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Germany

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- **Your Ref: EBA Discussion Paper on Draft Regulatory Technical Standards on the capital requirements for CCPs under the draft Regulation on OTC derivatives, CCPs and Trade Repositories**

Dear Sir.

Thank you for giving us the opportunity to comment on your EBA Discussion Paper on Draft Regulatory Technical Standards on the capital requirements for CCPs under the draft Regulation on OTC derivatives, CCPs and Trade Repositories (EBA/DP/2012/1). I agree with your main proposals, which should result in capital requirements that are at least equal to those resulting from CPSS-IOSCO principles.<sup>1</sup> This will promote financial strength and stability in clearing activities, foster efficient processes and improve risk management practices thereunder, and reduce systemic risk in the OTC derivatives market.

#### Operational expenses for winding-down or restructuring

In paragraph 11 of the Discussion Paper you state that: “the operational expenses for winding down or restructuring should be calculated as a CCP’s ongoing annual expenses divided by 12 and multiplied by the estimated number of months necessary to ensure winding-down or restructuring of its activities.” Furthermore, you go on to state that: “The EBA considers that a CCP should estimate the number of months necessary to ensure winding-down or restructuring of its activities taking into account the complexity of its business. In line with the recommendations provided by CPSS-IOSCO the time period used for the calculation of the operational expenses for winding-down or restructuring should be the longer of the two: (i) internally estimated time period; and (ii) [6- 12] months.”

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<sup>1</sup> See CPSS-IOSCO, *Principles for Financial Market Infrastructures*, available at: <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD350.pdf>

I agree in principle with this proposal; however I would recommend that you should refine the requirements further, by requiring a CCP to maintain sufficient financial resources in order to cover its operational expenses for at least 12 months, on a rolling basis. This is consistent with Generally Accepted Accounting Principles, which imply that an entity's ability to continue as a going concern is jeopardised if the entity would be unable to continue to meet its obligations in the next 12 months, without resort to external sources of funding.<sup>2</sup> I would also recommend that the operational expenses should be calculated based on the expected expenses assuming a winding-down or restructuring situation, and not the full ongoing annual expenses.<sup>3</sup> In this case only essential operational expense should definitely be included in the operational expenses for winding-down or restructuring.

Yours faithfully

C.R.B.

Chris Barnard

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<sup>2</sup> See for example: International Accounting Standards Board, *The Conceptual Framework for Financial Reporting*, § 4.1: "The financial statements are normally prepared on the assumption that an entity is a going concern and will continue in operation for the foreseeable future." American Institute of Certified Public Accountants Auditing Standards Board Statement of Auditing Standards No. 59, *The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern*, § 341.02: "The auditor has a responsibility to evaluate whether there is substantial doubt about the entity's ability to continue as a going concern for a reasonable period of time, not to exceed one year beyond the date of the financial statements being audited".

<sup>3</sup> The expected expenses assuming a winding-down or restructuring situation may be significantly lower if, for example, product development activities, costs of new business capture, and systems and infrastructure enhancements and upgrades were curtailed.