

CESR's consultation paper on Trade Repositories in the European Union

Reply of NASDAQ OMX

NASDAQ OMX welcomes the possibility to express views on the regulatory environment governing trade repositories and provides below general comments on some of the areas dealt with in the consultation paper.

NASDAQ OMX believes that a reporting obligation to a central data repository for trades that are not centrally cleared in regulated CCPs would be useful. On the contrary, for trades cleared in CCPs, this would result in duplication and additional costs for the market as a whole and should not be required.

The CESR paper uses the term “bilateral clearing” to describe the bilateral collateralisation of uncleared OTC transactions. Whilst bilateral collateralisation is an important process for reducing the risk associated with uncleared contracts, we strongly caution against regarding bilateral collateralisation as “bilateral clearing”. The essence of derivatives “clearing” is that an independent third party (the CCP) enables multi-lateral netting by becoming the buyer to every selling clearing member and the seller to every buying clearing member. This is not the case with uncleared bilateral contracts, even if risk is managed via bilateral collateralisation. If bilateral collateralisation is regarded as a form of clearing, it is likely to cloud the debate and lessen the impetus to move towards contract standardisation and central clearing.

We also believe that all repositories that will be used by EU regulators and participants should be required to comply with EU standards for governing repositories and the data that they process. In order to create a consistent environment, arrangements should be designed to ensure that the authorisation process and supervision of repositories is as uniform as possible at international level. If this is not immediately possible, authorisation and supervision should at least be made uniform at EU level pending more uniform rules at international level.

NASDAQ OMX has no strong opinion on location requirements provided efficient arrangements ensure compliance with EU standards and in particular, ensure that access to information is guaranteed for and provided on a non-discriminatory basis. Access to information may need to be different however for the various categories of institutions accessing such repositories (regulators, market participants, listed companies, the general public) but a given category should obtain access on a non-discretionary basis. Moreover, information disclosed to the public should be provided in aggregated levels only.

Finally, some terms used for the definition of a trade repository need to be clarified. This is in particular, the case of the “authoritative” nature of a database. The exact consequences that CESR attaches to such element are unclear and would need to be further specified including the exact legal consequences of such concept.