

# Swedish Securities Dealers Association

8 July 2013

## **RULES REGARDING PORTFOLIO RECONCILIATION AND DISPUTE RESOLUTION IN ACCORDANCE WITH EMIR WITH RESPECT TO OTC DERIVATIVE CONTRACTS**

### **Introduction**

EMIR (the European Market Infrastructure Regulation)<sup>1</sup> constitutes an EU regulatory structure which, among other things, governs trading in and clearing of OTC derivative contracts.

According to EMIR, the parties to an OTC derivative contract which is not cleared via a central counterparty are required to reach agreement regarding a formalised procedure to ensure that the parties are in agreement regarding the terms and conditions of the contract. For this purpose, the parties must 1) carry out a reconciliation of all contracts, and 2) have in place procedures for early discovery and resolution of disputes between the parties. The following rules regarding portfolio reconciliation and dispute resolution have been formulated in order to fulfil these requirements. The rules are intended to be applied between securities institutions (banks and investment firms) and their counterparties.

These rules shall apply between the parties only for the fulfilment of the requirements set forth in EMIR. However, any dispute which is referred to arbitration in accordance with the rules below shall be conclusively determined between the parties in accordance with special provisions in the Swedish Arbitration Act.

Where the dispute is not referred to arbitration in accordance with the rules below, the parties may have their matter tried in any other way, e.g. in a court of law. Subject to the aforesaid, where the parties have agreed that disputes shall be determined in any other way, such procedure shall apply between the parties.

### **Portfolio reconciliation and dispute resolution through negotiation between the parties**

At least once a year, a securities institution shall provide the counterparty with a portfolio summary with respect to all outstanding OTC derivative contracts with the counterparty and, where appropriate, a summary of assets posted as collateral. In connection with each transaction regarding a new contract, the securities institution shall provide the counterparty with a confirmation of the contract terms.

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<sup>1</sup> EC/648/2012 on OTC derivatives, central counterparties and trade repositories

The counterparty shall review received documents without delay and, as soon as possible, give notice of any errors or deficiencies and, where appropriate, raise an objection to values stated by the securities institution concerning listed contracts and summaries provided regarding assets posted as collateral. Where the counterparty fails to contact the securities institution within five business days of receipt of any such document, unless otherwise specifically agreed between the parties the counterparty shall be deemed to have accepted information and values stated by the institution.

Where notice is given regarding errors and deficiencies or objections are raised by the counterparty, the parties shall immediately commence discussions with each other aimed at reaching an agreement in the matter in question. Where agreement is not reached within three business days from commencement of the discussions, the matter shall be referred to each party's respective superiors.

Where the parties fail to reach agreement within five business days of commencement of the discussions, a party shall be entitled to refer the matter to arbitration in accordance with the provisions below. Where neither of the parties has referred the matter to such arbitration within 30 days of commencement of the discussions, the dispute shall be deemed settled as regards matters other than valuation issues, and information stated by the securities institution shall apply. With respect to unresolved disputes concerning valuation issues, the following provisions shall apply.

Where the counterparty has called into question values stated by the securities institution, the institution shall obtain quotes from no fewer than two and no more than four well-reputed financial institutions which are independent of the parties. Where such values per the valuation day significantly differ from the disputed values stated by the securities institution, an average of such values shall apply and the institution shall bear the valuation costs. Where the values do not differ in the stated manner, the securities institution's valuations shall apply and the counterparty shall instead bear the costs.

### **Mediation and arbitration**

Disputes which are referred pursuant to these rules shall preferably be resolved through mediation in accordance with the Rules of the Mediation Institute of the Stockholm Chamber of Commerce.

Where the dispute cannot be resolved through mediation, it shall be conclusively resolved through arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (SCC).

The Rules for Expedited Arbitrations shall apply unless, in light of the complexity of the case, the value of the subject matter of the dispute and other circumstances, the SCC determines that the Rules of Arbitration shall apply. In the latter case, the SCC shall also decide whether the arbitral tribunal shall comprise one or three arbitrators.

The place of arbitration shall be in Stockholm. The proceedings shall be conducted in Swedish. The dispute shall be governed by Swedish law. When several arbitrators

participate in the decision, the voting rules for civil disputes set forth in the Swedish Code of Judicial Procedure shall apply.