk management procedures (2) introduce an appropriate framework for collateral concentrations and respective monitoring (3) periodically verify the collateral liquidity (and if necessary collateral substitution) (4) Daily assess the credit quality of the collateral and its replacement if it does not meet requirements (The IT interface to have IRBA ratings available in collateral management system) (5) develop processes and modify the systems regarding the integration of structures of affiliated groups of companies. Establishing appropriate risk management procedures (6) develop of a haircut methodology for collateral and adjusting it every three months.

- According to *Article 2 (1) (d) LEC- Collateral Management* the risk management procedures of the counterparty receiving collateral shall include "*access to an active outright sale or repurchase agreement market with a diverse group of buyers and sellers even in stressed market conditions and in the case of default of the collateral provider".* In that regard the EACB notes that many small co-operative banks access the markets through another central institution. We consider that in the case of smaller banks which access to markets through another institution the principle of proportionality should be applied. EBA itself recommended in its Report "On appropriate uniform definitions of extremely high quality liquid assets" (December 2013): " (…) based on the proportionality principle, smaller banks which access markets through another institution, will, in most cases, not have to be active in several advanced money and capital markets.". In this context we consider that this recommendation should also be confirmed and applied when implementing the relevant collateral management procedures.

- The very same stands for the operational procedures of the periodical verification of the liquidity of the eligible collateral as envisaged in *Article 1 (1) (i)- OPE-Operational process for the exchange of collateral*. Again, as stated above, we believe that also in this case EBA Report "On appropriate uniform definitions of extremely high quality liquid assets" (December 2013) should be applied with regard to the "test sale". The principle of proportionality as far as smaller banks which access markets through another institution is concerned should be appropriately recognized throughout the ESA's consultation paper. In these cases it should be the institution through which smaller banks access markets that periodically verifies the liquidity of the eligible collateral.

- *Article 6 LEC* provides the eligibility criteria to avoid wrong-way risk. We consider that par. 1, point b) should be restricted to **consolidated** groups and entities which have close links in accordance with Article 2 (24) of Regulation (EU) No 648/2012. Otherwise, the corresponding requirements will likely impact disproportionately on those small banks which are not integrated in a consolidated banking group. To that regard, we would like to highlight that, generally, an IPS is made up of several small banks and, at least under the relevant prudential regulation (i.e. Art. 113(7) CRR), is not fully treated akin to a consolidated banking group. An IPS under Art. 113(7)(a) CRR in fact does not require full consolidation and does not foresee the same risk evaluation measurement and control procedures for institutions. Instead Art. 113(7)(c) requires that the IPS

disposes of suitable and uniform systems for the monitoring and classification of risk of each individual member and of the IPS as a whole. To this end the IPS conducts its own risk review that is then communicated to the individual member (Art. 113(7)(d)). Finally, the IPS is based on a broad membership of credit institution of predominantly homogeneous business profile (Art. 113(7)(h)). Therefore, the banks adhering to the network remain independent, especially as regards to their day-to-day business and each members of the IPS has its own credit quality which is not affected by the credit quality of the other members of the group.

- Accordingly and for the same reasons, *Article 7 LEC- Concentration limits for initial and variation margins, par. 1, point a) and b)* should also be modified to ensure that they refers only to **consolidated** groups and entities which have close links in accordance with Article 2 (24) of Regulation (EU) No 648/2012. For non consolidated groups, like an IPS network, there is no concentration risk in the strict sense since each individual entity acts independently.

- To avoid wrong-way risk we think it is appropriate to replace *Article 6 LCE- Eligibility criteria to avoid wrong-way risk* paragraph 1, point (c), with the following criterion: "they have a proven record as a reliable source of liquidity during stressed market conditions".

Question 2. Are there particular aspects, for instance of an operational nature, that are not addressed in an appropriate manner? If yes, please provide the rationale for the concerns and potential solutions.

Please see also above response to Question 1

The EACB considers that the following aspects should be addressed in an appropriate manner in the relevant RTS:

A. Intragroup- derivative contacts- Practical or legal impediment (article 3 IGT)

In order to ensure legal certainty and an alignment in the interpretation of CRR with EMIR we consider that once an exemption has been granted to a group or institutional protection scheme under article 113 (6)(7) these structures should automatically benefit form the relevant intra-group exemptions of EMIR regulation.

