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Eurex Clearing Response

to

EBA Consultation Paper on Draft Regulatory
Technical Standards on the Capital Requirements
for CCPs (EBA / CP / 2012 / 08)

Eschborn
31 July 2012

A. Introduction

Eurex Clearing is a globally leading central counterparty (CCP). We offer fully automated and straight-through post trade services for derivatives, equities, repo, energy and fixed income transactions. As a central counterparty, our focus is to increase market integrity.

Eurex Clearing is a subsidiary of Deutsche Börse Group and acts as the central counterparty for Eurex, Eurex Bonds, Eurex Repo, European Energy Exchange (EEX) the FWB® Frankfurter Wertpapierbörse (the Frankfurt Stock Exchange) - both Xetra® and floor - and the Irish Stock Exchange.

Eurex Clearing AG is a company incorporated in Germany and licensed and regulated as a credit institution under supervision of the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht- BaFin) pursuant to the German Banking Act (Gesetz über das Kreditwesen). The Financial Services Authority (FSA) has granted Eurex Clearing status as a Recognised Overseas Clearing House (ROCH) in the United Kingdom.

Eurex Clearing has contributed to the consultation on EBA's Discussion Paper on Draft Regulatory Technical Standards on the Capital Requirements for CCPs issued in March.

Eurex Clearing welcomes the additional opportunity to comment on EBA's Consultation Paper on Draft Regulatory Technical Standards on the Capital Requirements for CCPs (EBA/CP/2012/08) issued in June 2012 which is delivering a first draft legal text based on the discussion paper issued in March.

Eurex Clearing has taken the opportunity to exchange views during the public hearing on EBA premises on 4 July and has incorporated the useful information gathered during that hearing in this consultation reply.

The next part (Section B) of the document contains general remarks we have on aspects of the discussion paper. Section C of this document contains concrete remarks on the proposed text as such while the last part (Section D) provides detailed answers to the questions posed by EBA.

B. General remarks

Before we elaborate on the specific responses to the questions raised in the consultation paper, Eurex Clearing would like to take the opportunity to address some general aspects and concerns.

The capital requirements based on the European Market Infrastructure Regulation (EMIR) rules in Articles 16 and 41 – 47 and detailed in the current drafts of EBA and ESMA standards taken as a whole are massive. In our view, this is overstating the inherent risk of a CCP business model and is not proportionate to the risk. Furthermore, in combining major parts of the banking framework with additional topics for CCPs only, the total of the capital requirements is going far beyond the banking standard whereas – even taking some degree of systematic importance for CCPs for granted – the risks taken by CCPs and imposed on the financial markets are limited in our view. The well proven risk management of the CCPs has not touched the default fund contribution of non-defaulting clearing members or the CCPs itself during the financial crisis until

now and the defaults of Lehman and MF Global in so far demonstrated the strength of the CCPs' models. Taking the revised future framework under EMIR into account, we feel that CCPs will be further reducing their risks. Also the introduction of an increased obligation to clear OTC trades via a CCP does in our view not lead to such an increase in risk that it would require an over prudent capital regime as it is proposed in the combination of EBA and ESMA standards. Moreover, the massively increasing capital requirements and their related costs will add to the costs for the more or less reasonable implementation and maintenance of increased organisational requirements out of EMIR. In conjunction with the revised capital requirements for CCP positions as well as OTC positions at the clearing member or client level this will most likely not fulfil the goal to reach a comparative advantage of CCP cleared transactions over non CCP cleared transactions. Finally, the proposed rules go beyond international standards and will most likely lead to an uneven level playing field with lower capital requirements outside EEA which will probably shift business outside the EU and therefore outside the reach of EMIR and EU supervisors.

- **Content of the Technical Standards and limitations on level 1**

We clearly acknowledge the limitations to the technical standard by the legal text of EMIR itself. As such, the term "capital" is finally defined in Article 2 (25) EMIR, "reserves" are defined in Article 2 (26) EMIR and the scope for the technical standard is limited by Article 16 (3) EMIR. We also clearly understand that certain terminology used in EU legislative text has its clear and proven interpretation which in some cases might differ from the general public understanding or other possible interpretations.

