

Brussels, 8 May 2017

## **Annex 2 to circular NBB\_2017\_16**

### **Content of the application file for collateral exchange obligation exemption for intragroup derivatives**

#### 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 should aim at providing complementary information more specifically focused on the risk mitigation techniques on non-centrally cleared derivative transactions. It should at least include the following relevant information for each pair of counterparties applying for the intragroup derivative exemption from the collateral exchange obligation:

- The name of the **institution subject to the NBB supervision** for which the intragroup exemption is requested, with its LEI
- Its classification in line with the article 2 of EMIR: investment firms, insurance undertaking, credit institution, etc.
- Its registered address
- The person submitting the notification (name, function, contact)

The file should also include the relevant information for each **intragroup counterparty** for which the collateral exchange exemption for intragroup derivatives is requested. In particular it should at least include the following information:

- The name
- The LEI
- The classification according to article 2 of EMIR: investment firms, insurance undertaking, credit institution, etc.
- The country where the counterparty is established and the relevant national competent authority.
- If relevant: If the counterparty is established 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)
- Due to which part of the article 3 of EMIR does the entity comply with the definition of intragroup transactions according that article: 3.1, 3.2.a, 3.2.b, 3.2.c, 3.2.d?
- The nature of consolidation between the (parent) company and the counterparty
- Under which part of the article 11 of EMIR does the entity request an exemption from the collateral exchange obligation for intragroup transactions (11.6, 11.7, 11.8, 11.9, and 11.10)?

	Financial C/P	Non-financial C/P	Third-country Entities
Financial C/P	11.6	11.10	11.8
Non-financial C/P	11.10	11.7	11.9
Third-country Entities	11.8	11.9.	Not applicable

- An analysis verifying whether or not a practical or legal impediment as defined in articles 33 and 34 of delegated regulation (EU) n°2016/2251 exists, clearly detailing the underpinning, the reasoning as well as the conclusion. This analysis should include (but is not limited to):
  - An analysis of any potential impediments due to recovery-like plans (e.g.: contingency funding planning, recovery planning, business recovery planning...).
  - An analysis on any potential practical impediments to the prompt transfer of own funds (availability of unencumbered liquid assets and operational efficiency for timely settlement of obligations relating to OTC derivative contracts and transfers of liquidity).
  - An internal legal opinion confirming the absence of legal impediment to prompt transfer of own funds and repayment of liabilities, including at least the assessment of the criteria set forth in the Delegated Regulation EU 2016/2251 of 4 October 2016 under Article 33 (for each pair of counterparties for which the institution notifies/applies for the intragroup derivative exemption from the collateral exchange obligation). The internal opinion should

be completed by an external opinion covering at least the criteria defined in Article 33 a and b of the above mentioned delegated regulation<sup>1</sup>.

- A description and assessment of the key risk management procedures related to intragroup derivatives which show that they are adequately sound, robust and consistent with the level of complexity of the relevant derivative transactions and that the institution is compliant with the requirements under article 11.1, 11.2 and 11.4 of EMIR. This description and assessment should include (but is not limited to):
  - Full or partial exemption request limited to initial margins exchange.
  - Describe the business model and the purpose of intragroup derivative transactions.
  - A description of the risk management framework as it applies to different types of derivatives and the additional controls/procedures that apply to derivatives of varying complexity (including timely confirmation, daily valuation, portfolio reconciliation, dispute resolution procedures, stress tests on the volatility of intragroup derivatives exposures, monitoring of counterparty and concentration risk limits, and an estimation of pillar II capital complementary to pillar I requirements in absence of intragroup collateral exchange).
  - A description of the risk management framework as it applies to different types of collateral provided and received for these derivatives (including the use of relevant netting and/or collateral exchange agreements).
  - A description and documentation of the risk measurement systems including (but not limited to) an overview of the models used for margin calculations, netting procedures, aggregation procedures.
  - A copy of any relevant netting and/or collateral exchange (master) agreements (e.g. ISDA/CSA) used by the institutions in the derivative management framework.
  - Any relevant opinions/reports from internal audit, the external audit, legal and model validation on the derivative management framework (including the use of relevant netting and/or collateral exchange agreements).
  - Any other relevant risk management documentation.
- Details on the stock of OTC derivative contracts per pair of intragroup counterparties for which exemption is requested:
  - Please provide us with the aggregate average notional amount for the requesting counterparty as calculated according to article 39 of Delegated regulation 2016/2251.
  - Please fill in the attached table.



Quantitative  
Template EMIR.xlsx

- Signature of the notification/application file.

<sup>1</sup> In case of a partial exemption request for which the scope is limited to initial margins, an internal legal opinion will be sufficient to verify and attest the absence of legal impediments for the transfer of liabilities and own funds.