NYSE EURONEXT

RESPONSE TO THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS' CONSULTATION PAPER "CLASSIFICATION AND IDENTIFICATION OF OTC DERIVATIVE INSTRUMENTS FOR THE PURPOSE OF THE EXCHANGE OF TRANSACTION REPORTS AMONGST CESR MEMBERS

September 2009

SECTION 1

NYSE EURONEXT AND DERIVATIVES IN EUROPE

1. INTRODUCTION

1.1 NYSE Euronext is a leading global operator of financial markets. NYSE Euronext's exchanges in Europe (London, Paris, Amsterdam, Brussels and Lisbon) and the United States provide for the trading of cash equities, bonds, futures, options, and other Exchange-traded and processed products.

1.2 NYSE Liffe is NYSE Euronext's global derivatives business and is the world's second-largest derivatives business (and the largest in Europe) by value of trading.

1.3 NYSE Liffe's European derivatives business has an unrivalled cross border presence. Operating in five European locations, NYSE Liffe processed over one billion derivative contracts in Europe in 2008.

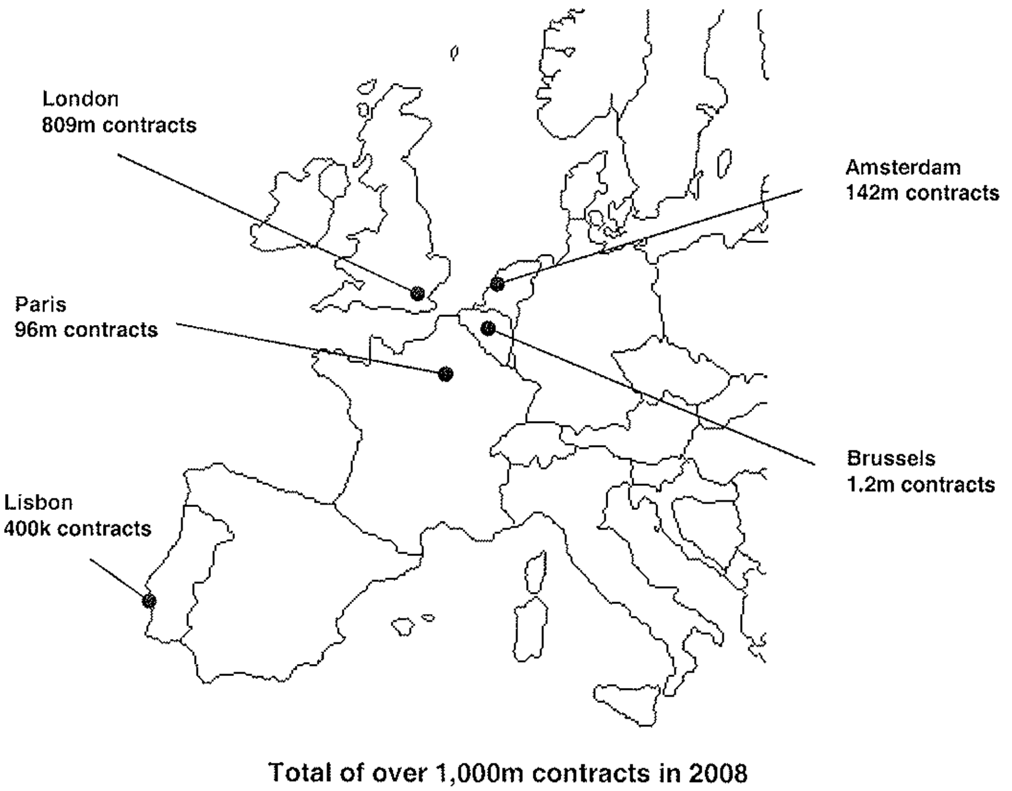


Figure 1: NYSE Euronext European Derivatives Volumes in 2008

1.4 NYSE Liffe is a world leader in Interest Rate, Fixed Income, Equity, Equity Index and Commodity products. In particular, NYSE Liffe is the world home of European Short Term Interest Rate (STIR) futures and options, and operates equity derivatives markets in all five of its European centres. It is also the home of key commodity derivatives, including Cocoa, Robusta Coffee and White Sugar contracts. NYSE Liffe's London business recently became a Self Clearing Recognised Investment Exchange and, as a result, is now the CCP for transactions on that market.

2. NYSE EURONEXT'S COMMITMENT TO OTC DERIVATIVES

2.1 NYSE Liffe's Bclear Service (operated by NYSE Liffe's London market, LIFFE), has lead the way in offering market participants the flexibility of pre-negotiation and anonymity whilst retaining benefits associated with operating in an exchange environment with a central counterparty.

