

PRESS RELEASE

The Association of Corporate Treasurers

EU Commission communication on OTC derivatives a step in the right direction

London

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The Association of Corporate Treasurers (ACT) is pleased to note that the Commission Communication (Ensuring efficient, safe and sound derivatives markets: Future policy action - COM(2009)563) begins to recognise the manner in which non financial institutions use OTC derivatives and the consequences of altering the market's operations. The ACT, the European Association of Corporate Treasurers and a large number of companies in the UK and mainland Europe have been active in explaining their use of derivatives to officials and have appreciated the willingness of the Commission and others to engage in these briefings.

It is a positive step that the communication acknowledges that most non financial institutions are not of systemic importance. This is a key principle which needs to be borne in mind when detailed legislation is being drafted. However, the Commission's communication on OTC derivatives does contain a few red flags that could give cause for concern, such as:

- Potential for higher costs associated with derivatives that are not subject to margining
- The need for activity of qualifying non financial institutions to fall "below a given threshold"
- The Commission's apparent intention to penalise bilateral derivative transactions as a mechanism to push for more transactions to go through a central counter party.

Stuart Siddall, Chief Executive of the ACT said:

"This communication is very welcome and important as it does recognise that non financial institutions play a key role but should not be caught by moves to improve banking regulation and transparency. They have realised that it would be almost impossible for companies to find the funding to collateralise all their derivative positions without significant damage to economic activity and prosperity generally."

Not only do non financial companies account for only a small part of total derivative outstandings but there are further limits to the systemic significance of the companies - individually and collectively. A bank's function includes taking measured and controlled credit risks on clients and likewise companies monitor standing of banks and limit their exposure to the banks.

There is a long legislative process ahead and treasury associations and individual companies will need to continue to monitor developments in order to ensure that unnecessary and unintended harm to customers of the financial services sector is minimised.

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NOTES TO EDITORS

1. The ACT agrees that if Central Counter Parties (CCPs) are to have a more significant role they need to be safe and robust. The extent to which detailed legislation is required to achieve that safety is debatable. Furthermore, as there is likely to be more than one clearing house, a requirement for agreement between them to permit netting of margin across CCPs will be essential if economic efficiency is not to suffer.
2. The ACT agrees that legal protection on collateral held by a CCP is very important and is particularly complex for those non members who have to access a CCP through a clearing member.
3. The ACT questions some of the assertions contained in the communication, for example: whether non financials have benefited from under pricing of risk in the derivative markets, whether regulatory arbitrage is really likely to be a big problem, whether costs in the OTC derivatives markets will decrease over time.
4. The communication asserts the object of "Making it mandatory to clear standardised contracts through CCPs." We understand the desire for this for intra-financial services contracts, although we think that transparency is more important. Care will be needed to ensure that working out of this statement does not negate the statement on being committed to avoiding variation margin requirements for non financials. Much will very much depend on the definition of standardised contracts and other details.

Background comment on OTC derivatives can be found at <http://www.treasurers.org/otcderivatives>.

About the ACT

The Association of Corporate Treasurers (ACT) is the international body for finance professionals working in treasury, risk and corporate finance. Through the ACT we come together as practitioners, technical experts and educators in a range of disciplines that underpin the financial security and prosperity of an organisation.

The ACT defines and promotes best practice in treasury and makes representations to government, regulators and standard setters.

We are also the world's leading examining body for international treasury, providing the widest scope of benchmark qualifications and continuing development through training, conferences and publications - including The Treasurer magazine.

For further information visit www.treasurers.org