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Code of Conduct on Clearing and Settlement

Twelfth meeting of the Monitoring Group (MOG)

15 March 2010

The purpose of the twelfth meeting of the Monitoring Group of the Code of Conduct (MOG) was to take stock of recent developments concerning the Code, notably as regards access and interoperability, as well as assessing the impact of forthcoming legislation on market infrastructures on the Code's field of application and its effects on the Code and the MOG.

Price transparency, service unbundling and accounting separation

The MOG concludes that no major developments have occurred in the area of price transparency since the last meeting (29 October 2009). The MOG considers that price comparability is important and invited infrastructures and users to continue their work to that effect. On accounting separation, the MOG takes note of the forthcoming self-assessment reports and assurance reports to be sent to financial regulators (scheduled for end of April).

Access and interoperability

This session was devoted to recent regulatory developments and potential forthcoming European legislation.

- In October 2009, Dutch, Swiss and UK regulators launched reviews of agreements between CCPs serving a number of European MTFs to become interoperable. On 12 February, the AFM, DNB, FINMA, FSA and SNB released a statement highlighting that in their view interoperability yields benefits but also gives rise to inter-CCP credit exposures and that CCPs need to measure, monitor and mitigate those exposures, notably by the holding of additional collateral.¹ This statement was presented by representatives of the DNB and the FSA at the MOG. The ensuing discussion highlighted a general degree of support for the main findings of the statement. Users called upon regulators and infrastructures to now move forward. To that effect, the MOG takes note of forthcoming roundtables between concerned regulators and CCPs, as well as meetings between CCPs and users.
- In view of forthcoming legislation on market infrastructures, the session was also devoted to an initial discussion of potential legislative options as regards access and interoperability between CCPs. The Commission services accordingly highlighted potential options related to, inter alia, (i) the material scope, (ii) the nature of obligations related to market opening, and (iii) rules on risk management. The ensuing discussion highlighted (i) agreement that self-regulation by means of the Code has not

¹ Communication of Regulatory Position on Interoperability by AFM, DNB, FINMA, FSA and SNB, February 2010.

delivered the expected progress as regards access and interoperability due to issues related to risks and regulatory barriers to cross-border service provision, (ii) the importance of carefully designed legal rights and obligations in order to ensure an efficient outcome, (iii) the difficulty of making potential conditions effective and operational, and (iv) the crucial importance of ensuring stringent management of risks arising from CCP interoperability. Further comments from participants highlighted the related function of settlement and the importance of links with Central Securities Depositories (CSDs), the importance of assessing the cost impact on users, and as regards data feed access, the need to take into account potential operational risks.

The MOG: future options

The last session was devoted to the future of the MOG. If the forthcoming legislative proposal on market infrastructures incorporated some of the core provisions of the Code (e.g. access and interoperability, accounting separation, service unbundling and price transparency), it would become necessary to review the rationale for the MOG as a free-standing body.

The MOG took note of initial views of meeting participants that (i) legislation would change the rationale, (ii) legislation takes time to materialise, (iii) the legislative scope is not yet clear and hence it is premature to take a decision, and (iv) the MOG has highlighted the benefits of an open and inclusive forum.

On the basis of this initial discussion, the Commission services invited further written comments by 1 April. The Commission services will consider these views and will communicate a suggested way forward subsequently.