EUROPEAN ASSOCIATION
OF CORPORATE TREASURERS

Mr Andrea Enria
Chairman
European Banking Authority (EBA)
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London EC2N 1HQ|UK

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Paris, 17 November 2014

Re: CVA risk capital charge exemption for non-financial counterparties

Dear Mr Enria,

I write to you concerning the work currently undertaken by the EBA on the implementing measures of the Capital Requirements Regulation (CRR), and in particular the work carried out concerning the Credit Valuation Adjustment (CVA) risk capital charge calculation.

The European Association of Corporate Treasurers has for several years defended the legitimate use of OTC derivatives by non-financial companies to mitigate risk arising from their business. The economic importance of this gained an important political recognition in the form of the exemption from central clearing under Article 10 (3) of the European Market Infrastructure Regulation (EMIR) and a read-across exemption from CVA risk capital charges under Article 382(4) of CRR.

These exemptions are instrumental in allowing EU non-financial companies to use OTC derivatives to hedge the impact of movements in currencies, interest rates and commodities. This benefits the wider economy by allowing companies to focus on their core purpose of building strong businesses, which through their growth create employment and investment. If non-financial companies which are below the clearing threshold as defined in EMIR could not benefit from such exemptions, they would face the following adverse consequences:

- The challenge of managing liquidity arising from cash collateralisation;
- A consequential reduction in risk mitigation as companies elect not to hedge i) when transactions are cleared because the liquidity risk is too high or ii) when derivatives are not cleared because the CVA risk capital charge makes it prohibitive;
- An absence of suitable hedging contracts as standardisation fails to match the specific risk characteristics of the underlying business needs.

Non-financial companies' use of OTC derivatives is not systemically risky and therefore such an outcome would be completely disproportionate.

We understand however that as part of the CVA data collection exercise the EBA has re-opened the question of the exemptions granted in CRR Article 382(4). We are extremely concerned by such an inappropriate development – all the more so as the implementing measures should not put in question the level 1 text. We therefore strongly urge the EBA not to proceed with any work that would seek to amend in any way the exemption for non-financial counterparties. The simple reference to the possibility of reviewing the exemptions, as done by the EBA, creates legal uncertainty for financial institutions, which is reflected in the prices and conditions they can currently offer to their non-financial clients. More fundamentally, we believe that in discussing the possible removal or re-definition of any of the exemptions, the EBA is exceeding the mandate given to it in CRR Articles 382(5) and 482 as neither one of these Articles allows such a review. Indeed, Article 382(5) only calls on the EBA to review the calibration and thresholds for application of CVA risk capital charges to non-financial counterparties established in a *third country*. Article 456 states that EBA shall monitor the own fund requirements for credit valuation adjustment risk and by 1 January 2015 submit a report to the Commission but that this report can only be used for amending Article 382 points (1) to (3), which therefore excludes any amendment of the exemptions granted under Article 382(4).

We have no doubt that you share our concerns on the importance of maintaining the ability of European non-financial companies to have access to fairly-priced and customised OTC derivatives products. We would welcome the opportunity to meet you or your staff at your earliest possible convenience to expand on our concerns in greater detail.

Your sincerely,

Richard Raeburn
Chair – European Association of Corporate Treasurers

Copy to:

Roberto Gualtieri, Chair of the Economic and Monetary Affairs Committee, European Parliament
Othmar Karas, Rapporteur on CRD IV – CRR