Having said this, we want to make the following statements:

1. While we agree, that it is common practice to clearly state "maximum of" or "higher of" in case this is **explicitly** meant (e.g. Article 90 (2) introductory part CRR), we also find "sum of" is mentioned if **exactly** this is targeted at (e.g. Article 87 (3) CRR, Article 90 (2) (a) CRR, Article 91 (2) CRR). Taking into account Article 16 (2) EMIR first sentence (proportionality) and the low likelihood of all events of sentence 2 happening at the same time, we feel that summing up the capital requirements for both purposes and all risks of sentence 2 is not in line with sentence 1. Finally, we want to point out that the terminology "shall at all times **be sufficient to ensure**" is also not a "common" terminology used in other contexts (e.g. Article 87 (1) CRR: "shall at all times **satisfy** the ... requirements", Article 87 (3) CRR: "shall **be calculated**"; Article 16 (1) EMIR "shall **have**"). For us, the term "be sufficient" therefore gives some room for interpretation and the "**AND**" needs to be read in context and cannot be interpreted in an isolated manner.
2. Article 16 (3) EMIR gives the EBA the task to develop a regulatory technical standard to specify requirements regarding capital, retained earnings and reserves of a CCP referred to in paragraph 2.
As explained by EBA during the public hearing, this does not allow introducing buffers as currently implemented and discussed in the Basel III / CRD IV framework. Moreover, in our opinion this does also not allow to put additional topics into the technical standard like the obligation for a CCP to determine the winding down period including a detailed documentation on how this is determined (proposed Article 6 (1) of the consultation paper (CP) and related explanatory text), the introduction of notification thresholds (proposed Article 4 of the CP) and the

possibility to ask for additional capital based on the review and evaluation process as laid down in Article 21 EMIR (note: there is no basis for a technical standard for Article 21 EMIR and also no room in EMIR to introduce something similar as the pillar II process known within the banking framework – even not in Article 21 EMIR).

3. More precisely, the basis in Article 16 (3) EMIR in general does not mandate EBA to specify formats, frequencies, dates of reporting, etc. for the reporting as such (like Article 95 (2) CRR), the basis to legally request such data might therefore be questionable. However, as we feel a regular (quarterly) reporting to the authorities is appropriate and we prefer reaching a level playing field by harmonised reporting content frequencies and deadlines, we clearly see the need for such a provision (Article 10 of the CP) even if the legal basis in EMIR is not given or at least doubtful.
4. Current EU law on setting up statutory accounts is mainly regulated in the Directives 78/660/EEC (Accounting Directive), Directive 86/635/EEC (Banking Accounting Directive – BAD) and in Regulation (EC) 1606/2002 (IAS Regulation). These legal texts only regulate the applicable accounting standards within the EU. They are not applicable as such but require (at least to some extent) national implementation to be eligible for CCPs. The BAD in this context applies to credit institutions and investment firms only and is therefore – without (possible) differing national implementation – not valid for CCPs as such. EMIR is not changing the accounting rules and as such, it may not determine the applicable accounting standard. Going forward there is also no provision within EMIR to determine the relevant accounting standard for statutory accounts via any technical standard. In consequence, also the proposal by ESMA in the set of Technical Standards published for consultation on 25 June 2012 to use IFRS under Regulation (EC) 1606/2002 does not have a proper legal basis. The right to implement IFRS on a stand-alone basis is given in Article 5 of Regulation (EC) 1606/2002 to the Member States.
However, in order to find a common terminology for the accounting basis and having in mind that the targeted standards to derive capital requirements are taken from the banking industry, we do not see a limitation in EMIR to clearly refer to the BAD and to follow some principles as laid down in CRR in a similar way:
 - (a) clearly state that the accounting framework of the CCP is to be used (like Article 4 (53) CRR in conjunction with Article 94 CRR)
 - (b) use BAD terminology where necessary or useful (like Article 305 (1) CRR) and
 - (c) clearly state the need to map own accounting standard to BAD positions (like Article 305 (2) CRR).

- **Usage of the banking framework and risk characteristics of CCPs**

Based on the CPSS-IOSCO principles the usage of international recognised capital framework to determine the capital needs is encouraged. Having this in mind, we are generally in favour of implementing the banking framework **in full** also for CCPs including the levels of proportionality included e.g. in Articles 90 – 92 CRR.¹ As this is -

¹We have made a proposal for three levels of CCPs in our proposal from 2 April 2012. In case EBA sees the need to elaborate on that basis, we are happy to contribute. However, we are not

based on the limitations set by the level 1 regulation (EMIR) - not possible (see above, but also based on the rules of Articles 43 (1) and 47 (2) EMIR), we honour the efforts made by EBA to use as many elements of the banking framework as possible. However, we see room to use the banking framework to an even broader extent than proposed in the draft standard in order to determine the capital requirements. This is explicitly true with regard to the range of choices offered under the banking framework (limited in Articles 7 of the CP for operational risk and 8 for counterparty credit risk and market risk).

