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International Organization of Securities
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Re: Public comment on Consultation Report on Risk Mitigation Standards for Non-centrally Cleared OTC Derivatives

Dear Sir/Madam,

Deutsche Bank welcomes the opportunity to comment on the above consultation. Overall, we find the standards balanced and sufficiently comprehensive.

We support the objectives pursued by IOSCO and agree that the standards could help limit regulatory divergence and promote legal certainty, facilitate the management of counterparty risk and increase overall financial stability. We do have some suggestions around some of the standards which aim to increase the likelihood that the desired objectives will be achieved:

Scope

- To the extent possible, the scope of the term “covered entity” needs to be consistent globally. Lack of consistency could give rise to legal uncertainty about which entities the standards apply to and potentially lead to competitive distortions and scope for arbitrage where similar entities in different jurisdictions are treated unevenly.

Proposed risk mitigation requirements

- The standard on trade relationship documentation should avoid mandating an overly prescriptive approach, especially around the timing for the execution of documentation. The focus should be on whether the requirements proposed by the standard are effectively achieved through rules on documentation processes as opposed to focusing on the exact timing around the fulfilment of the requirements. Some trades are legally confirmed on platforms when they are booked. The standard should be modified to make it clear that the requirements would be fulfilled where counterparties dispatch documentation as soon as the trade is agreed.
- Many of the terms in relation to portfolio reconciliation and dispute resolution are open to interpretation or regional divergence (e.g. “material terms”, “regular intervals”, “prompt notification”, “after a reasonable period of time” and “timely fashion”). We acknowledge that the exact definition of these terms was likely left open to account for national and regional specificities. However, to ensure that a balance between this pragmatic approach and attaining global consistency is struck,



IOSCO should aim for a sufficient level of granularity where possible and explicitly state that different interpretations should not hinder positive equivalence assessments where similar outcomes are achieved in terms of risk mitigation.

Cross-border regulatory convergence

- We welcome the emphasis placed on cross-border cooperation and reducing conflicts. However, as currently drafted, the standards are unlikely to be sufficient to prevent/mitigate cross-border regulatory divergence. It would be beneficial if explicit guidance were added to the standards to state that jurisdictions should agree to defer to each other's legislation where the rules achieve similar outcomes.

Implementation

- The standards need to take account of the fact that the approach being taken by jurisdictions - in terms of the exact form the requirements take and their implementation timing - is not harmonised. As long as equivalent outcomes are achieved at the end of the process and within a reasonable period of time, the standards should be sufficiently flexible in terms of implementation forms and timetable.
- Clarification would be welcome that the standards do not have retrospective application. This would ensure there is certainty that trading documentation does not have to be retrospectively reviewed for all historic trades.

Please do not hesitate to contact us should you like to discuss any of the points raised further.

Yours sincerely,

Daniel Trinder
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