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Code of Conduct on Clearing and Settlement

Third meeting of the Monitoring Group (MOG)

11 July 2007

The main purpose of the third meeting of the Monitoring Group of the Code of Conduct (MOG) was to assess the Access and Interoperability Guideline drafted by the infrastructures. Two other topics were also discussed: (i) price transparency and (ii) the draft Terms of Reference for the external audit procedure.

Access and interoperability

The Access and interoperability section is the central part of the Code of Conduct ("the Code"). Building on the general principles contained in the Code, the infrastructures have outlined – in a separate document – the detailed rules for access and interoperability. The "Access and Interoperability Guideline" ("the Guideline"), published on 28 June, was presented at this meeting of the MOG.

The MOG welcomed the Guideline and acknowledged the significant work infrastructures have undertaken to deliver it within the Code's deadline. It particularly welcomed the active consultation of users and the Commission throughout the process of drafting the Guideline.

The MOG considered that the Guideline is an important step forward in making it easier for infrastructures to gain access to and become interoperable with infrastructures in other markets. If properly implemented, it will lay a solid foundation for improving the efficiency of European post-trading arrangements.

However, the Guideline is a novel instrument. The MOG therefore considered that it will be necessary to assess and review all aspects of the Guideline at the end of this year in view of first experiences and to adjust it if necessary. The application of the Guideline will accordingly be on the agenda of the MOG meeting on 21 January 2008.

Moreover, whilst welcoming that the Commission's major comments were fully taken into account during the drafting process, the MOG stressed that there are still a limited number of areas where the Guideline should be amended. Most can be dealt with during the review process. However, three points warrant immediate attention:

1. It should be made clear that the Application Standards outlined in chapter 5 apply to all types of links foreseen by the Code and the Guideline. As currently phrased, some doubts remain.
2. There should be an overall time limit for the application process outlined in Article 113. The MOG considers that a 6 month limit – unless the involved parties agree otherwise – is reasonable.

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3. The chapter on mediation should describe the mediator's mission in further detail, including inter alia references to the mediator collecting facts and gathering information, listening to the parties and respecting due process, leading the negotiations, and making a proposal for an agreement.

The Commission said that it would write formally to the infrastructure Associations with its comments on the Guideline. Infrastructure representatives agreed to give due consideration to those comments and revert to the Commission.

The representative of the ECB also drew attention to the following aspects:

1. There is a need for consistency of treatment between CSDs and CCPs. As for CCPs, CSDs should be subject to adequate oversight/regulation by competent authorities on the basis of commonly accepted international (e.g. CPSS-IOSCO) or EU-wide (if any) standards;
2. The Guideline states that developments eliminating Giovannini barriers become part of the standard service offering. In this respect, the harmonisation of CSDs' operating hours should not be considered as customisation, but as a requirement to be met by CSDs in any case;
3. It would be desirable to have a consistent terminology between the Guideline and documents produced by institutions that intend to comply with the Code. This would make it easier to assess compliance. For example, under TARGET2 and TARGET2-Securities' user requirements, "transaction feed access" is referred to as "direct technical access". (This would become relevant in the event of T2S being launched);
4. The Guideline states that the existence of certain barriers limits its effectiveness. One such barrier cited in the text is the lack of remote access to central bank credit. However, under TARGET2 (cash), it will be possible to use a single cash account for all operations in countries connected to T2. The issue of having remote access to central bank credit will accordingly become irrelevant. Further technical enhancements to facilitate the flow of information between CSDs and T2 can be considered in the next release of T2 if there is a request by users.

Since these were primarily matters relating to CSDs it was agreed that ECSDA would follow up bilaterally with the ECB on these items.

Price transparency

The European Credit Sector Associations' (ECSA) user task force presented the results of its assessment of the level of implementation of the price transparency part of the Code. Focusing on (I)CSDs and CCPs, the task force concluded that (i) the picture on price transparency is improving due to close dialogue between infrastructures and users, (ii) there are many good practices and (iii) shortcomings are being addressed.

For the majority of the price transparency commitments (publication of prices, services, discount and rebate schemes, billing reconcilability) users concluded that nearly all CSDs and CCPs have made good progress. For price comparability users argued that partial progress has been achieved by CSDs, as the Conversion Table is not yet fully implemented.

The MOG welcomed this thorough assessment and the constructive cooperation between users and infrastructures. It invited users to further refine the methodology, particularly with a view to ensuring maximum consistency in the assessment of different infrastructures.

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Draft terms of reference for the external audit process

Under the Code's Article 44, each organisation having signed the Code will "task their external auditor or another external auditor of the organisation's choice, to verify their compliance with the Code." The Code also noted the Commission's intention to establish the MOG which would liaise with this external audit process.

The Commission accordingly presented its suggested framework for the external audit process foreseen by the Code. The draft Terms foresee that the organisations having signed the Code each year assess their own level of compliance. These Self-assessment Reports will be scrutinised by external auditors, who will provide their opinion along the lines of a limited assurance engagement. The MOG invites comments on the draft Terms over the summer with the aim of finalising them by early autumn.

Next meeting and future steps

The next meeting of the MOG will take place on Wednesday 10 October. It will focus on service unbundling and accounting separation, which is due to by the end of 2007. It will also discuss (i) the draft Terms of Reference for the external audit process, (ii) Code implementation so far, and (iii) extension of the Code to other asset classes.

Time	Topic
9.45	General introduction
10.00	Service unbundling and accounting separation preparation
11.00	Terms of reference for the external audit procedure
11.30	Code implementation so far <ul style="list-style-type: none">• Price transparency (20 minutes)• Access and Interoperability (40 minutes)
12.30	Extending the Code to other asset classes - discussion
13.00	Lunch
14.15	MOG deliberations (in camera)
15.30	End of meeting

The tentative schedule for forthcoming meetings of the MOG is as follows:

Date	Possible focus of future meetings
21 January 2008	Unbundling and accounting separation implementation Views on extending the Code to other asset classes Review effectiveness of Access and Interoperability Guideline First stock-taking of overall results
April 2008	Stock-taking and review of overall results Extensions (asset classes, market participants)