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To:

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CPSS-IOSCO OTC derivatives CCP

In response to the above recommendations on CCPs published in May 2010 the Wholesale Markets Brokers Association (WMBA) and London Energy Brokers Association (LEBA) would wish to respond with comments related to free and fair access from an execution facility into a CCP.

Recommendation 2: Participation requirements (p. 11)

Whilst the WMBA/LEBA endorse paragraph 4.2 that “A CCP’s participation requirements should be objective, publicly disclosed, and permit fair and open access;” we would hope for specific guidance on the role of the Interdealer Broker (IDB), as a regulated and compliant trade execution facility, to be able to pass eligible matched trades up to a CCP. Access to a CCP should be open to multiple types of trading formats including bilateral/voice brokered trades, fully electronic OTC executions, and on-exchange transactions. Ownership of a trading platform by a CCP should not be subject to favourable treatment as this would not only severely restrict competition but more importantly could negatively impact the terms and conditions under which market participants are able to manage and reduce risk.

This becomes especially critical where the product traded is defined as “Clearing Eligible” where there may be only a single suitable CCP. Credit Default Swap Index trades such as ITRAXX may be such an example where ICE Clear Europe has a dominant role in the clearing of this product. WMBA/LEBA therefore recommends that the language in the final CPSS-IOSCO document makes specific reference to ensuring that IDBs will be able to deliver all eligible products in a format acceptable to any CCP regardless of the execution format.

Guidance 12.2. Efficiency implication of decisions on links with multiple venues (p. 22)

With regard to the permission of fair and open access to clearing, it becomes critical for the business model of the IDB under a mandatory regime to be able to offer its trade execution and matching services.

We note the guidance “In OTC derivatives markets, where trading could occur over multiple venues, it is important for a CCP to conduct a thorough analysis of risks, costs and benefits (including potential benefits to the overall market) of accepting and clearing trades that are executed or processed at different venues, such as exchanges, electronic trading venues, TRs and confirmation matching platforms.”

WMBA/LEBA are highly concerned that this provision is allowing, and will allow in the future, the CCP to favour its own vertically integrated matching platforms to the exclusion of alternative venues such as IDBs and MTFs.

Where there is little or no competition between CCPs and where a CCP also owns an execution platform we remain concerned that the utility function may be compromised by commercial objectives. It is important to allow flexibility of access to any CCP as market participants may continue to execute large OTC transactions through WBMA/LEBA members where give-up into a CCP is required.

The overall growth and acceptance of electronic trading systems is likely to continue while the "price-search" function may prove in some markets to remain more efficient in the voice brokered arena. For this reason, no CCP should be in a position to refuse such trades. To avoid long delays in granting access initial requests to submit certain type of trades to an eligible CCP should be restricted to a very short period (2 weeks) so as to provide certainty for market participants. When such permission is granted there should be a strict regime for withdrawal from the CCP after market consultations and notification of the regulators concerned.

Currently, with both NYSE.LIFFE and the LSE announcing intentions to build a vertically integrated CCP, we note that the potential for further silo creation within the industry may be encouraged by existing CPSS-IOSCO guidance not only through delayed or deferred prudential analytical processes, but also through preferential access to the integrated trade processing technology such as the Application Program Interface (API) which governs the acceptance and processing of trades.

WMBA/LEBA note with alarm that when asked last week about their vertically integrated execution clearing models and closed access, senior management of both ICE and Eurex indicated that they would be reluctant to unbundle these services in terms of both fees and API access unless legally obliged to do so. With reference to the EU Internal Market, we question whether such actions may prima facie be a breach of the Code of Conduct (http://ec.europa.eu/internal_market/financial-markets/docs/code/code_en.pdf).

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| 27 | Access should be granted on the basis of non-discriminatory, transparent criteria and prices |
| 28 | Requests for access should be treated expeditiously |
| 29 | The process under which access requests are to be treated should be publicly available. |

Consequently WMBA/LEBA would wish for CPSS-IOSCO to emphasise strongly that the authorisation process for the acceptance of eligible transactions into any CCP is the responsibility of the prudential authorities and not the individual CCP management. Lastly, in order to promote competition and the optimal use of capital, WMBA/LEBA endorse the full interoperability between clearing houses.

Regards,



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