Appendix. Feedback Statement

IOSCO Board Consultation Report – *Risk Mitigation Standards for Non-centrally Cleared OTC Derivatives*[1]

Comments were submitted to the IOSCO Board by the following 19 respondents and three other respondents (who have requested for their comments not to be made public) in respect of the consultation report entitled *Risk Mitigation Standards for Non-centrally Cleared OTC Derivatives* (the Consultation Report).[2]

1. ACI – The Financial Markets Association
2. Association Française de la Gestion financière (AFG)
3. Amundi Asset Management
4. Budesverband Investment und Asset Management e.V (BVI)
5. Chatham Financial
6. Chris Barnard
7. Deutsche Bank AG
8. Deutsches Aktieninstitut
9. European Fund and Asset Management Association (EFAMA)
10. German Banking Industry Committee (GBIC)
11. ICI Global
12. International Banking Federation (IBFed)
13. International Swaps and Derivatives Association, Inc (ISDA)
14. Investment Management Association (IMA)
15. Japanese Bankers Association (JBA)
16. Markit
17. Siemens AG
18. SWIFT
19. Thomas Murray Data Services

These comments were taken into account in the preparation of the final report on *Risk Mitigation Standards for Non-centrally Cleared OTC Derivatives* (the Final Report). This feedback statement summarises the major issues covered by the comments and explains the main changes that have been made in the Final Report.

In general, the respondents were supportive of the objectives and content of the nine standards and the accompanying key considerations and explanatory notes set out in the Consultation Report. Respondents sought further consideration on the following issues:

Scope of coverage

Several respondents agreed that the standards should only apply to transactions between covered entities while others felt that the standards should apply to all transactions irrespective of whether the counterparties are covered entities.

[1] CR06/2014, published 17 September 2014.

[2] http://www.iosco.org/library/pubdocs/pdf/IOSCOPD450.pdf

The Final Report maintains the position that the standards are applicable to all covered entities, i.e. financial entities and systemically-important non-financial entities. Consistent with the "Margin Requirements for Non-Centrally Cleared Derivatives", Report of the Basel Committee on Banking Supervision and the Board of IOSCO, the precise definition of covered entities will be determined by appropriate authorities through national regulation. Authorities may require the use of risk mitigation techniques in a proportionate manner depending on the level of risk concentration or activity undertaken by market participants.

Granularity of standards

There were diverse views regarding the granularity of the standards. A number of respondents requested that IOSCO provide more granularity in relation to certain standards, e.g. prescribing the timeframe for trade confirmation (in respect of Standard 3) and the frequency for portfolio reconciliation (in respect of Standard 5). However, others urged IOSCO to leave such details to the discretion of national authorities in implementing the standards in their respective jurisdictions.

Taking into consideration that domestic conditions may differ across jurisdictions, IOSCO is of the view that prescriptive, one-size-fits-all standards would not be practical or meaningful. The Final Report maintains the level of granularity of the standards as originally proposed in the Consultation Paper, with key considerations and explanatory notes revised where relevant to make clear the expectations set out by the standards.

Agreement on valuation methodology

Several respondents expressed concerns that a standard for covered entities to agree on and clearly document the process and/or methodology for determining the value of each non-centrally cleared OTC derivatives transaction could undermine the ability of covered entities to manage their risks in changing market conditions. The respondents also pointed out that some counterparties may not be prepared to disclose proprietary information about their valuation methodology.

The objective of Standard 4 is to promote legal enforceability and facilitate the effective functioning of processes for valuation of non-centrally cleared OTC derivatives transactions. Transaction valuation is crucial for determining margin requirements and therefore plays a primary role in risk management for non-centrally cleared OTC derivatives transactions. No OTC derivatives market participant should be required to disclose to its counterparty confidential and/or proprietary information about, or used in, any model it may use to value an OTC derivatives transaction. Notwithstanding the foregoing, to address the respondents' concerns, the word "methodology" has been removed from the Final Report and language has been added to clarify that covered entities should agree on the general process for valuation (e.g. the approach, the key parameters, and the data sources for such parameters). The Final Report also makes it clear that the valuation process should be reasonably designed to avoid disputes, and should a dispute on valuation arises, covered entities should agree on how such disputes should be resolved as set out under Standard 7.

Several other respondents also cited potential difficulties for covered entities to agree in advance on an alternative methodology to be applied in the event of the unavailability of certain inputs for the valuation of a transaction. To address this concern, the Final Report has

been revised to remove the explanatory note regarding agreement on an alternative methodology. Instead, the Final Report makes clear that valuation documentation should include an alternative process or approach by which counterparties will determine the value of a transaction in the event of the unavailability or other failure of relevant inputs.

Agreement on dispute resolution process

Some respondents were concerned that an agreement on a dispute resolution process would restrict the ability of covered entities to pursue other options for recourse such as through legal proceedings.

The Final Report has been revised to clarify that covered entities should agree on the mechanism or process for determining how disputes in material terms or valuations of a non-centrally cleared OTC derivatives transaction should be resolved as soon as practicable. An agreement on such a mechanism or process would not prevent covered entities from pursuing other options for recourse such as arbitration or legal proceedings.