Response to the ESMA Consultation Paper on Guidelines for establishing consistent, efficient and effective assessments of interoperability arrangements

Ladies and Gentlemen

SIX x-clear Ltd. ("x-clear"), the clearing unit of SIX Securities Services (a division of SIX Group), welcomes the opportunity to respond to the ESMA Consultation Paper on Guidelines for establishing consistent, efficient and effective assessments of interoperability arrangements.

SIX x-clear has chosen not only to answer the questions raised in the Consultation Paper but also to comment on some of the guidelines. These comments relate to specific points where we are of the opinion that the criteria are too restrictive or where we consider the requirements for the assessment of the interoperability arrangements go beyond the responsibilities which should reasonably be attributed to any individual CCP.

About SIX x-clear Ltd.

Founded as the central counterparty for the Swiss market in 2003, SIX x-clear Ltd. today clears cash instruments on a pan-European level. x-clear considers itself a leading advocate of interoperability and competition. The company primarily acts as the Central Counterparty for SIX Swiss Exchange, the London Stock Exchange and various MTFs. SIX x-clear is licensed as a bank under Swiss law, enjoys the status of a Recognized Overseas Clearing House in the United Kingdom and has been granted a license for providing cross-border financial services ("Freistellungsverfügung") in Germany. SIX x-clear Ltd. is also in charge of the centralised risk management functions within the SIX Securities Services division.

About the SIX Group

SIX Securities Services is a division of the SIX Group which operates Switzerland’s financial market infrastructures and offers on a global scale comprehensive services in the areas of securities trading, clearing and settlement as well as financial information and payment transactions. The Group, which resulted from the merger of the SWX Group, Telekurs Group and SIS Group in 2008, is owned by its users (approximately 150 Swiss and foreign banks) and has a workforce of more than 3,900 employees.
and presences in 25 countries. SIX Group generated an operational income of 1.26 billion Swiss francs and a net income of CHF 218.6 million in 2011.

Appraisal and annotations of x-clear to the Consultation Paper

1. General remarks

Besides some specific material points of critique, x-clear has identified issues in a number of the assessment criteria in the draft Guidelines. These seem to require or at least imply that the CCPs must assume additional responsibilities for which they are not properly positioned nor have the capacity for, and so far have not been expected to fulfill. It is our understanding that the relevant investigations and assessments are in fact already, or should henceforth be, undertaken by the National Competent Authorities (NCAs) themselves. In return, a CCP should be able to rely on these assessments and supervisory activities of the NCAs.

As article 51 paragraph 3 states: “Entering into an interoperability arrangement or accessing a data feed or a settlement system referred to in paragraphs 1 and 2 shall be rejected or restricted, directly or indirectly, only in order to control any risk arising from that arrangement or access.” Consequently, a Co-CCP should be duly and appropriately informed about the NCAs’ assessments, especially when any of their findings which could jeopardize in any way the proper functioning of the inter-CCP arrangements. This particularly holds true with respect to the mutual collateralization and any critical outsourcing arrangements. As an additional requirement of any Master Clearing Link Agreement between Co-CCPs, x-clear therefore suggests including a clause of mutual consent to the timely and adequate provision of relevant information by the competent NCA to all Co-CCPs.

2. Remarks to criteria regarding a CCP’s responsibilities

Re: Guideline 1 (Legal risk), a) Documentation,
   iv. (process to consult risk committee and clearing members)

x-clear is sceptical that a consultation of the risk committee and the clearing members of the interoperability arrangement will lead to optimal results. Such time consuming processes with potentially contradictory results will cause loss of flexibility and delay negotiation processes with the Co-CCP(s), especially when more than two CCPs are involved. In light of the fact that the CCPs have to involve their NCAs in case of material changes in legal interoperability arrangements and comply with the relevant decision, x-clear would prefer to inform the risk committee as well as the clearing members only according to its own procedures as agreed contractually with its clearing members.

Re: Guideline 1 (Legal risk), b) Legal analysis

According to the bilateral Master Clearing Link Agreements of x-clear with its current Co-CCPs (LCH.Clearnet Ltd, EuroCCP and EMCF) each party in its own jurisdiction applies its own rules of Default and the other party accepts such application and practice. Legal Opinions have been obtained from Allen & Overy and the Swiss law firm Bär & Karrer that the pledge arrangements are legally valid and enforceable with respect to these default events, even in a cross-border, multi-jurisdiction environment.

External legal opinion has also been obtained with respect to the equivalence of Swiss Law with the EU Directives on Settlement Finality (1998/26/EC), the Financial Collateral Directive (2002/47/EC) and the
close-out netting provisions. CCPs should have comfort in relying on the assumption that our Co-CCPs do comply with the respective national laws and that they are regulated and supervised accordingly by their NCAs.

Thus, we regard further bilateral due diligence inquiries as unnecessary.

