European Banking Federation
Secretary General

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SF/GB

Mr Carlo COMPORTI
Secretary General
The Committee for European Securities Regulators (CESR)
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cc: *wmoeliker@cesr.eu*

Email

Brussels, 17 April 2009

Subject: ***EBF response to ESCB-CESR Recommendations***

Dear Mr Comporti,

Please find enclosed the EBF response to ESCB-CESR Recommendations for CCPs for derivatives (EBF ref. D0730A-2009).

Yours sincerely,

Guido Ravoet

Encl. (D0730A-2009)

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Comments on the ESCB-CESR Consultation paper

Draft Recommendations for Central Counterparties, Revised for CCPs Clearing OTC Derivatives (CESR / 09-302)

The European Banking Federation (EBF)[1] welcomes the opportunity to comment on the Draft Recommendations for Central Counterparties (CCPs) which have been revised for CCPs clearing OTC Derivatives.

The EBF has stated its support of central clearing in Europe for Credit Default Swaps (CDS) in a letter to Commissioner McCreevy in mid-February 2009.[2] The EBF played an instrumental role in forging consensus across the banking community in this respect and we welcomed the European Commission reconvening its Derivatives Working Group, in which the EBF takes part, to work towards the establishment of CCP clearing for CDS in Europe by 31 July 2009.

Over recent months the EBF has presented a consolidated set of requirements that banks active in the derivatives business, the users of the CCPs, would expect to see from central clearers that set up to clear OTC contracts.[3] On these occasions **the EBF has consistently called for *inter alia* the relevant application of ESCB-CESR Recommendations for prospective OTC derivative CCPs.** We also welcomed the fact that there was a good deal of common ground between the authorities' user requirements for OTC derivatives clearers and the community of the users.

General Remarks

The EBF supports initiatives that lead to safe, reliable and efficient market infrastructures in general and in the OTC derivatives space in particular. The Federation presented overall favourable comments to the first round of consultation on the ESCB-CESR Recommendations.[4]

[1] Set up in 1960, the European Banking Federation is the voice of the European banking sector with members from 31 EU and EFTA Member States. The EBF represents the interests of some 5,000 European banks: large and small, wholesale and retail, local and cross-border financial institutions. Since the vast majority of securities business in Europe is carried out by banks, the EBF is an authoritative voice on the evolution of financial markets in general and securities business in particular.

[2] See EBF letter to Commissioner McCreevy of 17 February 2009: http://www.ebf-fbe.eu/Content/Default.asp?PageID=238

[3] See, for example, EBF presentation at the ECB on 24 February 2009: http://www.ecb.int/events/pdf/conferences/ccp_cds/AGENDA_ITEM3_EBF.pdf?89f050e74fd1e5b6b1ceb6fc9dede9c7

[4] See EBF response to ESCB-CESR of 23 January 2009: http://www.ebf-fbe.eu/Content/Default.asp?PageID=238

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We welcome the statement that the risks in clearing OTC derivates do not significantly differ in nature from those of clearing on-exchange transactions, but that the greater complexity of OTC derivatives and the relative illiquidity of certain contracts can lead to differences in risk management (Introduction, Paragraph 4). **The potential illiquidity of certain OTC derivatives should be taken into account,** given that illiquidity of the traded assets implies the CCP absorbs a higher liquidity risk in addition to counterparty risk in case of default of a CCP participant.

Furthermore, **a clear policy from the CCPs concerning the eligibility of assets is an important aspect of the CCPs' ability to absorb illiquidity and/or counterparty risk.** We support the emerging outcomes on this issue in the structured dialogue between dealers, buy-side, infrastructure and authorities whereby it would be the CCPs' responsibility to define the eligibility of OTC products in consultation with users and following subsequent authorisation by supervisory authorities.

In terms of the banks' role in clearing, it is worth noting **the EBF has been working with the Committee of European Banking Supervisors (CEBS) over a number of weeks and months in relation to its work stream on custodian bank risk management.** Following an exchange of views with CEBS on 24 March 2009 in London during an Open Hearing on this subject, it was indicated that the Committee was inclined to carry out further exploratory work with regards to the regulatory regime applicable to General Clearing Member (GCM) banks.

In view of the further exploratory work CEBS may undertake in this area and that GCM banks are already fully covered by prudential and market regulatory regimes, **we do not believe that further regulation of GCMs on the grounds of their services to non-clearing members (NCM) lies within the original scope of the ESCB-CESR Recommendations (Introduction, Paragraph 6) and cannot therefore be justifiably introduced in this context.**

Specific Remarks

Recommendation 2 / Explanatory Memorandum Paragraph 3

The EBF disagrees that risk-related criteria are the only reasons for denial of access. Access could be denied due to significant legal, technical and/or operational reasons, which taken together would present a compelling reason to limit risk within the CCP by denying access to potentially problematic participants.

Consistent with the general remarks on this issue, we regard it as **inappropriate to address risks of GCMs in recommendations created for CCPs.** GCMs are strictly supervised entities and act on a bilateral basis with individual market participants in contrast to CCPs acting as a market infrastructure. Therefore, GCMs should stay outside of the scope of the recommendations and further work in this area should be left to CEBS, which has already announced its intention to look into this issue further.

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Recommendation 4 / Explanatory Memorandum Paragraphs 2 and 3

It would be useful and appropriate to define the notion of "highly liquid instruments" either in the Recommendations or in the CCPs' handbook to give a degree of guidance on this issue. The definition should in turn be arrived at after due consultation with the market, i.e. the CCP and its users.

In the last sentence of Recommendation 4C, we suggest that the words "to an appropriate extent" be deleted. **Margin calculation requirements should be made available to CCP participants and prospective participants on a continuous basis.**

Recommendation 5 / Explanatory Memorandum Paragraph 10

Dedicated clearing funds are an appropriate way to manage risks in the CCP, especially single risks. However, for the users dedicated clearing funds will imply an even higher cost to access the CCP compared to one single fund for all cleared products.

User demand in this area varies from market to market so **the decision to set up multiple clearing funds should be user driven** and potentially a point upon which the CCPs that are to set up in Europe to clear OTC products could differentiate themselves.

Recommendation 6 / Explanatory Memorandum Paragraph 5

The EBF welcomes this amendment. Market participants have shown their ability to handle such situations, with LCH.Clearnet being able to close Lehman's positions in a very short timeframe.