Position Paper

Insurance Europe response to ESMA on the clearing obligation for financial counterparties with a limited volume of activity

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Summary

Insurance Europe welcomes the opportunity to respond to this European Securities and Markets Authority (ESMA) consultation paper. The document appropriately identifies several challenges that small counterparties and/or counterparties with limited derivatives activity face in practice. The need for a more proportional approach on the application of the European Market Infrastructure Regulation (EMIR) was already raised by Insurance Europe in its response to the recent European Commission call for evidence, so swift action in this area is very much welcomed.

Insurance Europe supports the proposal to keep the definitions of the categories of counterparties as they currently are and to postpone the date of application of the clearing obligation for category 3 by 2 years.

Questions from the consultation paper

Access to clearing for financial counterparties

Question 1: To which category of counterparties does your organisation belong: (1) in the context of the 1st Commission Delegated Regulation on the clearing obligation, and (2) in the context of the 2nd Commission Delegated Regulation on the clearing obligation?

Please indicate the likely category of counterparties if the determination has not been done yet. For respondents that are in none of the four categories, please indicate the nature of the activity performed in relation to the clearing obligation (e.g. CCP). For associations, please indicate the category of counterparties that you mainly represent.

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Insurance Europe represents 95% of the overall European insurance market[1]. The size and level of activity of European insurance companies ranges from very small entities and/or limited derivatives activity to large entities and/or significant derivatives activities. Therefore, Insurance Europe represents entities that could be part of either category 1, 2 or 3 of the current definitions as provided by the Delegated Regulations on interest rate risk and credit risk.

Insurance companies predominately use financial derivatives to hedge balance sheet risks. These hedging strategies - and the corresponding acquisition of financial derivatives - are important tools for insurers' asset liability management. EMIR has introduced a number of requirements that in practice translate into obligations that are burdensome, both in terms of initial implementation and ongoing operation, especially for small and very small companies.

Small companies also have hedging needs and, where the size of the risk exposure is limited, the company may decide to engage in hedging via derivatives, but only perform one transaction per quarter or per year. A single transaction would in fact trigger significant EMIR obligations, including collateral management on a daily basis. Such an entity would be faced with a decision of whether it is efficient from a risk and cost perspective to be hedged and could in the end be incentivised not to hedge because of overly-burdensome EMIR requirements. A reduction of hedging purely driven by the cost of regulatory compliance will lead to an increase of companies' idiosyncratic risk.

Question 2: If you offer clearing services, please provide evidence on the constraints that would prevent you from offering clearing services to a wider range of clients.

N.A.

Question 3: Have you already established clearing arrangements (1) for interest rate swaps? (2) for credit default swaps? If not, please explain why (including the difficulties that you may be facing in establishing such arrangements) and provide an estimation of the time needed to finalise the arrangements.

Many European insurance companies have already established clearing arrangements – and this is especially the case for larger entities, and entities that have significant derivative activities. However, a range of smaller counterparties and counterparties with limited derivatives activities have been facing challenges, and would therefore welcome a later implementation of the clearing requirements.

Current level of CCP clearing experience of financial counterparties

Question 4: Please provide information and data you may have that could complement this analysis on the level of experience and preparedness of financial counterparties with CCP clearing.

N.A.

Identification of Financial Counterparties with a limited volume of activity

Question 5: Do you agree with the proposal to keep the definitions of the categories of counterparties as they currently are and to postpone the date of application of the clearing obligation for Category 3? If not, which alternative would achieve a better outcome?

Insurance Europe supports the approach of an extension being provided to category 3.

[1] Based on level of premiums

New phase-in period for Category 3

Question 6: Do you agree with the proposal to modify the phase-in period applicable to Category 3, by adding two years to the current compliance deadlines?

Insurance Europe supports the two-year extension.

Scope of the proposed amendment

Question 7: Do you agree with the proposal to modify the three Commission Delegated Regulations on the clearing obligation at the same time?

Insurance Europe supports a parallel modification of the Delegated Regulations.

Insurance Europe is the European insurance and reinsurance federation. Through its 34 member bodies — the national insurance associations — Insurance Europe represents all types of insurance and reinsurance undertakings, eg pan-European companies, monoliners, mutuals and SMEs. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers generate premium income of €1 200bn, directly employ over 975 000 people and invest nearly €9 800bn in the economy.