

BME SPANISH EXCHANGES COMMENTS ON THE CONSULTATION PAPER ON TRADE REPOSITORIES IN THE EUROPEAN UNION (CESR/09-837)

Madrid, November 6th, 2009

Bolsas y Mercados Españoles (BME) is the operator of all securities markets and financial systems in Spain. It brings together, under a single activity, decision-making and coordination unit, the Spanish equity, fixed-income and derivatives markets and their clearing and settlement systems.

We welcome the Consultation Paper on Trade Repositories in the European Union published by CESR on September 29, 2009. We take the opportunity to provide the following comments on this document:

Introduction

The present document includes what BME, as operator of the Spanish Central Securities Depository, considers an appropriate response to the Consultation Paper issued by the Committee of European Securities Regulators (CESR) regarding Trade Repositories (TR) in the European Union.

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

BME generally speaking agrees with the approach taken to define the concept of trade repository. However, there are some terms used within the definition that would need to be clarified, in particular, the description 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 on the legal regime applicable to the TR.

From our perspective, the most important role developed by a TR is this registration activity, that would be fostered by conceiving it as the sole "official legal record", but of course, other functionalities included in the consultation paper, such as reconciliation, record keeping ... are essential. In order to enhance the TR, additional

functionalities can be developed such as matching of OTC Trades and provide “value added services” to participants in the TR, i.e. collateralization, assets valuation, registry update due to corporate actions, settlement in different currencies, etc.

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

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

Question.- 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

From BME’s perspective, there are three types of information that should be available:

- a) Total and detailed information for each market participant regarding itself
- b) Total and detailed information for Supervisors regarding all market participants
- c) Aggregate information for the general public

One of the services provided by a TR must be to ensure that the data provided is reliable. For this purpose, it would be important to have a matching process in the scope of the TR, because when two trades involved in a contract are matched by the “seller” and “buyer” market participants demonstrate that both agree to the terms of the trade, so the reliability would be higher than when a trade is communicated by only one of the market participants.

When the underlying security of an OTC trade is a listed company in the secondary markets, information regarding the securities could be important for the issuer company of that security.

Question.- Do you see a need for establishing TR facilities in Europe if a global repository already exist elsewhere? Do you believe that 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

Although a Trade Information Warehouse (TIW) exist in the US, from BME's point of view it is important to have one or more TRs in Europe for different reasons that are basically based on the different legal jurisdictions among the European countries vis-à-vis the single US legal framework and the adequate access and control by supervisors of the information and of the very TRs.

Different issues such as more efficient control of OTC trades that would increase transparency of the derivative market; reduce operational risks and enhance market integrity and oversight of the whole markets as well as of the TRs... will be better tackled by means of TRs located in Europe. In the end, proximity, location and applicable legislation as far as supervision is concerned are of utmost importance and could make these functions easier.

Having said this, it would be better that the European Repositories have a connection with other TIW that are already in place, in order to have a broad range of information.

Last but not least, it is essential to have the appropriate legislation which regulates the TRs and makes the communication of OTC derivative transactions to TRs mandatory.

Should a TR operate in Europe, there would be two possible models for it: a) centralized model, where all functions would be developed by the sole European TR and data would be sent by market participants directly to the TR; b) decentralized model, where any TR could develop different functions (contacts with Market participants and supervisors, etc) and by means of interoperable solutions among the different TRs, they will forward the relevant information to the other TRs in order to consolidate all the data and process it, so as to virtually work as if they were a single TR.

Regarding the question about which trades should be registered in such facilities, BME's point of view is that all Derivatives OTC transactions should be registered in TRs.

Question.- Do you think there should be harmonized 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 harmonization and foster safety and efficiency in the post-trading process? Please, provide reasons for your position

BME feels that it is premature to answer this question. It would be necessary to accurately define the concept and role of TRs, as well as its legal basis in each of the Member States, before considering the need to harmonize.

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