



European Association of Co-operative Banks
Groupement Européen des Banques Coopératives
Europäische Vereinigung der Genossenschaftsbanken



European Association of Co-operative Banks comments on

Joint EBA-ESMA-EIOPA Discussion Paper

Draft Regulatory Technical Standards on risk mitigation techniques for OTC derivatives not cleared by a CCP under the Regulation on OTC derivatives, CCPs and Trade Repositories

Ref.: JC/DP/2012/1 (6 Mar 2012)

02 Apr 2012

The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4.000 locally operating banks and 63.000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 181 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 51 million members and 750.000 employees and have a total average market share of about 20%.

The voice of 4.000 local and retail banks, 51 million members, 181 million customers

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels

Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19

www.eurocoopbanks.coop • e-mail : secretariat@eurocoopbanks.coop



The Members of the European Association of Co-operative Banks (EACB) are pleased to comment on EBA, ESMA and EIOPA's joint *Discussion Paper Draft Regulatory Technical Standards on risk mitigation techniques for OTC derivatives not cleared by a CCP under the Regulation on OTC derivatives, CCPs and Trade Repositories*.

Detailed Remarks

IV.9 INTRA-GROUP EXEMPTIONS

Q45: In your views, what should be considered as a practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties?

We are of the firm opinion that there are no impediments for groups or institutional protection schemes already recognised under the relevant Article 3(1), Art. 80(7) and (8) of CRD II¹. Therefore these structures should automatically benefit from the relevant intra-group exemptions of the regulation.

CRD II already explicitly lays out strict rules for the prompt transfer of own funds or repayment of liabilities between the counterparties for both banking structures under either Article 3(1) or Article 80(7) and (8).

Firstly, the co-operative banking structures incorporated under Article 3(1) with a "central body and affiliated institutions [that have] joint and several liabilities" possess the feature that the central body can issue orders for the transfer of funds to all affiliated institutions

Secondly, all banking structures with an institutional protection scheme falling under Article 80(7) and (8) are already prohibited by the same Directive to feature any "practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties".

We therefore do not see any need to elaborate further on the topic of impediments with regards to intra-group exemptions in the context of EMIR.

Q46: What is the current practice regarding the collateralisation of intra-group derivative transactions?

Under the current practises intragroup transactions are generally not collateralised. The reason for this is that collateralisation would be counterproductive, as it would add unnecessary levels of operational and legal complexity impeding the effectiveness of the risk mitigation measures within the group or the institutional protection scheme (Article 3(1), Art. 80(7) and (8) of CRD II). Furthermore, there would be no benefits to mitigate

¹ Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions (recast)



these costs as no stability gains are possible, neither for the group or the (members of the) institutional protection scheme nor for the systemic stability. In addition, the risk weight for such intragroup exposures/transactions – falling under Article 3(1), Art. 80(7) and (8) of the Directive 2006/48/EC – are 0%. Additionally, the EU-Presidency compromise proposal for the Capital Requirements Regulation intends to exclude OTC derivative transactions that qualify for the treatment in Art. 9, 108(6) and (7) CRR² from own funds requirements for CVA risk. **Therefore requiring collateralisation of intra-group derivative transactions would be an inconsistent approach that would hurt co-operative banks using institutional protection scheme or structures that are set up as affiliated institutions around a central body with joint and several liabilities.**

Contact

The EACB trusts that its comments will be taken into consideration. Should there be any need for further information any questions on this paper, please contact:

Ms Marieke VAN BERKEL
Head of Retail Banking, Payments and Financial Markets
m.vanberkel@eurocoopbanks.coop

Mr Andreas STEPNIŹKA
Adviser for Financial Markets
a.stepnitzka@eurocoopbanks.coop

² follow-up regulation for Art. 3(1), 80(7) and (8) of Directive 2006/48/EC