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Consultation

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Classification and identification of OTC derivative instruments for the purpose of the exchange of transaction reports amongst CESR members

The French Banking Federation (FBF) represents the interests of the banking industry in France. Its membership is composed of all credit institutions authorised as banks and doing business in France, i.e. more than 500 commercial, cooperative and mutual banks. FBF member banks have more than 25,500 permanent branches in France. They employ 500,000 people in France and around the world, and serve 48 million customers.

The Association française des marchés financiers (AMAFI) has more than 120 members representing over 10,000 professionals who operate in the cash and derivatives markets for equities, fixed-income products and commodities. Nearly one-third of the members are subsidiaries or branches of non-French institutions.

The FBF and the AMAFI welcome the consultation of the CESR on the classification and identification of OTC derivative instruments for the purpose of the exchange of transaction reports amongst CESR members and, on a preliminary basis, would like to emphasise that French Banks are committed to support all initiatives which will satisfy and facilitate both the market efficiency needs and the integrity of the financial system. Then by principle we support the reporting to authorities and the communication of reporting between authorities.

Preliminary statement:

Concerning the perimeter, there is an ambiguity that needs to be clarified as it seems that the financial instrument with an underlying of several titles from the same issue is excluded. In its consultation paper, CESR states the scope is the derivative instruments « *except when different underlying instruments all refer the same issuer* » (§I C). We understand that the CDS on one entity but with several underlyings (including bonds) are excluded, which does not make sense.

If the intention of the regulators is not to target the transactions with a unique title underlying at the negotiation level in order to measure the impact of this unique title (as it could be interpreted in the §IV Market surveillance requirements), then the reporting will be an empty framework. Indeed, except ABS and CDS loans, there is no CDS with a unique underlying bond even if it is possible in the market to negotiate CDSs with a single name reference and with a particular bond. The ABSs with a basket of loans do not seem to be targeted by the consultation as they are not linked with financial instruments negotiated on a regulated market and are linked with an ensemble of loans. LLCDSs have, as underlyings, a particular loan and are then *a priori* excluded by CESR. The CDS with a unique bond underlying could exist but are not treated in the market.

Classification of OTC derivatives

Question 1: Do you agree with CESR's proposal? Any comments on CESR's view on this subject?

- The FBF and the AMAFI are in favour of the classification proposed by CESR for the categories of OTC derivatives for regulation purposes, as for example, for market abuses.
- Nevertheless, **warrants and futures should not be included in the proposed list of contracts as these products are not OTC derivatives and, so, are traded on regulated markets**. Also, warrants are financial instruments with an ISIN code, and futures are already submitted to a reporting through their CCPs.
- The FpML solution envisaged could offer more precision in the reporting but with an high cost and with uncertain benefits. Hence we do not support this solution.

Identification of OTC derivative instruments

Question 2: Do you agree with CESR's proposal? Any comments on CESR's view on the above?

On a preliminary basis, the FBF and the AMAFI would like to point out that there is a great necessity to remain coherent between referentials that can be drawn up by authorities or the industry worldwide for standardised products.

For example, some standardised products (such credit derivatives) already have a referential set up by DTCC and/or Markit altogether.

Concerning CDS, they are systematically taken into account within the referential with the name of the entity with a 6 numbers unique code (code Red of Markit's referential) and for each reference obligation with a 9 numbers code including the 6 numbers code of the reference entity.

The banks could reuse these issuers codes and reference obligation for the reporting without this code appearing systematically for all transactions, provided that this data is neither mandatory to negotiate in the market (possibility to settle in cash, in loans or in obligations without preliminary choice), nor to settle transactions. These codes are commonly used by all counterparts to facilitate the settlement of transactions when there is a single name entity declared to conclude the transactions without a particular reference obligation.

If the authorities wish to dispose of information on CDS, it would be appropriate to rely on the reporting already done to the FSA concerning all CDSs. It could be generalised through all authorities without asking the banks for any further reporting.

Another possibility could be to collect the CDSs data from the CCPs which are becoming indispensable on this type of transaction since the beginning of the financial crisis.

It would limit significant costs linked to management and setting up this new reporting concerning the credit sphere of the banks. There should be at least a benefit cost analysis.

Last but not least, the FBF and the AMAFI call attention to the fact that a transitional period of 9 months will be necessary to implement the new classification and identification codes, since IT upgrading and developments are inevitable.