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11-13 avenue de Friedland
Paris 75008
France

c/o LCH.Clearnet Group Ltd
Aldgate House
33 Aldgate High Street
London
EC3N 1EA

3 June 2010

Dear sirs,

EACH, the European Association of Central Counterparty Clearing Houses, welcomes the opportunity to comment on the CESR consultation "Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS." EACH represents 21 European CCPs, listed at the end of this letter.

The proposed CESR Guidelines cover treatment of CCP-cleared OTC derivatives in the context of counterparty thresholds. Directive 2009/65/EC states in Article 52 (1)

"The risk exposure to a counterparty of the UCITS in an OTC derivative transaction shall not exceed either:

- (a) 10 % of its assets when the counterparty is a credit institution referred to in Article 50 (1) (f); or
- (b) 5 % of its assets, in other cases."

The proposed guideline states:

"...The following exposure must also be calculated within the OTC counterparty limits specified in Article 52 (1): Any exposure with a central clearing house whereby exposure with the OTC counterparty is novated to the clearing house. In this case the risk exposure is with the clearing house and not the OTC counterparty."

While in most if not all cases the direct exposure of a UCITS will be to a clearing member of the CCP rather than to the CCP itself, we are concerned that the guidance could be interpreted so as to set a 5% (or in some cases 10%) counterparty

limit to indirect exposures to a single CCP for OTC derivatives, even if held via different intermediary clearing firms. This would work against the current political and regulatory aim to encourage increased use of CCP clearing for OTC derivatives as a means to enhance the safety and stability of financial markets, both at G20 and European levels.

In CCP clearing, mitigation of counterparty risk is achieved through contract novation, i.e. the process through which a CCP acts as a buyer to the seller and seller to the buyer, allowing the CCP to assume the counterparty risk on both sides and ensuring sufficient collateralisation through (potentially intraday) margin calls. Additionally, as a single counterparty a CCP can net all offsetting open derivatives contracts of each trading party across all other trading parties. Such multilateral netting decreases the gross risk exposure to a much higher degree than through bilateral netting. Furthermore, a CCP is in a better position than any counterparty of a bilateral transaction to absorb the failure of a clearing member by establishing rigorous membership criteria and post-default backing arrangements which are intended to enable the CCP to protect non-defaulting participants from the insolvency of any member, as happened most recently in the successful resolution of the Lehman failure.

In this connection we note that in the UK implementation of the UCITS directive, the benefits of central clearing are acknowledged in that listed derivatives are exempted from the concentration rules if the clearing house is considered to meet certain criteria:

“(14) In applying this rule, all derivatives transactions are deemed to be free of counterparty risk if they are performed on an exchange where the clearing house meets each of the following conditions:

- (a) it is backed by an appropriate performance guarantee; and
- (b) it is characterised by a daily mark-to-market valuation of the derivative positions and an at least daily margining.”

OTC derivatives that are centrally cleared will be subject to the same criteria and we believe that the same conditions on exposure thresholds should apply.

EACH suggests that CCPs should be excluded from the limits on risk exposure to a counterparty in an OTC derivatives transaction. This adjustment would help to ensure that the UCITS fund management industry would not be prohibited from adoption of CCP clearing for a significant portion of OTC derivatives, as well as securities lending and repo activities.

If you would like to discuss these matters further please do not hesitate to contact the undersigned.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rory Cunningham'.

Rory Cunningham
Chairman, EACH

Cc: Marcus Zickwolff, Secretary, EACH

List of EACH members

Cassa di Compensazione e Garanzia S.p.A. (Italy)

CCP Austria

CSD and CH of Serbia

European Commodity Clearing AG (Germany)

European Multilateral Clearing Facility (Netherlands)

Eurex Clearing AG (Germany)

European Central Counterparty Ltd (United Kingdom)

HELEX AS (Greece)

ICE Clear Europe (United Kingdom)

KDPW SA (Poland)

KELER CCP Ltd. (Hungary)

LCH.Clearnet Ltd (United Kingdom)

LCH.Clearnet SA (France)

MEFF (Spain)

NASDAQ OMX (Sweden)

National Clearing Centre (Russia)

NOS ASA (Norway)

NYSE LIFFE Clearing (United Kingdom)

OMIClear (Portugal)

Oslo Clearing ASA (Norway)

SIX x-clear AG (Switzerland)