Moreover, as risk management is the key business of CCPs, which in general are operating as limited purpose undertakings and are forced by EMIR (but more important by their already existing business models) to a highly risk averse business, **the banking framework in general is overstating the capital needs for CCPs.**

Finally, the capital requirements for credit institutions are targeting to avoid a credit institution's default. Therefore the capital levels in principle are set in order to secure going concern. In case further elements are added to this in order to secure winding down (gone concern situation) this assumes a situation which – in case the capital levels are set properly – should not occur. As such, combining capital needs for winding down (gone concern) with those for the ongoing capital requirements to secure sufficient capital (going concern) **at all times** by simply adding the two is clearly conceptually leading to an overstated and overprudent capital requirement.

In addition, as the capital concepts to cover the capital requirements are different in EMIR and CRD / CRR, further problems arise: While the capital definition under CRR is on the one hand broader (e.g. also including further elements like tier 2 capital and to some extent interim profits as well as other comprehensive income) and does not have the deductions coming from Article 43 (1) and 47 (2) EMIR, there are on the other hand also deductions in CRR which are not mirrored in the current EBA proposal (e.g. intangible assets, certain participations etc.).

For more details with regard to the use of the banking framework for CCPs we also refer to our response to EBA/DP/2012/01.

- **The principle of proportionality needs to be reflected**

Article 16 (2) EMIR requires a CCP's capital to be proportionate to the risks stemming from the CCP's activities. The current EBA proposal does in our opinion not reflect the principle of proportionality to a sufficient extent. While we recognise some aspects of proportionality with respect to the winding down period as proposed in Article 6 of the CP and with the option to use the AMA for operational risk in Article 7 of the CP, we clearly see this as too limited to cover proportionality. The proposed threshold of 12 month for minimum winding down period to be used for capital purposes, the missing choice for methods / approaches beyond AMA and the unique approach regardless of the scope of business seems to be inadequate to us.

including a similar proposal in this paper as this most likely would not have an impact on us and EBA has not taken up our earlier proposal in its current consultative document.

- **Clear rules with regard to future changes of the banking standards used need to be implemented**

As the current proposal intends to use the banking standards for determining capital requirements, clear rules need to be established to secure a proper rule set with appropriate rules also in case the banking framework is changing. Taking into account the current delay in the finalisation of the CRD IV package, the problem might already arise in finalising this technical standard as it is referring to CRR articles which will most likely not be the final ones. According to the current schedule, CRR rules will not be final before end of October 2012 – if not later. The technical standard and the EBA proposal also need to offer provisions in case the delay in the CRD IV process is even longer and entry into force is postponed e.g. to 1 January 2014 (as partially already proposed by the European Parliament with regards to CRD itself).

- **Transitional provisions are missing**

As currently only a limited number of CCPs have to follow the banking rules and based on potential delays for CRD IV on top of that, we ask to introduce clear transitional rules for the reporting set up. This is even more necessary as the proposed rules derive from the full banking framework while only using part of it.

C: Detailed comments on the proposed text of the Technical Standard

In addition to answering EBA's questions (see Section D below) we want to comment on some additional aspects and include proposals for adjustment to the text of the draft Technical Standard.

As stated above in Section B, we do not see the legal basis to introduce a notification threshold within the scope of Article 16 (3) EMIR. As the proposed standard (most likely even taking into account our suggested changes below) will go beyond banking standards while at the same time

- (1) CCPs have a lower risk profile,
- (2) organisational measures (partially fixed by EMIR) are tighter and
- (3) history indicates well-functioning lines of defence on a generally lower capital base as proposed in the standard,

we do not see the need to establish ancillary tools. We therefore propose to take out Recital 8 of the CP.

While we agree to a general rule for the winding down period, we disagree with the proposed duration of 12 months, to a "floor" as well as to the approach of adding the capital requirements for gone and going concern.

Current rules by the FSA cover capital (in total) by a period of 6 months operating costs. This covers both winding down and going concern. Also, in practice there are additional buffers implemented individually which, according to our understanding, vary based on the activity of the CCP.

Taking this as one reference, we clearly see a time span of 12 months according to Article 6 (1) of the CP as being too long (please see also our remarks on Article 6 below). Article 92 CRR refers to a period of 3 months (one quarter) of "fixed overheads"

(please see our remarks on that point below) and gives a second reference on the minimum time span. Taking this into account, we feel that a general rule of 6 months in combination with the “higher of” rule for both components of Article 16 (2) sentence 2 EMIR is appropriate.

Under clear rules stipulated at the latest after obtaining an EMIR licence the winding down of a CCP as a whole (legal entity) should not take very long.

