



25 February 2008

Code of Conduct on Clearing and Settlement – Access and Interoperability

Market users' demand – a position paper

1. Background, current situation

Subsequent to the successful conclusion of the Access and Interoperability Guideline in June 2007, an increasing number of requests for access and interoperability have been made. However, the current situation presents itself as follows:

- To date no practical solution that is in line with the Guideline has gone live. Rather, as outlined in our report to the MOG of 21 January 2008, suspicion is beginning to grow that the Code and the Guideline are being used to slow down progress.
- Market infrastructures so far have not actively involved market users in determining their access and interoperability priorities and in developing respective business cases.
- Market users lack the certainty of a coherent risk management framework for CCP interoperability solutions.
- Legal and regulatory impediments appear to be slowing the implementation of the much needed competitive post trade landscape.

Against this background, we express our requests hereafter.

2. Market users' priorities – the role of user demand and business case

From the outset our primary objective has consistently been the **creation of a CCP competitive environment** (Peer-to-Peer Model) at major European exchanges, i.e. Deutsche Börse, Euronext and the London Stock Exchange, followed by Borsa Italiana, SWX Swiss Exchange and Bolsas y Mercados Españoles BME.

25-28 Old Burlington Street London W1S 3AN	Telephone: +44 (0)20 7478 4210 Facsimile: +44 (0)20 7734 2253 Email: secretariat@eurosf.com Website: www.eurosf.com	Registered Office 30 St. James's Street London SW1A 1HB	European Securities Forum is a limited liability company registered in England and Wales under no. 4011370
---	--	---	---

Major market users request to be **systematically involved** in the process of CCPs developing respective service offerings. **User demand** and **business cases** depend on information to be provided by CCPs including

- cost savings vs incumbent
- cross margining / cross collateralisation
- estimated time to market
- estimated investment cost to users
- choice of CSDs
- description of possible obstacles to implementation

3. Risk management

CCP risk management aspects are covered in Articles 12, 13, 49, 84 and 124 of the Guideline. However, given the fact that the market users are the ultimate risk takers (guarantee funds, collateralisation / margining), they need to be aware of and agree to risk sharing arrangements between CCPs and, more generally, the potential risk impact of individual interoperability agreements. They therefore request to be fully informed by their respective CCPs of all relevant risk aspects of intended inter-operability agreements.

4. Removal of legal, fiscal and regulatory impediments

Article 51 of the Guideline provides that the Requesting Organisation should, in principle, comply with the legal, fiscal and regulatory arrangements applicable to the Receiving Organisation.

Such compliance could undermine competition on an equal footing and thus prevent de facto market users' choice.

We therefore propose to consider **expanding the brief and the composition of the MOG** by

- commissioning the MOG to take appropriate and targeted action to have legal, fiscal and regulatory impediments removed that stand in the way of implementing competitive access and interoperability solutions in practice in accordance with the Code and the Guideline
- adding to the current members representing the Commission, the ECB and CESR, representatives from market infrastructures and market users.

25-28 Old Burlington Street London W1S 3AN	Telephone: +44 (0)20 7478 4210 Facsimile: +44 (0)20 7734 2253 Email: secretariat@eurosf.com Website: www.eurosf.com	Registered Office 30 St. James's Street London SW1A 1HB	European Securities Forum is a limited liability company registered in England and Wales under no. 4011370
---	--	---	---

5. Conclusions

- **We deem the transposition to date of the Guideline into practical interoperability solutions so far unsatisfactory.**
- **Market users request to be systematically involved in the process of market infrastructures – primarily CCPs – developing competing service offerings based on the Guideline.**
- **We request to be fully informed of all relevant risk aspects of CCP to CCP interoperability agreements.**
- **We propose to consider expanding the brief and the composition of the MOG to effectively deal with legal, fiscal and regulatory impediments.**

25-28 Old Burlington Street London W1S 3AN	Telephone: +44 (0)20 7478 4210 Facsimile: +44 (0)20 7734 2253 Email: secretariat@eurosf.com Website: www.eurosf.com	Registered Office 30 St. James's Street London SW1A 1HB	European Securities Forum is a limited liability company registered in England and Wales under no. 4011370
---	--	---	---