



Mr Claudio Salini
CESR Task Force on Mutual Recognition
CESR
11-13 avenue de Friedland
75008 Paris
France

4 September 2009

Dear Claudio,

This letter and appendix provides Chi-X Europe Ltd's (Chi-X) response to CESR's call for evidence on mutual recognition with non-EU jurisdictions. Chi-X appreciates the work done by CESR to consider the issue of mutual recognition and the opportunity to assist in this important area.

Chi-X believes that, while mutual recognition will provide some benefits, the goal should be a degree of regulatory harmonisation between the major jurisdictions such as the US and EU to reduce the cost of complying with different obligations, particularly for cross-border financial groups. Reducing the cost of compliance may also increase competition in the provision of trading services, which should reduce tariffs and benefit market participants.

We would also like to clarify that organised public markets, such as Regulated Markets and MTFs, should be treated equivalently for the purposes of mutual recognition of trading venues as they are equivalent for the purposes of secondary markets trading under MiFID.

Our detailed responses to the individual questions within the Consultation Paper are shown in Appendix 1.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "D. Jenkins", written over a horizontal line.

Denzil Jenkins
Director of Regulation

Appendix 1

Q1 Do you believe that other relevant topics should be added in the regulatory areas above? In the affirmative, please explain the reasons why the specific topic deserve attention together with costs and benefits of mutual recognition associated to the area of interest.

Chi-X has limited its response to issues relating to the mutual recognition of trading venues. We consider that this topic has been covered in this consultation.

Q2 Focusing on the above areas and topics, would you expect benefits of mutual recognition frameworks for your own business (e.g. in terms of cost savings and business opportunities). Please provide any evidence/data/market statistic to support your view and an indicative prioritisation of the major regulatory and market segments.

Yes, see response to Q5.

Q3 What rules and regulations could cause the most severe distortion of competition in the field of cross-border activity with respect to a system of mutual recognition? Are there other potential risks that could result from a system of mutual recognition between Europe and third-countries? Differentiate according to third country, where necessary.

See response to Q6.

Q4 How could possible risks be mitigated?

By restricting mutual recognition to jurisdiction with a broadly equivalent regulatory framework to that of the EU. In the first instance, consideration should be given to the U.S., Switzerland, Canada, and Australia. Further consideration should also be given to Singapore, Hong Kong, and Japan. China will represent an important investor and trading constituency in the future but currently would present difficulties in determining equivalence of regulatory framework.

Q5 Would the liberalisation of access to securities exchanges (through placement of trading screens) be of relevance to your business? Please provide any evidence/data/market statistic to support your view.

Chi-X provides a platform for the trading of European equity securities. The market for European equities is made up of investors in nearly all regions, globally. To trade European equities currently investors need to use intermediaries mainly based in the EU. This may impose additional costs on investment and trading, either directly or indirectly by reducing competition.

This has been demonstrated by many studies on trans-Atlantic mutual recognition. For example: "Jackson, Howell E., Fleckner, Andreas M. and Gurevich, Mark, Foreign Trading Screens in the United States (June 1, 2006). Harvard Law and Economics Discussion Paper No. 549; Harvard Law and Economics Discussion Paper No. 549." "BUILDING A TRANSATLANTIC. SECURITIES MARKET. SECURITIES MARKET. By Dr Benn Steil. (2002)"

While the majority of foreign institutional investors have found mechanisms to be able to invest and trade European equities (for example going via a US broker and its EU affiliate or establishing an investment subsidiary in the EU) if a simple process could be put in place for direct access this may reduce costs. More importantly, it may increase competition in the provision of trading services thereby reducing tariffs.

Q6 What are currently the main regulatory obstacles that prevent EU exchanges from setting up trading screens in third countries (differentiate according to countries). Can these obstacles in the current regulatory environment be overcome (via cooperation arrangements with third country markets etc)?

The U.S. is the primary market where mutual recognition would be of interest given the size and sophistication of its institutional investor base and trading community. U.S. regulations (in the 1934 Exchange Act and elsewhere) require a firm offering an exchange service or that of an Alternative Trading System in equity securities to be approved to offer such services by the SEC. This requires compliance with all the relevant U.S. laws and regulations which while similar in intent to those in the EU would represent a significant burden to a firm such as Chi-X with little benefit. However, for derivative exchanges, the US laws and the CFTC have greater discretion to allow effectively mutual recognition and the presence of foreign trading screens in the US for no apparent detriment. In addition, all the securities available for trading on Chi-X would need to be registered with the SEC. Again the provisions for the approval of companies for admission to an exchange and for ongoing disclosure purposes are broadly similar to those of the EU but a requirement for issuers to also comply with the US regulations would make it unattractive for nearly all.

