

**Comments of the European Association of Central Counterparties
(EACH) on the draft CESR-ESCB Recommendations for Central
Counterparties as amended for OTC derivatives**

This document contains the response of EACH to the CESR/ESCB Consultation Paper CESR/09-302 of 31 March on the Draft Recommendations for Draft Recommendations for Central Counterparties as amended for OTC derivatives.

In general the comments do not address critical issues but we feel that a number of small amendments should be made in order to clarify the intended meaning. In order to expedite the process we suggest drafting changes where feasible.

We are ready to answer any questions raised by these comments.

April 19, 2009

INTRODUCTION

Applying ESCB/CESR Recommendations to CCPs clearing OTC derivatives

8. *“relevant authorities have a keen interest to have unrestrained access to relevant data for the purpose of spotting trades and monitoring open interests in the market.”* While we understand and support the principle, it would be helpful to specify what kinds of trades should be “spotted” and why access to a warehouse (rather than to a trading platform) is the most appropriate mechanism. The reference to “open interests” – usually “open interest” in the context of listed derivatives – is presumably “in order to monitor the build-up of large exposures of market participants and customers, particularly in relation to specific instruments or market segments” and we suggest such wording is appended to the sentence, as well as the comment that “Such monitoring processes are typically the responsibility of exchanges in relation to organised markets.”

RECOMMENDATION 1: LEGAL RISK

This point, we accept, should perhaps have been made in the earlier consultation but throughout, there are a number of references to e.g. participants, direct participants, non clearing participants, clearing members (e.g. in paras. C 9 and C 12). We suggest that there are only two relevant sets of parties: a) the members/direct participants of the CCP and b) all others. In common parlance the first are usually “clearing members” and the second are, directly or indirectly, “customers of clearing members”. We suggest that all references are standardised as appropriate to one of these descriptions.

RECOMMENDATION 2: PARTICIPATION REQUIREMENTS

C. Explanatory memorandum

4. We suggest that there should be a reference to the particular case, relevant to OTC derivatives or other more complex/less liquid instruments, where there may be a requirement for members to assume an active role in the default management process of the CCP. For example the following could usefully be added: “A CCP may impose specific additional obligations on clearing members to participate in default management processes, for example participation in auctions of a defaulting clearing member’s proprietary positions. These may be particularly appropriate in the case of OTC derivatives in order to ensure a timely resolution of a large and complex portfolio and if necessary should be included in the relevant participation requirements.”(and a corresponding addition to the Assessment Methodology).

RECOMMENDATION 4: MARGIN REQUIREMENTS

C. Explanatory memorandum

3. This is also a point that could have been made earlier but we feel it is important in the current circumstances to request at this late stage. We would like the words “at least” to be inserted before “99%” in order that no CCP or supervisor should feel

obliged, where the current margin requirements are designed to cover more than 99% of movements, to reduce it to 99%.

RECOMMENDATION 6: DEFAULT PROCEDURES

C. Explanatory memorandum

3. We do not disagree with the final sentence “As regards credit derivatives, a CCP’s default procedures should provide for adequate mechanisms” but it is not clear what mechanisms are meant; if these are additional, it would help to have a description of what these additional mechanisms are and why they are relevant to credit derivatives. Possibly the intention is to require a specific default management process, which may be related both to participation requirements (see above), or other measures which may be necessary in order to satisfy authorities that a particular instrument can prudently be cleared at all. We would agree with such a position and recommend that it is stated here.

RECOMMENDATION 7: CUSTODY AND INVESTMENT RISKS

C. Explanatory memorandum

2. “rehypothecation” has been added to a list of potential bad behaviours on the part of a custodian that should be prevented. We suggest the sentence should begin “In this regard, a CCP should define the conditions under which assets may be rehypothecated while ensuring that they remain available at any time to the CCP, and ascertain ...” (which would be consistent with the text added to RCCP1 C 9).