



London Stock Exchange Group response on ESMA Consultation Paper on Procedural Rules and Penalties imposed on Third-Country CCPs, TRs and CRAs

Introduction

The London Stock Exchange Group ("LSEG" or "the Group") is a financial market infrastructure provider, headquartered in London, with significant operations in Europe, North America and Asia. Its diversified global business focuses on capital formation, intellectual property and risk and balance sheet management. LSEG operates an open access model, offering choice and partnership to customers across all of its businesses.

LSEG operates multiple clearing houses. It has majority ownership of the multi-asset global CCP operator, LCH Group ("LCH"). LCH has two licensed CCP subsidiaries – LCH Ltd in the UK and LCH S.A. in France. Both are leading multi-asset class and international clearing houses, serving major international exchanges and platforms as well as a range of OTC markets. They clear a broad range of asset classes, including: securities, exchange-traded derivatives, commodities, foreign exchange derivatives, interest rate swaps, credit default swaps and euro, sterling and US dollar denominated bonds and repos.

In addition, LSEG operates Cassa di Compensazione e Garanzia S.p.A. ("CC&G"), the Italian clearing house, providing clearing services for a range of European securities as well as exchange traded equity and commodities derivatives.

LSEG also operates UnaVista ("UV"), a rules-based data matching and validation service, available globally and designed to manage multiple workflows irrespective of market, geography and asset class. UnaVista is an authorised and regulated EMIR Trade Repository ("TR") operating across all asset classes for both exchange traded derivatives and OTC derivatives and a European Approved Reporting Mechanism ("ARM") under the MiFID regime.

Introductory remarks

LSEG welcomes the opportunity to comment on ESMA's Consultation Paper ("CP") on Procedural Rules and Penalties imposed on Third-Country CCPs, TRs and CRAs. After reviewing the CP, we would like to note the following key comments:

- We are supportive of a transparent investigation procedure whereby a TC-CCP is provided access to the investigation file and the persons subject to the investigation have the right to be heard and provide input throughout the entire process.
- We believe that penalties imposed should be proportional to the TC-CCP's involvement in the misconduct and periods of limitations should not be extended for reasons other than the TC-CCP's failure to comply with its regulatory requirements to limit potential impacts on financial stability in the market stemming from legal uncertainty.

Below we set out our responses to each of the questions raised in the CP.

(Q1) - Do you agree with the proposal regarding the right to be heard and the procedure at the stage of the investigation conducted by the investigation officer? Please elaborate on the reasons for your answer.

LSEG agrees with ESMA's proposal regarding the rights of the persons subject to the investigation to be heard by the investigation officer upon his or her completion of the investigation but before the file is submitted to ESMA. We do believe, however that the person subject to the investigation, and following any previous written submission, should also have the right for an open hearing and not only if the investigation officer considers it necessary.

(Q2) - Regarding TC-CCPs, do you agree with the proposal regarding the file to be submitted by the investigation officer to ESMA? Please elaborate on the reasons for your answer.



LSEG agrees with ESMA's proposal regarding the contents of the file to be submitted by the investigation officer to ESMA, particularly with regards to any types of amendments to the original submission made in order to provide transparency to the entire process.

(Q3) - Regarding TRs, do you agree with the proposal regarding the file to be submitted by the investigation officer to ESMA? Please elaborate on the reasons for your answer.

LSEG agrees with ESMA's proposal regarding the file to be submitted by the investigation officer to ESMA.

(Q4) - Do you agree with the proposal regarding the procedure before ESMA with regards to fines and supervisory measures, including the right to be heard? Please elaborate on the reasons for your answer.

LSEG agrees with ESMA's proposal with regards to fines and supervisory measures, including the right to be heard. However, we consider that before ESMA can issue fines and/or supervisory measures, an oral hearing should be afforded to the TC-CCP in question based on the findings of the investigation officer. The CP recognises that there might be cases where the investigation officer's findings may be inconclusive or not constitute an infringement and in such cases we believe it's important that a TC-CCP's views are heard in an attempt to provide further clarity and terminate the procedure in a timely manner.

(Q5) - Do you agree with the proposal regarding the periodic penalty payments? Please elaborate on the reasons for your answer.