During Lehman and MF Global default, Eurex Clearing was able to close out positions within a couple of days. Even taking into account the more complex situation of a big CCP to be wound down, we cannot imagine that this takes more than 3 months. In case of continued operations, also further income needs to be considered. Therefore, we consider our proposed timespans as already being pessimistic and prudent. In line with these arguments, Recital 9 of the CP needs to be adjusted.

Article 2:

Article 2 (1) and (2) of the CP defines “investment activities” and “non-covered activities”. Given these definitions, we do not understand the background of the additional definitions in Article 8 (2) of the CP. We therefore kindly ask to combine the two “definitions”, deleting the proposed Article 8 (2) of the CP and update the definitions in Article 2 of the CP in order to reflect the content of Article 8 (2) of the CP. (Note: The current definition of “investment activities” is not referred to in the draft technical standard and is therefore currently useless.)

Furthermore, Eurex Clearing is of the opinion that the allocation of positions (including margins and default fund contributions) held with another CCP as either “covered” or “non-covered” activity needs to be clarified.

A CCP is entering into CCP link agreements only for the purpose of offering its clearing members and the related clients access to positions with another CCP. As the positions are covered by the lines of defence, they should fall within the covered activities of Article 41 - 44 EMIR. As the collateral and default fund rules of the other CCP will most likely not match the CCP’s own rules 1:1, the contributions for margins and default fund are to be allocated to the “non-covered activities”.

Paragraph (2) should be amended by a second sentence as follows: Margins and default fund contributions held with another CCP belong to non-covered activities, whereas clearing members’ or clients’ positions held at another CCP are covered activities in the sense of Article 41-44 EMIR.

Finally, a new paragraph 4 should be added to define the relevant accounting standard as follows:

“applicable accounting framework” means the accounting standard to which the CCP is subject to.

This is necessary in order to link to CRR where this is defined for institutions in Article 4 (53) CRR.

Article 3:

Eurex Clearing disagrees, as outlined in Section B, that based on the wording used in Article 16 (2) EMIR the sum of resources needed to cover “winding down” AND the capital requirements to cover risks from the non-covered activities is required. Eurex Clearing continues to understand the text as also offering the option to set a higher of approach. The banking framework implicitly (at all times) covers the time span for winding down. The higher of is also fulfilling the requested proportionality and therefore fulfils best the requirement of Article 16 (2) EMIR.

The capital charge for operational risk within the capital framework for credit institutions already covers legal and business risks. As the banking framework is proposed to be used, no additional charge for legal and business risks should be foreseen.

In consequence, paragraph 1 of Article 3 of the CP

- should reflect the higher of instead of the sum
- should clearly state in the current letter (b) capital requirements for operational, legal and business risks
- should not have a separate point for legal and business risks.

With regard to Article 3 (2) of the CP we have difficulties to follow the proposal for formal reasons. As EMIR already contains rules on how capital is defined and which elements are not eligible, we doubt that the chosen approach is right from a systematic perspective. With regard to the points (b) and (c) the EBA proposal gives nonetheless some additional clarity which in the end could, in our view, remain here.

Related to the default fund contribution of other CCPs – regardless of their origin – and in line with the allocation to the non-covered activities under Article 2 of the CP – we however see an upcoming conflict of rules with regard to the CRR provisions on exposures to CCPs as stated in Article 294 and subsequent CRR. We therefore propose to formally shift the treatment to Article 8 of the CP. Moreover, the banking framework in CRR foresees quite some positions, which are deducted from correct liable equity and do not form risk assets. As the capital concept between EMIR and CRR differs, we see the need to adjust the CRR framework for those topics.

In principle all those adjustments should be done in one place. Based on our comment above, we prefer to place the adjustments in Article 8 of the CP instead of adding them in Article 2 of the CP.

As according to Article 3 (1) of the CP the capital requirement is already defined as being at all times more than or equal to the sum of Article 3 (1)(a) - (d), Article 3 (3) of the CP seems to be unnecessary and should be deleted.

Article 4:

As Article 16 (3) EMIR is, according to our understanding, not giving any legal basis for a notification threshold, the whole Article should be taken out.

Furthermore, capital requirements for “winding down” and operational risk are supposed to be quite stable according to the proposed rules. Capital requirements for market risk are supposed to be close to zero and capital requirements for credit risk are expected to be low due to a high degree of either zero weighted positions or sufficient risk reducing

impact of financial collateral. We therefore do not see the need for such a threshold (even if it would be covered in the scope of Article 16 (3) EMIR).

