



## Commodity Markets Council - Europe

C/O Norton Rose Fulbright LLP  
3 More London Riverside  
London SE1 2AQ  
United Kingdom

Tel: +44 (0)20 7444 5693; +32 (0)2 237 6140  
Fax: +44 (0)20 7283 6500; +32 (0)2  
Eml: conor.foley@nortonrosefulbright.com  
Wb: www.commoditymks.org

Mr Gabriel Cardi  
Joint Committee of the ESAs  
European Banking Authority (EBA)  
One Canada Square (Floor 46)  
Canary Wharf  
London E14 5AA

30 August 2016

### **Draft RTS on risk-mitigation techniques for OTC derivative contracts not cleared by a CCP**

Dear Mr Cardi,

I am writing to you on behalf of the Commodity Markets Council – Europe (**CMCE**) and regarding the draft regulatory technical standards (**RTS**) for Article 11(15) of Regulation 648/2012/EU on OTC derivatives, central counterparties and trade repositories (**EMIR**) proposed by the Commission on 27 July 2016.

CMCE is an industry group bringing together commercial market participants active across agriculture and soft commodity, energy, base and precious metals and environmental markets. The group includes commodity producers, merchandisers and consumers, the main commodity trading venues and price reporting agencies. CMCE advocates effective regulation that facilitates the key role of these markets in price discovery and risk management.

The majority of CMCE members are non-financial counterparties (**NFCs**) for the purposes of EMIR. Those members exceeding a clearing threshold (**NFC+**) will be required to comply with the risk management requirements set out in Article 11 EMIR, including the “timely, accurate and appropriately segregated exchange of collateral”.

As the Joint Committee of the European Supervisory Authorities (Joint Committee) considers amendments to the draft RTS, we offer the following suggestions:

#### **1. Revision of transition provisions**

It is now clear that the draft RTS will not be adopted ahead of the original 01 September 2016 deadline. We welcome the delay and consider that it is preferable to get effective and proportionate rules late than ineffective or disproportionate rules on schedule.

As the Commission has introduced corresponding amendments to the Article 36 transitional provisions, we encourage the Joint Committee to re-introduce the additional six month delay to compliance with Article 12 requirements on variation margin (VM) for counterparties not referred to in Article 39(2)(a). This additional time will be needed for NFC+ counterparties to put in place the necessary arrangements to collect VM and will reduce the risk of market disruption that a shorter delay or parallel implementation will increase.

#### **2. Timing for collection of VM**

Article 12(2) of draft RTS requires that VM be collected “within the business day of the calculation” (which we assume to be within one business day of the calculation, conventionally referenced as T+1)

or “within two business days after the calculation date” (T+2) subject to conditions set out in Article 9(3). We believe that few netting sets will meet the conditions of Article 13(4) and (5). As such, most counterparties will be required to post or collect VM within one business day of the calculation. We consider this deadline too tight and that many commodity market participants would struggle to post or collect VM within this deadline. We also consider the proposed deadline very likely to dissuade third country persons that would be subject to margin requirements if established in the European Union from transacting with NFC+ commodity market participants. The proposed T+1 deadline is not risk-sensitive and not prescribed in the Basel Committee on Banking Supervision (BCBS) and International Organisation of Securities Commission’s (IOSCO) revised margin requirements for non-centrally cleared derivatives.<sup>1</sup>

We consider that the T+2 deadline should be applicable to NFC+ counterparties for all netting sets without the Article 9(3) conditions.

We therefore encourage the Joint Committee to support the CMCE suggestions, which we believe will deliver practical and proportionate margin and clearing requirements. We thank you and your colleagues for your continuing work on these most-important EMIR provisions. CMCE members and I remain at your disposal should you or your colleagues should you wish to discuss these suggestions.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Hill". The signature is written in a cursive, slightly slanted style.

Jonathan Hill  
Chairman  
CMCE Executive Committee

---

<sup>1</sup> BCBS and IOSCO: Margin requirements for non-centrally cleared derivatives (March 2015) [\[link\]](#).