

4 November 2009

EUROCLEAR S.A./N.V.
1 BOULEVARD DU ROI ALBERT II
B-1210 BRUSSELS, BELGIUM

CESR consultation on Trade Repositories in the European Union

Euroclear response

The Euroclear group is the world's leading provider of domestic and cross-border settlement and related services for bond, equity, fund and derivative transactions. User-owned and user-governed, the Euroclear group includes Euroclear Bank, based in Brussels, as well as the national Central Securities Depositories (CSDs) Euroclear Belgium, Euroclear Finland, Euroclear France, Euroclear Nederland, Euroclear Sweden and Euroclear UK & Ireland. The total value of securities transactions settled by the Euroclear group is around €560 trillion per annum, while assets held for clients are valued at more than €18 trillion.

We are pleased to be given the opportunity to provide our views on CESR's consultation paper 09/837 on Trade Repositories in the European Union. As a provider of securities settlement, clearing, custody and collateral management services, we feel that our experience in the post-trade segment of financial markets is of direct relevance to the future design of any new solutions that may contribute to enhanced risk mitigation and improved transparency and efficiency in the post-trade environment as a whole.

1. Functions and characteristics of a trade repository

Do you agree with the functional definition of what constitutes a trade repository? What other characteristics of a TR do you consider essential?

In general, we agree with the functional definition outlined in the consultation paper. We note that many of the characteristics of such a TR are actually already found in the design and operation of CSDs around the world. Indeed, some CSDs currently provide TR services (e.g. CETIP in Brazil and DTCC with its Trade Information Warehouse (TIW) in the US).

We believe that the main characteristics of a TR are as follows:

- The TR needs to be an authoritative and robust database. If we apply the standards and practices adopted by CSDs in the securities markets, a TR requires robustness and resilience in terms of its technology environment (including multiple data centres), well-defined operating procedures, and a particular focus on data integrity/confidentiality.
- The TR needs to be cover all open OTC derivative transactions: From an overall market and exposure perspective, there is a logic to represent all derivatives in the TR, including the CCP cleared contracts to provide a global view on the overall positions of critical players in the market. There is a growing acceptance in the market that a relatively sizeable part of the OTC derivatives will remain non-CCP cleared as innovation and developments in financial markets are likely

to continue to result in non-standard tailored structures¹. TRs therefore, should keep track of positions across the entirety of the OTC derivatives markets and ensure market transparency

- A TR could also engage in trade life cycle event management and downstream trade processing services. In respect of OTC derivatives, CSDs are particularly well-positioned, as life cycle event management for derivatives in many cases is linked to information on the underlying instrument (e.g. securities positions, corporate actions) for which the CSDs are often the record holder. The proximity/availability of the securities information in the same group as the TR moreover may create operational synergies.
- TR can be considered the sole 'official legal record' (golden copy); While today this may not (yet) be the case for the industry-organised TR on rates and equities (see the industry RFPs issued by ISDA), there appears to be a strong likelihood that, similar to the role currently taken by the CSDs for securities, the service offering of TRs may eventually evolve to include holding of the legal record and providing reporting.
- The TR's ability to interconnect with multiple market participants in support of risk reduction, operational efficiency and cost saving is an important attribute. Ensuring a robust, confidential and secure data flow between market infrastructures is critical to the value of the TR, but at the same time imposes resilience demands upon the same TR, as noted above.
- TR should allow third parties to provide ancillary services, such as central settlement, electronic novation/affirmation, portfolio compression, and valuation services. However, such services require open access to the TR. In this respect we would suggest that the Code of Conduct for Trading Clearing and Settlement in 2006 provides a useful model, together with the access requirements in MiFID.

2. Availability of data by trade repositories

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.

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

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.

- It is indeed the critical role of the TR to be the primary source of information. Success will depend on the TR's ability to concentrate effectively and efficiently the contract/position information to provide a global picture².

¹ The EC Communication 'Ensuring efficient, safe and sound derivatives markets' on the possible initiatives to enhance the resilience of OTC Derivatives Markets recognises this and even promotes the strengthening of bilateral clearing arrangements.