However, if the EBA and the Commission have a different understanding of Article 16 (3) EMIR, we nevertheless disagree with the absolute percentage of 125 % which we think is far too high. Taking our comments in section B into account, we clearly see the proposed capital requirements as being overstated. A threshold range of only 105 – 110 % would be more reasonable in such a case. A notification threshold – even if notification only is intended – has the tendency to become a minimum requirement in the long run. Taken our general concern on overstating requirements and the related costs to the market into account, a too high figure should therefore be avoided.

Article 5:

While we have some sympathy for the proposal as such, again we have difficulties to see this covered by Article 16 (3) EMIR. This is putting organisational requirements on CCPs which is, in our view, not the context of Article 16 EMIR.

Especially with regard to Article 5 (4) of the CP we disagree with tasking CCPs to estimate (annually taking Article 5 (1) of the CP into account) the time span for winding down a CCP. We furthermore do not understand the link of Article 5(2) of the CP to Article 22 EMIR. Any measure in line with Article 22 (3) EMIR is within the responsibility of member states but not delegated to EBA.

As a consequence, we believe Article 5 of the CP should be deleted from the Technical Standard. If deemed necessary in the course of ongoing supervision, member states or the competent authorities may set up similar rules as proposed under Article 5 (1) – (3) of the CP.

Article 6:

We have proposed a time span of 6 months for winding down or restructuring.

However, as current capital situation, business model as well as expected business volumes and risks might be underestimated by our proposal, we could think about some room for discretion for the competent authority or the college to increase this time span. In order to have clear limits, we are thinking of a maximum of twice the standard range. Furthermore, some general and unique rules should be added, under which conditions the extended period can be set and that the competent authority needs to deliver proof, why a longer winding down or restructuring period including respective capital needs are necessary and justified.

In case of the necessity to wind down or restructure, we believe that only fixed costs should be the reference and not operational expenses. This is in line with the definition of Article 92 (1) CRR. Variable costs like staff bonuses, etc. can be stopped during such processes or can be covered by earnings / net income received despite the winding down / restructuring process. Further considerations will be necessary when factoring in the future EBA standard requested by Article 92 (4) CRR.

For the time being however, we disagree with the proposal in Article 6 (2) of the CP and ask for the following text:

“2. Fixed overheads” of a CCP are to be determined out of the expenses of the following categories according to Article 27 of Directive 86/635/EEC:

- (1) Commissions payable,*
- (2) General administrative expense*
- (3) Other operating charges*
- (4) Value adjustments in respect of asset items 9 and 10*

The total amount shall not include extraordinary or irregular items and shall not include discretionary items like bonuses or similar payments to staff.

When the applicable accounting framework for the CCP is different from the ones established by Directive 86/635/EEC, it shall calculate the fixed overheads on the basis of those data that best reflect the definition set out in this Article.”

The proposal follows Article 305 CRR. We disagree with the proposed inclusion of taxes. Taxes in most jurisdictions are only due in case net income is gained. As such, this would require income which is going to cover the taxes in this case anyway.

We also disagree with the inclusion of additional costs that may occur in case of winding down or restructuring the CCPs' activities. In case of restructuring, we still believe there will be income which should be sufficient to cover already some parts of the ongoing costs and should definitively cover restructuring costs. In case of winding down, we repeat our argument, that there should be capital left from the other risks as it is unlikely that all risks occur at the same time. Finally, without a clear rule the requirement is difficult to trace and it would be difficult to achieve a level playing field.

Article 7:

Eurex Clearing AG welcomes the usage of the banking rules. However, as stated above, all choices given to banks should also be offered to CCPs. We therefore clearly ask for the option to use the Standardised Approach. As CCPs are allowed to perform other activities, e.g. as a normal bank or a payment institution, the use of the Standardised Approach should not be restricted by the technical standard. In practice however, we do not expect a widespread use of it. In order to reflect the CCP business which we agree does not fit in one of the existing categories, there are, in our view, two options:

- (1) map it to one of the existing categories. We recommend to map it to “agency services” as this is “near” to the CCP business and has a 15 % beta factor in CRR or
- (2) introduce an additional business line “CCP” with an allocated beta factor of 15 %.

We prefer option 1 as this would also allow using it in case a CCP is also operating with credit institution licence.

While we in principle also disagree with the 80 % floor of the AMA approach, we nevertheless understand the rationale behind it (no Basel I floor available) and therefore accept this as an interim solution. However, we recommend implementing a review clause on the floor by 31 December 2018.

More generally, we kindly ask to clarify, that legal **and business** risks are covered with the banking approach. Therefore the title of Article 7 of the CP should already reflect this and Article 7 (1) of the CP should be worded "... for operational, legal and business risks referred to in Article 3 by using ...". As stated in Section B above, the banking approach for operational risk has obviously a broader definition of the term than the EMIR framework in Article 16.

