



LONDON METAL EXCHANGE

14 April 2004

Mr Fabrice Demarigny
The Committee of European Securities Regulators
11-13 avenue de Friedland
75008 PARIS
FRANCE

Dear Sirs,

Consultative Concept Paper: Transaction Reporting, Co-operation & Exchange of Information Between Competent Authorities

General

The London Metal Exchange is a UK Recognised Investment Exchange; as a regulated market, it regulates the world's premier marketplace for the trading of exchange-traded forwards and options on non-ferrous base metals. There are no comparable regulated markets within the European Union; its only competitors operate in the United States, Japan, and China. There is only one Multilateral Trading Facility (MTF) within the EU known to offer trading in base metals derivatives.

The membership of the LME comprises investment firms, credit institutions, and affiliates of credit institutions that might or might not be parts of groups of companies, the main business of which is investment business, or banking, or neither.

Users of LME markets comprise knowledgeable, experienced, wholesale and professional clients that require little in the way of advice and guidance when using the markets of the Exchange, and, consequent to their daily participation in physical dealings or professional investment dealings, are fully aware of the supply and demand of metals, and, hence, prices.

Given its dual role as market regulator and market operator, the products traded on the LME, the nature of its membership and user-base, and the absence of a similar market elsewhere in the EU, the LME believes that the decision to include base metals derivatives within the scope of the Financial

Instruments Markets Directive (FIMD) leaves it uniquely placed to comment to CESR on measures affecting trading in such instruments.

Regulated Markets, commodity derivatives, & duplication

Before commenting on issues raised in the Concept Paper with regard to transaction reporting, we would ask CESR to note that:

- a. Regulated markets have obligations under the FESCO “Standards for Regulated Markets” to prevent disorderly markets, to monitor effectively compliance with their rules, and to ban practices that unfairly disadvantage other market users. To meet these obligations, regulated markets use real-time and historical transaction data.
- b. Regulated markets employ highly skilled resources (human and electronic) to analyse transaction and position data to achieve the aims outlined immediately above. Examples of electronic alerts can include the use of real-time electronic alerts/triggers, designed to highlight front running, sudden changes in individual prices, unusual trading patterns, sudden increases in trading volumes, etc.
- c. Commodity derivatives traded on regulated markets are unique ‘proprietary products’. In other words, the markets design and create the commodity derivatives contracts that are then traded solely on their markets. Settlement and delivery of the instruments, whether by physical delivery or cash-settlement, takes place according to market rules through the recognised clearing house that margins open positions. If trading is successful, ‘look-alike’ contracts might trade over-the counter, but such contracts cannot be used to satisfy delivery or settlement obligations through the clearing house.
- d. Duplication of resources means duplication of the cost burden borne by market users.

General Comments

1. Clearly, methods and arrangements for reporting financial transactions should take place over reliable systems that have high security of data. It would be highly surprising should any competent firm, market, MTF or authority consider otherwise.
2. CESR should seek to avoid recommending other methods and arrangements for reporting financial transactions that could result in onerous initial and/ or enduring costs to investment firms, regulated markets, MTFs, and competent authorities. The requirements should be kept to a minimum.
3. Note should be taken of the fact that commodity derivatives, which are wholesale and professional in nature, having minimal retail participation, are for the first time coming under the scope of the ISD. Hence, transaction reporting by investment firms to the competent authority, although not to regulated markets, will be new to the industry. The

nature of the financial instruments (see numbered paragraph c above) and the use to which competent authorities will put the data (see numbered paragraphs a, b and d above) is also relevant.

4. The advice provided by CESR should differentiate between markets in different financial instruments and not seek to impose the same requirements, irrespective of instruments traded and market users/ participants.
5. As mentioned in numbered paragraph c above, commodity derivatives are not multiple listed. Hence, the issue of which competent authority should receive information on commodity derivatives transactions appears relatively clear. It is the competent authority that supervises the regulated market for a commodity derivative traded that regulated market, for example the FSA in the case of the LME. CESR should consider this when reflecting on the measure of liquidity for commodity derivatives (see questions 4-7 posed by CESR).
6. With respect to the minimum content for transaction reports, this should be restricted to information that the competent authority requires to fulfil its regulatory supervisory function. This comprises time of trade, buy/sell, volume, instrument, and price. Other information can be obtained subsequently if there is need to 'investigate' any trading but should not be required on a routine basis.
7. With respect to a common standard/ format for transaction reporting, CESR should ensure that it recommends generally used formats such as data exportable in XML or CSV format so that it is freely transferable between authorities. This should also help to minimise financially onerous developmental work by those making and receiving reports.
8. Finally, and particularly given the fact that there are great differences between commodity derivatives, which are being reported formally to competent authorities for the first time, and securities, CESR should discuss with regulated markets that trade commodity derivatives the reports that they currently receive, how the data is supplied, and the purpose and use to which the data is put.

Contact details

Should you or your colleagues wish to discuss the LME response, you can contact me by telephone (+44 (0)20 7264 5675), by fax (+44 (0)20 7264 5513), or by e-mail (neil.mcgeown@lme.com).

Yours sincerely



Neil McGeown

LME Regulation & Compliance