The Bank of New York Mellon – London Branch
One Canada Square
London E14 5AL
United Kingdom

T +44 (0)20 7570 1784

RE: Consultative Report from the FSB, BCBS, CPMI, and IOSCO on the effects of reforms on incentives to centrally clear over-the-counter derivatives

BNY MELLON'S RESPONSE

The Bank of New York Mellon Corporation (BNY Mellon) is a global investments company dedicated to helping its clients manage and service their financial assets throughout the investment lifecycle.

BNY Mellon provides services to clients and end-users of financial services globally. Accordingly, BNY Mellon is keen to ensure global financial markets operate fairly and consistently, and that common standards are implemented in a way that ensures a level playing field.

As one of the world's largest investment services and investment management firms, BNY Mellon welcomes the opportunity to respond to the Consultative Report from the FSB, BCBS, CPMI, and IOSCO on the effects of reforms on incentives to centrally clear over-the-counter derivatives.

The Consultative Report provides a valuable overview of the majority of the issues stemming from recent regulatory reforms, with respect of the existing incentives to centrally clear over-the-counter (OTC) derivatives.

However, BNY Mellon believes that some aspects are not amply explored in the report, in particular with regard to market access obstacles for a diverse range of market participants.

In this response, BNY Mellon will set out some background considerations and directly address Questions 4 and 9.

BNY Mellon would be delighted to engage further as helpful on our response and regarding future developments on this important topic.

Yours sincerely,

Veronica Iommi
European Bank General Counsel and EMEA Head of Public Policy,
Legal Department
BNY Mellon

Background considerations

Strengthening the resilience of the financial system as a whole has been one of the key aims of regulatory reforms to date.

Intermediaries play an important role in facilitating risk distribution in the financial system, thereby reinforcing its resilience.

In order for a risk distribution mechanism to function adequately, it is fundamental that a diverse range of market participants have access, whether direct or indirect, to market infrastructure.

In particular for smaller market participants, it is important that intermediaries have the ability to provide relevant services that allow market participants easy and cost-effective access to market infrastructure.

BNY Mellon answers to Questions 4 and 9

Question 4. The consultative report seeks to identify the most important regulatory and non-regulatory factors which affect incentives to centrally clear OTC derivatives for dealers, other financial intermediaries, large clients and small clients. Please identify any significant missing factors and comment on the relative strength of regulatory and non-regulatory factors discussed in the consultative report.

An important topic is the topic of obstacles and difficulties faced by market participants in connecting to market infrastructure, specifically in this context, in connecting to CCPs.

The report discusses briefly the topic of cost of accessing CCPs, and treats cost as a variable that represents the full range of obstacles and difficulties in accessing a CCP.

The report identifies that taking account of transaction volumes it is more expensive for a smaller market participant to access a CCP, and to be able to clear a transaction, than for a larger market participant. At a very high level, this approach is not unreasonable, and the conclusion valid.

But keeping the analysis at such a high level means that important individual cost drivers, and important regulatory and non-regulatory factors that affect the obstacles and difficulties faced by market participants in accessing CCPs, are missed.

One important element that deserves more analysis is the topic of collateral. At a simple level, accessing a CCP in order to clear a transaction means that a market participant has to provide margin i.e. collateral. This can be a problem for some categories of market participants, such as pension funds. However, even if a market participant has collateral, the market participant still has a set of practical problems of how to access, value, deliver, and optimise that collateral.

In many cases, market participants use intermediaries to provide collateral-related services, and to deal with such problems. Intermediaries provide important and valuable services, because they provide access to multiple payment systems, and multiple CSDs, and because they can consolidate in their books positions in securities issued in multiple issuer CSDs. Market participants may need to use collateral to support different types of trading activity (i.e. may also need to provide collateral to parties other than CCPs). Intermediaries facilitate the recall, re-use and optimisation of collateral.

A problem occurs when CCPs, either based on their own decision, or based on regulatory requirements, impose limitations and restrictions on how they will hold collateral, and on how a market participant can deliver collateral to them. Such restrictions impede the free-flow of collateral, and represent an obstacle for market participants to access CCPs. A notable example of such a restriction is contained with the Level 2 rules for Article 47.3 of the European Union's Regulation on CCPs and OTC Derivatives (EMIR).

9. Are there any areas where potential policy adjustments should be considered which would enhance the incentives for or access to central clearing of OTC derivatives, or the incentives to provide client clearing services?

As set out in our answer to Question 4, we believe that an area in which potential policy adjustments should be considered is the area of access to collateral management services, including more specifically the area of regulatory restrictions on the provision of collateral management services. Such restrictions make access to collateral management, and to collateral management services, more difficult for market participants, and thus impede their access to CCPs.