

Brussels, November 2009

RESPONSE Ref: CESR / 09-837

CESR CONSULTATION PAPER TRADE REPOSITORIES IN THE EUROPEAN UNION

I. Introduction

The Federation of European Securities Exchanges (FESE) is a not-for-profit international association (AISBL) representing the interests of 23 Market Operators which operate a total of 42 exchanges (Regulated Markets and MTFs) in equities, bonds, and derivatives. FESE Members come from all the EU Member States and Iceland, Norway and Switzerland, as well as 7 Corresponding Members from European emerging markets.

FESE welcomes the opportunity given by CESR to respond to the consultation paper on Trade Repositories in the European Union. Below you will find our General Remarks, which summarise the main elements of our views, followed by more specific answers to some of the questions.

II. General Remarks

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.

III. FESE Response to CESR consultation paper on trade repositories in the European Union

FUNCTIONS AND CHARACTERISTICS OF A TRADE REPOSITORY

Q1: Do you agree with the functional definition of what constitutes a trade repository?

The record keeping requirements of a trade repository should cover “closed” OTC contracts as well as OTC contracts which are “open”.

Q2: What other characteristics of a TR do you consider essential?

Broad access by dealers and buy-side parties.

AVAILABILITY OF DATA BY TRADE REPOSITORIES

Q3: In your opinion, what kind of information should be available to: regulators, market participants and the general public, respectively? Please differentiate by asset class where appropriate.

The size of individual participants’ positions is highly commercially sensitive and should not be disclosed to the public, although these should be available to the supervisory authority which is responsible for overseeing the positions in question.

If transaction reporting is to be introduced for uncleared OTC contracts, wherever feasible the Commission/CESR should promulgate the use of the Alternative Instrument Identifier (“All”) approach which was developed for transaction reporting of exchange traded derivatives under MIFID.

Q4: Do you agree that trade repositories should provide adequate processes to ensure the reliability of the data provided? How could reliability be ensured?

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Q5: Do you see any other entity with legitimate information needs with regard to OTC derivative trades recorded in a trade repository? If yes, please explain.

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LOCATION OF A TRADE REPOSITORY

Q6: Do you see a need for establishing TR facilities in Europe if a global repository already exists elsewhere? Do you believe that a European repository is needed for each OTC asset class as described above (i.e. CDS, interest rate and equity derivative markets)? Please give reasons.

Generally it should be left to market forces to determine the number and location of repositories within EU and their additional competitive commercial features. Furthermore, it should be stressed that it is perfectly appropriate for

different asset classes (for instance, Credit Default Swaps, Interest Rate Swaps or Equity Derivatives) to use different repositories – the same repository is not required for all products. A single repository for all products may not be the most efficient or flexible approach, and different repositories may be suitable for different product types.

Q7: If yes, what form should the trade repository facilities to be established in Europe take (e.g. single point of information, back-up facility) and which trades should be registered in such facilities (e.g. trades of European market participants, trades referring to European underlying entities)? Please specify.

Registry for all European participants which could provide multiple or single point of access, it should be accessible by local and central regulators and by all the European market participants. Access from non-European entities should also be considered in order to facilitate cross-border matching.

LEGAL FRAMEWORK FOR TRADE REPOSITORIES

Q8: Do you think there should be harmonised EU requirements for the regulation and supervision of trade repositories?

There are some terms used within the definition of a Trade Repository that would need to be clarified. In particular, the qualification of the database as “an authoritative” one. The use of such a term would require a deeper explanation of the source of the authority vested to the TR and the legal effects of its registration activity, and this would depend of the legal regime applicable to the TR.

Q9: To what extent do you expect that protocols, common market practices and the like, surrounding proposed solutions for trade repositories, could promote harmonisation and foster safety and efficiency in the post-trading process? Please provide reasons for your position

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