- Operating a TR should be a regulated activity and, given the similarities to the databases already operated by CSDs for securities transactions, the authorities may wish to look at the supervisory structures that are already applied to CSDs. We believe that there may be synergies in terms of cost and efficiency from the provision of TR services by providers that already provide similar services in the securities markets, such as CSDs. We also believe that there are advantages in locating such a TR within the EU, primarily to take advantage of EU regulation and EU data security.
- As identified in the CESR consultation document, information needs will in effect significantly differ per stakeholder segment, (i.e. regulators, market infrastructures and service providers, or the broader public). We recognise the information characterisation described in the CESR document, which is not dissimilar from our experience in the other financial markets (e.g. MiFID reporting by Euroclear/Xtrakter)
- The CESR consultation states that the TR should at least include matched and confirmed trades. Considering a critical function of the TR is to provide regulators with a 'snap shot' of overall positions in case of financial turmoil or in case of the bankruptcy of a financial institution, we believe that capturing and reporting of alleged positions (single sided trades) in the TR could also prove valuable to the regulators.

3. Location of a trade repository

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.

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.

- Currently there is no TR facility for CDS or any other OTC derivative class physically operated or maintained in the European Union.
- We subscribe to the logic of providing legal certainty and adequate legal protection of relevant parties as proposed in the CESR consultation document. We see again similarities with the securities markets. All legal and privacy aspects of holding data through cross-border arrangements which may be subject to different standards of confidentiality need to be carefully considered. Confidentiality will be a key issue to deal with for a TR. A TR, wherever located, will need to take into account the confidentiality rules of different derivatives

² Incentives for market players to make this information available may result from regulatory or voluntary measures (cf. June 2, 2009 industry commitment to regulators to set up trade repositories).

contracts being used. Also, local jurisdictions may put forward different privacy and data protection rules which may differ depending on the counterparties.

- Overall we believe that – since derivatives activities are global – the resilience/robustness of the market infrastructure which provides TR functionality should consequently operate to the best of global standards for resilience, data recovery and back-up. TRs for derivatives markets should be built on the same sound and solid arrangements that are in place for infrastructures across Europe. Where there are multiple TRs, Interoperability could facilitate access data and provide reciprocal fallback in case of crisis or regional disaster.

4. Legal framework for trade repositories

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

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.

- In all areas of the financial markets there has been an evolution toward consistent harmonised supervision and regulations within the EU and beyond. Consequently, we would obviously recommend a single set of supervisory rules for TRs active in the EU.
- Any regulation for TRs operating in the EU should include rules covering aspects such as price transparency, open access (to providers of value added/CCP services); unencumbered access to data for EU regulators; governance involving user input; avoidance of conflict of interest (between provider of the TR services and the TR itself); resilience requirements; transparent legal framework, etc.
- Harmonisation of market practices and standards has been a powerful driver of reducing cost and increasing efficiency for market participants in financial markets. Harmonisation initiatives require a close partnership between the authorities and the private sector as demonstrated by the Giovannini Barriers removal process. Euroclear's business model and approach to building a domestic market for settlement in Europe is based on the harmonisation of national market practices across its home markets in combination with developments of a single platform.



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Conclusion

Central data repositories are of great value to the efficiency of financial markets in general. In considering the development of data repository solutions, the authorities should contemplate leveraging infrastructures that already support the collection of similar data on the underlying instruments and using their existing technological capability, client reach and market access to develop scalable, fully secured and resilient solutions. CSDs and ICSDs have long been regarded as safe data repositories for listed securities and debt instruments.

Given the fact that in excess of 60% of equity derivatives are on European equities, there is value in ensuring there is an appropriate European user-owned infrastructure supporting the market. Euroclear has a long-standing experience in offering a secure and confidential depository environment for a broad range of instruments and it holds over EUR 18 trillion assets under custody. Through one of its subsidiaries, Xtrakter, owner of the TRAX trade matching system, Euroclear is also one of the leading regulatory reporting providers in Europe. Because of the nature of our activity, we are regulated by a number of securities supervisors and overseen by several national central banks. We therefore believe that the Euroclear group is well positioned to play a role in this important debate and we have shown our interest by responding to the recent RFPs for data repositories issued by the ISDA.

We remain available to discuss the above responses and information with CESR.

Contacts

For further information, please contact:

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| - Paul Symons, Head of Public Affairs | +44 (0)207 7849 0034 |
| - Frank Pottie, Director, Public Affairs | +32 (0)2 326 1302 |