BUSINESSEUROPE

THE DIRECTOR GENERAL

Lord Jonathan Hill
Commissioner
Financial Stability, Financial Services
and Capital Markets Union
European Commission
Rue de la Loi 200
B-1049 Brussels
BELGIUM

28 January 2015

Dear Commissioner, Dear Lord Hill,

EMIR Risk Mitigation margining requirements for non-centrally cleared OTC derivatives: Variation Margin Phase in for NFC+

BUSINESSEUROPE is supportive of the efforts to consider the cumulative effects of all EU policies on the availability of finance, as well as the broader impact of policies on companies' investment decisions. In this context, I would like to raise an item which requires urgent attention due to the forthcoming finalisation of the relevant Regulatory Technical Standards.

The timeframe granted to entities for the implementation of exchange of Variation Margin ('VM') for non-centrally cleared derivatives in respect of non-financial counterparties ('NFCs') is too limited and notably inconsistent with the published 3 year phase-in for the clearing obligation for NFCs.

A more realistic solution to manage this risk would be to align the implementation timeline for VM with the recently confirmed phase-in dates for the clearing obligation, which requires bilateral transactions to be cleared from December 2018 for Category 4 counterparties. This would ensure working capital can be raised and allow adequate preparation time for compliance, this would also be consistent with the longer phase-in period for Initial Margin.

Although presently there are a relatively small number of entities designated as NFC+ directly affected by the margining obligation, we are concerned that this number will increase (such as proposed by ESMA in their EMIR Review report no.1, issued on 13 August 2015). The key concern regarding the margining requirement is that liquidity risk will increase for corporates, as additional working capital will have to be sourced.

NFC+ entities should thus not be due to begin exchanging VM for their non-centrally cleared OTC derivatives from 1st March 2017 as proposed under the draft JC/CP/2015/002 issued on 10 June 2015. The IOSCO guidelines do not directly specify NFC+ and subsequently relevant corporates have been grouped under 'All other covered entities' which also includes all but the largest banks. The result of this

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grouping is to bring forward the obligation on NFCs to exchange collateral for transactions which would be cleared at a later date.

End user corporates caught up in the regulatory developments need more time to respond to regulatory demands and we are concerned by the inconsistent approach applied by ESMA. The Commission recognised in a letter dated 7th February 2013 that for non-financial firms, the phase in to exchange collateral under the clearing obligation 'is a period of three years'. It appears contradictory therefore that the risk mitigation margin requirements for un-cleared transactions are not adhering to the same phase-in duration as clearing.

We hope that you recognise this concern and that future work on EMIR risk mitigation margining techniques will ensure that the legislation will function effectively, encouraging growth and preventing damage to businesses in the wider economy. We remain at your disposal should you wish to discuss this subject further.

Yours sincerely,

Markus J. Beyrer