LCH.CLEARNET

European Central Bank
Kaiserstrasse 29
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Germany

11 July 2014

LCH.Clearnet SA response to the ECB consultation on a draft Regulation of the European Central Bank on supervisory fees

Dear Sir, Madam

This letter provides LCH.Clearnet SA's response to the ECB consultation on a draft Regulation of the European Central Bank on supervisory fees issued in May 2014.

Background

Banque Centrale de Compensation SA trading as LCH.Clearnet SA (LCH) is a Central Counterparty (CCP) incorporated in France and authorised under regulation (UE) N°648/2012 (EMIR) to provide clearing services for a broad range of financial instruments including equities, fixed income, listed and OTC derivatives. As a CCP, LCH interposes itself between the counterparties to the contracts traded on these financial markets, becoming the buyer to every seller and the seller to every buyer to ensure the performance of the transaction.

In compliance with EMIR standards, clearing members are required to post initial and variation margin with LCH in order to secure their obligations to LCH for submitted transactions. In addition, clearing members are required to make contributions to LCH's default funds. Under LCH's default rules, if a clearing member defaults on its obligations to LCH, LCH is able to access the pre-funded resources within its default waterfall[1] in order to fund any losses incurred when liquidating or transferring the defaulting member's positions. By assuming such counterparty risk and having such safeguards in place, LCH underpins the stability of many important financial markets, facilitating trading and increasing confidence in those markets.

In order to have access to Central Bank liquidity, LCH has held a banking licence since its inception (as allowed in article 14 of EMIR). Nevertheless LCH's banking licence scope is limited to LCH's clearing activities and LCH is not permitted to carry out any traditional banking activities such as accepting deposits or engaging in lending.

[1] Comprised of the defaulting clearing member's margins and default fund contributions, a dedicated proportion of LCH's own capital ('skin in the game') and thereafter the margins and default fund contributions of the non-defaulting members.

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Article 1 of the Single Supervisory Mechanism Regulation (SSMR) explicitly exempts CCPs from scope. As such, LCH is of the view that it should not be subject to ECB supervision under the Single Supervisory Mechanism (SSM). Nonetheless, as LCH holds a banking licence it is currently considered by the ECB to be in scope of the SSM however, LCH is not considered to be a significant entity and will therefore be subject to indirect supervision.

Consultation on fees

We welcome the fact that the consultation has provided for different level of fees for varying degrees of supervision by the ECB and that the ECB expects that the proportion of the total supervisory expenditure to be recovered from the indirectly supervised entities will be much lower than for entities it will supervise directly. We support this proportionate approach. An EMIR authorised CCP, LCH is supervised by the Autorité de contrôle prudentiel et de resolution (ACPR), the Autorité des marches financiers (AMF), Banque de France as national competent authorities and a college of regulators.

LCH currently pays supervisory fees to number of different regulators. Imposing substantial additional supervisory fees on LCH pursuant to the SSM would impose a significant burden for LCH and in our view would not be appropriate given the ECB has determined that LCH should be subject to indirect supervision only under the SSM .

Furthermore, we have concerns at the proposed calculation of fees as they would apply to a CCP. In particular we do not consider that it would be appropriate to view the balance sheet (including total assets resulting from the clearing activities) and risk profile of a CCP in the same manner in which a banking entity is viewed. A CCP has a completely different business model and structure compared to a bank. For instance any credit or market risk it is exposed to is managed through holding several layers of protection. As per EMIR requirements, in the event of a default, LCH would use the pre-funded resources in its default waterfall to fund any losses incurred when liquidating or transferring the defaulter's positions.

While we continue to take the view that CCPs are exempt from the SSM, should the ECB choose to conduct indirect supervision of those CCPs that hold banking licences then we would strongly encourage the fees to be calculated in a way that recognises the nature of a CCP's activities is fundamentally different to those of a bank.

We hope that the above response will constructively assist the ECB in the calibration of the supervisory fees, and should you with to discuss any aspect of our response please kindly contact Francois Faure francois.faure@lchclearnet.com or Perrine Herrenschmidt at Perrine.Herrenschmidt@lchclearnet.com.

Yours faithfully,

Diane Bouwmeester

Group General Counsel and Head of Compliance