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Consultation Report on Risk Mitigation Standards for Non-centrally Cleared OTC Derivatives/Public Comment of Siemens AG

Register Number of Siemens Aktiengesellschaft: 4266797770-31

Dear Sirs,

We refer to your abovementioned consultation paper.

Siemens AG (Berlin and Munich) is a global industrial company engaged in electronics and electrical engineering, with its focus concentrated in the sectors industry, energy, healthcare, and infrastructure & cities. The Siemens Group has around 362,000 employees working to develop and manufacture products, design and install complex systems and projects, and tailor a wide range of solutions for individual requirements. For over 160 years, Siemens has stood for technical achievements, innovation, quality, reliability and internationality. In fiscal year 2013, Siemens had revenues of € 75.8 billion and a net income of € 4.2 billion (IFRS). Further information is available on the Internet at: www.siemens.com.

Siemens AG mainly uses derivatives to hedge risk positions which result from the group's worldwide business transactions. Therefore the existence of an efficient and flexible derivative market is essential for Siemens AG, and is in our opinion a key prerequisite for promoting economic growth within the European Community and elsewhere.

We appreciate the opportunity to participate in this consultation process and have the following comments to your questions and statements below.

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I. General Comments

As a matter of principle, we appreciate the idea of IOSCO to develop a set of universal risk management standards for uncleared derivatives. This might reduce ambiguity between several jurisdictions who have not yet implemented such standards and those who already have, and might as well limit the variations between existing and future concepts. Business across borders and jurisdictions has become such a standard for the "Real Economy" that it is highly important to limit bureaucratic costs stemming from market supervision rules involved. This is neither to say that such supervision does not serve a common purpose, nor that it has to be identical across all jurisdictions. Though the latter would be preferable from an operational standpoint, it is not a realistic target to achieve. These points, however, have to be taken into account when drafting such general standards as IOSCO is proposing.

Looking at the details of the proposal it becomes clear that they are based on existing rules implemented in regulations such as Dodd-Frank Act and EMIR. We believe it is a very sensible approach to draw from such sources, but are missing a very critical cornerstone: IOSCO should clearly state in the text that the proposed rules are not meant to "override" comparable ones already implemented in other jurisdictions. For European companies this would be highly important as the IOSCO proposal is very close to what has been mandated by EMIR, but not identical. This, however, could lead to interpretation problems or even conflicts which must be avoided in our view.
To minimize inconsistencies between jurisdictions we would further strongly advise IOSCO not to specify any more details like deadlines, frequencies, or definitions, other than suggested in the recitals. We believe the framework presented should better try to set standards with regard to techniques and areas of attention than try to be a full-blown rulebook that would not require any further adjustments. This would increase the probability of its application across a wider range of jurisdictions in our view, as it would allow regulators to easier apply the standards to their respective market practices and environments.
Last, not least, IOSCO encourages "covered entities" to apply the proposed standards in their transactions even with those entities that are not. As this would increase operational burdens for counterparties that do by definition not pose a risk for the financial system, such transactions should remain out of scope. In most cases such entities would be smaller non-financial companies that are using derivatives only to reduce risks from their operative businesses.

II. Comments on Individual Rule Proposals

II.1 Standard 1/Scope of Coverage
As already commented under I. we believe it is highly important for IOSCO to make clear that the proposed rules do not supersede any similar rules or regulations in the G 20 already in place or scheduled. While the paper does demand a consistency of local rules with margin requirements for uncleared OTC derivatives, it does not provide any statement as given above. We suggest to include appropriate wording either in the initial comments to this standard, paragraph 1.2 or in the following Explanatory Notes to make this case.

II.2 Standard 3/Trade Confirmation
We again refer to our general comments suggesting it is preferable to avoid specifying exact timeframes for the confirmation process to avoid collisions with those of local rules like Dodd-Frank Act or EMIR already being in place. This is even more important as such rules might be subject to changes: EMIR for example does include a step-up process reducing confirmation deadlines over the years. We further welcome statements that leave the decision about the exact methods to be used (e.g. electronical or other means) to counterparties on the basis of reasonal practicability.

We believe that relationships among trading parties will in the long run always result in solutions which are economically viable for both sides, depending on type of business and transaction frequency. It would not be proportionate to force every market player to use specific means simply because those are available in the market. For certain transactions electronic confirmation is not (yet) available or is not appropriate from a cost-benefit perspective. Therefore, it is very important that confirmation via fax, e-mail etc. continue to be acceptable. This includes negative affirmation, which is widely used for internal transactions of non-financial companies to reduce operative complexity.
The requirement to report unconfirmed transactions to the relevant authorities should be restricted to financial counterparties only, as is the case under EMIR. Due to their longer experience with financial market regulation, financial companies are far better equipped with required processes and structures available. Therefore, they should be reporting unconfirmed transactions with their clients, including non-financial companies.

II.3 Standard 5/Reconciliation

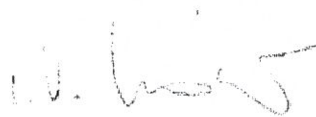
We again point to the importance to draw a line between IOSCO proposals and risk management rules already in place in certain jurisdictions. Reconciliation for example is a risk management tool required under EMIR for all market players, not only for the systemically relevant. However, for that reason, EMIR does not require to reconcile valuations from all counterparties: non-financial companies not breaching the defined clearing thresholds are not required to track valuations. This again demonstrates the importance of leaving preference to rules already established in some jurisdictions to avoid confusion. We further reiterate we would not advise to add more detail to this chapter with regard to thresholds or frequencies to avoid collisions with comparable rules.

II.4 Standard 6/Portfolio Compression

We agree with IOSCO that portfolio compression will not always be appropriate. This is especially the case for derivatives used by non-financial counterparties for risk-mitigating purposes, as these instruments are in general held until maturity, subject to adjustments in case the underlying business or market expectations have changed. As long as there is an underlying business, there is no reason for a portfolio compression, which is processed to eliminate redundant contracts, simply because there are no such contracts. Even worse, eliminating "similar" or offsetting contracts will in many cases create problems with regard to hedge accounting treatment. We again reiterate we would not advise to add more detail to this chapter with regard to thresholds or frequencies to avoid collisions with comparable rules in other jurisdictions.

Sincerely yours,

Siemens Aktiengesellschaft



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