



ESMA
103 rue de grenelle
75007 Paris
France

31 January 2013

Dear Sirs,

This paper provides the response of the LCH.Clearnet Group ("LCH.Clearnet") to ESMA's consultation on guidelines for establishing consistent, efficient and effective assessments of interoperability arrangements (ESMA/2012/852).

LCH.Clearnet is the world's leading clearing house group, serving major international exchanges and platforms, as well as a range of OTC markets. It clears a broad range of asset classes including: securities, exchange traded derivatives, commodities, energy, freight, interest rate swaps, credit default swaps, FX derivatives and bonds and repos and works closely with market participants and exchanges to identify and develop clearing services for new asset classes.

We welcome the opportunity to comment on the proposed guidelines for establishing consistent, efficient and effective assessments of interoperability arrangements for transferable securities and money market instruments and for any other products, including repos and derivatives, where interoperability arrangements are currently in place. In this connection we note that ESMA has recently indicated to the European Association of CCPs that "It is ... expected that National Competent Authorities will apply ESMA's guidelines for establishing consistent, efficient and effective assessments of interoperability arrangements to interoperability arrangements for products other than transferable securities or money-market instruments and expected that CCPs will have regard to the provisions in Title V of EMIR when structuring such interoperability arrangements." We urge ESMA to ensure that National Competent Authorities do indeed fully apply the final guidelines when reviewing all interoperability arrangements, including those for repos and derivatives, and would welcome a clearer direction in this regard.

Overall, we believe that the guidelines provide a suitable framework for regulators to assess interoperable links. However, as can be seen in our detailed comments below, we believe that they are not always practicable. In particular, we agree that the guidelines should be sufficiently detailed to ensure

that some jurisdictions do not unduly restrict CCPs' ability to enter into interoperability arrangements and that the interoperability arrangements do not create additional risks that are not adequately mitigated. As ESMA notes in its consultation, interoperability increases competition and ultimately reduces costs for market participants and should be encouraged. However, we would like to stress that the guidelines should be proportionate and not result in undue administrative burden for CCPs.

We would like to make the following detailed comments on the standards.

Guideline 3 point a) General policies, procedures and systems

Point ii

We fully support the requirement for CCPs to obtain sufficient information on the operation of the interoperable CCPs to assess the risks associated with the interoperable arrangement. However, we believe that the due diligence expected from the CCP should be proportionate and there should be some reliance on regulatory recognitions of CCPs, in particular that it should not place an obligation on the CCP to conduct detailed audits of the critical service providers used by the interoperable CCP.

Point v

We believe that there should be a process for informing the other CCPs in an interoperable link of the changes to the rules of one CCP that directly impact the interoperability arrangement. We however believe that it would be disproportionate to share information on rule changes that would not have any impact on the link. Changes to the rules could for example affect an asset class that is not covered by the link. In addition, requiring CCPs to agree on changes to the rules of a CCP with which it is interoperable would compromise the CCP's own independence and responsibility. It would also go beyond what is required by EMIR, which is not the objective of ESMA. We urge ESMA to delete that requirement and instead require CCPs to have dispute settlement mechanisms in place.

Point vii

We note that in para 18 of the cost benefit analysis, ESMA recognises that CCPs should be provided with 'sufficient flexibility to adopt processes, procedures, policies and models adapted to the specificities of their business, which may lead to interoperable CCPs operating under quite different risk management framework from one another'. However point vii suggests that CCPs should endeavour to harmonise their respective risk management frameworks. CCPs should have the independence and freedom to apply their risk management frameworks under the supervision of their National Competent Authorities. We do not believe that homogenisation of risk management frameworks is practicable or desirable. The second sentence of point vii should be deleted.

Guideline 3 point b) prudential requirements

Point iii

We support the requirement for CCPs to assess the required inter-CCP resources necessary to cover credit and liquidity risk arising from the interoperable arrangement, including in extreme but plausible market conditions. However, we believe that the requirement should be stronger and that the CCP should take adequate action to cover inter-CCP exposures in extreme but plausible market conditions resulting from the earlier mentioned assessment in excess of the initial margin calculated in accordance with article 41 of EMIR.

Guideline 3 point c) interoperable CCPs

We support the requirement for CCPs to assess the impact of the default of an interoperable CCP. However, we note that under these guidelines the CCP is not required to assess the impact of an interoperable CCP that is closing down although the EBA RTS on EMIR require CCPs to have a wind down plan in place. We believe that this should be included, as in some case the wind down plans of an interoperable CCP can have an impact on the contracts and functioning of the linked CCP. We also believe that the guidelines should cover a high level assessment of the interoperable CCPs' business continuity plans.

Guideline 3 point e) risk profile and membership criteria

Point i)

We support the requirement for CCPs to keep under review the risk profile of each interoperating CCP, including membership criteria and policies.

Point ii)

We support the requirement to have policies, procedures and systems to monitor, assess and mitigate risks arising from interdependencies between interoperable CCPs. However we do not believe it is practicable for the CCPs to 'constantly' do so nor is it practicable to do it with the level of granularity suggested in the guidelines. Finally, we agree that the interoperability arrangement should specify what information should be shared. We think that information should be shared at a high level and should not include detailed and sensitive information on members. It should be considered that any information that is exchanged may be confidential or commercially sensitive.

Guideline 3 point f) exposure management

Guideline i. c) envisages that the risk management parameters applied to the inter-CCP exposures could be different to those applied to the clearing members provided that the CCP provides the National Competent Authority with a detailed explanation of the difference. We believe that the risk management parameters used could be different but that this should not result in lower risk management standards for the inter-CCP exposures.

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We trust that our comments will assist ESMA in developing guidelines for establishing interoperability arrangements. We hope to maintain our engagement with ESMA during this process.

Should you have any questions or issues arising from this response please contact Perrine Herrenschmidt, European Head of Public Affairs at perrine.herrenschmidt@lchclearnet.com.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Ian Axe', written over a light blue horizontal line.

Ian Axe

Chief Executive Officer