March 2013

Basel Committee on Banking Supervision and the International Organization of Securities Commissions

Margin requirements for non-centrally cleared derivatives Second Consultative Document

Comments from NASDAQ OMX[1]

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[1] EU Transparency Register ID: 76648765687-29

Key principle 1

Appropriate margining practices should be in place with respect to all derivative transactions that are not cleared by CCPs.

Requirement 1

1.1 Except physically-settled FX forwards and swaps, the margin requirements apply to all non-centrally cleared derivatives. In relation to physically-settled FX forwards and swaps, the BCBS and IOSCO seek comment on the margin requirements for these instruments. The BCBS and IOSCO note that the BCBS is updating the supervisory guidance for managing settlement risk in FX transactions. The update to the supervisory guidance covers margin requirements for physically-settled FX forwards and swaps. The BCBS and IOSCO are considering how the WGMR's work and the FX settlement risk supervisory guidance should be coordinated.

Q1. Given the particular characteristics of physically-settled FX forwards and swaps, should they be exempted from initial margin requirements with variation margin required as a result of either supervisory guidance or national regulation? Should physically-settled FX forwards and swaps with different maturities be subject to different treatments?'

Answer 1

Considering the possible differences in interpretation, the variations in resources for supervision, technical infrastructures and cost for expertise between countries in the union that could lead to significant differences in how and where the exemption of variation margin would be implemented. A supervisory guidance would limit the variations of national legal modifications to some degree even though the level of national financial development are quite possible to affect the implementation of the BCBS Supervisory guidance for managing settlement risk in FX transaction.

Answer 2

Regarding the considerations proposed by the BCBS in Supervisory guidance for managing settlement risk in FX transaction and particular the "substantial FX settlement-related risks due to rapid growth in the FX trading market. Many banks underestimate their principal risk and other associated risks by not taking into full account of the duration of exposure between trade execution and final settlement. While such risks may have a relatively low impact during normal market conditions, they may create disproportionately larger concerns during times of market stress".

NASDAQ OMX acknowledges these serious shortcomings. Our consideration is particular regarding the fact that counterparty risk increases with the duration the transactions. NASDAQ OMX is of the opinion that not enough analysis has been done regarding counterparty risk on long dated FX forwards/swaps and is worried that by exempting these from margin requirements for non-centrally cleared derivatives, the objectives of the G20 to establish safe and sustainable financial markets are totally ignored.

The FX market has more than tripled over the last ten years whilst the actual cross boarder flows of products and services has stagnated since 2007. The FX market is today a market in its own right attracting not only those in need of a hedge due to import or export of products but more so those looking for alpha returns through active trading just like other asset classes. The FX Forwards and Swaps account for close to 50% of the total market volume and it would have serious implications if these products are to be treated with such leniency as exemptions for margining.

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