Moreover, Article 3 IGT (1) (a) and (b) mention "regulatory restrictions" and "insolvency, resolution or similar regimes" as one of the legal impediments to the prompt transfer of own funds which would prevent reliance on the intragroup exemption. However, many regulatory regimes and all insolvency, resolution or similar other regimes, by their nature, contain provisions which can affect the ability of the regulated or insolvent party or the party under resolution to effect payments or transfer assets. Art. 1 IGT (1) (b) should mean that such impediment is only deemed to exist upon initiation of such proceedings but not before. We understand that this is note the intention of the ESAs. The intragroup exemption is essential to minimise the adverse effects of and challenges posed by the application of mandatory margining to transactions between members of the same group. If it would factually not possible to rely on this exemption, the negative consequences for groups would be detrimental.

B. Level-playing-field with regard to third countries:

We note that there is no exception for collection of initial margin from counterparties from non-EU entities, not even for those qualified as non-financial entities below the threshold (P. 23). As a consequence there is an unlevel playing field with non-EU parties.

In general the EACB would like to stress to stress the need for global coherence and level-playing-field with regards to third countries. This would mean harmonization in the three following areas:

- Harmonization regarding the type of entities that have to collect margins. Indeed, the definition of non-financial counterparties under EMIR does not match the definition of end-users under Dodd-Frank.
- Harmonization with regards to the possibility to re-use collateral (*see also below answer to Question 6*). In the current draft rules re-use would be banned under EMIR but this does not seem to be the case in the US, thus giving a competitive advantage to US institutions
- Nothing seems to indicate that jurisdiction in Asia or in the Middle East are preparing to adopt regulations on the line of EMIR which would again strengthen the unlevel-playing-field between EU based institutions and those located outside the EU.

As a result, we would call for greater alignment or postponement of the entry into force of the proposed rules in order to await for the situation in other jurisdictions to be clarified.

C. Forex financial instruments:

We consider that foreign exchange transactions with a commercial purpose and which are physically settled should be granted the possibility to be excluded from the collection of the variation margin along with the initial one.
In any case, the envisaged requirements concerning the exchange of variation margins for FX-swaps and FX-forwards shall only be considered for deals with a settlement period beyond 3 months. Below that time frame, counterparty risks can safely be considered as low.
The mitigation of settlement risk has already been addressed by and has been approved by the payment-versus-payment settlement system (CLS).
In addition, we consider that foreign exchange transactions with central banks, due to their purpose and low risk for the counterparty, should equally be exempted from of the EMIR requirements.

The EACB would like to note, that, compared to other derivative transactions, FX-transactions naturally extend far more into the area of regulatory extraterritoriality. To guarantee a level playing field, we highly appreciate a careful consideration and comparison of already implemented rules in the US and Asia.
The EACB has presented its view with regard to Foreign exchange transactions in the context of MiFID and EMIR in its response to the Commission Consultation paper on FX Financial Instruments.[1]

D. Further clarifications required:

[1] The EACB response to the Commission Consultation paper on FX Financial Instruments can also be found here: http://ec.europa.eu/internal_market/consultations/2014/foreign-exchange/docs/contributions/registered-organisations/eacb-european-assoc-cooperative-banks_en.pdf .

The EACB would like to note that certain aspects of the RTS should be further clarified in order to ensure legal certainty:

- The draft RTS do not provide a *definition or criteria for measuring the liquidity of an eligible collateral*. In the forthcoming RTS for MiFID II/MiFIR a definition of liquid markets will be provided by ESMA. The ESAs should give advice whether MiFID II/MiFIR definitions, which yet have to be finalized, should also be relevant in the EMIR collateral context or if other criteria should be applied by market participants in the verification of the liquidity. In any case we consider that the CRR liquidity rules should also be taken into account in the future work of ESMA and the ESAs.

- With regard to the eligible collateral we consider that "cash assimilated instruments", as defined by article 4(1)(60) of CRR, should also be included in *point (a), paragraph 1 of article 1 LEC- eligible collateral for initial and variation margin*, provided that the instruments are issued by the collateral taker.

- We agree that the requirements set out in the RTS shall only apply to new contract, since existing contracts are priced under the assumption that no margin is posted. It is stated in the explanatory text that margin requirements will not apply retroactively (page 24/25 of the consultation paper). However, there is no clear reference to this in the wording of the regulation itself, other than the *recital 18*. We consider that it would be appropriate that it this is made clear in the provisions of the RTS. Moreover, we would like to clarify the notion of 'new contract' as envisaged in the same article not to capture any small amendment to existing contracts but only material ones.