Re: Guideline 2 (Open and fair access), 2. i. (extension of interoperability arrangements)

We consider this requirement a substantive and acceptable criterion. However, we wish to advise that the contractual arrangements established among the four CCPs LCH.Clearnet Ltd, EuroCCP, EMCF and x-clear provide for essentially identical contractual arrangements in order to facilitate and ensure clearing of transactions on any trading venue - even among more than two CCPs. A third party may accede to an existing Agreement (see clause F of the ingress in the four CCPs' Master Clearing Link Agreements).

Re: Guideline 3 (Identification, monitoring and management of risks), 2. a) (General policies, procedures and systems)

x-clear has specific concerns about these very descriptive and detailed requirements regarding the Co-CCPs operations and risk concepts with respect to third party service providers, harmonization of the Co-CCPs risk management framework and the identification of interdependencies or spill-over effects. CCPs cannot influence their Co-CCPs' decisions about service providers. They neither have access to specific bilateral contracts, nor do they know the reasons for the selection of a specific third party service provider, nor can they monitor operations between other Co-CCPs and their service providers. Hence, there is only limited information available to a CCP for a periodic assessment. Their added value would be very limited.

In x-clear's opinion, the responsibility to address and track critical issues must remain with the NCAs and any eventual colleges based on the information provided to them by the CCPs.

Furthermore, x-clear believes that the harmonization of the CCPs' risk management frameworks should be implemented only in certain well-defined areas (e.g. buy-in rules, inter-CCP margin calls) which are performed in the daily inter-CCP clearing business. Harmonization should not extend to the overall CCP risk management framework, which is different in every CCP for historical, organizational, regulatory and functional reasons. Within the risk management and quality standards defined by EMIR, CCPs should be allowed to develop procedures best tailored to their specific organizations and factual situations in relation to their Co-CCPs.

Any identification of new interdependencies and spill-over effects is certainly a trigger for a review of interoperability arrangements already in place. Changes to the agreements would however need agreement among the CCPs. x-clear believes that an explicit ruling is not necessary in a technical standard.

Re: Guideline 3 (Identification, monitoring and management of risks), c) Interoperable CCP default, i. b. (portability of positions)

This requirement is in principle considered an appropriate and acceptable criterion. However, x-clear believes that the portability of positions cannot not be taken into account to lower the inter-CCP
exposures as long as portability in general and the concept of "inter-CCP portability" in particular is not supported and firmly established in the jurisdictions of all interoperable CCPs.

Re: Guideline 3 (Identification, monitoring and management of risks),

d) Different risk-management models

x-clear is of the opinion that the assessment of stress test results can only effectively be undertaken by the relevant NCA The NCA understands the entire setup of the stress testing model, the robustness of the default procedures as well as the instruments for mitigation - all in light of the regulatory framework and any specifics of applicable local law. It would lead to a tremendous workload for a CCP have to cope with such a task. Furthermore national data secrecy laws might impede or even prevent a meaningful exchange of information about a CCP's business secrets and clearing member data with third parties.

Re: Guideline 3 (Identification, monitoring and management of risks),

e) Risk profile and membership criteria

All interoperating CCPs have to submit the inter-CCP arrangements to their NCA(s) which has/have approved the membership policies as part of the whole risk framework to operate a CCP and participate in an interoperable network. Therefore x-clear believes that the suggested risk monitoring and management framework should not include the assessment of membership policies. A CCP cannot influence their Co-CCPs to change their membership criteria. These have been approved by the NCAs themselves and are part of the Co-CCP's approved business model.

3. Answers to the Questions raised in the Consultation Paper

Q1: Do you think that the draft guidelines adequately capture all the relevant considerations for an NCA when receiving an application from a CCP to establish an interoperability arrangement?

In our opinion the guidelines capture the main topics with respect to interoperability arrangements.

In the points discussed above we consider them too descriptive, creating unnecessary additional workload for CCPs. We would welcome the guidelines being revised and streamlined in these matters.

Costs and added value to the CCPs in terms of in-depth knowledge about the main procedures of their Co-CCPs should be better aligned - the more so when keeping in mind the fact that CCPs cannot directly influence the business models of their Co-CCPs.

Q2: Are there areas where it would be helpful to have more detail on the relevant considerations for an NCA when receiving an application from a CCP to establish an interoperability arrangement? If so, please specify what those details should be.

x-clear regards the relevant considerations as detailed enough.

Q3: Is it appropriate to consider an assessment by CCPs of the membership criteria of interoperable CCPs?

See our response to Guideline 3 e).

The supervision and control of the Co-CCPs' approved membership criteria by the NCAs and its compliance with the stringent regulatory requirements should allow a CCP to rely on their
appropriateness and adherence by the Co-CCPs and should not necessitate any further efforts by the CCP itself.

Q4: Do you have additional comments on the draft guidelines?

x-clear has no further comments.

We hope our comments and annotations are of help. We agree that they are made public at your discretion.

If you require any further information or would like to discuss any of the points made in this response, please contact the undersigned to the right.

Yours sincerely,

SIX x-clear Ltd.

[Signatures]

Tomas Kindler
Member of the Executive Committee

Markus Heiniger
Head Operational Risk Management