



EUROPEAN CENTRAL BANK

EUROSYSTEM

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Re: International Swap Regulation Study

Dear Ms Markman Radhakrishnan and Mr Sabahi,

I would like to reply to your request dated 8 August 2011, asking me to review and provide feedback on the Request for Comment on the International Swap Regulation Study as mandated in Section 719 (c) of the Dodd-Frank Act.

As regards details on the EU rule-making and/or a detailed comparison between EU legislative and secondary regulatory provisions with corresponding US regulations, you may wish to address the European Commission, which is the competent EU institution. The European Commission has proposed a regulation on OTC derivatives, central counterparties and trade repositories (the European Market Infrastructure Regulation or EMIR) and is also directly involved in the ongoing regulatory dialogue.

I understand that, more generally, you also invite contributions to your study highlighting similarities and differences between the regulatory approaches, which are important to evaluate whether the degree of consistency of regulation across jurisdictions is appropriate and/or sufficient, and which steps could be taken in the US to bring statutory requirements of the Dodd-Frank Act and the CFTC or SEC regulation

into line with laws and regulations in other jurisdictions. In this respect, I would like to mention one aspect of the mandatory clearing provisions being introduced in various G20 jurisdictions, which is of direct relevance to central banks, and on which I believe consistency across jurisdictions is desirable to allow central banks to perform effectively their statutory tasks and public policy functions.

More specifically, the ECB¹ is mandated by the Treaty on the Functioning of the European Union with, among other functions, the task of managing the official foreign reserves of the EU Member States that have adopted the euro as their national currency (the ECB and the national central banks (NCBs) of the Member States that have adopted the euro are referred to collectively as the “Eurosysteem”). The ECB may also mandate operational tasks, including in the field of reserve management, to the Eurosysteem NCBs.

As already mentioned in the ECB letter to the CFTC and SEC dated 6 May 2011 (a copy of which is enclosed), the ECB is concerned about the possible inconsistency between US and EU legislation with respect to differing rules on exempting public international institutions, and more specifically the ECB and the Eurosysteem NCBs, from the clearing and reporting obligation.

More precisely, both the Dodd-Frank Act and EMIR, arguably following the same logic, foresee an explicit exemption for the central banks of the respective jurisdictions. However, while the current draft of the EU Regulation² on central clearing of OTC derivatives foresees an explicit exemption³ for the ECB and several other public international institutions (possibly including foreign central banks), the Dodd-Frank Act exemptions are limited to the Federal Reserve System, the federal government or a federal agency (the exemption being achieved by way of defining “swap” and “security-based swap”).

One way to possibly achieve a greater degree of consistency with the European EMIR legislation could be to treat certain institutions (e.g. public international institutions and/or certain foreign central banks, such as the ECB and the Eurosysteem NCBs) in a way comparable to the Federal Reserve System. Achieving consistency with the official status and tasks of central banks seems all the more warranted as the public tasks of both the Federal Reserve System and the ECB are broadly comparable, and both are explicitly excluded from the clearing obligation in the respective jurisdictions.

Should no exemption be granted to the ECB, one of our major concerns is that mandatory reporting of ECB operations may affect the ECB’s ability to fulfil the mandate that it has been given by the Treaty on the Functioning of the European Union. For instance, on certain occasions central bank market activities, if subject to public disclosure and external supervision, may cause signalling effects to market players that could ultimately hinder the attainment of policy objectives through such actions (the CCP itself would also have a privileged view of all central bank-cleared transactions).

Furthermore, if a central bank were to become a member of a CCP under conditions similar to those of other market participants, sensitive moral hazard issues may arise (e.g. a central bank having to participate in the CCP default procedures, especially in the event of a crisis).

¹ “ECB” is to be understood here as the European Central Bank and the national central banks of the Eurosysteem to which the ECB may mandate operational tasks such as the management of foreign exchange reserves.

² Proposal for a regulation of the European Parliament and of the Council on OTC derivative transactions, central counterparties and trade repositories - Presidency Compromise (18 July 2011).

³ EMIR, title I, art. 1, no. 4

In this regard, it should be noted that the ECB has worked closely with the Federal Reserve System in responding to the financial crisis, and its ability to respond similarly in the future should not be hampered by the implementation of the Dodd-Frank Act.

I stand ready to elaborate on any of the matters raised above, including possible operational/legal ways to design an exemption.

Yours sincerely,



Daniela Russo

Director General

Directorate General Payments and Market Infrastructure

Cc: Jeff Marquardt (Board of Governors of the Federal Reserve System)