Article 8:

Eurex Clearing AG welcomes the usage of the banking rules. However, as stated above, all choices given to banks should also be offered to CCPs. We therefore clearly ask for the option in Article 8 paragraphs (3) to (5) of the CP to use all approaches allowed for credit institutions for any kind of risk including the simple method for financial collateral.

Most likely, the methods / approaches currently listed in the proposal will be chosen by the vast majority of CCPs. However, CCPs should not be limited to these methods / approaches by the standard itself.

We want to point out, that the approaches for market risk are limited to some extent to trading book positions only and ask for clarity that without a dedicated trading book those rules do not apply. Contrary, we also ask for clarity with respect to currency (and commodity) risk which so far seem not to be explicitly included in the proposal.

With regard to Article 8 (2) of the CP we kindly refer to our comments to Article 2 of the CP and propose to delete this paragraph.

As stated above (Section B and comments on Article 3 of the CP) we see the need to include specific rules related to (potential) credit risk for those items which are corrected via the equity part of the banking framework in CRR but not corrected in the capital caption of EMIR / EBA technical standard. Furthermore, due to the limited use of the banking framework, the linkage to definitions in CRR is missing, which might require adjustments in the context of EMIR / the EBA Technical Standards. As stated in the explanatory text to Article 8 of this EBA paper and in accordance with our comments to Article 3 margins should be treated as trade exposures according 297 CRR. This can be done by simply defining the risk weight for any such contribution as 1.250 %.

Article 9:

Neither Article 16 (3) EMIR nor Article 21 EMIR is delivering a basis for the proposal of Article 9 of the CP. In addition, the title of the Article is covering a topic, which is covered in Article 7 of the CP (see our comments to this Article above) and the context of the Article goes beyond the reference of the Article's title. As we see no basis for that proposal in the level 1 legal text, we simply ask to delete Article 9 of the CP.

Article 10:

Article 16 (3) EMIR does not mandate EBA to propose formats, frequencies etc. for the monitoring and reporting of the capital requirements and coverage.

However, we feel that despite missing a level 1 basis, general rules on monitoring and reporting are necessary and should be harmonised to a suitable extent in order to secure a level playing field.

In that regard, we agree with Article 10 (1) second sentence of the CP. In our view the first sentence of that paragraph however is going beyond the mandate of the level 1 legal text.

Article 10 (2) of the CP seems not sufficient to guarantee an appropriate level of (EU wide) clarity on the reporting needs. We therefore suggest replacing paragraph 2 with rules containing the following:

- Reporting frequency is quarterly
- Reporting deadline shall be the same as proposed for COREP under the ITS for banks based on Article 95 CRR (in general around 45 calendar days after end-of-quarter)
- Reporting content is capital, reserves (including retained earnings) and capital requirements split by “winding down”, credit risk, operational risk, market risk and credit counterparty risk.
- Exposures should be shown gross, risk weighted and after credit risk mitigation (if any).

Paragraph 3 should finally state that reporting formats and transmission rules are to be set by the competent authority.

Furthermore, we suggest to add a regulation that first time reporting is expected to be done no earlier than four months after receiving the authorisation under Article 17 EMIR in order to allow for the necessary implementation.

In principle, we favour an approach using the COREP templates and technical (transmission / data model) standards. As the majority of the CCPs are currently not in scope of the banking regime and the modification done by EMIR and the current EBA draft Technical Standards are substantial, this seems not to be an ideal solution. Furthermore, most of the templates / cells of COREP might be empty for CCPs. As such, the proposal above is taking care of these considerations by proposing a much lighter approach.

As there will most likely be no standard software provider (maybe with the exception of UK) developing a software for CCPs for that purpose, at least the calculation of the capital requirements with the banking software should be feasible to a substantial degree. As such, this also underpins our statements above to use the capital requirement calculations for banks (beside the ones for “winding down”) in exactly the same manner or at least to the highest degree possible as credit institutions have to do.

D: Detailed answers to the questions raised by EBA

Q1. Do you support this approach to capital requirements?

As stated in the general remarks, we are generally supporting the usage of the banking approach. However, the chosen approach is deviating from the banking approach in several areas and is adding additional topics which are not covered by Article 16 (3) EMIR. We therefore disagree with several details of the proposal as stated above in Sections B and C while nevertheless supporting the approach in general. Furthermore, we clearly ask – in line with our comments above – for a stronger commitment to proportionality. Finally, there are some open topics which need to be addressed such as

items to be deducted from capital, positions towards another CCP, reporting details, definitions out of CRR to be integrated etc.

