



10 July 2015

Second Joint Committee Consultation on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP (EMIR RTS)

CMC Europe Response

Respondents are invited to comment on the proposal in this section concerning the treatment of non-financial counterparties domiciled outside the EU.

CMCE supports the revised approach taken by the joint committee.

However, we also note the challenges of applying the intragroup provisions in Article 3 EMIR in the absence of Commission decisions on third country equivalence under Article 13(2) EMIR. We would encourage the Commission and ESMA to swiftly adopt such equivalence decisions in order to enable Article 3 provisions to be applied effectively.

Other Comments

CMCE would welcome further clarification regarding the new wording in Article 4 IGT – “Applicable criteria on the practical impediment to the prompt transfer of own funds and repayment of liabilities.”

The new draft now stipulates that a practical impediment to the prompt transfer of own funds or repayment of liabilities exists where there is “insufficient availability of unencumbered or liquid assets”. It is not clear how this would apply where treasury pooling arrangements are in place, as we have no direction as to how to demonstrate the availability of unencumbered or liquid assets. We note that the previous draft called only for sufficient assets of the counterparties to be “freely available in the necessary form” and we believe this drafting was more appropriate

We do not believe that treasury pooling arrangements do or should pose a practical impediment to the prompt transfer of own funds or repayment as stipulated by Article 11 EMIR. It would be helpful if the application of the RTS to such arrangements was clarified to ensure they are not inadvertently characterised as such.