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BDEW Bundesverband der Energie- und Wasserwirtschaft e.V.
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Position Paper

Consultative Document

Margin requirements for non-centrally-cleared derivatives

Berlin, 28. September 2012

The German Association of Energy and Water Industries (BDEW) welcomes the opportunity to comment the consultation document emerging from the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) joint Working Group on Margining Requirements (WGMR) on "margin requirements for non-centrally-cleared derivatives".

BDEW represents 1,800 members of the electricity, gas and water industry. In the energy sector, we represent companies active in generation, trading, transmission, distribution and retail.

BDEW supports the objectives and already today, margining agreements are commonly applied by counterparties in energy wholesale markets. Margining is an efficient tool for energy companies to mitigate credit risks which result from hedging market price risks.

BDEW fears that the application of the proposed margining requirements for non-centrally-cleared derivates imposes additional costs for our member companies. BDEW sees it as essential that any regulation proposal on margining requirements must be in line with the existing regulation of EMIR, which has a clear approach on how to treat non-financial companies.

BDEW restricts its answer on the most relevant main points.

Main Points from BDEW

- The treatment of non-financial companies as established in EMIR should also be applicable for the proposed principles. Non-financials below the clearing threshold of EMIR should also be exempted from the BCBS/IOSCO-principles.
- BDEW sees it as essential that those non-financial companies, which are not obliged under EMIR to centrally clear their derivatives should not be required to post margins bilaterally.
- The beneficial effects of derivatives used for hedging purposes by non-financial energy companies are commonly acknowledged among regulators and are reflected in certain legislations, e.g. EMIR and Dodd-Frank. These activities do not pose a risk to the stability of the financial system.
- BDEW urges for a sufficiently timed phase-in period to reduce the burden to our member companies.
    - As a minimum the application should be coordinated with the implementation of EMIR.
    - The phase-in period should give non-financial companies adequate time to adjust their processes and internal policies to the use of collaterals.

- Intra-group transactions do not increase the risk position of the whole group and it is inappropriate to require margining for these transactions. This obligation would also contradict already existing legislations, e.g. EMIR.

- The proposed standards should adequately reflect the common collateralisation practice of non-financial companies.
    - Collateral should not be exchanged more frequently than once a month
    - Margin thresholds and minimum transfer amounts should be applied and
    - Segregation of collateral should not be mandatory.
- BCBS/IOSCO should refrain from developing a "one size fits all" approach and should leave the details e.g. of the asset classes acceptable for collateralisation and the threshold approach to the discretion of the contract partners.
- The determination of asset classes acceptable for collateralisation should take into account that non-financial companies do not have access to central bank liquidity.
    - BDEW would prefer to provide more flexibility for counterparties to agree on collateral they regard as being appropriate to effectively mitigate the risk related to the transaction.
    - It is also important to acknowledge bank guarantees as collateral, as provided in EMIR to secure derivative transactions settled by CCPs.
    - Furthermore, acceptable collateral should comprise tangible assets, which are already used in bank lending. In order to acknowledge the uniqueness of every transaction, supervisory authorities should refrain from developing an exclusive list of eligible collateral.
- BDEW welcomes efforts to conduct a quantitative impact study to assess the impact of the proposed margin requirements.
    - The study should explicitly cover non-financial companies and analyse the impact on the liquidity of current OTC markets.

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