Q2. Do you have any other option to suggest that is not covered in this draft RTS?

Based on the limitation of the level 1 legislation, we refer to the detailed proposals in Section C above.

Q3. Do you consider there to be any alternative approach which is more appropriate that would be consistent with Article 16 of the Regulation?

We refer to our detailed comments made in Section B and especially in Section C

Q4. What is the incremental cost to your CCP for the implementation of this proposal?

As Eurex Clearing is currently already regulated as a credit institution and will for the time being continue to be so, the incremental costs relate to deviating rules between the future CCP capital regime and the banking rules. Overall we do expect quite some implementation costs but no huge amount.

Q5. What is the incremental benefit to your CCP for the implementation of this proposal?

We do not see any benefit but additional costs and burden.

Q6./7. What is the incremental cost/benefit for the supervisors for the implementation of this proposal?

We do not know. But whatever the benefits, there will be separate templates and some additional processes which will not be for free.

Q8. What is your view on the notification threshold? At which level should it be set?

As stated in Sections B and C, we disagree with the threshold in general as we do not see this covered by the EBA mandate under Article 16 (3) EMIR. However, if a threshold is going to be implemented, the value 125 % is by far too high in our opinion.

Q9. In your view, in which case should restriction measures be taken by the competent authority once the notification threshold breaches?

The introduction of restriction measures is not covered by Article 16 (3) EMIR. As we on top of that disagree with the introduction of the notification threshold as such, we obviously also disagree at this point with any introduction of restrictive measures via the current EBA technical standard. However, Article 22 (3) EMIR is the place where the basis for any measures is regulated. This Article puts the competence to national law and the competent authority. As we nevertheless agree, that restrictive measures in case of breaches should be taken and should be harmonized across the EU to the extent possible, we kindly urge EBA to recommend to the Commission to consider such

an approach during any future revision of EMIR. In parallel, we will discuss with our national competent authority and the responsible federal ministry adequate measures to be aligned across Member States.

Q10. Which criteria do you take into account for estimating the appropriate time span for orderly wind-down or restructuring of the CCP's activities?

The time span to wind down a CCP is highly depending on the reason to wind it down, its business scope, size and complexity, kind and size of collateral taken, economic and market conditions and many more. The time span is also depending on insolvency law and potential litigations. Furthermore, a CCP should also still be in a position to earn money out of existing positions even during the process of winding down or restructuring, which needs to be taken into account when determining the necessary amount to secure orderly winding down.

Having said this, we kindly refer to our arguments and proposals made in Section B and C. We cannot imagine any proper model to estimate the appropriate time span and therefore prefer a generic rule of thumb as proposed under Section C.

Q11. What is your estimation for the number of months necessary to ensure an orderly winding-down or restructuring of the CCP's activities?

We refer to our answer to question 10 and our general proposal in Section C. We neither feel in a position to determine such a period ex ante nor see the need to specify it. A generic approach – as proposed above – should be followed.

Q12. What is the incremental cost or benefit to your CCP of this proposal assuming that the time span for winding-down or restructuring a CCP's activities is 12 month?

Eurex Clearing expects only costs but no benefit.

Q13. How do you currently measure and capitalise for operational risk?

ECAG is currently classified as a credit institution under German law and subject to the national incorporation of CRD (Basel II rules). In turn, it is obliged to follow banking rules for capital purposes and follows the Basic Indicator Approach for operational risk.

Q14. Do you think that the banking framework is the most appropriate method for calculating a CCP's capital requirements for operational risk? If not, which approach would be more suitable for a CCP?

The banking framework is an appropriate method for calculating the capital requirement for operational risk. However, mixing the banking framework with an approach to hold capital for "winding down" purposes is in our opinion systematically overstating the capital requirements. The banking framework as such is supposed to already cover such risk in the total of its capital requirements. We therefore kindly renew our proposal with regard to Article 16 (2) EMIR and to the implementation of a "higher of", which in our opinion is a possible interpretation. Furthermore, we still expect to have possible solutions like the ones stated in Article 90 – 92 CRR for smaller CCPs in place in order to reflect the principle of proportionality as requested by Article 16 (1) EMIR.

Q15. Do you think that the Basic Indicator Approach set out for banks is appropriate for CCPs?

Yes, the Basis Indicator Approach – like any of the three approaches allowed in the banking framework – is appropriate to CCPs to the same extent. Moreover, it will most likely be the only approach being used.

