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- **Your Ref: EBA Consultation Paper on Draft Regulatory Technical Standards on Capital Requirements for CCPs**

Dear Sir.

Thank you for giving us the opportunity to comment on your EBA Consultation Paper on Draft Regulatory Technical Standards on Capital Requirements for CCPs (EBA/CP/2012/08). Under your draft standards, the capital of a CCP, including retained earnings and reserves, should be at all times at least equal to the sum of: the CCP's operational expenses during an appropriate time span for winding-down or restructuring its activities; the capital necessary to cover the overall operational - including legal - risk born by the CCP; and the capital necessary to cover credit, counterparty credit and market risks stemming from 'non-covered activities' that the CCP carries out.

I agree with your draft standards, which should result in capital requirements that are consistent with those resulting from CPSS-IOSCO principles.¹ 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 Article 6(1) you state that: "The estimation of the winding-down or restructuring period is subject to a floor of twelve months." I strongly agree with this. This is consistent with Generally Accepted Accounting Principles, which imply that an entity's ability to continue as a

¹ See CPSS-IOSCO, *Principles for financial market infrastructures, assessment methodology and disclosure framework*, available at <http://www.bis.org/publ/cpss101.htm>.

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.²

In Article 6(2) you comprehensively list the ongoing annual expenses of a CCP. I would also recommend that these “operational expenses” should be determined based on the expected expenses assuming a winding-down or restructuring situation, and not the full ongoing annual expenses.³ 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

² 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”.

³ The expected expenses assuming a winding-down or restructuring situation would be lower if, for example, marketing and promotion expenses were curtailed.