2.2 Since its launch in late 2005, over 500 million equity derivative contracts have been reported to the Bclear Service, with a notional value of over €8 trillion. The Bclear Service enables users to specify particular contract characteristics, such as expiry dates or options strike prices. OTC Trades are pre-negotiated in the OTC market, and then submitted to the Exchange. Once accepted by the Exchange, the OTC Trade is replaced by an Exchange Contract for same day processing and clearing.

2.3 The Bclear Service is an example of how an exchange provided processing and clearing model can add exceptional value for OTC derivatives. Such models provide processing capability and scalability that surpass those of existing or planned OTC infrastructure, as well as same day confirmations and full multilateral daily clearing. NYSE Liffe calls for authorities to consider these factors when considering the benefits of different OTC clearing or trade processing solutions.

2.4 Bclear's success and growth since launch has been continual:

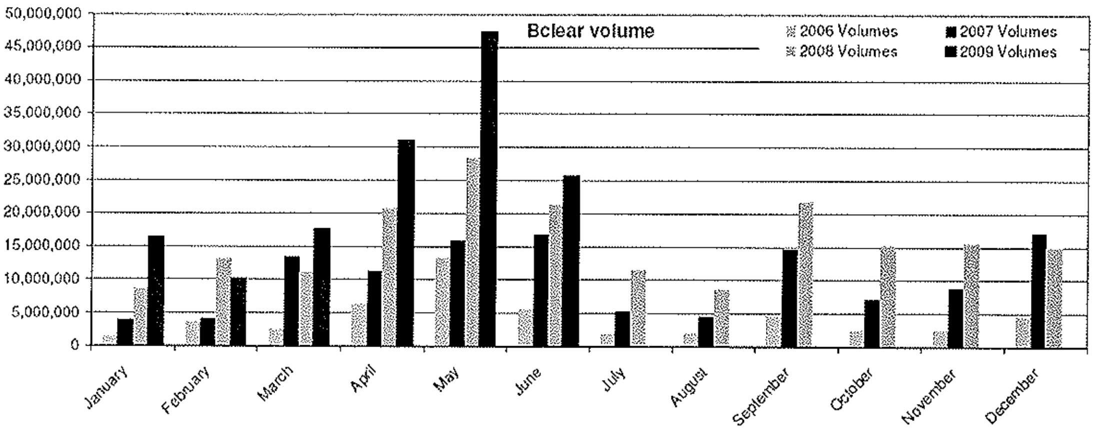
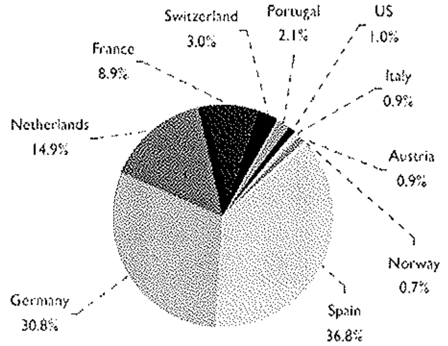


Figure 2: Bclear volumes by month, 2006-2009

2.5 The range of products available on Bclear has also continued to grow. Futures and/or options on over a thousand underlyings from twenty two countries are now listed on the Bclear Service:



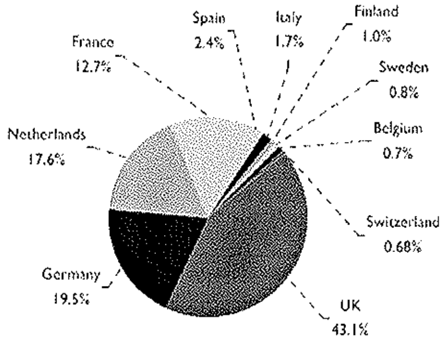


Figure 3: Split of Bclear Equity Derivatives by National Underlyings, YTD June 2009

2.6 The Bclear Service offers an OTC cleared model which preserves many of the legitimate benefits of the OTC market whilst being consistent with the European Commission's goal of increasing efficiency and safety.

SECTION 2

RESPONSE TO CESR'S CONSULTATION PAPER

1. SUMMARY OF NYSE EURONEXT'S VIEWS

1.1 In summary NYSE Euronext's views on transaction reporting are as follows:

(i) transaction reporting of OTC derivatives should only be introduced for those OTC derivatives where monitoring on a transaction basis can be shown to be beneficial e.g. identification of insider dealing for those instruments which may be susceptible to such abuse; and

(ii) classification of standardised OTC derivatives for transaction reporting purposes should be harmonised across the EU and should be based on the Alternative Instrument Identifier ("AII") wherever possible to ensure that any additional transaction reporting requirements are introduced in a cost-effective way.