Q16. In your view, which alternative indicator should the EBA consider for the Basic Indicator Approach? (Please elaborate why such indicator would be more appropriate for CCPs)

Based on our general support of using the banking rules to the extent possible and having in mind the long debate in the Basel process, we cannot see any other indicator, which would fit more appropriately. However, we want to point out that a proper linkage of the accounting standard used under national law in line with Article 305 CRR is necessary.

Q17. What would be the incremental cost of employing the basic indicator approach set out for banks for the calculation of your capital requirements for operational risk?

As the Basis Indicator Approach is already implemented at our company, there will be no costs at all.

Q18. Do you think CCPs should be allowed to calculate the capital requirements for operational risk with an internal model, as in the advanced measurement approach?

As we principally favour the use of the banking approach to the extent possible, we are also in favour to grant CCPs all of the choices given to banks including free choice of available methods / approaches. We cannot see any reason, why internal models should not be allowed. We nevertheless see difficulties for CCPs to use the AMA based on missing external data and we also believe that use of the more advanced approaches by CCPs will be limited – if used at all. However, this does not change our view to allow these methods.

Q19. Which other approaches should the EBA consider for operational risk measurement?

As stated above, the long lasting Basel discussion should not be repeated and the approaches being implemented since 2007 / 2008 in the banking industry have not proven to be materially wrong. As such, we currently do not see the need to look out for other approaches including any approach to link the operational risk charge to expenses, income or balance sheet size. With regard to the Standardised Approach an appropriate mapping of the CCP business to one particular business line is required and we propose to map it to the “Agency service”.

Q20. What are the incremental costs and benefits to your CCP for the implementation of the advanced measurement approach for operational risk?

We do not intend to move to the Advance Measurement Approach and expect the costs to be high while benefits – if at all – will be limited. However, we have implemented advanced risk methods in our company which we are using aside the regulatory requirements and we will continue to do so.

Q21. Do you think CCP's should be allowed to calculate the capital requirements for market, credit and counterparty credit risks with internal models?

Eurex Clearing AG is generally in favour of allowing CCPs all possible choices also given to credit institutions in the banking approach. However, we do not expect a widespread usage of internal models for credit risk and we do not expect to have material market and counterparty credit risks at all. As such, offering the choice will most likely not lead to a usage of it.

Q22. How do you currently measure and capitalise for credit, counterparty credit and market risk stemming from "non-clearing activities"?

ECAG is currently using the Standardised Approach for credit risk including the comprehensive method for financial collateral. It uses the standardised method for market risk. As market risk is coming from FX risk only and no trading book exists, the method for market risk does not really matter.

Q23. Do you think that the banking framework is the most appropriate method of calculating a CCP's capital requirements for credit, counterparty credit and market risk stemming from "non-clearing activities"? If not, which method would be more suitable for a CCP?

We refer to our answer given to Question 1 and our additional comments to the other questions and in Sections B and C as well as our response to EBA/DP/2012/01.

Furthermore, as stated in Section C, an appropriate treatment for positions towards another CCP and for items being deducted from equity in the banking framework / CRR need to be included in the technical standard.

Q24./25./26. What are the incremental costs or benefits to your CCP of this proposal assuming that for that for credit, counterparty credit and market risk stemming from non-covered activities is computed with the approach required in Article 8?

We expect incremental costs for credit risk due to differing rules in some details as stated above. Furthermore, a dedicated reporting solution needs to be put in place. As we are already implementing the CRR rules in our role as credit institution, the overall costs should be limited.

On the other hand, we do not see any benefit deriving from a second slightly modified framework on top of the banking framework we need to follow anyway.

Q27. Do you think that CCP's, should be allowed to calculate their capital requirements for credit, counterparty credit and market risk using internal models?

See answer to Q21 (same question).

Q28 In your view, which other approaches should the EBA consider for credit, counterparty credit and market risk measurement?

We have outlined our modifications to the proposed approach in this response. We do not consider using a completely different approach as we in general support the usage of the well proven banking framework.

Q29. What other risks should be considered in Article 9?

As the banking framework, in our opinion, is covering all material risks and according to our understanding of Article 16 EMIR there is no request to look out for the coverage of further risks, we want to repeat our comment made under Section C. Legal and business risks are already covered within the operational risk charge of the banking framework. There is no delegation to EBA to put in place a pillar II like addition to the requirements laid down in Article 16 EMIR and we therefore disagree with the introduction of the content of Article 9 of the CP within the current EBA Technical Standards.

E. Closing

We hope that you deem our comments useful– even if critical in quite some areas. We are happy to continue the discussion in order to find an appropriate framework for capital requirements within the boundaries of the level 1 legal text. Overall, we strongly support the general approach taken with the modifications and limitations proposed. If you have any questions please do not hesitate to contact:

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