LSEG agrees with ESMA's proposal regarding a periodic penalty payment during the investigation phase in order to compel a Tier 2 TC-CCP to submit to an investigation or an inspection would be appropriate.

(Q6) - Do you agree with the proposal regarding the access to the file by TC-CCPs? Please elaborate on the reasons for your answer.

LSEG agrees with ESMA's proposal regarding the access to the file by TC-CCPs.

(Q7) - Do you agree with the proposal regarding the adoption of interim decisions for TCCCPs? Please elaborate on the reasons for your answer.

LSEG agrees with ESMA's proposal regarding the adoption of an interim decision for TC-CCPs, however we must note that it is important for the TC-CCP to have the opportunity to submit written comments to ESMA in both stages of this process (i.e. "Interim decision" and "Confirmatory decision") and for ESMA to take them under consideration before any decision is made/ratified. As periodic penalties can be sanctioned until an interim decision is either confirmed or annulled, providing the right to the person subject to the investigation to provide comments will provide transparency and significantly increase the validity of both decisions' phases. In addition to that, we would like to note that, ESMA's "two-step" supervisory proposal (i.e. Interim and Confirmatory) alongside with two different "sanctions" at each step of the process, can be quite hard to follow and time consuming when implemented. We believe that a simpler process, whereby sanctions only apply once a "confirmatory decision" is made, to be a more suitable approach providing the necessary clarity to both ESMA and TC-CCPs.

(Q8) - Do you agree with the proposal regarding the adoption of interim decisions for TRs? Please elaborate on the reasons for your answer.

LSEG believes it is important for the TR to have the opportunity to submit written comments to ESMA in both stages of this process and for ESMA to take them under consideration before any decision is made/ratified. Therefore, we would appreciate clarification on this aspect.

(Q9) - Do you agree with the proposal regarding the limitation periods for the imposition of penalties imposed on TC-CCPs? Please elaborate on the reasons for your answer.



LSEG agrees with ESMA's proposal regarding the limitation periods for the imposition of penalties imposed on TC-CCPs. We would, however, welcome further clarity on how the "limitation period" would work in practice particularly around interruptions and extensions of that period. For example, it is not clear in the current drafting whether the phrase "start running afresh" means that the five-year limitation period is effectively reset. We believe that a use case / example would be a good way to illustrate all possible scenarios and their impacts on the limitation period.

Furthermore, we are of the view that, any interruption that is not a result of a TC-CCPs actions should not be considered within ESMA's limitation period and not prolong it. Such an approach would add to the legal certainty of the TC-CCP in question and its participants and will limit potential impacts on financial stability.

(Q10) - Do you agree with the proposal regarding the limitation periods for the enforcement of penalties imposed on TC-CCPs? Please elaborate on the reasons for your answer.

LSEG agrees with ESMA's proposal regarding the limitation periods for the enforcement of penalties imposed on TC-CCPs.

(Q11) - Do you agree with the proposed collection of fines and periodic penalty payments regarding TC-CCPs? Please elaborate on the reasons for your answer.

LSEG agrees with ESMA's proposal regarding the proposed method and allocation of fines and periodic penalty payments regarding TC-CCPs.

(Q12) - Do you agree with the proposed collection of fines and periodic penalty payments regarding TRs? Please elaborate on the reasons for your answer.

LSEG agrees with the update of the reference to "DG MARKT" to "the relevant DG of the Commission in charge of financial matters". In relation to periodic penalty payments being lodged to different accounts or subaccounts, we would not have any concerns as long as the accounts (or subaccounts) are all directly attributable to ESMA.

(Q13) - Do you agree with the proposed calculation of periods, dates and time limits? Please elaborate on the reasons for your answer.

LSEG agrees with ESMA's proposal regarding the proposed calculation of periods, dates and time limits.

(Q14) - Do you agree with the proposals to amend the CRA Commission Delegated Regulation to ensure consistency with the rules of procedure applicable to TRs? Please elaborate on the reasons for your answer.

LSEG agrees with ESMA's intention to provide broader consistency between different pieces of EU Regulation. We are strong supporters of a harmonised supervisory framework.