

Post-trading – the regulatory agenda for clearing and settlement

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Status of post-trading legal and regulatory framework

- Absence of a harmonised comprehensive regulatory framework for post-trading of securities in the EU
 - Some aspects addressed by EU law (e.g. *MiFID* rules on safeguarding client's assets and access rights, revised *SFD* addressing system interoperability and cross-system finality, explicit coverage of clearing systems and protection of night-time settlement and third-party collateral)
 - *Legislative action* (e.g. proposed *Securities Law Directive*, *EMIL*, *UNIDROIT*)
 - *Regulatory standards* at EU and global level (*MiFID*, *CESR-ESCB*, *CPSS-IOSCO*, *Basel II*)
 - Scope for *self-regulatory measures* (*Code of conduct for clearing and settlement*)
 - Harmonisation of *technical standards and infrastructure services* (*CESAME*, *T2S*, *ISO*)
- ⇒ *Coordination of initiatives?*

Main elements of a framework for CCPs

- Clear and transparent legal basis
- Stringent participation requirements
- Highest standards for credit, operational and liquidity risk management
- Fair and open access
- Management of conflicts of interest
- Contribution to market transparency
- Arrangements for default management
- Arrangements for cooperation among authorities

⇒ *ESCB-CESR recommendations as starting point*

Rationale for CCP regulation

- Systemic importance of CCPs
 - Growing cross-border implications of CCPs in terms of products, major participants and currencies in increasingly integrated markets
 - Further development of CCPs, namely in the context of OTC derivatives
- ⇒ *Need for a level playing field within single market and beyond*
- ⇒ *Pre-empt possible regulatory arbitrage and competition on risk management*

Areas of focus for OTC derivatives CCPs

- Particular importance of cross-border clarity and enforceability of contractual arrangements
 - More stringent participation requirements, e.g. including involvement in default management
 - Risk management and default procedures in line with specific risk features of OTC derivatives
 - Possible regulatory incentives for using CCPs
 - Decision on contract eligibility based on effective corporate governance arrangements
 - Need for effective public disclosure and regulatory reporting on cross-border basis
- ⇒ *ESCB-CESR recommendations for CCPs already reflect specific issues regarding clearing OTC derivatives*

Priorities for EU-US regulatory convergence

- Scope of mandatory central clearing, especially as regards the final decision on clearing eligibility
- Possible exemptions for some asset classes and/or participant types
- Capital charges and collateralisation requirements for bilaterally cleared contracts
- Regulatory requirements for CCPs

⇒ *More detail on EU and US legislation by mid 2010; critical phase for EU-US regulatory dialogue*

⇒ *Review of CPSS-IOSCO recommendations for CCPs provides assistance*

Related policy issues

- Global cooperation and information-sharing for (i) individual CCPs and (ii) CCP industry as a whole
- Effective interaction between regulation, supervision and oversight
- Globally consistent rules and cooperative arrangements for trade repositories (TRs)
- Effective public disclosure and central bank/regulatory access to data stored in TRs

⇒ *Forthcoming EU framework also on trade repositories*

⇒ *Review of CPSS-IOSCO recommendations for FMIs*

⇒ *OTC Derivatives Regulators Forum facilitating global cooperation for OTC derivatives infrastructures*

Lessons for the post-trading area

- Need for a *consistent legal and regulatory approach* encompassing substantive law, market practices and regulatory standards (both EU and global)
- Better *coordination between supervision and oversight* (e.g. increased information and cooperation)
- Fostering *interoperability of systems and infrastructure integration* as important drivers for increasing the efficiency and safety of the financial system
- Promote *development of infrastructure for OTC derivatives* (CCPs, TRs) to help transparency, standardisation of products and to improve risk management and netting
- Improvement of *liquidity management*