- According to *Article 1 (3) EIM - Initial margins* a counterparty shall collect initial margins within the business day following the execution of a new derivative contract. We would like to clarify whether this is the same business day or the business day following the day of the execution of the contract (overnight). We stress that same business day would be a change of the current situation and is operationally not manageable we consider that it would be appropriate to have the initial margin settled on T+1 (transaction date plus one business day in accordance with the market practice).

Question 3. Does the proposal adequately address the risks and concerns of counterparties to derivatives in cover pools or should the requirements be further tightened? Are the requirements, such as the use of the CRR instead of a UCITS definition of covered bonds, necessary ones to address the risks adequately? Is the market-based solution as outlined in the cost-benefit analysis section, e.g. where a third party would post the collateral on behalf of the covered bond issuer/cover pool, an adequate and feasible alternative for covered bonds which do not meet the conditions mentioned in the proposed technical standards?

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Question 4. In respect of the use of a counterparty IRB model, are the counterparties confident that they will be able to access sufficient information to ensure appropriate transparency and to allow them to demonstrate an adequate understanding to their supervisory authority?

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Question 5. How would the introduction of concentration limits impact the management of collateral (please provide if possible quantitative information)? Are there arguments for exempting specific securities from concentration limits and how could negative effects be mitigated? What are the pros and cons of exempting securities issued by the governments or central banks of the same jurisdiction? Should proportionality requirements be introduced, if yes, how should these be calibrated to prevent liquidation issues under stressed market conditions?

The EACB notes that the smaller banks, especially small co-operative banks whose portfolio is almost exclusively made up of domestic sovereign securities (also due to constrains by law or statute), would be unduly penalized were concentration limits be introduced on that category of assets. We strongly advocate an alignment with the CRR liquidity rules should be achieved and therefore concentration limits should not be applied to securities issued or guaranteed by EEA Sovereigns and EEA Central Banks in the domestic currency.

Moreover, if this requirement were to come into law, an exchange of fixed income collateral would certainly be prevented below a certain amount of exposure (e.g. below 30 to 50 million Euro) due to unreasonably high operational costs for front-, middle- and back-office. To ensure a balance between risks intended to mitigate (concentration risks) and the above mentioned operational costs we would propose a threshold of 30 - 50 Million Euro below which no concentration risk need to be mitigated.

We note that his requirement is also difficult to implement from a technical perspective. Often, collateral management tools are not capable of limiting the quantities or concentrations of collateral allowed. Because of this reason an automated solution over all contracts would not be possible with the nowadays systems.

Question 6. How will market participants be able to ensure the fulfilment of all the conditions for the reuse of initial margins as required in the BCBS-IOSCO framework? Can the respondents identify which companies in the EU would require reuse or re-hypothecation of collateral as an essential component of their business models?

The BCSB-IOSCO framework allows the re-use of IM under conditions. Even though we understand that this ban is linked to the obligation to segregate initial margins, we would like to stress that this total ban on re-use of collaterals will generate considerable liquidity problems. As re-use of collateral is allowed for transactions cleared with CCPs we would advocate for the same kind of rules to apply for non-centrally cleared transactions provided that it is limited to certain type of instruments e.g. money market funds.

Moreover, we would like to stress that there are harmonization issues with regard to the possibility to re-use collateral. In the current draft rules re-use would be banned under EMIR but this does not seem to be the case for example in the US, thus giving a competitive advantage to US institutions. If the competent authorities nonetheless decide to apply a total ban on the re-use of collateral we would strongly advocate for the introduction of a review clause in a short time in order to re-assess relevant provisions and their impact and to allow for an adaptation of the European framework with the global developments accordingly.

In addition, the terms re-hypothecation and re-use are undefined terms which are sometimes used interchangeably and sometimes describe very different legal concepts.

The Recommendations adopted by the Financial Stability Board addressing risk associated with securities lending and repo transactions (Policy Framework for Addressing Shadow Banking Risks in Securities Lending and Repos - 29 August 2013) clearly distinguish between re-hypothecation on the one hand and re-use on the other.

Re-hypothecation also needs to be clearly distinguished from full-title transfer transactions where the legal ownership is transferred to the receiving party. We strongly believe that it should be explicitly provided that that transfer of title (of collateral) is not included in the definition of re-use.

We note that the issue of re-use/re-hypothecation of collateral or protection of client assets against re-use is also at the moment being addressed in the context of two other legislative initiatives at European level (the proposal for a SFT-Regulation and MiFID II). The scope of practices to be covered by these initiatives varies or is sometimes is not yet clearly defined. Against this background, we would advocate to define the scope of practices to be covered by a prohibition of re-use as clearly as possible and to coordinate the various initiatives in order to prevent conflicts or inconsistencies.

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