

**From:** Gilberg, David J.  
**Sent:** Thursday, April 12, 2012 12:10 PM  
**To:** Mesa, Jacqueline H.  
**Cc:** Jochen Leubner; Raisler, Kenneth M.; Juzenas, Eric  
**Subject:** RE: EMIR

Thanks again, Jackie. I just want to clarify one small point in my earlier e-mail. I referred to the attached letter from the BaFin as confirming that KfW is a “public sector entity” for purposes of the relevant EMIR provision. The BaFin letter was technically not addressing EMIR, because the letter was issued in 2006. The letter was focused on the status of KfW as a “public sector entity” for purposes of the Consolidated Banking Directive. That had the effect of confirming that counterparties could use the same risk weighting for KfW as is applied to the sovereign. However, EMIR also makes reference to the relevant provision of the Consolidated Banking Directive and, because KfW is a public sector entity for purposes of the Directive, it is also a public sector entity under EMIR. It was for this reason that we included the BaFin letter in my e-mail to you – the letter does in fact confirm that KfW is a public sector entity under EMIR, but it does not do so directly. This clarification doesn’t change the substance of my point, but I just want to make sure that we are completely clear on the purpose and effect of the material we provided to you.

Please let us know if you have any questions or if we can provide any further information or be helpful in any way in this process. Thanks again for taking the time to meet with us earlier in the week.

Best regards,

David

**From:** Mesa, Jacqueline H.  
**Sent:** Tuesday, April 10, 2012 2:44 PM  
**To:** Gilberg, David J.; Juzenas, Eric  
**Cc:** Guenther Braeunig; Jochen Leubner; Raisler, Kenneth M.  
**Subject:** Re: EMIR

Dear David,

Thank you very much.

Jackie

**From:** Gilberg, David J.  
**Sent:** Tuesday, April 10, 2012 12:16 PM  
**To:** Mesa, Jacqueline H.; Juzenas, Eric  
**Cc:** Guenther Braeunig; Jochen Leubner; Raisler, Kenneth M.  
**Subject:** EMIR

Jackie and Eric – Thanks again for taking the time to meet with us this morning. As we discussed, attached are (1) the full text of the EMIR statute; (2) an excerpt from the statute containing the provision exempting “public sector entities;” and (3) a letter from the BaFin, the German regulator, confirming that KfW is a “public sector entity” for purposes of EMIR. Please let us know if you need anything else or if we can provide further assistance.

Thanks very much again.

Best regards,

David

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## Title I

### Subject matter, scope and definitions

#### Article 1

##### Subject matter and scope

1. This Regulation lays down *clearing and bilateral risk management* requirements for *OTC* derivative contracts, *reporting requirements for derivative contracts* and uniform requirements for the performance of activities of central counterparties and trade repositories.
2. This Regulation shall apply to *CCPs and their clearing members*, to financial counterparties and to trade repositories. It shall apply to non-financial counterparties *and trading venues* where so provided.
3. Title V shall **■** apply *only* to transferable securities and money-market instruments, as defined in *Article 4(1)(18)(a) and (b) and (19)* of Directive 2004/39/EC.

4. This Regulation shall not apply to:
- (a) the *members* of the *ESCB* and other *Member States'* bodies performing similar functions and other *Union* public bodies charged with or intervening in the management of the public debt;
  - (b) *the Bank for International Settlements.*
5. *This Regulation shall not apply to the following entities, with the exception of the reporting obligation under Article 6:*
- (a) multilateral development banks, as listed under Section 4.2 of Part 1 of Annex VI to Directive 2006/48/EC;
  - (b) *public sector entities within the meaning of Article 4(18) of Directive 2006/48/EC where they are owned by central governments that have explicit guarantee arrangements provided by central governments;*
  - (c) *the European Financial Stability Facility and the European Stability Mechanism.*

Anlage 2

16.08.2006

Reference: BA 27-GS 4032-2006/0010 (Please quote in your reply)

**Risk-weighting of exposures to Kreditanstalt für Wiederaufbau (KfW) in accordance with Directive 2006/48/EC (Consolidated Banking Directive)**

With regard to the above-mentioned issue and referring to Annex VI Part 1 §§ 15 and 16 of the Consolidated Banking Directive 2006/48/EC I would like to comment as follows on the risk weighting of KfW:

KfW is a public law institution. The Federal Republic of Germany holds 80 % and the German federal states 20 % of the capital of KfW. The liability assumed by the Federal Republic for the fulfilment of KfW's payment obligations is equivalent to an explicit guarantee (§ 1a of the KfW Law). As a result of the liability of the Federal Republic of Germany there is no difference in the risk of exposures to the Federal Republic of Germany and the risk of exposures to KfW.

KfW is a public sector entity in the meaning of Article 4 para. 18 of the Consolidated Banking Directive and exposures to KfW are treated in the same way as exposures to the Federal Republic of Germany (Annex VI, Part 1, § 15 of the Consolidated Banking Directive).

Bonn, 16.08.2006



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