

Brussels, 8 May 2017

Annex 1 to circular NBB_2017_16

Content of the notification/application file for clearing obligation exemption

Scope

This circular letter is applicable to the Belgian financial and non-financial counterparties subject to the supervision of the NBB, as defined in article 2 of the Regulation (EU) No 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (hereinafter referred to as the EMIR regulation) which have intragroup OTC derivative transactions.

This includes Belgian credit institutions, Belgian insurance and reinsurance undertakings, Belgian stockbroking firms (sociétés de bourse), Belgian payment institutions, settlement institutions and assimilated, hereinafter referred to as “the institutions”.

The file could build on the relevant existing reporting to the NBB, i.e.: the information transmitted in application of circular letter NBB_2014_02 on preparatory measures for Solvency II and the information transmitted in application of circular letter NBB_2011_09 for the risk management function of the credit institutions. Therefore, the file should aim at providing complementary information more specifically focused on the risks and management of the intragroup derivative transactions.

It should include in particular the following relevant information for each pair of counterparties notifying/applying for the intragroup derivative exemption from the clearing obligation:

- The name of the (parent) company for which the intragroup exemption is notified, with its LEI code
- Its classification in line with the article 2 of EMIR: investment firms, insurance undertaking, credit institution, etc.
- Its address
- The person submitting the notification (name, function, contact)
- Either the pair of counterparties, or the list of all the pairs of counterparties, for which the clearing exemption for intragroup derivatives is notified/applied for, including:
 - The names of the respective counterparty
 - Their LEI
 - Their classification according to article 2 of EMIR
 - The country where they are established
 - Their category of institution according to art. 2 of RTS ((EU) 2015/2205 of 6/8/2015
 - If relevant: If the counterparty is establishing in a third country, has the Commission adopted for that country a delegated act as mentioned in article 13.2 of EMIR?
 - Whether the entity is exempted from own funds requirements on individual or sub-consolidated basis (whenever relevant)
 - According to which part of the article 3 of EMIR do the transactions comply with the definition of intragroup transactions according that article: 3.2.a, 3.2.b, 3.2.c, 3.2.d?
 - The nature of consolidation between the (parent) company and the counterparty
 - The nature of the derivative contracts: description of the activities that require derivative transactions and why those transactions are intragroup
- With focus on the risk management and control of derivatives, intragroup derivative transactions and the activities covered by EMIR, details on the centralized procedure for the management and control of risks, including:
 - Whether there is a centralized risk management function within the group which is responsible for an appropriate and centralized evaluation, measurement, and control of risk for all the entities concerned within the group and with an organizational structure which is clear, with a division of responsibility well defined, transparent and coherent.
 - To which entity this centralized risk management function belongs to?
 - Who is the competent supervisory authority of this entity?
 - Which management body is responsible for the periodic review of the strategies and policies for all the risks encountered by the entities of the group? What's the frequency of this review?
 - How does the centralized risk management function steer the exposures and risks of intra-group derivatives held for hedging/trading purposes as part of the overall (consolidated/combined) risk measurement and management (market, interest rate, credit, liquidity risks,...) ?
 - Are the following risks adequately covered by efficient procedures for identification, assessment, management, control and reporting for all entities within the group? (focus on the control of derivatives and intragroup derivative transactions)

- Credit and counterparty credit risk: yes/no; frequency of the centralized evaluation, measure, control and reporting?
 - Market risk: yes/no; frequency of the centralized evaluation, measure, control and reporting?
 - Interest rate risk: yes/no; frequency of the centralized evaluation, measure, control and reporting?
 - Liquidity risk: yes/no; frequency of the centralized evaluation, measure, control and reporting?
 - Operational risk: yes/no; frequency of the centralized evaluation, measure, control and reporting?
 - Concentration risk: yes/no; frequency of the centralized evaluation, measure, control and reporting?
 - Legal risk: yes/no; frequency of the centralized evaluation, measure, control and reporting?
 - Residual risk: yes/no; frequency of the centralized evaluation, measure, control and reporting?
- Other risks (please specify): yes/no; frequency of the centralized evaluation, measure, control and reporting? What are the specific procedures for the identification, assessment, management, control and reporting of the transactions between the different sectors of activities (e.g.: bank/insurance)
 - Are there transparent communication mechanisms established within the organization, so that the management body, senior management, business lines, the risk management function and other control functions can all share information about risk measurement, analysis and monitoring? Please describe and mention the frequency of communication. Specify and describe the mechanism and the frequency of communication for the derivatives and intragroup derivative transactions.
 - Are there risk policies, internal procedures and information systems which are consistent throughout the institutions within the group and ensuring that all sources of relevant risks can be identified, measured reliably, and monitored on an aggregated basis and also, to the extent necessary, by entity, business line, and portfolio?
 - Is key risk information regularly reported to the central risk management function to enable appropriate centralized evaluation, measurement and control risk across the relevant group entities. What ensures that the information is complete, comprehensive and reliable?
 - How do the procedures in place ensure the consistency and the efficiency of monitoring, control and management of risks within each of the entities of the group?
 - In summary, what ensure specifically that risks linked to OTC intragroup derivatives are adequately identified, measured and analysed, monitored and managed, avoiding the need to centrally clear those intragroup derivative transactions?
 - Please provide a detailed description of the organization put into place in order to identify, assess, manage, control and report the risks to which the entities of the group are or could be exposed, as well as the internal control mechanisms put into place

Signature of the notification/application file.