Consultation on the Supervision of Non-Financial Counterparties under EMIR

Questions for consideration

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?

Comments

We agree with the Central Bank of Ireland's (CBI's) categorisation framework outlined on page 16 of the consultation paper, including that direct supervision by the CBI should only apply to NFC+ firms. However, we believe that the exemption threshold should be revised as we have described in the response to question two below.

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?

Comments

Exchange Trade Derivatives (ETD) positions that are listed on markets that are not deemed equivalent by the European Commission (EC) are deemed to be "OTC derivatives" under EMIR (currently all non-EU markets). Until this is addressed by the EC we believe that this results in an artificial inflation of the gross notional value of OTC derivative contracts and the number of outstanding OTC derivatives contracts for NFCs that hold such positions.

Given the above we believe that CBI should either:

- set the minimum threshold at a level above the criteria currently specified in the S.I. (i.e. greater than 100 outstanding contracts and €100 million gross notional value) for NFCs that hold such positions; or
- exempt ETDs that are listed outside of the EU from the definition of OTC derivatives / the minimum threshold exemption.

We also believe that the minimum threshold specified in the S.I. should exclude part c) i.e. that NFCs have delegated the reporting of all of their OTC derivative contracts. We respectfully do not agree that there is a direct connection between the delegation of EMIR reporting to a third party and whether a NFC is "small". In some cases a "small" NFC may be self-reporting out of necessity (e.g. a third party entity has not offered them delegated EMIR reporting).

We also have some points that we would be grateful for clarification in relation to the specified criteria:

- under part a) of the minimum threshold criteria what constitutes an OTC derivative contract? Is this the number of positions held or should it be the number of lots held summed across all positions (particularly relevant if non-EU listed ETDs have to be included)?
- under part a) of the minimum threshold criteria do we have to determine if greater than 100 OTC derivative contracts were held at the end of any one day during the reference period ?
- under part b) of the minimum threshold criteria should the calculation of gross notional value be calculated as of the reference date for the ERR using the closing prices as of that date?

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?

Comments

We agree with the CBI's proposed approach that medium NFC- firms should not be subject to direct supervision but instead complete an annual ERR (although we have outlined practical issues with completing the proposed version of the ERR in our response to question six below).

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?

Comments

We agree with the CBI's proposal to allow medium NFC- firms the discretion to compile the ERR at a chosen submission date. This would likely help from a practical and cost efficiency standpoint as the reference date for the ERR could for example tie in with the same date as the NFC's year-end financial audit. In such cases, a NFC's financial auditor could complete their independent assessment of the ERR using data that they would already be familiar with during the preparation of the annual financial statements.

We would also suggest that the first ERR reference date should be year-end 2015 i.e. there should not be a return requiring data from year-end 2014. This suggestion is due to the practical difficulty that NFCs would face in completing tables 2.2 and 2.3 in the ERR with the required Trade Repository data for year-end 2014. We have outlined the range of ongoing issues with receiving and deciphering trade and position reports from Trade Repositories (particularly where reporting has been delegated to a third party) to the EMIR team in the CBI in separate correspondence and also in response to question 6 below.

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?

Comments

We have no suggestions regarding supervisory costs as we support the ERR concept provided the practical difficulties outlined in the response to question six are addressed.

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

Comments
We are in favour of adopting the ERR; however we have some questions below regarding the current proposed format.

a) Reference Period

We would like to request clarification on what is meant by "reference period" versus "reference date" as some tables in section 2 of the ERR request information across a "reference period".

- is the "reference period" always the twelve month period from the previously submitted ERR?
- what will be the "reference period" of the first ERR that is submitted?
- it is unclear how the "reference period" and "reference date" in the tables in Section 2 of the ERR relate to the "Reference start date" and "Reference Dates" detailed in fields 1.7 and field 1.8 of section 1. It would be helpful to use the same terminology across the ERR.

b) Scope of derivatives to be included in section two
We would be grateful if you could confirm that the scope of the totals to be reported in Tables 2.2 – 2.5 should be limited to positions in OTC derivatives only or should it include all positions that have been reported i.e. including ETDs listed on regulated markets?

c) Table 2.2
As mentioned in the response to question two, we would like to have the term "no. of contracts" in second column Table 2.2 clarified. For example, is the number of contracts equivalent to the number of lots (quantity) or is it the number of contracts held with different counterparties? Perhaps it would be helpful if the CBI were to provide worked examples of how this value should be calculated especially in the context of ETDs?

d) Table 2.4
Regarding the term "Valuation" in Table 2.4, does this mean "Notional Amount" or is it the current value of derivative less the original cost?

If the term "Valuation" is the latter, our understanding is that only NFC+ and FC entities are required to report a valuation of their derivative contracts on a daily basis under EMIR and as such would expect that for NFC- firms the questions in fields 2.4 (a) and 2.4 (b) are not relevant.

e) Table 2.5
We would also like clarification on the term "Gross Volume" – is this the market value and if so, should it be calculated on end of day positions or on trade by trade basis? Additionally, what is meant by "Gross Stock of derivative contracts" and how should this value be determined? It would be helpful if the CBI provided formulas on how they expect gross volume and gross stock to be calculated for each product type (options, futures, CDS, CFD, etc.). This would ensure that all reporting NFCs are providing data in a consistent manner. This has been an issue with EMIR reporting as there are few agreed standards / little ESMA guidance on how calculated fields are to be determined and as a result different formulas are being used across the industry for the same field e.g. notional amount.

f) Trade Repository Values
Completion of the ERR requires firms to be in a position to reconcile between the TRs and their own records. At present reports produced by DTCC contain a number of issues preventing reconciliation (e.g. Product ID is missing, cannot easily distinguish between Transactions & Positions, etc.) In addition there are the issues around reconciling trades and positions reported by delegators to our own records due to lack of agreed standards (e.g. some provide ISIN some provide Exchange Code, some calculate notional amount using strike price others use previous close price, etc.). We have outlined these difficulties at greater length in separate correspondence.

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

Comments

None.

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

Comments

We are supportive of the ERR and the proposed role of the Third Party Assessor despite the additional cost that will be borne by NFCs in this regard.

We note that there could be a delay in the completion of the third party assessment because professional bodies would need time to agree upon set industry procedures in relation to the Report of Factual Findings. We believe that this is another reason why the timing of the first reference date of the ERR should be year-end 2015.