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**RE: Response to CP90 – Consultation on the Supervision of Non-Financial Counterparties under EMIR**

Dear Sir/Madam

Pfizer's Dublin Treasury Centre, based in Dublin since 1991, conducts various centralized treasury activities on behalf of the Pfizer group. There are a number of Irish incorporated legal entities which comprise the treasury centre and these entities interface with third party banks in order to manage Pfizer's FX and interest rate risks. Foreign exchange and interest rate exposures arising in the Pfizer group are managed by executing derivatives between the treasury centre and its Pfizer affiliated entities, with offsetting transactions between the treasury centre and external banks. In addition the Pfizer Dublin Treasury Centre hedges its own risks by entering into derivative trades with external banks.

Volumes are significant due to Pfizer's scale, however the derivative activity is for commercial hedging purposes and therefore Pfizer is classified as an NFC- under EMIR. We have over the last couple of years put systems and processes in place to manage our obligations under EMIR and welcome now the opportunity to engage with you on the supervision of non-financial counterparties. We therefore attach our responses to the specific questions posed in CP90.

Yours Sincerely

A handwritten signature in blue ink that reads "Susan Webb".

SUSAN WEBB  
Managing Director

**EMIR: Responses to Consultation paper 90 on the Supervision of Non-Financial Counterparties.**

***Question One: Do you think that this is the optimal categorisation which the Central Bank should use to underpin our supervisory framework? If not what other categorisation would you propose?***

The triangle should be reconstructed. The categorisations should align with ESMA and recognise NFC- entities. It is not clear what is meant by complex in the current structure. Most treasury operations fall into the NFC- bracket and many would be viewed as large but not complex. The risks associated with such entities do not warrant a direct engagement model.

From the various discussions that the Central Bank has had over the last number of weeks with individuals and representative bodies it appears that it was intended that NFC- entities fall into the middle section of the triangle, however this should be clarified.

***Question Two: Should the minimum threshold be set at a level above the criteria specified in the S.I. and if so, what would be the appropriate level?***

No view on this.

***Question Three: Do you envisage any operational or other difficulties with the Central Bank adopting this approach? If so please provide commentary as to how these difficulties could be resolved.***

Yes.

For an entity with large volumes or multiple entities it would be administratively burdensome to have to operate certain daily procedures and record- keeping in order to capture data for ERR reporting. Considerable investment has already been made to ensure that obligations under EMIR are met and a further layer of procedure and reporting incremental to the effort that has already been made is not in our view an efficient use of resources.

A more reasonable approach for NFC- entities would be to request all in scope entities to register with the Central Bank and to provide summary data around the scale of their hedging practices in order to give the Competent Authority a sense of the derivative activity in each entity. Alternative approaches to the ERR should be considered for such entities, for example

1. Such entities would also be required to submit a statement signed by the directors on an annual basis confirming that they have to the best of their knowledge complied with their EMIR obligations under ESMA. How the directors get comfortable with this should be a matter for each entity. In some cases the directors might rely on internal audit, in others it might be a review of the controls or a report from senior management on how compliance is achieved. Under this approach there could also be a mechanism for spot checks by the Central Bank in certain circumstances or

2. Alternatively, internal or external audit might be asked to report to the board on an annual basis confirming that the entity has the systems and processes in place to comply its EMIR obligations. Where internal or external audit are unable to report in the affirmative on this then a report should be made to the Central Bank. Again there could be a mechanism here for spot checks by the Central Bank.

There are many obligations that a company has in relation to its day to day business under varying regulations and no other obligation is monitored through a mechanism of reporting to a third party.

We are not aware of similar ERR obligations in other EU member States and believe that such requirements are excessive and disproportionate to the risks posed by NFC- entities. We note that S.I. No. 443 of 2014 gives the Central Bank the power to request ERRs. However, in deciding whether to exercise that power, the Central Bank must have regard to the following factors: (a) whether any other powers available to the Central Bank would be more appropriate in the circumstances and (b) the cost implications for the relevant counterparty. Given (i) the significant costs and administrative burden that would be placed on NFC-s and (ii) the limited compliance obligations of NFC-s under EMIR, it does not appear to be proportionate for the Central Bank to require the submission of ERRs certified by a third party on an annual basis for NFC-s.

This is not an exhaustive list but the items below highlight some of the areas that would be operationally difficult under ERR:

- The start date. Providing historic data is not feasible as some of the data requested now in the ERR has not been kept as was not required by ESMA. In addition there were numerous start up difficulties post the go live date of 12 February 2014 which were outside the control of NFC- entities. The start date should be either the date of the Central Bank's appointment as competent authority or a date in the future after the consultation period has concluded and the final framework determined.
- The reporting currency should be the functional currency of the entity. Many larger treasury entities have currencies other than Euro as their functional currency. Having to convert cross currency trades where one side is not the functional currency is going to require systems development.
- Valuations are not required for NFC- entity under ESMA and therefore Table 2.4 should be amended to clarify this.
- Where an entity has chosen to avail of delegated reporting with multiple banks it will be difficult to determine on a daily basis why a report is late.
- There appears to be no distinction between external derivative activity and intercompany derivative trades. If this is the case then trades between Irish entities within the same group would be reported twice and there would be a large number of individual ERR submissions just reflecting intercompany activity that would need to be completed.
- Overall there is too much data required in the ERR.

***Question Four: Should the Central Bank accommodate tailored submission periods from NFCs or should it determine a fixed date for the submission of all ERRs?***

If an entity is submitting an ERR then they should be given the flexibility to determine what the reporting date will be provided this is within a certain reasonable time period from the initial start date.

***Question Five: If the ERR was not adopted, how should the Central Bank charge supervisory costs to all categories of NFCs? Should we for example have a sliding scale for NFCs, which is dependent on the level of derivative activity?***

The Central Bank should not penalise larger treasuries who hedge their risks. The fees charged should vary according to the ESMA categorisations NFC+ and NFC- with a smaller fee for entities below the minimum threshold

***Question Six: If you are of the view that the ERR should be adopted, as broadly outlines, are we asking the right questions in the ERR? If there are questions which can be improved upon, please let us have this feedback.***

See also responses to question three above.

If the ERR is adopted, it should be a flexible document capable of change as practical issues arise. Would recommend that Central Bank maintain a dialogue with a variety of users who would input on a continuous basis into the questions in the ERR.

***Question Seven: If there is specific feedback re any professional disclosers, please submit details to the Central Bank.***

N/A

***Question Eight: What is your view on the role of the Third Party Assessor?***

If a third party assessor is required then their role should be to review the controls and procedures that a company has in place to satisfy the company's obligations under EMIR and to test that those controls and procedures are operating as intended. There should be some form of reasonableness and materiality incorporated into this assessment.