Other jurisdictions, such as Switzerland, have arrangements for recognition as a foreign exchange which provides for effectively mutual recognition. However, there are still Swiss requirements which prevent foreign exchanges from operating on an equal basis with domestic competitors (such as the requirement for trades to be reported to the domestic exchange).

While mutual recognition will provide some benefits, the goal should be a degree of regulatory harmonisation between the major jurisdictions such as the U.S. and EU to reduce the cost of complying with different obligations, particularly for cross-border financial groups.

Q7 Which third countries do you consider to be the most interesting to arrange a mutual recognition on stock exchanges (given your current or future business focus)? Which economic advantages and drawbacks do you foresee?

The U.S., Switzerland in the first instance. Subsequently Japan, Canada, Singapore, Hong Kong, Australia, South Africa and China.

Q8 What would you consider to be the effects on the market as a whole, in terms of liquidity and integrity, of: a) foreign stock exchanges locating trading screens in EU Member States? b) EU stock exchanges locating trading screens in third countries?

If access to 'trading screens' is restricted to wholesale intermediaries and investors and foreign trading platforms are only able to provide trading in securities that are not offered by domestic platforms it will represent a positive addition to liquidity with limited risk to integrity (subject to equivalent protections in the other jurisdiction).

Greater benefits would arise from allowing access to professional or retail investors and intermediaries and direct competition in the trading of all securities however this raises greater concerns about the provision of level playing fields and investor protection.

Chi-X considers that it is important that mutual recognition in this area is not restricted to 'stock exchanges' but also covers entities which have equivalent functions and regulatory obligations for secondary market trading, such as MTFs in the EU. Otherwise this would be anti-competitive action for trading of EU stocks.

Q9 What are the main factors, if any, making "remote membership" different from direct electronic access? To what extent are such differences affected by: a) amount of fees paid; b) post-trading services;

Remote membership refers to an entity which is a direct member or participant of a trading venue. Direct electronic access commonly refers to access to a trading venue for a client of an intermediary. A requirement to go via an intermediary may, in certain cases, present additional complexity and cost.

Q10 What are in your view the main competitive risks posed by: a) foreign stock exchanges locating trading screens in EU member States? b) EU stock exchanges locating trading screens in third countries?

If foreign trading venues are restricted to offering stocks not available for trading by domestic venues then there will be little risk of a non-level playing field. This represents an easier first phase in any mutual recognition arrangements. However, there will be a reduction in direct competition and any benefits arising. For further phases, investigation

of any distortion to competition from a non-level playing field would need to be considered.

Q11 Which third country's financial market is of interest to your business? What benefits/costs would you expect for your business from the market opening to specific third countries? Please provide any evidence/data/market statistic to support your view)

Chi-X has limited its response to issues relating to the mutual recognition of trading venues. However, a liberalisation of the ability of EU brokers to deal with investors in third countries would assist in those investors accessing EU securities markets, including Chi-X, to the benefit of those markets. The countries cited in the response to Q7 would be applicable. In addition, major sources of investment funds such as countries in the Middle East.

Q12 What are currently the main regulatory obstacles that EU banks/investment firms face when providing financial services to clients located in third countries (differentiate according to countries). Can these obstacles in the current regulatory environment be overcome (via cooperation arrangements with third country firms)?

Chi-X has limited its response to issues relating to the mutual recognition of trading venues.

Q13 How important is the provision of cross border financial services provided to third countries (in terms of volume, generated profit) for your business? Please differentiate according to third countries and provide evidence/data if possible. How would you expect the development of this business after the implementation of a Mutual Recognition Arrangement?

Chi-X has limited its response to issues relating to the mutual recognition of trading venues.

Q14 What would you consider to be the effects, in terms of costs and benefits, on: a) EU intermediaries, if non-EU brokers are allowed to do business with EU professional investors regarding listed securities of the country of the non-EU broker? b) non-EU intermediaries, if EU brokers are allowed to do business with non-EU professional investors regarding listed securities of the EU? c) EU investors if non-EU brokers are allowed to do business with EU professional investors regarding listed securities of the country of the non-EU broker,

Chi-X has limited its response to issues relating to the mutual recognition of trading venues.

Q15 Do you consider that a mutual recognition arrangement could reduce the fees in cross border investment services (due to increased cross border competition)? Would the reduction of cost make up the reduction of fees? Would the volume increase enough to match any differences?

Chi-X has limited its response to issues relating to the mutual recognition of trading venues.

Questions 16 – 22:

Chi-X has limited its response to issues relating to the mutual recognition of trading venues, and therefore has not provided a response to these questions.