CESR Call for Evidence
Response

BÖRSE FRANKFURT

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Response to formal request for 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

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A. Introduction

The Committee of European Securities Regulators (CESR) has requested 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.

Frankfurter Wertpapierbörse (FWB) welcomes the opportunity to contribute to the identification of differences and obstacles in post trade processes across Europe. Deutsche Börse as the operator of FWB has committed to the European Code of Conduct for Clearing and Settlement (CoC) from the very beginning. FWB has confirmed its commitment in the sequence by actively working in the CoC framework.

B. Comments

FWB Responsibility for orderly Clearing and Settlement

FWB welcomes competition in the post-trading process. According to German legislation, the stock exchange as a public sector organization shares the responsibility for orderly and economically efficient clearing and settlement. As a consequence, FWB is involved in all requests for transaction feeds covering trades executed on FWB with the focus extending into the whole post-trade process chain.

The key governing body for FWB is the Exchange Council; it has 18 members who are elected for a term of three years. The members of the Exchange Council represent banks, fund managers, lead brokers and listed companies[1]. The FWB Exchange Council has mobilized dedicated resources to deal with all CoC related issues by establishing a dedicated expert group.

FWB assumes a pioneering role in handling requests from external parties under the Code of Conduct. Lacking a harmonized European regulation for clearing and settlement the **FWB Exchange Council is the first institution in Europe to transparently define a draft catalogue of minimum requirements for access covering all layers to ensure a efficient trading, clearing and settlement landscape for the FWB market.** This transparent information basis is to ensure that clearing and settlement of FWB transactions continue to occur properly, efficiently and economically at any time. The nature of the requirements formulated is to underline FWB's neutral position and to ensure both, transparency of the admission process and fairness of competition among the post-trade infrastructure providers.

The minimum requirements do cover aspects as products, transactions and service scope, as well as risk and operational aspects. FWB, as an example, runs two trading platforms (electronic trading/Xetra and floor trading/Xontro), which need to be supported by all infrastructure providers in the post-trade value chain.

The catalogue of minimum requirements eases for inquiring parties the description of their services. This catalogue was received by the inquiring parties in addition to comprehensive functional and technical information lacking European standards in that area.

FWB welcomes the further harmonization resulting from the finalization of the ESCB-CESR standards, which will certainly help increase transparency in regulatory standards for the involved infrastructure providers on the post-trade layer. In the light of the upcoming ESCB-CESR recommendations **FWB will therefore perform a**

[1]The members of the FWB Exchange Council can be found on http://deutsche-boerse.com/dbag/dispatch/en/kir/gdb_navigation/about_us/20_FWB_Frankfurt_Stock_Exchange/30_Exchange_Council

reconciliation of its minimum requirements for efficient access to FWB with the yet to be finalized ESCB-CESR recommendations to ensure their adequate reflection. Nevertheless, FWB is confident, that the minimum requirements can be considered satisfactory stable as to work out the Service Description documents by the applicants as requested under CoC.

Requesting Parties

In total to date, FWB has received six requests for transaction feed (three of which issued by CCPs and three issued by CSDs) out of four foreign jurisdictions. FWB has meanwhile received Service Descriptions from three of these requesting parties, and is continuously analyzing the service scope contained therein together with the requestors.

A major challenge to FWB is the differing legal and regulatory market practices in the different countries, as e.g. the legal status of a CCP. FWB would welcome a CCP to be regulated as a bank, but in this aspect regulation is differing across the countries of origin of the different requestors to FWB.

The Code of Conduct has had a great success in terms of ignition of a process in Europe's cross border trading, which is a big value as such. A large number of requests have been posed between the infrastructure providers, i.e. exchanges, clearing houses and central securities depositories.

However, the resulting landscape of links and interoperability becomes quite complex, not only by technical reasons but also with view to the different legal environments of such providers involved on a cross border basis. Each request for transaction feed must necessarily be accompanied by the respective peer-to-peer and transaction feed requests to all other involved parties. **Alone the six requests received by FWB will thus result in more than 30 links in operation, thus proposing significant challenges with respect to efficiency and safety.**

FWB has constantly invited all requestors to express their open questions, to call for meetings and workshops, and to collaborate in a professional way for more than one year now. Following the pro-active proliferation of the above-mentioned minimum requirements catalogue, which to our perception should facilitate the requestors to comply with the existing rules, a process of knowledge exchange and continuous refinement of the necessary Service Descriptions is under way. This effort is unavoidable due to the differences in regulation and market practice in the countries of origin of the different requestors to FWB.

A major source of complexity in our perception is the interoperability on the horizontal levels, i.e. CCP to CCP, as well as CSD to CSD. One key example in this context is the fact that within one year of progress, it was not possible to agree on one common risk management model. Such common model, however, would be crucial to prevent a footrace for the lowest risk standards and thus to avoid competition on the expense of the integrity of the market as a whole, a worry that has become very apparent in recent days.

C. Conclusion

A promising process has started to improve competition and thereby both, efficiency and cost-effectiveness of European cross border securities trading. Momentum is high, which – upon successful completion – will certainly improve cross border securities trading. FWB has supported this process from the beginning and continues to do so by providing highest transparency on the admission process.

It might facilitate the overall progress of the Code of Conduct, if similar efforts were undertaken by all exchange venues. We hope that this will be supported as well by the other involved trading venues; finally, from the post-trade perspective, reciprocity regarding the access to trade flows will be a crucial prerequisite for the implementation of any link.

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