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International Organization of Securities Commissions
Madrid
Spain

Basel Committee on Banking Supervision /
Bank for International Settlements
Basel
Switzerland

BY EMAIL

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The Bank of New York Mellon's comments on the BCBS-IOSCO Consultative Document concerning Margin Requirements for Non-Centrally-Cleared Derivatives (the "Consultative Document")

Introduction

BNY Mellon is grateful for the opportunity to respond to the questions raised in the Consultative Document. Our position on certain of the issues raised is set out below.

BNY Mellon supports the introduction of measures to ensure appropriate margining of non-centrally-cleared derivatives as part of a coherent and integral strategy to meet the objectives of the G20 reform programme. As acknowledged in the Consultative Document, many of the elements of the programme are inter-related. This should have a bearing on how and when measures within the scope of the current exercise are determined.

Other regulatory initiatives, most notably in the area of liquidity and capital requirements, must also be borne in mind in formulating a sensible response to the issues raised in the Consultative Document. With these issues in mind we welcome the quantitative analysis proposed. It is important, however, that market participants are permitted to respond at a later stage in the process, with the benefit of the results of that analysis.

About The Bank of New York Mellon

The Bank of New York Mellon, founded in 1784, is now a multi-faceted financial holding company providing banking and investment and asset services globally. Headquartered in New York, BNY Mellon has approximately $25.9 trillion in assets under custody or administration – making it one of the largest global custodians active in settlement, payment and financial market services activity throughout the world - and $1.2 trillion in assets under management on behalf of underlying clients. BNY Mellon is located in 36 countries and services over 100 markets worldwide.

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BNY Mellon has actively supported and participated in many efforts to reduce systemic risk since its founding. BNY Mellon was one of the founding members of the New York Clearing House Association in 1853, which provided a mechanism for banks to settle their daily accounts with each other in a single secure location and which provided a line of defence against shocks to the system during times of financial crisis.

BNY Mellon comments on issues raised in the Consultative Document

Whether requirements should apply to all derivative transactions that are not cleared by CCPs

We support the principle that appropriate margining practices should be in place for derivatives that are in-scope. As to which classes of derivatives should be within scope, we think it is relevant that a transaction may fall outside the scope of the mandatory clearing regime for one of a number of reasons. If a transaction falls outside the mandatory clearing regime because the key risks associated with that transaction are mitigated by means other than central clearing (as is held to be the case in relation to certain fx transactions) it would seem appropriate to also exclude that transaction from the proposed regime on collateral. By contrast, if the reason for the exclusion from the clearing regime has to do with the degree of standardisation only, such transaction should fall within scope of the proposed regime on collateral, all other things being equal.

We would also make the general point that appropriate margining practices for certain asset classes should be customised according to the risk profile of the asset classes concerned. Certain kinds of options contract are an illustration of this point.

Thresholds and other moderating factors

We support the use of a device such as a threshold amount or a minimum payment amount so as to avoid the unnecessary exchange of relatively small margin payments. We acknowledge that there is a trade-off in terms of simplicity on the one hand, which may militate towards a simple threshold approach, and risk-sensitivity on the other, which may militate towards a more risk-based approach, perhaps involving the application of weightings or factors to different classes of market participant.

Retrospective effect

We would oppose the application of the proposed rules to transactions that have already been executed and instead propose that the requirement should apply to new business only. Our concerns here stem from (1) the logistical effort required at a time of relatively scarce resources and (2) the need to avoid arbitrary distortive effects on the commercial balance of the transactions involved.

Eligible Collateral

The detailed arrangements on eligible collateral must balance the need for confidence that it may be readily liquidated when needed, at or near the relevant value, versus difficulties of scarcity that are anticipated, especially at the high quality end. In light of the increasing demands on scarce collateral that are likely to arise from various regulatory initiatives that are currently underway we would

propose a relatively flexible approach, such as a principles-based approach. On a point of detail we would support the addition of money market funds as eligible collateral.

Treatment of provided margin

The manner in which margin is held and treated - variation and initial, cash and non-cash - is fundamental to the success of the entire reform programme, and not just that of the current exercise. Within many national jurisdictions there is legal uncertainty associated with the holding of collateral, and this is compounded by the differences in approach between jurisdictions, both in terms of potential regulatory arbitrage and difficulties relating to cross-border transactions. It is difficult to see how this and other related regulatory initiatives will work efficiently without co-ordinated reform of insolvency legislation.

As to the re-use of posted collateral by the receiver, we acknowledge the trade-off between the need to ensure that posted collateral is retrievable by the posting counterparty on the one hand and, on the other, the need wherever possible to avoid further diminishing the stock of available collateral. We would support in principle an approach such as that advocated by the US SEC, which seeks to retain liquidity through permitting re-use provided that certain conditions (including appropriate segregation and compatibility with applicable insolvency law) are met.

Interaction of national regimes in cross-border transactions

We agree that the objectives listed under this heading are important to the G20 reform programme as a whole ((i) regulatory arbitrage opportunities are limited (ii) a level playing field is maintained (iii) there is no application of duplicative or conflicting margin requirements to the same activity and (iv) there is substantial certainty as to which national jurisdiction's rules apply). We support the approach proposed in the Consultative Document as a credible and clear way of pursuing the third and fourth objectives listed but we note that it would not help to meet the first and second objectives.

We would welcome the opportunity to contribute further to the current exercise, ideally with the benefit of results of the quantitative analysis referred to in the Consultative Document.

Yours faithfully,

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