



Instituto de Crédito Oficial

Basel Committee on Banking Supervision

Bank for International Settlements

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Switzerland

International Organization of Securities Commissions

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Spain

Exemption of public entities with the explicit guarantee of a State from the provisions related to margin requirements for non-centrally cleared derivatives.

Dear Sirs:

We are grateful for the opportunity to send our comments to the second consultative document on margin requirements for non-centrally cleared derivatives.

The focus of our comment will be the scope of these obligations, since, as it is stated in the document, margin requirements should not apply to “sovereigns, central banks, multilateral development banks or the Bank for International Settlements”.

Regarding this point, paragraph 2 (c) specifically sets out that transactions in which this kind of entities are counterparties are excluded from the margin requirements. We appreciate the clarification that it will not be necessary for any counterparty to either collect or post collateral in respect of these transactions. As far as we know, no previous ruling implementing the systemic risk reduction from OTC derivatives had clarified this point.

However we believe some clarification would be needed, especially to determine the meaning of “sovereigns”, in order to include certain entities such as Instituto de Crédito Oficial (ICO).

ICO is a corporate state-owned entity of those contemplated in article 43.1.b) of Act 6/1997, of 14 April, on Organisation and Operation of the State General Administration, ascribed to the Ministry of Economy and Finance through the

Secretariat of State for Economy; it has the legal nature of Credit Institution and the consideration of State Financial Agency (article 1 of ICO's Bylaws, approved by Royal Decree 706/1999, of 30 April, adapting Instituto de Crédito Oficial to Act 6/1997, of 14 April, on Organisation and Operation of the State General Administration, and approving its Bylaws). The strategic management of ICO, as well as the assessment and control of the results of its activity are incumbent upon the Secretariat of State for Economy. ICO is subject to the control of the Office of the Comptroller ("Intervención General") of the State Administration, and of the Court of Exchequer ("Tribunal de Cuentas").

The purposes of ICO are the support and promotion of economic activities contributing to the growth and improvement in the distribution of the national wealth and, in particular, of those that, due to their social, cultural, innovating or environmental transcendence, merit their being fostered.

The functions of ICO are to contribute to palliate the economic effects arising from situations of severe economic crisis, natural catastrophes or other similar events, pursuant to instructions from the Council of Ministers or the Government's Delegate Commission for Economic Affairs, and to act as instrument for the implementation of certain economic policy measures, following the fundamental guidelines established by the Council of Ministers, the Government's Delegate Commission for Economic Affairs or the Ministry of Economy and Finance, and, subject to the rules and decisions approved to that respect by its General Board.

As we have mentioned, ICO has the legal nature of credit institution and, in order to comply with its purposes and functions it may develop, without prejudice to the competences of the different Ministerial Departments and Entities and Bodies ascribed to them, a wide range of financial activities. However, ICO may not raise funds by means of deposits from the public in general.

Due to ICO's condition as the Kingdom of Spain's Financial Agency, it has privileged rules for fund raising, which make securities issued by ICO similar to Government debt. The most important feature is that debts and obligations incurred by ICO when raising funds benefit, as regards third parties, from the State guarantee. The said guarantee is explicit, irrevocable, unconditional and direct. Also, the issue of securities by ICO follows a simplified procedure, and these securities are admitted to trading, ex officio, on organized secondary securities markets in Spain. ICO's securities can be traded, when applicable, on the book-entry government debt market. Finally, debts incurred by ICO when raising funds performed outside the national territory and for non-residents, have the same fiscal regime as Government debt.

Therefore, Instituto de Crédito Oficial is a credit institution but, most importantly, it is public entity, integrated in the State's General Administration, and even though it is



authorized to carry out almost any type of financial operations, its activity is limited to the fulfillment of its purposes, under the strategic management of the Secretariat of State for Economy. The range of financial operations performed by ICO includes derivatives and FX Forward.

ICO's special nature has already been taken into consideration in the European Union Legislation. For example, Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006, relating to the taking up and pursuit of the business of credit institutions, sets out that it shall not apply to the Central Banks of Member States, post office giro institutions and certain other institutions in some countries, specifically, in Spain, the "Instituto de Crédito Oficial" (by virtue of article 2 of the mentioned Directive). Also, on the issuer's side, because ICO's issues benefit from the State's guarantee, ICO is also exempt from Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (pursuant to article 2. d) of Directive 2003/71/EC).

Foreign legislation with extraterritorial application, such as the United States's Foreign Account Tax Compliance Act, has also recognized ICO's specific features and activities, considering ICO explicitly excepted from the requirements that this Law imposes to Foreign Financial Entities, in the context of the Agreement reached between the United States and Spain to facilitate FATCA implementation.

Finally, in the context of the Basel II Framework, ICO's claims are treated as claims on the Kingdom of Spain, in accordance with the provision in paragraph 58 part 2. We understand this to be an essential point in this discussion. The margining requirements, among other measures, try to reduce systemic risk from OTC derivatives. The reason for sovereigns to be excluded from this requirement is that they do not pose systemic risk. If claims against ICO are treated as claims against the Kingdom of Spain for risk-weighting purposes, the same conclusion should be reached for ICO's situation, and therefore ICO should be expressly included in the exemption from the margining requirements.

International rules developing the Group of Twenty's (G20) concerns on reducing the systemic risk from OTC derivatives, have included certain exceptions to certain entities assimilated to sovereigns. In this regard, the Regulation (EU) N° 648/2012 of the European Parliament and of the Council of 4 July on OTC derivatives, central counterparties and trade repositories (EMIR), provides for an exemption for certain public sector entities owned by central governments which have explicit guarantee arrangements provided by central governments.


Also, the rules implementing the Dodd-Frank Act regarding the end-user exception to the clearing requirements, recognizes that the clearing requirement should not apply to foreign governments (including in the definition of "foreign governments" KFW).

For all the above reasons, ICO should be considered equivalent to “sovereigns”, and be explicitly excepted from all margining requirements. To this end, we suggest either of the following three approaches:

- To expressly cite ICO in paragraph 2.4 as a not covered entity.
- To include “public sector entities with the explicit guarantee of a State” in the list of not covered entities in paragraph 2.4.
- To state that “sovereigns” include “public sector entities with the explicit guarantee of a State”.

We would greatly appreciate it if you took into considerations our suggestion.

Best regards,

A handwritten signature in black ink, appearing to read "I. Cortez Senter", enclosed within a large, loopy oval stroke.

INSTITUTO DE CRÉDITO OFICIAL