Standard Chartered

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European Banking Authority
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STANDARD CHARTERED RESPONSE TO EUROPEAN BANKING AUTHORITY ("EBA") CONSULTATION PAPER CP/2015/04 ON DRAFT REGULATORY TECHNICAL STANDARD ON A MINIMUM SET OF THE INFORMATION ON FINANCIAL CONTRACTS THAT SHOULD BE CONTAINED IN THE DETAILED RECORDS AND CIRCUMSTANCES IN WHICH THE REQUIREMENT SHOULD BE IMPOSED (THE "PAPER")

We are writing to provide private and confidential feedback from Standard Chartered PLC (together with its subsidiaries, the "Group"), on the Paper. Our responses to the specific questions posed in the Paper are in the Appendix.

The Group is committed to working closely with all its regulators on global recovery and resolution planning and is supportive of the development of strong, internationally consistent resolution regimes for financial institutions, in line with the Financial Stability Board's Key Attributes of Effective Resolution Regimes for Financial Institutions.

We welcome the efforts of the EU and the EBA to develop a credible and feasible resolution regime in Europe. However, we would like to emphasise the importance of:

- **proportionality** in the development of resolution regimes and the need for detailed consideration of the cost versus benefit of each element of the regime;
- achieving **market certainty** and minimising any overlap or conflicts with existing regulatory and legislative regimes;
- maintaining a **level playing field** between institutions, nationally and internationally, with regimes being sufficiently flexible to take into account the resolution strategy for individual institutions;
- **consistency with international regimes**, recognising recovery and resolution needs to be effective across borders to be credible and feasible;
- regimes allowing sufficient **flexibility** and discretion to enable resolution authorities to consider each firm, the circumstances surrounding its financial difficulties and the likely consequences of its failure holistically, as opposed to containing hard triggers or requirements to consider named scenarios; and
- **equal treatment of creditors** of the same class, regardless of nationality.

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We recognise the importance of a common framework when considering the detailed records of financial contracts firms are required to maintain. However, we would like to stress the importance of ensuring any data requirements are fully aligned and consistent with existing trade reporting requirements, including those under EMIR 148/2013. We think that the Paper should follow an outcomes based approach when considering the form of the data storage, outlining the requirement to obtain a single view of the financial contract information within a specified timeframe, instead of the more prescriptive requirement under (6) for data to "be kept in central location on relational database capable of being accessed by the competent and resolution authorities or from which information can be extracted readily and transmitted to the relevant authority."

We welcome the opportunity to provide our comments to the Paper and look forward to continued dialogue to support the development of a European resolution framework. We trust that our confidential comments are helpful and would be happy to participate in further bilateral discussions with you on this topic.

Yours sincerely

Louis Taylor

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Appendix

Q1: Do you agree with the circumstances in which the requirement to maintain detailed records shall be imposed?

We are of the view that the current guidelines as stated in the Paper are sufficient, and ensure the requirements are proportionate, applying only to firms subject to resolution actions.

Q2: If the answer is no. What alternative approach could be used to define the circumstances in which the requirement should be imposed in order to ensure proportionality relative to the aim pursued?

No comment

Q3: Do you agree with the list of information set out in the Annex which it is proposed shall be required to be maintained in the detailed records?

We are of the view that to avoid any overlap or conflict, any requirements for data maintenance should be fully aligned and consistent with existing trade reporting requirements, including those under EMIR 148/2013. With reference to the specific fields listed in the Annex, we have the following comments:

- ***#10, Contractual recognition – write-down and conversion:***
  This is not relevant to the stated purpose of the record keeping under Article 71 of the BRRD (power to temporarily suspend termination rights), we propose that it is removed.
- ***#11, Contractual recognition-Resolution (third country-governed contracts only):***
  In order to promote consistency across 'reporting counterparties' and achieve the stated purpose of the record keeping, we propose this field should just record whether there is a contractual recognition of the stay power.
- ***#12, Financial contract relates to core business line:***
  Given that not all financial contracts will map to a single core business line, greater clarity is required for circumstances where there is either (i) no core business line involved, or (ii) where a contract underpins several core business lines (common for contracts of a funding nature).
- ***#28, Type of financial contract:***
  As the scope of products extends beyond existing trade reporting requirements, care needs to be taken to ensure the product hierarchies are consistent between both the maintenance (under this CP 2015/04) and reporting requirements (under EU (148/2103)).
- ***#34, Termination conditions:***
  In order to promote consistency across 'reporting counterparties', greater detail should be provided with regards to the final data content required to be maintained.
- ***#41, Type of liability/claim:***
  We suggest more clarity as to what is meant here, and whether the data requirement only applies to contracts subject to central clearing, as implied by the section heading ("Section 2d – Clearing").
- ***#42, Value of liability/claim:***
  We request more clarity as to whether the data requirement only applies to contracts subject to central clearing, as implied by the section heading ("Section 2d – Clearing").

Q4: If no. What kind of other information would be useful to maintain in detailed record of financial contracts?

See response to Question 3.

Q5: Do you agree that in the Annex to the draft RTS the same structure as in Commission's delegated regulation (EU) no 148/2013 should be kept?

Yes, as included in our response to Question 3, we are of the opinion that any data requirements must be fully aligned and consistent (including in structure) with existing trade reporting requirements, including those under EMIR 148/2013.

Q6: Considering the question above do you think it would be possible and helpful to define expressly in the RTS which data points should be collected at a "per trade" level, and which should be collected at a "per counterparty" level?

As a number of data fields relate solely to a financial contract's governing master agreement, we are of the view that the Paper should make clear at what level the data points are required to be maintained. We believe "per master agreement" is more appropriate than "per counterparty level" and "per trade level", as it represents the actual grouping of financial contracts from a legal perspective. Furthermore it is always possible for counterparties to have multiple master agreements in place between themselves, with different data attributes, so collecting data at the level of a master agreement level is more pragmatic. For reference, we believe the following data points should be collected at a "per master agreement" level.

- *#9, Governing law*
- *#11, Contractual recognition-Resolution (third country-governed contracts only)*
- *#12, Financial contract relates to core business line*
- *#19, Collateralisation*
- *#20, Composition of the collateral*
- *#21, Collateral portfolio*
- *#22, Collateral portfolio code*
- *#23, Initial margin posted*
- *#24, Initial margin received*
- *#25, Variation margin posted*
- *#26, Variation margin received*
- *#27, Currency of the collateral value*