



London
STOCK EXCHANGE

23 September 2008

Carlo Comporti
Secretary General
CESR
11-13 Avenue de Friedland
75008 Paris
FRANCE

10 Paternoster Square
London EC4M 7LS
T +44 (0)20 7797 1000
www.londonstockexchange.com

Dear Carlo

RESPONSE TO CESR CALL FOR EVIDENCE ON POST-TRADING INFRASTRUCTURES

Thank you for the opportunity to provide technical advice on identification of regulatory arrangements for post-trading infrastructures and to advise on possible solutions in terms of bridging any potential differences in these arrangements.

We take a keen interest in the issues surrounding clearing and settlement systems in the EU. We welcomed the Code of Conduct for Clearing and Settlement ("the Code"), and believe that it has led to many favourable outcomes as a direct consequence of the price transparency and unbundling provisions. However, experience over the last 12 months has demonstrated that implementation of the inter-operability aspects of the Code have been far from straightforward.

This call for evidence focuses on differences in the existing regulatory arrangements. It is worth highlighting that these provisions have, in the main, been created as simple arrangements for regulating domestic infrastructures. CESR should be most focused on those jurisdictions where the domestic regimes prevent overseas infrastructures from operating in that jurisdiction. The UK regime is unusual in that its Recognised Overseas Clearing House (ROCH) classification, recognises the regulatory oversight performed by overseas regulators. It would seem that in the absence of a passport regime, such a regime is the minimum that will be necessary for overseas infrastructures to ensure they meet the local regulatory requirements

In addition to considering the barriers that might need to be removed, we would ask CESR to consider changes to the profile of systemic risks that are created by linking different clearing houses and their exposures to a wider, but inextricably linked, range of asset classes.

The default of Lehman Brothers International (Europe) has highlighted that there may be new risks inherent in trading across multiple venues with multiple but as yet unlinked clearing houses. We would ask CESR to consider the extent to which a wide network of linkages may affect systemic risk.

It is clear to us, that there remain a number of barriers which make it difficult for the Code to be implemented along the lines envisaged. Indeed, as the markets have moved on, there may be conceptual issues associated with the Code that need to be reconsidered. Notwithstanding these, it is widely recognised that practical, fiscal and regulatory barriers still exist. We would like to make the following observations in relation to the regulatory environment in the UK, although we are aware that other, more serious, barriers exist in other European countries.

Restrictions on ability to clear and settle business with any provider

The UK Recognition Requirements Regulations ("REC") applicable to UK market operators (or Recognised Investment Exchanges ("RIEs")) set out obligations imposed on RIEs. These extend to settlement and clearing services (REC2.8). Whilst it is not necessarily the case that these requirements conflict with the Code of Conduct, FSA does expect that exchanges only use Recognised Clearing Houses (RCHs) or Recognised Overseas Clearing Houses (ROCHs) for clearing and settlement requirements, at least for UK equities. This initial process is not without cost or time for potential providers wishing to act as Central Counter Party (CCP) or Central Securities Depository (CSD), for UK RIEs.

UK stamp duty

Secondary legislation is required in respect of each CCP in order for them to obtain an exemption from the UK Stamp Duty Reserve Tax (SDRT) Regulations. This exemption is only available to recognised clearing houses. In practice, this means that CCPS for RIEs are required to be RCHs or ROCHs.

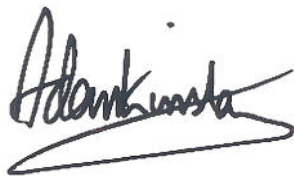
It is worth highlighting that EMCF (in the context of offering clearing services for Chi-X) has avoided going down this route by relying on intermediary relief. However, this approach may not be available to all CCPs and may have some side-effects in how their transactions are processed in Euroclear UK and Ireland and so a barrier may still exist. Furthermore, we believe that the approach would not be available for CCPs clearing RIEs' business.

Place of records

UK company law (Companies Act 2006, chapter 2) in effect requires that the register of shareholders is kept in the UK. This creates a problem for a non-UK CSD seeking to compete directly with a UK-established provider (whilst it does not stop them from having a nominee inside such a provider, this would nevertheless cause SDRT issues to arise).

I hope our views are helpful to CESR's work. Please do not hesitate to contact me if you wish to discuss any aspect of this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Adam Kinsley', with a long horizontal flourish underneath.

Adam Kinsley
Director of Regulation
T: +44 (0)20 7797 1241
akinsley@londonstockexchange.com