2. SCOPE OF TRANSACTION REPORTING OF OTC DERIVATIVES

2.1 Transaction reporting should only be introduced in respect of those OTC derivatives where monitoring on a transaction basis is likely to result in abuses such as insider dealing being identified. If a product is not prone to an abuse of this type, there would be little justification in requiring that product type to be subject to potentially onerous and costly transaction reporting requirements.

2.2 The case for application or non-application of transaction reporting requirements would need to be made only after following the systematic examination of OTC derivative product types.

3. STANDARDISED OTC DERIVATIVES CLEARED BY A CENTRAL COUNTERPARTY

3.1 In its Consultation Paper, CESR concluded that the six fields which form the AII would be insufficient to allow CESR members to understand the nature of the OTC derivative. Whilst this may be the case for more complex OTC derivatives, NYSE Euronext believes it is important for CESR to distinguish between:

(i) those transactions which are "pure" OTC transactions traded on a bilateral basis; and

(ii) those which may, as a result of being cleared by a central counterparty, become an exchange contract and are therefore subject to the rules of the exchange[1] and may be fungible with contracts admitted to trading on the exchange.

3.2 By virtue of being exchange contracts, the second group of OTC derivative contracts listed above are likely also to be available for trading in the relevant exchange's central order book[2] and are almost always "standardised" rather than "complex" derivatives. As such, these OTC derivatives are likely to be capable of being reported using only a slightly modified version of the AII code rather than using the format suggested in Section J of the CESR Consultation Paper. Attached at Appendix 1 is a suggested draft format for the reporting of such OTC derivatives transactions which is a useful starting point for

[1] Where OTC derivative trades are reported to NYSE LIFFE's Bclear Service and are authorised by LIFFE, at the point of authorisation a LIFFE contract comes into existence and replaces the OTC transaction.
[2] Products may be reported to NYSE Liffe's Bclear Service which are identical to, and therefore fungible with, contracts which are traded via the central order book of the regulated market.

developing a classification system. Changes to the existing AII format have been shown as underlined and replicate CESR's suggestion for classification set out in section G of the Consultation Paper. Using a familiar format such as a modified AII code for reporting such OTC transactions would reduce the delay to, and costs of, implementation to investment firms, regulated markets and Competent Authorities alike.

3.3 Furthermore, treating those transactions submitted to an exchange's OTC clearing service such as NYSE Liffe's Bclear Service in a similar manner to those transactions traded on the regulated market would reduce any confusion as to how business should be reported. NYSE Euronext is aware that some investment firms may not have made the subtle distinction between OTC transactions submitted to an exchange's clearing service and transactions involving securities admitted to trading through the exchange's central order book as both result in transactions in an exchange contract (and often, in an identical exchange contract).

3.4 NYSE Euronext suggests that together with the Competent Authorities, exchanges/ CCPs should define the necessary amendments to the AII code to enable OTC derivatives which become exchange contracts to be reported using the same systems which are in place for the reporting of exchange traded derivatives. In addition, exchanges could provide daily standing data files to the relevant CESR member which would include additional product details such as the Instrument Name, Underlying Instrument ID, Price Multiplier.

Appendix 1

Alternative Instrument Identifier for OTC Derivatives

Additions to the existing format for the AII code are shown as underlined

Field	**Valid Content**
Exchange code/CCP Code	MIC Code -Conforms to ISO10383
Exchange Product Code	Space padding must be used.
Derivative Type	**Generic Contract Type** O - Option F – Future <u>W – Warrant</u> <u>D – Contract for Difference</u> <u>X – Spread Bets</u> <u>S – Swaps</u> <u>Z – CDS</u> <u>K – Complex Derivatives</u>
Put / Call Identifier	**Contract Type** C – Call P – Put F – Future <u>W – Warrant</u> <u>D – Contract for Difference</u> <u>X – Spread Bets</u> <u>S – Swaps</u> <u>Z – CDS</u> <u>K – Complex Derivatives</u>
Expiry /Delivery /Prompt Date	Conforms to ISO8601. Date YYYY-MM-DD
Strike Price	No decimal point character. First 14 digits contain the integer value (with preceding zeroes) and the last 5 digits represent the decimal places (with trailing zeroes).