



VIA E-MAIL TO: consultation-2014-09@iosco.org

23 February 2015

Ms. Rohini Tendulkar
IOSCO General Secretariat
Calle Oquendo 12
28006 Madrid
Spain

Re: Public Comment on Task Force on Cross-Border Regulation

Dear Ms.Tendulkar:

LCH.Clearnet Group Limited (LCH.Clearnet or The Group) is pleased to file a response to the request for comment from the International Organization of Securities Commissions (IOSCO) on the consultation report prepared by the IOSCO Task Force on Cross-Border Regulation (Consultation).

LCH.Clearnet Overview

The LCH.Clearnet Group is the leading multi-asset class and multi-national clearinghouse, serving major international exchanges and platforms as well as a range of OTC markets.¹ It clears a broad range of asset classes including securities, exchange-traded derivatives, commodities, energy, freight, foreign exchange derivatives, interest rate swaps, credit default swaps, and euro and sterling denominated bonds and repos. LCH.Clearnet works closely with market participants and exchanges to continually identify and develop innovative clearing services for new asset classes. LCH.Clearnet Group Limited is majority owned by the London Stock Exchange Group (LSEG), a diversified international exchange group that sits at the heart of the world's financial community.²

¹ LCH.Clearnet Group Limited consists of three operating entities: LCH.Clearnet Limited, the UK entity; LCH.Clearnet SA, the Continental European entity; and, LCH.Clearnet LLC, the US entity. Link to Legal and Regulatory Structure of the Group:

<http://www.lchclearnet.com/about-us/corporate-governance/legal-and-regulatory-structure.asp>

² LSEG operates a range of international equity, fixed income and derivatives markets including London Stock Exchange; Borsa Italiana; MTS Group; and Turquoise. LSEG also operates a range of post-trade and risk management infrastructures including CC&G S.p.A, the EMIR authorised CCP; Monte Titoli, the Italian CSD; globeSettle, a new CSD based in Luxembourg; LCH.Clearnet Group, and Univista, the EMIR authorised trade repository.

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Comments on the Consultation

The Consultation performs an important service by developing a common terminology for discussion of the tools employed by regulators on cross-border issues. This common terminology is a crucial first step to addressing the complex and important issues facing regulators and market participants.

LCH.Clearnet's three CCPs, as well as many individual businesses within LSEG, are regulated in one or more jurisdictions around the globe. These facts give LCH.Clearnet an informed view on use of the three tools—national treatment, recognition and passporting—used by regulators in a cross-border context that are identified in the Consultation. The Consultation provides an excellent overview of the pros and cons of each of the tools. Based on its own experiences as a cross-border participant in the global financial markets, LCH.Clearnet has the following comments.

- The observations and preliminary suggestions of the Consultation are as relevant for OTC derivatives markets as they are for other financial markets. The final report of the Task Force should apply to all financial markets.
- As IOSCO identifies in its report, differences in the regulatory tools that are chosen may cause difficulty in a cross-border context. For example, LCH.Clearnet has observed the difficulties caused by the different legislative and regulatory frameworks that have been introduced for central clearing. These differing frameworks have caused challenges for regulators in determining equivalence between jurisdictions. Given the global nature of these and many other financial markets, it is important that regulators work together to create a framework that provides a level playing for all market participants. However, as it is evident from the IOSCO report, the ability of regulators to work together to create effective cross-border regulatory frameworks depends on the political decisions being taken to support that work. This political support will be evident in terms of the scope of the empowerment given to the national regulators in enabling regulation, and in the political direction provided by government. Absent sufficient political support, it will be difficult for regulators to exercise flexibility to creatively address cross-border issues or to lead the national industry. LCH.Clearnet suggests this component could be the most significant inhibitor of the development of effective co-operative cross-border regulatory measures.
- In the absence of a political mandate (e.g., from the G20), resolving many cross-border regulatory disputes will remain the responsibility of the relevant supervisory authorities. In order to resolve such disputes, the regulators will need to craft a hybrid tool unique to the issue at hand that includes elements of the other regulator's tool as well as its own. The dispute between the European Commission and Commodity Futures Trading Commission (CFTC) on the regulation of cross-border central counterparties is an example. In this case, the European Commission is relying on the recognition tool while the CFTC is relying on the national treatment tool. To date, it has proven difficult to reconcile the two approaches and development of a hybrid approach may be the only way forward. Some of the suggestions advanced in the Consultation could be helpful in resolving disputes between regulators employing different tools. For example:

- By enhancing international dialogue, IOSCO can increase each regulator's comfort with the regulatory regime of the other jurisdiction and assist in identification of possible conflict areas before final laws and regulations are adopted.
 - A central hub of information, maintained by IOSCO, could assist each regulator in understanding which regulatory tool is used generally by other regulators with which it may need to cooperate, and how those regulators have addressed prior cross-border issues involving regulators employing a different tool.
 - IOSCO guidelines for assessing foreign regulatory regimes could be particularly useful where regulators are using different tools. Where international standards exist, the emphasis should be on achieving outcomes-based assessments based on the international standards.
- IOSCO could facilitate harmonization of rules across borders by encouraging jurisdictions to implement and enforce international standards on IOSCO's members. Self-assessments and peer assessments play an important role in allowing fellow regulators and market participants to evaluate each jurisdiction's progress in implementing and enforcing IOSCO standards. LCH.Clearnet agrees with the Consultation's view that the development of IOSCO standards for benchmarks represents a successful cross-border approach. Self-assessments and peer assessments should be used to gauge whether the differing approaches of individual jurisdictions to implementing and enforcing these common standards are building on or undermining this success story.
- IOSCO should consider increasing the granularity of standards while taking into account the downsides of doing so. More granular standards could facilitate regulatory convergence in the regulation of global markets or infrastructure. As identified in the Consultation, the downsides of more granular standards include potentially transforming standards into a hard ceiling which discourage the imposition of higher standards and may limit a regulator's flexibility in properly regulating its own markets.
- In developing laws and regulations, regulators should be encouraged to take into consideration the impact of the proposed law or rule on foreign entities and participants active in the regulator's jurisdiction at an early stage. Such consideration will allow regulators to choose the tool that will best fulfil the core regulatory goals of protecting investors, ensuring that markets are fair, efficient and transparent, and reducing systemic risk in the situation at hand. The best tool to address cross-border activity in markets that are predominantly domestic and involve retail participants may be different than the best tool to address markets that are truly global and involve institutional participants. Regulators should not be wed to a single approach or tool for all situations. Enhancing international dialogue between regulators facing the same issue, providing a forum for IOSCO members to discuss the potential advantages and disadvantages of the various tools in specific situations, and developing guidelines for assessing foreign regulatory regimes may be particularly useful as laws and regulations applicable to previously unregulated activity are being developed.



Conclusion

LCH.Clearnet hopes that our comments will assist the Task Force in developing its final report on IOSCO's role with regard to cross-border issues.

Please do not hesitate to contact LCH.Clearnet regarding any questions raised by this submission or to discuss our comments in greater detail.

Yours sincerely,

A handwritten signature in black ink that reads 'Susan Milligan' followed by a horizontal line.

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