



The European Association of Corporate Treasurers

Response to ESMA's consultation on the clearing obligation for financial counterparties with a limited volume of activity

5 September 2016

The European Association of Corporate Treasurers (EACT)

The EACT is a grouping of national associations representing treasury and finance professionals in 18 countries of the European Union. We bring together about 13,000 members representing 6,500 groups/companies located in the EU. We comment to the European authorities, national governments, regulators and standard-setters on issues faced by treasury and finance professionals across Europe.

We seek to encourage the profession of treasury, corporate finance and risk management, promoting the value of treasury skills through best practice and education.

Our contact details are provided on the final page of this document.

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Introduction

We appreciate the opportunity to respond to ESMA's consultation on the clearing obligation for financial counterparties with a limited volume of activity. The EACT represents non-financial counterparties (NFCs), and the majority of our member associations' affiliates are below the clearing thresholds and therefore classified as NFC- not subject to the clearing obligation. However, there is an important aspect of this consultation relating to NFC+s that are subject to the clearing obligation that has not been taken into consideration by ESMA that we would like to raise.

Indeed, ESMA is proposing to extend the phase-in period only for small financial counterparties in Category 3 but does not consider the need to extend in similar manner the phase-in period for non-financial counterparties in Category 4. The difficulties of establishing clearing relationships with clearing members and the general lack of availability of indirect

client clearing offerings in the market is only discussed with reference to Category 3 financial counterparties where the same issues would certainly be faced by Category 4 counterparties.

We would therefore seek to ensure that any delay offered to Category 3 counterparties is also extended to Category 4 in order to give NFC+s more time to work through these issues and also to ensure that the clearing start date for Category 4 remains after the start date for Category 3 and a suitable gap is retained between the start dates.

Response to specific questions

Question 5: Do you agree with the proposal to keep the definitions of the categories of counterparties as they currently are and to postpone the date of application of the clearing obligation for Category 3? If not, which alternative would achieve a better outcome?

We agree that the definitions of the categories counterparties should be kept as they are, but the date of application of the clearing obligation should also be extended for counterparties in Category 4 and not only for counterparties in Category 3.

Furthermore, we disagree with the concept that a counterparty is obliged to centrally clear or exchange margin for transactions across all asset classes if they cross the threshold in any one class. In our view the current design is illogical and counterproductive from a broader economic perspective. NFC+s should have an obligation to centrally clear or exchange margin only for the asset class above the clearing threshold but should benefit from the same exceptions as NFC-s for their other hedging transactions. Imposing clearing and margining on hedging transactions below the clearing thresholds will expose NFC+s to daily volatility up to the settlement date of the underlying commercial transaction and will entail higher levels of working capital. This will divert financial resources that could otherwise be invested in the real economy.

Question 6: Do you agree with the proposal to modify the phase-in period applicable to Category 3, by adding two years to the current compliance deadlines?

Any delay offered to financial counterparties in Category 3 should also be extended to Category 4 counterparties. We see ESMA's proposal to switch the implementation order for Category 3 and 4 as illogical. The issues faced by small FCs are very likely to be experienced by NFC+s as well. NFC+s' focus is currently very much on implementing the upcoming variation margin requirements as opposed to looking ahead to the clearing technicalities. Given the complexity of variation margin requirements, we anticipate that clearing implementation would be at least as complicated as this process involving system and contract changes and as such we would look for Category 4 counterparties to be granted as much time as possible to achieve this. As noted in the consultation paper 'an extension of the phase-in period for small market players should not compromise the primary objective of the clearing obligation, which is the reduction of systemic risk'. A two year delay would not only give NFC + more time to work through these issues but would also ensure that the clearing start date for Category 4 remains after the start date for Category 3 and a suitable

gap is retained between the start dates.

Question 7: Do you agree with the proposal to modify the three Commission Delegated Regulations on the clearing obligation at the same time?

We agree that modifications should be made to the three clearing obligation delegated regulations at the same time.

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